## Title 1 Secretary of State

## Part III Secretary of State

PREAMBLE: The following Rules are hereby adopted by the Secretary of State by the authority granted in Miss. Code Ann. Section 97-17-71(1)(b) (2008). These Rules supersede all rules heretofore adopted and from this date shall be applicable to the administration of the Mississippi Scrap Metal Dealer Registration Act. The procedures and practices expressed in these Rules were 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 Dealer Registration Act, codified at Mississippi Code Annotated Sections 97-17-71, *et seq.*

### Subpart 1 Regulation and Enforcement – Scrap Metal

### Chapter 1 Definitions

As used in Miss. Code Ann. Section 97-17-71 and these Rules promulgated thereunder, these terms shall have the following meaning unless the context requires otherwise:

100 **Act** shall mean the Mississippi Scrap Metal Dealer Registration Act, which is codified at Mississippi Code Annotated Section 97-17-71 *et seq.* (2008).

101 **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, Suite 800, Dallas, Texas 75248 (www.LeadsOnline.com).

102 **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 Secretary of State's approved Agent for Registration and Recordkeeping for maintaining all customer records pursuant to the Act.

103 **Applicant** shall mean any person 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 until such time as its Registration is denied or cancelled by the Secretary of State.

104 **Customer Transaction Report** shall mean the Scrap Metal Purchase Transaction Record as described in Chapters 2, 3, 4, and 5, and required by Mississippi Code Annotated Section 97-17-71 (2)(a) – (i). As required by statute, this Report shall include:

a. The name, address and age of the person from whom the metal property is purchased as obtained from the seller's personal identification card;
b. The date and place of each acquisition of the metal property;

c. The weight, quantity or volume and a general physical description of the type of metal property, such as wire, tubing, extrusions or casting, purchased in a purchase transaction;
d. The amount of consideration given in a purchase transaction for the metal property;
e. The vehicle license tag number, state of issue and the make and type of vehicle used to deliver the metal property to the purchaser;
f. If a person other than the seller delivers the metal property to the purchaser, the name, address and age of the person who delivers the metal property;
g. A signed statement from the person receiving consideration in the purchase transaction stating that he is the rightful owner of the metal property or is entitled to sell the metal property being sold;
h. i. A scanned copy or a photocopy of the personal identification card of the person receiving consideration in the purchase transaction; or
ii. If a person other than the seller delivers the metal property to the purchaser, a scanned copy or a photocopy of the personal identification card of the person delivering the metal property to the purchaser; and
i. A photograph, videotape or similar likeness of the person receiving consideration or any person other than the seller who delivers the metal property to the purchaser in which the person's facial features are clearly visible and in which the metal property the person is selling or delivering is clearly visible.

105 **Dealer** as defined in the Act and as used in these Rules is an Individual who pays compensation for Regulated Metal Property. "Dealer" shall have the same meaning as "Scrap Metal Dealer" as defined herein, and the terms shall be used interchangeably.

106 **Dealer/Processor** as defined in the Act and as used in these Rules is a Scrap Metal Dealer or Dealer who pays compensation for Regulated Metal Property and who is engaged in some aspect of Processing as that term is defined in these Rules.

107 **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 that Scrap Metal Dealer for the sale of that Metal Property.

108 **Division** shall mean the Regulation and Enforcement Division of the Office of the Secretary of State of Mississippi.

109 **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. The term "Individual" and the term "Business" are used interchangeably in these Rules.

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

111 **Metal Property** or **Regulated Metal Property** as defined in the Act and used in these Rules shall include the following:

111.01 railroad track materials such as any rail, switch component, spike, angle bar, tie plate or bolt of the type used in constructing railroads;

111.02 copper materials, such as any copper wire, bars, rods or tubing, including copper wire or cable or coaxial cable of the type used by public utilities, common carriers or communication services providers, whether wireless or wire line, copper air conditioner evaporator coils or condensers, aluminum copper radiators not attached to a motor vehicle, or any combination of these;

111.03 aluminum materials such as any aluminum cable, bars, rods or tubing of the type used to construct utility, communication or broadcasting towers, aluminum utility wire and aluminum irrigation pipes or tubing; however, this shall not include aluminum cans that have served their original economic purpose;

111.04 electrical, communications or utility brass, stainless steel sinks, catalytic converters not attached to a motor vehicle, metal beer kegs or metal syrup tanks or any recognizable part thereof generally used in the beverage industry unless the dealer possesses a bill of sale from a beverage manufacturer, beverage distributor or from a manufacturer of such tanks;

111.05 any bronze vase or marker, memorial, statue, plaque, or other bronze object used at a cemetery or other location where deceased persons are interred, entombed or memorialized unless the dealer possesses documentation from local law enforcement and from a cemetery authenticating the lawful source of such material;

Metal property does not include ferrous materials not listed in the Act.

112 **Metal Property Dealer** as defined in the Act and as used in these Rules shall have the same meaning as “Scrap Metal Dealer” as defined herein and the terms shall be used interchangeably.

113 **Other Purchaser** as defined in the Act and used in these Rules, shall mean any individual who purchases Metal Property as that term is defined in the Act, but who is not registered as a Scrap Metal Dealer pursuant to the Act.

114 **Party** as defined in the Act and used in these Rules, shall include the Attorney General, the Secretary of State, the Division, any governmental agency, any Scrap Metal Dealer, any Law Enforcement Officer, or any other person.

