



Texas Department of Housing and Community Affairs
Manufactured Housing Board Meeting
January 15, 2016

Michael H. Bray, Chair

Ronnie Richards, Member

Kiran Shah, Member

Sheila M. Vallés-Pankratz, Member

Donnie W. Wisenbaker, Member

**Texas Department of Housing and Community Affairs
Manufactured Housing Board Meeting**

January 15, 2016

ROLL CALL

	<u>Present</u>	<u>Absent</u>
Michael H. Bray, Chair	_____	_____
Ronnie Richards, Member	_____	_____
Kiran Shah, Member	_____	_____
Sheila M. Vallés-Pankratz, Member	_____	_____
Donnie W. Wisenbaker, Member	_____	_____
Number Present	_____	
Number Absent		_____

_____, Presiding Officer

MANUFACTURED HOUSING BOARD MEETING
TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
1500 N. Congress, Capitol Extension Committee Room E2.036
Austin, Texas 78701
January 15, 2016 10:30 a.m.

AGENDA

CALL TO ORDER, ROLL CALL Chair

CERTIFICATION OF QUORUM Chair

The Board of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs (TDHCA) will meet to consider and possibly act upon:

ACTION ITEMS

- | | | |
|---------|---|------------|
| Item 1. | Consideration and action to approve the minutes of the board meeting on April 17, 2015. | Chair |
| Item 2. | Presentation, discussion and action for approval of Texas Manufactured Housing School (TXMHS), request for approval to continue as a Continuing Education Provider. | Jim Hicks |
| Item 3. | Presentation, discussion and action for approval of Texas Manufactured Housing Association (TMHA), request for approval to continue as a Continuing Education Provider. | Jim Hicks |
| Item 4. | Presentation, discussion and action to approve the execution of amendment to the Administrative Services Agreement for FY 2016 between the Manufactured Housing Division and TDHCA. | Joe Garcia |
| Item 5. | Presentation, discussion and possible action to approve adoption of proposed amendments to 10 Texas Administrative Code, Chapter 80 for publication as proposed in the Texas Register for public comment. | Joe Garcia |

REPORT ITEMS

- | | | |
|----|--|------------|
| 1. | Executive Director's Report to include issues relating to operations, budget and performance of the Manufactured Housing Division. | Joe Garcia |
|----|--|------------|

PUBLIC COMMENT Chair

EXECUTIVE SESSION Chair

Note: The Board may go into executive session (close its meeting to the public) on any agenda item if appropriate and authorized by the Open Meetings Act, Texas Government Code, Chapter 551.

- (a) If necessary, the Board will go into executive session to discuss Personnel Matters pursuant to Sec. 551.074, Texas Government Code.
- (b) If necessary, the Board will go into executive session for Consultation with Attorney pursuant to Sec. 551.071, Texas Government Code.

RECONVENE Chair

Reconvene in public session and take action on any matters coming out of Executive Session.

ADJOURN Chair

To access this agenda or request information, please visit our website at www.tdhca.state.tx.us or contact Sharon Choate, TDHCA/MHD, 1106 Clayton Lane, Suite 270W, Austin, Texas 78723, 512-475-2206, sharon.choate@tdhca.state.tx.us.

Individuals who require auxiliary aids, services or translators for this meeting should contact Gina Esteves, ADA Responsible Employee, at 512-475-3943 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Agenda Action Item No. 1

**MINUTES OF THE REGULAR MEETING OF THE
MANUFACTURED HOUSING BOARD**

On Friday, April 17, 2015, at 10:35 a.m., there was a regular meeting of the Manufactured Housing Board (the "Board") at 300 W. 15th Street, Room 103, Austin, Texas. Donnie Wisenbaker presided. Myeshi Briley and Brenda Swinney, constituting a quorum, attended. Michael Bray and Sheila Vallés-Pankratz were absent. The following Manufactured Housing Division (the "MHD") staff were present: Joe Garcia and Sharon Choate.

Donnie Wisenbaker called the roll and confirmed the presence of a quorum.

