



Michael Watson
SECRETARY OF STATE

Mississippi Commodities Enforcement Act

Title 75 Chapter 89

Effective 1993

Mississippi Commodities Enforcement Act

§ 75-89-1. Short Title.

§ 75-89-3. Definitions.

§ 75-89-5. Commodity sale or purchase permitted only pursuant to Section 75-89-7 or 75-89-9.

§ 75-89-7. Persons authorized to conduct commodity transactions.

§ 75-89-9. Exempt transactions; qualified seller defined; requirements; waiver of requirements; authority of administrator to deny, suspend, revoke or place limitations on authority of, or exemption for, qualified seller; summary denial or suspension of exemption for qualified seller; rules, regulations and orders.

§ 75-89-11. Requirements to engage in trade or business of commodity merchant.

§ 75-89-13. Fraudulent or deceitful acts, false or misleading statements or reports, and the like prohibited.

§ 75-89-15. Vicarious or agency liability.

§ 75-89-17. Purpose and construction; no private rights or remedies created.

§ 75-89-19. Investigation and enforcement by administrator; compulsion of testimony and other evidence.

§ 75-89-21. Action by administrator to prevent, enjoin, and prosecute violations; administrative penalties.

§ 75-89-23. Judicial measures to prevent, enjoin, and prosecute violations of Mississippi or other state's Commodity Act; special remedies; administrator need not post bond.

§ 75-89-25. Penalties; period of limitations; institution of criminal proceedings.

§ 75-89-27. Secretary of State to administer chapter; insider information; public and privileged information; subpoena of evidence.

§ 75-89-29. Cooperation with like agencies in other jurisdictions.

§ 75-89-31. Administrator may make, amend and rescind rules, forms and orders; publication of same; exemption from liability therefore.

§ 75-89-33. Conduct violative of chapter or rule deemed appointment of administrator to accept service of process.

§ 75-89-35. Applicability of certain provisions when purchase, sale, or offer to buy or sell is made in state; what constitutes purchase, sale, or offer to buy or sell in state.

§ 75-89-37. Procedure for administrative proceedings; notice and hearing.

(601) 359-1334

Mississippi Secretary of State's Office
Securities Division
Post Office Box 136
Jackson, Mississippi 39205

www.sos.ms.gov

§ 75-89-39. Judicial review of final orders.

§ 75-89-41. Burden of proof as to exemptions.

§ 75-89-43. Failure to make timely delivery not a violation when caused by factors beyond control of seller, seller's agents, etc.

§ 75-89-45. Interpretative opinions; no-action determinations.

§ 75-89-1. Short Title.

This chapter shall be known and may be cited as the "Mississippi Commodities Enforcement Act."

§ 75-89-3. Definitions.

As used in this chapter, the following words and phrases shall have the following meanings unless the context clearly indicates otherwise:

- (a) "Administrator" means the Secretary of State of Mississippi.
- (b) "Board of trade" means any person or group of persons engaged in buying or selling any commodity or receiving the same for sale on consignment, whether such person or group of persons is characterized as a board of trade, exchange or other form of marketplace.
- (c) "CFTC rule" means any rule, regulation or order of the Commodity Futures Trading Commission in effect on July 1, 1993, and all subsequent amendments, additions or other revisions thereto, unless the administrator, within thirty (30) days following the effective date of any such amendment, addition or revision, disallows the application thereof to this chapter or to any provision thereof by rule, regulation or order.
- (d) "Commodity" means, except as otherwise specified by the administrator by rule, regulation or order, any agricultural, grain or livestock product or by-product, any metal or mineral, including a precious metal set forth in paragraph (m) of this section, any gem or gemstone, whether characterized as precious, semiprecious or otherwise, any fuel, whether liquid, gaseous or otherwise, any foreign currency, and all other goods, articles, products or items of any kind. "Commodity" shall not include:
 - (i) A numismatic coin whose fair market value is at least fifteen percent (15%) higher than the value of the metal it contains;
 - (ii) Real property or any timber, agricultural or livestock product grown or raised on real property and offered or sold by the owner or lessee of such real property;
 - (iii) Any work of art offered or sold by art dealers, at public auction or offered or sold through a private sale by the owner thereof; or
 - (iv) A "security" as that term is defined in Section 75-71-102(28) of the Mississippi Securities Act.
- (e) "Commodity contract" means any account, agreement or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract or otherwise. Any commodity contract offered or sold shall, in the absence of evidence to the contrary, be presumed to be offered or sold for speculation or investment purposes. "Commodity contract" shall not include, except to the extent set forth in paragraph (1)(b) of Section 75-89-9, any contract or agreement which requires,

and under which the purchaser receives, within twenty-eight (28) calendar days from the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement.

