

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) proposes amendments to §§85.1002, 85.1003, 85.1004, 85.1008, 85.1011, and 85.2002; proposes new 85.1007 and 85.1012; and proposes the repeal of 85.1007 in Subchapter B of 7 TAC, Chapter 85, concerning the registration of crafted precious metal dealers.

The purpose of the proposed rule changes is to implement the registration system transition to the Office of Consumer Credit Commissioner's (OCCC) online registration portal, to update and streamline registration procedures, to require current application and contact information, to update late renewal procedures, and to make technical corrections.

The OCCC circulated an early draft of proposed changes to interested stakeholders, and then held a stakeholder meeting and webinar regarding the registration system transition and accompanying rule changes. The OCCC did not receive any informal oral or written precomments on the rule text draft.

The individual purposes of the proposed changes to each section are provided in the following paragraphs.

Section 85.1002 outlines the requirements to file a new application. Proposed amendments throughout §85.1002 add references to the agency's acronym, OCCC. The agency believes that the use of "OCCC" will provide better clarity to the rules when the context calls for action by the

agency, as opposed to the commissioner specifically.

Also in §85.1002, proposed amendments remove unnecessary language related to current registration system that is being replaced. In particular, the phrase "online Metals Registration Program" is proposed for deletion from subsections (a) and (b). In subsection (c)(3), the requirement to provide a list of locations would also be deleted, as each permanent and temporary location will be registered separately by the crafted precious metal dealer.

In §85.1002(c)(4), a proposed amendment removes the requirement to provide hours of operation for temporary locations. Additionally, duplicative language regarding responsible persons is proposed for deletion.

Section 85.1003 concerns the processing of an application. Corresponding changes to those described under §85.1002 are also included in §85.1003(a)(1) to continue use of the agency's acronym. Current subsections (b) and (c) are proposed for deletion to update registration procedures, as they relate to application notification and withdrawal procedures that are no longer needed.

Also in §85.1003, a proposed amendment describes how a crafted precious metal dealer must print its registration certificate and display it in accordance with current rule §85.1006.

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Section 85.1004 concerns the relocation of a permanent registered location. A proposed amendment to this section removes references to the DPS system and updates the process for relocating a permanent registered location.

Section 85.1005 relates to notice requirements for a registered dealer. The current language of §85.1005 has been reorganized into proposed subsection (c), regarding the OCCC's reasonable reliance on the dealer's mailing and e-mail addresses currently on file. The proposed addition of subsection (a) requires a dealer to notify the OCCC of material changes in application information, including a change in assumed name or the person responsible for day-to-day operations. The proposed addition of subsection (b) explains that each dealer must keep its contact information up-to-date. This provision is intended to ensure that the agency can contact registered dealers, and so that the agency can carry out its responsibility to monitor dealers and ensure compliance, as provided by Texas Occupations Code, §1956.0613.

Section 85.1007 is proposed for repeal to be replaced with a revised and reorganized rule that reflects the amended procedures for annual renewals. The new rule incorporates renewal and expiration based on calendar year, as opposed to being based on the anniversary date of each particular registration.

Proposed new §85.1007(a) outlines annual renewal generally for permanent registered locations. Each calendar year after initial registration, a dealer must renew permanent locations, as these locations will expire on December 31 of each year.

In proposed new §85.1007(b), the information necessary to complete the renewal procedure is described, including required fees and other necessary information.

Several changes are proposed in new §85.1007(c) concerning the late renewal process for permanent locations. In subsection (c)(1), there would be no additional late renewal fee if a dealer renews by the 30th day after expiration (i.e., January 30 of the following year). Under subsection (c)(2), if a dealer renews between 31 and 180 days after expiration, there would be a late renewal fee of \$50. This maintains the current late renewal fee, but extends the late renewal period by 30 days. The requirement to obtain a new permanent registered location if not renewed by the late renewal deadline is maintained in proposed subsection (c)(3) (current (c)(2)).

The administrative penalty provision authorized by Texas Occupations Code, §1956.0615 has been maintained in proposed §85.1007(d) (current (c)(3)). Proposed §85.1007(e) adds a specific statement that a registration for a temporary location is not renewable.

Section 85.1008 concerns temporary location amendments. Proposed amendments to this section revise language to relocate a temporary location, and remove the requirement to provide hours of operation for temporary locations, consistent with the change proposed in §85.1002. Additionally, language related to renewal of a temporary location is proposed for deletion, as temporary locations will not be renewable under proposed new §85.1007.

