

**RULES
OF
DEPARTMENT OF REVENUE**

**CHAPTER 560-8
ALCOHOL & TOBACCO DIVISION (TOBACCO)**

**SUBJECT 560-8-6
ADMINISTRATIVE HEARINGS**

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Rule 560-8-6-.03 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. Prior to an Executive Order becoming final, the Hearing Officer may reconsider his or her decision to correct errors or omissions of fact or law.
2. 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.
3. 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.
3. On review, the Commissioner may consider the whole record or such portions of it as may be cited by the parties. No evidence outside the record shall be considered.

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4. After due consideration and as soon as practicable, the Commissioner or his/her 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. With the exception of an Order remanding the case to the Hearing Officer, either the Commissioner's Order denying a Motion for Review or the Commissioner's Final Order entered pursuant to this procedure shall constitute final Department action, and the matter 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 to follow the intra-agency appeal procedure as outlined in this Regulation shall constitute a waiver of Department appeal rights. Absent the initiation of the intra-agency appeal procedure, the Hearing Officer's Executive Order shall automatically become the Final Decision of the Department and the Commissioner ten (10) days after service.
- (4) Any person aggrieved because of any action or decision of the commissioner, after an administrative hearing has been conducted, may appeal the decision to the superior court of the county in which the appellant resides.

Authority: O.C.G.A. Secs. 48-2-12, 48-11-4, 48-11-6, 48-11-18

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Rule 560-8-6-.06 Evidence; Official Notice – Administrative Hearings

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 superior courts shall be followed as far as is practicable.
- (c) When necessary to ascertain facts not reasonably ascertainable of proof under such rules, evidence not admissible under superior court rules may be admitted, except where precluded by statute, if it is a type commonly relied upon by reasonably prudent persons.
- (d) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, the 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 superior courts of Georgia.
- (e) A party may conduct such cross-examination as shall be required for a full and true disclosure of the facts.
- (f) Official notice may be taken of judicially recognizable facts and generally recognized technical facts or records within the Department'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. Secs. 48-2-12, 48-11-6, 48-11-18