- (f) "Commodity Exchange Act" means the act of Congress known as the Commodity Exchange Act, as amended prior to July 1, 1993, codified as 7 U.S.C.S., Section 1 et seq., and all subsequent amendments, additions of other revisions thereto, unless the administrator, within thirty (30) days following the effective date of any such amendment, addition or revision, disallows the application thereof to this chapter or to any provision thereof by rule, regulation or order.
- (g) "Commodity Futures Trading Commission" or "CFTC" means the independent regulatory agency established by Congress to administer the Commodity Exchange Act.
- (h) "Commodity merchant" means any of the following as defined or described in the Commodity Exchange Act or by CFTC rule:
 - (i) Futures commission merchant;
 - (ii) Commodity pool operator;
 - (iii) Commodity trading advisor;
 - (iv) Introducing broker;
 - (v) Leverage transaction merchant;
 - (vi) An associated person of any of the foregoing;
 - (vii) Floor broker; and
 - (viii) Any other person, other than a futures association, required to register with the Commodity Futures Trading Commission.
- (i) "Commodity option" means any account, agreement or contract giving a party thereto the right but not the obligation to purchase or sell one or more commodities and/or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty or otherwise. "Commodity contract" shall not include an option traded on a national securities exchange registered with the United States Securities and Exchange Commission.
- (j) "Financial institution" means a bank, savings institution or trust company organized under, or supervised pursuant to, the laws of the United States or of any state.
- (k) "Offer" includes every offer to sell, offer to purchase or offer to enter into a commodity contract or commodity option.

- (l) "Person" means an individual, a corporation, a partnership, association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government or a political subdivision of a government. "Person" shall not include a contract market designated by the Commodity Futures Trading Commission or any clearinghouse thereof or a national securities exchange registered with the Securities and Exchange Commission or any employee, officer or director of such contract market, clearinghouse or exchange acting solely in that capacity.
- (m) "Precious metal" means the following in either coin, bullion or other form:
 - (i) Silver;
 - (ii) Gold;
 - (iii) Platinum;
 - (iv) Palladium;
 - (v) Copper; and
 - (vi) Such other items as the administrator may specify by rule, regulation or order.
- (n) "Sale" or "sell" includes every sale, contract of sale, contract to sell or disposition for value.

§ 75-89-5. Restrictions on commodity transactions

Except as otherwise provided in Section 75-87-7, or Section 75-89-9, no person shall sell or purchase, or offer to sell or purchase, any commodity under any commodity contract or under any commodity option, or offer to enter into or enter into as seller or purchaser any commodity contract or any commodity option.

§ 75-89-7. Persons authorized to conduct commodity transactions.

The prohibitions in Section 75-89-5 shall not apply to any transaction offered by and in which any of the following persons, or any employee, officer or director thereof acting solely in that capacity is the purchaser or seller:

- (a) A person registered with the Commodity Futures Trading Commission as a futures commission merchant or as a leverage transaction merchant whose activities require such registration;
- (b) A person registered with the Securities and Exchange Commission or registered under the laws of this state as a securities broker-dealer whose activities require such registration;
- (c) A person affiliated with, and whose obligations and liabilities under the transaction are guaranteed by, a person referred to in paragraph (a) or (b) of this section;

- (d) A person who is a member of a contract market designated by the Commodity Futures Trading Commission or any clearinghouse thereof;
- (e) A financial institution.

§ 75-89-9. Exempt transactions; qualified seller defined; requirements; waiver of requirements; authority of administrator to deny, suspend, revoke or place limitations on authority of, or exemption for, qualified seller; summary denial or suspension of exemption for qualified seller; rules, regulations and orders.

