



## TEXAS METALS PROGRAM ADMINISTRATIVE RULES

### Texas Administrative Code

**Title 37**            **Public Safety and Corrections**  
**Part 1**            **Texas Department of Public Safety**  
**Chapter 36**        **Metals Registration**

### SUBCHAPTER A

#### §36.1. DEFINITIONS.

The terms in this section have the following meanings when used in this chapter unless the context clearly indicates otherwise:

- (a) Act--Texas Occupations Code, Chapter 1956.
- (b) Advisory letter--An informational notification of an alleged minor violation of statute or administrative rule for which no disciplinary action is proposed.
- (c) Applicant--A person who has applied for registration under the Act.
- (d) Business owner--A proprietor, partner, member, or individual.
- (e) Commission--The Public Safety Commission.
- (f) Department--The Texas Department of Public Safety.
- (g) Fixed location--A building or structure for which a certificate of occupancy can be issued.
- (h) Immediate family member--A parent, child, sibling, or spouses.
- (i) Military service member, military veteran, and military spouse--Have the meanings provided in Texas Occupations Code, §55.001.
- (j) On-site representative--A person responsible for the day-to-day operation of the location.
- (k) Person--A corporation, organization, agency, business trust, estate, trust, partnership, association, holder of a certificate of registration, an individual, or any other legal entity.
- (l) Personal identification document--Has the meanings provided by Texas Occupations Code, §1956.001(8) of the Act.
- (m) Program--Texas Metals Program.
- (n) Registrant--A person who holds a certificate of registration under the Act.
- (o) Revocation--The withdrawal of authority to act as a metal recycling entity under the Act.
- (p) Statutory agent--The natural person to whom any legal notice may be delivered for each location.



(q) Suspension--A temporary cessation of the authority to act as a metal recycling entity under the Act.

**§36.2. 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, statutory agent's, or applicant's failure to respond.

(b) Service upon the registrant, applicant or statutory agents 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. If the notice is received after 5:00 p.m. or on a weekend or holiday, it is considered received on the next business day. Receipt is presumed three (3) 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 or statutory agent of advisory letters, reprimands, suspensions, or revocations of certificates of registration by certified mail, return receipt requested.

**§36.3. ADDRESS ON FILE.**

(a) All registrants or applicants at all times shall 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) The current mailing address for a statutory agent at all times shall be on file with the department.

(c) All registrants, applicants, and statutory agents at all times shall maintain on file with the department a current and valid electronic mail address.

(d) All registrants, applicants, and statutory agents shall notify the department of any change of their mailing or electronic mail address using the department's online application prior to the effective date of the change of address.

**§36.4. FORMS.**

(a) All forms required by the department must be completed legibly and in English.

(b) Except as provided in subsection (c) of this section, information submitted pursuant to the requirements of §1956.0382(b) or § 1956.032(a)(3)(B) of the Act must be on a department approved form.

(c) In lieu of a form required by subsection (b) of this section, a person may submit to the department a waiver requesting approval to use an alternative form that contains information substantially consistent with that required by subsection (b) of this section.

(d) The name or State Seal of Texas or the name or seal of the Texas Department of Public Safety shall not be displayed on any alternative form.

(e) The digital photograph required on a form pursuant to §1956.0382(b) of the Act must be in color.

(f) A waiver to use an alternative form must be submitted in a manner prescribed by the department.



(g) A person is not authorized to use an alternative form described in subsection (c) of this section without first obtaining written approval of the department.

## **SUBCHAPTER B**

### **§36.11. APPLICATION FOR CERTIFICATE OF REGISTRATION.**

(a) A certificate of registration may only be obtained through the department's online application process.

(b) The application for certificate of registration must include, but is not limited to, the following:

(1) Criminal history disclosure of all convictions and deferred adjudications for each person listed as a business owner engaged in the regular course of business of a metal recycling entity on the application;

(2) Proof of ownership and current status as required by the department, including but 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 §36.17 of this title (relating to Fees);

(4) A copy of any license or permit required by a county, municipality, or political subdivision of this state in order to act as a metal recycling entity in that county or municipality;

(5) Proof of training pursuant to §36.34 of this title (relating to Texas Metals Program Recycler Training); and

(6) A statutory agent disclosure pursuant to §36.12 of this title (relating to Statutory Agent Disclosure).

