

Title 7, Texas Administrative Code
Part 5. Office of Consumer Credit Commissioner
Chapter 84. Motor Vehicle Installment Sales
Subchapter G. Examinations

The Finance Commission of Texas (commission) adopts amendments to §84.707 (relating to Files and Records Required (Retail Sellers Assigning Retail Installment Sales Contracts)), §84.708 (relating to Files and Records Required (Retail Sellers Collecting Installments on Retail Installment Sales Contracts)), and §84.709 (relating to Files and Records Required (Holders Taking Assignment of Retail Installment Sales Contracts)) in 7 TAC Chapter 84, concerning Motor Vehicle Installment Sales.

The commission adopts the amendments to §84.707, §84.708, and §84.709 without changes to the proposed text as published in the November 10, 2023, issue of the *Texas Register* (48 TexReg 6519).

The commission received no official comments on the proposed amendments.

The rules in 7 TAC Chapter 84 govern motor vehicle retail installment transactions. In general, the purposes of the adopted rule changes to 7 TAC Chapter 84 are: (1) to implement changes relating to recordkeeping for debt cancellation agreements under HB 2746 (2023), and (2) to make technical corrections and updates.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC received one informal precomment on the rule text draft, discussed later in this preamble. The OCCC appreciates the thoughtful input provided by stakeholders.

Amendments to §84.707 update recordkeeping requirements for retail sellers that assign motor vehicle retail installment contracts to another holder. Amendments at §84.707(d)(2)(A)(iv) remove a reference to the Tax Collector's Receipt for Texas Title Application/Registration/Motor Vehicle Tax handwritten receipt (Form 31-RTS). Based on information from the Texas Department of Motor Vehicles (TxDMV), the OCCC understands that this form is obsolete for motor vehicle dealer sales. An amendment removes current §84.707(d)(2)(E), which requires retail sellers to maintain the County of Title Issuance form (Form VTR-136). The OCCC understands that this form is now obsolete and is no longer used, following the passage of SB 876 (2021) and amendments to Texas Transportation Code, Chapter 501. Other amendments throughout §84.707 renumber provisions to be consistent with these amendments and make technical corrections.

Amendments at §84.707(d)(2)(I) update recordkeeping requirements for motor vehicle debt cancellation agreements. Under Texas Finance Code, §354.007, a buyer is entitled to a refund of a debt cancellation agreement fee when the agreement terminates due to prepayment of the retail installment contract. The OCCC has identified failure to provide these refunds as a recurring issue in its examinations of licensees. In examinations conducted between 2016 and 2023, the OCCC instructed licensees to provide more than \$26 million in refunds to consumers as a result of this issue. In the 2023 regular legislative

session, the Texas Legislature passed HB 2746, which amended requirements for debt cancellation agreement refunds. In particular, HB 2746 amended Texas Finance Code, §354.007 to specify: (1) that retail sellers and third-party administrators are responsible for providing refunds upon cancellation or termination of a debt cancellation agreement (based on the portion of the debt cancellation agreement fee that the retail seller and administrator received), (2) that holders must either refund a debt cancellation agreement fee or provide written instruction to the administrator and retail seller to make the refund, and (3) that administrators and retail sellers are responsible for maintaining records of a refund. The amendments to §84.707(d)(2)(I) specify that retail sellers must maintain documentation of the disbursement of the debt cancellation agreement fee, any written instruction from a holder to make a refund, and documentation of any refund. These amendments will help ensure that retail sellers maintain records to show compliance with Texas Finance Code, §354.007, as amended by HB 2746. Licensees must maintain these records to document that consumers are receiving legally required refunds.

In an informal precomment, an attorney representing an association of motor vehicle dealers asked two questions regarding the proposed amendments to §84.707. First, the attorney asked: "With respect to the required 'written instruction' from a holder and the documentation of any refund of the DCA, if the written instructions are sent electronically, may the written instructions be maintained electronically by the retail seller?" Second, the attorney asked: "With the recognition that the DCA is to be maintained in each retail installment transaction file or a copy of any page of the DCA with a signature, transaction-specific

term, the cost of the DCA and any blank spaces completed and a master copy of each DCA maintained as required, do the written instructions and refund documents have to be maintained in each retail buyer's file, or may they be maintained collectively?" These issues are addressed in the current rule's introductory text to §84.707(d)(2), which states: "A licensee must maintain a paper or imaged copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time." The introductory text also states: "If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request." These two sentences apply to the records that are normally part of the retail installment transaction file, and these sentences are not being changed in this adoption. As described in these two sentences, a retail seller could maintain an electronic record that is not included in the transaction file, as long as the electronic record can be accessed on request within a reasonable amount of time.

