

SEC. 69-25-51. Alleged violation of rules and regulations of Bureau of Plant Industry; right to hearing; State Entomologist as reviewing officer; determination; penalty.

(1) When any allegation or charge has been made against a person for violating the rules and regulations of the Bureau of Plant Industry within the regulatory office of the Mississippi Department of Agriculture and Commerce or the laws set forth in Sections [69-19-1](#) through [69-19-11](#) and Sections [69-21-1](#) through [69-21-27](#) and Sections [69-23-1](#) through [69-23-133](#), Mississippi Code of 1972, the Director of the Bureau of Plant Industry or his designated employee shall act as a reviewing officer. The designated reviewing officer shall (a) cause the complaint to be in writing and signed by the person making the charge; (b) insure that the complaint is filed in the Office of the Bureau of Plant Industry; and (c) 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. Such notification shall be accomplished by any of the methods provided for in Rule 4 of the Mississippi Rules of Civil Procedure. 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. The reviewing officer may meet with and discuss the alleged violation with the accused.

(2) If the reviewing officer determines that the complaint lacks merit, he may recommend to the Commissioner of Agriculture and Commerce that the complaint be dismissed.

(3) If the reviewing officer determines that there are reasonable grounds to indicate that a violation has occurred or if the accused admits to the truth of the allegations upon which the complaint is based, the reviewing officer may recommend to the Commissioner of Agriculture and Commerce an appropriate penalty which may be a written notice of warning, assessment of civil penalties or suspension or cancellation of license or permit as provided by the Rules and Regulations of the Bureau of Plant Industry and/or a fine not to exceed Five Thousand Dollars (\$5,000.00) for each violation.

(4) If the accused requests a hearing, in writing, within thirty (30) days from receipt of the decision of the Commissioner of Agriculture and Commerce, the commissioner shall appoint three (3) members of the advisory board to the Bureau of Plant Industry to act as a hearing committee and a hearing shall be scheduled.

In determining the amount of the penalty, the reviewing officer shall consider the appropriateness of such penalty for the particular violation, the effect of the penalty on the person's ability to continue in business and the gravity of the violation.

SOURCES: Laws, 1992, ch. 474, Sec. 1, eff from and after July 1, 1992. Amended by Laws 2000, Ch. 372, Sec. 3, SB2495, eff. July 1, 2000.

SEC. 69-25-53. Hearing procedure; opinion and order.

(1) Within thirty (30) days of notification from the commissioner, the hearing committee shall schedule a hearing at the next regularly scheduled quarterly meeting of the Bureau of Plant Industry Advisory Board. For good cause shown the hearing committee may grant a continuance or continuances of such hearings. Written notice of the date, time and place of such hearing shall be mailed to the accused by registered mail, return receipt requested, no less than fifteen (15) days prior to the commencing of the hearing.

(2) A duly qualified court reporter shall be in attendance and shall make a full and complete transcript of the proceedings. The hearing shall be closed unless the accused shall request a public hearing. The hearing committee shall have the right and duty to impose reasonable restrictions as it may deem necessary or appropriate to insure an orderly, expeditious and impartial proceeding, and shall admit all relevant and material evidence except evidence which is

unduly repetitious. Hearsay shall be admissible only to the extent that it corroborates other evidence.

(3) For purposes of such hearing, the hearing committee is hereby empowered to require the attendance of witnesses, administer oaths and hear testimony, either oral or documentary, for and against the accused. The hearing committee shall have the authority to issue subpoenas to compel the attendance of witnesses and the production of books, papers, records or other documentary evidence at a hearing pending before the board. Subpoenas to be issued shall be delivered to the sheriff of the county where they are to be executed and the sheriff shall cause them to be served. In case of the failure of any person to comply with any subpoena issued by the hearing committee, the hearing committee or its authorized representative may invoke the aid of any court of general jurisdiction of this state. The court may thereupon order such person to comply with the requirements of the subpoena. Failure to comply with the order of the court may be treated as contempt thereof.

(4) At the conclusion of the hearing, the hearing committee upon the majority vote of the members of such committee shall transmit to the Commissioner of Agriculture and Commerce a written opinion incorporating its findings of facts and conclusions of law and recommended penalty. The commissioner shall enter an order accepting or rejecting the committee's written opinion. Should the commissioner reject the committee's opinion, he shall set forth in the order his reasons for doing so. The State Entomologist shall notify the accused violator of the commissioner's final decision.