Section 85.1011 outlines the fees required for permanent and temporary

locations, as well as amendments to each type of registration. The dollar amounts required for all registration fees have been maintained in this proposal. The proposed amendments in §85.1011 relate to updating the process to be used regarding renewal, amendments, and relocation.

Proposed new 85.1012 is a temporary rule specifically related to the registration system transition. Subsection (a) describes how registrations obtained on or before June 30, 2018 will be effective for one year, and will expire on the anniversary of the registration. Subsection (b) outlines the registration start date of July 1, 2018, and the first renewal period under the OCCC online portal with registrations expiring on December 31, 2019. Subsection (c) states that §85.1012, i.e. the rule itself, would expire on January 1, 2020.

Section 85.2002 outlines the process for submitting required transaction reports to local law enforcement. Under Texas Occupations Code, §1956.062(d)(2) and §1956.063, a crafted precious metal dealer is required to submit a report to local law enforcement for each transaction no later than 48 hours after the transaction. A proposed amendment to §85.2002(b) deletes current paragraph (3), which states that a dealer may submit transaction reports through the Metals Registration Program. Crafted precious metal dealers do not currently report individual transactions through DPS's system. The proposal retains the provisions in current §85.2002(b)(1) and (2) stating that the dealer may submit transaction reports to local law enforcement by paper or electronically, in a manner agreed to by local law enforcement.

Christina Cuellar Hoke, Manager of Accounting, has determined that for the first

five-year period the rule changes are in effect there will be no anticipated costs for state or local government as a result of administering the rule changes. Any costs associated with the registration system change are part of normal operating expenditures and have been previously allocated as part of the OCCC's budget to manage and regulate the crafted precious metal dealer industry.

Ms. Hoke has also determined that for the first five-year period the rule changes are in effect there will be a small decline in the agency's revenue as a result of administering the rule changes. The proposed rule changes as drafted will transition registrants from an anniversary date renewal process to a calendar year renewal process. In order to accomplish the transition, registrants who establish registration on or before June 30, 2018, will need to renew at their one-year anniversary expiration, and renew in December 2019. Registrants currently have the option to renew 60 days before and 60 days following the anniversary date. Registrants who renew on or after July 1, 2018 will renew by December 31, 2019. Ms. Hoke has determined that the net effect of these staggered renewal dates is a projected decline in revenue to the OCCC of \$3,300 for fiscal year 2019 (the first fiscal year these rule changes are in effect). After the December 31, 2019 renewal cycle and for the remaining four fiscal years the rule changes are in effect, all renewal cycles will be synchronized and annual registration revenue will normalize to its previous level.

Additionally, Ms. Hoke has determined that for the first five-year period the rule changes are in effect there will be no fiscal implications overall for local government as a result of administering the rule changes.

Rudy Aguilar, Director of Consumer Protection, has determined that for each year of the first five years the rule changes are in effect, the public benefits anticipated as a result of the changes will be that the commission's rules will be more easily understood by applicants and registrants, will create increased efficiencies, will reflect current registration procedures, and will be more easily enforced. The proposed amendments to §85.1005 requiring updated application and contact information will result in the agency's enhanced ability to fulfill its regulatory duties. Additionally, all of the proposed rule changes relating to the transition will benefit crafted precious metal dealers, as the OCCC online portal will be better able to assist dealers with the registration process.

Additional economic costs may be incurred in order for registrants to comply with this proposal. The agency anticipates that any costs resulting from the proposal would be minimal and involve complying with proposed new §85.1007 and §85.1012, which requires registrants to transition from an anniversary date renewal process to a calendar year renewal process.

The potential economic costs to comply with the proposal will depend on the anniversary renewal date for the particular dealer's permanent location registration. Registrants who establish registration on or before June 30, 2018, will need to renew at their one-year anniversary expiration, and renew in December 2019. Registrants who renew on or after July 1, 2018 will renew by December 31, 2019.

The anticipated costs for dealers who will renew before June 30 will be \$50 for each permanent registered location that

could have a renewal cycle between 6 and 11 months.

Dealers with an anniversary renewal date on or after July 1, 2018 will receive the benefit of a registration for longer than a 12-month period. For example, if a dealer's current registration will expire on July 31, 2018 under the anniversary date renewal process, the registration would have expired on July 31, 2019. However, under proposed §85.1012(b)(2), the registration for this dealer would not expire until December 31, 2019. Hence, this dealer's renewal fee would have paid for 17 months, as opposed to 12 months.

