

Calendar No. 88

113TH CONGRESS
1ST SESSION**S. 394**

To prohibit and deter the theft of metal, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 27, 2013

Ms. KLOBUCHAR (for herself, Mr. GRAHAM, Mr. SCHUMER, Mr. HOEVEN, and Mr. COONS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

JUNE 17, 2013

Reported by Mr. LEAHY, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italie*]**A BILL**

To prohibit and deter the theft of metal, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Metal Theft Prevention
5 Act of 2013”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

(1) the term “critical infrastructure” has the meaning given the term in section 1016(e) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (42 U.S.C. 5195e(e));

(2) the term “specified metal” means metal that—

(A)(i) is marked with the name, logo, or initials of a city, county, State, or Federal government entity, a railroad, an electric, gas, or water company, a telephone company, a cable company, a retail establishment, or a public utility; or

(ii) has been altered in such a manner that a recycling agent would have a reasonable basis to believe that such alteration was made for the purpose of removing, concealing, or obliterating a name, logo, or initials described in clause (i) through burning or cutting of wire sheathing or other means; or

(B) is part of—

(i) a street light pole or fixture;

(ii) a road or bridge guard rail;

(iii) a highway or street sign;

1 (iv) a water meter cover;

2 (v) a storm water grate;

3 (vi) unused or undamaged building
4 construction or utility material;

5 (vii) a historical marker;

6 (viii) a grave marker or cemetery urn;

7 (ix) a utility access cover; or

8 (x) a container used to transport or
9 store beer with a capacity of 7.75 gallons
10 or more;

11 (C) is a wire or cable commonly used by
12 communications and electrical utilities; or

13 (D) is copper, aluminum, and other metal
14 (including any metal combined with other mate-
15 rials) that is valuable for recycling or reuse as
16 raw metal, except for aluminum cans; and

17 (3) the term “recycling agent” means any per-
18 son engaged in the business of purchasing specified
19 metal for reuse or recycling, without regard to
20 whether that person is engaged in the business of re-
21 cycling or otherwise processing the purchased speci-
22 fied metal for reuse.

23 **SEC. 3. THEFT OF SPECIFIED METAL.**

24 (a) OFFENSE.—It shall be unlawful to steal specified
25 metal—

1 (1) being used in or affecting interstate or for-
2 eign commerce; and

3 (2) the theft of which harms critical infrastruc-
4 ture, including metal used as part of an electrical
5 substation, power line, cellular tower, telephone land
6 line, highway equipment and facilities, railroad
7 equipment and facilities, water well, reservoir, or
8 sewage line.

9 (b) PENALTY.—Any person who commits an offense
10 described in subsection (a) shall be fined under title 18,
11 United States Code, imprisoned not more than 10 years,
12 or both.

13 **SEC. 4. DOCUMENTATION OF OWNERSHIP OR AUTHORITY**
14 **TO SELL.**

15 (a) OFFENSES.—

16 (1) IN GENERAL.—Except as provided in para-
17 graph (2), it shall be unlawful for a recycling agent
18 to purchase specified metal described in subpara-
19 graph (A) or (B) of section 2(2), unless—

20 (A) the seller, at the time of the trans-
21 action, provides documentation of ownership of,
22 or other proof of the authority of the seller to
23 sell, the specified metal; and

24 (B) there is a reasonable basis to believe
25 that the documentation or other proof of au-

1 thority provided under subparagraph (A) is
2 valid.

3 ~~(2) EXCEPTION.—Paragraph (1) shall not~~
4 apply to a recycling agent that is subject to a State
5 or local law that sets forth a requirement on recy-
6 cling agents to obtain documentation of ownership
7 or proof of authority to sell specified metal before
8 purchasing specified metal.

9 ~~(3) RESPONSIBILITY OF RECYCLING AGENT.—A~~
10 recycling agent is not required to independently
11 verify the validity of the documentation or other
12 proof of authority described in paragraph (1).

