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the party (or party's attorney) seeking the testimony, and shall set forth a summary of the testimony sought and its relevance to the proceedings. The affidavit or statement must be submitted before permission to testify may be granted. The appropriate TTB officer may, upon request and for good cause shown, waive the requirement of this paragraph.

(4) *Time limit for serving request or demand.* The request or demand, together with the affidavit or statement (if required by paragraph (e)(3) of this section), must be served at least 5 working days prior to the scheduled date of testimony or disclosure of records, in order to ensure that the appropriate TTB officer has adequate time to consider whether to grant the request or demand. The appropriate TTB officer may, upon request and for good cause shown, waive the requirement of this paragraph.

(5) *Factors to be considered in determining whether a request or demand will be granted.* The appropriate TTB officer must consider whether granting the request or demand would be appropriate under the relevant rules of procedure and substantive law concerning privilege. Among the requests or demands that will not be granted are those that would, if granted, result in—

(i) The violation of a statute, such as 26 U.S.C. 6103 or 7213, or a rule of procedure, such as the grand jury secrecy rule (F.R.Cr.P. Rule 6(e)), or a specific regulation;

(ii) The disclosure of classified information;

(iii) The disclosure of a confidential source or informant, unless the TTB officer or employee and the source or informant, have no objection;

(iv) The disclosure of investigative records compiled for law enforcement purposes if enforcement proceedings would thereby be impeded, or of investigative techniques and procedures whose effectiveness would thereby be impaired, unless the appropriate TTB officer determines that the administration of justice requires disclosure;

(v) The disclosure of trade secrets without the owner's consent; or

(vi) Testimony in a case in which TTB has no interest, records or other official information.

(f) *State cases.* The appropriate TTB officer, may, in the interest of Federal and State law enforcement, upon receipt of demands or requests of State authorities, and at the expense of the State, authorize employees under their supervision to attend trials and administrative hearings in liquor, tobacco, firearms, or explosives cases in which the State is a party or on behalf of the State in any criminal case, to produce records, and to testify as to facts coming to their knowledge in their official capacities. However, in cases where a defendant in a criminal case requests or demands testimony or the production of TTB records or information, authorization from the appropriate TTB officer is required. Production or testimony may not divulge information contrary to 26 U.S.C. 6103 and 7213, or 12 U.S.C. 3412. See also 18 U.S.C. 1905.

(g) *Penalties.* Any TTB officer or employee who disobeys the provisions of this section will be subject to dismissal and may incur criminal liability.

[T.D ATF–57, 44 FR 27094, May 9, 1979, as amended by T.D. ATF–302, 55 FR 47325, Nov. 13, 1990. Redesignated by T.D. ATF–378, 61 FR 29955, June 13, 1996, as amended by T.D. ATF–446a, 66 FR 19089, Apr. 13, 2001; T.D. ATF–450, 66 FR 29030, May 29, 2001; T.D. TTB–91, 76 FR 5482, Feb. 1, 2011]

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AUTHORITY: 26 U.S.C. 5271, 5181, 5712, 5713, 7805, 27 U.S.C. 204.

SOURCE: 21 FR 1441, Mar. 6, 1956, unless otherwise noted. Redesignated at 40 FR 16835, Apr. 15, 1975, and further redesignated by T.D. ATF–463, 66 FR 42734, Aug. 15, 2001.

EDITORIAL NOTE: Nomenclature changes to part 71 appear by T.D. ATF–414, 64 FR 49084, Sept. 10, 1999and T.D. ATF–463, 66 FR 42734, 42735, Aug. 15, 2001.

Subpart A—Scope and Construction of Regulations

§ 71.1 Scope of part.

The regulations in this part govern the procedure and practice in connection with the disapproval of applications for basic permits, and for the suspension, revocation and annulment of such permits under sections 3 and 4 of the Federal Alcohol Administration Act (27 U.S.C. 201 *et seq.*) and disapproval, suspension, and revocation of permits under title 26 of the U.S. Code. The regulations in this part shall also govern, insofar as applicable, any adversary proceeding involving adjudication required by statute to be determined on the record after opportunity for hearing, under laws administered by the Alcohol and Tobacco Tax and Trade Bureau.

