

Georgia Secondary Metals Compliance Guide:

A Guide for Secondary Metals Recyclers, Law Enforcement, Prosecutors, Utilities, and others to better understand the proper and lawful Purchase of Regulated Metal Property in the State of Georgia – effective July 1, 2012.

This guide is provided as a public service of:



The Georgia Recyclers

GEORGIA RECYCLERS ASSOCIATION, INC.

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APPLICABILITY

Georgia's Regulated Metals Recycling Law regulates anyone meeting the definition of a Secondary Metals Recycler which is anyone engaged in Georgia in the business of paying compensation for the purchase of Regulated Metal Property whether or not the person operates from a fixed location or otherwise and whether or not the person is engaged in converting such property into raw material products. **This includes any person located in a residence buying metals or buying metals from a truck parked on public or private property.**

Regulated Metal Property is any item composed primarily of ferrous or nonferrous metals, but excludes batteries, aluminum beverage containers, used beverage containers (or similar items). Ferrous metals are those that contain significant quantities of iron or steel. Nonferrous metals are those metals that do not contain significant quantities of iron or steel, and include stainless steel items, copper, brass, aluminum, bronze, lead, zinc, beer kegs, catalytic converters, nickel and any of their respective alloys.

The Regulated Metals Recycling Law exempts from its coverage purchases of Regulated Metal Property from certain sellers including purchases from manufacturing, industrial, or other commercial vendors (but excluding other Secondary Metals Recyclers) that generate or sell Regulated Metal Property in the ordinary course of their business (the "business-to-business exception"), non-profit sellers, law enforcement and public officials acting in their respective capacities and certain court appointed officials. The Regulated Metals Recycling Law impacts almost every aspect of a Secondary Metal Recycler's business operations including recordkeeping, the form of payment for purchase transactions, hours of operation, types of Regulated Metal Property it may purchase and from whom it may purchase the metals.

Amendments made in 2012 to the Regulated Metals Recycling Law significantly change how the metal recycling industry conducts business. Recyclers must now register with the county sheriff. They may no longer pay cash for purchases (other than in exempt transactions). Their business hours have been reduced. They must obtain and retain in their records additional information regarding purchase transactions. Purchases of certain types of Regulated Metal Property (air conditioning coils, burned copper wire and burial memorials) are restricted to certain sellers with proper licenses or documentation. Upon the establishment of a State database recyclers will be required to report purchase transaction information daily to the Georgia Bureau of Investigation. Finally, recyclers will be subject to more stringent penalties for failure to comply with the law.

As noted in the "Disclaimer" below, this Compliance Guide is designed as a resource to help Secondary Metals Recyclers understand and comply with the Regulated Metals Recycling Law but it is not offered as legal advice nor meant to serve a substitute for the advice of legal counsel. Secondary Metal Recyclers are encouraged to read the Regulated Metals Recycling Law or consult with legal counsel regarding the law if they have any questions.

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TERMS DEFINED **(O.C.G.A. § 10-1-350)**

Statutory Definitions: The following are the defined terms found in the Regulated Metals Recycling Law:

Aluminum Property means aluminum forms designed to shape concrete.

Burial Object means any product manufactured for, or used for, identifying or permanently decorating a grave site, including, without limitation, monuments, markers, benches, and vases, and any base or foundation on which they rest or are mounted

Coil means any copper, aluminum, or aluminum-copper condensing coil or evaporation coil. The term does not include coil from a window air-conditioning system, if contained within the system itself, or coil from an automobile condenser.

Copper Property means any copper wire, copper tubing, copper pipe, or any item composed completely of copper.

Deliverer means any individual who takes or transports the Regulated Metal Property to the Secondary Metals Recycler.

Ferrous Metals means any metals containing significant quantities of iron or steel.

Law Enforcement Officer means any duly constituted peace officer of the State or of any county, municipality or political subdivision of the State.

Nonferrous Metals means any metals not containing significant quantities of iron or steel and includes stainless steel beer kegs, other stainless steel items, copper, brass, aluminum, bronze, lead, zinc, nickel, and their alloys

Person means an individual, partnership, corporation, joint venture, trust, association or any other legal entity.

