

State of Kansas

Proposed

**Attorney General Notice of Public Hearing  
On Proposed Permanent Regulations for  
Scrap Metal Theft Reduction Act**

Thursday, July 27, 2017

The Attorney General's Office will conduct a public hearing from 1:00pm until 2:00pm on Friday, September 29, 2017, in Memorial Hall auditorium, 120 SW Tenth Ave., Topeka, Kansas, 66612, to consider revoking K.A.R. 16-14-1 through K.A.R. 16-14-11.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed rules and regulations. All interested parties may submit written comments prior to the hearing to the Office of the Attorney General Derek Schmidt, Scrap Metal Unit, 120 SW Tenth Ave. 2<sup>nd</sup> Floor, Topeka, Kansas 66612 or by email to [cprotect@ag.ks.gov](mailto:cprotect@ag.ks.gov). All interested parties will be given a reasonable opportunity during the public hearing to present their views orally regarding the regulations proposed for revocation. In order to provide all parties an opportunity to present their views, it may be necessary to require that each participant limit any oral presentation to an appropriate timeframe.

Any individual with a disability may request an accommodation in order to participate in the public hearing and may request the proposed regulations and economic impact statement in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting the Office of Attorney General Special Agent Randy Slater at [randy.slater@ag.ks.gov](mailto:randy.slater@ag.ks.gov) or 800-432-2310.

Copies of the proposed regulations and their estimated economic impact follow. Copies of the proposed regulations and the economic impact statement may be obtained by contacting Special Agent Randy Slater at [randy.slater@ag.ks.gov](mailto:randy.slater@ag.ks.gov) or phone number listed above.

Copies of the proposed regulations and the Economic Impact Statement for the proposed regulations can be viewed at the following website:

<http://ag.ks.gov/licensing/scrap-metal-dealers>

K.A.R. 16-14-1 through K.A.R. 16-14-11 are proposed for revocation following the enactment of 2017 Senate Bill 149 (SB 149), which became effective on June 1, 2017. SB 149 delayed enforcement of most parts of the Scrap Metal Theft Reduction Act until January 1, 2019, thereby eliminating the need for these regulations.

**Economic Impact.** SB 149 prohibits the Attorney General's Office from charging a fee for scrap metal dealer registration until January 1, 2019. The proposed revocation of K.A.R. 16-14-1 implements this change in the law. In State Fiscal Year 2017 the Attorney General's Office collected \$92,750 in scrap metal dealer registration fees, and it is estimated that at least the same amount would have been collected in State Fiscal Year 2018. In the absence of that funding stream, the Attorney General's Office will use existing resources to cover costs associated with investigating verified complaints about scrap metal dealers received by the office. The attorney

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general's office does not anticipate an economic impact on other government agencies. Scrap metal dealers will not be required to pay registration fees until January 1, 2019.

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SECRETARY OF STATE

16-14-1 and 16-14-2. (Authorized by L. 2015, ch. 96, sec. 1; implementing K.S.A. 2014 Supp. 50-6,112a, as amended by L. 2015, ch. 96, sec. 15; effective, T-16-8-10-15, Aug. 10, 2015; effective Dec. 4, 2015; revoked P-\_\_\_\_\_.)

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ATTORNEY GENERAL

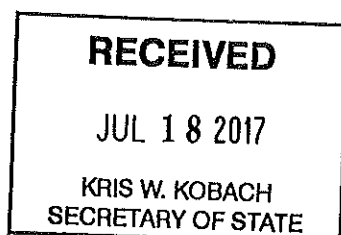
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JUN 27 2017

DEPT. OF ADMINISTRATION

16-14-3, 16-14-4, 16-14-5, 16-14-6, 16-14-7, 16-14-8, and 16-14-9. (Authorized by L. 2015, ch. 96, sec. 1; implementing K.S.A. 2014 Supp. 50-6,112c, as amended by L. 2015, ch. 96, sec. 17; effective, T-16-8-10-15, Aug. 10, 2015; effective Dec. 4, 2015; revoked P-\_\_\_\_\_.)

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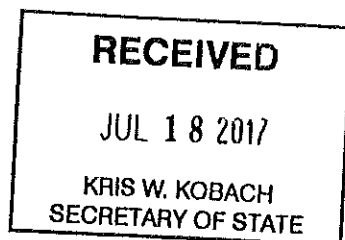


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16-14-10 and 16-14-11. (Authorized by K.S.A. 2016 Supp. 50-6,109a; implementing K.S.A. 2016 Supp. 50-6,109a and 50-6,110; effective, T-16-6-29-16, July 1, 2016; effective Oct. 21, 2016; revoked P-\_\_\_\_\_.)

