Sub-Part 8101 - Administration

Chapter 00002 - Toll Facilities

Purpose

100 The purpose of this rule is to establish: the exemptions for certain Users of Toll Facilities, the parameters regarding the issuance of toll evasion citations, the penalties to those Users of Toll Facilities who evade tolls, a civil administration adjudication system, and a mechanism to approve the toll regime of each Toll Facility authorized by Sections 65-43-1 through 39 and Sections 65-43-71 through 85 of the Mississippi Code of 1972 (the "Code"), as amended from time to time (collectively, the "Toll Road Act").

Definitions

200 "Department" means the Mississippi Department of Transportation.

210 "Processing Agency" means a Toll Facility Operator designated by the Department responsible for the processing of notices to be sent pursuant to the Toll Road Act and the processing of toll collections.

220 "Toll Facility" means any road or bridge for which tolls are charged for the use thereof.

230 "Toll Facility Operator" means any private company contracting with the Department to collect tolls for the use of any toll road or bridge as authorized under the Toll Road Act.

240 "User(s)" means the registered owner of a vehicle traveling on a Toll Facility or any portion thereof.

Users Exempted from Paying Tolls

300 Pursuant to the Toll Road Act and this Rule, no persons are permitted to use any Toll Facility without the payment of tolls, except as designated in the Toll Road Act and except for the persons operating the following:

1. Marked and unmarked law enforcement vehicles;

2. Fire and rescue vehicles when responding to an emergency; and

3. Public and private ambulances when responding to an emergency.

310 The Department shall be permitted to use a Toll Facility without payment of tolls in order to fulfill the Department's duties and responsibilities pursuant to the contract governing such Toll Facility and as provided in each contract governing that particular Toll Facility. With the prior written approval of the Department, the Toll Facility Operator may temporarily exempt Users of a Toll Facility or suspend tolls during a designated start-up period or during other promotional campaigns.

Issuance of a Notice of Toll Evasion

400 Pursuant to Code Section 65-43-73(2), a User is found to have evaded tolls when any of the following occur:

1. In the event a User of the Toll Facility who has established an account with the Toll Facility Operator and who uses the electronic toll lanes but fails to pay its bill within 30 days of receiving an invoice, such failure to pay shall be grounds for issuance of a Notice of Toll Evasion to the registered owner of the motor vehicle in accordance with the procedures specified in Code Section 65-43-73(2).

2. In the event a User of the Toll Facility who has not established an account with the Toll Facility Operator and who uses the electronic toll lanes and thereby fails to pay its bill the applicable toll, and who fails to pay the invoice for such toll within 30 days of the date of the invoice for such toll, such failure to pay shall be grounds for issuance of a Notice of Toll Evasion to the registered owner of the motor vehicle in accordance with the procedures specified in Code Section 65-43-73(2).

3. A User of the Toll Facility who has not established an account with the Toll Facility Operator, who uses the cash toll lanes and who does not have sufficient cash to pay the toll will be allowed to use the Toll Facility upon such User providing its information, which includes name, address and license plate number, to the Toll Facility Operator. The Toll Facility Operator shall cause the Department or the Processing Agency, if the Department has appointed a Processing Agency, to send an invoice to such User and if such User fails to pay its invoice within 30 days of the date of the invoice, such failure to pay shall be grounds for issuance of a Notice of Toll Evasion to the registered owner of the motor vehicle in accordance with the procedures specified in Code Section 65-43-73(2).

Schedule of Toll Evasion Penalties

500 Pursuant to Code Section 65-43-73(2), the Department, or the Processing Agency if the Department has appointed a Processing Agency, shall assess the following civil penalties to the registered owner of any vehicle driven on a Toll Facility without the payment of the toll:

1. Upon the issuance of a Notice of Toll Evasion (as defined in Section 600.1, herein), the registered owner of the vehicle shall be liable for the outstanding toll and a $20 penalty per violation.