Personal Identification Card means any current and unexpired (i) driver's license or identification card issued by the Georgia Department of Driver Services or any similar card issued by another state, (ii) a military identification card or (iii) a current work authorization issued by the federal government, which contains the individuals name, address, and photograph. **No other forms of identification are acceptable.**

Purchase Transaction means any transaction in which a Secondary Metals Recycler pays money or gives something of value in exchange for Regulated Metal Property.

Regulated Metal Property means any item primarily composed of Ferrous Metals or Nonferrous Metals; and includes Aluminum Property, Copper Property, and catalytic converters,

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but shall not include batteries, aluminum beverage containers, used beverage containers (or similar items).

Secondary Metals Recycler means any Person who is engaged in this state, whether from a fixed location or otherwise, in the business of paying compensation for (buying) Regulated Metal Property, whether or not engaged in the business of performing the manufacturing process of converting the Regulated Metal Property into raw material products.

Seller means the rightful owner of the Regulated Metal Property or the individual authorized by the rightful owner of the Regulated Metal Property to conduct the Purchase Transaction.

Other Definitions: The following are additional defined terms used in this Compliance Guide:

Burned Copper Wire means any copper wire that appears to have been exposed to heat, charred, or burned in order to remove insulation surrounding it.

Licensed Burial Object Manufacturer/Distributor means a Person that has a current unexpired business license evidencing that it is a manufacturer or distributor of Burial Objects.

Licensed Cemetery Owner means a cemetery owner registered under Code Section 10-14-4 (“Registration of Dealers and Cemeteries; Perpetual Care Cemeteries Trust Funds; Non-perpetual Care Cemeteries; Preneed Escrow Accounts”) of the O.C.G.A. or under the law of another state.

Licensed Contractor means a contractor licensed pursuant to Chapter 14 (“Electrical Contractors, Plumbers, Conditioned Air Contractors, Low-Voltage Contractors, and Utility Contractors”) of Title 43 of the O.C.G.A.

Licensed Funeral Director means a funeral director licensed under the provisions of Chapter 18 (“Funeral Directors and Establishments, Embalmers, and Crematories”) of Title 43 or under the law of another state.

Title means the Certificate of Title issued by the State of Georgia or any other State which evidences Seller’s ownership and title to the subject Vehicle or Trailer.

Title Cancellation Certificate means the Form MV-1SP, “*Cancellation of Certificate of Title for Scrap Vehicles*”, that is required to be completed and signed by the Seller and the Secondary Metals Recycler and filed by the Secondary Metals Recycler with the Motor Vehicle Division of the Department of Revenue. When purchasing certain vehicles or trailers without a title in accordance with O.C.G.A §40-3-36.

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REGISTRATION OF SECONDARY METALS RECYCLERS **(O.C.G.A. §10-1-360)**

Registration Requirements: The 2012 Amendments impose registration requirements upon all Secondary Metals Recyclers (individuals and entities) that pay compensation for Regulated Metal Property. Failure to properly register may result in criminal penalties.

Individuals (without a place of business):

(1) **Georgia Resident:** Secondary Metals Recyclers who are individual residents of Georgia must register with the Sheriff in the Georgia County in which the individual resides.

(2) **Non-Georgia Resident:** Secondary Metals Recyclers who are individuals not residing in Georgia must register with the Sheriff of the Georgia County in which the individual primarily engages or intends to primarily engage in business as a Secondary Metals Recycler

Entities (with a place of business):

Secondary Metals Recyclers other than individuals must register with the Sheriff of each County in which the Secondary Metals Recycler maintains a place of business.

Registration Form: The 2012 Amendments mandate the development of a Secondary Metals Recycler registration form by the Secretary of State of Georgia ("**Registration Forms**") and the Registration Forms will be available from the Sheriff of each County. The Registration form will, among other things, require a Secondary Metals Recycler to declare that the Secondary Metals Recycler is informed of and will comply with the provisions of the Regulatory Metals Recycling Law. The Sheriff, or an agent or representative of the Sheriff, of each County is required to (a) register the Secondary Metals Recycler, (b) maintain a record of each registration and (c) enter the registration into a searchable database coordinated by the Secretary of State.

Registration Fee: The Sheriff may assess the Secondary Metals Recycler a registration fee not to exceed \$200.00.