(c) Applicants proposing to conduct business at more than one (1) location must complete an application for each location and obtain a certificate of registration for each location. An applicant proposing to conduct business at more than one (1) location is only required to comply with the requirement of subsection (b)(5) of this section for the initial location at which they are seeking to conduct business.

(d) A new certificate of registration for a metals recycling entity may not be issued if the applicant's immediate family member's registration as a metals recycling entity, at that same location, is currently suspended or revoked, or is subject to a pending administrative action, unless the applicant submits an affidavit stating the family member who is the subject of the suspension, revocation or pending action, has no, nor will have any, direct involvement or influence in the business of the metals recycling entity.

(e) A new certificate of registration may be issued at the same location where a previous owner's registration as a metals recycling entity is pending or currently serving a suspension, revocation, or is subject to a pending administrative action if the applicant submits an affidavit stating the previous owner who is the subject of the suspension, revocation, or other pending administrative action, has no, nor will have any, direct involvement or influence in the business of the metals recycling entity. The affidavit must contain the statement that the affiant understands and agrees that in the event the department discovers the previous registration holder is involved in the business of metals recycling entity at that location, the certificate of registration will be revoked pursuant to §36.53 of this title (relating to Revocation of a Certificate of Registration). In addition to the affidavit, when the change of ownership of the metals recycling entity is by



lease of the location, the applicant seeking a certificate of registration must provide a copy of the lease agreement included with the application for certification of registration.

(f) The failure of an applicant to meet any of the conditions of subsections (a) – (e) of this section will result in rejection of the application as incomplete.

(g) An applicant for a certificate of registration is not authorized to engage in any activity for which a certificate of registration is required prior to being issued a certificate of registration by the department.

**§36.12. STATUTORY AGENT DISCLOSURE.**

(a) Statutory agent disclosure information must be submitted by all applicants for each location at which the applicant is seeking to conduct business. Each person 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. This address may not be a post office box.

(b) Modification of the statutory agent disclosure information must be submitted using the department's online application and all required fees must be paid pursuant to §36.17 of this title (relating to Fees), prior to the effective date of the change.

**§36.13. CHANGE IN OWNERSHIP.**

(a) The department must be notified of any change in ownership structure or registrant status within five (5) business days of the effective date of the change. Notification must be through the department's online application. All fees required pursuant to §36.17 of this title (relating to Fees) must be paid at the time of notification.

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

**§36.14. APPLICATION REVIEW.**

(a) If an incomplete application is received, the applicant will be notified of the deficiency and provided twenty (20) calendar days after receipt of notice to submit the missing information. If an applicant fails to furnish the missing information within twenty (20) calendar days, the application will be rejected as incomplete.

(b) An application is complete when:

(1) It contains all of the items required pursuant to §36.11 of this title (relating to Application for Certificate of Registration);

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

(3) All fees have been paid pursuant to §36.17 of this title (relating to Fees);

(4) All requests for additional information have been satisfied; and

(5) Proof of training has been completed pursuant to §36.34 of this title (relating to Texas Metals Program Recycler Training).



**§36.15. TERM OF CERTIFICATE OF REGISTRATION.**

- (a) A certificate of registration is valid for two (2) years from the date of issuance.
- (b) 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.
- (c) A registrant must display a copy of the current, certificate of registration in a manner clearly visible to anyone authorized to inspect pursuant to §1956.035(b)(2) of the Act.

**§36.16. RENEWAL OF CERTIFICATE OF REGISTRATION.**

- (a) To renew a certificate of registration, an application for renewal and the appropriate renewal fee must be submitted prior to the certificate's expiration date but not more than forty-five (45) days before the expiration date of the current certificate of registration.
- (b) A certificate of registration that has been expired less than one (1) year may be renewed by submitting an application for renewal and the appropriate renewal fee pursuant to §36.17 of this title (relating to Fees).
- (c) A certificate of registration that has expired for one (1) year or more may not be renewed. An application for a new certificate of registration must be submitted according to the procedures pursuant to §36.11 of this title (relating to Application for Certificate of Registration) and by paying the appropriate fees pursuant to §36.17 of this title (relating to Fees).
- (d) To renew a certificate of registration, registrants must submit proof of training pursuant to §36.34 of this title (relating to Texas Metals Program Recycler Training). The department may waive this requirement if there have been no significant updates since the previous training.
- (e) Except as authorized pursuant to §36.42 of this title (relating to Extension of Registration Renewal Deadlines for Military Service Members) no extension for registration renewal is authorized.
- (f) An applicant for a renewal of certificate of registration that is expired is not authorized to engage in any activity for which a registration is required prior to being issued a renewal certificate of registration by the department.

