

SECONDARY METALS RECYCLERS

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538.18 Definitions.

538.18 Definitions.—As used in this part, the term:

- (1) “Ferrous metals” means any metals containing significant quantities of iron or steel.
- (2) “Fixed location” means any site occupied by a secondary metals recycler as owner of the site or as lessee of the site under a lease or other rental agreement providing for occupation of the site by the secondary metals recycler for a total duration of not less than 364 days.
- (3) “Money” means a medium of exchange authorized or adopted by a domestic or foreign government as part of its currency.
- (4) “Nonferrous metals” means metals not containing significant quantities of iron or steel, including, without limitation, copper, brass, aluminum, bronze, lead, zinc, nickel, and alloys thereof, excluding precious metals subject to regulation under part I.
- (5) “Personal identification card” means any government-issued photographic identification card.
- (6) “Purchase transaction” means a transaction in which a secondary metals recycler gives consideration for regulated metals property.
- (7) “Regulated metals property” means any item composed primarily of any nonferrous metals, but shall not include aluminum beverage containers, used beverage containers, or similar beverage containers. The term shall include stainless steel beer kegs.
- (8) “Secondary metals recycler” means any person who:
 - (a) Is engaged, from a fixed location or otherwise, in the business of gathering or obtaining ferrous or nonferrous metals that have served their original economic purpose or is in the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value; or
 - (b) Has facilities for performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential

economic value, other than by the exclusive use of hand tools, by methods including, without limitation, processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content thereof.

(9) “Department” means the Department of Revenue.

History.—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 6, ch. 90-318; s. 4, ch. 91-429; s. 94, ch. 2004-5; s. 1, ch. 2008-69.

538.19 Records required.

538.19 Records required.—

(1) A secondary metals recycler shall maintain a legible record of all purchase transactions to which such secondary metals recycler is a party.

(2) The following information must be maintained on a form approved by the Department of Law Enforcement for each purchase transaction:

(a) The name and address of the secondary metals recycler.

(b) The name, initials, or other identification of the individual entering the information on the ticket.

(c) The date and time of the transaction.

(d) The weight, quantity, or volume, and a description of the type of regulated metals property purchased in a purchase transaction.

(e) The amount of consideration given in a purchase transaction for the regulated metals property.

(f) A signed statement from the person delivering the regulated metals property stating that she or he is the rightful owner of, or is entitled to sell, the regulated metals property being sold. If the purchase involves a stainless steel beer keg, the seller must provide written documentation from the manufacturer that the seller is the owner of the stainless steel beer keg or is an employee or agent of the manufacturer.

(g) The distinctive number from the personal identification card of the person delivering the regulated metals property to the secondary metals recycler.

(h) A description of the person from whom the goods were acquired, including:

1. Full name, current residential address, workplace, and home and work phone numbers.

2. Height, weight, date of birth, race, gender, hair color, eye color, and any other identifying marks.

3. The right thumbprint, free of smudges and smears.

4. Vehicle description to include the make, model, and tag number of the vehicle and trailer of the person selling the regulated metals property.

5. Any other information required by the form approved by the Department of Law Enforcement.

(i) A photograph, videotape, or digital image of the regulated metals being sold.

(j) A photograph, videotape, or similar likeness of the person receiving consideration in which such person’s facial features are clearly visible.

(3) Any secondary metals recycler that maintains an electronic database containing the information required in paragraph (2)(h), along with an oath of ownership with a signature of the seller of the secondary metals being purchased by the secondary metals recycler and a right thumbprint that has no smudges and

smears on the oath of ownership for each purchase transaction, shall be exempt from the records requirement of paragraph (2)(h). A secondary metals recycler complies with the requirements of this section if it maintains an electronic database containing the information required by paragraph (2)(h) as long as the electronic information required by paragraph (2)(h), along with an electronic oath of ownership with an electronic signature of the seller of the secondary metals being purchased by the secondary metals recyclers and an electronic image of the seller's right thumbprint that has no smudges and smears, can be downloaded onto a paper form in the image of the form approved by the Department of Law Enforcement as provided in subsection (2).

(4) A secondary metals recycler shall maintain or cause to be maintained the information required by this section for not less than 5 years from the date of the purchase transaction.

(5) If a purchase transaction involves the transfer of regulated metals property from a secondary metals recycler registered with the department to another secondary metals recycler registered with the department, the secondary metals recycler receiving the regulated metals property shall record the name and address of the secondary metals recycler from which it received the regulated metals property in lieu of the requirements of paragraph (2)(h).