Term of Registration: A Secondary Metals Recycler's registration is valid for a 12 month period.

Penalties for Failure to Register: Any Secondary Metals Recycler convicted of violating this section is guilty of a misdemeanor of a high and aggravated nature.

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PURCHASE TRANSACTIONS

Exempt Transactions

(O.C.G.A. § 10-1-355)

Purchases of Regulated Metal Property from the following Persons are exempt from the restrictions on the purchase of Regulated Metal Property under the Regulated Metals Recycling Law:

- Manufacturing, industrial, or other commercial vendors that generate or sell Regulated Metal Property in the ordinary course of their business with the exception of secondary metal recyclers (the “business-to-business exception”);
*NOTE: (Transactions between **Georgia** Secondary Metals Recyclers are **not** exempt transactions under the “business-to-business” exception.)*
- Non-profit groups;
- Law Enforcement Officers acting in their official capacity;
- Bankruptcy trustee, executor administrator or receiver;
- Public official acting under judicial process or authority; and
- Sale on the execution of any process issued by a court

NOTE: Identification and proper paper work should be available and documented in the Secondary Metals Recycler’s records to establish and support these exemptions.

Hours of Business

(O.C.G.A. §10-1-359(1))

The purchase or sale of Regulated Metal Property by a Secondary Metals Recycler is prohibited between the hours of 7:00 P.M. and 7:00 A.M. A Secondary Metals Recycler may only purchase and sell Regulated Metal Property between the hours of 7:00 A.M. and 7:00 P.M. Other normal business activities (processing, receipt and unloading of trucks, etc.) are allowed at any hour, but no Purchase Transactions may take place during prohibited hours.

Payment Restrictions

(O.C.G.A. §10-1-355)

The Regulated Metals Recycling Law places restrictions on the form of payment for any Purchase Transaction (other than Exempt Transactions (see “*Exempt Transactions*” above) which transactions are exempt from the Payment Restrictions). Those restrictions are as follows:

No Cash Payments: Cash payments from a Secondary Metals Recycler to a Seller of Regulated Metal Property are not permitted. No Secondary Metals Recycler may pay Cash to a Seller for the purchase of a Regulated Metal Property at the time of the purchase.

Checks Permitted: Payment by Check is permitted. Checks must be made payable only to the Seller of the Regulated Metal Property and can be delivered to the Seller at the time of the Purchase Transaction. A Secondary Metals Recycler is not permitted to (a) redeem or cash any

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Check paid to a Seller or (b) provide or permit any mechanism on the Secondary Metals Recycler's premises for the redemption or cashing of the Check.

Electronic Transfers Permitted: Payment by Electronic Transfer is permitted and, similar to payments by Check, (a) the Electronic Transfer is payable only to the Seller, (b) it may not be redeemed or cashed by the Secondary Metals Recycler and (c) the Secondary Metals Recycler may not provide or permit any mechanism on the Secondary Metals Recycler's premises for redemption or cashing of an Electronic Transfer.

Vouchers Permitted: Payment by Voucher is permitted. Unlike Checks and Electronic Transfers, Vouchers may be redeemed by the Secondary Metals Recycler for cash but only after a three (3) day waiting period.

(1) **Required Voucher Information:** Vouchers must include the following information: (i) the date of the Purchase Transaction, (ii) the name of the Seller, (iii) the amount paid for the Regulated Metal Property, (iv) a detailed description of the Regulated Metal Property purchased, (v) information as to whether the voucher was mailed or delivered to Seller at the time of the Purchase Transaction, (vi) the first date on which the Voucher may be redeemed, and (vii) the date on which the Voucher expires.

(2) **Voucher Redemption:** The Voucher may only be redeemed for cash by the Seller or by the Seller's heirs or legal representatives.

(3) **Expiration of Voucher:** If a Voucher is not redeemed by the Seller or by the Seller's heirs or legal representatives within six (6) months of the date of the transaction, the Voucher expires and the Secondary Metals Recycler is not required to honor the Voucher after the expiration date.

Recordkeeping Requirements

(O.C.G.A. § 10-1-353)

Legible records of all Purchase Transactions must be maintained by a Secondary Metals Recycler for a period of two (2) years. The records must include the following:

(1) **Secondary Metals Recycler Identifying Information:** The name and address of the Secondary Metals Recycler.