Amendments to §84.708 update recordkeeping requirements for retail sellers that collect payments on motor vehicle retail installment contracts. The amendments to §84.708 are substantially similar to the amendments to §84.707 described in the previous two paragraphs. In particular, the amendments delete a reference to Form 31-RTS, delete a reference to Form VTR-136, make technical corrections, and require sellers to maintain records of debt cancellation agreement refunds to ensure consistency with HB 2746.

Amendments to §84.709 update recordkeeping requirements for holders that take assignment of motor vehicle retail installment contracts. Specifically, amendments to §84.709(e)(2)(D) explain that holders must maintain any written instruction to another person to make a refund, and must maintain any other refunding documentation that comes into their possession. Amendments to §84.709(e)(2)(F) specify that holders must maintain documents relating to the cancellation or termination of a debt cancellation agreement that come into their possession, and must cooperate in obtaining related documents. These amendments are consistent with a holder's current responsibility under §84.709(e)(2)(F) to maintain (and cooperate in obtaining) documents relating to a debt cancellation agreement claim. It is important that licensees maintain these records to document that consumers are receiving legally required refunds.

The rule amendments are adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4. In addition, Texas Finance Code, §348.513 authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 348.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 348 and 354.

§84.707. Files and Records Required (Retail Sellers Assigning Retail Installment Sales Contracts)

- (a) - (c) (No change.)
- (d) Records required.

(1) Retail installment sales transaction report.

(A) General requirements. Each licensee must maintain records sufficient to produce a retail installment sales transaction report that contains a listing of each Texas Finance Code, Chapter 348 retail installment sales contract entered into by the licensee. The report is only required to include those retail installment sales contracts that are subject to the record retention period of paragraph (7) [~~(6)~~] of this subsection.

(B) - (D) (No change.)

(2) Retail installment sales transaction file. A licensee must maintain a paper or imaged copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) for all retail installment sales transactions:

(i) - (iii) (No change.)

(iv) the Texas Department of Motor Vehicles' Title Application Receipt (Form VTR-500-RTS) [~~], Tax Assessor's Tax Collector's Receipt for Title Application/Registration/Motor Vehicle Tax handwritten receipt (Form 31-RTS),~~] or similar document evidencing the disbursement of the sales tax, and fees for license, title, and registration of the vehicle;

(v) (No change.)

(vi) any records applicable to the retail installment transaction outlined by subparagraphs (B) - ~~(P)~~ [(Q)] of this paragraph.

(B) - (D) (No change.)

~~[(E) for a retail installment sales transaction in which the retail buyer elects to have the vehicle registered in another county as permitted by Texas Transportation Code, §501.0234, a completed copy of the Texas Department of Motor Vehicles' County of Title Issuance form (Form VTR-136) signed by the retail buyer.]~~

(E) [(F)] for a retail installment sales transaction involving a downpayment, a copy of any document relating to the downpayment including:

(i) - (iv) (No change.)

(F) [(G)] for a retail installment sales transaction involving a trade-in motor vehicle, a copy of the Texas Disclosure of Equity in Trade-In Motor Vehicle required by Texas Finance Code, §348.0091 and §84.204 of this title (relating to Disclosure of Equity in Retail Buyer's Trade-in Motor Vehicle).

(G) [(H)] for a retail installment sales transaction involving the disbursement of funds for money advanced pursuant to Texas Finance Code, §348.404(b) and (c), a copy of any document relating to the disbursement of funds for money advanced.

(H) [(I)] for a retail installment sales transaction in which the licensee issues a certificate of insurance regarding insurance policies issued by or through the licensee in connection with the retail installment sales transaction, copies of the certificates of insurance.

(I) [(J)] for a retail installment sales transaction in which the licensee issues a debt cancellation agreement, a complete copy of the debt cancellation agreement provided to the retail buyer, documentation of disbursement of the debt cancellation agreement fee to the retail seller or a third-party administrator, any written instruction from a holder to make a full or partial refund of the debt cancellation agreement fee, and documentation of any refund provided upon cancellation or termination of the debt cancellation agreement. As an alternative to maintaining a complete copy of the debt cancellation agreement in the retail installment sales transaction file, the licensee may maintain all of the following:

(i) in the retail installment sales transaction file, a copy of any page of the debt cancellation agreement with a signature, a transaction-specific term, the cost of the debt cancellation agreement, or any blank space that has been filled in;

(ii) in the licensee's general business files, a complete master copy of each debt cancellation agreement form used

by the licensee during the period described by paragraph (7) of this subsection;

(iii) in the licensee's general business files, policies and procedures that show a verifiable method for ensuring that the master copy of the debt cancellation agreement accurately reflects the debt cancellation agreement used in each individual transaction.