115 **Processing** as the term is used in the Act and in these Rules shall mean returning or converting Metal Property into a product having an existing or potential economic value as a raw or finished material. Processing shall not include sorting, cleaning, washing, transferring, transporting, or bundling if bundling only involves gathering together of material in a tighter, more compact surface area with no change in the form or mass of the object(s) as scrap metal material. However, processing shall include any other function that facilitates the return of Metal Property into a raw material or raw material product consisting of proposed grades and having an existing or potential economic value. Examples of processing include, but are not limited to, the following: cutting, shredding, melting, smelting, chipping, chopping, stripping, and baling, if baling involves using machinery to convert the form, shape or mass of Metal Property into a raw material that will have or has economic value.

116 **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. Registrant as defined in the Act and as used in these Rules shall have the same meaning as "Scrap Metal Dealer" as defined herein and the terms shall be used interchangeably.

117 **Registration Form** or **Registration Application** shall mean the Mississippi Metal Dealer/Dealer Processor Registration Application.

118 **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, and Dealer/Processors.

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

120 The **Three-Day Hold Period** as defined in the Act and used 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 of the three days. The Three Day Hold Period shall apply only to the initial purchase of Metal Property by a Registered Scrap Metal Dealer or Other Purchaser. It shall not apply to subsequent transactions involving that same Metal Property between registered Scrap Metal Dealers or between a Scrap Metal Dealer and Other Purchasers.

121 **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 Time, Monday through Saturday.

## Chapter 2 Registration

100 Unless exempt from registration, all individuals as defined in Chapter 1, Section 109 paying compensation for Metal Property must register with the Secretary of State as a Scrap Metal Dealer. No individual may acquire or purchase Metal Property unless

registered or exempt. No Processor, as that term is defined in these Rules, shall be exempt from registration.

The following are exempt:

100.01 Any law enforcement officer acting in an official capacity paying compensation for metal property or selling metal property acting in an official capacity.

100.02 A trustee in bankruptcy, executor, administrator or receiver who purchases or sells metal property when acting in such capacity.

100.03 Any public official acting under a court order to deal in metal property.

100.04 A manufacturing, industrial or other commercial vendor that generates or sells regulated metal property in the ordinary course of its business. However, the term "commercial vendor" does **not** include individuals or businesses that acquire, generate, or produce scrap metal property and then sell such property as a primary business operation (i.e., scrap metal dealer-to-dealer transactions).

101 All applications for registration, all Customer Transaction Reports, and any other papers or documents required to be maintained or submitted by the Act or by these Rules, **must** be transmitted electronically to the Secretary of State's Agent, unless a hardship waiver is granted under Chapter 3. The failure to electronically submit an application for registration or Customer Transaction Reports to the Agent will subject the business to the administrative penalties authorized by Mississippi Code Annotated Section 97-17-17.1 (C)(i)(ii). The electronic filing shall be accessed through the Secretary of State's website or that of its Agent. Instructions for e-filing and e-filing forms shall be available on the Secretary of State's website at www.sos.ms.gov. Assistance may also be provided by contacting the Division at 601-359-1350.

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

## Chapter 3 Electronic Filing Hardship Waiver

100 Individuals who are unable to file electronically shall submit a written request for a hardship waiver to the Secretary of State's Office sixty (60) days prior to the expiration date of their registration. Such request shall set forth the reasons the business is unable to electronically register and file Customer Transaction Reports. The Secretary of State's Office shall consider hardship waivers on a case-by-case basis. A hardship waiver request application will be furnished by the Secretary of State's Office upon request. The following factors, as indicated on the application, must be documented and substantiated with any request for a hardship waiver:

100.01 Internet service is not available to the registrant due to the absence of an internet service provider;

100.02 Internet service is cost prohibitive for the registrant in that the cost outweighs any efficiencies, savings or productivity gains from having the service;

100.03 Neither the registrant nor any personnel available to the registrant possess minimum technology hardware skills or minimum internet skills necessary to register and to upload customer transaction reports online.

100.04 A compelling and substantial factor not encompassed in the three previous factors that merits accommodation at the Secretary of State's discretion.

101 For businesses that have received a hardship waiver, copies of an application form needed to become a registered dealer are available from the Secretary of State's Office. Further, any applicant or registrant may receive walk-in assistance at any office of the Secretary of State, namely: 700 North Street, Jackson, MS 39202; 1701 24th Avenue, Gulfport, MS 39501; 330 West Jefferson Street, Tupelo, MS 38804; and 316 West Commerce Street, Hernando, MS 38632.

**Chapter 4 Fees**

100 The registration fee is One Hundred Dollars ( $100.00) for Dealers who paid compensation for metal property, as defined in the Act and in Chapter 1, Rule 111, in the prior ending calendar year in an amount less than or equal to Twelve Thousand Dollars ($12,000.00). For example: In August of 2010, if a Dealer had total purchases of regulated scrap metal in calendar year 2009 totaling $10,700.00, the registration fee is One Hundred Dollars ($100.00). For Dealers in this category who have received a hardship waiver to register and to maintain paper records of customer transactions, the fee is Two Hundred and Fifty Dollars ($250.00).

101 The registration fee is Five Hundred Dollars ($500.00) for Dealers who paid compensation for metal property, as defined in the Act and in Chapter 1, Rule 111, in the prior ending calendar year in an amount greater than Twelve Thousand Dollars ($12,000.00). For example: In August of 2010, if a Dealer had total purchases of regulated scrap metal in calendar year 2009 totaling $17,700.00, the registration fee is Five Hundred Dollars ($500.00). For Dealers in this category who have received a hardship waiver to register and to maintain paper records of customer transactions, the fee is Seven Hundred and Fifty Dollars ($750.00).

102 The registration fee for Dealer/Processors shall be Two Thousand Dollars ($2,000.00). Processors who have received a hardship waiver shall pay a registration fee of Two Thousand Five Hundred Dollars ($2,500.00).