2. Upon the failure of a registered owner to pay the toll, penalty and administrative fee to the Department or the Processing Agency, if any, within 14 days after the conclusion and issuance of a final order of a hearing officer pursuant to the procedures established in Section 600 of this rule, the Department or the Processing Agency, if any, shall assess the registered owner an additional penalty of $30 for each violation.

3. Upon failure of a registered owner of a vehicle to satisfy any toll, penalty or administrative fee resulting from a final order or orders of liability relating to five (5) or more toll violations within a calendar year, the Department or the Processing Agency, if any, shall assess the registered owner an additional penalty of $50 to the fifth violation and to each subsequent violation within that one calendar year.

510 All criminal penalties for failure or refusal to pay any toll shall be governed by Section 65-43-6 and not by this Rule.

Civil Administrative Adjudication System

600 Pursuant to Code Section 65-43-77, the Department is establishing a system of civil administrative adjudication for the contesting of toll violations. This section describes the administrative appeal process when a registered vehicle owner chooses to contest a Notice of Toll Evasion. The intent of the administrative adjudication process is to secure a just and final administrative decision.

1. Notice of Toll Evasion - The Department or the Processing Agency if a Processing Agency has been appointed shall give a notice of toll evasion violation (the "Notice of Toll Evasion") to the registered owner in accordance with Code Section 65-43-73(2). In addition to the information prescribed by Code Section 65-43-73(2) and Section 65-43-75, the Notice of Toll Evasion shall inform the registered owner of the availability of a hearing in which the violation may be contested on its merits and the manner in which the hearing may be conducted. The Notice of Toll Evasion shall inform the registered owner that failure to contest the alleged violations in the manner and time provided shall be deemed an admission of liability and that a final order of liability may be entered on that admission. The Notice of Toll Evasion shall further state that failure to either pay the indicated toll, penalty or administrative fee or to request a hearing on the merits will result in a final order of liability in the amount of the toll, penalty and/or administrative fee indicated. The Processing Agency may perform or execute the preparation, certification, affirmation, or mailing of the Notice of Toll Evasion.

2. Representation – A registered owner may represent himself or may choose to designate an authorized representative at any point throughout the administrative adjudication process.

3. Written Request for Administrative Hearing

    a. The registered owner contesting a Notice of Toll Evasion must request a hearing in writing within 30 days after the date of the Notice of Toll Evasion. The written request for a hearing must be sent within such 30 days to the Department or the Processing Agency, if the Department has appointed a Processing Agency, must include a statement of the relief being sought and the amount of the toll, penalty and/or administrative fee in dispute. The request also must include the registered owner's name, vehicle make and model, tag number and the reason the registered owner is contesting the Notice of Toll Evasion.

    b. The request must include the registered owner's mailing address and the name and address of his authorized representative, if at the time of filing the registered owner has selected such representative. If at any time thereafter the registered owner selects an authorized representative, the registered owner must submit the name and address of such authorized representative to the Department or the Processing Agency, if the Department has appointed a Processing Agency. It is the responsibility of the registered owner contesting to provide and maintain an official mailing address on file

with the Processing Agency. Any change of address during the administrative adjudication process must be made in writing and addressed to the Department or the Processing Agency, if the Department has appointed a Processing Agency.

4. Notice of Hearing

    a. A registered owner or the authorized representative will be notified of the hearing by mail at the last known address. The last known address will be the mailing address provided in the written request for a hearing.

    b. The hearing notice will contain the time, place, and date of the hearing. Notice to the registered owner or registered owner's authorized representative constitutes notice to the registered owner or registered owner's authorized representative.

5. Hearing Officers – Appointment, Disqualification, Powers and Duties

    a. The Department shall appoint a hearing officer that is either (a) from the Attorney General's office, or (b) a contracted private party or individual, who may be an employee or duly authorized agent of the Processing Agency, having the appropriate expertise to properly interpret and enforce the Toll Road Act and the Department's rules and regulations.

    b. A motion to disqualify a hearing officer may be made for bias, conflict of interest or other good cause and must be made prior to the commencement of the hearing.

    c. The powers and duties of the hearing officer at the hearing include, but are not limited to:

        i. presiding over the hearing;

        ii. explaining the procedures of the hearing to the parties;

        iii. ruling on the admissibility of evidence and permitting parties to present evidence;

        iv. permitting parties to examine and cross-examine witnesses; and

        v. issuing a final order indicating his/her findings.