**§36.17. FEES.**

- (a) The department has prescribed the following non-refundable fees for purposes of administering the Act:
  - (1) Initial application. A \$500 fee is assessed for each application for a new certificate of registration. Applicants conducting business at more than one (1) location must apply for a new certificate of registration and submit a \$500 fee for each location.
  - (2) Statutory agent disclosure. A \$10 fee is assessed each time statutory agent disclosure information is filed, without an initial application or application for renewal.
  - (3) Change in ownership. A \$10 fee is assessed each time change of ownership information is filed, without an initial application or application for renewal.



(4) Renewal certificate of registration. A \$500 fee is assessed for each location renewing a certificate of registration in accordance with §36.16 of this title (relating to Renewal of Certificate of Registration). A certificate of registration that has been expired for ninety (90) days or less may be renewed by submitting a renewal application using the department's online application and by paying \$750. A certificate of registration that has been expired for more than ninety (90) days but less than one (1) year may be renewed by submitting a renewal application using the department's online application and by paying \$1,000.

(5) Add or change location. A \$500 fee is assessed each time a metal recycling entity adds or changes a fixed location.

(b) Payment of fees shall be in the manner prescribed by the department. If payment is dishonored or reversed prior to issuance of the certificate, the application will be rejected as incomplete. If the certificate of registration has been issued prior to the payment being dishonored or reversed, revocation proceedings will be initiated pursuant to §36.53 of this title (relating to Revocation of Certificate of Registration). The department may dismiss a pending revocation proceeding upon receipt of payment of the full amount due, including any additional processing fees.

(c) Except as authorized pursuant to §36.41 of this title (relating to Military Exemption from Penalty for Failure to Renew in Timely Manner) no exemption from a penalty for failure to renew a registration before expiration is authorized.

#### **§36.18. ADDING OR CHANGING LOCATIONS.**

To conduct business at a new or additional location a registrant must apply for a certificate of registration for each location, pay all fees required pursuant to §36.17 of this title (relating to Fees), and obtain a certificate of registration pursuant to §36.11 (relating to Application for Certificate of Registration) for each location.

### **SUBCHAPTER C**

#### **§36.31. REPORTING REQUIREMENTS.**

(a) Not later than the second (2<sup>nd</sup>) working day after the date of purchase or other acquisition of regulated material for which a record is required pursuant to §1956.033 of the Act, the entity shall collect and submit to the department an electronic transaction report using the department's online reporting system. The report must contain the statutorily required documentation. In addition, the address of the individual from whom the regulated material is purchased must be a physical address. This address must not be a post office box.

#### **§36.32. EXEMPTION FROM ELECTRONIC REPORTING.**

(a) A metal recycling entity unable to comply with the electronic reporting requirements may request an exemption from the requirement. The request must be in the form of an affidavit stating the entity does not have an available and reliable means of submitting the transaction report electronically. In addition, the request must clearly describe the metal recycling entity's technological inadequacies, explain why those inadequacies cannot be remedied, and include documentation establishing the financial hardship associated with compliance.

(b) If an exemption is granted, the entity must file reportable transactions with the department on an approved form. The exemption will remain in effect for no longer than twelve (12) months, beginning the first (1<sup>st</sup>) day of the month following the month the exemption was granted. A new exemption must be requested annually in writing.

(c) The department may rescind an exemption if the reasons underlying the exemption no longer exist.



**§36.33. DOCUMENTATION ON FIRE-SALVAGED INSULATED COMMUNICATIONS WIRE.**

Pursuant to §1956.032(a)(5) and (h) of the Act, a person attempting to sell insulated communications wire that has been burned wholly or partly to remove the insulation must display to the purchasing metal recycling entity documentation of the seller's ownership of the property at which the fire occurred or an affidavit from the owner reflecting the owner's consent for the material to be removed and sold.

