MISSISSIPPI
SCRAP METAL PROPERTY DEALER REGISTRATION ACT
EMERGENCY RULES

These Rules reflect the Secretary of State's efforts to assist Scrap Metal Dealers in meeting the requirements passed by the Mississippi Legislature in Senate Bill 2006, signed by the Governor. Registration pursuant to Senate Bill 2006 is mandatory through the Secretary of State. With respect to the recordkeeping requirements of Senate Bill 2006, the Rules have been drafted to guide affected individuals and companies toward compliance. The LeadsOnline web-based registration and recordkeeping system has been developed for free and easy compliance with Senate Bill 2006, to assist Scrap Metal Dealers, Law Enforcement, and the public. Paper forms have been provided by the Secretary of State as well for Scrap Metal Dealers to comply with Senate Bill 2006.

PREAMBLE: The following Emergency Rules are hereby adopted by the Secretary of State by the authority granted him in Miss. Code Ann. Section 97-17-71(1)(b) (2008). These Rules supersede all rules heretofore adopted and from this date shall be generally applicable to the administration of the Mississippi Scrap Metal Property Dealer Registration Act, and to the procedures and practices expressed in these Rules drafted by the Regulation and Enforcement Division of the Secretary of State. The adoption of these Rules represents a finding by the Secretary of State that such Rules are necessary and appropriate for the public interest and are consistent with the purposes fairly intended by the policy and provisions of the Mississippi Scrap Metal Property Dealer Registration Act. These Rules are intended to supplement and provide guidance under the statutory provisions of the Mississippi Scrap Metal Property Dealer Registration Act and should not be considered as replacing or superseding any provision concerning filings, registrations, applications, penalties, or any other requirements contained therein.

ARTICLE ONE: GENERAL PROVISIONS

101: DEFINITIONS

As used in Miss. Code Ann. Section 97-17-11 and these Rules promulgated thereunder, the following terms shall have the meaning ascribed to them below unless the context requires otherwise:

A. "Act" shall mean the Mississippi Scrap Metal Property Dealer Registration Act, which is codified at Miss. Code Ann. Section 97-17-71, *et seq*. (2008).

B. "Agent" shall mean the Secretary of State's Agent for Registration and Recordkeeping. The Secretary of State's Agent currently is LeadsOnline, 15660 N. Dallas Parkway, Dallas, Texas (LeadsOnline.com).

C. "An Accurate and Legible Record" as used in the Act and in these Rules, shall mean a record maintained by any Applicant or Scrap Metal Dealer, or submitted by any Applicant or Scrap Metal Dealer to the approved Secretary of State's Agent for Registration and Recordkeeping, in use by the Secretary of State to keep and maintain all records pursuant to the Act.

D. "Applicant" shall mean any individual or business entity in the process of registering as a Scrap Metal Dealer under the Act, who has received a registration number but who has not yet received a Certificate of Registration from the Secretary of State. An Applicant is authorized to conduct business as a Scrap Metal Dealer subject to the denial of its Registration Form by the Secretary of State.

E. "Delivery Person" shall mean any individual who, on behalf of a Seller, presents Metal Property for sale to a Scrap Metal Dealer, and who does not receive compensation from a Scrap Metal Dealer for the sale of that Metal Property.

F. "Division" shall mean the Business Regulation and Enforcement Division of the Office of the Secretary of State of Mississippi.

G. "Individual" shall mean any person, entity, partnership, corporation, joint venture, trust, limited liability company, limited liability partnership, association or any other legal or commercial or corporate entity, and shall include Dealers and Dealer/Processors.

H. "Law Enforcement Officer" as defined in the Act and as used in these Rules shall mean any person appointed or employed full time by the State of Mississippi or any political subdivision thereof; including any municipality or township, or by the State military, who is duly vested with the authority to bear arms and make arrests, and whose primary responsibility is the prevention and detection of crime, the apprehension of criminals and the enforcement of laws of this State or the ordinances of any political subdivision thereof.