[21 FR 1441, Mar. 6, 1956, as amended by T.D. 6389, 24 FR 4790, June 12, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 71.1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 71.2 Liberal construction.

The regulations in this part shall be liberally contrued to secure just, expeditious, and efficient determination of the issues presented. The Rules of Civil Procedure for the U.S. District Courts (28 U.S.C. appendix), where applicable, shall be a guide in any situation not provided for or controlled by this part but shall be liberally construed or relaxed when necessary.

(5 U.S.C. 552(a) (80 Stat. 383, as amended))

[T.D. ATF–92, 46 FR 46917, Sept. 23, 1981]

§ 71.3 Forms prescribed.

(a) The appropriate TTB officer is authorized to prescribe all forms required by this part. All of the information called for in each form shall be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form shall be furnished as required by this part.

(b) Forms prescribed by this part are available for printing through the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

(5 U.S.C. 552(a) (80 Stat. 383, as amended))

[T.D. ATF–92, 46 FR 46918, Sept. 23, 1981, as amended by T.D. ATF–372, 61 FR 20725, May 8, 1996; T.D. TTB–44, 71 FR 16964, Apr. 4, 2006]

§ 71.4 Delegations of the Administrator.

Most of the regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are specified in TTB Order 1135.71, Delegation of the Administrator's Authorities in 27 CFR Part 71, Rules of Practice in Permit Proceedings. You may obtain a copy of this order by accessing the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

[T.D. TTB–44, 71 FR 16964, Apr. 4, 2006]

Subpart B—Definitions

§ 71.5 Meaning of terms.

When used in this part and in forms prescribed under this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meaning ascribed in this subpart. Words in the plural form shall include the singular, and vice versa, and words importing the masculine gender shall include the

feminine. The terms ''include'' and ''including'' do not exclude things not enumerated which are in the same general class.

Administrative law judge. The person appointed pursuant to 5 U.S.C. 3105, designated to preside over any administrative proceedings under this part.

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

Applicant. Any person who has filed an initial application for a permit under the Federal Alcohol Administration Act or the Internal Revenue Code (26 U.S.C.).

Application. Any application for a permit under the Federal Alcohol Administration Act or the Internal Revenue Code (26 U.S.C.) for operations not covered by an existing permit.

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.71, Delegation of the Administrator's Authorities in 27 CFR Part 71, Rules of Practice in Permit Proceedings.

Attorney for the Government. The attorney in the appropriate office of Chief Counsel authorized to represent the appropriate TTB officer in the proceeding.

CFR. The Code of Federal Regulations.

Citation. Includes any notice contemplating the disapproval of an application or any order to show cause why a permit should not be suspended, revoked or annulled.

Initial decision. The decision of the appropriate TTB officer or administrative law judge in a proceeding on the suspension, revocation or annulment of a permit.

Other term. Any other term defined in the Federal Alcohol Administration Act (27 U.S.C. 201), the Internal Revenue Code (26 U.S.C.) or the Administrative Procedure Act (5 U.S.C. 1001), where used in this part, shall have the meaning assigned to it therein.

Permit—(a) *Alcohol fuel permit.* The document issued under 26 U.S.C. 5181, authorizing the person named therein to engage in the business described therein.

(b) *Basic permit.* The document authorizing the person named therein to engage in a designated business or activity under the Federal Alcohol Administration Act.

(c) *Industrial use permit.* The document issued under 26 U.S.C. 5271(a), authorizing the person named therein to withdraw and use distilled spirits free of tax in accordance with part 22 of this chapter, or withdraw and deal in or use specially denatured spirits in accordance with part 20 of this chapter, as described therein.

(d) *Operating permit.* The document issued under 26 U.S.C. 5171, authorizing the person named therein to engage in the business described therein.

(e) *Tobacco permit.* The document issued under 26 U.S.C. 5713(a), authorizing the person named therein to engage in the business described therein.

Permittee. Any person holding a basic permit under the Federal Alcohol Administration Act or the Internal Revenue Code (26 U.S.C.).

Person. An individual, trust, estate, partnership, association, company, or corporation.

Recommended decision. The advisory decision of the administrative law judge in any proceeding on an initial application for a permit.

Respondent. Any person holding a permit against which an order has been issued to show cause why such permit should not be suspended, revoked or annulled.