13 ~~(4) PURCHASE OF STOLEN METAL.—It shall be~~
14 unlawful for a recycling agent to purchase any speci-
15 fied metal that the recycling agent knows, or has a
16 reasonable basis to believe, to be stolen.

17 ~~(b) CIVIL PENALTY.—A person who knowingly vio-~~
18 lates subsection (a) shall be subject to a civil penalty of
19 not more than \$10,000 for each violation.

20 **SEC. 5. TRANSACTION REQUIREMENTS.**

21 ~~(a) RECORDING REQUIREMENTS.—~~

22 ~~(1) IN GENERAL.—Except as provided in para-~~
23 graph (2), a recycling agent shall maintain a written
24 or electronic record of each purchase of specified
25 metal.

1 ~~(2) EXCEPTION.—~~Paragraph ~~(1)~~ shall not
 2 apply to a recycling agent that is subject to a State
 3 or local law that sets forth recording requirements
 4 that are substantially similar to the requirements de-
 5 scribed in paragraph ~~(3)~~ for the purchase of speci-
 6 fied metal.

7 ~~(3) CONTENTS.—~~A record under paragraph ~~(1)~~
 8 shall include—

9 ~~(A)~~ the name and address of the recycling
 10 agent; and

11 ~~(B)~~ for each purchase of specified metal—

12 ~~(i)~~ the date of the transaction;

13 ~~(ii)~~ a description of the specified
 14 metal purchased using widely used and ac-
 15 cepted industry terminology;

16 ~~(iii)~~ the amount paid by the recycling
 17 agent;

18 ~~(iv)~~ the name and address of the per-
 19 son to which the payment was made;

20 ~~(v)~~ the name of the person delivering
 21 the specified metal to the recycling agent,
 22 including a distinctive number from a Fed-
 23 eral or State government-issued photo
 24 identification card and a description of the
 25 type of the identification; and

1 (vi) the license plate number and
 2 State-of-issue, make, and model, if avail-
 3 able, of the vehicle used to deliver the spec-
 4 ified metal to the recycling agent.

5 (4) REPEAT SELLERS.—A recycling agent may
 6 comply with the requirements of this subsection with
 7 respect to a purchase of specified metal from a per-
 8 son from which the recycling agent has previously
 9 purchased specified metal by—

10 (A) reference to the existing record relat-
 11 ing to the seller; and

12 (B) recording any information for the
 13 transaction that is different from the record re-
 14 lating to the previous purchase from that per-
 15 son.

16 (5) RECORD RETENTION PERIOD.—A recycling
 17 agent shall maintain any record required under this
 18 subsection for not less than 2 years after the date
 19 of the transaction to which the record relates.

20 (6) CONFIDENTIALITY.—

21 (A) RECYCLING AGENTS.—A recycling
 22 agent cannot be required to provide any infor-
 23 mation collected or retained under this sub-
 24 section to any person other than a law enforcee-

ment agency with jurisdiction over the recycling agent, unless acting pursuant to a court order.

~~(B) OTHER PERSONS.~~—Any person other than a recycling agent who receives information collected or retained under this subsection from a recycling agent may not provide such information to any person other than a law enforcement agency with jurisdiction over the recycling agent, unless acting pursuant to a court order.

~~(b) PURCHASES IN EXCESS OF \$100.—~~

~~(1) IN GENERAL.~~—Except as provided in paragraph ~~(2)~~, a recycling agent may not pay cash for a single purchase of specified metal of more than \$100. For purposes of this paragraph, more than 1 purchase in any 48-hour period from the same seller shall be considered to be a single purchase.

~~(2) EXCEPTION.~~—Paragraph ~~(1)~~ shall not apply to a recycling agent that is subject to a State or local law that sets forth a maximum amount for cash payments for the purchase of specified metal.