I. "Metal Property" shall mean materials as defined in the Act as railroad track materials, copper materials and aluminum materials and electrical, communications or utility brass, stainless steel sinks, catalytic converters not attached to a motor vehicle and metal beer kegs. Metal property does not include ferrous materials not listed in the Act.

J. "Party" as used in these Rules, shall include the Attorney General, the Secretary of State, the Division, a governmental agency, Scrap Metal Dealer, Law Enforcement Officer or any other person.

K. "Quarterly Period" when used in these rules or in forms adopted by the Secretary of State shall refer to three month periods than run concurrent with the calendar year with the same concluding on March 31, June 30, September 30 and December 31st of any given calendar year.

L. "Registrant" shall mean any individual registered as a Scrap Metal Dealer under the Act who also has received a Certificate of Registration from the Secretary of State.

M. "Registration Form" shall mean the Mississippi Metal Dealer/Dealer Processor Registration Form.

N. "Scrap Metal Dealer" as defined in the Act and as used in these Rules, shall include and mean any individual engaged in the Scrap Metal business, including Metal Property Dealers, Registrants, Dealers and Dealer/Processors.

O. "Seller" shall mean any individual who, directly or through a Delivery Person, presents Metal Property for sale to a Scrap Metal Dealer, and who receives compensation from a Scrap Metal Dealer for the sale of that property.

P. The "Three-Day Hold Period" as used in the Act and in these Rules, shall not include the day of the act or event from which the time begins to run, or any legal holiday or Sunday. It shall include the last day of the Three Day Hold Period.

Q. The "Three-Day Hold Period" as used in the Act and in these Rules shall apply only to the initial purchase of Metal Property by a registered Scrap Metal Dealer. It shall not apply to subsequent transactions involving that Metal Property between registered Scrap Metal Dealers.

R. "Transaction Report" shall mean the Scrap Metal Purchase Transaction Report.

S. "Usual and Customary Business Hours" as used in the Act and in these Rules, shall mean between the hours of 8 a.m. and 5 p.m., Central Standard Time, Monday through Saturday.

103: FILING MATERIALS

Registration and renewal forms, as well as fees and penalties, shall be filed electronically or through the mails on forms authorized by the Secretary of State and in use by the Secretary of State's Agent for Registration and Recordkeeping. Such forms are available on the Secretary of State's website. Assistance obtaining forms may be obtained by contacting the Division at 601-359-9055. All other required papers, forms or documents shall be submitted electronically, through the mails or otherwise as directed by the Secretary of State. The date on which papers, forms or other documents are actually received by the Division shall be the date of filing thereof. A registration or renewal form is not considered complete, and fees and penalties are not considered received, and none will be further processed until all required documentation has been received by the Division.

105: APPLICATION FORMS

All applications (including, but not limited to, those for registration and renewal) required to be filed under the Act shall be submitted to the Division electronically through the Agent, or

on paper, on forms authorized by the Secretary of State. Such forms are available on the Secretary of State's website. Assistance obtaining forms may be obtained by contacting the Division at 601-359-9055. Additional documentation not specifically called for by the form, but which is essential to a full disclosure of information needed to assess registration, shall be furnished upon request by the Division. All forms and documentation for registration furnished to the Division become part of the records of the Division and are not returnable.

107: NONPUBLIC RECORDS; CONFIDENTIALITY

Any social security number; residential address unless used as a business address; driver's license number; federal EIN number; personal email address; residential telephone number unless used as a business telephone number; and information disclosing an individual's percentage of ownership interest in a Scrap Metal business, contained in any registration or renewal application for licensure, is not a public record.

109: VARIANCES FROM THE RULES

The Secretary of State may grant variances from these Rules if it determines that (a) application of the Rules would, in the particular case, be unnecessarily burdensome, and (b) such variance would not be inconsistent with the public policy purposes of the Act.

111: ORAL OPINIONS

Oral or informal opinions by the staff of the Division as to the applicability of the Act and oral or information representations by the staff of the Division concerning the status of filings made with the Division are not considered binding upon the Division unless accurately and promptly confirmed in writing by the Party requesting such oral or informal opinion or representation.