[T.D. ATF–48, 43 FR 13543, Mar. 31, 1978; 44 FR 55845, Sept. 28, 1978, and amended by T.D. ATF–62, 44 FR 71696, Dec. 11, 1979; T.D. ATF–199, 50 FR 9196, Mar. 6, 1985; T.D ATF–244, 51 FR 45762, Dec. 22, 1986; T.D. ATF–374, 61 FR 29956, June 13, 1996; T.D. ATF–414, 64 FR 49084, Sept. 10, 1999; T.D. TTB–44, 71 FR 16964, Apr. 4, 2006]

Subpart C—General

§ 71.25 Communications and pleadings.

All communications to the Government regarding the procedures set forth in this part and all pleadings, such as answers, motions, requests, or other papers or documents required or permitted to be filed under this part, relating to a proceeding pending before

an administrative law judge, shall be addressed to the administrative law judge, at his post of duty or to the administrative law judge, in care of the appropriate TTB officer to be forwarded to the examiner. Communications concerning proceedings not pending before an administrative law judge, should be addressed to the appropriate TTB officer or the Administrator, as the case may be. All pleadings should be filed in quadruplicate.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 71.26 Service on applicant or respondent.

All orders, notices, citations, motions and other formal documents, except subpoenas, required to be served under the regulations in this part may be served by mailing a signed duplicate original copy thereof to the permittee or applicant by registered mail, with request for return receipt card, at the address stated in his permit or application or at his last known address, or by delivery of such original copy to the permittee or applicant personally, or in the case of a corporation, partnership, or other unincorporated association, by delivering the same to an officer, or manager, or general agent thereof, or to its attorney of record. Such personal service may be made by any employee of the Alcohol and Tobacco Tax and Trade Bureau or by any employee of the Treasury Department designated by the Secretary. A certificate of mailing and the return receipt card, or certificate of service signed by the person making such service, shall be filed as a part of the record.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55846, Sept. 28, 1979]

§ 71.27 Service on the appropriate TTB officer or Administrator.

Pleadings, motions, notices, and other formal documents, except subpoenas, may be served, by registered mail or personally, on the appropriate TTB officer (or upon the attorney for the Government on behalf of the appropriate TTB officer, or on the Administrator, if the proceeding is before him for review on appeal).

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF–374, 61 FR 29957, June 13, 1996; T.D. TTB–91, 76 FR 5482, Feb. 1, 2011]

TIME

§ 71.28 Computation.

In computing any period of time prescribed or allowed by this part, the day of the act, event or default after which the designated period of time is to run, is not to be included. The last day of the period to be computed is to be included, unless it be a Saturday, Sunday or legal holiday, in which event the period runs until the next day which is neither a Saturday, Sunday or legal holiday. Pleading, requests, or other papers or documents required or permitted to be filed under this part must be received for filing at the appropriate office within the time limits, if any, for such filing.

§ 71.29 Continuances and extensions.

For good cause shown, the administrative law judge, Administrator, or the appropriate TTB officer, as the case may be, may grant continuances and as to all matters pending before him extend any time limit prescribed by the regulations in this part (except where the time limit is statutory).

(26 U.S.C. 7805 (68A Stat. 917), 27 U.S.C. 205 (49 Stat. 981 as amended), 18 U.S.C. 926 (82 Stat. 959), and Sec. 38, Arms Export Control Act (22 U.S.C. 2778, 90 Stat. 744))

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 43 FR 13531, Mar. 31, 1978; T.D. ATF–374, 61 FR 29957, June 13, 1996]

REPRESENTATION AT HEARINGS

§ 71.30 Personal representation.

Any individual or member of a partnership may after adequate identification, appear for himself, or such partnership, and a corporation or association may be represented by a bona fide officer of such corporation or association, upon showing of adequate authorization.

§ 71.31 Attorneys and other representatives.

A respondent or applicant may be represented by an attorney, certified public accountant, or other person enrolled to practice before the Alcohol and Tobacco Tax and Trade Bureau under 31 CFR part 8—Practice before the Alcohol and Tobacco Tax and Trade Bureau. The representative shall file in the proceeding a duly executed power of attorney to represent the applicant or respondent. See 26 CFR 601.501 through 601.527 (conference and practice requirements). The appropriate TTB officer shall be represented in proceedings under this part by the attorney for the Government who is authorize to execute and file motions, briefs, and other papers in the proceeding, on behalf of the appropriate TTB officer, in his own name as ''Attorney for the Government''.

