

Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 85. Pawnshops and Crafted Precious Metal Dealers
Subchapter B. Rules for Crafted Precious Metal Dealers

The Finance Commission of Texas (commission) adopts amendments to §§85.1001, 85.1009, and 85.2001 in Subchapter B of 7 TAC, Chapter 85, concerning the registration and reporting of crafted precious metal dealers.

The commission adopts the amendments to §85.1001 with changes to the proposed text as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 23). These changes are being made in order to make a technical correction to a citation contained in a definition.

The commission adopts the amendments to §85.1009 and 85.2001 without changes to the proposed text as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 23).

The commission received no written comments on the proposal.

In general, the purpose of the amendments is to implement changes resulting from the commission's review of Chapter 85, Subchapter B under Texas Government Code, §2001.039. The notice of intention to review 7 TAC, Chapter 85, Subchapter B was published in the *Texas Register* on November 13, 2015 (40 TexReg 8035). The agency did not receive any comments on the notice of intention to review.

The adopted amendments are technical in nature, providing clarification and conforming changes in accordance with a revised rule, recent legislation, and updated

agency contact information. The individual purposes of the amendments to each section are provided in the following paragraphs.

In §85.1001, concerning Definitions, a technical correction has been made to clarify the definition of "Local law enforcement." In §85.1001(4)(B)(ii)(II), the word "not" has been inserted before the phrase "in a municipality that maintains a police department." The agency believes that the inclusion of "not" clarifies the original intent of this provision, and that this word had been inadvertently omitted at the time the rule was initially adopted. Section 85.1001(4)(B)(ii)(II) defines local law enforcement to be the local county sheriff of the dealer's permanent registered location, for mail order or Internet sales where a non-resident seller enters a transaction with a dealer located in a municipality without a police department. The amendment's language is based on Texas Occupations Code, §1956.063(b), which provides that required reports must be sent to the chief of police if the transaction occurs in a municipality that maintains a police department, and to the sheriff of the county if the transaction occurs in another location.

Since the proposal, a technical correction has been made in §85.1001(2), amending the Texas Occupations Code citation contained in the definition of "Crafted precious metal." The revised citation refers to §1956.051(3) in order to correct an accidental transposition of two numbers.

In §85.1009, concerning Revocation, an amendment is provided in subsection (b) to

update an internal rule reference to 7 TAC §9.1(a), relating to contested case procedure.

The commission previously adopted amendments to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions; former title: Definitions and Interpretation; Severability) to clarify which rules of procedure apply to a contested case hearing conducted by an administrative law judge contracted by a finance agency, and which rules apply to a hearing conducted by the State Office of Administrative Hearings. Amended subsection (a) in §9.1 as adopted reads: "This chapter governs contested case hearings conducted by an administrative law judge employed or contracted by an agency. All contested case hearings conducted by the State Office of Administrative Hearings (SOAH) are governed by SOAH's procedural rules found at Title 1, Chapter 155 of the Texas Administrative Code."

Section 85.1009(b) identifies the rules of procedure applicable to a contested case hearing regarding a notice to revoke a crafted precious metal dealer's registration for alleged violations of Texas Occupations Code, Chapter 1956. The amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

Section §85.2001, concerning Transaction Report Form and Records, contains two amendments regarding recently revised information. The first amendment in subsection (a)(8) corresponds to 2015 legislation, and the second in subsection (a)(13) provides updated agency contact information.

First, crafted precious metal dealers must accept a Texas handgun license as a valid

form of identification for purchases of crafted precious metal as of September 1, 2015. During the most recent legislative session, the Texas Legislature passed HB 2739. This new law added Section 506.001(a) to the Texas Business and Commerce Code stating: "A person may not deny the holder of a concealed handgun license issued under Subchapter H, Chapter 411, Government Code, access to goods, services, or facilities . . . because the holder has or presents a concealed handgun license rather than a driver's license or other acceptable form of personal identification." This means that dealers must now accept handgun licenses as a valid form of identification, in addition to the other forms of identification listed in Section 1956.062(c) of the Texas Occupations Code. The amendment uses the phrase "handgun license" in accordance with HB 910, the open-carry law passed by the Texas Legislature during the most recent session. HB 910 replaces the phrase "concealed handgun license" with "handgun license" throughout the statutes governing handgun licenses. HB 910 went into effect on January 1, 2016.