- (1) The prohibitions in Section 75-89-5 shall not apply to the following:
 - (a) An account, agreement or transaction within the exclusive jurisdiction of the Commodity Futures Trading Commission as granted under the Commodity Exchange Act;
 - (b) A commodity contract for the purchase of one or more precious metals which requires, and under which the purchaser receives, within twenty-eight (28) calendar days from the payment in good funds of any portion of the purchase price, physical delivery of the quantity of the precious metals purchased by such payment. Physical delivery shall be deemed to have occurred if, within such twenty-eight-day period, such quantity of precious metals purchased by such payment is delivered, whether in specifically segregated or fungible bulk form, into the possession of a depository, other than the seller, which is either:
 - (i) A financial institution;
 - (ii) A depository whose warehouse receipts are recognized for delivery purposes for any commodity on a contract market designated by the Commodity Futures Trading Commission;
 - (iii) A storage facility licensed or regulated by the United States or any agency thereof; or
 - (iv) A depository designated by the administrator; provided that such depository, or other person which itself qualifies as a depository as aforesaid, or a qualified seller, issues and the purchaser receives a certificate, document of title, confirmation or other instrument evidencing that such quantity of precious metals has been delivered to the depository and is being and will continue to be held by the depository on the purchaser's behalf, free and clear of all liens and encumbrances, other than liens of the purchaser, tax liens, liens agreed to by the purchaser, or liens of the depository for fees and expenses, which have previously been disclosed to the purchaser;
 - (c) A commodity contract or commodity option solely between persons engaged in producing, processing, using commercially or handling as merchants, each commodity subject thereto, or any by-product thereof;
 - (d) A commodity contract under which the offeree or the purchaser is a person referred to in Section 75-89-7, an insurance company, an investment company as defined in the Investment Company

Act of 1940, or an employee pension and profit-sharing or benefit plan, other than a self-employed individual retirement plan or individual retirement account; or

- (e) Any other transaction which the administrator by rule or order exempts from the prohibitions in Section 75-89-5 upon finding that such exemption is consistent with public interest and with the purpose fairly intended by the policy and provisions of this chapter.

(2) For the purposes of paragraph (1)(b) of this section, a qualified seller is a person who:

- (a) Is a seller of precious metals and has a tangible net worth of at least Five Million Dollars (\$5,000,000.00), or has an affiliate who has unconditionally guaranteed the obligations and liabilities of the seller and the affiliate has a tangible net worth of at least Five Million Dollars (\$5,000,000.00); and
- (b) Has stored precious metals with one or more depositories on behalf of customers for at least the previous three (3) years; and
- (c) Prior to any offer, and annually thereafter, files with the administrator a sworn application to act as a qualified seller under paragraph (1)(b) of this section, containing:
 - (i) The seller's name and address, names of its directors, officers, controlling shareholders, partners, principals and other controlling persons;
 - (ii) The address of its principal place of business, state and date of incorporation or organization, and the name and address of seller's registered agent in this state;
 - (iii) A statement that the seller, or a person affiliated with the seller who has guaranteed the obligations and liabilities of the seller, has a tangible net worth of at least Five Million Dollars (\$5,000,000.00);
 - (iv) Depository information including the name and address of the depository or depositories that the seller intends to use, and the name and address of each and every depository where the seller has stored precious metals on behalf of customers for the previous three (3) years together with independent verification from each and every named depository that the seller has in fact stored precious metals on behalf of the seller's customers for the previous three (3) years and a statement of total deposits made during this period;
 - (v) Financial statements for the seller, or the person affiliated with the seller who has guaranteed the obligations and liabilities of the seller, for the past three (3) years, audited by an independent certified public accountant together with the accountant's report;
 - (vi) A statement describing the details of all civil, criminal or administrative proceedings currently pending or adversely resolved against the seller or its directors, officers, controlling shareholders, partners, principals or other controlling persons during the past ten (10) years, including civil litigation and administrative proceedings involving securities or commodities violations or fraud; criminal proceedings; denials, suspensions or

revocations of securities or commodities licenses or registrations; and suspensions or expulsions from membership in, or associations with, self-regulatory organizations registered under the Securities Exchange Act of 1934, or the Commodities Exchange Act; or a statement that there were no such proceedings; and