Donnie Wisenbaker asked for a motion to approve the minutes from the board meeting on October 10, 2014. Upon motion of Brenda Swinney, duly seconded by Myeshi Briley, the motion was unanimously approved.

Joe Garcia presented and discussed for approval adoption of proposed amendments to 10 Texas Administrative Code, Chapter 80 for publication as proposed in the Texas Register for public comment. Upon motion of Myeshi Briley, duly seconded by Brenda Swinney, the rules were unanimously approved.

Joe Garcia delivered the Executive Director's Report.

The Board did not go into an Executive Session.

The next board meeting was tentatively set for Friday, June 5, 2015.

There being no further business to come before the board, the meeting was adjourned at 11:05 a.m.

Sharon Choate, Secretary

Approved:

Donnie Wisenbaker, Acting Presiding Chair



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MANUFACTURED HOUSING DIVISION

Greg Abbott
GOVERNOR

Joe A. Garcia
EXECUTIVE DIRECTOR

Agenda Action Item No. 2

Board Members
Presiding Officer, Michael H. Bray
Ronnie Richards
Kiran Shah
Sheila M. Vallés-Pankratz
Donnie W. Wisenbaker

TO: Governing Board of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs

FROM: Jim R. Hicks, Consumer Protection Manager

THROUGH: Joe A. Garcia, Executive Director

SUBJECT: Texas More Hours School (TXMHS), A Division of Fact Homes, Inc. Request for Approval to Continue as a Continuing Education Provider

DATE: December 14, 2015

Texas More Hours School, A Division of Fact Homes, Inc. (“TXMHS”) is currently approved as a Continuing Education Provider offering both classroom and online classes until December 31, 2015. TXMHS has been an approved provider since November 10, 2003. TXMHS satisfies the statutory requirements regarding providing continuing education as set forth in Section 1201.113 of the Texas Occupations Code. Changes to the course include updated laws and rules.

Management has reviewed the renewal submission, materials, and online course of TXMHS and recommends that its request be approved.



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS MANUFACTURED HOUSING DIVISION

Greg Abbott
GOVERNOR

Joe A. Garcia
EXECUTIVE DIRECTOR

Agenda Action Item No. 3

Board Members
Presiding Officer, Michael H. Bray
Ronnie Richards
Kiran Shah
Sheila M. Vallés-Pankratz
Donnie W. Wisenbaker

TO: Governing Board of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs

FROM: Jim R. Hicks, Consumer Protection Manager

THROUGH: Joe A. Garcia, Executive Director

SUBJECT: Texas Manufactured Housing Association Request for Approval to Continue as a Continuing Education Provider

DATE: December 14, 2015

Texas Manufactured Housing Association (“TMHA”) is currently approved as a Continuing Education Provider offering online classes and in person classes through January 17, 2016. TMHA has been an approved provider since April 27, 2004. TMHA satisfies the statutory requirements regarding providing continuing education as set forth in Section 1201.113 of the Texas Occupations Code. Changes to the course include updated laws and rules as well as new instructors and content to its in person classes.

Management has reviewed the renewal submission, materials, and online course of TMHA and recommends that its request be approved.

Agenda Action Item No. 4

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
AND
MANUFACTURED HOUSING DIVISION'S
ADMINISTRATIVE SERVICES AND COST REIMBURSEMENT AGREEMENT

This Administrative Services and Cost Reimbursement Agreement ("Agreement") is made effective as of September 1, 2015 by and between the **Texas Department of Housing and Community Affairs**, a public and official department of the State of Texas ("TDHCA"), and the **Manufactured Housing Division** of TDHCA.

RECITALS:

WHEREAS, Subchapter AA, Sections 2306.6001 through 2306.6023 of the Texas Government Code, requires:

- (1) that beginning on September 1, 2001, TDHCA began to administer and enforce the Texas Manufactured Housing Standards Act (Chapter 1201 of the Texas Occupations Code) through the Manufactured Housing Division ("MH Division");
- (2) that the MH Division be governed by a five member board that is to be an independent entity within TDHCA, administratively attached to TDHCA, and not an advisory board to TDHCA ("MH Board");
- (3) that the MH Board and the division director of the MH Division are to exercise authority and responsibilities assigned to them under the Texas Manufactured Housing Standards Act (Chapter 1201 of the Texas Occupations Code); and
- (4) that the MH Board shall develop a budget for the operations of the department relating to the MH Division and shall reduce administrative costs by entering into an agreement with TDHCA to enable the sharing of department personnel, equipment, and facilities.