113: EFFECTIVE DATE

The Effective Date of the Act and these Rules is August 8, 2008. Any registration application submitted to the Secretary of State's Office or the Secretary's Agent on or before September 5, 2008 shall be deemed timely filed for the purpose of registering pursuant to the Act.

ARTICLE TWO: SCRAP METAL DEALERS

201: REGISTRATION

The following must be registered with the Secretary of State as a Scrap Metal Dealer:

a. Those Dealers paying compensation for Scrap Metal Property during any calendar month in the amount of Ten Thousand Dollars ($10,000.00) or more;

b. Those Dealers paying compensation for Scrap Metal Property during any quarterly period in the amount of Twenty-Five Thousand Dollars ($25,000.00) or more; or

c. Those Dealer/Processors paying compensation for Scrap Metal Property that has served its original economic life and who are engaged in the business of processing Scrap Metal Property by which that property is returned to or converted into a raw material product having an existing or potential economic value as a raw or finished material. Processing shall not include transporting or transferring Scrap Metal Property, but **shall** include any other function that facilitates the return of Scrap Metal Property into a raw material or raw material product consisting of proposed grades and having an existing or potential economic value.

203: FEES

a. Electronic Registration and Recordkeeping:

Registration as a Scrap Metal Dealer may be completed by electronically submitting to the Secretary of State's Agent for Registration and Recordkeeping a Mississippi Metal Dealer/Dealer Processor Registration Form ("Registration Form"), which Registration Form is authorized by the Secretary of State and in use by the Agent.

Applicants and Scrap Metal Dealers shall keep An Accurate and Legible Record pursuant to the Act. Applicants and Scrap Metal Dealers may comply with the recordkeeping requirements of the Act by preparing a Scrap Metal Purchase Transaction Report ("Transaction Report") for each purchase transaction. The Transaction Report may be submitted electronically to the Agent, who shall keep and maintain all electronic records pursuant to the Act.

Copies of the Registration Form and Transaction Report will be made available on the Secretary of State's website. Further, any applicant or registrant may receive walk-in assistance at any office of the Secretary of State, the same being: 700 North Street, Jackson, MS 39202; 1701 24th Avenue, Gulfport, MS 39501; 330 West Jefferson Street, Tupelo, MS 38804.

Those Dealers identified in subsections 201(a) and 201(b) of the Rules who electronically submit their Registration Form **and** all Transaction Reports, shall submit to the Secretary's Agent a registration fee of Five Hundred Dollars ($500.00).

Those Dealer/Processors identified in subsection 201(c) of the Rules who electronically submit their Registration form **and** all Transaction Reports, shall submit to the Secretary's Agent a fee of Two Thousand Dollars ($2,000.00).

Paper copies of the Registration Form and Transaction Report may be obtained from the Division. Those individuals electing to submit a paper Registration Form in lieu of electronic filing through the Agent's computer program, shall file the paper Registration Form with the Division. Those electing to maintain paper records of the Transaction Reports in lieu of electronic filing, shall keep the Transaction Reports at the fixed location of the Scrap Metal Dealer pursuant to Emergency Rule 213. Those Dealers identified in subsections 201(a) and

201(b) of these Rules who complete the paper Registration Form and maintain paper copies of the Transaction Report, instead of electronically submitting these documents to the Agent, shall submit to the Division a registration fee of Seven Hundred Fifty Dollars ($750.00). Those Dealer/Processors identified in subsection 201(c) of these Rules who complete the paper Registration Form and maintain paper records of the Transaction Report, shall submit to the Division a fee of Two Thousand Five Hundred Dollars ($2,500.00).

A registration fee is good for two years from the date of registration, which date is reflected on the Certificate of Registration issued by the Secretary of State.

b. Separate Geographic Locations and Legal Entities

Each geographic location, and each separate legal entity, subsidiary and affiliate, of a Scrap Metal Dealer, must be independently registered to operate as a Scrap Metal Dealer by the submission of a separate Registration Form and fee. It is the responsibility of each Applicant, and each Scrap Metal Dealer, to ensure separate registration of its locations and its subsidiaries and affiliates.