(5 U.S.C. 552(a) (80 Stat. 383, as amended))

[T.D. ATF–48, 44 FR 55846, Sept. 28, 1979, as amended by T.D. ATF–92, 46 FR 46918, Sept. 23, 1981; T.D. ATF–374, 61 FR 29957, June 13, 1996]

Subpart D—Compliance and Settlement

§ 71.35 Opportunity for compliance.

Except in proceedings involving willfulness or those in which the public interest requires otherwise, and the appropriate TTB officer so alleges in his citation, stating his reasons therefor, no permit shall be suspended, revoked or annulled, unless, prior to the institution of proceedings, facts or conduct warranting such action shall have been called to the attention of the permittee by the appropriate TTB officer, in writing, and the permittee shall have been accorded an opportunity to demonstrate or achieve compliance with all lawful requirements, as set forth in section 9(b) of the Administrative Procedure Act. If the permittee fails to meet the requirements of the law and regulations within such reasonable time as may be specified by the appropriate TTB officer, proceedings for suspension, revocation or annulment of the permit shall be initiated.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–199, 50 FR 9196, Mar. 6, 1985; T.D. ATF–374, 61 FR 29957, June 13, 1996]

INFORMAL SETTLEMENT

§ 71.36 General.

In all proceedings in which a permittee is cited to show cause why the permit should not be suspended, revoked or annulled, the permittee shall be afforded opportunity for the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment, where time, the nature of the proceeding, and the public interest permit. Such submittals should be made to the appropriate TTB officer, but may be made through the attorney for the Government. Where necessary, the date of the hearing may be postponed, pending consideration of such proposals, when they are made in good faith and not for the purpose of delay. If proposals of settlement are submitted, and they are considered unsatisfactory, the appropriate TTB officer may reject the proposals and may, either directly or through the attorney for the Government, inform the permittee of any conditions on which the alleged violations may be settled. If the proposals of settlement are considered satisfactory to the appropriate TTB officer, the permittee shall be notified thereof and the proceeding shall be dismissed, unless such proposals of settlement include a monetary offer in compromise considered satisfactory to the appropriate TTB officer, in which event the proceeding shall be held in abeyance pending final action on such monetary offer in compromise.

[T.D. ATF–244, 51 FR 45762, Dec. 22, 1986, as amended by T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 71.37 Notice of contemplated action.

Where the appropriate TTB officer believes that the matter may be settled informally, i.e., without formal administrative proceedings, he shall, in accordance with section 5 (b) of the Administrative Procedure Act, prior to the issuance of a citation, inform the permittee of the contemplated issuance

of an order to show cause why his permit should not be suspended, revoked or annulled, and that he is being given an opportunity for the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment. The notice should inform the permittee of the charges on which the citation would be based, if issued, and afford him a period of 10 days from the date of the notice, or such longer period as the appropriate TTB officer deems necessary, in which to submit proposals of settlement to the appropriate TTB officer. Where informal settlement is not reached promptly because of inaction of the permittee or proposals are made for the purpose of delay, a citation shall be issued in accordance with §§ 71.55 and 71.56.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–199, 50 FR 9196, Mar. 6, 1985; T.D. ATF–244, 51 FR 45763, Dec. 22, 1986; T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 71.38 Limitation on informal settlement.

Where the evidence is conclusive and the nature of the violation is such as to preclude any settlement short of suspension, revocation or annulment, or the violation is of a continuing character that necessitates immediate action to protect the public interest, or where the appropriate TTB officer believes that any informal settlement of the alleged violation will not insure future compliance with the laws and regulations, or in any similar case where the circumstances are such as to clearly preclude informal settlement, and the appropriate TTB officer so finds and states his reasons therefor as provided in § 71.35, he may restrict settlement to that provided in § 71.71.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–199, 50 FR 9197, Mar. 6, 1985; T.D. ATF–374, 61 FR 29957, June 13, 1996]

Subpart E—Grounds for Citation

§ 71.45 Basic permits.