The OCCC believes that the registration system transition implemented by the proposed rule changes is necessary so that the agency can provide enhanced customer service to dealers regarding the registration process, and allow the agency more direct access to registration data. In addition, the agency has maintained the registration fee amounts in §85.1011 to better enable dealers to adjust the timing change of their renewal while budgeting for the same fees.

For all registered dealers, regardless of anniversary renewal date, there may be some minimal anticipated costs to train personnel regarding the OCCC online registration portal and calendar year renewal process. These costs will vary widely among registrants depending on the number of employees who must be trained, as well as the labor costs associated with supervisors or other personnel assigned to renew or maintain the registrations for a crafted precious metal dealer.

For those dealers who may need to use the late renewal process in proposed new §85.1007(c), certain benefits are included in

the revised late renewal procedure. First, §85.1007(c)(1) as proposed removes the late renewal fee if the dealer renews its registration by the 30th day after expiration (i.e., on or before January 30). Additionally, proposed §85.1007(c)(2) extends the late renewal period by 30 days from the current rule, while maintaining the late renewal fee.

Overall, the agency anticipates that any costs involved to comply with proposed new §85.1007 and §85.1012 will be minimal for most registrants. As noted earlier, the anticipated costs for all dealers may involve personnel training, and for certain dealers, \$50 for each permanent registered location that has a shorter renewal cycle.

In order to obtain more complete information, the agency would like to invite comments from registrants on any costs involved to comply with proposed rule changes, as well as any alternatives to lessen those costs while achieving the purpose of the proposal.

The agency believes that the majority of crafted precious metal dealers affected by the proposal are small or micro-businesses, between 500 to 1,500 registered dealers. The agency also believes that some dealers are located in rural communities, between 0 to 50 registered locations, an estimate of less than 0.05% of the total registered dealers. As described in the preceding paragraphs, the minimal costs of personnel training and the impact of a shorter registration period for certain dealers may have an economic impact on small business, micro-businesses, or rural communities resulting from this proposal. The agency does not believe the economic impact to be adverse on small or micro-businesses as compared to the impact on large businesses.

To minimize potential costs and any adverse impact on small business, micro-businesses, or rural communities, the OCCC licensing staff is available by phone and email for assistance throughout the registration system transition and thereafter. Shortly before the July 1, 2018 transition date, the OCCC plans to obtain the most current registration list and will provide notice to all registrants before the OCCC portal is activated, and before the December 31, 2019 first renewal period.

In order to obtain more complete information concerning the economic effect of these rule changes, the agency invites comments from interested stakeholders and the public on any economic impact on small business, micro-businesses, or rural communities not described in this proposal. The agency also invites comments on any alternative methods of achieving the purpose of this proposal to minimize the impact on small business, micro-businesses, or rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. The proposed rule changes result in a decrease of \$3,300 in fees paid to the agency during fiscal year 2019. The proposal creates new §85.1012, a temporary rule that would expire on January 1, 2020, after the registration system transition. The proposal amends §§85.1002, 85.1003, 85.1004, 85.1008, 85.1011, and 85.2002, resulting in certain requirements that are expanded and certain requirements that are limited, as discussed previously in this proposal. The proposal repeals and replaces the current rule at §85.1007,

resulting in certain requirements that are expanded and certain requirements that are limited, as discussed previously in this proposal. The proposed rule changes do not increase or decrease the number of individuals subject to the crafted precious metal dealer regulations in Chapter 85, Subchapter B. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of business on the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The rule changes are proposed 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. The rule changes are also proposed under Texas Occupations Code, §1956.0612(f), which authorizes the Consumer Credit Commissioner to prescribe the registration form.

The statutory provisions affected by the proposed rule changes are contained in Texas Occupations Code, Chapter 1956,

Subchapter B, concerning Sale of Crafted Precious Metal to Dealers.

Title 7, Texas Administrative Code

Chapter 85, Pawnshops and Crafted Precious Metal Dealers

Subchapter B. Rules for Crafted Precious Metal Dealers

Division 1. Registration Procedures

§85.1002. Filing of New Application.

(a) New application. An application for issuance of a new crafted precious metal dealer registration must be submitted as prescribed by the OCCC [~~commissioner~~] at the date of filing and in accordance with the OCCC's [~~commissioner's~~] instructions.