6. Discovery

    a. The registered owner or its authorized representative will be permitted to schedule an appointment to review video or photo surveillance evidence pertaining to the Notice of Toll Evasion. These appointments shall be made during regular business hours and shall take place at the Toll Facility Operator's office located within the State or any other location within the State designated by the Department or the Processing Agency.

b. Written discovery shall be limited to the production of documents and identification of witnesses that each party intends to introduce or call at the hearing. Nothing in this subsection shall impose a duty upon the Department or the Processing Agency to produce for the registered owner copies of documents that the Toll Facility Operator had previously sent to the registered owner.

7. Continuance

A request for a continuance of the hearing will be routinely granted if the request is received within 10 days after the notice of the hearing is mailed. If the request for continuance is received beyond 10 days, then the determination to continue the hearing will be decided by the Processing Agency, if one has been appointed, or the Department.

8. Hearings Format

a. Each toll violation shall be considered a separate violation.

b. The Department or the Toll Facility Operator may be represented by an employee or duly authorized agent at the hearing or may proceed on the Notice of Toll Evasion. The hearing officer shall not present any evidence on behalf of the Department; provided, however, that the Notice of Toll Evasion may be placed into the record by the hearing officer. A registered owner must be present at the hearing and may represent himself or herself or be represented by a duly authorized agent.

c. The Department and the registered owner may introduce into evidence, and the hearing officer may consider, all video or photo surveillance evidence relating to the alleged violations, the evidentiary foundation for which shall be presumed valid subject to rebuttal. A Notice of Toll Evasion or facsimile of the notice, sworn or affirmed to or certified by a duly authorized agent of the Processing Agency based upon an inspection of photographs, microphotographs, videotape, or other recorded images produced by a video or photo surveillance system, shall be admitted as prima facie evidence of the correctness of the facts contained in the Notice of Toll Evasion.

d. Each party to the hearing may make an opening statement, call, examine and cross-examine witnesses, and offer evidence for the record. Evidence may be written or oral.

e. Each party may make a closing argument at the conclusion of the hearing.

f. No testimony shall be given or received at the hearing relating to discussions, offers, counter offers, rejections or admissions at any settlement conferences that may have occurred.

g. Any written stipulations of the parties may be introduced as evidence at the hearing. These stipulations shall be introduced at the beginning of the hearing and shall become part of the record of the hearing.

h. The Department or the Processing Agency with the Department's approval, may, at its sole discretion, establish a process in which registered owners may contest alleged violations by a telephonic hearing or mail-in hearing as opposed to an in-person hearing.

i. The hearing officer shall have full authority to conduct and control the procedure at the hearing. The hearing officer shall not be bound by the strict rules of evidence applicable to the courts; irrelevant, immaterial, or unduly repetitious evidence shall be excluded. Evidence not admissible under the rules of evidence may be admitted if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Objections to evidentiary offers may be made, shall be ruled upon by the hearing officer, and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, any part of the evidence may be received in written form. Oral testimony in in-person or telephonic hearings may be recorded by audio or electronic means, provided that, in the event of a recording loss or malfunction, the hearing officer may prepare a written summary of the oral testimony for purposes of administrative review.

j. The hearing officer shall apply a preponderance of the evidence standard to determine registered owner's liability for the alleged violations.

k. Upon completion of a hearing on the merits, the hearing officer shall issue a final administrative decision setting forth his or her findings as to liability or non-liability of the registered owner. If the hearing officer finds for the Department or the Toll Facility Operator, the final decision of liability shall assess the tolls, penalties and/or administrative fees that the registered owner owes to the Department or the Processing Agency. The final decision of liability shall state that an additional penalty of $30 per violation will be assessed if registered owner fails to pay the proper toll, penalty and fee to the Department or the Processing Agency within 14 days after the issuance of a final decision of liability. A final decision of liability shall inform the parties of their right to appeal the administrative adjudication and seek judicial review pursuant to Code Section 65-43-79 and include a statement that failure to satisfy any toll, penalty or administrative fee imposed by the final decision of liability will be collected as a civil penalty.

