

Texas Department of Public Safety

Metals Registration Program Administrative Rules

Effective November 11, 2010

§36.1. Definitions.

- (a) Act--Texas Occupations Code, Chapter 1956.
- (b) Applicant--Any owner, corporate officer, and/or operator of a metal recycling entity, or a dealer of crafted precious metal who has applied for registration under the Act.
- (c) Business owner--A proprietor, partner, member, or individual.
- (d) Commission--The Public Safety Commission.
- (e) Department--The Texas Department of Public Safety.
- (f) Fixed location--A building or structure for which a certificate of occupancy can be issued.
- (g) On-site representative--A person responsible for the day-to-day operation of the location.
- (h) Person--A corporation, organization, agency, business trust, estate, trust, partnership, association, holder of a certificate of registration, and any other legal entity.
- (i) Program--The Metals Registration Program.
- (j) Registrant--A person who holds a certificate of registration covered by this chapter.
- (k) Revocation--The withdrawal of authority to act as a metal recycling entity under the Act.
- (l) Statutory agent--The person or entity to whom any legal notice may be delivered at each location.
- (m) Suspension--A temporary cessation of the authority to act as a metal recycling entity under the Act.

§36.2. Address on File.

(a) All registrants or applicants shall at all times maintain on file with the department their current mailing and principal place of business address. The principal place of business address must be a physical address and may not be a post office box.

(b) All registrants or applicants shall at all times maintain on file with the department a current and valid electronic mail address.

(c) All registrants shall notify the department of any change of their mailing or electronic mail address by completing the Change of Address Form on the program's website prior to the effective date of the change of address.

Section 36.3. Notice.

(a) The department is entitled to rely on the mailing and electronic mail address currently on file for all purposes relating to notification. The failure to maintain a current mailing and electronic mail address with the department is not a defense to any action based on the registrant's or applicant's failure to respond.

(b) Service upon the registrant or applicant of notice is complete and receipt is presumed upon the date the notice is sent, if sent before 5:00 p.m. by facsimile or electronic mail, and the department receives confirmation of the transmission, and three days following the date sent, if by regular United States mail.

(c) The department shall notify the applicant of the denial of an application for a certificate of registration or renewal application for a certificate of registration and the registrant of reprimands, suspensions, or revocations of certificates of registration by certified mail, return receipt requested.

§36.4. Application for Certificate of Registration.

(a) No metal recycling entity may operate until they have received a certificate of registration certifying a completed application and payment of fees. Any metal recycling entity that had an active free registration may continue to operate until that registration expires or for 60 days, whichever is earlier, before obtaining a certificate of registration which requires the payment of fees. A person who is required to register and who is not registered may apply for registration at any time.

(b) A certificate of registration as required by subsection (a) of this section may only be obtained by submitting an Application for Certificate of Registration (MRB 1) to the department using online forms provided by the department via the program's website at:

https://records.txdps.state.tx.us/DPS_WEB/MetalsNew/index.aspx.

(c) The MRB 1 includes, but is not limited to, the following:

(1) Criminal history disclosure of all convictions and deferred adjudications for each person providing a signature for the application, each person listed as a business owner engaged in the regular course of business of a metal recycling entity on the application, and each person designated as an on-site representative on the application.

(2) Proof of entity form and current status as required by the department. Such proof includes, but is not limited to - a current Certificate of Existence or Certificate of Authority from the Texas Office of the Secretary of State and a Certificate of Good Standing from the Texas Comptroller of Public Accounts.

(3) All fees required pursuant to Section 36.21 of this title (relating to Fees).

(d) Applicants conducting business at more than one location must complete an MRB 1 for each location at which the applicant proposes to conduct business and obtain a certificate of registration for each location at which the applicant proposes to conduct business.

(e) An applicant for a certificate of registration may not, within two years prior to the date of the application, have previously:

(1) had a certificate of registration revoked;

(2) obtained a certificate of registration by means of fraud, misrepresentation, or concealment of material fact;

(3) sold, bartered, or offered to sell or barter a certificate of registration; or

(4) violated Section 1956.040(b) of the Act.