~~(3) PAYMENT METHOD.—~~

~~(A) OCCASIONAL SELLERS.~~—Except as provided in subparagraph ~~(B)~~, for any purchase of specified metal of more than \$100 a recycling agent shall make payment by check that—

- 1 (i) is payable to the seller; and
 2 (ii) includes the name and address of
 3 the seller.

4 ~~(B) ESTABLISHED COMMERCIAL TRANS-~~
 5 ~~ACTIONS.—A recycling agent may make pay-~~
 6 ~~ments for a purchase of specified metal of more~~
 7 ~~than \$100 from a governmental or commercial~~
 8 ~~supplier of specified metal with which the recy-~~
 9 ~~cling agent has an established commercial rela-~~
 10 ~~tionship by electronic funds transfer or other~~
 11 ~~established commercial transaction payment~~
 12 ~~method through a commercial bank if the recy-~~
 13 ~~cling agent maintains a written record of the~~
 14 ~~payment that identifies the seller, the amount~~
 15 ~~paid, and the date of the purchase.~~

16 ~~(c) CIVIL PENALTY.—A person who knowingly vio-~~
 17 ~~lates subsection (a) or (b) shall be subject to a civil penalty~~
 18 ~~of not more than \$10,000 for each violation.~~

19 **SEC. 6. ENFORCEMENT BY ATTORNEY GENERAL.**

20 The Attorney General may bring an enforcement ac-
 21 tion in an appropriate United States district court against
 22 any person that engages in conduct that violates this Act.

23 **SEC. 7. ENFORCEMENT BY STATE ATTORNEYS GENERAL.**

24 (a) ~~IN GENERAL.—An attorney general or equivalent~~
 25 ~~regulator of a State may bring a civil action in the name~~

1 of the State, as *parens patriae* on behalf of natural per-
 2 sons residing in the State, in any district court of the
 3 United States or other competent court having jurisdiction
 4 over the defendant, to secure monetary or equitable relief
 5 for a violation of this Act.

6 (b) NOTICE REQUIRED.—Not later than 30 days be-
 7 fore the date on which an action under subsection (a) is
 8 filed, the attorney general or equivalent regulator of the
 9 State involved shall provide to the Attorney General—

10 (1) written notice of the action; and

11 (2) a copy of the complaint for the action.

12 (c) ATTORNEY GENERAL ACTION.—Upon receiving
 13 notice under subsection (b), the Attorney General shall
 14 have the right—

15 (1) to intervene in the action;

16 (2) upon so intervening, to be heard on all mat-
 17 ters arising therein;

18 (3) to remove the action to an appropriate dis-
 19 trict court of the United States; and

20 (4) to file petitions for appeal.

21 (d) PENDING FEDERAL PROCEEDINGS.—If a civil ac-
 22 tion has been instituted by the Attorney General for a vio-
 23 lation of this Act, no State may, during the pendency of
 24 the action instituted by the Attorney General, institute a
 25 civil action under this Act against any defendant named

1 in the complaint in the civil action for any violation alleged
2 in the complaint.

3 (c) CONSTRUCTION.—For purposes of bringing a civil
4 action under subsection (a), nothing in this section regard-
5 ing notification shall be construed to prevent the attorney
6 general or equivalent regulator of the State from exer-
7 cising any powers conferred under the laws of that State
8 to—

- 9 (1) conduct investigations;
- 10 (2) administer oaths or affirmations; or
- 11 (3) compel the attendance of witnesses or the
- 12 production of documentary and other evidence.

13 **SEC. 8. DIRECTIVE TO SENTENCING COMMISSION.**

14 (a) IN GENERAL.—Pursuant to its authority under
15 section 994 of title 28, United States Code, and in accord-
16 ance with this section, the United States Sentencing Com-
17 mission, shall review and, if appropriate, amend the Fed-
18 eral Sentencing Guidelines and policy statements applica-
19 ble to a person convicted of a criminal violation of section
20 3 of this Act or any other Federal criminal law based on
21 the theft of specified metal by such person.

