General Rules of Procedure.

112.01 Purpose. The following rules are adopted in accordance with Senate Bill 2859 of the 1993 Session of the Mississippi Legislature and shall control hearings conducted by the Mississippi Department of Agriculture and Commerce, Bureau of Regulatory Services, hereinafter referred to as the "Bureau", resulting from violations *MISS. CODE ANN. §69-55-37 et seq.* or any rules or regulations promulgated thereunder.

112.02 Designated reviewing officer. The Chief of the Bureau of Regulatory Services or his designated employee shall act as a reviewing officer.

112.03 Complaint. When a complaint is received, either from an individual or from Department personnel pursuant to an investigation, the reviewing officer shall:

1. Cause the complaint to be in writing and signed by the inspector making the charge;
2. Insure that the complaint is filed in the office of the Bureau of Regulatory Services; and
3. Send a copy of the complaint and any supporting documents to the person accused along with a request for the accused to respond to the allegations within thirty 30 days from receipt of such notice. Failure to file an answer to or plead specifically to any allegation of fact in the complaint may constitute an admission of such allegation. Said complaint and supporting documentation shall be served on the accused by registered mail, return receipt requested, or by any method allowed by Rule 4 of the Mississippi Rules of Civil Procedure.

112.04 Reviewing officer's recommendation. Upon receipt of the response and any supporting documents from the accused, the Reviewing Officer shall screen all information on file to determine the merit of the complaint or lack thereof. Based on the evidence, the Reviewing Officer may:

1. Meet with the accused to discuss the alleged violation; or
2. Recommend to the Commissioner of Agriculture and Commerce hereinafter referred to as "Commissioner", that the complaint be dismissed; or
3. Recommend to the Commissioner that an appropriate penalty, be levied in accordance with the attached Penalty Assessment Guidelines.

112.05 Request for hearing. The accused shall have thirty days 30 from receipt of the Reviewing Officer's decision within which to file, with the Reviewing Officer, a written request for a hearing.

112.06 Representation. All parties may represent themselves or be represented by counsel.

112.07 Failure to appear. The failure of any party to appear at any administrative proceeding created under this regulation shall be deemed to be a waiver of such right.

112.08 Hearing. The Reviewing Officer shall within thirty 30 days of receipt of a written request from the accused, schedule a hearing. The hearing shall be before an

Appeals Committee comprised of the Commissioner of Agriculture and Commerce, or his designee, the President of the Petroleum Marketer's Association, or his designee and a representative of the Attorney General. The Reviewing Officer shall have the authority to grant continuances, in his discretion, for good cause. Written notice of the date, time and place of such hearing shall be mailed to the accused by registered mail, return receipt requested, not less than fifteen 15 days prior to the commencing of the hearing. The hearing shall be closed unless the accused shall request a public hearing. The Reviewing Officer shall impose necessary restrictions to ensure an orderly and impartial proceeding.

112.09 Evidence:

1. The testimony of witnesses at a hearing shall be upon oath or affirmation and subject to cross-examination. Any witness may, in the discretion of the Appeals Committee, be examined separately and apart from all other witnesses except those who may be parties to the proceeding.
2. All relevant evidence that is not unduly repetitious shall be admitted. Hearsay, as defined by the Mississippi Rules of Evidence, shall be admissible only to the extent that it corroborates other evidence.
3. If a party objects to the admission or rejection of any evidence or to the limitation of the scope or any examination or cross-examination, such party shall state briefly the grounds for such objection, whereupon an automatic exception will follow if the objection is overruled by the Appeals Committee.
4. A true copy of every written entry in the records of the Department, made by an officer or employee thereof in the course of official duties and relevant to the issues involved in the hearing, shall be admissible as prima facie evidence of the facts stated therein, without the production of such officer or employee.
5. Except where the Appeals Committee finds that the furnishing of copies is impracticable, copies of each exhibit, in addition to the original, shall be filed with the Appeals Committee, for the use of the other parties to the proceeding. Provided that a true copy of an exhibit may be substituted for an original.
6. Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence to be offered. If the evidence consists of a brief oral statement or an exhibit, it shall be inserted into the transcript in its entirety.
7. At the request of the Appeals Committee, each party may file proposed findings of facts and conclusions of law, and a brief in support thereof, within such time as the Appeals Committee may proscribe. The Appeals Committee may request that such proposed findings of facts and conclusions of law be filed before, during or after the hearing.