- (d) Notifies the administrator within fifteen (15) days of any material changes in the information provided in the application; and
 - (e) Annually furnishes to each purchaser for whom the seller is then storing precious metals, and to the administrator, a report by an independent certified public accountant of the accountant's examination of the seller's precious metals storage program.
- (3) The administrator may, upon request by the person seeking designation as a qualified seller, waive any of the exemption requirements in subsection (2) of this section, conditionally or unconditionally.
- (4) The administrator may, by order, deny, suspend, revoke or place limitations on the authority to engage in business as a qualified seller under paragraph (1)(b) of this section if the administrator finds that the order is in the public interest and that the person, the person's officers, directors, partners, agents, servants or employees, any person occupying a similar status or performing similar functions, any person who directly or indirectly controls or is controlled by the seller, or any of them, the seller's affiliates or subsidiaries:
- (a) Has made a filing under subsection (2) of this section with the administrator or the designee of the administrator which was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;
 - (b) Has, within the last ten (10) years, pled guilty or nolo contendere to, or been convicted of any crime indicating a lack of fitness to engage in the investment commodity business;
 - (c) Has been permanently or temporarily enjoined by any court of competent jurisdiction from engaging in, or continuing, any conduct or practice which injunction indicates a lack of fitness to engage in the investment commodities business;
 - (d) Is the subject of an order of the administrator denying, suspending or revoking the person's license as a securities broker-dealer, securities broker-dealer agent, investment advisor or investment advisor representative;
 - (e) Is the subject of any of the following orders which are currently effective and which were issued within the last five (5) years:
 - (i) An order by the securities agency or administrator of another state, Canadian province or territory, the Securities and Exchange Commission or the Commodity Futures Trading Commission, entered after notice and opportunity for hearing, denying, suspending or revoking the person's registration as a futures commission merchant, commodity trading advisor, commodity pool operator, securities broker-dealer, securities broker-dealer agent,

investment advisor, investment advisor representative or the substantial equivalent of those terms;

- (ii) Suspension or expulsion from membership in, or association with, a self-regulatory organization registered under the Securities Exchange Act of 1934 or the Commodity Exchange Act;
 - (iii) A United States Postal Service fraud order;
 - (iv) A cease and desist order entered after notice and opportunity of hearing by the administrator or the securities or commodities agency or administrator of any other state, Canadian province or territory, the Securities and Exchange Commission or the Commodity Futures Trading Commission;
 - (v) An order entered by the Commodity Futures Trading Commission denying, suspending or revoking registration under the Commodity Exchange Act;
- (f) Has engaged in an unethical or dishonest act or practice in the investment commodities or securities business; or
- (g) Has failed reasonably to supervise sales representatives or employees.
- (5) If the public interest or the protection of investors so requires, the administrator may, by order, summarily deny or suspend the exemption for a qualified seller. Upon the entry of the order, the administrator shall promptly notify the party against whom the order has been entered that the order has been entered and the reasons therefor. The administrator shall also inform the party against whom the order has been entered that a written request for a hearing on the matters set forth in the order must be filed with the administrator within thirty (30) days from receipt of a certified copy of the order. The provisions of Section 75-89-37 shall apply with respect to all subsequent proceedings.
- (6) If the administrator finds that any applicant or qualified seller is no longer in existence or has ceased to do business or is subject to an adjudication of mental incompetence or to the control of a committee, conservator or guardian, or whose designated place of business cannot be located after reasonable search, the administrator may, by order, deny or revoke the exemption for a qualified seller.
- (7) The administrator may issue rules, regulations or orders prescribing the terms and conditions of all transactions and contracts covered by the provisions of this chapter which are not within the exclusive jurisdiction of the Commodity Futures Trading Commission as granted by the Commodity Exchange Act, exempting and conditionally or unconditionally or otherwise implementing the provisions of this chapter for the protection of purchasers and sellers of commodities.

§ 75-89-11. Requirements to engage in trade or business of commodity merchant.

- (1) No person shall engage in the trade or business of, or otherwise act as, a commodity merchant unless such person:

(601) 359-1334

Mississippi Secretary of State's Office
Securities Division
Post Office Box 136
Jackson, Mississippi 39205

www.sos.ms.gov

- (a) Is registered or temporarily licensed with the Commodity Futures Trading Commission for each activity constituting such person as a commodity merchant and such registration or temporary license shall not have expired, nor been suspended nor revoked; or
 - (b) Is exempt from such registration by virtue of the Commodity Exchange Act or of a CFTC rule.
- (2) No board of trade shall trade, or provide a place for the trading of, any commodity contract or commodity option required to be traded on or subject to the rules of a contract market designated by the Commodity Futures Trading Commission unless such board of trade has been so designated for such commodity contract or commodity option and such designation shall not have been vacated, nor suspended nor revoked.

§ 75-89-13. Fraudulent or deceitful acts, false or misleading statements or reports, and the like prohibited.