(b) Required submission to OCCC [~~online Metals Registration Program~~]. Each application for a new crafted precious metal dealer registration must be filed with the OCCC [~~online Metals Registration Program~~].

(c) Required information. The application must include the following information and any other information required by the OCCC [~~commissioner~~]. All questions must be answered.

(1) Responsible persons. The application must list the person responsible for the day-to-day operation of the applicant's permanent registered location and a responsible person for each temporary location.

(2) Assumed names. For any applicant that does business under an "assumed name" as that term is defined in

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Texas Business and Commerce Code, §71.002, the applicant must provide all assumed names used.

(3) Permanent registered location required. [~~List of locations. Each applicant must provide a list of each location in this state at which the person will conduct business as a crafted precious metal dealer.~~] A dealer must have at least one, and may have more than one, permanent registered location. If none of a dealer's locations satisfies the permanent registered location definition contained in §85.1001 of this title (relating to Definitions), the dealer must designate one location to be the permanent registered location.

(4) Temporary locations. For each temporary location, the dealer must provide the approximate dates [~~and hours~~] of operation at each [~~in the~~] temporary location [~~and the name of the person responsible for on-site operations and compliance with applicable laws~~].

§85.1003. Processing of Application.

(a) Complete application. An application is complete when:

(1) the application conforms to the rules and the OCCC's [~~commissioner's~~] published instructions;

(2) all fees have been paid; and

(3) all requests for additional information have been satisfied.

~~[(b) Notification. Within 30 days of receiving an incomplete application for registration, the OCCC will provide written notice to the applicant stating that the application is incomplete and specifying the~~

~~additional information required for completion.]~~

~~[(c) Application considered withdrawn. If the OCCC requests additional information required to complete an application and the applicant does not respond within 30 days, the application will be considered withdrawn. If an application is considered withdrawn, then the applicant must reapply under §85.1002 of this title (relating to Filing of New Application) in order to obtain a registration.]~~

(b) [~~(d)~~] Certificate. When an application is complete, the OCCC will issue a notice to [certificate of registration] to the crafted precious metal dealer. The crafted precious metal dealer must print its registration certificate through the OCCC online registration portal and display its registration in accordance with §85.1006 of this title (relating to Registration Display).

§85.1004. Relocation of Registered Location.

A registered crafted precious metal dealer may amend a registration to relocate a permanent registered location [~~move a business office from the registered location to any other location by amending the dealer's record in the Metals Registration Program~~]. An amendment fee under §85.1011 of this title (relating to Fees) is required at the time of relocation.

§85.1005. Contact Information and Notice.

(a) Updates to application information. A crafted precious metal dealer must report to the OCCC any information that would require a different answer than that given in the original application within 30 calendar days after the crafted precious metal dealer

has knowledge of the information, if the information relates to any of the following:

(1) the name or any assumed name of the crafted precious metal dealer; or

(2) the person responsible for day-to-day operations at any permanent or temporary location.

(b) Contact information. Each crafted precious metal dealer is responsible for ensuring that all contact information on file with the OCCC is current and correct, including all mailing addresses, all phone numbers, and all e-mail addresses. It is a best practice for crafted precious metal dealers to regularly review contact information on file with the OCCC to ensure that it is current and correct.

(c) Notice. The OCCC may rely on the mailing and e-mail addresses currently on file for all purposes relating to notification. The failure to maintain a current mailing or e-mail address with the OCCC is not a defense to any action based on a crafted precious metal dealer's failure to respond to the OCCC.

§85.1007. Annual Renewal. {{This section will replace current §85.1007, which will be repealed.}}

(a) Generally. For each calendar year following the initial registration for a permanent registered location, a crafted precious metal dealer must renew the registration annually. A registration for a permanent registered location expires on December 31 of each year.

(b) Renewal procedure. A crafted precious metal dealer may renew its

registration for a permanent registered location by providing the following:

(1) the fees required by §85.1011 of this title (relating to Fees); and

(2) any information required by the OCCC.

(c) Late renewal.

(1) If a crafted precious metal dealer renews its registration on or before the 30th day following expiration (i.e., on or before January 30), then there is no late renewal fee.

(2) If a crafted precious metal dealer renews its registration after the 30th day following expiration, but on or before the 180th day following expiration, then the dealer must pay a late renewal fee of \$50 for each permanent registered location, in addition to the fees described by §85.1011 of this title.