NOW THEREFORE, TDHCA has agreed to provide for indirect and direct administrative services as hereinafter provided for a monthly administrative fee described herein to be paid by the MH Division to TDHCA. The parties, TDHCA and the MH Division, agree as follows:

1. ADMINISTRATIVE SERVICES AND REIMBURSEMENT OF OPERATING COSTS

1.1 Scope of Services

During the term of this Agreement, TDHCA shall continue to provide for the budgeted costs and expenses set out on the annual operating budget for the MH Division attached as Exhibit "A" in the manner contemplated by the annual operating budget for TDHCA and to account for all such actual payments and receipts. These services, will include, but not be limited to, administrative support services from TDHCA's Executive Office; Internal Audit; Policy and Public Affairs; Human Resources; Purchasing and Facilities Management; Information Systems; and Financial Administration (collectively the "Services").

2. TERM

2.1 Term

This Agreement shall be effective September 1, **2015** and shall continue in full force and effect until August 31, **2016**, unless sooner terminated pursuant to Section 4.1 of this Agreement.

3. ADMINISTRATIVE SERVICES FEES AND COST REIMBURSEMENTS

3.1 Reimbursement to TDHCA for Operating Costs

TDHCA shall be reimbursed by the MH Division for all operating costs incurred by TDHCA on their behalf out of budgeted receipts attributable to the MH Division as set out on Exhibit "A".

3.2 Payments to TDHCA for Services

As compensation for the Services performed by TDHCA personnel pursuant to this Agreement, TDHCA shall be paid \$42,677.25 monthly by the MH Division (or a total annual amount not to exceed \$512,127.00) for each month during the term of this Agreement.

4. TERMINATION OF AGREEMENT

4.1 Early Termination

Either party and, the duly constituted MH Board contemplated by Chapter 2306 once appointed, may terminate this Agreement prior to the August 31, **2016** term provided in Section 2.1 upon 30 days' written notice to the other party. Administrative fees due for Services provided up to and including the date of such early termination shall be prorated and shall be payable in full to TDHCA upon such early termination. If this Agreement is terminated by the MH Board, TDHCA agrees to take all actions necessary to deliver to the MH Board possession or control of all books, records, and property of the MH Division in TDHCA's possession in an orderly manner and without interruption of the MH Division's business.

5. FORCE MAJEURE

5.1 Force Majeure

In the event that performance by a party of any of its obligations under the terms of this Agreement shall be interrupted or delayed by an act of God, by acts of war, riot, or civil commotion, by an act of State, by strikes, fire, or flood, or by the occurrence of any other event beyond the control of such party, such party shall be excused from such performance during the period of time when the interruption occurred and for such period of time as is reasonably necessary after such occurrence abates for the effects thereof to have dissipated.

6. MISCELLANEOUS

6.1 Notices

All notices, requests, demands and other communications under this Agreement shall be deemed to be duly given if delivered or sent in accordance with this Section 6.1 and all of its subsections; and if addressed as follows:

If to TDHCA to:

Texas Department of Housing and Community Affairs
221 E. 11th Street, Third Floor
Austin, Texas 78701
ATTENTION: Timothy K. Irvine, TDHCA Executive Director
Tim.Irvine@tdhca.state.tx.us
FAX: (512) 469-9606

If to the Manufactured Housing Division to:

Manufactured Housing Division
1106 Clayton LN. Twin Towers, Suite 270W
Austin, Texas 78723
ATTENTION: Joe Garcia, MH Division, Executive Director
Joe.Garcia@tdhca.state.tx.us
FAX: (512) 475-0495

or to such other address or to the attention of such other person as the recipient party has specified in accordance with this Section 6.1 by prior written notice to the sending party. Every notice required or contemplated by this Agreement to be given, delivered or sent by any party may be delivered in person or may be sent by courier, facsimile, e-mail, first class mail, or certified mail (or its equivalent under the laws of the country where mailed), addressed to the party for whom it is intended, at the address specified in this Agreement. Any party may change its address for notice by giving notice to the other parties of the change. Any written notice will be effective no later than the date actually received. Unless otherwise provided in this Agreement, notice by courier, express mail, certified mail, or registered mail will be effective on the date it is officially recorded as delivered by return receipt or equivalent and in the absence of such record of delivery it will be presumed to have been delivered on the fifth business day after it was deposited, first-class postage prepaid, in the United States first class mail. Notice not given in writing will be effective only if acknowledged in writing by a duly authorized officer of the party to whom it was given.

6.2 Entire Agreement

This Agreement contains the entire agreement of the parties with respect to the matters covered by its terms. Any written or oral representations, promises, agreements or understandings concerning the subject matter of this Agreement that is not contained in this Agreement shall be of no force or effect. No change, modification or waiver of any of the terms of this Agreement shall be binding unless reduced to writing and signed by authorized representatives of both parties.

6.3 Assignment

This Agreement shall be binding upon and inure to the benefit of the parties hereto, and the legal representatives, successors in interest and assigns, respectively, of each such party. Notwithstanding the preceding sentence, this Agreement shall not be assigned in whole or in part by either party without the prior written consent of the other party.

6.4 Governing Law

This Agreement shall be construed under and governed in all respects, including without limitation, issues of validity, interpretation, performance and enforcement, by the laws, and not the conflicts of law, of the State of Texas.

6.5 No Waiver

The failure of any party hereto at any time to require performance of any provision of this Agreement shall in no way affect the right of such party to require performance of that provision. Any waiver by any party of any breach of any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself or a waiver of any right under this Agreement.

6.6 Partial Invalidity

If any one or more of the provisions of this Agreement should be ruled wholly or partly invalid or unenforceable by a court or other government body of competent jurisdiction, then:

- (A) the validity and enforceability of all provisions of this Agreement not ruled to be invalid or unenforceable will be unaffected;
- (B) the effect of the ruling will be limited to the jurisdiction of the court or other government body making the ruling;
- (C) the provision(s) held wholly or partly invalid or unenforceable will be deemed amended, and the court or other government body is authorized to reform the provision(s), to the minimum extent necessary to render them valid and enforceable in conformity with the parties' intent as manifested herein; and
- (D) if the ruling, and/or the controlling principle of law or equity leading to the ruling, is subsequently overruled, modified, or amended by legislative, judicial, or administrative action, then the provision(s) in question as originally set forth in this Agreement will be deemed valid and enforceable to the maximum extent permitted by the new controlling principle of law or equity.

6.7 Time

Time is of the essence under this Agreement. If the last day permitted for the performance of any act required or permitted under this Agreement falls on a Saturday, Sunday, or legal holiday in the State of Texas, the time for such performance shall be extended to the next succeeding business day that is not a legal holiday.

6.8 Jurisdiction and Venue

Suit to enforce this Agreement or any provision thereof will be brought exclusively in the state or federal courts located in Austin, Travis County, Texas.

6.9 Section Headings

The article and section headings contained in this Agreement are for reference purposes only and shall not in any way control the meaning or interpretation of this Agreement. Each person signing below represents that he or she has read this Agreement in its entirety (including any and all Schedules and Exhibits); understands its terms; is duly authorized to execute this Agreement on behalf of the party indicated below by his name; and agrees on behalf of such party that such party will be bound by those terms.