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**KANSAS ATTORNEY GENERAL'S OFFICE  
ECONOMIC IMPACT STATEMENT**

K.A.R. 16-14-1, 16-14-2, 16-14-3, 16-14-4, 16-14-5, 16-14-6, 16-14-7,  
16-14-8, 16-14-9, 16-14-10, and 16-14-11

**I. Summary of the Proposed Regulations, Including Their Purpose.**

These regulations are proposed for revocation following the enactment of 2017 Senate Bill 149 (SB 149), which became effective on June 1, 2017. SB 149 delayed enforcement of most parts of the Scrap Metal Theft Reduction Act until January 1, 2019, thereby eliminating the need for these regulations.

**II. Whether the Regulation Is Mandated by Federal Law.**

The regulations are not mandated by federal law.

**III. Anticipated Economic Impact upon the Kansas Attorney General's Office.**

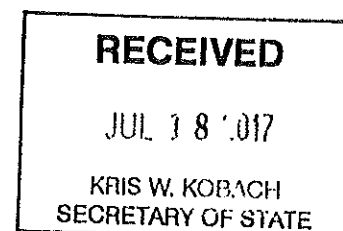
SB 149 prohibits the Attorney General's Office from charging a fee for scrap metal dealer registration until January 1, 2019. The proposed revocation of K.A.R. 16-14-1 implements this change in the law. In State Fiscal Year 2017 the Attorney General's Office collected \$92,750 in scrap metal dealer registration fees, and it is estimated that at least the same amount would have been collected in State Fiscal Year 2018. In the absence of that funding stream, the Attorney General's Office will use existing resources to cover costs associated with investigating verified complaints about scrap metal dealers received by the office.

**IV. Anticipated Financial Impact upon Other Governmental Agencies and upon Private Businesses or Individuals.**

The attorney general's office does not anticipate an economic impact on other government agencies. Scrap metal dealers will not be required to pay registration fees until January 1, 2019.

**V. Less Costly or Intrusive Methods That Were Considered, but Rejected, and the Reason for Rejection.**

No less costly or intrusive methods exist.



**K.A.R. 16-14-1. Fees.**

Each applicant or registrant shall pay one of the following nonrefundable fees, as applicable, for registration of each place of business for which a registration is sought:

- (a) Scrap metal dealer's initial registration certificate \$1,000
- (b) Annual renewal of a scrap metal dealer's registration certificate \$1,000

**Credits**

(Authorized by L. 2015, ch. 96, sec. 1; implementing K.S.A. 2014 Supp. 50-6,112a, as amended by L. 2015, ch. 96, sec. 15; effective, T-16-8-10-15, Aug. 10, 2015; effective Dec. 4, 2015.)

**K.A.R. 16-14-2. Initial application.**

(a) Each person seeking an initial registration certificate shall submit an application that consists of the following:

(1) An initial application form provided by the attorney general and fully completed by the applicant;

(2) payment of the initial registration certificate fee specified in K.A.R. 16-14-1; and

(3) a copy of the applicant's current state or federal government-issued photographic identification.

(b) An application for an initial registration certificate shall be deemed incomplete if the application fails to include all information required by the application form and if the applicant fails to submit the items required in paragraphs (a)(2) and (3). If the applicant fails to provide all missing information, documents, and the applicable fee within 30 days of notification by the attorney general that the application is incomplete, the application shall be deemed abandoned, and all fees accompanying the application shall be retained by the attorney general and shall not be refunded to the applicant.

**Credits**

(Authorized by L. 2015, ch. 96, sec. 1; implementing K.S.A. 2014 Supp. 50-6,112a, as amended by L. 2015, ch. 96, sec. 15; effective, T-16-8-10-15, Aug. 10, 2015; effective Dec. 4, 2015.)



**K.A.R. 16-14-3. Computation of time.**

(a) In computing any period of time prescribed by the scrap metal theft reduction act or this article concerning registration, the day of the action or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless that day is a Saturday, Sunday, or legal holiday, in which event the period shall include the end of the next day that is not a Saturday, Sunday, or legal holiday.

(b) Unless otherwise specified in this article, each of the following terms shall have the meaning specified in this subsection:

(1) "Day" means calendar day and not business day. Intermediate Saturdays, Sundays, and legal holidays shall be included in the computation.

(2) "Business day" means any day that is not a Saturday, Sunday, or legal holiday.

(3) "Legal holiday" shall include any day designated as a holiday by any Kansas statute or regulation.

(c) If the attorney general's office is not open to the public on the last day of any time period prescribed by this article, the time period shall be extended until the next business day on which the attorney general's office is open for business.