SOURCES: Laws, 1992, ch. 474, Sec. 2, eff from and after July 1, 1992.

SEC. 69-25-55. Failure to respond to complaint or request hearing; effect.

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 and any penalties assessed by the commissioner shall be due and payable as provided in [69-25-63](#).

SOURCES: Laws, 1992, ch. 474, Sec. 3, eff from and after July 1, 1992.

SEC. 69-25-57 Jurisdiction of Commissioner of Agriculture and Commerce; rules and regulations; penalty assessment guidelines.

The Commissioner of Agriculture and Commerce shall have jurisdiction over all persons and property necessary to administer and enforce the provisions of Secs. [69-25-51](#) through [69-25-65](#). The commissioner may adopt rules and regulations to implement the provisions of Secs. [69-25-51](#) through [69-25-65](#). These rules shall include penalty assessment guidelines based on a schedule which takes into consideration the severity or gravity of the violation and the type of violation.

SOURCES: Laws, 1992, ch. 474, Sec. 4, eff from and after July 1, 1992.

SEC. 69-25-59. Judicial review.

(1) Any individual aggrieved by a final decision of the Commissioner of Agriculture and Commerce shall be entitled to judicial review.

(2) An appeal from the commissioner's decision shall be filed in the circuit court of the county where the defendant resides or in the case of a nonresident defendant in the Circuit Court of the First Judicial District of Hinds County on the record made, including a verbatim transcript of the testimony at the hearing held before the designated hearing committee. The appeal shall be filed within thirty (30) days after notification of the action of the commissioner is mailed or served and the proceedings in circuit court shall be conducted as other matters coming before the court.

(3) The scope of review of the circuit court in such cases shall be limited to a review of the record made before the hearing committee to determine if the action of the commissioner is unlawful for the reason that it was:

(a) Not supported by any substantial evidence;

(b) Arbitrary or capricious; or

(c) In violation of some statutory or constitutional right of the individual.

(4) No relief shall be granted based upon the court's finding of harmless error by the commissioner in complying with the procedural requirements of Secs. [69-25-51](#) through [69-25-65](#). In the event that there is a finding of prejudicial error in the proceedings, the cause may be remanded for a rehearing consistent with the findings of the court.

(5) Any party aggrieved by action of the circuit court may appeal to the State Supreme Court in the manner provided by law.

SOURCES: Laws, 1992, ch. 474, Sec. 5, eff from and after July 1, 1992.

SEC. 69-25-61. Civil penalty for violations.

Each violation of the rules and regulations of the Bureau of Plant Industry or violations of the statutes set forth in Section [69-25-51](#) may be subject to the imposition of a civil penalty up to Five Thousand Dollars (\$5,000.00).

SOURCES: Laws, 1992, ch. 474, Sec. 6, eff from and after July 1, 1992.

SEC. 69-25-63. Payment and enforcement of penalties; fees and costs.

(1) Any penalty assessed by the Commissioner of Agriculture and Commerce shall be due and payable within forty-five (45) days of the notification of the decision.

(2) In the event that the judgment is not paid within the forty-five (45) days, or within such additional time as the Commissioner of Agriculture and Commerce may allow, the commissioner through his designated representative may file suit in the circuit court of the county where the defendant resides or in the case of a nonresident defendant in the Circuit Court of the First Judicial District of Hinds County or any other court with appropriate jurisdiction to enforce the decision of the commissioner and recover reasonable attorney's fees and all court costs.

(3) A copy of the notification sent by the commissioner or the State Entomologist to the violator shall be sufficient proof as to the judgment of the commissioner.

SOURCES: Laws, 1992, ch. 474, Sec. 7, eff from and after July 1, 1992.

SEC. 69-25-65. Exemption of certain licensed aerial applicators.

The provisions of Secs. [69-25-51](#) through [69-25-65](#) shall not apply to aerial applicators who are licensed under Sections [69-21-101](#) through [69-21-125](#).

SOURCES: Laws, 1992, ch. 474, Sec. 8, eff from and after July 1, 1992.