IN WITNESS WHEREOF, the parties have signed this Agreement to be effective as of September 1, 2015.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

By: 

Timothy K. Irvine
Executive Director

MANUFACTURED HOUSING DIVISION

By: 

Joe A. Garcia
Executive Director

MEMBERS OF THE TEXAS MANUFACTURED HOUSING BOARD:

Michael Bray, Chairman

Sheila M. Valles-Pankratz, Member

Ronnie Richards, Member

Donnie W. Wisenbaker, Member

Kiran Shah, Member

ADMINISTRATIVE SERVICES AGREEMENT AND COST REIMBURSEMENT AGREEMENT

Exhibit A

**Manufactured Housing
Administrative Support Schedule
Fiscal Year 2016**

	FTEs	Salaries	Payroll Related Costs	Total
Support:				
Executive Office	0.10	\$ 11,653	\$ 2,680	\$ 14,334
Internal Audit	0.40	26,740	6,150	32,890
Policy and Public Affairs	0.22	18,436	4,240	22,676
Human Resources	0.40	24,410	5,614	30,025
Purchasing and Facilities Management	0.90	47,659	10,962	58,621
Information Systems	2.08	141,875	32,631	174,506
Financial Administration:				
Director, Financial Administration	0.10	10,175	2,340	12,515
Payroll	0.20	12,982	2,986	15,968
Accounting Manager	0.15	14,245	3,276	17,521
Travel Accountant	0.50	26,702	6,141	32,843
Payables	0.45	26,329	6,056	32,384
Program Accountant	1.00	55,158	12,686	67,844
Total Support, Manufactured Housing	6.50	\$ 416,364	\$ 95,762	\$ 512,127

Agenda Action Item No. 5

Preamble for Proposed Manufactured Housing Rules
*Administrative Rules of the Texas Department of Housing and Community Affairs
10 Texas Administrative Code, Chapter 80*

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the “Department”) proposes to amend 10 Texas Administrative Code, Chapter 80, §§80.3, 80.30, 80.32, 80.36, 80.41, 80.71, 80.73 and 80.90 relating to the regulation of the manufactured housing program. The rules are revised for clarification purposes.

Section 80.3(f): Revised to clarify the installer is also eligible to request an industry inspection per §1201.355(b) of the Standards Act.

Section 80.30(f): Revised to clarify the rule also relates to any advertisements in social media.

Section 80.30(g): Revised to clarify the rule also relates to any advertisements in social media.

Section 80.32(u): The new subsection clarifies how long a person has to exercise their right of rescission without penalty or charge.

Section 80.36(a): Reworded to reference the definition of a salvaged home as defined in §1201.461 of the Standards Act.

Section 80.36(d): Reworded to reference the definition of a salvaged home as defined in §1201.461 of the Standards Act.

Section 80.41(d)(6)(B): The new subparagraph enables the continuing education provider to submit their renewal application and fee and continue operating. This will be most beneficial in the event that a renewal is pending and the regularly scheduled board meetings are postponed and or rescheduled, or canceled due to lack of a quorum.

Section 80.41(f)(1): The revision will assist in preventing former license holders whose license was revoked, suspended, and/or denied from applying for a salesperson’s license when they may be viewed as unsuitable to work in the manufactured housing industry.

Section 80.71(d): The new subsection clarifies that the Department may serve the notice of hearing on the respondent to the last known address as shown by the Department's records.

Section 80.71(f): The new subsection clarifies the process when a default is granted by the administrative law judge without issuance of a default proposal for decision.

Section 80.73(e): Clarifies the timeframe in which the Department requires the licensee to submit the completed service or work orders.

Section 80.73(f): Revised to remind license holders of the risk of requesting an extension without sufficient basis well in advance in case the request is denied.

Section 80.90(a)(6): Revised to include personal property in the designation for use as a dwelling that requires evidence of a satisfactory habitability inspection by the Department.

Joe A. Garcia, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, has determined that for the first five-year period that the proposed rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these sections. There will be no effect on small or micro-businesses because of the proposed amendments. There are no anticipated economic costs to persons who are required to comply with the proposed rules.

Mr. Garcia also has determined that for each year of the first five years that the proposed rules are in effect the public benefit as a result of enforcing the amendments will be to provide clarification of procedures and to comply with the Manufactured Housing Standards Act.