103 Any Dealer or Processor that has not been granted a hardship waiver and that fails to submit their registration application **and all** Customer Transaction Reports to the Secretary's Agent is subject to administrative penalties authorized by the Act or by these

Rules. Additionally, such Dealers or Processors will be invoiced the additional fee charged for a hardship registrant within that fee category.

## Chapter 5 Recordkeeping

100 Applicants for registration and registered Scrap Metal Dealers must keep an accurate and legible record pursuant to the Act. Applicants and Scrap Metal Dealers **shall** comply with the recordkeeping requirements of the Act by submitting a Customer Transaction Report for each purchase transaction. The Customer Transaction Report must be submitted electronically to the Agent, who shall keep and maintain all electronic records pursuant to the Act. Customer Transaction Reports must be uploaded to the Secretary's Agent no later than the close of business (5:00 p.m.) of the next business day following the date of purchase by the dealer. For those who have received hardship waivers only, the Secretary of State's Office can furnish a sample Customer Transaction Report Form that, when fully completed by the business, complies with all provisions of the Act. Hardship filers shall maintain the Customer Transaction Reports at the business subject to inspection and review by law enforcement and the Secretary of State's Office. The reports must be maintained for two (2) years.

101 Applicants, Scrap Metal Dealers, and Other Purchasers shall ensure that each Customer 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 on behalf of the true owner. Where the Metal Property being sold is HVAC equipment (including air conditioner evaporator coils or condensers), this affirmation shall consist of a written statement provided by the seller that he is a locally licensed (permit/privilege license) HVAC business or contractor. The written affirmation statement may be maintained through the use of the Daily Signature Sheet, a form authorized by the Secretary of State and available on the Secretary of State's website. The Daily Signature Sheet recommended by the Secretary of State satisfies the requirements of Mississippi Code Annotated Sections 97-17-71 (2)(g) (statement of rightful ownership from seller) and 97-17-71.1 (HVAC representation). Use of the Daily Signature Sheet available on the Secretary of State's website is not required. Any Dealer or Dealer/Processor may develop their own form or written system to use in their business so long as it complies with Sections 97-17-71 (2)(g) and 97-17-71.1. The Daily Signature Sheet or any comparable version in use by a Dealer is never filed with the Secretary of State's Office or with the Secretary's Agent. These are maintained at the business for a period of two (2) years.

102 Transactions between Scrap Metal Dealers ("dealer-to-dealer sales") are **not** excluded from the recordkeeping requirements of the Act or Rules. 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. Likewise, transactions involving the purchase of air conditioner evaporator coils or condensers are not exempt or excluded from the recordkeeping requirements of the Act or these Rules.

## Chapter 6 Payment by Check

100 Pursuant to the Act, payment for Metal Property shall be by check mailed to the recorded address of the Seller or by electronic funds transfer following a period of three days after the purchase transaction. Mississippi Code Annotated § 97-17-71(8). However, if the check is subsequently returned as undeliverable or does not reach the intended addressee, the Scrap Metal Dealer or other purchaser may, in its discretion, deliver payment directly to the Seller. However, at no point may payment be made by cash tender. Payment shall, at all times, be made by check or electronic funds transfer issued to the Seller of the Metal Property following the initial three days.

## Chapter 7 Certificate of Registration

100 The date on which forms or other documents (electronic or paper) are actually received by the Division or by the Secretary of State's Agent shall be the date of filing. A registration or a renewal application is not considered complete and fees are not considered received and none will be further processed until all required documentation has been received by the Division. Additional documentation not specifically called for by the forms, but essential to full disclosure of information needed to process an application shall be furnished, as directed, upon request by the Division. All documents (paper and e-documents) furnished to the Division become part of the records of the Division and are not returnable.

101 Upon submission of an application for registration, the applicant will be issued a registration number by the Agent or the Secretary of State. The registration is provisional at this point until the applicant is issued a Certificate of Registration from the Secretary of State's Office. A registration can be denied or cancelled for the following reasons:

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

101.02 Submission of an incomplete registration application;

101.03 Failure to satisfy the background history verification for registration as a Scrap Metal Dealer as required under the Act; or

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

102 In addition to the cancellation of the provisional registration, a finding of any of the above-listed reasons shall result in a denial of the Applicant's registration as a Scrap Metal Dealer. Registration under the Act is confirmed by 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. The Certificate of Registration is issued upon receipt by the Secretary of State of a completed registration application, confirmed receipt of the 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.

103 All registrations, unless suspended or revoked, shall be effective for a period of two (2) years from the date of registration reflected on the Certificate of Registration issued by the Secretary of State. Individuals seeking to renew their registration must re-apply pursuant to the Act and these Rules and submit the required registration fee.

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

104.01 A standard Certificate of Registration document measuring approximately eight-and-a-half by eleven inches (8 ½" x 11") in size; and/or

104.02 A wallet-sized Registration Card.

105 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 wallet-sized registration card will be issued by the Secretary of State so that the same may be presented upon request of any individual in the scrap metal business acting within the scope of his business to confirm lawful registration of any dealer when the dealer is outside of his office or fixed location.

## Chapter 8 Termination of Registration and Refund Policy

100 The only basis for requesting a registration fee refund is that the initial registration was made in error because the individual or business does not engage in the business of purchasing regulated materials. In such instances, a registration refund **must** be requested within ninety (90) days following submission of the registration application. When an applicant is denied registration the registration fee will be refunded to the applicant.

101 Otherwise, once a registration application is approved, the registration fee becomes the property of the Mississippi Secretary of State's Office and shall be non-refundable and non-transferable. No portion of the registration fee will be returned to a registered Scrap Metal Dealer whose registration is suspended or revoked.