(f) An applicant must submit a Statutory Agent Disclosure as described in Section 36.5 of this title (relating to Statutory Agent Disclosure (MRB 2)) along with the MRB 1.

(g) The failure of an applicant to meet any of the conditions of subsections (a) - (f) of this section will be grounds for denial of the application under Section 1956.151 of the Act.

§36.5. Statutory Agent Disclosure (MRB 2).

(a) The Statutory Agent Disclosure (MRB 2) form must be completed by all applicants for each location at which the applicant is seeking to conduct business. The statutory agent is the person to whom any legal notice may be delivered at each

location. Each person or entity applying for a certificate of registration must designate a natural person as the statutory agent and provide a physical address where that natural person may be located.

(b) A new MRB 2 must be filed whenever the statutory agent changes.

(c) A \$10 fee for filing will be charged for filing a form MRB 2 alone, without an initial application or application for renewal.

§36.6. *Change in Ownership (MRB 3).*

(a) A registrant must notify the department each time the ownership structure of a registrant changes by completing a Change in Ownership (MRB 3) form as soon as such a change has taken effect.

(b) The registrant must submit amended proof of entity form and status as required by the department.

(c) A \$10 fee for filing will be charged for filing a form MRB 3 alone, without an initial application or application for renewal.

§36.7. *Application Review.*

(a) *Initial review.* If an incomplete application is received, notice will be sent to the applicant stating that the application is incomplete and specifying the information required for acceptance.

(b) *Incomplete application.* The applicant has 20 calendar days after receipt of notice to provide the required information and submit a complete application. If an applicant fails to furnish the documentation, the application will be deemed to be withdrawn by the applicant.

(c) *Complete application.* An application is complete when it:

(1) contains all of the items required in §36.4 of this title (relating to Application for Certificate of Registration);

(2) conforms to the Act, this chapter, and the program's instructions;

(3) all fees have been paid as provided by §36.21 of this title (relating to Fees); and

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

§36.8. Term of Certificate of Registration.

- (a) A certificate of registration is valid for two years from the date of issuance.
- (b) An initial certificate of registration may be extended for a period of less than 12 additional months, if an extension is necessary to evenly allocate the expiration dates of all certificates.
- (c) A person whose certificate of registration has expired may not act as a metal recycling entity, represent to the public that the person is a metal recycling entity, or perform collections until the certificate has been renewed.

§36.9. Renewal of Certificate of Registration.

- (a) To renew a certificate of registration, a person must submit an Application for Renewal (MRB 4) to the department using online forms provided by the department via the program's website and by submitting the appropriate renewal fee as outlined in §36.21 of this title (relating to Fees) prior to the certificate's expiration date.
- (b) A person may not apply for a renewal of registration more than 45 days before the expiration date of the current certificate of registration.
- (c) If a person submits a timely MRB 4, but the department has not acted upon it before the old certificate of registration expires, the old certificate of registration continues in effect until the MRB 4 is approved or denied by the department.
- (d) A person continuing to conduct business as a metal recycling entity whose certificate of registration has been expired for 90 days or less may renew the certificate by paying \$750 to the department.
- (e) A person continuing to conduct business as a metal recycling entity whose certificate of registration has been expired for more than 90 days but less than one year may renew the certificate by paying \$1,000 to the department.
- (f) A person continuing to conduct business as a metal recycling entity whose certificate of registration has been expired for one year or more may not renew the certificate. This person must obtain a new certificate of registration utilizing the initial application procedure set forth in §36.4 of this title (relating to Application for Certificate of Registration), submitting the initial application fee, and paying an additional administrative penalty of \$1,000.

§36.10. Denial of Application for Certificate of Registration.