Mr. Garcia has also determined that for each year of the first five years the proposed rules are in effect there should be no adverse effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

If requested, the Department will conduct a public hearing on this rulemaking, pursuant to the Administrative Procedure Act, Texas Government Code §2001.029. The request for a public hearing must be received by the Department within 15 days after publication.

Comments may be submitted to Mr. Joe A. Garcia, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, P. O. Box 12489, Austin, Texas 78711-2489 or by e-mail at mhproposedrulecomments@tdhca.state.tx.us. The deadline for comments is no later than 30 days from the date that these proposed rules are published in the *Texas Register*.

The amendment is proposed under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by the proposed rules.

The agency hereby certifies that the proposed amendments have been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Proposed Manufactured Housing Rules

*Administrative Rules of the Texas Department of Housing and Community Affairs
10 Texas Administrative Code, Chapter 80*

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SUBCHAPTER A. CODES, STANDARDS, TERMS, FEES AND ADMINISTRATION

§80.1. *Texas Manufactured Housing Standards Code.*

(No change.)

§80.2. *Definitions.*

(No change.)

§80.3. *Fees.*

(a) - (e) (No change.)

(f) Industry Request. The manufacturer, ~~or~~ retailer, or installer may request a consumer complaint home inspection. The request must be accompanied by the required fee of \$150.00.

Rationale: §1201.355(b) includes the installers as a license holder eligible to request an industry inspection.

(g) - (n) (No change.)

§80.4. *Advisory Committee.*

(No change.)

SUBCHAPTER B. INSTALLATION STANDARDS AND DEVICE APPROVALS

§80.20. *Requirements for Manufacturer's Designs and Installation Instructions.*

(No change.)

§80.21. *Requirements for the Installation of Manufactured Homes.*

(No change.)

§80.22. *Generic Standards for Moisture and Ground Vapor Controls.*

(No change.)

§80.23. *Generic Standards for Footers and Piers.*

(No change.)

§80.24. Generic Standards for Anchoring Systems.

(No change.)

§80.25. Generic Standards for Multi-Section Connections Standards.

(No change.)

§80.26. Registration of Stabilizing Components and Systems.

(No change.)

SUBCHAPTER C. LICENSEES' RESPONSIBILITIES AND REQUIREMENTS

§80.30. All Licensees' Responsibilities.

(a) - (e) (No change.)

(f) Any advertisement (including social media) by a retailer, broker, or installer (other than a sign/display advertisement at a licensed location, point of sale literature, or a price tag) must conspicuously disclose the license number of the person who is advertising.

Rationale: Clarification

(g) Any advertisement (including social media) by a salesperson must conspicuously disclose the name and license number of their sponsoring retailer identified on their valid salespersons license.

Rationale: Clarification

(h) - (i) (No change.)

§80.31. Manufacturers' Responsibilities and Requirements.

(a) - (e) (No change.)

§80.32. Retailers' Responsibilities and Requirements.

(a) – (t) (No change.)

(u) A person may exercise their right of rescission of contract for sale, exchange, or lease-purchase of home pursuant to §1201.1521 of the Standards Act within three (3) business days without penalty or charge.

Rationale: Clarification

(v)(u) The written warranty that the used manufactured home is habitable as per §1201.455 of the Standards Act, shall have been timely delivered if given to the homeowner at or prior to possession or at the time the applicable sales agreement is signed.

(w)(v) The written manufacturer's new home construction warranty per §1201.351 of the Standards Act, shall be timely delivered if given to the homeowner at or prior to the time of initial installation at the consumer's home site.

§80.33. *Installers' Responsibilities and Requirements.*

(a) - (l) (No change.)

§80.34. *Brokers' Responsibilities and Requirements.*

(a) – (b) (No change.)

§80.35. *Salesperson's Responsibilities and Requirements.*

(a) – (b) (No change.)

§80.36. *Retailer's Rebuilding Responsibilities and Requirements.*

(a) Any home ~~which has sustained sufficient damage to be declared~~ that is salvaged salvage as defined in §1201.461 of the Standards Act, may be rebuilt/repaired for purposes of issuance of a manufactured Statement of Ownership and Location at the option of the Department after inspection in accordance with Department procedures. Notification in writing to the Department at its Austin headquarter's ~~office~~ shall be required before rebuilding/repair begins.