(2) **Purchase Transaction Date:** The date of the Purchase Transaction.

(3) **Description of Regulated Metal Property:** The weight, quantity or volume, and description of the type of Regulated Metal Property purchased.

- **Type** means a general physical description of the Regulated Metal Property, such as wire, tubing, extrusions, castings, etc.

- **Example:** An adequate entry might look like: 150 lbs. #2 copper wire or 150 lbs. copper wire & tubing – mixed (Compared to an inadequate entry that omits the type: 150 lbs. #2 copper)

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(4) **Photo of Regulated Metal Property:** Digital photograph(s) or digital video image(s) of the Regulated Metal Property which shows the Regulated Metal Property in a reasonably clear manner. This does not require a piece by piece photo, but an image of the load as delivered.

(5) **Purchase Price and Copy of Payment:** The amount of money paid for the Regulated Metal Property and a copy of the check, voucher or documentation evidencing the electronic funds transfer given as consideration for the Purchase Transaction.

(6) **Seller's Statements/Affidavit:** A signed and sworn statement from the Seller stating as follows (*this may be printed at the bottom of a purchase ticket*):

(a) "I am the rightful owner of the material described above, or am entitled by the rightful owner to sell the material described above."; and

(b) "I understand that a Recycler is any Person who is engaged, from a fixed location or otherwise, in the business in this state of paying compensation for Regulated Metal Property that has served its original economic purpose, whether or not engaged in the business of performing the manufacturing process by which Regulated Metal Property is converted into raw material products consisting of prepared grades and having an existing or potential economic value. No Ferrous Metal, Nonferrous Metals, Aluminum Property, Copper Property, or catalytic converters (batteries, aluminum beverage containers, used beverage containers, or similar beverage containers are exempt) may be purchased by a Recycler unless such Recycler is a holder of a valid permit issued pursuant to Article 14 of Chapter 1 of Title 10 of the Official Code of 159 Georgia Annotated."

(7) **Copy of Seller's/Deliverer's Government Issued ID Card:** A photocopy or scan of a valid Personal Identification Card of Seller and the Deliverer, if the Deliverer is different from the Seller, which record contains (a) the individual's name, address and photograph (Ex. a driver's license, military ID, or work permit from the federal government) and (b) the type of identification and the distinctive identification number.

(8) **Photo of Seller:** A clear photograph, videotape, or digital recording of the face ("recognizable facial image") of the Seller and the Deliverer, if the Deliverer is different from the Seller, to be retained in a transferable electronic storage format.

(9) **Vehicle Identifying Information:** Vehicle license tag number and the state of issue of the license tag and the type of Vehicle used to deliver the metal. In the event that the delivering vehicle does not have a valid license tag, the Secondary Metals Recycler is required to record the Vehicle Identification Number (VIN) of the delivering vehicle.

- Example: Pickup truck; Tag number: Georgia ABC123 or Dump body truck; Tag number: South Carolina 321CBA.
- Type of Vehicle means automobile, pickup truck, van, or truck.

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(10) **Copies of Licenses and Registrations:** A scan or photocopy of the licenses, permits, registration and other documentation required in connection with Purchase Transactions with Licensed Contractors, Licensed Funeral Directors, Licensed Cemetery Owners and Licensed Burial Object Manufacturers/Distributors described above.

(11) **Title or Title Cancellation Certificate:** In accordance with O.C.G.A. §40-3-36, for the purchase of end of life Vehicles and Trailers, a copy of the Title or of the Title Cancellation Certificate that is required to be sent to the Motor Vehicle Division of the Department of Revenue (the “*DMV*”). The Secondary Metals Recycler must forward the original Title or Title Cancellation Certificate to the DMV within 72 hours of receipt of the Title or Title Cancellation Certificate.

Electronic reporting of this information will be required at some point after July 1, 2012
(*awaiting development by Georgia Department of Revenue*).

(12) **Transactions between Georgia Secondary Metals Recyclers:** When purchasing Regulated Metal Property from other Georgia Secondary Metals Recyclers, the purchasing recycler should obtain documentation that the selling recycler has purchased all Regulated Metals Properties in the shipment in accordance with Georgia law.