Whenever the appropriate TTB officer has reason to believe that any person has willfully violated any of the conditions of his basic permit, or has not in fact or in good faith engaged in the operations authorized by such permit for a period of more than two years, or that such permit was procured through fraud, misrepresentation or concealment of material facts, he shall issue a citation for the suspension, revocation or annulment of such permit, as the case may be.

[21 FR 1441, Mar. 6, 1956, as amended by T.D. 6389, 24 FR 4790, June 12, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 71.46 Suspension and revocation of tobacco permits.

Whenever the appropriate TTB officer has reason to believe that any person has not in good faith complied with any of the provisions of 26 U.S.C. chapter 52 or regulations issued thereunder, or has not complied with any provision of 26 U.S.C. which involves intent to defraud, or has violated any of the conditions of his permit, or has failed to disclose any material information required, or has made any materially false statement, in the application for his permit, or has failed to maintain his premises in such manner as to protect the revenue, or is, by reason of previous or current legal proceedings involving a felony violation of any other provision of Federal criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, not likely to maintain operations in compliance with 26 U.S.C. chapter 52, or has been convicted of a felony violation of any provision of Federal or State criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, the appropriate TTB officer shall issue a citation for the revocation or suspension of such permit.

(72 Stat 1421, as amended; 26 U.S.C. 5713)

[T.D. TTB–75, 74 FR 14491, Mar. 31, 2009]

§ 71.48 Operating permits and industrial use permits.

Whenever the appropriate TTB officer has reason to believe that any person who has an operating permit or an industrial use permit:

(a) Has not in good faith complied with the provisions of 26 U.S.C. chapter 51 or enabling regulations; or

(b) Has violated the conditions of such permit; or

(c) Has made any false statement as to any material fact in his application therefor; or

(d) Has failed to disclose any material information required to be furnished; or

(e) Has violated or conspired to violate any law of the United States relating to intoxicating liquor or has been convicted of any offense under 26 U.S.C. punishable as a felony or of any conspiracy to commit such an offense; or

(f) Is (in the case of any person who has a permit to procure or use distilled spirits free of tax for nonbeverage purposes and not for resale or use in the manufacture of any product for sale, or to procure, deal in, or use specially denatured distilled spirits) by reason of his operations, no longer warranted in procuring or using the distilled spirits or specially denatured distilled spirits authorized by his permit; or

(g) Has, in the case of any person who has a permit to procure, deal in, or use specially denatured distilled spirits, manufactured articles which do not correspond to the descriptions and limitation prescribed by law and regulations; or

(h) Has not engaged in any of the operations authorized by the permit for a period of more than 2 years;

He may issue a citation for the revocation or suspension of such permit.

(72 Stat. 1349, 1370; 26 U.S.C. 5171, 5271)

[T.D. 6389, 24 FR 4790, June 12, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55846, Sept. 28, 1979; T.D. ATF–199, 50 FR 9196, 9197, Mar. 6, 1985; T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 71.49 Applications for basic permits.

If, upon examination of any application (including a renewal application) for a basic permit, the appropriate TTB officer has reason to believe that the applicant is not entitled to such permit he shall issue a citation for the contemplated disapproval of the application.

[T.D. 6954, 33 FR 6814, May 4, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 71.49a Applications for operating permits and industrial use permits.

If, on examination of an application for an operating permit or an industrial use permit, the appropriate TTB officer has reason to believe:

(a) In case of an application to withdraw and use distilled spirits free of tax, the applicant is not authorized by law or regulations issued pursuant thereto to withdraw or use such distilled spirits; or

(b) The applicant (including in the case of a corporation, any officer, Administrator, or principal stockholder and, in the case of a partnership, a partner) is, by reason of the applicant's business experience, financial standing, or trade connections, not likely to maintain operations in compliance with 26 U.S.C. chapter 51 or implementing regulations; or

(c) The applicant has failed to disclose any material information required, or has made any false statement as to any material fact, in connection with his application; or

(d) The premises on which the applicant proposes to conduct the business are not adequate to protect the revenue;

He may issue a citation for the contemplated disapproval of the application.