No person, in connection with the purchase or sale of, the offer to sell, the offer to purchase, the offer to enter into, or the entry into any commodity contract or commodity option, shall directly or indirectly:

- (a) Cheat or defraud, or attempt to cheat or defraud, any other person or employ any device, scheme or artifice to defraud any other person;
- (b) Make any false report, enter any false record or make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading;
- (c) Engage in any transaction, act, practice or course of business, including without limitation any form of advertising or solicitation, which operates or would operate as a fraud or deceit upon any person; or
- (d) Misappropriate or convert the funds, security or property of any other person.

§ 75-89-15. Vicarious or agency liability.

- (1) The act, omission or failure of any official, agent, or other person acting for an individual, association, partnership, corporation or trust within the scope of his employment or office shall be deemed the act, omission or failure of such individual, association, partnership, corporation or trust, as well as of such official, agent or other person.
- (2) Every person who directly or indirectly controls another person liable under any provision of this chapter, every partner, officer, or director of such other person, every person occupying a similar status or performing similar functions, every employee of such other person who materially aids in the violation is also liable jointly and severally with and to the same extent as such other person, unless the person who is also liable by virtue of this provision sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist.

§ 75-89-17. Purpose and construction; no private rights or remedies created.

This chapter may be construed and implemented to effectuate its general purpose to protect investors, to prevent and prosecute illegal and fraudulent schemes involving commodity contracts and to maximize coordination with federal and other states' laws and the administration and enforcement thereof. This chapter is not intended to create any rights or remedies upon which actions may be brought by private persons against persons who violate the provisions of this chapter.

§ 75-89-19. Investigation and enforcement by administrator; compulsion of testimony and other evidence.

- (1) The administrator may conduct investigations, within or without this state, as he finds necessary or appropriate to:
 - (a) Determine whether any person has violated, or is about to violate, any provision of this chapter or any rule or order of the administrator; or
 - (b) Aid in enforcement of this chapter.
- (2) The administrator may publish information concerning any violation of this chapter or any rule or order of the administrator.
- (3) For purposes of any investigation or proceeding under this chapter, the administrator or any officer or employee designated by rule or order, may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the administrator finds to be relevant or material to the inquiry.
- (4)
 - (a) If a person does not give testimony or produce the documents required by the administrator or a designated employee pursuant to an administrative subpoena, the administrator or designated employee may apply for a court order compelling compliance with the subpoena or the giving of the required testimony.
 - (b) The request for order of compliance may be addressed to either:
 - (i) The Chancery Court of the First Judicial District of Hinds County, Mississippi, if the person is within this state; or
 - (ii) The appropriate court of the state having jurisdiction over the person refusing to testify or produce, if the person is outside this state.

§ 75-89-21. Action by administrator to prevent, enjoin, and prosecute violations; administrative penalties.

- (1) If the administrator believes, whether or not based upon an investigation conducted under Section 75-89-19, that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order hereunder, the administrator may seek any or all of the following remedies:
 - (a) Issue a cease and desist order with or without a prior hearing against the person(s) engaged in the prohibited activities, directing them to cease and desist from further illegal activity;
 - (b) Issue an order imposing an administrative penalty up to a maximum of Twenty-five Thousand Dollars (\$25,000.00) for each offense and each violation shall be considered as a separate offense in a single proceeding or a series of related proceedings, to be paid to the administrator and requiring reimbursement to the administrator for all costs and expenses incurred in the investigation of the violation(s) and in the institution of administrative proceedings, if any, as a result thereof; or
 - (c) Initiate any of the actions specified in subsection (2) of this section.
- (2) The administrator may institute any or all of the following actions in the Chancery Court of the First Judicial District of Hinds County, Mississippi, or in the appropriate courts of another state, in addition to any legal or equitable remedies otherwise available:
 - (a) An action for a declaratory judgment;
 - (b) An action for a prohibitory or mandatory injunction to enjoin the violation and to ensure compliance with this chapter or any rule or order of the administrator;
 - (c) An action for disgorgement; or
 - (d) An action for appointment of a receiver or conservator for the defendant or the defendant's assets.

§ 75-89-23. Judicial measures to prevent, enjoin, and prosecute violations of Mississippi or other state's Commodity Act; special remedies; administrator need not post bond.

