CERTIFICATION OF ADMINISTRATIVE RULES
OF THE DEPARTMENT OF REVENUE
FILED WITH THE SECRETARY OF STATE
BRIAN P. KEMP

(Pursuant to O.C.G.A. §§ 50-13-3, 50-13-4 and 50-13-6.)

I do hereby certify that the attached Rules are correct copies as promulgated and adopted on the 1st **of** October, **2010.**

GEORGIA DEPARTMENT OF REVENUE

Filing Date: October 1, **2010.**

The Georgia Department of Revenue has adopted:

- 560-2-16-.01, entitled "Applicability of Rules; Persons Authorized to Hold Hearings; Authority of Hearing Officer."
- 560-2-16-.02, entitled "Nature of the Proceeding; Hearing Procedure; Burden of Proof."
- 560-2-16-.03, entitled "Evidence; Official Notice."
- 560-2-16-.04, entitled "Executive Orders."
- 560-2-16-.05, entitled "Intra-Agency Appeal Procedure; Post Hearing Motions."
- 560-2-16-.06, entitled "Continuances and Postponements."
- 560-2-16-.07, entitled "Subpoena Forms; Service."
- 560-2-16-.08, entitled "Transcripts of Hearing."

The aforementioned Rules are being adopted under the authority of O.C.G.A. §§ 3-2-2 and 3-2-3.

Sworn to and subscribed before me this 1st **day of** October, **2010.**

Melanie A Butler

(Signature of Notary Public)
(Notary Public Seal)

Notary Public, Rockdale County, Georgia
My Commission Expires Nov. 19, 2012

Bart L. Graham
Commissioner
Georgia Department of Revenue

RULES
OF
DEPARTMENT OF REVENUE
ALCOHOL AND TOBACCO DIVISION

CHAPTER 560-2-16
ADMINISTRATIVE HEARINGS

560-2-16-.01 Applicability of Rules; Persons Authorized to Hold Hearings; Authority of Hearing Officer - Administrative Hearings.

(1) The rules in this Chapter shall apply to and govern administrative hearings held by the Department regarding Alcoholic Beverages.

(2) Administrative hearings will be held by a Hearing Officer appointed by the Commissioner to hear such cases.

(3) When any person other than the Commissioner acts as Hearing Officer in such matters, the Hearing Officer's actions, decisions and orders shall be deemed to be on behalf of the Commissioner and effective as though taken by the Commissioner, and are:

(a) Subject to the appeals procedures as provided in this section;

(b) Empowered to exercise the same degree of authority and perform the same actions as hearing officers under O.C.G.A. § 50-13-13.

Authority: O.C.G.A. §§ 3-2-2, 3-2-3.

RULES
OF
DEPARTMENT OF REVENUE
ALCOHOL AND TOBACCO DIVISION

CHAPTER 560-2-16
ADMINISTRATIVE HEARINGS

560-2-16-.02 Nature of the Proceeding; Hearing Procedure; Burden of Proof - Administrative Hearings.

The hearings held under these Regulations shall only be as formal as is necessary to preserve order and be compatible with the principles of justice.

(1) Parties shall have the right to be represented by legal counsel and to obtain the appearance of witnesses and documentary evidence.

(2) The parties shall also have the right to respond and present evidence on all issues involved and to cross examine all witnesses.

(3) The standard of proof on all issues in the hearing shall be a preponderance of the evidence.

(4) In cases commenced by the issuance of citations by the Department, the Department shall have the burden of proof and shall present its case first.

(5) In cases involving the preliminary denial of license applications or the seizure of alcoholic beverages, the applicant or licensee shall have the burden of proof and shall present its case first.

(6) In all other cases the commencing party shall have the burden of proof and shall present its case first.

Authority: O.C.G.A. §§ 3-2-2, 3-2-3.

RULES
OF
DEPARTMENT OF REVENUE
ALCOHOL AND TOBACCO DIVISION

CHAPTER 560-2-16
ADMINISTRATIVE HEARINGS

560-2-16-.03 Evidence; Official Notice – Administrative Hearings.

(1) The rules of evidence in hearings covered by this Chapter shall be substantially as follows:

(a) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded;

(b) The rules of evidence as applied in the trial of civil non-jury cases in the superior courts shall be followed as far as practicable;

(c) When necessary to ascertain facts not reasonably susceptible of proof under such rules, evidence not admissible under superior court rules may be admitted;

(d) Except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent persons;

(e) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original or have it established as documentary evidence according to the rules of evidence applicable to the superior courts of Georgia;

(f) A party may conduct such cross-examination as required for a full and true disclosure of the facts;

(g) Official notice may be taken of judicially recognizable facts and generally recognized technical facts or records within the agency's specialized knowledge. The parties shall be notified of any material so noticed and shall be afforded the opportunity to contest such material.

Authority O.C.G.A. §§ 3-2-2, 3-2-3.

RULES
OF
DEPARTMENT OF REVENUE
ALCOHOL AND TOBACCO DIVISION

CHAPTER 560-2-16
ADMINISTRATIVE HEARINGS

560-2-16-.04 Executive Orders - Administrative Hearings.