(72 Stat. 1349, 1370; 26 U.S.C. 5171, 5271)

[T.D. 6389, 24 FR 4791, June 12, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55846, Sept. 28, 1979; T.D. ATF–199, 50 FR 9196, 9197, Mar. 6, 1985; T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 71.49b Denial of application for tobacco permit.

The appropriate TTB officer may issue a citation for the contemplated disapproval of an application for a tobacco permit provided for in 26 U.S.C. 5713, if the appropriate TTB officer on examination of the application has reason to believe—

(a) The premises on which it is proposed to conduct the business are not adequate to protect the revenue;

(b) The applicant for a permit does not meet the minimum manufacturing and activity requirements in § 40.61 of this chapter; or

(c) The applicant (including, in the case of a corporation, any officer, administrator, or principal stockholder and, in the case of a partnership, a partner) is, by reason of his business experience, financial standing, or trade connections, or by reason of previous or current legal proceedings involving a felony violation of any other provision of Federal criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, not likely to maintain operations in compliance with 26 U.S.C. chapter 52, or has been convicted of a felony violation of any provision of Federal or State criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, or has failed to disclose any material information required or made any material false statement in the application.

(72 Stat. 1421, as amended; 26 U.S.C. 5712)

[T.D. TTB–75, 74 FR 14491, Mar. 31, 2009]

Subpart F—Hearing Procedure

CITATIONS

§ 71.55 Content.

(a) Citation for the suspension, revocation or annulment of a permit shall be issued by the appropriate TTB officer and shall set forth (1) the sections of law and regulations relied upon for authority and jurisdiction, (2) in separate paragraphs, the matters of fact constituting the violations specified, dates, places, section of law and regulations violated, and (3) the permittee has 15 days within which to request a hearing before an administrative law judge.

(b) Citations for the disapproval of an application for a permit shall set forth (1) the sections of law and regulations relied upon for authority and jurisdiction, (2) in separate paragraphs, the matters of fact and law relied upon for the contemplated disapproval of the application, and (3) that the application will be disapproved unless a hearing is requested within 15 days.

[T.D. ATF–244, 51 FR 45763, Dec. 22, 1986, as amended by T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 71.56 Form.

Citations shall be issued on the following forms:

(a) Form 5000.6. ''Order To Show Cause'', shall be used for all citations for the suspension, revocation, or annulment, as the case may be, of permits under the Internal Revenue Code or the Federal Alcohol Administration Act.

(b) Forms 5000.17. ''Notice of Contemplated Disapproval of Application For Basic Permit,'' shall be used to issue notice of contemplated disapproval of applications for permit.

[21 FR 1441, Mar. 6, 1956]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 71.56, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 71.57 Execution and disposition.

Forms 5000.6 and 5000.17 shall be executed in quintuplicate. A signed duplicated original shall be served on the permittee. If a hearing is requested, one copy shall be sent to the administrative law judge designated to conduct the hearing. The original copy containing the certificate of service shall be placed in the official record of the proceeding; and the remaining copies shall be retained by the appropriate TTB officer.

[T.D. ATF–244, 51 FR 45763, Dec. 22, 1986, as amended by T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 71.58 Designated place of hearing.

The designated place of hearing shall be such as meets the convenience and necessity of the parties.

[T.D. 6389, 24 FR 4791, June 12, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975]

REQUEST FOR HEARING

§ 71.59 Application cases.

If the applicant for a permit desires a hearing, he shall file a request therefor, in writing, with the appropriate

TTB officer within fifteen days after receipt of notice of the contemplated disapproval, in whole or in part, of his application.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–199, 50 FR 9197, Mar. 6, 1985; T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 71.60 Suspension, revocation, or annulment proceedings.

(a) If a hearing is desired, the respondent shall file a request, in writing, with the appropriate TTB officer within 15 days after receipt of the citation or within such time as the appropriate TTB officer may allow.

(b) Where a respondent requests a hearing, the appropriate TTB officer shall forward a copy of the request together with a copy of the citation to the Administrator for the assignment of an administrative law judge.

(c) After the Administrator notifies the appropriate TTB officer of the assignment of the administrative law judge, the appropriate TTB officer shall serve a notice of designation of the administrative law judge on the respondent.

(d) The administrative law judge shall set a time and place for a hearing and shall serve notice thereof on the parties at least 10 days in advance of the hearing date.