- (1)
 - (a) Upon a proper showing by the administrator that a person has violated, or is about to violate, any provision of this chapter or any rule or order of the administrator, the court may grant appropriate legal or equitable remedies.
 - (b) Upon a showing of violation of this chapter or a rule or order of the administrator, the court, in addition to traditional legal and equitable remedies, including temporary restraining orders, permanent or temporary prohibitory or mandatory injunctions, and writs of prohibition or mandamus, may grant the following special remedies:
 - (i) Disgorgement;

- (ii) Declaratory judgment;
 - (iii) Restitution to investors wishing restitution; and
 - (iv) Appointment of a receiver or conservator for the defendant or the defendant's assets.
- (c) Appropriate remedies when the defendant is shown only about to violate this chapter or a rule or order of the administrator shall be limited to:
- (i) A temporary restraining order;
 - (ii) A temporary or permanent injunction;
 - (iii) A writ of prohibition or mandamus; or
 - (iv) An order appointing a receiver or conservator for the defendant or the defendant's assets.
- (d) Upon a proper showing by the administrator or commodity agency of another state that a person, other than a government or governmental agency or instrumentality, has violated, or is about to violate, any provision of the commodity code of that state or any rule or order of the administrator or commodity agency of that state, the Chancery Court of the First Judicial District of Hinds County, Mississippi, may grant appropriate legal and equitable remedies.
- (e) Upon showing of a violation of the commodity act of another state or a rule or order of the administrator or commodity agency of another state, the court, in addition to traditional legal or equitable remedies including temporary restraining orders, permanent or temporary prohibitory or mandatory injunctions and writs of prohibition or mandamus, may grant the following special remedies:
- (i) Disgorgement; and
 - (ii) Appointment of a receiver, conservator or ancillary receiver or conservator for the defendant or the defendant's assets located in this state.
- (f) Appropriate remedies when the defendant is shown only about to violate the commodity act of another state or a rule or order of the administrator or commodity agency of another state shall be limited to:
- (i) A temporary restraining order;
 - (ii) A temporary or permanent injunction;
 - (iii) A writ of prohibition or mandamus; and

(iv) An order appointing a receiver, conservator or ancillary receiver or conservator for the defendant or the defendant's assets located in this state.

(2) The court shall not require the administrator to post a bond in any official action under this chapter.

§ 75-89-25. Penalties; period of limitations; institution of criminal proceedings.

(1) Any person who willfully violates:

(a) Any provision of this chapter; or

(b) Any rule or order of the administrator under this chapter shall, upon conviction, be fined not more than Twenty-five Thousand Dollars (\$25,000.00) or imprisoned not more than five (5) years, or both, for each violation.

(2) Any person convicted of violating a rule or order under this chapter may be fined, but may not be imprisoned, if the person proves he had no knowledge of the rule or order.

(3) No indictment or information may be returned under this chapter more than five (5) years after the alleged violation.

(4) The administrator may refer such evidence as is available concerning violations of this chapter or any rule or order of the administrator to the Attorney General or to the proper district attorney, who may, with or without such a referral from the administrator, institute the appropriate criminal proceedings under this chapter.

§ 75-89-27. Secretary of State to administer chapter; insider information; public and privileged information; subpoena of evidence.

(1) This chapter shall be administered by the Secretary of State of Mississippi.

(2) Neither the administrator nor any employees of the administrator shall use any information which is filed with or obtained by the administrator which is not public information for personal gain or benefit, nor shall the administrator or any employees of the administrator conduct any commodity dealings whatsoever based upon any such information, even though public, if there has not been a sufficient period of time for the commodity markets to assimilate such information.

(3) (a) Except as provided in paragraph (b) of this subsection (3), all information collected, assembled or maintained by the administrator is public information and is available for the examination of the public as provided by the Mississippi Public Records Act of 1983.

(b) The following are exceptions to paragraph (a) of this subsection (3) which are deemed to be confidential:

- (i) Information obtained in private investigations pursuant to Section 75-89-19;
 - (ii) Information made confidential by the provisions of the Mississippi Public Records Act of 1983, and any statutory exceptions thereto;
 - (iii) Information obtained from federal agencies which may not be disclosed under federal law.
- (c) The administrator in his discretion may disclose any information made confidential under paragraph (3)(b) of this section to persons identified in subsection (1) of Section 75-89-29.
- (d) No provision of this chapter either creates or derogates any privilege which exists at common law, by statute or otherwise when any documentary or other evidence is sought under subpoena directed to the administrator or any employee of the administrator.

§ 75-89-29. Cooperation with like agencies in other jurisdictions.