- (a) The department may deny an application for a certificate of registration if:

(1) the applicant attempts to obtain a certificate of registration by means of fraud, misrepresentation, or concealment of a material fact;

(2) the applicant has sold, bartered, or offered to sell or barter a certificate of registration;

(3) the applicant has previously been convicted of knowingly purchasing stolen regulated material pursuant to §1956.040(b) of the Act;

(4) the applicant fails to disclose the required persons involved in the regular course of the business of a metal recycling entity on the Application for Certificate of Registration pursuant to §36.4(c) of this title (relating to Application for Certificate of Registration); or

(5) the applicant has been convicted of a felony or misdemeanor offense as outlined in §36.15 of this title (relating to Disqualifying Offenses).

(b) Upon the denial of an application under this section, an applicant may request a hearing before the department as outlined in §36.17 of this title (relating to Informal Hearings).

§36.11. Reprimands and Suspensions of a Certificate of Registration.

(a) The department may reprimand a person who is registered under the Act or suspend a certificate of registration of a person who is registered under the Act if the person:

(1) fails to submit the required reports to the department pursuant to Section 36.14 of this title (relating to Reporting Requirements);

(2) willfully or knowingly submits false, inaccurate, or incomplete information to the department on the reports submitted pursuant to Section 36.14 of this title;

(3) fails to preserve the records required pursuant to Section 1956.034 of the Act; or

(4) violates the Act or this chapter.

(b) For a first time violation of subsection (a) of this section, the person may receive a written reprimand in the form of a letter notifying the person of the violation and directing the person to immediately remedy the violation.

(c) For a second violation of subsection (a) of this section within the preceding two year period, the person's certificate of registration may be suspended for a period of not to exceed three months.

(d) For a third violation of subsection (a) of this section within the preceding two year period, the person's certificate of registration may be suspended for a period of not to exceed six months.

(e) Upon the suspension of a certificate of registration under this section, a person may request a hearing before the department as outlined in Section 36.17 of this title (relating to Informal Hearings).

§36.12. Revocation of a Certificate of Registration.

(a) The department may revoke a certificate of registration of a person who is registered under the Act if the person:

(1) commits multiple violations of the same type as outlined in Section 36.11(a) of this title (relating to Reprimands and Suspensions of a Certificate of Registration);

(2) obtains a certificate of registration by means of fraud, misrepresentation, or concealment of a material fact;

(3) sells, barter, or offers to sell or barter a certificate of registration;

(4) is convicted of knowingly purchasing stolen regulated material pursuant to Section 1956.040(b) of the Act;

(5) is convicted of a felony or misdemeanor offense as outlined in Section 36.15 of this title (relating to Disqualifying Offenses); or

(b) Upon receipt of notice of revocation under this section, a person may request a hearing before the department as outlined in Section 36.17 of this title (relating to Informal Hearings).

§36.13. Recertification after Revocation.

A person whose certificate of registration has been revoked may not reapply prior to the passage of at least five years from the date of revocation. The previously revoked applicant must follow the procedures set forth in §36.4 of this title (relating to Application for Certificate of Registration) for new applications.

§36.14. Reporting Requirements.

(a) Not later than the seventh day after the date of purchase or other acquisition of regulated material for which a record is required under Section 1956.033 of the Act, a metal recycling entity shall collect and submit to the department a Report of Purchase for Metal Recycling Entity (MRB 5), containing:

- (1) the place and date of the purchase;
- (2) the name and physical address, the address may not be a post office box, of each individual from whom the regulated material is purchased or obtained;
- (3) the identifying number of the seller's personal identification document;
- (4) a written description made in accordance with the custom of the trade of the type and quantity of the purchased regulated material; and
- (5) written documentation that the person is the legal owner of or is lawfully entitled to sell the regulated material.

(b) A completed MRB 5 shall be sent to the department by facsimile, electronic mail, or electronic upload via the program's website.

(c) If a metal recycling entity purchases bronze material that is a cemetery vase, receptacle, memorial, or statuary or a pipe that can reasonably be identified as aluminum irrigation pipe, the entity shall notify the department of the purchase by the close of the next business day via facsimile, electronic mail, or by calling the department at the number listed on the program's website and shall file an MRB 5 with the department within five business days.

§36.15. Disqualifying Offenses.

