Administrative Action

117.01. Definitions.

a. "Administrative Complaint" means a written document issued to a person or business that contains allegation(s) of violation(s) of the "Weights and Measures Law of 1964" and/or the "Weights and Measures Regulations" by the person or business named therein and the notice of penalty(ies) for said violation(s).

b. "Administrative hearing" means an appeal by the respondent in an administrative complaint to the Department for an evidentiary hearing on the allegations contained in said complaint.

c. "Commissioner" means the Commissioner of Agriculture and Commerce.

d. "Respondent" means the person or business who receives an administrative complaint alleging violation(s) of the law and the notice of penalty(ies) for that violation(s).

117.02. Conduct of the 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 may conduct the hearing or he/she may designate a Hearing Officer.

c. The respondent may represent himself/herself in person or be represented by a duly authorized representative.

d. 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.

e. Formal rules of evidence and procedure will not apply to these proceedings but the Hearing Officer may use them as a guide in the proceedings.

f. The Department will present its case first and then the respondent may present its case. The Department will be allowed to present rebuttal evidence.

g. 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. This decision will be the final order of the Department.

h. 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.

117.03. Penalties.

a. Authority. The Department's authority to assess administrative penalties for the enforcement of the Weights and Measures Law and regulations adopted in support of that Law is found in **MISS. CODE ANN.** §75-27-59 (Supp. 2013).

b. In general. The penalty matrix below will be followed for the violations listed in most cases. However, the Department will exercise some discretion up to the penalty amounts set out in the law where there are aggregating factors including but not limited to where the violator has repeatedly violated the law in a 12-month period, or if the violator is shown to have willfully and intentionally violated the law or regulations.

c. Penalty Matrix.

Law[1]	**Violation**	**First Violation-Penalty**	**Subsequent Violations**[2]**-Penalty**
HB 44, Sections: §1.10, G-UR 4.1 §1.10, G-UR 4.2 §1.10, G-UR 4.3 §1.10, G-UR.4	Failure to maintain device in proper working order (maintenance of equipment).	Stop-Use Order	2nd violation-$500; 3rd violation- $1,000.
Miss. Code Ann. §75-27-31 §75-27-59(1)(b)	Use or have in possession for the purpose of use a weight or measure without a seal affixed to the weight or measure by the Department.	Stop-Use Order	2nd violation-$500; 3rd violation-$1,000.
Miss. Code Ann. §75-27-31 §75-27-59(1)(d)	Unauthorized removal of a Department red-tag or use of a red-tagged device.	$500.00	2nd violation-$1,000 3rd violation-$2,000.
Miss. Code Ann. §75-27-27 §75-27-59(1)€	Sell, or offer or expose for sale, less than the quantity he represents.	Stop sale and/or $500.00.	2nd violation-$1,000; 3rd violation-$2,000.
Miss. Code Ann. §75-27-59(1)(f)	Take more than the quantity he represents of any commodity, thing, or service, when, as buyer he furnishes the weight or measure by means of which the amount is	$500.00 for each commodity, thing, or service has been falsely represented.	2nd violation-$1,000; 3rd violation-$2,000.

[1] "Law" means the source of the weights and measures violation. It references the statute, Weights and Measures ("WM") regulation or the section of Handbook 44 ("HB44") where the violation is prescribed.

[2] A second violation is one that occurs within 12 months of a previous violation. A third violation occurs within 18 months of the first violation.

	determined.		
Miss. Code Ann. §75-27-29 §75-27-59(1)(j)	Violation of a stop-sale, stop-use order, stop-removal or removal order.	$1,000.00	2nd violation-$2,000; 3rd violation-$3,000.
Miss. Code Ann. §75-27-59(1)(h); HB 44, §1.10, G-UR.3.3; WM §116.03; WM §116.04	Failure to position device properly.	Stop-use order.	$500.00.
Miss. Code Ann. §75-27-59(1)(b) HB 44, §1.10, G-UR.1.1	Use of an unsuitable device.	Stop-use order and/or $500.00 for each unsuitable device.	2nd violation-$1,000 per device; 3rd violation-$2,000 per device.
HB 44, §2.20,UR.3.3; Miss. Code Ann. §75-27-59(1)(j)	Failure to follow HB 44, UR 3.3, "Single Draft Vehicle Weighing."	Stop-use order and/or $500 for each instance unless weighed in accordance with HB 44.	2nd violation-$1,000; 3rd violation-$2,000.
WM §115.04 Miss. Code Ann. §75-27-59(1)(j)	Use of field standards by a service repairperson that have not been verified by the Department or another state laboratory recognized by NIST.	Stop-use order and/or $500.00 for each unverified field standard.	2nd violation-$1,000 for each unverified field standard; 3rd violation-$2,000 for each unverified field standard.
WM §115.05 Miss. Code Ann. §75-27-67 §75-27-59(1)(j)	Failure by service company to submit service reports to the Department within three days of restoring the device to service or placing the device in service.	$500.00 for each device restored to service or placed in service without timely submitting a service report to the Department.	2nd violation-$1,000 per device; 3rd violation $2,000.00 per device.
Miss. Code Ann. §75-27-19	Failure to obtain an installation permit for installing scales with a weighing capacity of 10,000 pounds or more.	$1,000.00	2nd violation-$2,000; 3rd violation- $3,000.
Miss. Code Ann. §75-27-19	Failure to obtain a scale repairman license prior to repairing or testing a weighing device in MS.	$1,000.00	2nd violation-$2,000 3rd violation-$3,000
Miss. Code Ann. §75-27-59(1)(i)	Buy or sell pulpwood by any means other than prescribed in 75-27-39.	$500.00	2nd violation-$1,000; 3rd violation-$2,000
Miss. Code Ann. §75-27(1)(j)	Violate any WM law or regulation for which a penalty	$500.00	2nd violation-$1,000; 3rd violation-$2,000.

	has not been provided herein.		
Miss. Code Ann. §75-27-51	Misrepresentation of price; Bar code scanner system with a failure rate of greater than 2%.	Stop use order and/or $100	2nd and subsequent violations-$500.

(Adopted August 4, 2016.)

Source: *Miss. Code Ann.* §75-27-19.