**Credits**

(Authorized by L. 2015, ch. 96, sec. 1; implementing K.S.A. 2014 Supp. 50-6,112c, as amended by L. 2015, ch. 96, sec. 17; effective, T-16-8-10-15, Aug. 10, 2015; effective Dec. 4, 2015.)

**K.A.R. 16-14-4. Hearings.**

Any applicant or registered scrap metal dealer may request a hearing on an order denying, suspending, or revoking that individual's application or registration by submitting a written request for a hearing to the attorney general's office within 15 days of the date of service of the order denying, suspending, or revoking the registration.

**Credits**

(Authorized by L. 2015, ch. 96, sec. 1; implementing K.S.A. 2014 Supp. 50-6,112c, as amended by L. 2015, ch. 96, sec. 17; effective, T-16-8-10-15, Aug. 10, 2015; effective Dec. 4, 2015.)

**K.A.R. 16-14-5. Notice of hearing.**

The time and place of each hearing shall be set at least 10 days before the hearing. Notice of the hearing shall be provided to all parties.

**Credits**

(Authorized by L. 2015, ch. 96, sec. 1; implementing K.S.A. 2014 Supp. 50-6,112c, as amended by L. 2015, ch. 96, sec. 17; effective, T-16-8-10-15, Aug. 10, 2015; effective Dec. 4, 2015.)

**K.A.R. 16-14-6. Service of order or notice.**

(a) Service of an order or notice shall be made upon each party and, if any, each party's attorney of record by delivering a copy of the order or notice to the person to be served or by mailing a copy of the order or notice by first-class mail to the person at the person's last known address. Service shall be presumed if the attorney general, or the attorney general's designee, delivers a written certificate of service. Delivery of a copy of an order or notice to a person shall mean handing the order or notice to the person or leaving the order or notice at the person's principal place of business or residence with a responsible person who works or resides there. Service by mail shall be complete upon mailing.

(b) Whenever a party has the right or is required to perform an action within a prescribed period after service of a notice or order and the notice or order is served by mail, three days shall be added to the prescribed period.

**Credits**

(Authorized by L. 2015, ch. 96, sec. 1; implementing K.S.A. 2014 Supp. 50-6,112c, as amended by L. 2015, ch. 96, sec. 17; effective, T-16-8-10-15, Aug. 10, 2015; effective Dec. 4, 2015.)

**K.A.R. 16-14-7. Hearing procedure.**

The following provisions shall apply at each hearing:

- (a) The proceedings shall be conducted by the attorney general or the attorney general's designee.
- (b) To the extent necessary for full disclosure of all relevant facts and issues, each party shall have the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted by a limited grant of intervention or by the prehearing order.
- (c) Nonparties may be given an opportunity by the attorney general or the attorney general's designee to present oral or written statements. Each party shall be given an opportunity to challenge or rebut these statements. On motion of any party, the statements shall be required by the attorney general or the attorney general's designee to be given under oath or affirmation.
- (d) The hearing may occur by telephone or other electronic means, if each participant in the hearing has an opportunity to participate in the entire proceeding while it is taking place.
- (e) The hearing shall be recorded at the expense of the attorney general's office. The attorney general's office shall not be required at its own expense to prepare a transcript, unless required to do so by a provision of law. Any party, at the party's expense and subject to any reasonable conditions that the attorney general's office may establish, may cause a person other than the attorney general's office to prepare a transcript from the record or cause additional recordings to be made during the hearing.
- (f) Each hearing shall be open to public observation, except to the limited extent as determined by the attorney general or the attorney general's designee, that it is necessary to close parts of the hearing pursuant to any provision of law requiring confidentiality or expressly authorizing closure.

**Credits**

(Authorized by L. 2015, ch. 96, sec. 1; implementing K.S.A. 2014 Supp. 50-6,112c, as amended by L. 2015, ch. 96, sec. 17; effective, T-16-8-10-15, Aug. 10, 2015; effective Dec. 4, 2015.)

**K.A.R. 16-14-8. Evidence.**

(a) At each hearing, the parties shall not be bound by technical rules of evidence, and the parties shall have reasonable opportunity to be heard and to present evidence. The attorney general or the attorney general's designee shall act reasonably and without partiality. The rules of privilege recognized by law shall be followed by the attorney general or the attorney general's designee. Evidence shall not be required to be excluded solely because the evidence is hearsay.

(b) All testimony of parties and witnesses shall be given under oath or affirmation. The power to administer an oath or affirmation for that purpose shall reside with the attorney general or the attorney general's designee.