(1) As soon as possible after the close of a hearing, the Hearing Officer shall issue an Executive Order ("Order") in the case and forward that Order to the Alcohol and Tobacco Division for service and execution.

(2) The Order shall contain the determination of the Hearing Officer and any penalties to be imposed as a result of the proceeding.

(3) Unless the execution of the Order is stayed by the Commissioner or Hearing Officer, the execution of the Order is to be effective on the date specified in the Order or upon service of the Order if no other effective date is so specified.

Authority O.C.G.A. §§ 3-2-2, 3-2-3.

RULES
OF
DEPARTMENT OF REVENUE
ALCOHOL AND TOBACCO DIVISION

CHAPTER 560-2-16
ADMINISTRATIVE HEARINGS

560-2-16-.05 Intra-Agency Appeal Procedure; Post Hearing Motions - Administrative Hearings.

(1) The following two-step appeal procedure shall be the exclusive administrative remedy for appealing decisions entered pursuant to these regulations.

(a) Step One - **Request for Reconsideration**:

1. A Licensee or applicant who is aggrieved by the Executive Order entered by the Hearing Officer may appeal by filing a Request for Reconsideration with the Hearing Officer who heard the case no later than ten (10) days after service.

2. The Hearing Officer shall review the request and either deny the request or modify the initial Executive Order by an Order on Reconsideration.

(b) Step Two - **Motion for Review:**

1. Provided a timely Request for Reconsideration was filed with the initial Hearing Officer, a licensee or applicant shall have ten (10) days from the date of receipt of the Hearing Officer's Order on Reconsideration (or denial of request), to file with the Commissioner, a written Motion for Review.

2. The motion shall set forth a concise statement of the basis upon which the appeal is made together with supporting arguments setting forth an enumeration of erroneous conclusions of law or determinations and any claim that the Executive Order contains an exercise of discretion or policy which is of such importance that the Commissioner should, in his discretion, review.

3. No evidence outside the record shall be considered.

4. After due consideration and as soon as practicable, the Commissioner or his designee shall either grant or deny the Motion for Review.

5. If the Motion is denied, the Hearing Officer's Executive Order shall automatically become the Final Decision of the Department.

6. If the Motion is granted, the Commissioner will either remand the case to the Hearing Officer for additional proceedings or issue a Final Order either modifying or upholding the Executive Order.

7. Except in the case of an Order remanding the case, either the Commissioner's Final Order, or the Commissioner's denial of a Motion for Review entered pursuant to this procedure shall constitute final Department action and shall not be further appealable within the Department.

(2) **Application to Stay Execution of Order:** The filing of a Request for Reconsideration or Motion for Review does not automatically, of itself, stay the execution and enforcement of any Order of the Hearing Officer or Commissioner.

(a) A request to stay the execution and enforcement of any Order may be made with the Request for Reconsideration or Motion for Review and the Hearing Officer or Commissioner may grant such request to stay upon appropriate terms for good cause shown.

(3) **Waiver of Administrative Appeal:** The failure of any party to follow the intra-agency appeal procedure as outlined in this Regulation shall constitute a waiver of Department appeal rights and the Hearing Officer's Executive Order shall automatically become the Final Order of the Commissioner ten (10) days after service of the initial Order.

Authority O.C.G.A. §§ 3-2-2, 3-2-3.

RULES
OF
DEPARTMENT OF REVENUE
ALCOHOL AND TOBACCO DIVISION

CHAPTER 560-2-16
ADMINISTRATIVE HEARINGS

560-2-16-.06 Continuances and Postponements – Administrative Hearings.

(1) Matters set for hearing may be continued or postponed within the sound discretion of the Hearing Officer upon timely motion by either party.

(2) The Hearing Officer may on his own motion continue or postpone the hearing.

Authority O.C.G.A. §§ 3-2-2, 3-2-3.

RULES
OF
DEPARTMENT OF REVENUE
ALCOHOL AND TOBACCO DIVISION

CHAPTER 560-2-16
ADMINISTRATIVE HEARINGS

560-2-16-.07 Subpoena Forms; Service - Administrative Hearings.

(1) Either party may obtain subpoena forms from the Hearing Officer by making a timely request.

(2) Service, proof of service and enforcement of subpoenas shall be as provided by Georgia law and shall be the responsibility of the party requesting the subpoena.

Authority O.C.G.A. §§ 3-2-2, 3-2-3.

RULES
OF
DEPARTMENT OF REVENUE
ALCOHOL AND TOBACCO DIVISION

CHAPTER 560-2-16
ADMINISTRATIVE HEARINGS

560-2-16-.08 Transcripts of Hearing - Administrative Hearings.

(1) Any party may request that the hearing be conducted before a court reporter.

(2) The request shall be in writing and include an agreement by the requesting party that he or she shall pay the costs incurred by the request or that he or she shall procure at his or her own cost and on his or her own initiative, the court reporting services for the hearing.

(3) Regardless of who makes the arrangements or requests the transcript be made, the original transcript of the proceedings shall be submitted to the Hearing Officer prior to the close of the hearing record if the transcript is to be made part of the record.

Authority: O.C.G.A. §§ 3-2-2, 3-2-3.