102 When a registered Scrap Metal Dealer withdraws or surrenders his Certificate of Registration, the registration fee is non-refundable and non-transferable. However, should the same Dealer wish to return to operation during the remaining two-year registration period, the Dealer may do so without an additional fee until renewal.

## Chapter 9 Denial, Suspension, Revocation or Refusal to Renew Registration

100 The Secretary of State shall notify a Scrap Metal Dealer in writing 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 (14) calendar days of the date of notice. The denial, suspension, revocation, or refusal to renew a registration shall become effective fourteen (14) calendar 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 (14) calendar days. If a hearing is

requested and the denial, suspension, revocation, or refusal to renew is upheld, such action shall not become effective until issuance of a Final Order following the hearing.

## Chapter 10 Nonpublic Records; Confidentiality

100 Any social security number; residential address not used as a business address; driver's license number; federal EIN; personal email address; residential telephone number not used as a business telephone number; and any information disclosing an individual's percentage of ownership interest in a Scrap Metal business, or any other personal or proprietary information that may be obtained in any registration or renewal application for licensure under these Rules shall not be deemed a public record.

## Chapter 11 Metal Unit Administrative Procedures

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

101 If any one or more of these Rules, or any part of any Rule is found to be invalid by any court of competent jurisdiction, such finding shall not affect the validity of any other Rule or the remaining content of any part of a Rule that is not found to be invalid. Further, if any one or more of these Rules, or any part of any Rule, is superseded, amended, or contradicted by subsequent legislation, such amendment or change by subsequent legislation in no way invalidates any other part of a Rule or any other Rules not addressed or impacted by subsequent legislative action.

102 Oral or informal opinions by the staff of the Division as to the applicability of the Act and oral or informal representations by the staff of the Division concerning the status of filings made with the Division are not binding upon the Division. Requestors can obtain a written declaratory opinion from the Division by following the procedures described in the Secretary of State's Rule on Declaratory Opinions.

103 Administrative Hearing Procedures

103.01 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 or these Rules.

103.02 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.

103.03 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 Officer and the opposing party a list of witness which it intends to call to testify or to otherwise give evidence. The list shall contain for each witness:

1. Name;

2. Residential and business address, if known;

3. Residential and business telephone number, if known;

4. A brief summary statement indicating the substance of the person's expected testimony.

103.04 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.

103.05 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.

103.06 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.

103.07 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.

103.08 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.

103.09 Documents received into evidence by the Hearing Officer shall be marked by him or her, or under his or her direction, entered into evidence and made a part of the record in the cause.

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

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

103.12 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.

103.13 A record of testimony at the hearing may be made by other than stenographic means.

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

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

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

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

103.16 After all evidence is heard or received and the hearing is completed, the Hearing Officer shall, within a reasonable time thereafter, prepare and file written findings of fact and conclusions of law. The Secretary of State shall review the Hearing Officer's findings and conclusions and all exhibits entered into evidence, and, if desired, order a transcript of the hearing. Thereupon, the Secretary may issue a Final Order adopting and accepting the Hearing Officer's findings of fact and conclusions of law; reject the findings in whole or in part and issue new findings of fact and conclusions of law with a Final Order; or remand the case to the Hearing Officer for additional findings or clarification of key issues. A case is not concluded until issuance of a Final Order by the Secretary of State. All findings and final orders shall be sent via certified mail, return receipt requested, to all Parties who appeared at the administrative hearing or their or attorney or authorized representative.

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

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

## Chapter 12 Notices

100 Any correspondence or notices 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.

## Chapter 13 Affirmative Obligation to Update Registration Information

100 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 of the Applicant or Registrant to maintain current and correct address and contact information with the Division or its Agent.

## Chapter 14 Effective Date

100 The Effective Date of the Act is August 8, 2008.

101 The Effective Date of these Rules is June 20, 2010.

## Title 1 Secretary of State

## Part III Secretary of State

PREAMBLE: The following Rules are hereby adopted by the Secretary of State by the authority granted in Miss. Code Ann. Section 97-17-71(1)(b) (2008). These Rules supersede all rules heretofore adopted and from this date shall be applicable to the administration of the Mississippi Scrap Metal Dealer Registration Act. The procedures and practices expressed in these Rules were 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 Dealer Registration Act, codified at Mississippi Code Annotated Sections 97-17-71, *et seq.*

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k. The date and place of each acquisition of the metal property;

l. The weight, quantity or volume and a general physical description of the type of metal property, such as wire, tubing, extrusions or casting, purchased in a purchase transaction;
m. The amount of consideration given in a purchase transaction for the metal property;
n. The vehicle license tag number, state of issue and the make and type of vehicle used to deliver the metal property to the purchaser;
o. If a person other than the seller delivers the metal property to the purchaser, the name, address and age of the person who delivers the metal property;
p. A signed statement from the person receiving consideration in the purchase transaction stating that he is the rightful owner of the metal property or is entitled to sell the metal property being sold;
q. i. A scanned copy or a photocopy of the personal identification card of the person receiving consideration in the purchase transaction; or
ii. If a person other than the seller delivers the metal property to the purchaser, a scanned copy or a photocopy of the personal identification card of the person delivering the metal property to the purchaser; and
r. A photograph, videotape or similar likeness of the person receiving consideration or any person other than the seller who delivers the metal property to the purchaser in which the person's facial features are clearly visible and in which the metal property the person is selling or delivering is clearly visible.