Purchase Transaction Database

(O.C.G.A. §10-1-360.1)

The 2012 Amendments require a Secondary Metals Recycler to provide to the Georgia Bureau of Investigation (the “*GBI*”) all information (other than the purchase price paid for the Regulated Metal Property) that the Secondary Metals Recycler maintains for each Purchase Transaction (the “*Reportable Information*”) under the Regulated Metals Recycling Law (see “*Recordkeeping Requirements*” above). In that regard, the 2012 Amendments require the GBI to establish and maintain a database of the Reportable Information and to make the database accessible to and searchable by law enforcement agencies. The GBI is required to issue rules, regulations and procedures regarding the implementation and enforcement of the statewide informational database which rules, regulations and procedures will include the time, manner, and method of the transmittal of the Reportable Information to the GBI. Secondary Metals Recyclers will not be required to transmit their Reportable Information to the GBI until the database is implemented and the rules, regulations and procedures are established.

SPECIAL PURCHASE TRANSACTIONS

Air Conditioning Unit Coils

(O.C.G.A. § 10-1-351)

A Secondary Metals Recycler is only permitted to purchase Coils (excluding automobile air conditioning coils and window air conditioning coils if still contained in the unit) from the following Persons:

(1) **Licensed Contractor:** A Licensed Contractor (electrical contractors, plumbers, conditioned air contractors, low-voltage contractors and utility contractors) who at the time of the Purchase Transaction either (a) provides to the Secondary Metals Recycler a copy of the contractor's valid license (which license must be scanned or photocopied by the Secondary Metals Recycler) or (b) has on file with the Secondary Metals Recycler a scan or photocopy of the contractor's valid license.

(2) **Certain Sellers:** A Seller who at the time of the Purchase Transaction has verifiable documentation, such as a receipt or work order, indicating that the Coils are the result of the replacement by a Licensed Contractor of the condenser Coils or of a heating or air-conditioning system (which documentation should be scanned or photocopied by the Secondary Metals Recycler).

(3) **Other Secondary Metals Recyclers:** Another Secondary Metals Recycler who at the time of the Purchase Transaction provides the documentation required in paragraphs (1) and (2) above which is received from a Licensed Contractor or Seller.

Burned Copper Wire

(O.C.G.A. § 10-1-351)

A Secondary Metals Recycler is only permitted to purchase Burned Copper Wire from the following Persons:

(1) **Licensed Contractor:** A Licensed Contractor who at the time of the Purchase Transaction either (a) provides to the Secondary Metals Recycler a copy of the contractor's valid license (which license must be scanned or photocopied by the Secondary Metals Recycler) or (b) has on file with the Secondary Metals Recycler a scan or photocopy of the contractor's valid license.

(2) **Certain Sellers:** A Seller who at the time of the Purchase Transaction has a copy of a police report showing that Seller's property was involved in a fire (which report must be scanned or photocopied by the Secondary Metals Recycler).

(3) **Other Secondary Metals Recyclers:** Another Secondary Metals Recycler who at the time of the Purchase Transaction provides the documentation required in paragraphs (1) and (2) above which is received from a Licensed Contractor or Seller.

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Burial Objects

(O.C.G.A. § 10-1-352)

A Secondary Metals Recycler is only permitted to purchase Burial Objects from the following Persons:

(1) **Licensed Funeral Director:** A Licensed Funeral Director who at the time of the Purchase Transaction either (a) provides to the Secondary Metals Recycler a copy of the directors valid license (which must be scanned or photocopied by the Secondary Metals Recycler) or (b) has on file with the Secondary Metals Recycler a scan or photocopy of the director's valid license.

(2) **Licensed Cemetery Owner:** A Licensed Cemetery Owner who at the time of the Purchase Transaction either (a) provides to the Secondary Metals Recycler a copy of the owner's valid registration documents (which must be scanned or photocopied by the Secondary Metals Recycler) or (b) has on file with the Secondary Metals Recycler a scan or photocopy of the owner's valid registration documents.