205: CERTIFICATE OF REGISTRATION

Any individual seeking to register with the Secretary of State must, pursuant to the Act, submit a Registration Form to the Agent or the Division on forms authorized by the Secretary of State and made available on the Secretary of State's website. Assistance obtaining forms may be obtained by contacting the Division at 601-359-9055.

Upon submission of the appropriate Registration Form, each individual will be issued a registration number by the Agent or the Secretary of State and will be considered an Applicant to deal in Scrap Metal under the Act.

This provisional registration is subject to being denied or cancelled for the following violations of the Act and these Rules:

a. The Secretary of State's inability to confirm receipt of the registration fee due to non-sufficient funds or other errors by Applicant;

b. Submission of an incomplete Registration Form;

c. Failure to satisfy the background history verification for registration as a Scrap Metal Dealer, pursuant to the Act; or,

d. Other just cause as determined by the Secretary of State.

A finding of any of the above-listed reasons shall result in a denial of the Applicant's application for registration as a Scrap Metal Dealer.

Registration under the Act is confirmed with the issuance of a Certificate of Registration

by the Secretary of State. Registration shall become effective upon the date of registration reflected on the Certificate of Registration issued by the Secretary of State. The Certificate of Registration may be issued upon receipt by the Secretary of State of a completed Registration Form, confirmation of receipt of the required registration fee, and an assessment of the Applicant's qualifications to act as a Scrap Metal Dealer, including but not limited to a criminal background history verification as authorized by the Act.

All registrations, unless suspended or revoked, shall be effective for a period of two years from the date of registration reflected on the Certificate of Registration issued by the Secretary of State.

207: RENEWAL

The Certificate of Registration issued by the Secretary of State shall expire two years from the date of registration, which date is reflected on the Certificate. Those individuals seeking to renew their registration must re-apply pursuant to the Act and these Rules and submit the required registration fee.

209: TERMINATION OF REGISTRATION

A Scrap Metal Dealer may terminate registration by submitting to the Secretary of State a written Notice of Termination or a letter requesting termination. Registration fees are non-refundable; however, should the Dealer terminating registration wish to return to operation during the same two year registration period, the pre-paid registration fee shall be applied to the remainder of that period, pursuant to Rule 215.

211: DISPLAY OF CERTIFICATE

A Certificate of Registration may be issued to each Scrap Metal Dealer in one or more of the following forms:

a. A standard Certificate of Registration document measuring approximately eight-and-a-half by eleven inches in size; and/or

b. A wallet-sized Registration Card.

A current Certificate of Registration issued by the Secretary of State shall be posted and displayed in a conspicuous place and in easy view of all who enter the office or fixed location of the Scrap Metal Dealer. A current Registration Card issued by the Secretary of State shall be provided by the dealer upon request of any individual in the scrap metal business acting within the scope of his business while said dealer is away from or outside of his office or fixed location.

213: RECORDKEEPING:

a. All Applicants and Scrap Metal Dealers shall keep An Accurate and Legible Record pursuant to the Act. Applicants and Scrap Metal Dealers may comply with the

recordkeeping requirements of the Act by preparing a Scrap Metal Purchase Transaction Report ("Transaction Report") for each purchase transaction. A copy of the Transaction Report will be made available on the Secretary of State's website.

The Transaction Report may be submitted electronically to the Secretary of State's Agent for Registration and Recordkeeping ("Agent") by logging into the Agent's website and completing the Transaction Report.

Applicants and Scrap Metal Dealers also may maintain paper records of the Transaction Report for each purchase transaction in lieu of electronic recordkeeping. Should the Applicant or Scrap Metal Dealer maintain paper records of the Transaction Reports instead of electronically submitting these documents to the Agent, the Applicant or Scrap Metal Dealer shall maintain each Transaction Report at his fixed location for no less than two (2) years from the date the Transaction Report was prepared. Such paper recordkeeping shall subject the Applicant or Scrap Metal Dealer to an increased registration fee pursuant to Emergency Rule 203(a).