As a result, the amendments to §85.2001(a)(8) add the phrase "or handgun license number" to the list of identification numbers to be recorded on the transaction report form by crafted precious metal dealers.

Second, in accordance with instructions from the Texas Department of Information Resources, the Office of Consumer Credit Commissioner (OCCC) has updated its website and e-mail address with the "texas.gov" extension: occc.texas.gov and consumer.complaints@occc.texas.gov. In order to provide consumers with the best contact information for the agency, this

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adoption amends §85.2001(a)(13) with the OCCC's updated contact information.

The amendments are adopted under Texas Occupations Code, §1956.0611, which authorizes the Finance Commission to adopt rules necessary to implement and enforce Texas Occupations Code, Chapter 1956, Subchapter B, regarding Sale of Crafted Precious Metal to Dealers. Additionally, §1956.063(c) states that for each regulated transaction, dealers must submit a report on a form prescribed by the commissioner.

The statutory provisions affected by the adopted amendments are contained in Texas Occupations Code, Chapter 1956, Subchapter B, concerning Sale of Crafted Precious Metal to Dealers.

§85.1001. Definitions.

The following terms, when used in this subchapter, have the following meanings:

(1) (No change.)

(2) Crafted precious metal--Has the meaning provided by Texas Occupations Code, §1956.051(3) [~~§1965.051(3)~~]. The term does not include a coin, a bar, a commemorative medallion, an item that contains incidental or trace amounts of precious metal, or an item that is purchased by a dealer for 105% or more of the item's scrap value.

(3) (No change.)

(4) Local law enforcement.

(A) (No change.)

(B) For mail order or Internet sales, local law enforcement is:

(i) (No change.)

(ii) if the seller does not reside in Texas and the dealer's permanent registered location is in Texas:

(I) (No change.)

(II) the sheriff of the county of the dealer's permanent registered location, if the dealer's permanent registered location is not in a municipality that maintains a police department.

(5) - (10) (No change.)

§85.1009. Revocation.

(a) (No change.)

(b) Upon receiving notice of revocation under this section, an affected person may request a hearing before the OCCC. The hearing will be conducted under the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the rules of procedure applicable under §9.1(a) of this title (relating to Application, Construction, and Definitions). [~~as provided in Texas Government Code, Chapter 2001, and Part 1, Chapter 9, Subchapter B of this title (relating to Contested Case Hearings).~~]

§85.2001. Transaction Report Form and Records.

(a) Required elements. For each transaction in which a dealer purchases crafted precious metal, the dealer must prepare a transaction report form. The report form must be preprinted and prenumbered

and must contain the following required elements:

(1) - (7) (No change.)

(8) the seller's driver's license number, ~~[or]~~ personal identification certificate number, or handgun license number;

(9) - (12) (No change.)

(13) the following notice: "This business is registered under the laws of the State of Texas and by state law is subject to regulatory oversight by the Office of Consumer Credit Commissioner. Any consumer wishing to file a complaint against this business may contact the Office of Consumer Credit Commissioner through one of the means indicated below: In Person or U.S. Mail: 2601 North Lamar Boulevard, Austin, Texas 78705-4207. Telephone No.: (800) 538-1579. Fax No.: (512) 936-7610. E-mail: consumer.complaints@occc.texas.gov. ~~[consumer.complaints@occc.state.tx.us.]~~ Website: occc.texas.gov. ~~[www.occc.state.tx.us.]~~"

(b) - (c) (No change.)

Certification

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on February 19, 2016.

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