[T.D. ATF–244, 51 FR 45763, Dec. 22, 1986, as amended by T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 71.61 Notice of hearing.

In case a request for a hearing is filed by the applicant within the required time, the appropriate TTB officer shall refer the matter to the administrative law judge and the administrative law judge shall set a time and place for a hearing and shall serve notice thereof upon the parties at least ten days in advance of the hearing date.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF–374, 61 FR 29957, June 13, 1996]

NON-REQUEST FOR HEARING

§ 71.62 Application.

In the case of an application, if the applicant does not request a hearing within the time specified in § 71.59, or within such further time as the appropriate TTB officer may in his discretion allow, the appropriate TTB officer will by order, stating the findings upon which it is based, disapprove the application, and will serve signed duplicate original of such order on the applicant.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–199, 50 FR 9197, Mar. 6, 1985; T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 71.63 Suspension, revocation, or annulment proceedings.

If the respondent does not request a hearing within the time specified in § 71.60, and does not file an answer as required in § 71.64, the appropriate TTB officer shall make the initial decision in the case in accordance with § 71.79.

[T.D. ATF–244, 51 FR 45763, Dec. 22, 1986, as amended by T.D. ATF–374, 61 FR 29957, June 13, 1996]

ANSWERS

§ 71.64 When required.

(a) Where the respondent requests a hearing in accordance with § 71.60, a written answer shall be filed with the administrative law judge and served on the appropriate TTB officer within 15 days after service of the designation of the administrative law judge.

(b) Where no hearing is requested, the respondent shall file a written answer with the appropriate TTB officer within 15 days after service of a citation.

(c) An answer shall contain a concise statement of the facts that constitute his grounds for defense. The hearing may be limited to the issues contained in the citation and the answer. The administrative law judge, or appropriate TTB officer as the case may be, may, as a matter of discretion, waive any requirement of this section.

(d) Answers need not be filed in application proceedings.

[T.D. ATF–244, 51 FR 45763, Dec. 22, 1986, as amended by T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 71.65 Answer admitting facts.

If the respondent desires to waive the hearing on the allegations of fact set forth in the order to show cause, and does not contest the facts, the answer

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.

[T.D. ATF–244, 51 FR 45763, Dec. 22, 1986, as amended by T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 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.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–199, 50 FR 9197, Mar. 6, 1985]

§ 71.68 [Reserved]

§ 71.69 Suspension, revocation, or annulment.

If on the date set for the hearing 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.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–199, 50 FR 9197, Mar. 6, 1985; T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 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.

[T.D. ATF–244, 51 FR 45763, Dec. 22, 1986, as amended by T.D. ATF–374, 61 FR 29957, June 13, 1996]

SURRENDER OF PERMIT

§ 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.

[T.D. ATF–244, 51 FR 45764, Dec. 22, 1986, as amended by T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 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.

[T.D. ATF–244, 51 FR 45764, Dec. 22, 1986, as amended by T.D. ATF–374, 61 FR 29957, June 13, 1996]

MOTIONS

§ 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.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 71.76 At hearing.

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

HEARING

§ 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.

[T.D. ATF–244, 51 FR 45764, Dec. 22, 1986]

§ 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

the public subject to such restrictions and limitations as may be consistent with orderly procedure.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–199, 50 FR 9197, Mar. 6, 1985; T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 71.79 Suspension, revocation, or annulment.

(a) The administrative law judge who presides at the hearing in proceedings for the suspension, revocation and annulment of permits shall make the initial decision.

(b) If no hearing is requested, the appropriate TTB officer shall make the initial decision.

[T.D. ATF–244, 51 FR 45764, Dec. 22, 1986, as amended by T.D. ATF–374, 61 FR 29957, June 13, 1996]

BURDEN OF PROOF

§ 71.80 Applications.

In hearings on the contemplated disapproval of applications there may be incorporated in the record sufficient testimony, reports, affidavits and other documents to be considered only for the limited purpose of establishing probable cause for the issuance of the notice of contemplated disapproval by showing that the appropriate TTB officer had reason to believe that the applicant is not entitled to a permit. The burden of proof shall be upon the applicant to produce evidence to show he is entitled to a permit. The appropriate TTB officer may, instead of following the aforementioned procedure, assume the burden of going forward.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–199, 50 FR 9197, Mar. 6, 1985; T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 71.81 Suspension, revocation, or annulment.