22 (b) CONSIDERATIONS.—In carrying out this section,
23 the Sentencing Commission shall—

- 24 (1) ensure that the sentencing guidelines and
- 25 policy statements reflect the—

1 (A) serious nature of the theft of specified
2 metal; and

3 (B) need for an effective deterrent and ap-
4 propriate punishment to prevent such theft;

5 (2) consider the extent to which the guidelines
6 and policy statements appropriately account for—

7 (A) the potential and actual harm to the
8 public from the offense, including any damage
9 to critical infrastructure;

10 (B) the amount of loss, or the costs associ-
11 ated with replacement or repair, attributable to
12 the offense;

13 (C) the level of sophistication and planning
14 involved in the offense; and

15 (D) whether the offense was intended to or
16 had the effect of creating a threat to public
17 health or safety, injury to another person, or
18 death;

19 (3) account for any additional aggravating or
20 mitigating circumstances that may justify exceptions
21 to the generally applicable sentencing ranges;

22 (4) assure reasonable consistency with other
23 relevant directives and with other sentencing guide-
24 lines and policy statements; and

1 ~~(5)~~ assure that the sentencing guidelines and
 2 policy statements adequately meet the purposes of
 3 sentencing as set forth in section ~~3553(a)(2)~~ of title
 4 18, United States Code.

5 **SEC. 9. STATE AND LOCAL LAW NOT PREEMPTED.**

6 Nothing in this Act shall be construed to preempt any
 7 State or local law regulating the sale or purchase of speci-
 8 fied metal.

9 **SEC. 10. EFFECTIVE DATE.**

10 This Act shall take effect ~~180~~ days after the date of
 11 enactment of this Act.

12 **SECTION 1. SHORT TITLE.**

13 *This Act may be cited as the “Metal Theft Prevention*
 14 *Act of 2013”.*

15 **SEC. 2. DEFINITIONS.**

16 *In this Act—*

17 (1) *the term “critical infrastructure” has the*
 18 *meaning given the term in section 1016(e) of the*
 19 *Uniting and Strengthening America by Providing*
 20 *Appropriate Tools Required to Intercept and Obstruct*
 21 *Terrorism (USA PATRIOT ACT) Act of 2001 (42*
 22 *U.S.C. 5195c(e));*

23 (2) *the term “specified metal” means metal*
 24 *that—*

1 (A)(i) is marked with the name, logo, or
 2 initials of a city, county, State, or Federal gov-
 3 ernment entity, a railroad, an electric, gas, or
 4 water company, a telephone company, a cable
 5 company, a retail establishment, a beer supplier
 6 or distributor, or a public utility; or

7 (ii) has been altered for the purpose of re-
 8 moving, concealing, or obliterating a name, logo,
 9 or initials described in clause (i) through burn-
 10 ing or cutting of wire sheathing or other means;
 11 or

12 (B) is part of—

13 (i) a street light pole or street light fix-
 14 ture;

15 (ii) a road or bridge guard rail;

16 (iii) a highway or street sign;

17 (iv) a water meter cover;

18 (v) a storm water grate;

19 (vi) unused or undamaged building
 20 construction or utility material;

21 (vii) a historical marker;

22 (viii) a grave marker or cemetery urn;

23 (ix) a utility access cover; or

1 (x) a container used to transport or
 2 store beer with a capacity of 5 gallons or
 3 more;

4 (C) is a wire or cable commonly used by
 5 communications and electrical utilities; or

6 (D) is copper, aluminum, and other metal
 7 (including any metal combined with other mate-
 8 rials) that is valuable for recycling or reuse as
 9 raw metal, except for—

10 (i) aluminum cans; and

11 (ii) motor vehicles, the purchases of
 12 which are reported to the National Motor
 13 Vehicle Title Information System (estab-
 14 lished under section 30502 of title 49); and

15 (3) the term “recycling agent” means any person
 16 engaged in the business of purchasing specified metal
 17 for reuse or recycling, without regard to whether that
 18 person is engaged in the business of recycling or oth-
 19 erwise processing the purchased specified metal for
 20 reuse.