112.10 Filing. All documents or papers required or authorized to be filed shall be filed with the Reviewing Officer and copies served on all parties with a certificate of service which states the date of service and who was served.

112.11 Computation of time. Computation of time shall be the same as required in the Mississippi Rules of Civil Procedure.

112.12 Extensions of time. The time for filing any document or paper required or authorized by these rules can only be extended by the Reviewing Officer, if the

~~request for extensions is made prior to the expiration of the final date allowed for such filing, and if in the judgement of the Appeals Committee there is good reason for the extension and the opposing party will not be prejudiced.~~

~~112.13 Findings of fact and conclusions of law. At the conclusion of the hearing, the Appeals Committee shall prepare a written final opinion incorporating its findings of facts and conclusions of law.~~

~~112.14 Powers of the appeals committee:~~

~~1. The Appeals Committee is delegated authority and empowered by the Commissioner of Agriculture and Commerce to:~~

~~a. Rule upon motions and requests;~~

~~b. Set the time and place of the hearing or conference, adjourn the hearing from time to time, and change the time and place of the hearing;~~

~~c. Examine witnesses;~~

~~d. Admit or exclude evidence;~~

~~e. Hear oral argument of facts and law;~~

~~f. Do all acts and take all measures necessary for the maintenance of order at the hearing and for the efficient, fair and impartial conduct of the proceeding; and~~

~~g. Issue the final decision of the Department.~~

~~112.15 Notice and Waiver. Failure of the accused to request a hearing or respond to the complaint within thirty 30 days shall constitute a waiver of the right to a hearing.~~

~~112.16 Penalties. The Appeals Committee shall notify the accused of his final decision. Any penalties assessed by the Appeals Committee shall be due and payable within forty five 45 days of the notification of the decision. The Appeals Committee, in their discretion, may grant additional time within which penalties may be paid.~~

~~112.17 Reconsideration. Within twenty 20 days after receiving the final decision the accused may allege in writing a request for reconsideration based upon a clear error of fact or law. The Appeals Committee may upon reviewing same, modify or review its previously issued final decision. The accused should view a request for reconsideration as an exceptional process, not merely as another progressive step in the proceeding.~~

~~(Section 112 adopted August 1993, amended February 12, 2001, amended October 21, 2002.)~~

112 Administrative Action

1. Definitions.
   a. "Administrative Complaint" means a written document issued to a person or business that contains allegation(s) of violation(s) of the "Petroleum Products Inspection Law" by the person or business named therein.
   b. "Commissioner" means the Commissioner of Agriculture and Commerce.
   c. "Dealer" means any person or business that registers for sale petroleum products regulated by the "Petroleum Products Inspection Law".
   d. "Retailer" means any retail establishment that sells or offers for sale directly to the consumer gasoline, gasoline-oxygenate blends, diesel, biodiesel, biodiesel blends, kerosene or any other petroleum product.

2. Fuel Quality.
   a. The Department may impose a $500.00 penalty to a retailer who violates a fuel quality requirement under MISS. CODE ANN. §§75-55-5, 75-55-11, 75-55-22, 75-55-13 and/or those requirements adopted in sections 103, 108 and 113.02 of these regulations. The retailer shall correct the violation as provided in section 107 above.
   b. The Department may impose a $1,000.00 penalty to a dealer who violates a fuel quality requirement under the laws referenced in paragraph 2(a).
   c. The Department may impose a penalty of not more than $3,000.00 to a retailer or dealer who violates a fuel quality requirement under the laws referenced in subparagraph 2(a) where there are aggregating factors including but not limited to where the retailer or dealer has repeatedly violated the law in a 12-month period, or if the person is shown to have willfully and intentionally violated these requirements.