Rationale: Clarification.

(b) – (c) (No change.)

(d) A manufactured home which does not meet the definition of salvage as defined in §1201.461 of the Standards Act, ~~has not sustained sufficient damage to be declared salvage~~ may be refurbished to its original structural configuration so that it is habitable as defined by §1201.453 of the Standards Act.

Rationale: Clarification.

§80.37. *Correction Requirements.*

(a) – (c) (No change.)

§80.38. *Right to Advance Copy of Certain Documents.*

(a) – (b) (No change.)

SUBCHAPTER D. LICENSING

§80.40. Security Requirements.

- (a) – (f) (No change.)

§80.41. License Requirements.

- (a) – (c) (No change.)

- (d) Continuing Education.

- (1) – (5) (No change.)

- (6) Once the Department determines that a request for approval is complete, that request will be placed on the next regularly scheduled meeting of the Board for consideration. The Department will provide the board with a written recommendation on each such request. The staff will advise the applicant of the board's action within ten (10) business days of the date of the board meeting, including a written statement as to any limitations, conditions, or other requirements imposed.

- (A) Approvals shall be for a period not to exceed two years. The Department may, at no cost, attend or send a representative to attend any approved portion of the continuing education program to determine that the courses are being taught in accordance with the terms of approval.

- (B) Should the two-year approval time for a continuing education provider expire in between regularly scheduled board meetings, the executive director may issue approval to continue providing services until the next board meeting upon receipt of the required renewal application, fee, and necessary documentation of education material.

Rationale: Enables the continuing education provider to submit their renewal application and fee and continue operating. This will be most beneficial in the event that a renewal is pending and the regularly scheduled board meetings are postponed and or rescheduled, or canceled due to no quorum.

- ~~(C)~~(B) The Department may revoke or suspend approval of a continuing education program if the Department determines that any of the courses are not being taught in accordance with the terms of approval or that any of the courses are not being administered in accordance with the law or these rules. Any action to revoke or suspend such an approval is a contested matter under Chapter 2001, Government Code, and the party against whom revocation or suspension is sought may make a written request for a hearing before an Administrative Law Judge. If no such hearing is requested within thirty (30) calendar

days after receipt of notice from the Department, the Department order of suspension or revocation shall become final.

(e) (No change.)

(f) License Application or Renewal Denial.

(1) In the evaluation of an applicant for a license, ~~other than a salesperson's license,~~ the Director shall consider whether the applicant or any related person involved with the applicant has previously:

Rationale: Assists in preventing former license holders whose license was revoked, suspended, and/or denied from applying for a salesperson's license when they may be viewed as unsuitable to work in the manufactured housing industry.

(A) been found in a final order to have participated in one or more violations of the Standards Act that served as grounds for the suspension or revocation of a license;

(B) been found to have engaged in activity subject to the Standards Act without possessing the required license;

(C) caused the trust fund to incur unreimbursed payments or claims;

(D) failed to abide by the terms of a final order or agreed final order, including the payment of any assessed administrative penalties; or

(E) had any state license revoked for violations of a law or rule.

(2) – (6) (No change.)

(g) (No change.)

SUBCHAPTER E. ENFORCEMENT

§80.70. Enforcement.

(a) – (b) (No change.)

§80.71. Rules for Hearings.

(a) – (c) (No change.)

(d) The Department may serve the notice of hearing on the respondent at his or her last known address as shown by the Department's records.

Rationale: Clarification.

(e)~~(+)~~ If, after receiving notice of a hearing, a party fails to appear in person or by representative on the day and time set for hearing or fails to appear by telephone in accordance with Government Code, Chapter 2001, also known as the Administrative Procedures Act, the hearing may proceed in that party's absence and a proposal for decision may be entered by default, accepting all facts and conclusions of law as deemed admitted.

