may consist of a statement that the respondent admits all material allegations of fact charged in the citation to be true. The appropriate TTB officer shall thereupon base the decision on the citation and such answer although such an answer shall not affect the respondent’s right to submit proposed findings of fact and conclusions of law, or the right to appeal.


§ 71.66 Prehearing conferences.

In any proceeding the administrative law judge may, upon his own motion or upon the motion of one of the parties or their qualified representatives, in his discretion direct the parties or their qualified representatives to appear at a specified time and place for a conference to consider:

(a) The simplifications of the issues;

(b) The necessity of amendments to the pleadings;

(c) The possibility of obtaining stipulations, admissions of facts and of documents;

(d) The limitation of the number of expert witnesses; and

(e) Such other matters as may aid in the disposition of the proceeding. As soon as practicable after such conference, the administrative law judge shall issue an order which recites the action taken thereat, the amendments allowed to the pleadings and the agreements made by the parties or their qualified representatives as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admission or agreement; and such order shall control the subsequent course of the proceedings, unless modified for good cause by a subsequent order.

Failure To Appear

§ 71.67 Applications.

Where the applicant on an application for a permit has requested a hearing and does not appear at the appointed time and place, and evidence has not been offered to refute or explain the grounds upon which disapproval of the application is contemplated, this shall be construed as a waiver of the hearing, a default will be entered and the administrative law judge shall recommend disapproval of said application.


§ 71.68 [Reserved]

§ 71.69 Suspension, revocation, or annulment.

If on the date set for the hearing the respondent does not appear and no evidence has been offered, the attorney for the Government will proceed ex parte and offer for the record sufficient evidence to make a prima facie case. At such hearing, documents, statements and affidavits may be submitted in lieu of testimony of witnesses.

Waiver of Hearing

§ 71.70 Application proceedings.

At any time prior to final action thereon the applicant may, by filing written notice with the appropriate TTB officer, withdraw his application. If such a notice is filed after referral to the administrative law judge of a proceeding on an application for a permit and prior to issuance of his recommended decision or decision thereon, the appropriate TTB officer shall move the administrative law judge to dismiss the proceedings as moot. If such a notice is filed while the proceeding is before the appropriate TTB officer and prior to final action thereon, that is, either (a) after issuance of a notice of contemplated disapproval and before referral of the proceeding to the administrative law judge or (b) after issuance by the administrative law judge of his recommended decision and prior to the appropriate TTB officer’s order disapproving the application, the appropriate TTB officer shall, by order, dismiss the proceeding.


§ 71.71 Adjudication based upon written submissions.

The respondent may waive the hearing before the administrative law
judge, and stipulate that the matter will be adjudicated by the appropriate TTB officer based upon written submissions. Written submissions may include stipulations of law or facts, proposed findings of fact and conclusions of law, briefs, or any other documentary material. The pleadings together with the written submissions of both the attorneys for the Government and the respondent shall constitute the record on which the initial decision shall be based. The election to contest the citation without a hearing under this section does not affect the respondent’s right to appeal.

§ 71.72 Before citation.

If a respondent surrenders the permit before citation, the appropriate TTB officer may accept the surrender. But if the evidence, in the opinion of the appropriate TTB officer, warrants citation for suspension, revocation or annulment, the surrender shall be refused and the appropriate TTB officer shall issue the citation.

§ 71.73 After citation.

If a respondent surrenders the permit after citation and prior to an initial decision, the appropriate TTB officer may accept the surrender of the permit and dismiss the proceeding as moot. If, however, in the opinion of the appropriate TTB officer, the evidence is such as to warrant suspension, revocation or annulment, as the case may be, the surrender of the permit shall be refused, and the proceeding shall continue.

§ 71.74 General.

All motions shall be made and addressed to the officer before whom the proceeding is pending, and copies of all motion papers shall be served upon the other party or parties. Such officer may dispose of any motion without oral argument, but he may, if he so desires, set it down for hearing and request argument. He may dispose of such motion prior to the hearing on the merits or he may postpone the disposition until the hearing on the merits. No appeal may be taken from any ruling on a motion until the whole record is certified for review. Examples of typical motions may be found in the Rules of Civil Procedure referred to in § 71.2.

§ 71.75 Prior to hearing.

All motions which should be made prior to the hearing, such as motion directed to the sufficiency of the pleadings or of preliminary orders, shall be filed in writing with the appropriate TTB officer issuing the citation or the administrative law judge if the matter has been referred to him, and shall briefly state the order or relief applied for and the grounds for such motion, and shall be filed within 15 days after service of the citation.

§ 71.76 At hearing.

Motions at the hearing may be made in writing to the administrative law judge or stated orally on the record.

§ 71.77 General.

If a hearing is requested, it shall be held at the time and place stated in the notice of hearing unless otherwise ordered by the administrative law judge.

§ 71.78 Applications.

The administrative law judge who presides at the hearing on applications shall recommend a decision to the appropriate TTB officer who shall make the initial decision as provided in § 71.107. The applicant may be directed by the appropriate TTB officer to produce such records as may be deemed necessary for examination. All hearings on applications shall be open to