

OFFICE OF STATE ADMINISTRATIVE HEARINGS
NOTICE OF PROPOSED AMENDMENTS TO ADMINISTRATIVE RULES OF
PROCEDURE

CHAPTER 616-1-2: Administrative Rules of Procedure

TO ALL INTERESTED PERSONS AND PARTIES:

Notice is hereby given that, pursuant to the authority set forth below, the Chief Judge of the Office of State Administrative Hearings (OSAH) is considering proposed amendments to Chapters 616-1-2 of its rules. In the formulation of the proposed amendments, OSAH has considered the impact on the processes and procedures of administrative law in the State of Georgia by the passage of House Bill 790 during the 2018 Legislative Session.

Attached with this notice are copies of the rules with underlined language indicating the proposed changes, as well as synopses of the proposed amendments to the rules.

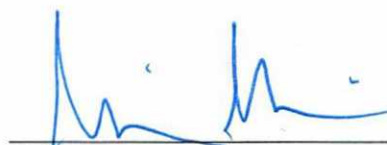
This notice and the attachments, as described above, are being mailed to all persons who have requested in writing that they be placed on a mailing list. The documents also may be reviewed during normal business hours (Monday-Friday, 8:00 a.m. to 4:30 p.m.), excluding official state holidays, at OSAH's front desk, located at 225 Peachtree Street, N.E., Suite 400, Atlanta, Georgia 30303. Additionally, these documents are available to download on OSAH's website, www.osah.ga.gov, or interested parties can request a copy by calling (404) 651-9636.

OSAH will be accepting written comments regarding the proposed changes from December 5, 2018, through January 4, 2019. To ensure their consideration, written comments must be received by OSAH on or before 4:30 p.m. January 4, 2019.

A public hearing is scheduled for December 19, 2018, at 3:00 p.m. E.S.T., at OSAH's offices, 225 Peachtree Street, N.E., Suite 400, Atlanta, Georgia 30303, to provide the public an opportunity to comment upon and provide input on the proposed rule amendments. The proposed rule changes will be considered for adoption on January 9, 2019, at 8:30 a.m. E.S.T. at OSAH's offices, 225 Peachtree Street, N.E., Suite 400, Atlanta, Georgia 30303.

The adoption date is January 9, 2019 with an effective date of January 29, 2019. To ask questions or submit data, views, or arguments orally or in writing, please contact Christina Herd at telephone number (404) 651-9636, fax number (404) 818-3751, or email address cherd@osah.ga.gov. Promulgation of rules and rule amendments is pursuant to O.C.G.A. §§ 50-13-4 and 50-13-40(c).

This 5th day of December, 2018.



MICHAEL MALIHI
Chief State Administrative Law Judge

SYNOPSIS OF PROPOSED REVISIONS TO ADMINISTRATIVE RULES OF PROCEDURE, Chapter 616-1-2

(1) Rule 616-1-2-.03 REFERRING CASES. AMENDED.

Purpose: To update the rules of the Office of State Administrative Hearings to reflect the amendments to O.C.G.A. § 50-13-41 effected by the enactment of HB790 following the 2018 Legislative Session.

Main feature: Revising the title of the Rule Section to “Commencing a Case.” Adding Subsection 2 to provide for Direct Appeals pursuant to O.C.G.A. § 50-13-41(a)(1).

(2) Rule 616-1-2-.19 SUBPOENAS; NOTICES TO PRODUCE

Purpose: To update the rules of the Office of State Administrative Hearings to reflect the amendments to O.C.G.A. § 50-13-41 effected by the enactment of HB790 following the 2018 Legislative Session, and to reference the updated evidence code.

Main feature: Revising subsection (4) to cite the updated evidence code. Inserting new subsection (7) to reference an administrative law judge’s power to enforce subpoenas. Under the current rule, the prior evidence code is cited. Additionally, under the current rule there is no reference to the authority of an administrative law judge to enforce a subpoena.

(3) Rule 616-1-2-.37 REQUEST FOR AGENCY RECORDS.

Purpose: To update the rules of the Office of State Administrative Hearings to reflect the deletion of O.C.G.A. § 50-13-70(e) under the Open Records Act.

Main Feature: Removing Subsection 2.

(4) Rule 616-1-2-.44 POWERS OF ADMINISTRATIVE LAW JUDGE

Purpose: To update the rules of the Office of State Administrative Hearings to reflect the amendments to O.C.G.A. § 50-13-41 effected by the enactment of HB790 following the 2018 Legislative Session and also to reiterate an administrative law judge’s powers specified in the Administrative Procedures Act.

Main feature: Adding Ga. Comp. R. & Regs. 616-1-2-.44 to reflect an administrative law judge’s authority as provided in O.C.G.A. § 50-13-41, including the power to impose civil penalties.

616-1-2-.03 Referring Cases. Amended.

(1) Except as provided in section (2) of this Rule, or unless otherwise provided by the Chief State Administrative Law Judge, all case referrals to the Office of State Administrative Hearings shall be made by a Referring Agency with an Office of State Administrative Hearings Form 1. (See Attachment A.) The Chief State Administrative Law Judge may prescribe different forms for different Referring Agencies or for different type or classes of cases. The Chief State Administrative Law Judge may authorize the referral of multiple cases through alternative methods.

(2) Petition for Direct Appeal.