(J) [~~K~~] for a retail installment sales transaction in which the licensee issues a certificate of coverage regarding ancillary products issued by or through the licensee in connection with the retail installment sales transaction, records of the ancillary products (motor vehicle theft protection plans, service contracts, maintenance agreements, identity recovery service contracts, etc.) including all certificates of coverage.

(K) [~~L~~] for a retail installment sales transaction where separate disclosures are required by federal or state law including the following:

(i) - (ii) (No change.)

(L) [~~M~~] for a retail installment sales contract that has an itemized charge for the inspection of a used motor vehicle, access to a copy of the work order, inspection receipt, or other verifiable evidence that reflects that the inspection was performed including the date and cost of the inspection.

(M) [~~N~~] for a retail installment sales transaction involving the sale of a trade-in credit agreement under Texas Finance Code, §348.125:

(i) - (iii) (No change.)

(N) [~~O~~] for a retail installment sales transaction in which a retail buyer requests or receives a benefit under a trade-in credit agreement under Texas Finance Code, §348.125:

(i) - (iii) (No change.)

(O) [~~P~~] for a retail installment sales transaction in which a retail buyer requests or receives a benefit under a depreciation benefit optional member program under Texas Occupations Code, §1304.003(a)(2)(C):

(i) - (ii) (No change.)

(P) [~~Q~~] any conditional delivery agreement signed by the retail buyer or provided to the retail buyer.

(3) - (7) (No change.)

§84.708. Files and Records Required (Retail Sellers Collecting Installments on Retail Installment Sales Contracts)

(a) - (d) (No change.)

(e) Records required.

(1) Retail installment sales transaction report.

(A) General requirements. Each licensee must maintain records sufficient to produce a retail installment sales transaction report that contains a listing of each Texas Finance Code, Chapter 348 retail installment sales contract made or acquired by the licensee. The report is only required to include those retail installment sales contracts that are subject to the record retention period of paragraph (10) [~~9~~] of this subsection.

(B) - (D) (No change.)

(2) Retail installment sales transaction file. A licensee must maintain a paper or imaged copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) for all retail installment sales transactions:

(i) - (iv) (No change.)

(v) the Texas Department of Motor Vehicles' Title Application Receipt (Form VTR-500-RTS) [~~Tax Assessor's Tax Collector's Receipt for Title Application/Registration/Motor Vehicle Tax handwritten receipt (Form 31-RTS),~~] or similar document evidencing the disbursement of the sales tax, and fees for license, title, and registration of the vehicle;

(vi) (No change.)

(vii) any records applicable to the retail installment transaction outlined by subparagraphs (B) - ~~(U)~~ [~~(V)~~] of this paragraph.

(B) - (D) (No change.)

~~[(E) for a retail installment sales transaction in which the retail buyer elects to have the vehicle registered in another county as permitted by Texas Transportation Code, §501.0234, a completed copy of the Texas Department of Motor Vehicles' County of Title Issuance form (Form VTR-136) signed by the retail buyer.]~~

~~(E)~~ [(F)] for a retail installment sales transaction involving a downpayment, a copy of any record or document relating to the downpayment including:

(i) - (iv) (No change.)

~~(F)~~ [(G)] for a retail installment sales transaction involving a trade-in motor vehicle, a copy of the Texas Disclosure of Equity in Trade-In Motor Vehicle required by Texas Finance Code, §348.0091 and §84.204 of this title (relating to Disclosure of Equity in Retail Buyer's Trade-in Motor Vehicle).

~~(G)~~ [(H)] for a retail installment sales contract that has an itemized charge for the inspection of a new or used motor vehicle, a copy of or access to the work order, inspection receipt, or other verifiable evidence that reflects that the inspection was performed including the date and cost of the inspection.

~~(H)~~ [(I)] for a retail installment sales transaction involving the disbursement of funds for money advanced pursuant to Texas Finance Code, §348.404(b) and (c), a

copy of any document, form, or agreement relating to the disbursement of funds for money advanced.

(I) [~~(J)~~] for a retail installment sales transaction in which the licensee issues a certificate of insurance regarding insurance policies issued by or through the licensee in connection with the retail installment sales transaction, copies of the certificates of insurance.