(3) A registration for a permanent registered location may not be renewed after the 180th day following expiration. In order to obtain a registration, the crafted precious metal dealer must reapply under §85.1002 of this title (relating to Filing of New Application).

(d) Administrative penalty. If a person has engaged in the purchase of crafted precious metal while its registration was not effective, the person may be subject to an administrative penalty under Texas Occupations Code, §1956.0615.

(e) Temporary locations. A registration for a temporary location is not renewable.

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§85.1008. Temporary Location Amendments.

A dealer may amend a registration to relocate a temporary location [~~to add one or more temporary locations~~] after the initial application [~~or after a renewal~~]. In order to amend its registration, a dealer must provide:

(1) the fee required by §85.1011 of this title (relating to Fees);

(2) the approximate dates [~~and hours~~] of operation for each temporary location; and

(3) the name of the person responsible for on-site operations and compliance with applicable laws at each temporary location.

§85.1011. Fees.

(a) Fee for permanent registered locations. In connection with a new application or an annual renewal, a crafted precious metal dealer must pay a \$50 fee for each permanent registered location.

(b) Fee for temporary locations. In connection with a new application for a temporary location [~~or an annual renewal~~], a crafted precious metal dealer must pay a \$25 fee for each temporary location.

(c) Amendments to permanent registered location. In order to amend a registration by changing the assumed name of the registrant or relocating a permanent registered location, a crafted precious metal dealer must pay a \$25 fee.

(d) Amendments to temporary location [~~Temporary location additions~~]. In order to

amend a registration by relocating a temporary location [~~to add one or more temporary locations after the initial application or after a renewal~~], a crafted precious metal dealer must pay a fee of \$25 for each amended [~~added~~] location.

(e) Fees nonrefundable, nontransferable, and not prorated. All fees paid relating to a crafted precious metal dealer's registration with the OCCC are nonrefundable and nontransferable. All fees are fixed and will not be prorated based on the date of the dealer's application.

(f) Nonsufficient funds fee. As provided by Texas Business and Commerce Code, §3.506, the OCCC may charge a fee for nonsufficient funds if an applicant provides a payment device that is dishonored.

§85.1012. Registration System Transition.

(a) Registrations on or before June 30, 2018.

(1) Effectiveness of registration. Notwithstanding §85.1007 of this title (relating to Annual Renewal), if a crafted precious metal dealer obtains or renews a registration for a permanent registered location on or before June 30, 2018, the dealer's registration will be effective for one year after the date of the registration, and will expire on the anniversary of the date of registration.

(2) After expiration. After the expiration of a permanent registered location registration obtained on or before June 30, 2018, a dealer must register for a permanent registered location using the OCCC online registration portal in order to continue doing business as a crafted precious metal dealer.

(b) Registrations on or after July 1, 2018.

(1) Transition start date. On or after July 1, 2018, all registrations and renewals for crafted precious metal dealers will be performed through the OCCC online registration portal.

(2) Expiration date. Notwithstanding §85.1007 of this title, if a dealer obtains a registration for a permanent registered location or before December 31, 2018, then the registration will expire on December 31, 2019.

(c) Expiration of section. This section will expire on January 1, 2020.

§85.2002. Submission of Transaction Report Form and Records.

(a) Copy to seller required. The dealer must provide a complete copy of the transaction report form and any images used under §85.2001(a)(9)(B) of this title (relating to Transaction Report Form and Records) to the seller with respect to that seller's transaction.

(b) Paper or electronic submission. Within 48 hours of each transaction, the dealer must submit, in a manner approved by local law enforcement, either:

(1) a printed copy of the transaction report form and any images used under §85.2001(a)(9)(B) of this title to local law enforcement; or

(2) an electronic copy of the transaction report form and any images used under §85.2001(a)(9)(B) of this title to local law enforcement. [~~;~~]

~~[(3) an electronic copy of the transaction report form to the online Metals Registration Program. If the dealer submits the form to the Metals Registration Program, then the dealer must also notify local law enforcement in writing, within 48 hours of the transaction, that it has submitted a transaction report form to the Metals Registration Program and provide to local law enforcement either a paper or electronic copy of any images used under §85.2001(a)(9)(B) of this title.]~~

Certification

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

Issued in Austin, Texas on February 16, 2018.

Laurie B. Hobbs
Assistant General Counsel
Office of Consumer Credit Commissioner