21 **SEC. 3. THEFT OF SPECIFIED METAL.**

22 (a) *OFFENSE.*—It shall be unlawful to knowingly steal
 23 specified metal—

24 (1) being used in or affecting interstate or for-
 25 eign commerce; and

1 (2) *the theft of which is from and harms critical*
 2 *infrastructure.*

3 (b) *PENALTY.—Any person who commits an offense de-*
 4 *scribed in subsection (a) shall be fined under title 18,*
 5 *United States Code, imprisoned not more than 10 years,*
 6 *or both.*

7 **SEC. 4. DOCUMENTATION OF OWNERSHIP OR AUTHORITY**
 8 **TO SELL.**

9 (a) *OFFENSES.—*

10 (1) *IN GENERAL.—Except as provided in para-*
 11 *graph (2), it shall be unlawful for a recycling agent*
 12 *to purchase specified metal described in subparagraph*
 13 *(A) or (B) of section 2(2), unless—*

14 (A) *the seller, at the time of the transaction,*
 15 *provides documentation of ownership of, or other*
 16 *proof of the authority of the seller to sell, the*
 17 *specified metal; and*

18 (B) *there is a reasonable basis to believe*
 19 *that the documentation or other proof of author-*
 20 *ity provided under subparagraph (A) is valid.*

21 (2) *EXCEPTION.—Paragraph (1) shall not apply*
 22 *to a recycling agent that is subject to a State or local*
 23 *law that sets forth a requirement on recycling agents*
 24 *to obtain documentation of ownership or proof of au-*

1 *thority to sell specified metal before purchasing speci-*
 2 *fied metal.*

3 (3) *RESPONSIBILITY OF RECYCLING AGENT.*—A
 4 *recycling agent is not required to independently*
 5 *verify the validity of the documentation or other proof*
 6 *of authority described in paragraph (1).*

7 (4) *PURCHASE OF STOLEN METAL.*—*It shall be*
 8 *unlawful for a recycling agent to purchase any speci-*
 9 *fied metal that the recycling agent—*

10 (A) *knows to be stolen; or*

11 (B) *should know or believe, based upon com-*
 12 *mercial experience and practice, to be stolen.*

13 (b) *CIVIL PENALTY.*—*A person who knowingly violates*
 14 *subsection (a) shall be subject to a civil penalty of not more*
 15 *than \$10,000 for each violation.*

16 **SEC. 5. TRANSACTION REQUIREMENTS.**

17 (a) *RECORDING REQUIREMENTS.*—

18 (1) *IN GENERAL.*—*Except as provided in para-*
 19 *graph (2), a recycling agent shall maintain a written*
 20 *or electronic record of each purchase of specified*
 21 *metal.*

22 (2) *EXCEPTION.*—*Paragraph (1) shall not apply*
 23 *to a recycling agent that is subject to a State or local*
 24 *law that sets forth recording requirements that are*

1 *substantially similar to the requirements described in*
2 *paragraph (3) for the purchase of specified metal.*

3 (3) *CONTENTS.—A record under paragraph (1)*
4 *shall include—*

5 (A) *the name and address of the recycling*
6 *agent; and*

7 (B) *for each purchase of specified metal—*

8 (i) *the date of the transaction;*

9 (ii) *a description of the specified metal*
10 *purchased using widely used and accepted*
11 *industry terminology;*

12 (iii) *the amount paid by the recycling*
13 *agent;*

14 (iv) *the name and address of the per-*
15 *son to which the payment was made;*

16 (v) *the name of the person delivering*
17 *the specified metal to the recycling agent,*
18 *including a distinctive number from a Fed-*
19 *eral or State government-issued photo iden-*
20 *tification card and a description of the type*
21 *of the identification; and*