(a) Pursuant to Texas Occupations Code, Section 53.021(a)(1), the department may revoke a certificate of registration or deny an application for a certificate of registration on the grounds that a person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of a metal recycling entity.

(b) The department has determined that the following offenses directly relate to the duties and responsibilities of metal recycling entities. A conviction for one or more of the following offenses may result in the denial of an application (initial or renewal) for a certificate of registration or the revocation of a certificate of registration. Offenses directly related to the duties and responsibilities of metal recycling entities (as reflected in the Texas Penal Code) include, but are not limited to, the following:

- (1) Blackmail;
- (2) Bribery;
- (3) Burglary;

- (4) Counterfeiting;
- (5) Embezzlement;
- (6) Extortion;
- (7) False Pretenses;
- (8) Forgery;
- (9) Fraud against revenue or other government functions;
- (10) Larceny (grand or petit);
- (11) Mail fraud;
- (12) Malicious destruction of property;
- (13) Perjury;
- (14) Receiving stolen goods (with guilty knowledge);
- (15) Tax evasion (willful);
- (16) Theft (when it involves the intention of permanent taking); and
- (17) Transporting stolen property (with guilty knowledge).

(c) A felony conviction for one of the offenses listed in subsection (b) of this section that directly relates to the duties and responsibilities metal recycling entities, a sexually violent offense as defined by Code of Criminal Procedure, Article 62.001, or an offense listed in Code of Criminal Procedure, Article 42.12, Section 3(g), is disqualifying for ten years from the date of the conviction, unless a full pardon has been granted under the authority of a state or federal official and not only by statutory effect.

(d) A misdemeanor conviction for one of the offenses listed in subsection (b) of this section or a substantially similar offense is disqualifying for five years from the date of conviction, unless a full pardon has been granted under the authority of a state or federal official and not only by statutory effect.

(e) For the purposes of this Chapter, all references to ‘conviction’ are to those for which the judgment has become final.

(f) A person's certificate of registration shall be revoked for the imprisonment of the certificate holder following a felony conviction, felony community supervision

revocation, revocation of parole, or revocation of mandatory supervision for an offense that does not relate to the occupation for which the certificate is sought and is disqualifying for five years from the date of the conviction.

(g) The department may consider the factors specified in Texas Occupations Code, Section 53.022 and Section 53.023 in determining whether to grant, deny, or revoke any certificate of registration.

§36.16. Additional and Accelerated Enforcement Actions.

(a) The department may seek any additional enforcement actions authorized by the Act, including civil penalties and injunctive relief. Operating without a required registration or any action prohibited by this chapter or by the Act is subject to additional enforcement actions.

(b) Although in §36.11 of this title (relating to Reprimands and Suspensions of a Certificate of Registration) and §36.12 of this title (relating to Revocation of a Certificate of Registration), the department outlines a graduated enforcement schedule for failing to file reports or filing false, inaccurate or incomplete information to the department under §36.14 of this title (relating to Reporting Requirements), the department may accelerate the graduated enforcement schedule if it finds that the failure to report or the filing of false, inaccurate or incomplete information was a deliberate attempt to conceal other violations under this chapter or under the Act.

§36.17. Informal Hearings.

(a) A person whose application for a certification of registration is denied, whose certificate of registration is suspended or revoked, or who is reprimanded is entitled to a hearing before the department, governed by Chapter 29 of this title (relating to Practice and Procedure) and Texas Government Code, Chapter 2001, if the person submits to the department a written request for the hearing in compliance with subsection (b) of this section.

(b) A written request for a hearing must be submitted by mail, facsimile, or e-mail, to the department within 20 calendar days after receipt of notice of denial, suspension, revocation, or reprimand. If a written request for a hearing is not made within 20 calendar days of the date notice was received, the person has waived their right to a hearing under this section.

(c) An informal hearing will be scheduled and conducted by the manager of the program or the manager's designee in the manner prescribed by the department on the program's website.

(d) After the conclusion of the informal hearing, the hearing officer will issue a written statement of findings to the person at the person's address on file.