b. Applicants and Scrap Metal Dealers shall ensure that each Transaction Report is completed in its entirety. This shall include having the seller of Metal Property provide written affirmation that the seller is the rightful owner of the Metal Property or is entitled to sell the property. Where the Metal Property being sold is HVAC equipment (including an air conditioner evaporator coil or condenser), this also shall include having the seller provide written certification that he is a locally licensed (or permit or privilege licensed) HVAC business or contractor. These written affirmations and certifications may be maintained through the use of the Daily Signature Sheet, which form is authorized by the Secretary of State pursuant to Emergency Rule 213(c).

c. **For both paper and electronic Registrants**, Applicants and Scrap Metal Dealers may comply with Rule 213(b) and the Act by maintaining a Daily Signature Sheet, which must be maintained by all Applicants and Scrap Metal Dealers at the corresponding location to be presented to law enforcement or Secretary of State personnel for inspection upon request. **The Daily Signature Sheet is not submitted to the Secretary of State or to the Agent.** A copy of the Secretary of State's approved Daily Signature Sheet is available for download from the Agent, and from the Secretary of State's website, for photocopying and use by Applicants and Scrap Metal Dealers.

d. Transactions between Scrap Metal Dealers ("dealer-to-dealer sales") are not excluded from the recordkeeping requirements of Emergency Rule 213. Such recordkeeping is required even though The Three Day Hold Period applies only to the initial purchase of Metal Property by a registered Scrap Metal Dealer and does not apply to subsequent transactions involving that Metal Property between registered Scrap Metal Dealers. Nor are transactions involving the purchase of air conditioner evaporator coils or condensers excluded or exempt from the recordkeeping requirements of Emergency Rule 213.

215: REFUND POLICY

An Applicant may withdraw a Registration Form for a full refund of the registration fee,

by submitting written notice to the Mississippi Secretary of State, Metal Property Unit, 700 North Street, Jackson, MS 39202. Such notice must be postmarked no later than ten calendar days following submission of the registration application.

In the event of the denial of a Registration Form, the Applicant will be refunded the full amount of the registration fee.

In the event a Registration Form is approved, and the Applicant becomes a registered Scrap Metal Dealer in Mississippi, the registration fee shall become the property of the Mississippi Secretary of State's Office and shall be non-refundable and non-transferrable. No portion of the registration fee will be returned to a registered Scrap Metal Dealer whose registration is suspended or revoked.

In the event a registered Scrap Metal Dealer withdraws or surrenders his Certificate of Registration, the registration fee shall be non-refundable and non-transferrable. However, should the same Dealer wish to return to operation during the same registration period, the pre-paid registration fee shall be applied to the remainder of that period. No additional registration fee shall be assessed against such a Dealer until the expiration of the registration period.

ARTICLE THREE: ADMINISTRATIVE HEARING PROCEDURES

301: DENIAL, SUSPENSION, REVOCATION OR REFUSAL TO RENEW REGISTRATION

The Secretary of State shall notify a Scrap Metal Dealer of his intent to deny, suspend, revoke or refuse to renew the Dealer's registration. The notification shall contain the reasons for the action and shall inform the Dealer of his right to challenge the decision of the Secretary of State by requesting an administrative hearing within fourteen calendar (14) days of the date of notice. The denial, suspension or revocation of, or refusal to renew, a registration shall become effective fourteen calendar (14) days following the date of notice unless a written request for an administrative hearing is received by the Secretary of State before the expiration of the fourteen calendar (14) days. If a hearing is requested and the denial, suspension, revocation or refusal is upheld, the denial, suspension, revocation or refusal to renew shall become effective upon the issuance of a Final Order.

303: NOTICE OF ADMINISTRATIVE HEARING

Written notice shall be provided to any Scrap Metal Dealer or other person against whom the Attorney General or Secretary of State intends to institute an administrative hearing pursuant to the Act.

Such notice shall be by certified mail, return receipt requested and shall set forth the date, time and place for the administrative hearing and shall also designate a Hearing Officer.