(a) If an agency fails to forward the hearing request for a contested case to the Office of State Administrative Hearings within thirty (30) calendar days after receipt of the request, or a shorter period prescribed by law, the party requesting the hearing may file a petition for a direct appeal.

(b) The petition for direct appeal must include:

(i) The petitioner's name and mailing address;

(ii) The name of the agency that received the petitioner's hearing request;

(iii) The date the petitioner submitted the hearing request to the agency;

(iv) A brief description of the adverse action that prompted the petitioner's hearing request.

(c) The Office of State Administrative Hearings shall promptly issue a written determination granting or denying the petition. The granting or denial of the petition shall be within the Administrative Law Judge's discretion. However, the determination shall not be based on the merits of the contested case.

(d) If the petition for direct appeal is granted, the Office of State Administrative Hearings shall schedule the case for a hearing.

Statutory Authority O.C.G.A. Sec. 50-13-40(c); 50-13-41.

616-1-2-.19 Subpoenas; Notices to Produce. Amended.

- (1) Subpoenas may be issued which require the attendance and testimony of witnesses and the production of objects or documents at depositions or hearings provided for by these Rules. The party on whose behalf the subpoenas are issued shall be responsible for completing and serving the subpoenas sufficiently in advance of the hearing to secure the attendance of a witness or the deposed testimony of the witness at the time of the hearing.
- (2) Subpoenas shall be in writing and filed at least five (5) days prior to the hearing or deposition at which a witness or document is sought, shall be served upon all parties, and shall identify the witnesses whose testimony is sought or the documents or objects sought to be produced. Every subpoena shall state the title of the action.
- (3) Subpoenas may be obtained from the Office of State Administrative Hearings website or from the Clerk.
- (4) A subpoena may be served at any place within Georgia and by any sheriff, by a sheriff's deputy, or by any other person not less than eighteen (18) years of age. Proof of service may be shown by certificate endorsed on a copy of the subpoena. Subpoenas may also be served by registered or certified mail, and the return receipt shall constitute prima facie proof of service. Service upon a party may be made by serving the party's counsel of record. Fees and mileage shall be paid to the recipient of a subpoena in accordance with O.C.G.A. § ~~24-10-24~~ 24-13-25.
- (5) Once issued, a subpoena may be quashed by the Administrative Law Judge if it appears that the subpoena is unreasonable or oppressive, or that the testimony, documents, or objects sought are irrelevant, immaterial, or cumulative and unnecessary to a party's preparation and presentation of its position at the hearing, or that basic fairness dictates that the subpoena should not be enforced. The Administrative Law Judge may require the party issuing the subpoena to advance the reasonable cost of producing the documents or objects.
- (6) Once issued and served, unless otherwise conditioned or quashed, a subpoena shall remain in effect until the close of the hearing or until the witness is excused, whichever comes first.
- (7) An Administrative Law Judge shall have the power to enforce subpoenas through the imposition of civil penalties, pursuant to Rule 44.
- (78) A party may serve a notice to produce in order to compel production of documents or objects in the possession, custody, or control of another party in lieu of serving a subpoena under this Rule. Service may be perfected in accordance with paragraph (4),

but no fees or mileage shall be allowed therefore. Paragraph (5) shall apply to such notices.

- (89) A notice to produce shall be in writing and shall be signed by the party or by the party's attorney seeking production of documents or objects. The notice shall be directed to the opposing party or the opposing party's attorney. A copy of any notice to produce shall be filed with the Clerk.

Authority O.C.G.A. Sec. 50-13-40 and 50-13-41.

616-1-2-.37 Request for Agency Records. Amended.

In any matter which could result in the revocation, suspension, or limitation of a license ~~or permit~~, requests by the licensee ~~or permit holder~~ for exculpatory, favorable, or arguably favorable information relative to any pending issues concerning the license shall be governed by O.C.G.A. § 50-13-18(d).

~~(2) Requests for access to public records pertaining to the subject of a pending matter shall be governed by O.C.G.A. § 50-18-70(e).~~

Statutory Authority

O.C.G.A. Sec. 50-13-40.

616-1-2-.44 Powers of Administrative Law Judge.

An Administrative Law Judge shall have all the powers of the ultimate decision maker in the agency with respect to a contested case and the power to do all things specified in paragraph (6) of subsection (a) of Code Section 50-13-13. In addition, an Administrative Law Judge shall have the power to impose civil penalties for failing to obey any lawful process or order of the Administrative Law Judge or any Rule or regulation promulgated by the Office of State Administrative Hearings, for failure to comply with subpoenas, for any indecorous or improper conduct committed in the presence of the Administrative Law Judge, or for submitting pleadings or papers for an improper purpose or containing frivolous arguments or arguments that have no evidentiary support. An Administrative Law Judge may impose a civil penalty for any such violation of not less than \$100.00 nor more than \$1,000.00 per violation. Any violator who is assessed a civil penalty may also be assessed the cost of collection. The Administrative Law Judge shall have the power to issue writs of fieri facias to collect such penalties and costs assessed, which shall be enforced in the same manner as a similar writ issued by a superior court. All penalties and costs assessed shall be tendered and made payable to the Office of State Administrative Hearings and shall be deposited in the general fund of the state treasury.

Authority O.C.G.A. Sec. 50-13-40 and 50-13-41.