22 (vi) *the license plate number and*
23 *State-of-issue, make, and model, if avail-*
24 *able, of the vehicle used to deliver the speci-*
25 *fied metal to the recycling agent.*

1 (4) *REPEAT SELLERS.*—A recycling agent may
 2 comply with the requirements of this subsection with
 3 respect to a purchase of specified metal from a person
 4 from which the recycling agent has previously pur-
 5 chased specified metal by—

6 (A) reference to the existing record relating
 7 to the seller; and

8 (B) recording any information for the
 9 transaction that is different from the record re-
 10 lating to the previous purchase from that person.

11 (5) *RECORD RETENTION PERIOD.*—A recycling
 12 agent shall maintain any record required under this
 13 subsection for not less than 2 years after the date of
 14 the transaction to which the record relates.

15 (6) *CONFIDENTIALITY.*—Any information col-
 16 lected or retained under this section may be disclosed
 17 to any Federal, State, or local law enforcement au-
 18 thority or as otherwise directed by a court of law.

19 (b) *PURCHASES IN EXCESS OF \$100.*—

20 (1) *IN GENERAL.*—Except as provided in para-
 21 graph (2), a recycling agent may not pay cash for a
 22 single purchase of specified metal of more than \$100.
 23 For purposes of this paragraph, more than 1 purchase
 24 in any 48-hour period from the same seller shall be
 25 considered to be a single purchase.

1 (2) *EXCEPTION.*—*Paragraph (1) shall not apply*
 2 *to a recycling agent that is subject to a State or local*
 3 *law that sets forth a maximum amount for cash pay-*
 4 *ments for the purchase of specified metal.*

5 (3) *PAYMENT METHOD.*—

6 (A) *OCCASIONAL SELLERS.*—*Except as pro-*
 7 *vided in subparagraph (B), for any purchase of*
 8 *specified metal of more than \$100 a recycling*
 9 *agent shall make payment by check that—*

10 (i) *is payable to the seller; and*

11 (ii) *includes the name and address of*
 12 *the seller.*

13 (B) *ESTABLISHED COMMERCIAL TRANS-*
 14 *ACTIONS.*—*A recycling agent may make pay-*
 15 *ments for a purchase of specified metal of more*
 16 *than \$100 from a governmental or commercial*
 17 *supplier of specified metal with which the recy-*
 18 *cling agent has an established commercial rela-*
 19 *tionship by electronic funds transfer or other es-*
 20 *tablished commercial transaction payment meth-*
 21 *od through a commercial bank if the recycling*
 22 *agent maintains a written record of the payment*
 23 *that identifies the seller, the amount paid, and*
 24 *the date of the purchase.*

1 (c) *CIVIL PENALTY.*—A person who knowingly violates
 2 subsection (a) or (b) shall be subject to a civil penalty of
 3 not more than \$5,000 for each violation, except that a per-
 4 son who commits a minor violation shall be subject to a
 5 penalty of not more than \$1,000.

6 **SEC. 6. ENFORCEMENT BY ATTORNEY GENERAL.**

7 The Attorney General may bring an enforcement ac-
 8 tion in an appropriate United States district court against
 9 any person that engages in conduct that violates this Act.

10 **SEC. 7. ENFORCEMENT BY STATE ATTORNEYS GENERAL.**

11 (a) *IN GENERAL.*—An attorney general or equivalent
 12 regulator of a State may bring a civil action in the name
 13 of the State, as *parens patriae* on behalf of natural persons
 14 residing in the State, in any district court of the United
 15 States or other competent court having jurisdiction over the
 16 defendant, to secure monetary or equitable relief for a viola-
 17 tion of this Act.