9. Withdrawal of a Contest of a Notice of Toll Evasion

a. A contest of a Notice of Toll Evasion before an administrative hearing officer may be withdrawn by the registered owner or his authorized representative filing the appeal at any time prior to issuance of the final administrative decision. The withdrawal may be made voluntarily by the registered owner or may occur involuntarily under the following conditions:

i. An involuntary withdrawal of a contest may occur as a result of the registered owner failing to appear at a scheduled hearing, failing to timely provide a written contest in lieu of attendance at a hearing if such written contest is permitted, or by any other act or failure that the Department or the Processing Agency determines represents a failure on the part of the registered owner to pursue his contest. An involuntary withdrawal of a contest of a Notice of Toll Evasion will be documented by the Department or the Processing Agency if the Department has appointed a Processing Agency.

ii. A voluntary withdrawal of a contest must be received in writing and sent by the person or authorized representative to the hearing officer and the Department or the Processing Agency if the Department has appointed a Processing Agency.

b. Following a withdrawal of a contest of a Notice of Toll Evasion, the action shall become final and not subject to further review by the Department or the Processing Agency. Thereafter, the Department or the Processing Agency on behalf of the Department shall then proceed with any action in accordance with the Toll Road Act.

10. Failure to Respond to Notice of Toll Evasion – Default

A registered vehicle owner who fails to either pay in full all outstanding tolls, penalties and/or administrative fees set forth in the Notice of Toll Evasion or to file a request for a hearing within the time permitted shall be deemed to have admitted liability and to have waived his or her right to a hearing and the Department or the Processing Agency, if the Department has appointed a Processing Agency, may enter a final decision of liability against the registered vehicle owner.

Administrative Fees

700 The following administrative fees shall be assessed to the registered owner and collected by the Department or Processing Agency, if one has been appointed by the Department:

1. Xerographic Reproductions

8½X11"	$0.25 per page
8½X14"	$0.35 per page
11X17"	$0.75 per page

2. Microfilm Reproductions

8½X11"	$0.50 per page

Minimum charge of $2.00 per request

3. Computer Printouts $1.00 per page of report data

4. Certification of Documents

$3.00 first copy or cover letter

$1.00 each additional page

5. Video Reproductions

$10.00 first copy

$2.00 each additional copy

710 Additional administrative fees incidental to document production may include personnel charges for time expended in the actual searching, reviewing and/or duplicating of documents and if applicable, the mailing of copies of said documents and the mailing of any and all notices. In no event will the personnel charges exceed $20.00.

Establishment of Toll Regime and Toll Schedule

800 The Mississippi Transportation Commission (the "Commission") is responsible for establishing the toll regime (which shall include a schedule of tolls), charging and collecting tolls for each Toll Facility. Alternatively, during the term of any concession contract with the prior written approval of the Commission, in the Commission's sole discretion, the Toll Facility Operator may establish the toll regime and toll schedule, charge and collect tolls for the applicable Toll Facility in accordance with this Rule and the terms of such concession contract approved by the Commission in its sole discretion. Such toll regime must include the following:

1. User classifications;

2. Toll collection methods;

3. The initial amount of such tolls by classification and method;

4. Time of day pricing, if any, and/or dynamic (congestion) pricing, if any; and

5. Toll escalation method.

810 Pursuant to Section 65-43-3(4), the Commission shall, in any case, give notice and hold a public hearing on the toll regime for each Toll Facility and shall give notice and hold a public hearing on any change or amendment to a previously approved toll regime. The notice for the public hearing shall be published twice, specifically once a week for two successive weeks in a newspaper having a general circulation throughout the State, and no hearing shall be held less than 14 days or more than 60 days after the publication of the first notice of such public hearing.