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10~~5~~6 **Dealer/Processor** as defined in the Act and as used in these Rules is a Scrap Metal Dealer or Dealer who pays compensation for Regulated Metal Property and who is engaged in some aspect of Processing as that term is defined in these Rules. ~~shall have the same meaning as "Scrap Metal Dealer" as defined herein and the terms shall be used interchangeably. The term "Dealer/Processor" and "Processor" are used interchangeably in these Rules.~~

10~~6~~7 **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 that Scrap Metal Dealer for the sale of that Metal Property.

10~~7~~8 **Division** shall mean the Regulation and Enforcement Division of the Office of the Secretary of State of Mississippi.

10~~8~~9 **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. The term "Individual" and the term "Business" are used interchangeably in these Rules.

1~~09~~10 **Law Enforcement Officer** as defined in the Act and as used in these Rules shall mean any person appointed or employed by the State of Mississippi or any political subdivision thereof, including municipalities or townships or the State military, who is duly vested

with the authority to bear arms and make arrests, and whose primary responsibility is prevention and detection of crime, apprehension of criminals, and enforcement of laws of this State or the ordinances of any political subdivision thereof.

11~~0~~11 **Metal Property** or **Regulated Metal Property** as defined in the Act and used in these Rules shall include the following:

11~~0.01~~1.01 railroad track materials such as any rail, switch component, spike, angle bar, tie plate or bolt of the type used in constructing railroads;

11~~0.02~~1.02 copper materials, such as any copper wire, bars, rods or tubing, including copper wire or cable or coaxial cable of the type used by public utilities, common carriers or communication services providers, whether wireless or wire line, copper air conditioner evaporator coils or condensers, aluminum copper radiators not attached to a motor vehicle, or any combination of these;

11~~0.03~~1.03 aluminum materials such as any aluminum cable, bars, rods or tubing of the type used to construct utility, communication or broadcasting towers, aluminum utility wire and aluminum irrigation pipes or tubing; however, this shall not include aluminum cans that have served their original economic purpose;

11~~0.04~~1.04 electrical, communications or utility brass, stainless steel sinks, catalytic converters not attached to a motor vehicle, metal beer kegs or metal syrup tanks or any recognizable part thereof generally used in the beverage industry unless the dealer possesses a bill of sale from a beverage manufacturer, beverage distributor or from a manufacturer of such tanks;

11~~0.05~~1.05 any bronze vase or marker, memorial, statue, plaque, or other bronze object used at a cemetery or other location where deceased persons are interred, entombed or memorialized unless the dealer possesses documentation from local law enforcement and from a cemetery authenticating the lawful source of such material;

Metal property does not include ferrous materials not listed in the Act.

11~~1~~2 **Metal Property Dealer** as defined in the Act and as used in these Rules shall have the same meaning as “Scrap Metal Dealer” as defined herein and the terms shall be used interchangeably.

11~~2~~3 **Other Purchaser** as defined in the Act and used in these Rules, shall mean any individual who purchases Metal Property as that term is defined in the Act, but who is not registered as a Scrap Metal Dealer pursuant to the Act.

11~~3~~4 **Party** as defined in the Act and used in these Rules, shall include the Attorney General, the Secretary of State, the Division, any governmental agency, any Scrap Metal Dealer, any Law Enforcement Officer, or any other person.

1~~14~~15 **Processing** as the term is used in the Act and in these Rules shall mean returning or converting Metal Property into a product having an existing or potential economic value as a raw or finished material. Processing shall not include sorting, cleaning, washing, transferring, transporting, or bundling if bundling only involves gathering together of material in a tighter, more compact surface area with no change in the form or mass of the object(s) as scrap metal material. However, processing shall include any other function that facilitates the return of Metal Property into a raw material or raw material product consisting of proposed grades and having an existing or potential economic value. Examples of processing include, but are not limited to, the following: cutting, shredding, melting, smelting, chipping, chopping, stripping, and baling, if baling involves using machinery to convert the form, shape or mass of Metal Property into a raw material that will have or has economic value.

11~~5~~6 **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. Registrant as defined in the Act and as used in these Rules shall have the same meaning as "Scrap Metal Dealer" as defined herein and the terms shall be used interchangeably.

11~~6~~7 **Registration Form** or **Registration Application** shall mean the Mississippi Metal Dealer/Dealer Processor Registration Application.

11~~7~~8 **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, and Dealer/Processors.

11~~8~~9 **Seller** shall mean any individual who, directly or through a Delivery Person, presents Metal Property for sale to a Scrap Metal Dealer or Dealer/Processor and who receives compensation from that Scrap Metal Dealer for the sale of that property.

1~~19~~20 The **Three-Day Hold Period** as defined in the Act and used 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 of the three days. The Three Day Hold Period shall apply only to the initial purchase of Metal Property by a registered Scrap Metal Dealer or Other Purchaser. It shall not apply to subsequent transactions involving that same Metal Property between registered Scrap Metal Dealers or between a Scrap Metal Dealer and Other Purchasers.

~~120 **Transaction Report** or **Customer Transaction Report** or **Customer Purchase Transaction Report** shall mean the Scrap Metal Purchase Transaction Report as described in Chapters 2, 3, 4, and 5, and required by Mississippi Code Annotated Section 97-17-71 (2)(a-h).~~

121 **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 Time, Monday through Saturday.

## Chapter 2 Registration

100 Unless exempt from registration, all individuals as defined in Chapter 1, Section 10~~8~~9 paying compensation for Metal Property must register with the Secretary of State as a Scrap Metal Dealer. No individual may acquire or purchase Metal Property unless registered or exempt. No Processor, as that term is defined in these Rules, shall be exempt from registration.

The following are exempt:

100.01 A scrap metal business or individual that does not pay compensation for Metal Property during any calendar month in the amount of One Thousand Dollars ($1,000.00) or more.