History.—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 4, ch. 91-429; s. 748, ch. 97-103; s. 2, ch. 2008-69.

538.20 Inspection of regulated metals property and records.

538.20 Inspection of regulated metals property and records.—During the usual and customary business hours of a secondary metals recycler, a law enforcement officer shall, after properly identifying herself or himself as a law enforcement officer, have the right to inspect:

- (1) Any and all purchased regulated metals property in the possession of the secondary metals recycler, and
- (2) Any and all records required to be maintained under s. [538.19](#).

History.—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 4, ch. 91-429; s. 749, ch. 97-103.

538.21 Hold notice.

538.21 Hold notice.—

(1) Whenever a law enforcement officer has reasonable cause to believe that certain items of regulated metals property in the possession of a secondary metals recycler have been stolen, the law enforcement officer may issue a hold notice to the secondary metals recycler.

(a) The hold notice shall be in writing, shall be delivered to the secondary metals recycler, shall specifically identify those items of regulated metals property that are believed to have been stolen and that are subject to the notice, and shall inform the secondary metals recycler of the information contained in this section.

(b) Upon receipt of the notice issued in accordance with this section, the secondary metals recycler receiving the notice may not process or remove the items of regulated metals property identified in the notice, or any portion thereof, from the place of business of the secondary metals recycler for 15 calendar days after receipt of the notice by the secondary metals recycler, unless sooner released by a law enforcement officer.

(2) No later than the expiration of the foregoing 15-day period, a law enforcement officer may issue a second hold notice to the secondary metals recycler, which shall be an extended hold notice.

(a) The extended hold notice shall be in writing, shall be delivered to the secondary metals recycler, shall specifically identify those items of regulated metals property that are believed to have been stolen and that are subject to the extended hold notice, and shall inform the secondary metals recycler of the information contained in this section.

(b) Upon receipt of the extended hold notice issued in accordance with this section, the secondary metals recycler receiving the extended hold notice may not process or remove the items of regulated metals property identified in the notice, or any portion thereof, from the place of business of the secondary metals recycler for 45 calendar days after receipt of the extended hold notice by the secondary metals recycler, unless sooner released by a law enforcement officer.

(3) At the expiration of the hold period or, if extended in accordance with this section, at the expiration of the extended hold period, the hold is automatically released and the secondary metals recycler may dispose of the regulated metals property unless other disposition has been ordered by a court of competent jurisdiction.

(4) This section provides a uniform statewide process and preempts municipal or county ordinances enacted after December 31, 2008, relating specifically to secondary metals recyclers holding such metals.

History.—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 4, ch. 91-429; s. 2, ch. 2009-162.

538.22 Exemptions.

538.22 Exemptions.—This part shall not apply to purchases of regulated metals property from:

- (1) Organizations, corporations, or associations registered with the state as charitable, philanthropic, religious, fraternal, civic, patriotic, social, or school-sponsored organizations or associations, or from any nonprofit corporation or association;
- (2) A law enforcement officer acting in an official capacity;
- (3) A trustee in bankruptcy, executor, administrator, or receiver who has presented proof of such status to the secondary metals recycler;
- (4) Any public official acting under judicial process or authority who has presented proof of such status to the secondary metals recycler;
- (5) A sale on the execution, or by virtue of any process issued by a court, if proof thereof has been presented to the secondary metals recycler; or
- (6) A manufacturing, industrial, or other commercial vendor that generates regulated materials in the ordinary course of business.

History.—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 4, ch. 91-429.

538.23 Violations and penalties.

538.23 Violations and penalties.—

(1)(a) Except as provided in paragraph (b), a secondary metals recycler who knowingly and intentionally:

1. Violates s. [538.20](#) or s. [538.21](#);
2. Engages in a pattern of failing to keep records required by s. [538.19](#);
3. Violates s. [538.26](#)(4); or
4. Violates s. [538.235](#),

commits a misdemeanor of the first degree, punishable as provided in s. [775.082](#).

(b) A secondary metals recycler who commits a third or subsequent violation of paragraph (a) commits a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

(2) A secondary metals recycler is presumed to know upon receipt of stolen regulated metals property in a purchase transaction that the regulated metals property has been stolen from another if the secondary metals recycler knowingly and intentionally fails to maintain the information required in s. [538.19](#) and shall, upon conviction of a violation of s. [812.015](#), be punished as provided in s. [812.014](#)(2) or (3).