(3) **Licensed Burial Object Manufacturer/Distributor:** A Licensed Burial Object Manufacturer/Distributor who at the time of the Purchase Transaction either (a) provides to the Secondary Metals Recycler (i) a copy of the manufacturer/ distributor's valid business license (which must be scanned or photocopied by the Secondary Metals Recycler) and (ii) a letter from the owner or operator of the manufacturer/distributor expressly recognizing the Deliverer as an employee or authorized agent of the manufacturer/distributor or (b) has on file with the Secondary Metals Recycler a scan or photocopy of the manufacturer/distributor's valid business license and the previously referenced letter.

(4) **Certain Sellers:** A Seller who at the time of the Purchase Transaction has verifiable documentation, such as a receipt from or contract with a Licensed Funeral Director, Licensed Cemetery Owner, or Licensed Burial Object Manufacturer/Distributor, evidencing that such Seller is the rightful owner of the Burial Object.

(5) **Other Secondary Metals Recyclers:** Another Secondary Metals Recycler who at the time of the Purchase Transaction provides the documentation received from a Licensed Funeral Director, Licensed Cemetery Owner, Licensed Burial Object Manufacturer/Distributor or Seller required in paragraphs (1) through (4) above.

Vehicles and Trailers

(O.C.G.A. §§ 40-3-36; 40-3-56)

Purchases of Vehicles and Trailers: The 2012 Amendments to the Regulated Metals Recycling Law add Trailers to the regulations governing de-titling of Vehicles. When purchasing a Vehicle or Trailer as scrap, a Secondary Metals Recycler must obtain from the Seller at the time of the Purchase Transaction either (a) the Title for the Vehicle or Trailer; or (b) a Title Cancellation Certificate executed by the Seller, if applicable.

Regulations Governing Use of the Title Cancellation Certificate: If a Seller did not obtain a Title in Seller's name or has lost the Title for (a) a Vehicle that is at least 12 model years old and

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worth \$850.00 or less or (b) a Trailer that is at least 12 model years old and worth \$1,700.00 or less, then the Secondary Metals Recycler may accept from the Seller a completed and executed Title Cancellation Certificate with respect to that Vehicle or Trailer. Knowingly falsifying a title cancellation certificate by either the buyer or the seller is a felony.

Filing of Documents with the DMV: Secondary Metals Recyclers are required to submit the Title or the Title Cancellation Certificate to the DMV within seventy-two (72) hours of receipt of the document from the Seller. The Title Cancellation Certificate provides instructions and the address to which to mail the Title Cancellation Certificate. Copies of the form of the Title Cancellation Certificate are available on the Internet at:

http://motor.etax.dor.ga.gov/forms/pdf/motor/MV_Application_to_Cancel_Cert_of_Title_for_ScrapDerelict_Veh_MV1SP.pdf

**At some time after July 1, 2012, this information will be required to be reported electronically to Georgia Department of Revenue – Motor Vehicles Division.

Record Retention: Secondary Metals Recyclers must keep a copy of the Title or the completed Title Cancellation Certificate. Secondary Metals Recyclers must retain copies of the Title or Title Cancellation Certificate, as applicable and all related Purchase Transaction documentation for at least 2 years.

Liens/Security Interests: Under the 2012 Amendments, the State is required to develop an on-line method for Secondary Metals Recyclers to determine whether a purchased Vehicle is subject to a security interest or a lien (a “*Lien*”). As soon as this on-line method is available, Secondary Metals Recyclers will be required to certify in the Title Cancellation Certificate (for vehicles purchased without a title) that they have verified that the Vehicle is not subject to any Liens.

Further, the Amendments automatically release liens as follows:

(1) **Liens on Vehicles Less than 12 Model Years Old:** For Vehicles that are less than (12) model years old, a Lien on the Vehicle will be considered satisfied and released, if it has been at least ten (10) years since the date of issuance of the Title for the Vehicle.

(2) **Liens on Vehicles 12 Model Years or Older:** For Vehicles which are twelve (12) model years or older, a Lien on the Vehicle will be considered satisfied and released, if it has been at least four (4) years since the date of issuance of the Title for the Vehicle.

(3) **Extension of Liens:** Liens may be extended beyond ten (10) years for a Vehicle which is less than 12 model years old and beyond four (4) years for a Vehicle which is 12 model years or older by obtaining a new Title for the Vehicle with the Lien listed on the new Title. The application for the new Title must be submitted to the DMV or the DMV’s duly authorized tag agent before the end of the ten (10) year or four (4) year period, respectively.