(e) Within 20 calendar days of the date the statement of findings was received, the person may request an administrative hearing before the State Office of Administrative Hearings (SOAH).

§36.18. Hearings Before the State Office of Administrative Hearings.

(a) A request for a hearing before the State Office of Administrative Hearings (SOAH) must be submitted in writing (by mail, facsimile, or e-mail) within 20 calendar days of the receipt of the statement of findings sent to the person's address on file.

(b) Procedures for a hearing before SOAH shall follow the process set forth in Texas Government Code, Chapter 2001.

§36.19. Temporary Location Registration of Dealers of Crafted Precious Metal.

(a) A dealer of crafted precious metal is considered to be conducting business at a temporary location if the dealer buys precious metal or used items made of precious metal at a location for a period of less than 90 days.

(b) A dealer of crafted precious metal who conducts business at a temporary location must complete and submit a Temporary Location Registration Statement (MRB 6) and the required fee in the manner prescribed by the department on the program's website within a 12 month period at least 30 days before a purchase is made at a temporary location.

(c) The MRB 6 must contain:

(1) the name and address of the dealer;

(2) the location where the business is to be conducted;

(3) the time period, including hours of operation, that business is to be conducted at the temporary location;

(4) a description of the specific nature of the business to be conducted at the temporary location;

(5) if the dealer is an association, the name and address of each member of the association; and

(6) if the dealer is a corporation, the name and address of each officer and director of the corporation.

(d) Upon completion of the MRB 6 and the submission of the required fee, a dealer of crafted precious metal may obtain a certificate of registration in the manner prescribed by the department.

(e) A fee of \$25 is required for each certificate of registration issued pursuant to a MRB 6.

(f) A dealer commits a criminal offense if the dealer fails to file a registration statement as required by §1956.067 of the Act.

§36.20. Forms.

The department has prescribed the following forms for purposes of administering the Act:

- (1) Application for Certificate of Registration as a Metal Recycling Entity (MRB 1);
- (2) Statutory Agent Disclosure (MRB 2);
- (3) Change in Ownership (MRB 3);
- (4) Renewal Application for Metal Recycling Entity (MRB 4);
- (5) Report of Purchase for Metal Recycling Entity (MRB 5);
- (6) Temporary Location Registration Statement for Dealer of Crafted Precious Metal (MRB 6);
- (7) Change of Address Form (MRB 7); and
- (8) Request for an Informal Hearing (MRB 8).

§36.21. Fees.

The department has prescribed the following fees for purposes of administering the Act:

- (1) *Initial Application.* A \$500 fee is assessed each time an application for a new certificate of registration is filed in accordance with §36.4 of this title (relating to Application for Certificate of Registration). Applicants conducting business at more than one location must submit a \$500 fee for a new certificate of registration for the first location and an additional \$500 fee for each additional location applying for a certificate of registration at the same time. These fees are non-refundable.

(2) *Statutory Agent Disclosure.* A \$10 fee is assessed each time a Statutory Agent Disclosure form is filed alone, without an initial application or application for renewal.

(3) *Change in Ownership.* A \$10 fee is assessed each time a Change of Ownership form is filed alone, without an initial application or application for renewal.

(4) *Renewal Certificate of Registration.* A \$500 fee is assessed each time a certificate of registration is renewed in accordance with §36.9 of this title (relating to Renewal of Certificate of Registration). For registrants conducting business at more than one location, a \$500 fee is assessed for the first location renewing a certificate of registration and an addition \$500 fee is assessed for each additional location submitting a renewal at the same time. A person continuing to conduct business as a metal recycling entity whose certificate of registration has been expired for 90 days or less may renew the certificate by paying \$750 to the department. A person continuing to conduct business as a metal recycling entity whose certificate of registration has been expired for more than 90 days but less than one year may renew the certificate by paying \$1,000 to the department. These fees are non-refundable.

(5) *Certificate of Registration for Temporary Location for Dealer of Crafted Precious Metal.* A \$25 fee is assessed each time a dealer of crafted precious metal is issued a certificate of registration.