18 (b) *NOTICE REQUIRED.*—Not later than 30 days before
 19 the date on which an action under subsection (a) is filed,
 20 the attorney general or equivalent regulator of the State in-
 21 volved shall provide to the Attorney General—

- 22 (1) written notice of the action; and
 23 (2) a copy of the complaint for the action.

1 (c) *ATTORNEY GENERAL ACTION.*—Upon receiving no-
 2 tice under subsection (b), the Attorney General shall have
 3 the right—

4 (1) *to intervene in the action;*

5 (2) *upon so intervening, to be heard on all mat-*
 6 *ters arising therein;*

7 (3) *to remove the action to an appropriate dis-*
 8 *trict court of the United States; and*

9 (4) *to file petitions for appeal.*

10 (d) *PENDING FEDERAL PROCEEDINGS.*—If a civil ac-
 11 tion has been instituted by the Attorney General for a viola-
 12 tion of this Act, no State may, during the pendency of the
 13 action instituted by the Attorney General, institute a civil
 14 action under this Act against any defendant named in the
 15 complaint in the civil action for any violation alleged in
 16 the complaint.

17 (e) *CONSTRUCTION.*—For purposes of bringing a civil
 18 action under subsection (a), nothing in this section regard-
 19 ing notification shall be construed to prevent the attorney
 20 general or equivalent regulator of the State from exercising
 21 any powers conferred under the laws of that State to—

22 (1) *conduct investigations;*

23 (2) *administer oaths or affirmations; or*

24 (3) *compel the attendance of witnesses or the*
 25 *production of documentary and other evidence.*

1 **SEC. 8. DIRECTIVE TO SENTENCING COMMISSION.**

2 (a) *IN GENERAL.*—Pursuant to its authority under
3 section 994 of title 28, United States Code, and in accord-
4 ance with this section, the United States Sentencing Com-
5 mission, shall review and, if appropriate, amend the Fed-
6 eral Sentencing Guidelines and policy statements applica-
7 ble to a person convicted of a criminal violation of section
8 3 of this Act or any other Federal criminal law based on
9 the theft of specified metal by such person.

10 (b) *CONSIDERATIONS.*—In carrying out this section,
11 the Sentencing Commission shall—

12 (1) ensure that the sentencing guidelines and
13 policy statements reflect the—

14 (A) serious nature of the theft of specified
15 metal; and

16 (B) need for an effective deterrent and ap-
17 propriate punishment to prevent such theft;

18 (2) consider the extent to which the guidelines
19 and policy statements appropriately account for—

20 (A) the potential and actual harm to the
21 public from the offense, including any damage to
22 critical infrastructure;

23 (B) the amount of loss, or the costs associ-
24 ated with replacement or repair, attributable to
25 the offense;

1 (C) the level of sophistication and planning
2 involved in the offense; and

3 (D) whether the offense was intended to or
4 had the effect of creating a threat to public
5 health or safety, injury to another person, or
6 death;

7 (3) account for any additional aggravating or
8 mitigating circumstances that may justify exceptions
9 to the generally applicable sentencing ranges;

10 (4) assure reasonable consistency with other rel-
11 evant directives and with other sentencing guidelines
12 and policy statements; and

13 (5) assure that the sentencing guidelines and pol-
14 icy statements adequately meet the purposes of sen-
15 tencing as set forth in section 3553(a)(2) of title 18,
16 United States Code.

17 **SEC. 9. STATE AND LOCAL LAW NOT PREEMPTED.**

18 Nothing in this Act shall be construed to preempt any
19 State or local law regulating the sale or purchase of speci-
20 fied metal, the reporting of such transactions, or any other
21 aspect of the metal recycling industry.

22 **SEC. 10. EFFECTIVE DATE.**

23 This Act shall take effect 180 days after the date of
24 enactment of this Act.

Calendar No. 88

113TH CONGRESS
1ST Session

S. 394

A BILL

To prohibit and deter the theft of metal, and for
other purposes.

JUNE 17, 2013

Reported with an amendment