**§36.34. TEXAS METALS PROGRAM RECYCLER TRAINING.**

Before receiving a certificate of registration pursuant to §36.11 of this title (relating to Application for Certificate of Registration) or renewal of certificate of registration pursuant to §36.16 of this title (relating to Renewal of Certificate of Registration), all applicants and registrants, must satisfactorily complete the department's Texas Metals Program Recycler Training. A copy of the proof of training for registrants must be maintained at the place of business and available for inspection by anyone authorized to inspect pursuant to §1956.035(b)(2) of the Act.

**§36.35. PAYMENT BY METAL RECYCLING ENTITY.**

A check or money order issued to a seller pursuant to §1956.0381(a)(3) or §1956.0381(a)(4) of the Act must not be cashed by a metal recycling entity or at a metal recycling entity location.

**§36.36. STANDARDS OF CONDUCT.**

a) Pursuant to §1956.035 of the Act, a metal recycling entity shall cooperate fully with any investigation or inspection conducted by a peace officer, a representative of the department, or a representative of a county, municipality, or political subdivision that issues a license or permit under §1956.003(b) of the Act.

(b) Pursuant to §1956.035 of the Act, a metal recycling entity shall permit access during normal business hours to a person authorized to inspect.

(c) A metal recycling entity must not purchase, sell, or possess any regulated material that reasonably could have been known to contain a substance as defined by Texas Penal Code, §46.01(2).

(d) If convicted of a disqualifying offense pursuant to section §36.55 of this title (relating to Disqualifying Offenses), an applicant or registrant shall notify the department within seventy-two (72) hours of the conviction. Notification shall be made in a manner prescribed by the department.

(e) Any violation of subsection (a), (b), or (c) of this section by a business owner, or on-site representative will be construed as a violation by the registrant.

**§36.37. CASH TRANSACTION CARD.**

(a) In addition to the requirements pursuant to §1956.0382(d) of the Act, a cash transaction card must be laminated or made of a rigid plastic or other durable material that will preserve the legibility of the information contained on the card. All information on the card must be legible and in English.

(b) The name of the metal recycling entity issuing the card and their state issued registration number must be included on the front of the card.

(c) The Texas state seal or the name or insignia of the department must not be displayed as part of a cash transaction card other than such items prepared or issued by the department.



(d) The digital photograph required pursuant to §1956.0382(d)(2) of the Act, must be the same digital photograph required pursuant to §1956.0382(b)(3) and it must be in color.

(e) A cash transaction card required by a local law, regulation, or ordinance consistent with §1956.0382(d) of the Act that is issued subsequent to the effective date of this section must comply with this section. Any such card issued prior to the effective date of this section need not comply with this section so long as it remains valid and has not expired, unless more than two (2) years have passed since the date of issuance.

#### **SUBCHAPTER D**

##### **§36.41. MILITARY EXEMPTION FROM PENALTY FOR FAILURE TO RENEW IN TIMELY MANNER.**

A person who holds a certificate of registration issued under the Act is exempt from any increased fee or other penalty imposed by the department for failing to renew the certificate of registration in a timely manner, if the person establishes to the satisfaction of the department the person failed to renew the certificate of registration in a timely manner because the person was serving as a military service member.

##### **§36.42. EXTENTION OF REGISTRATION RENEWAL DEADLINES FOR MILITARY SERVICE MEMBERS.**

A military service member who holds a certificate of registration issued under the Act is entitled to two (2) years of additional time to complete any requirement related to the renewal of the military service member's certificate of registration.

##### **§36.43. ALTERNATIVE REGISTRATION PROCEDURES FOR MILITARY SERVICE MEMBERS, MILITARY VETERANS, AND MILITARY SPOUSES.**

An applicant who is a military service member, military veteran, or military spouse may apply for a certificate of registration under this section if the applicant:

(1) Establishes to the satisfaction of the department that the applicant holds a current certificate of registration or the equivalent issued by another jurisdiction with requirements substantially equivalent to the Act's requirements for the certificate of registration; or

(2) Within the five (5) years preceding the application date held the certificate of registration in this state.

##### **§36.44. CREDIT FOR MILITARY EXPERIENCE AND TRAINING.**

(a) Verified military service, training, or education that relates to registration as a metal recycling entity will be credited toward the respective experience or training requirements.

(b) This section does not apply to an applicant who:

(1) holds a restricted license issued by another jurisdiction; or

(2) is ineligible for the registration or license under the Act or this chapter, based on a disqualifying criminal history.