(f) If the administrative law judge grants a default but does not issue a default proposal for decision and instead issues a default order dismissing the case and returning the file to the Department for informal disposition on a default basis in accordance with §2001.056 of the Texas Government Code, the Executive Director may issue a final order deeming the allegations in the Notice of Hearing as true.

Rationale: Clarification when a default is granted by the administrative law judge without issuance of a default proposal for decision.

(g)~~(+)~~ Pursuant to the Administrative Procedures Act, each party has the right to file exceptions to the Proposal for Decision and present a brief with respect to the exceptions. All exceptions must be filed with the Department within ten (10) business days of the Proposal for Decision, with replies to be filed ten (10) business days after the filing of exceptions.

(h)~~(+)~~ When an administrative hearing is held for any matter in which the Department seeks to take action against a licensee for violating the Standards Act or these rules, whether such action is an action to assess administrative penalties, to require corrective action, to require cessation of improper activities, to suspend or revoke a license, or any combination thereof, the Department shall assess the costs of the proceeding against any party that fails to appear at a duly noticed administrative hearing. The costs assessed shall be the greater of \$100 or the actual costs charged to the Department by the State Office of Administrative Hearings, the Office of the Attorney General, any court reporter, or any other third party providing services in connection with such hearing.

(i)~~(+)~~ The Department will seek the recovery of its costs from any party against whom it initiates an action if that action results in the entry of a final order taking any administrative action against that party, including the assessment of administrative penalties, requiring corrective action, requiring cessation of improper activities, suspension or revocation of a license, or any combination thereof.

§80.72. *Sanctions and Penalties.*

(a) – (g) (No change.)

§80.73. *Procedures for Handling Consumer Complaints.*

(a) – (d) (No change.)

- (e) When service or repairs are completed following any notice or orders from the Department pursuant to §1201.356(a) of the Standards Act, the manufacturer, retailer, and/or installer shall forward to the Department copies of service or work orders reflecting the date the work was completed, or other documentation to establish that the warranty service or repairs have been completed. A consumer is not required to sign the service or work order. These service or work orders must be received by the Department ~~within~~ no later than five (5) calendar days ~~from~~after the expiration of the period of time specified in the warranty order issued by the Department. Corrective action taken is subject to re-inspection.

Rationale: Clarification.

- (f) If service or repairs cannot be made within the specified time frame, the license holder shall notify the Department in writing prior to the expiration of the specified time ~~frame~~on the warranty order ~~by certified mail~~. The notice shall list those items which have been, or will be, completed within the time frame and shall show good cause why the remainder of the service or repairs cannot be made within the specified time frame. The license holder shall request an extension for a specific time. Original deadline to complete warranty work may apply if the request for extension is denied. If the Department fails to respond in writing to the request within five (5) business days of the date of receipt of the notice of request for extension, the extension has been granted.

Rationale: Clarification. Reminds license holders of the risk of requesting an extension without sufficient basis well in advance in case the request is denied.

- (g) – (h) (No change.)

SUBCHAPTER F. MANUFACTURES HOMEOWNERS' RECOVERY TRUST FUND

§80.80. Administration of Claims under the Manufactured Homeowners' Recovery Trust Fund.

- (a) – (f) (No change.)

SUBCHAPTER G. STATEMENTS OF OWNERSHIP AND LOCATION

§80.90. Issuance of Statements of Ownership and Location.

- (a) Application Requirements. In order to be deemed complete, an application for a Statement of Ownership and Location must include, as applicable:
- (1) - (5) (No change.)
- (6) When a manufactured home is to be designated for use as a dwelling and/or personal property after the home has been designated for business use, salvage, or as real property, evidence of a satisfactory habitability inspection by the Department.

Rationale: Clarification

(b) – (i) (No change.)

§80.91. *Issuance of a Texas Seal.*

(a) – (b) (No change.)

§80.92. *Inventory Finance Liens.*

(a) – (b) (No change.)

§80.93. *Recording Tax Liens on Manufactured Homes.*

(a) – (e) (No change.)

§80.94. *Report to County Tax Assessor-Collectors and County Appraisal Districts.*

(No change.)