1. The burden of proving an exemption under 100.01 is on the individual or business seeking the exemption. To secure an exemption from registration, the individual must present documentation to the Division substantiating the exemption. The individual or business seeking the exemption shall provide to the Division copies of, or access to, the individual's books and records covering the period of one hundred and twenty (120) days preceding the application for exemption to substantiate the claim for a registration exemption. Any claim for an exemption with supporting documentation must be presented to the Division on an approved form supplied by the Division.

100.02 Any law enforcement officer acting in an official capacity paying compensation for metal property or selling metal property acting in an official capacity.

100.03 A trustee in bankruptcy, executor, administrator or receiver who purchases or sells metal property when acting in such capacity.

100.04 Any public official acting under a court order to deal in metal property.

100.05 A manufacturing, industrial or other commercial vendor that generates or sells regulated metal property in the ordinary course of its business. However, the term "commercial vendor" does **not** include individuals or businesses that acquire, generate, or produce scrap metal property and then sell such property as a primary business operation (i.e., scrap metal dealer-to-dealer transactions).

101 ~~From and after August 1, 2010, all~~ All applications for registration, all customer transaction reports, and any other papers or documents required to be maintained or submitted by the Act or by these Rules, **must** be transmitted electronically to the Secretary of State's Agent, unless a hardship waiver is granted under Chapter 3. The

failure to electronically submit an application for registration or customer transaction reports to the Agent will subject the business to the administrative penalties authorized by Mississippi Code Annotated Section 97-17-17.1 (C)(i)(ii). The electronic filing shall be accessed through the Secretary of State's website or that of its Agent. Instructions for e-filing and e-filing forms shall be available on the Secretary of State's website at www.sos.ms.gov. Assistance may also be provided by contacting the Division at 601-359-1350.

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

## Chapter 3 Electronic Filing Hardship Waiver

100 Individuals who are unable to file electronically shall submit a written request for a hardship waiver to the Secretary of State's Office sixty (60) days prior to the expiration date of their registration. Such request shall set forth the reasons the business is unable to electronically register and file customer transaction reports. The Secretary of State's Office shall consider hardship waivers on a case-by-case basis. A hardship waiver request application will be furnished by the Secretary of State's Office upon request. The following factors, as indicated on the application, must be documented and substantiated with any request for a hardship waiver:

100.01 Internet service is not available to the registrant due to the absence of an internet service provider;

100.02 Internet service is cost prohibitive for the registrant in that the cost outweighs any efficiencies, savings or productivity gains from having the service;

100.03 Neither the registrant nor any personnel available to the registrant possess minimum technology hardware skills or minimum internet skills necessary to register and to upload customer transaction reports online.

100.04 A compelling and substantial factor not encompassed in the three previous factors that merits accommodation at the Secretary of State's discretion.

101 For businesses that have received a hardship waiver, copies of an application form needed to become a registered dealer are available from the Secretary of State's Office. Further, any applicant or registrant may receive walk-in assistance at any office of the Secretary of State, namely: 700 North Street, Jackson, MS 39202; 1701 24th Avenue, Gulfport, MS 39501; ~~and~~ 330 West Jefferson Street, Tupelo, MS 38804; and 316 West Commerce Street, Hernando, MS 38632.

## Chapter 4 Fees

~~100 Prior to August 1, 2010, Dealers who electronically submit their registration application **and all** customer transaction reports to the Secretary's Agent shall pay a registration fee of Five Hundred Dollars ($500.00). Dealer/Processors who electronically submit their registration application **and all** customer transaction purchase reports to the Secretary's Agent shall pay a registration fee of Two Thousand Dollars ($2,000.00). Dealers who submit a paper application for registration **or** maintain copies of customer purchase transaction reports in paper format without submitting the same to the Secretary's Agent for database maintenance shall pay a registration fee of Seven Hundred and Fifty Dollars ($750.00). Processors who submit a paper application for registration **or** maintain copies of customer purchase transaction reports in paper format without submitting the same to the Secretary's Agent for database maintenance shall pay a registration fee of Two Thousand Five Hundred Dollars ($2,500.00). To qualify for the reduced registration fee of Five Hundred Dollars ($500.00) or Two Thousand Dollars ($2,000.00), respectively, the Dealer or Dealer/Processor must **both** register electronically **and** maintain/submit electronic copies of the customer purchase transaction reports to the Secretary's Agent. Any failure to maintain both requirements will result in additional billing by the Secretary of State's Office for the additional fee.~~

~~101 From and after August 1, 2010, the registration fee for Dealers shall be Five Hundred Dollars ($500.00). Any Dealer that fails to electronically submit their registration application **and all** customer transaction reports to the Secretary's Agent will be invoiced an additional fee of Two Hundred and Fifty Dollars ($250.00). Further, the failure to maintain and submit electronic records with the Secretary's Agent will subject any Dealer who does not possess a hardship waiver to other administrative penalties authorized by the Act or by these Rules. Dealers who have received a hardship waiver shall pay a registration fee of Seven Hundred and Fifty Dollars ($750.00).~~

~~102 From and after August 1, 2010, the registration fee for Dealer/Processors shall be Two Thousand Dollars ($2,000.00). Any Processor that fails to electronically submit their registration application **and all** customer transaction reports to the Secretary's Agent will be invoiced an additional fee of Five Hundred Dollars ($500.00). Further, the failure to maintain and submit electronic records with the Secretary's Agent will subject any Processor who does not possess a hardship waiver to other administrative penalties authorized by the Act or by these Rules. Processors who have received a hardship waiver shall pay a registration fee of Two Thousand Five Hundred Dollars ($2,500.00).~~

100 The registration fee is One Hundred Dollars ( $100.00) for Dealers who paid compensation for metal property, as defined in the Act and in Chapter 1, Rule 111, in the prior ending calendar year in an amount less than or equal to Twelve Thousand Dollars ($12,000.00). For example: In August of 2010, if a Dealer had total purchases of regulated scrap metal in calendar year 2009 totaling $10,700.00, the registration fee is One Hundred Dollars ($100.00). For Dealers in this category who have received a hardship waiver to register and to maintain paper records of customer transactions, the fee is Two Hundred and Fifty Dollars ($250.00).