#### **SUBCHAPTER E**

##### **§36.51. 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 is ineligible pursuant to §36.55 of this title (relating to Disqualifying Offenses);
  - (4) The applicant's certificate of registration was revoked within two (2) years prior to the date of application; or
  - (5) The applicant operated a metal recycling entity in violation of §1956.021 of the Act and, after notice of the violation, failed to obtain a registration required by the Act.
- (b) Upon the denial of an application under this section, an applicant may request a hearing before the department pursuant to §36.56 of this title (relating to Informal Hearings).

**§36.52. ADVISORY LETTERS, 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 §1956.036 of the Act;
  - (2) Willfully or knowingly submits false, inaccurate, or incomplete information to the department on the reports submitted pursuant to §1956.036 of the Act;
  - (3) Fails to preserve the records required pursuant to §1956.034 of the Act; or
  - (4) Violates the Act or this chapter.
- (b) For the first (1<sup>st</sup>) 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 (2<sup>nd</sup>) violation of subsection (a) of this section occurring within two (2) years of an earlier violation for which a final order has been issued, the person's certificate of registration may be suspended for a period not to exceed three (3) months.
- (d) For a third (3<sup>rd</sup>) violation of subsection (a) of this section occurring within two years of two earlier violations for which final orders have been issued, the person's certificate of registration may be suspended for a period not to exceed six (6) months.
- (e) Upon receipt of a notice of reprimand or suspension under this section, a person may request a hearing before the department pursuant to §36.56 of this title (relating to Informal Hearings). The failure to timely appeal the proposed action will result in the issuance of a final order.
- (f) In lieu of a reprimand imposed pursuant to §36.52(b) of this title (relating to Advisory Letters, Reprimands and Suspensions of a Certificate of Registration) the person may receive an advisory letter.



(g) Upon issuance of a final order for any violation of this section, the department may require a person to complete training pursuant to §36.34 of this title (relating to Texas Metals Program Recycler Training).

**§36.53. 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 pursuant to §36.52(a) of this title (relating to Advisory Letters, 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 a disqualifying felony or misdemeanor offense pursuant to §36.55 of this title (relating to Disqualifying Offenses); or

(5) Submits to the department a payment that is dishonored, reversed, or otherwise insufficient or invalid.

(b) Upon receipt of notice of revocation under this section, a person may request a hearing before the department pursuant to §36.56 of this title (relating to Informal Hearings).

**§36.54. RECERTIFICATION AFTER REVOCATION.**

(a) Except as provided in subsection (b) of this section, a person whose certificate of registration has been revoked may not be recertified earlier than two (2) years from the date of revocation.

(b) A person whose certificate of registration has been revoked for a dishonored or reversed payment, as provided under §36.53(a)(5) of this title (relating to Revocation of a Certificate of Registration), may reapply at any time. Approval of the application is contingent upon receipt of payment of the full amount due, including any additional processing fees resulting from the prior dishonored or reversed payment.

(c) A person whose certificate of registration has been revoked must follow the procedures pursuant to §36.11 of this title (relating to Application for Certificate of Registration) for new applications including proof of training pursuant to §36.34 of this title (relating to Texas Metals Program Recycler Training).

**§36.55. DISQUALIFYING OFFENSES.**

(a) Pursuant to Texas Occupations Code, §53.021(a)(1), the department may revoke a certificate of registration or deny an application for a certificate of registration if the applicant, registrant, and/or business owner thereof 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 the following types of offenses directly relate to the duties and responsibilities of metal recycling entities. A conviction for an offense within one (1) or more of the following categories may result in the denial of an application (initial or renewal) for a certificate of registration or the revocation of a certificate of registration. The Texas Penal Code references provided in this section are for illustrative purposes and are not intended to exclude similar offenses in other state or federal codes. The types of offenses directly related to the duties and responsibilities of metal recycling entities include, but are not limited to:



- (1) Arson, Criminal Mischief, and other Property Damage or Destruction (Texas Penal Code, Chapter 28);
  - (2) Burglary and Criminal Trespass (Texas Penal Code, Chapter 30);
  - (3) Theft (Texas Penal Code, Chapter 31);
  - (4) Fraud (Texas Penal Code, Chapter 32);
  - (5) Bribery and Corrupt Influence (Texas Penal Code, Chapter 36);
  - (6) Perjury and Other Falsification (Texas Penal Code, Chapter 37);
  - (7) Any violation of Texas Occupations Code, §1956.038 or §1956.040;
  - (8) Prohibited Weapon – Explosive Weapon (Texas Penal Code, §46.05(a)(1); and
  - (9) Component of Explosives (Texas Penal Code, §46.09).
- (c) A felony conviction for one of the offenses listed in subsection (b) of this section, a sexually violent offense as defined by Texas Code of Criminal Procedure, Article 62.001, or an offense listed in Texas Code of Criminal Procedure, Article 42.12, §3(g), is disqualifying for ten (10) 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 (5) years from the date of conviction.
- (e) For the purposes of this chapter, all references to conviction are to those for which the judgment has become final.
- (f) A certificate of registration may be revoked for the imprisonment of the registrant 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 of metal recycling and is disqualifying for five (5) years from the date of the conviction.
- (g) The department may consider the factors specified in Texas Occupations Code, §53.022 and §53.023 in determining whether to grant, deny, or revoke any certificate of registration.

**§36.56. INFORMAL HEARINGS.**

- (a) A person who receives notice of the department's intention to deny an application for a certification of registration to suspend or revoke a certificate of registration to be reprimanded, or to be prohibited from paying cash for a purchase of regulated material pursuant to §1956.036(e) of the Act, may appeal the decision by requesting an informal hearing.
- (b) The request for hearing must be submitted by mail, facsimile, or electronic mail, to the department in the manner provided on the department's metals recycling program website within twenty (20) calendar days after receipt of notice of denial, suspension, revocation, or reprimand. If a written request for a hearing is not submitted within twenty (20) calendar days of the date notice was received, the right to a hearing under this section or §36.57 of this title (relating to Hearings before the State Office of Administrative Hearings) is waived.



(c) An informal hearing will be scheduled and conducted by the department's designee.

(d) Following the informal hearing, the hearing officer will issue a written statement of findings to the person at the address on file. The result may be appealed to the State Office of Administrative Hearings as provided in §36.57 of this title (relating to Hearings before the State Office of Administrative Hearings).

**§36.57. HEARINGS BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS.**

The determination of the informal hearing officer may be appealed by requesting a hearing before an administrative law judge of the State Office of Administrative Hearings within twenty (20) calendar days of receipt of the statement of findings. The request must be submitted in writing by mail, facsimile, or electronic mail, to the department in the manner provided on the metals recycling program's website.

**§36.58. DEFAULT JUDGMENTS.**

Following adequate notice of a hearing on a contested case before State Office of Administrative Hearings, failure of the respondent to appear at the time of hearing shall entitle the department to request from the administrative law judge an order dismissing the case from the State Office of Administrative Hearings docket and to informally dispose of the case on a default basis.

**§36.59. HEARING COSTS.**

(a) In cases brought before State Office of Administrative Hearings, in the event the respondent is adjudicated as being in violation of the Act or this chapter after a trial on the merits, the department has authority to assess the actual costs of the administrative hearing in addition to the penalty imposed. Such costs include, but are not limited to, investigative costs, witness fees, deposition expenses, travel expenses of witnesses, transcription expenses, or any other costs that are necessary for the preparation of the department's case.

(b) The costs of transcriptions and preparation of the record for appeal shall be paid by the respondent.

**§36.60. ADMINISTRATIVE PENALTIES.**

(a) In addition to or in lieu of discipline imposed pursuant to §36.52 of this title (relating to Advisory Letters, Reprimands and Suspensions of a Certificate of Registration) the department may impose an administrative penalty on a person who violates §1956.036 of the Act.

(b) For a first (1<sup>st</sup>) violation, the penalty may not exceed \$500.

(c) For a second (2<sup>nd</sup>) violation, within the preceding one (1) year period, the penalty may not exceed \$1,000.

(d) In determining the amount of the administrative penalty, the department shall consider:

(1) The degree of knowledge or intent;

(2) The amount necessary to deter a future violation;

(3) Efforts to correct the violation; and

(4) Any other matter that justice may require.



(d) Upon receipt of a notice of administrative penalty under this section, a person may request a hearing before the department pursuant to §36.56 of this title (relating to Informal Hearings). The failure to timely appeal the proposed action will result in the issuance of a final order.