- (1) To encourage uniform application and interpretation of this chapter and commodities regulation and enforcement in general, the administrator and the employees of the administrator may cooperate, including bearing the expense of the cooperation, with the commodities agencies or administrator of another jurisdiction, Canadian province or territory or such other agencies, administering this chapter, the Commodity Futures Trading Commission, the Securities and Exchange Commission, any self-regulatory organization established under the Commodity Exchange Act or the Securities Exchange Act of 1934, any national or international organization of commodities officials or agencies and any governmental law enforcement agency.
- (2) The cooperation authorized by subsection (1) shall include, but need not be limited to, the following:
- (a) Making joint examinations or investigations;
 - (b) Holding joint administrative hearings;
 - (c) Filing and prosecuting joint litigation;
 - (d) Sharing and exchanging personnel;
 - (e) Sharing and exchanging information and documents;
 - (f) Formulating and adopting mutual regulations, statements of policy, guidelines, proposed statutory changes and releases; and
 - (g) Issuing and enforcing subpoenas at the request of the commodity agency in another jurisdiction, the securities agency of another jurisdiction, the Commodity Futures Trading Commission or the Securities and Exchange Commission, if the information sought would also be subject to lawful subpoena for conduct occurring in this state.

§ 75-89-31. Administrator may make, amend and rescind rules, forms and orders; publication of same; exemption from liability therefor.

- (1) In addition to specific authority granted elsewhere in this chapter, the administrator may make, amend and rescind rules, forms and orders as are necessary to carry out the provisions of this chapter. Such rules or forms shall include, but need not be limited to rules defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with the provisions of this chapter. For the purpose of rules or forms, the administrator may classify commodities and commodity contracts, persons and matters within the administrator's jurisdiction.
- (2) Unless specifically provided in this chapter, no rule, form or order may be adopted, amended or rescinded unless the administrator finds that the action is:
 - (a) Necessary or appropriate in the public interest or for the protection of investors; and
 - (b) Consistent with the purposes fairly intended by the policy and provisions of this chapter.
- (3) All rules and forms of the administrator shall be published.
- (4) No provision of this chapter imposing any liability applies to any act done or omitted in good faith in conformity with a rule, order or form adopted by the administrator, notwithstanding that the rule, order or form may later be amended, or rescinded or be determined by judicial or other authority to be invalid for any reason.

§ 75-89-33. Conduct violative of chapter or rule deemed appointment of administrator to accept service of process.

When a person, including a nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order of the administrator, the engaging in the conduct shall constitute the appointment of the administrator as the person's attorney to receive service of any lawful process in a noncriminal proceeding against the person, a successor or personal representative, which grows out of that conduct and which is brought under this chapter or any rule or order of the administrator with the same force and validity as if served personally.

§ 75-89-35. Applicability of certain provisions when purchase, sale, or offer to buy or sell is made in state; what constitutes purchase, sale, or offer to buy or sell in state.

- (1) Sections 75-89-5, 75-89-11, and 75-89-13 apply to persons who sell or offer to sell when:
 - (a) An offer to sell is made in this state; or
 - (b) An offer to buy is made and accepted in this state.

- (2) Sections 75-89-5, 75-89-11, and 75-89-13 apply to persons who buy or offer to buy when:
 - (a) An offer to buy is made in this state; or
 - (b) An offer to sell is made and accepted in this state.
- (3) For the purpose of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer:
 - (a) Originates from this state; or
 - (b) Is directed by the offeror to this state and received at the place to which it is directed, or at any post office in this state in the case of a mailed offer.
- (4) For the purpose of this section, an offer to buy or to sell is accepted in this state when acceptance:
 - (a) Is communicated to the offeror in this state; and
 - (b) Has not previously been communicated to the offeror, orally or in writing, outside this state; and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state, reasonably believing the offeror to be in this state and it is received at the place to which it is directed, or at any post office in this state in the case of a mailed acceptance.
- (5) An offer to sell or to buy is not made in this state when:
 - (a) The publisher circulates or there is circulated on his behalf in this state any bona fide newspaper or other publication of general, regular and paid circulation which is not published in this state, or which is published in this state but has had more than two-thirds (2/3) of its circulation outside this state during the past twelve (12) months; or
 - (b) A radio or television program originating outside this state is received in this state.

§ 75-89-37. Procedure for administrative proceedings; notice and hearing.