101 The registration fee is Five Hundred Dollars ($500.00) for Dealers who paid compensation for metal property, as defined in the Act and in Chapter 1, Rule 111, in the prior ending calendar year in an amount greater than Twelve Thousand Dollars ($12,000.00). For example: In August of 2010, if a Dealer had total purchases of regulated scrap metal in calendar year 2009 totaling $17,700.00, the registration fee is Five Hundred Dollars ($500.00). For Dealers in this category who have received a hardship waiver to register and to maintain paper records of customer transactions, the fee is Seven Hundred and Fifty Dollars ($750.00).

102 The registration fee for Dealer/Processors shall be Two Thousand Dollars ($2,000.00). Processors who have received a hardship waiver shall pay a registration fee of Two Thousand Five Hundred Dollars ($2,500.00).

103 Any Dealer or Processor that has not been granted a hardship waiver and that fails to submit their registration application **and all** Customer Transaction Reports to the Secretary's Agent is subject to administrative penalties authorized by the Act or by these Rules. Additionally, such Dealers or Processors will be invoiced the additional fee charged for a hardship registrant within that fee category.

## Chapter 5 Recordkeeping

100 ~~From and after August 1, 2010, applicants~~ Applicants for registration and registered Scrap Metal Dealers must keep an accurate and legible record pursuant to the Act. Applicants and Scrap Metal Dealers **shall** comply with the recordkeeping requirements of the Act by submitting a ~~Scrap Metal Purchase~~ Customer Transaction Report ~~("Transaction Report")~~ for each purchase transaction. The Customer Transaction Report must be submitted electronically to the Agent, who shall keep and maintain all electronic records pursuant to the Act. Customer ~~Purchase~~ Transaction Reports must be uploaded to the Secretary's Agent no later than ~~noon (12:00 p.m.)~~ close of business (5:00 p.m.) of the next business day following the date of purchase by the dealer. For those who have received hardship waivers only, the Secretary of State's Office can furnish a sample ~~c~~ Customer ~~t~~ Transaction ~~r~~ Report ~~f~~ Form that, when fully completed by the business, complies with all provisions of the Act. Hardship filers shall maintain the ~~c~~ Customer ~~t~~ Transaction ~~purchase r~~ Reports at the business subject to inspection and review by law enforcement and the Secretary of State's Office. The reports must be maintained for two (2) years.

101 Applicants, Scrap Metal Dealers, and Other Purchasers shall ensure that each ~~c~~ Customer ~~t~~ Transaction ~~purchase r~~ 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 on behalf of the true owner. Where the Metal Property being sold is HVAC equipment (including air conditioner evaporator coils or condensers), this affirmation shall consist of a written statement provided by the seller that he is a locally licensed (permit/privilege license) HVAC business or contractor. The written affirmation statement may be maintained through the use of the Daily Signature Sheet, a form authorized by the Secretary of State and available on the Secretary of State's website. The Daily Signature Sheet recommended by the Secretary of State satisfies the requirements of Mississippi Code Annotated Sections 97-17-71 (2)(g)

(statement of rightful ownership from seller) and 97-17-71.1 (HVAC representation). Use of the Daily Signature Sheet available on the Secretary of State's website is not required. Any Dealer or Dealer/Processor may develop their own form or written system to use in their business so long as it complies with Sections 97-17-71 (2)(g) and 97-17-71.1. The Daily Signature Sheet or any comparable version in use by a Dealer is never filed with the Secretary of State's Office or with the Secretary's Agent. These are maintained at the business for a period of two (2) years.

102 Transactions between Scrap Metal Dealers ("dealer-to-dealer sales") are not excluded from the recordkeeping requirements of the Act or these Rules. 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. Likewise, transactions involving the purchase of air conditioner evaporator coils or condensers are not exempt or excluded from the recordkeeping requirements of the Act or these Rules.

## Chapter 6 Payment by Check

100 Pursuant to the Act, payment for Metal Property shall be by check mailed to the recorded address of the Seller or by electronic funds transfer following a period of three days after the purchase transaction. Mississippi Code Annotated Section 97-17-71(8). However, if the check is subsequently returned as undeliverable or does not reach the intended addressee, the Scrap Metal Dealer or other purchaser may, in its discretion, deliver payment directly to the Seller. However, at no point may payment be made by cash tender. Payment shall, at all times, be made by check or electronic funds transfer issued to the Seller of the Metal Property following the initial three days.

## Chapter 7 Certificate of Registration

100 The date on which forms or other documents (electronic or paper) are actually received by the Division or by the Secretary of State's Agent shall be the date of filing. A registration or a renewal application is not considered complete and fees are not considered received and none will be further processed until all required documentation has been received by the Division. Additional documentation not specifically called for by the forms, but essential to full disclosure of information needed to process an application shall be furnished, as directed, upon request by the Division. All documents (paper and e-documents) furnished to the Division become part of the records of the Division and are not returnable.