(3) Any person who knowingly gives false verification of ownership or who gives a false or altered identification and who receives money or other consideration from a secondary metals recycler in return for regulated metals property commits:

(a) A felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#), if the value of the money or other consideration received is less than \$300.

(b) A felony of the second degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#), if the value of the money or other consideration received is \$300 or more.

(4) If a lawful owner recovers stolen regulated metals property from a secondary metals recycler who has complied with this part, and the person who sold the regulated metals property to the secondary metals recycler is convicted of theft, a violation of this section, or dealing in stolen property, the court shall order the defendant to make full restitution, including, without limitation, attorneys' fees, court costs, and other expenses to the secondary metals recycler pursuant to s. [775.089](#).

(5) A person acting as a secondary metals recycler who is not registered with the department under s. [538.25](#) commits a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#). History.—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 4, ch. 91-429; ss. 3, 4, ch. 92-79; s. 2, ch. 92-157; s. 4, ch. 93-37; s. 10, ch. 95-184; s. 3, ch. 2008-69.

538.235 Method of payment.

538.235 Method of payment.—A secondary metals recycler shall not enter into any cash transaction in excess of \$1,000 in payment for the purchase of regulated metals property. Payment in excess of \$1,000 for the purchase of regulated metals property shall be made by check issued to the seller of the metal and payable to the seller.

History.—s. 4, ch. 2008-69.

538.24 Stolen regulated metals property; petition for return.

538.24 Stolen regulated metals property; petition for return.—

(1) If the secondary metals recycler contests the identification or ownership of the regulated metals property, the party other than the secondary metals recycler claiming ownership of any stolen goods in the possession of a secondary metals recycler may, provided that a timely report of the theft of the regulated metals property was made to the proper authorities, bring an action for replevin in the county or circuit court by petition in substantially the following form:

Plaintiff A. B. sues defendant C. D., and alleges:

1. This is an action to recover possession of personal property in _____ County, Florida.
2. The description of the property is: (list property) . To the best of plaintiff's knowledge, information, and belief, the value of the property is \$_____.
3. Plaintiff is the lawful owner of the property and can identify the property as belonging to the plaintiff in the following manner: (explain basis of identification) .
4. Plaintiff is entitled to the possession of the property under a security agreement dated _____, (year) , a copy of which is attached.
5. To the plaintiff's best knowledge, information, and belief, the property is located at _____.
6. The property is wrongfully detained by defendant. Defendant came into possession of the property by (describe method of possession) . To plaintiff's best knowledge, information, and belief, defendant detains the property because (give reasons) .
7. The property has not been taken under an execution or attachment against plaintiff's property.

(2) The filing fees shall be waived by the clerk of the court and the service fee shall be waived by the sheriff. The court may award the prevailing party reasonable attorney's fees and costs.

(3) Upon the filing of the petition, the court shall set a hearing to be held at the earliest possible time. Upon the receipt by a secondary metals recycler of a petition for return, the secondary metals recycler shall hold, and shall not process or otherwise alter, the regulated metals property at issue, or any portion thereof, until the court determines the respective interests of the parties.

History.—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 4, ch. 91-429; s. 25, ch. 99-6.

538.25 Registration.

538.25 Registration.—

(1) No person shall engage in business as a secondary metals recycler at any location without registering with the department.

(a) A fee equal to the federal and state costs for processing required fingerprints must be submitted to the department with each application for registration. One application is required for each secondary metals recycler. If a secondary metals recycler is the owner of more than one secondary metals recycling location, the application must list each location, and the department shall issue a duplicate registration for each location. For purposes of subsections (3), (4), and (5), these duplicate registrations shall be deemed individual registrations. A secondary metals recycler shall pay a fee of \$6 per location at the time of registration and an annual renewal fee of \$6 per location on October 1 of each year. All fees collected, less costs of administration, shall be transferred into the Operations Trust Fund.

(b) The department shall forward the full set of fingerprints to the Department of Law Enforcement for state and federal processing, provided the federal service is available, to be processed for any criminal justice information as defined in s. [943.045](#). The cost of processing such fingerprints shall be payable to the Department of Law Enforcement by the department. The department may issue a temporary registration to each location pending completion of the background check by state and federal law enforcement agencies, but shall revoke such temporary registration if the completed background check reveals a prohibited criminal background. The Department of Law Enforcement shall report its findings to the Department of Revenue within 30 days after the date fingerprint cards are submitted for criminal justice information.

(c) An applicant for a secondary metals recycler registration must be a natural person who has reached the age of 18 years or a corporation organized or qualified to do business in the state.