- (1) The administrator shall commence an administrative proceeding under this chapter by entering either a notice of intent to take administrative action or a summary order. The notice of intent or summary order may be entered without notice, without opportunity for hearing and need not be supported by findings of fact or conclusions of law, but must be in writing.
- (2) Upon entry of a notice of intent or summary order, the administrator shall promptly notify the party against whom the notice of intent or summary order is entered that the notice of intent or summary order has been entered and the reasons therefor. The administrator shall also inform the party against whom the notice or summary order is entered that a written request for a hearing on the matters set forth in the

notice of intent or summary order must be filed with the administrator within thirty (30) calendar days from receipt of a certified copy of the notice of intent or summary order.

- (3) If the proceeding is pursuant to a summary order, the administrator, whether or not a written request for a hearing is received from any interested party, may set the matter down for hearing on the administrator's own motion.
- (4) If no hearing is requested within the requisite period of time and none is ordered by the administrator, the notice of intent or summary order will become final upon entry of an appropriate order.
- (5) If a hearing is requested or ordered, the administrator shall give notice to the party against whom the notice or summary order has been entered of the date, time and place of the hearing. The administrator shall promulgate rules governing the procedure for conducting the hearing and for entering the appropriate final order thereafter. However, no final order or other order after the hearing may be entered without:
 - (a) Appropriate notice to the party or parties against whom the notice of intent or summary order has been entered;
 - (b) Opportunity for hearing by the party or parties against whom the notice of intent or summary order has been entered; and
 - (c) Entry of written findings of fact and conclusions of law.

§ 75-89-39. Judicial review of final orders.

- (1) Any person aggrieved by a final order of the administrator may obtain a review of the order in the Chancery Court of the First Judicial District of Hinds County, Mississippi, by filing in court within sixty (60) days after the entry of the order a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition for review shall be served upon the administrator.
- (2) Upon the filing of a petition for review, except where the taking of additional evidence is ordered by court pursuant to subsection (5) or (6) of this section, the court shall have exclusive jurisdiction of the matter, and the administrator may not modify or set aside the order in whole or in part.
- (3) The filing of a petition for review under subsection (1) of this section does not, unless specifically ordered by the court, operate as a stay of the administrator's order, and the administrator may enforce or ask the court to enforce the order pending the outcome of the review proceedings.
- (4) Upon receipt of the petition for review, the administrator shall certify and file in the court a copy of the order and the transcript or record of the evidence upon which it was based. If the order became final under subsection (4) of Section 75-89-37, the administrator shall file in court an affidavit certifying that no hearing has been held and that the order became final pursuant to subsection (4) of Section 75-89-37.

- (5) If either the aggrieved party or the administrator applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court, that there were reasonable grounds for failure to adduce the evidence in the hearing before the administrator or other good cause, the court may order the additional evidence to be taken by the administrator under such conditions as the court considers proper.
- (6) If new evidence is ordered taken by the court, the administrator may modify the findings and order by reason of the additional evidence and shall file in the court the additional evidence together with any modified or new findings or order.
- (7) The court shall review the petition based upon the original record before the administrator plus any additional evidence ordered to be taken pursuant to subsections (5) and (6) of this section. The findings of the administrator as to the facts, if supported by competent, material and substantive evidence, are conclusive. Based upon this review, the court may affirm, modify, enforce or set aside the order in whole or in part.

§ 75-89-41. Burden of proof as to exemptions.

It shall not be necessary to negate any of the exemptions of this chapter in any complaint, information or indictment, or in any writ or proceeding brought under this chapter. The burden of proof of any such exemption shall be upon the party claiming the same.

§ 75-89-43. Failure to make timely delivery not a violation when caused by factors beyond control of seller, seller's agents, etc.

It shall be a defense in any complaint, information, indictment, any writ or proceeding brought under this chapter alleging a violation of Section 75-89-5 based solely on the failure in an individual case to make physical delivery within the applicable time period under paragraph (e) of Section 75-89-3 or paragraph (1)(b) of Section 75-89-9 that:

- (a) Failure to make physical delivery was due solely to factors beyond the control of the seller, the seller's officers, directors, partners, agents, servants or employees, every person occupying a similar status or performing similar functions, every person who directly or indirectly controls or is controlled by the seller, or any of them, the seller's affiliates, subsidiaries or successors; and
- (b) Physical delivery was completed within a reasonable time under the applicable circumstances.

§ 75-89-45. Interpretative opinions; no-action determinations.

The administrator may honor requests from interested persons for interpretative opinions or may issue determinations that no enforcement proceedings will be instituted against certain specified persons for engaging in certain specified activities when the determination is consistent with the purposes fairly intended by the policy and provisions of this chapter. The administrator may charge a fee for interpretative opinions and for no-action determinations.