101 Upon submission of an application for registration, the applicant will be issued a registration number by the Agent or the Secretary of State. The registration is provisional at this point until the applicant is issued a Certificate of Registration from the Secretary of State's Office. A registration can be denied or cancelled for the following reasons:

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

101.02 Submission of an incomplete registration application;

101.03 Failure to satisfy the background history verification for registration as a Scrap Metal Dealer as required under the Act; or

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

102 In addition to the cancellation of the provisional registration, a finding of any of the above-listed reasons shall result in a denial of the Applicant's registration as a Scrap Metal Dealer. Registration under the Act is confirmed by 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. The Certificate of Registration is issued upon receipt by the Secretary of State of a completed registration application, confirmed receipt of the 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.

103 All registrations, unless suspended or revoked, shall be effective for a period of two (2) years from the date of registration reflected on the Certificate of Registration issued by the Secretary of State. Individuals seeking to renew their registration must re-apply pursuant to the Act and these Rules and submit the required registration fee.

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

104.01 A standard Certificate of Registration document measuring approximately eight-and-a-half by eleven inches (8 ½" x 11") in size; and/or

104.02 A wallet-sized Registration Card.

105 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 wallet-sized registration card will be issued by the Secretary of State so that the same may be presented upon request of any individual in the scrap metal business acting within the scope of his business to confirm lawful registration of any dealer when the dealer is outside of his office or fixed location.

## Chapter 8 Termination of Registration and Refund Policy

100 The only basis for requesting a registration fee refund is that the initial registration was made in error because the individual or business does not engage in the business of purchasing regulated materials. In such instances, a registration refund **must** be requested within ninety (90) days following submission of the registration application. When an applicant is denied registration the registration fee will be refunded to the applicant.

101 Otherwise, once a registration application is approved, the registration fee becomes the property of the Mississippi Secretary of State's Office and shall be non-refundable and non-transferable. No portion of the registration fee will be returned to a registered Scrap Metal Dealer whose registration is suspended or revoked.

102 When a registered Scrap Metal Dealer withdraws or surrenders his Certificate of Registration, the registration fee is non-refundable and non-transferable. However, should the same Dealer wish to return to operation during the remaining two-year registration period, the Dealer may do so without an additional fee until renewal.

## Chapter 9 Denial, Suspension, Revocation or Refusal to Renew Registration

100 The Secretary of State shall notify a Scrap Metal Dealer in writing 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 (14) calendar days of the date of notice. The denial, suspension, revocation, or refusal to renew a registration shall become effective fourteen (14) calendar 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 (14) calendar days. If a hearing is requested and the denial, suspension, revocation, or refusal to renew is upheld, such action shall not become effective until issuance of a Final Order following the hearing.

## Chapter 10 Nonpublic Records; Confidentiality

100 Any social security number; residential address not used as a business address; driver's license number; federal EIN; personal email address; residential telephone number not used as a business telephone number; and any information disclosing an individual's percentage of ownership interest in a Scrap Metal business, or any other personal or proprietary information that may be obtained in any registration or renewal application for licensure under these Rules shall not be deemed a public record.

## Chapter 11 Metal Unit Administrative Procedures

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

101 If any one or more of these Rules, or any part of any Rule is found to be invalid by any court of competent jurisdiction, such finding shall not affect the validity of any other Rule or the remaining content of any part of a Rule that is not found to be invalid. Further, if any one or more of these Rules, or any part of any Rule, is superseded, amended, or contradicted by subsequent legislation, such amendment or change by subsequent legislation in no way invalidates any other part of a Rule or any other Rules not addressed or impacted by subsequent legislative action.

102 Oral or informal opinions by the staff of the Division as to the applicability of the Act and oral or informal representations by the staff of the Division concerning the status of filings made with the Division are not binding upon the Division. Requestors can obtain a written declaratory opinion from the Division by following the procedures described ~~at 02 MSAC 03,~~ in the Secretary of State's Rule on Declaratory Opinions.

## 103 Administrative Hearing Procedures

103.01 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 or these Rules.

103.02 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.

103.03 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 Officer and the opposing party a list of witness which it intends to call to testify or to otherwise give evidence. The list shall contain for each witness:

1. Name;

2. Residential and business address, if known;

3. Residential and business telephone number, if known;

4. A brief summary statement indicating the substance of the person's expected testimony.

103.04 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.

103.05 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.

103.06 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.

103.07 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.

103.08 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.

103.09 Documents received into evidence by the Hearing Officer shall be marked by him or her, or under his or her direction, entered into evidence and made a part of the record in the cause.

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

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

103.12 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.

103.13 A record of testimony at the hearing may be made by other than stenographic means.

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

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

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

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

103.16 After all evidence is heard or received and the hearing is completed, the Hearing Officer shall, within a reasonable time thereafter, prepare and file written findings of fact and conclusions of law. The Secretary of State shall review the Hearing Officer's findings and conclusions and all exhibits entered into evidence, and, if desired, order a transcript of the hearing. Thereupon, the Secretary may issue a Final Order adopting and accepting the Hearing Officer's findings of fact and conclusions of law; reject the findings in whole or in part and issue new findings of fact and conclusions of law with a Final Order; or remand the case to the Hearing Officer for additional findings or clarification of key issues. A case is not concluded until issuance of a Final Order by the Secretary of State. All findings and final orders shall be sent via certified mail, return receipt requested, to all Parties who appeared at the administrative hearing or their or attorney or authorized representative.

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

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

## Chapter 12 Notices

100 Any correspondence or notices 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.

## Chapter 13 Affirmative Obligation to Update Registration Information

100 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 of the Applicant or Registrant to maintain current and correct address and contact information with the Division or its Agent.

## Chapter 14 Effective Date

100 The Effective Date of the Act is August 8, 2008.

101 The Effective Date of these Rules is ~~April 4, 2010~~ June 20, 2010.

~~102 The Effective Date of Chapters 2, 3, and 5 pertaining to Electronic Filing is August 1, 2010.~~