1. If the applicant is a natural person, the registration must include a complete set of her or his fingerprints, certified by an authorized law enforcement officer, and a recent fullface photographic identification card of herself or himself.

2. If the applicant is a partnership, all the partners must make application for registration.

3. If the applicant is a corporation, the registration must include the name and address of such corporation's registered agent for service of process in the state and a certified copy of statement from the Secretary of State that the corporation is duly organized in the state or, if the corporation is organized in a state other than Florida, a certified copy of the statement that the corporation is duly qualified to do business in this state.

(2) A secondary metals recycler's registration shall be conspicuously displayed at the place of business set forth on the registration. A secondary metals recycler shall not dispose of property at any location until any holding period has expired.

(3) The Department of Revenue may impose a civil fine of up to \$10,000 for each knowing and intentional violation of this section, which fine shall be transferred into the General Revenue Fund. If the fine is not paid within 60 days, the department may bring a civil action under s. [120.69](#) to recover the fine.

(4) In addition to the fine provided in subsection (3), registration under this section may be denied or any registration granted may be revoked, restricted, or suspended by the department if, after October 2, 1989, and within a 24-month period immediately preceding such denial, revocation, restriction, or suspension:

(a) The applicant or registrant has been convicted of knowingly and intentionally:

1. Violating s. [538.20](#) or s. [538.21](#);

2. Engaging in a pattern of failing to keep records as required by s. [538.19](#);

3. Making a material false statement in the application for registration; or

4. Engaging in a fraudulent act in connection with any purchase or sale of regulated metals property;

(b) The applicant or registrant has been convicted of, or entered a plea of guilty or nolo contendere to, a felony committed by the secondary metals recycler against the laws of the state or of the United States involving theft, larceny, dealing in stolen property, receiving stolen property, burglary, embezzlement, obtaining property by false pretenses, possession of altered property, or any felony drug offense or of knowingly and intentionally violating the laws of the state relating to registration as a secondary metals recycler; or

(c) The applicant has, after receipt of written notice from the department of failure to pay sales tax, failed or refused to pay, within 30 days after the secondary metals recycler's receipt of such written notice, any sales tax owed to the department.

(5) A denial of an application, or a revocation, restriction, or suspension of a registration, by the department shall be probationary for a period of 12 months in the event that the secondary metals recycler subject to such action has not had any other application for registration denied, or any registration revoked, restricted, or suspended, by the department within the previous 24-month period.

(a) If, during the 12-month probationary period, the department does not again deny an application or revoke, restrict, or suspend the registration of the secondary metals recycler, the action of the department shall be dismissed and the record of the secondary metals recycler cleared thereof.

(b) If, during the 12-month probationary period, the department, for reasons other than those existing prior to the original denial or revocation, restriction, or suspension, again denies an application or revokes, restricts, or suspends the registration of the secondary metals recycler, the probationary nature of such original action shall terminate and both the original action of the department and the action of the department causing the termination of the probationary nature thereof shall immediately be reinstated against the secondary metals recycler.

(6) Upon the request of a law enforcement official, the Department of Revenue shall release to the official the name and address of any secondary metals recycler registered to do business within the official's jurisdiction.

History.—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 7, ch. 90-318; s. 4, ch. 91-429; s. 17, ch. 94-353; s. 750, ch. 97-103; s. 5, ch. 2007-14; s. 5, ch. 2008-69.

538.26 Certain acts and practices prohibited.

538.26 Certain acts and practices prohibited.—It is unlawful for a secondary metals recycler to do or allow any of the following acts:

(1) Purchase regulated metals property between the hours of 9 p.m. and 6 a.m.

(2) Fail to pay any sales tax owed to the department or fail to have a sales tax registration number.

(3) Purchase regulated metals property at a location other than the place of business set forth on the registration.

(4) Purchase regulated metals property from any seller who presents such property for sale at the registered location of the secondary metals recycler when such property was not transported in a motor vehicle.

(5) Purchase regulated metals property in return for money from a trailer, a vehicle, or any location other than a fixed location or from any person who is required to prove ownership pursuant to subsection (4). However, regulated metals may be purchased from a nonfixed location, or from such person, with any negotiable or nonnegotiable instrument, including a check or draft or any other type of instrument purchased with money and sold for the purpose of making payments or transfers to others.

History.—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 8, ch. 90-318; s. 4, ch. 91-429; s. 1, ch. 92-157; s. 6, ch. 2008-69.