305: WITNESSES

Any Party wishing to appear or introduce evidence or other testimony at the administrative hearing shall, no later than four (4) business days prior to the hearing date, file with the Hearing Office a list of witnesses which it intends to call to testify or to otherwise give evidence. The list shall contain for each witness:

a. Name;

b. Current residential and business address, if known;

c. Current residential and business telephone number, if known.

A true and correct copy of such list shall be forwarded to each Party to all other Parties no later than four (4) business days prior to the hearing date.

307: DOCUMENTS

Upon request by any Party, any documents, papers or tangible things to be introduced by any Party at the hearing shall be made available for inspection and copying by the requesting Party no later than four (4) business days prior to the hearing date.

309: CONDUCT OF HEARING

The Hearing Officer shall have the authority to administer oaths and affirmations.

Each Party may be represented by an attorney or other authorized representative.

The Hearing Officer may clear the hearing room of witnesses not under examination.

The Hearing Officer shall have the authority to maintain the decorum of the hearing and shall take reasonable steps to do so when necessary, including clearing the hearing room of any person who is disruptive.

311: EVIDENCE

The hearing shall be informal and technical rules of evidence shall be relaxed.

All witnesses who appear and testify under oath shall be subject to cross-examination.

The Hearing Officer shall have the authority to admit into the record any evidence which, in his or her judgment, has a reasonable degree of probative value and trustworthiness. The Hearing Officer shall have the authority to exclude evidence which is irrelevant, immaterial, lacking in probative value, untrustworthy or unduly cumulative.

Documents received into evidence by the Hearing Officer shall be marked by him or her, or under his or her direction, and filed for the record of the appeal.

Rebuttal and surrebuttal evidence may be heard at the discretion of the Hearing Officer.

Arguments summarizing the evidence and the law may be heard at the discretion of the Hearing Officer.

313: ORDER OF PROOF—BURDEN OF PROOF

At the hearing, the Attorney General or the Secretary of State or the Division shall be the first to present evidence.

The Attorney General or the Secretary of State or the Division shall have the burden of proving its allegations by a preponderance of the evidence. Fraud must be proven by clear and convincing evidence.

315: PRESERVATION AND TRANSCRIPTION OF RECORD OF HEARING

A record of testimony at the hearing may be made by other than stenographic means, in which event notice shall be given to all parties designating the manner of recording and preserving the testimony.

It shall be the responsibility of any Party desiring to preserve by stenographic means a record of testimony at the hearing to:

a. arrange for a court reported to make a stenographic recording of the hearing;

b. pay all fees and expenses for such recording and transcription directly to the court reporter.

A true and correct copy of said stenographic recording shall be made available to any other Party requesting it, provided such Party agrees to pay the expense of such copy.

317: ORDER TO BE FILED UPON COMPLETION OF HEARING

After all evidence is heard or received and the hearing is completed, the Hearing Officer shall, within a reasonable time thereafter, prepare and file a written findings of fact and conclusions of law and a Final Order based thereon. A copy of such decision and order shall be sent promptly by the Secretary of State, via certified mail, return receipt requested, to all Parties who appeared at the administrative hearing or their attorney or authorized representative.

319: CONTINUANCES

Continuances requested by any Party will be granted within the discretion of the Hearing Officer only for good cause shown.

321: COMPUTATION OF TIME

In computing any period of time prescribed or allowed under these Rules, the Hearing Officer shall be guided by the Mississippi Rules of Civil Procedure.

323: NOTICES

Any correspondence or notice issued pursuant to this Act and these Rules shall be directed to the Secretary of State's Office, Metal Property Unit, 700 North Street, Jackson, MS 39202.

325: AFFIRMATIVE OBLIGATION TO UPDATE REGISTRATION INFORMATION

It is solely the responsibility of the Applicant or Registrant to update and remain current with all address and contact information required for registration. The Division and the Secretary of State are not responsible and the Applicant or Registrant is solely responsible for the non-receipt of any notice or correspondence issued by the Division or the Secretary of State due to the failure to of the Applicant or Registrant to maintain current and correct address and contact information with the Division or its Agent.

327: VALIDITY OF RULES

If any one or more of these rules is found to be invalid by any court of competent jurisdiction, such finding shall not affect the validity of any other of these rules.