All liens are now required to be released by the lienholder upon their satisfaction.

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LAW ENFORCEMENT AND PROPERTY DISPUTES

Law Enforcement Officers Rights and Responsibilities **(O.C.G.A. §10-1-354)**

Law Enforcement Officer’s Right to Inspect: During a Secondary Metals Recycler’s usual business hours, a Law Enforcement Officer properly identifying himself or herself as an officer has the right to inspect: (a) any Regulated Metal Property in the possession of the Secondary Metals Recycler and (b) any records required to be maintained with respect to Purchase Transactions and to issue hold notices with respect to any Regulated Metal Property that the officer suspects is stolen property (See the “*Hold Notices*” section below)

Topics Relevant to Inspection: The following is a list of Compliance Guide topics that Secondary Metals Recyclers may need to know or review when Law Enforcement Officers come to inspect the inventory or records of a Secondary Metals Recycler:

- Hold Notices
- Regulated Metal Property Ownership Disputes; Restitution
- Exempt Transactions
- Hours of Business
- Payment Restrictions
- Illegal Acts
- Criminal and Civil Penalties
- Forfeiture and Seizure

Hold Notices

(O.C.G.A. §10-1-356)

Hold Procedures: If a Law Enforcement Officer has reasonable cause to believe that any specific item or items of Regulated Metal Property in a Secondary Metals Recycler’s possession have been stolen, the Law Enforcement Officer may issue a written hold notice (the “*Hold Notice*”) specifically identifying the item(s) believed to have been stolen. Only those items specifically identified in the written Hold Notice are covered by the Hold Notice.

Hold Period: Upon receipt of the written Hold Notice, the Secondary Metals Recycler must hold such item(s) on the premises, and not process the item(s), for a period of 15 calendar days, unless the hold is released sooner than 15 days (or extended) by a Law Enforcement Officer (the “*Hold Period*”). Those items specifically identified in the written Hold Notice should not be mixed with any other items and kept separate during the Hold Period.

Hold Extension: During the initial 15-day Hold Period, a Law Enforcement Officer may issue and deliver to the Secondary Metals Recycler a written extension of the hold notice specifically identifying the item(s) covered by the extended Hold Notice (the “*Hold Extension*”). After receipt of the Hold Extension, the Secondary Metals Recycler may not remove from the premises or process the covered item(s) for a period of 30 days from the date of receipt of the Hold Extension. The Hold Extension can be released sooner than 30 days.

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Release of Hold: At the expiration of the Hold Period, the hold is automatically released and the Secondary Metals Recycler may dispose of the covered items, unless the courts have ordered otherwise.

Regulated Metal Property Ownership Disputes; Restitution **(O.C.G.A. §10-1-357)**

Ownership Dispute: If a Person claims (the “*Claimant*”), that he or she owns a Regulated Metal Property which is in the possession of a Secondary Metals Recycler (the “*Disputed Property*”), and the Secondary Metals Recycler also claims ownership, the Secondary Metals Recycler is not required to surrender the Disputed Property to the Claimant. The Claimant is required to file a civil lawsuit to recover the Disputed Property in a superior or state court located in the county in which the Secondary Metals Recycler is located. The Claimant must have previously filed a timely report of the theft of the Disputed Property to the proper authorities. The Claimant’s petition must include a description of the means of identification of the Disputed Property as the Claimant’s property. It is recommended that the Disputed Property be set aside or segregated until resolution of the dispute.

Secondary Metals Recycler’s Rights to Restitution: If the Disputed Property is recovered by the Claimant from a Secondary Metals Recycler who had followed the provisions of the Regulated Metals Recycling Law and maintained accurate records of the questioned Purchase Transaction, restitution is possible if the Person who sold the Disputed Property to the Secondary Metals Recycler is convicted (the “*Thief*”). If the Thief is convicted, the court must order full restitution be made to the Secondary Metals Recycler by the Person convicted (including attorneys’ fees, court costs and other expenses).

NOTE: Although a Secondary Metals Recycler may obtain an order of restitution from the court, it is often difficult and costly to recover the value of the assets from a Thief.