(J) [~~(K)~~] for a retail installment sales transaction in which the licensee issues a debt cancellation agreement, a complete copy of the debt cancellation agreement provided to the retail buyer, documentation of disbursement of the debt cancellation agreement fee to the retail seller or a third-party administrator, any written instruction to another person to make a full or partial refund of the debt cancellation agreement fee, and documentation of any refund provided upon cancellation or termination of the debt cancellation agreement. As an alternative to maintaining a complete copy of the debt cancellation agreement in the retail installment sales transaction file, the licensee may maintain all of the following:

(i) in the retail installment sales transaction file, a copy of any page of the debt cancellation agreement with a signature, a transaction-specific term, the cost of the debt cancellation agreement, or any blank space that has been filled in;

(ii) in the licensee's general business files, a complete master copy of each debt cancellation agreement form used by the licensee during the period described by paragraph (10) of this subsection;

(iii) in the licensee's general business files, policies and procedures that

show a verifiable method for ensuring that the master copy of the debt cancellation agreement accurately reflects the debt cancellation agreement used in each individual transaction.

(K) [~~(L)~~] for a retail installment sales transaction in which the licensee issues a certificate of coverage regarding ancillary products issued by or through the licensee in connection with the retail installment sales transaction, records of the ancillary products (motor vehicle theft protection plans, service contracts, maintenance agreements, identity recovery service contracts, etc.) including all certificates of coverage.

(L) [~~(M)~~] for a retail installment sales transaction involving insurance claims for credit life, credit accident and health, credit property, credit involuntary unemployment, collateral protection, or credit gap insurance:

(i) - (ii) (No change.)

(M) [~~(N)~~] for a retail installment sales transaction involving the cancellation of a full or partial balance under a debt cancellation agreement for total loss or theft of an ordinary vehicle:

(i) - (ii) (No change.)

(N) [~~(O)~~] for a retail installment sales transaction where separate disclosures are required by federal or state law including the following:

(i) - (ii) (No change.)

(O) [~~(P)~~] for a retail installment sales transaction that has been repaid in full, evidence of the discharge or release of lien as

prescribed by 43 TAC §217.106 (relating to Discharge of Lien).

(P) [~~(Q)~~] for a retail installment sales transaction involving a repossession, the records required by subsection (f) of this section.

(Q) [~~(R)~~] for a retail installment sales transaction in which the licensee agrees to defer all or part of one or more payments:

(i) - (ii) (No change.)

(R) [~~(S)~~] for a retail installment sales transaction involving the sale of a trade-in credit agreement under Texas Finance Code, §348.125:

(i) - (iii) (No change.)

(S) [~~(T)~~] for a retail installment sales transaction in which a retail buyer requests or receives a benefit under a trade-in credit agreement under Texas Finance Code, §348.125:

(i) - (iii) (No change.)

(T) [~~(U)~~] for a retail installment sales transaction in which a retail buyer requests or receives a benefit under a depreciation benefit optional member program under Texas Occupations Code, §1304.003(a)(2)(C):

(i) - (ii) (No change.)

(U) [~~(V)~~] any conditional delivery agreement signed by the retail buyer or provided to the retail buyer.

(3) - (10) (No change.)

(f) (No change.)

§84.709. Files and Records Required (Holders Taking Assignment of Retail Installment Sales Contracts)

(a) - (d) (No change.)

(e) Records required.

(1) (No change.)

(2) Retail installment sales transaction file. A licensee must maintain a paper or imaged copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) - (C) (No change.)

(D) for a retail installment sales transaction in which the licensee issues or takes assignment of a debt cancellation agreement, a complete copy of the debt cancellation agreement provided to the retail buyer and any written instruction to another person to make a full or partial refund of the

debt cancellation agreement fee, and any documentation that comes into the licensee's possession regarding a refund provided upon cancellation or termination of the debt cancellation agreement. As an alternative to maintaining a complete copy of the debt cancellation agreement in the retail installment sales transaction file, the licensee may maintain all of the following:

(i) in the retail installment sales transaction file, a copy of any page of the debt cancellation agreement with a signature, a transaction-specific term, the cost of the debt cancellation agreement, or any blank space that has been filled in;

(ii) in the licensee's general business files, a complete master copy of each debt cancellation agreement form used by the licensee during the period described by paragraph (9) of this subsection;

(iii) in the licensee's general business files, policies and procedures that show a verifiable method for ensuring that the master copy of the debt cancellation agreement accurately reflects the debt cancellation agreement used in each individual transaction.

(E) (No change.)

(F) for a retail installment sales transaction involving the cancellation of a full or partial balance under a debt cancellation agreement for total loss or theft of an ordinary vehicle, or involving the cancellation or termination of a debt cancellation agreement, the licensee must:

(i) maintain any documents that come into its possession relating to the creation, processing, [Ø] resolution,

cancellation, or termination of a debt cancellation agreement; and

(ii) upon request of the agency, cooperate in requesting and obtaining access to the type of documents described in clause (i) of this subparagraph that are not in its possession.

(G) - (J) (No change.)

(3) - (9) (No change.)

(f) (No change.)

Certification

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas on December 15, 2023.

Matthew J. Nance
General Counsel
Office of Consumer Credit Commissioner