3. Dispenser Labeling; Documentation to be delivered to retailer.
   a. The Department shall issue a stop sale order and a warning to a retailer whose fuel dispenser violates the dispenser labeling requirements set out in Miss. Code Ann. §75-55-6(3) and sections 106 and 113 of these regulations, if the violation is not corrected within the time specified by the Department's inspector.
   b. The Department shall impose a $500.00 penalty to any dealer who distributes petroleum products to a retailer and does not provide the documentation required by sections 106 and 113.03 of these regulations.
   c. The Department may impose a penalty of not more than $3,000.00 on a retailer or dealer who violates a labeling or documentation requirement where there are aggregating factors, including but not limited to, where the retailer or dealer has repeatedly violated the law in a 12-month period, or if the person is shown to have willfully and intentionally violated these requirements.

4. Signage.
   a. The Department shall issue a warning to any retailer whose fuel storage tank labeling or street signage does not comply with the requirements of Miss. Code Ann. §75-55-9, if the violation is not corrected within the time specified by the Department's inspector.
   b. Repeated violations. The Department may impose a $250 penalty to the retailer for a violation as set out in subparagraph 4(a), if the retailer has repeatedly violated the requirements of Miss. Code Ann. §75-55-9 in a 12-month period.

5. Equipment violations. In addition to any enforcement action in section 101, the Department may impose a $250.00 penalty to the retailer if the Department finds during an inspection that the retailer's equipment does not comply with current NIST Handbook 44, §1.10, ¶G-UR.4.1, "Maintenance of Equipment."

6. Registration of Petroleum Products.
   a. If a dealer fails to provide all of the information required in section 105 in its application for registration, the Department shall return the application to the dealer as incomplete and notify the dealer that it cannot be registered by the Department without a completed application. If the dealer resubmits an incomplete application, then the Department shall deny the dealer's registration.
   b. Upon determination at any time of inaccurate information in the dealer's application, the Department shall notify the dealer and allow the dealer 14 days to correct the information. If the dealer fails to correct the information within 14 days of notification, the Department shall impose a $100.00 civil penalty on the dealer per day that it goes uncorrected. Subsequent and continuous failure to correct the

application information may result in increased penalties and/or suspension, revocation or permanent denial of registration.

7. Licensed Petroleum Equipment Repairperson.
   a. If a licensed repairperson fails to submit a service report and/or a Notice of Violation Repair to the Department within three days after he/she repairs or adjusts a petroleum pump, metering or measuring device or removes an official seal there from or violates any other requirement of Miss. Code Ann. §75-55-38 or rules promulgated in support of that section, then the Department shall issue a warning to the repairperson.
   b. If a licensed repairperson fails to correct the violation as provided in the warning, then the Department may impose a $250.00 penalty and/or suspend or revoke the repairperson's license.
   c. The Department may impose a penalty of not more than $3,000.00 on a repairperson for violations of the law where there are aggregating factors, including but not limited to, where the repairperson has repeatedly violated the law in a 12-month period, or if the repairperson is shown to have willfully and intentionally violated these requirements.

8. Administrative Hearing.
   a. Any person who receives an administrative complaint may request an administrative hearing within 30 days from the date of receipt of the notice, except for a stop-sale order which must be appealed within 20 days of issuance per law. The commissioner or his/her designee shall conduct a hearing after giving written notice of the date, time and place of such hearing to the respondent not less than fourteen (14) days prior to the commencing of the hearing. Failure to request a hearing within the allotted time period shall constitute a waiver of the right to a hearing.
   b. The commissioner or his/her designee may serve as the Hearing Officer in the administrative hearing. Any party may participate in the hearing in person or by a duly authorized representative.
   c. The Department shall cause the hearing to be recorded by a court reporter. Any party may, at its own expense, request the court reporter to prepare a transcript of the hearing.
   d. Evidence. The Mississippi Rules of Evidence shall not apply to these proceedings but the Hearing Officer may use them as a guide in the proceedings.
   e. At the conclusion of the hearing, the Hearing Officer shall prepare a written final opinion incorporating his/her findings of facts and conclusions of law. The commissioner may adopt or reject the opinion as the final order of the Department or remand the matter for further proceedings. The respondent shall have 30 days from the date of entry of the final order to pay any penalties that may be imposed.
   f. The decision of the Department may be appealed to the Circuit Court of the First Judicial District of Hinds County. The appealing party shall be responsible for the costs of preparing the record on appeal, including the transcript.

(Section 112 adopted August 1993, amended February 12, 2001, amended October 21, 2002, amended 2010.)

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