(c) Any statements presented by nonparties in accordance with this article may be received as evidence.

(d) Any part of the evidence may be received in written form if doing so will expedite the hearing without substantial prejudice to the interests of any party.

(e) Documentary evidence may be received in the form of a copy or excerpt. Upon request, the parties shall be given an opportunity to compare the copy with the original if the original is available.

(f) Official notice may be taken of the following:

(1) Any matter that could be judicially noticed in Kansas courts;

(2) the record of other proceedings before the attorney general or the attorney general's designee;

(3) technical or scientific matters within the specialized knowledge of the attorney general's office; and

(4) codes or standards that have been adopted by an agency of the United States, of Kansas, or of another state or by a nationally recognized organization or association.

(g) The parties shall be notified before or during the hearing, or before the issuance of any order that is based in whole or in part on matters or material noticed, of the specific matters or material noticed and the source thereof, including any staff memoranda and data. The parties shall be afforded an opportunity to contest and rebut the matters or material so noticed.

**Credits**

(Authorized by L. 2015, ch. 96, sec. 1; implementing K.S.A. 2014 Supp. 50-6,112c, as amended by L. 2015, ch. 96, sec. 17; effective, T-16-8-10-15, Aug. 10, 2015; effective Dec. 4, 2015.)

**K.A.R. 16-14-9. Default.**

If the party requesting a hearing defaults by failing to attend or participate in a hearing or any other stage of an adjudicative proceeding, the request for a hearing shall be dismissed and the order denying, suspending, or revoking the registration shall become final.

**Credits**

(Authorized by L. 2015, ch. 96, sec. 1; implementing K.S.A. 2014 Supp. 50-6,112c, as amended by L. 2015, ch. 96, sec. 17; effective, T-16-8-10-15, Aug. 10, 2015; effective Dec. 4, 2015.)

**K.A.R. 16-14-10 Submission of required information.**

(a) Except as provided in subsections (c) and (d), each scrap metal dealer shall submit the information required by K.S.A. 2016 Supp. 50-6,110(b) and (c), and amendments thereto, by no later than 11:59 p.m. local time on the same day. This information shall be submitted by entering the required information into the database.

(b) Failure to timely submit the information required by K.S.A. 2016 Supp. 50-6,110(b) and (c), and amendments thereto, shall be grounds for suspension of the scrap metal dealer's registration pursuant to K.S.A. 2016 Supp. 50-6,112c, and amendments thereto.

(c) A scrap metal dealer who purchases regulated scrap metal from a licensed business shall not be required to comply with subsection (a) if the purchase is made at the fixed business location of the licensed business. In this case, each scrap metal dealer shall enter the following information into the database by no later than 11:59 p.m. local time on the same day:

- (1) The time, date, and place of the transaction;
- (2) the name of the licensed business;
- (3) a general description of the predominant types of junk vehicle or other regulated scrap metal property being purchased in the transaction; and
- (4) the weight, quantity, or volume, made in accordance with the custom of the trade, of the regulated scrap metal being purchased.

(d) Any scrap metal dealer may submit a written application to the attorney general to request additional time to comply with subsection (a). Each application shall include documentation of one of the following:

- (1) No satellite-based or land-based internet service providers offer internet service to either the scrap metal dealer's residence or the scrap metal dealer's place of business.
- (2) Compliance with subsections (a) and (c) would result in extreme hardship.

**Credits**

(Authorized by K.S.A. 2016 Supp. 50-6,109a; implementing K.S.A. 2016 Supp. 50-6,109a and 50-6,110; effective, T-16-6-29-16, July 1, 2016; effective Oct. 21, 2016.)



**K.A.R. 16-14-11 Definitions.**

As used in this article of the attorney general's regulations and in the scrap metal theft reduction act, K.S.A. 2016 Supp. 50-6,109 et seq. and amendments thereto, each of the following terms shall have the meaning specified in this regulation:

(a) "Database" means the online central repository approved by the attorney general to be used by each scrap metal dealer to submit the information required by K.S.A. 2016 Supp. 50-6,110, and amendments thereto.

(b) "Licensed business" means a sole proprietorship, general partnership, limited partnership, limited liability partnership, corporation, or limited liability company that lawfully operates out of a fixed business location and that is reasonably expected to generate regulated scrap metal at the fixed business location in the ordinary course of business due to the nature of the products or services offered.

**Credits**

(Authorized by K.S.A. 2016 Supp. 50-6,109a; implementing K.S.A. 2016 Supp. 50-6,109a and 50-6,110; effective, T-16-6-29-16, July 1, 2016; effective Oct. 21, 2016.)