Illegal Acts

(O.C.G.A. §10-1-359(2))

It is illegal for a Secondary Metals Recycler to purchase or sell Regulated Metal Property in violation of restricted hours of operation (7 pm-7 am).

Presentation by Seller of False Identification: It is illegal for a Person selling Regulated Metal Property to a Secondary Metals Recycler to (i) present to the Secondary Metals Recycler a false or altered Personal Identification Card, Vehicle tag number or Vehicle identification number (VIN) or (ii) to falsely sign a statement that he owns the Regulated Metal Property or has been authorized by the owner to sell the Regulated Metal Property to the Secondary Metals Recycler.

Failure of Secondary Metals Recycler to Retain Records: It is illegal for a Secondary Metals Recycler to fail to obtain the required information, such as a valid Personal Identification Card, Vehicle tag number, required photographs, or to fail to keep the records for purchases of Regulated Metal Property for at least 2 years from the date of the purchase.

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Criminal and Civil Penalties

(O.C.G.A. §10-1-361)

Criminal Penalties: Penalties for violation of the Regulated Metals Recycling Law have been amended to reflect a more systematic approach to punishment of these violations. In that regard, any Person who buys or sells Regulated Metal Property in violation of any provision of the Regulated Metals Recycling Law, other than a violation of the Secondary Metals Recycler's registration provisions (see the "*Registration of Secondary Metals Recyclers*" section above), is subject to the following penalties: (1) for a first offense, the buyer or seller is guilty of a misdemeanor; (2) for a second offense, the buyer or seller will be guilty of a misdemeanor of a high and aggravated nature; and (3) for three or more offenses, a buyer or seller will be guilty of a felony and if convicted will be punished by imprisonment for not less than one (1) nor more than ten (10) years.

Civil Penalties: In addition to the criminal penalties above, any Person who buys or sells Regulated Metal Property in violation of any provision of the Regulated Metals Recycling Law may be liable in a civil action to any Person who was the victim of a Crime involving the Regulated Metal Property for the full value of the Regulated Metal Property, any repairs and related expenses incurred as a result of such crime, litigation expenses, and reasonable attorneys' fees.

Forfeiture and Seizure

(O.C.G.A. §10-1-362)

The 2012 Amendments provide for additional penalties in the form of forfeiture and seizure of property (such as Vehicles, tools, equipment, and driver's licenses) used in the commission of the metal theft crime and also provide for the sale of these assets to pay restitution. This includes any property or weapons possessed, used or intended or available for use, directly or indirectly, to facilitate a crime (and any proceeds of that property).

State Preemption

(O.C.G.A. §10-1-363)

The Regulated Metals Recycling Law supersedes and preempts all county, municipal and other local government rules, regulations, codes, ordinances and laws except for (a) laws affecting local land use and zoning relating to Secondary Metal Recyclers and (b) laws relating to occupational tax certificates and those imposing occupational taxes and regulatory fees on Secondary Metal Recyclers.

Motor Vehicles and Trailers

Motor vehicles and trailers purchased for scrap or for parts by a Secondary Metals Recycler or licensed used motor vehicle parts dealer only, are governed by O.C.G.A. §40-3-36. It is important to note that anyone who purchases a vehicle for scrap or parts must comply with the provisions of the National Motor Vehicle Title Information System (NMVTIS), 28 CFR Part 25 (B), including reporting all vehicles purchased to NMVTIS.

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In order to report, each purchaser is required to obtain a reporting entity ID and this ID number must be included on the Georgia form MV1SP when a vehicle is purchased using that form.

Note that HB 269 passed in 2011 and made effective July 1, 2012 by HB 872, will require Secondary Metals Recyclers or licensed used motor vehicle parts dealers to report NMVTIS data to the Motor Vehicle Division of the Georgia Department of Revenue and for the Motor Vehicle Division to report that information on behalf of the Secondary Metals Recycler or licensed used motor vehicle parts dealer to NMVTIS.

However, until this system is fully implemented, Secondary Metals Recyclers or licensed used motor vehicle parts dealers should continue to mail titles and MV1SP forms to the Motor Vehicle Division within 72 hours as required.

Violations of NMVTIS carry civil penalties of up to \$1,000.00 per violation (each unreported vehicle).

For additional information on NMVTIS and reporting information, Visit www.nmvtis.gov

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