In hearings on the suspension, revocation, or annulment of a permit, the burden of proof is on the Government.

[T.D. ATF–199, 50 FR 9197, Mar. 6, 1985]

GENERAL

§ 71.82 Stipulations at hearing.

If there has been no prehearing conference under § 71.66, the administrative law judge shall at the beginning of the hearing, require that the parties attempt to arrive at such stipulations as will eliminate the necessity of taking evidence with respect to allegations of fact concerning which there is no substantial dispute. The administrative law judge should take similar action, where it appears appropriate, throughout the hearing and should call and conduct any conferences which he deems advisable with a view to the simplification, clarification, and disposition of any of the issues involved.

§ 71.83 Evidence.

Any evidence which would be admissible under the rules of evidence governing proceedings in matters not involving trial by jury in the Courts of the United States, shall be admissible and controlling as far as possible: *Provided*, That the administrative law judge may relax such rules in any hearing when in his judgment such relaxation would not impair the rights of either party and would more speedily conclude the hearing, or would better serve the ends of justice. Except as provided in § 71.81, the proponent of an order shall have the burden of proof. Every party shall have the right to present his case or defense by oral or documentary evidence, depositions, duly authenticated copies of records and documents, to submit rebuttal evidence, and to conduct such reasonable cross-examination as may be required for a full and true disclosure of the facts. The administrative law judge shall have the right in his discretion to limit the number of witnesses whose testimony may be merely cumulative and shall, as a matter of policy, not only exclude irrelevant, immaterial, or unduly repetitious evidence but shall also limit the cross-examination of witnesses to reasonable bounds so as not to unnecessarily prolong the hearing and unduly burden the record. Material and relevant evidence shall not be excluded, because it is not the best evidence, unless its authenticity is challenged, in which case reasonable time shall be given to establish its authenticity. When portions only of a document are to be relied upon, the offering party shall prepare the pertinent excerpts, adequately identified, and

shall supply copies of such excerpts, together with a statement indicating the purpose for which such materials will be offered, to the administrative law judge and to the other parties. Only the excerpts, so prepared and submitted, shall be received in the record. However, the whole of the original document should be made available for examination and for use by opposing counsel for purposes of cross-examination. Compilations, charts, summaries of data and photostatic copies of documents may be admitted in evidence if the proceedings will thereby be expedited, and if the material upon which they are based is available for examination by the parties. Objections to the evidence shall be in short form, stating the grounds relied upon. The transcript shall not include argument or debate on objections, except as ordered by the administrative law judge, but shall include the rulings thereon.

§ 71.84 Closing of hearings; arguments, briefs and proposed findings.

Before closing a hearing, the administrative law judge shall inquire of each party whether he has any further evidence to offer, which inquiry and the response thereto shall be shown in the record. The administrative law judge may hear arguments of counsel and may limit the time of such arguments at his discretion, and may, in his discretion, allow briefs to be filed on behalf of either party but shall closely limit the time within which the briefs for both parties shall be filed, so as to avoid unreasonable delay. The administrative law judge shall also ascertain whether the parties desire to submit proposed findings and conclusions, together with supporting reasons, and if so a period of not more than 15 days (unless extended by the administrative law judge)—after the close of the hearing or receipt of a copy of the record, if one is requested—will be allowed for such purpose.

§ 71.85 Reopening of the hearing.

The Administrator, the appropriate TTB officer, or the administrative law judge, as the case may be, may, as to all matters pending before him, in his discretion reopen the hearing (a) in case of default where applicant failed to request a hearing or to appear after one was set, upon petition setting forth reasonable grounds for such failure, and (b) in case any party desires leave to adduce additional evidence upon petition summarizing such evidence, establishing its materiality and stating reasonable grounds why such party with due diligence was unable to produce such evidence at the hearing.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 43 FR 13531, Mar. 31, 1978; 44 FR 55846, Sept. 28, 1979; T.D. ATF–374, 61 FR 29957, June 13, 1996]

RECORD OF TESTIMONY

§ 71.86 Stenographic record.

A stenographic record shall be made of the testimony and proceedings, including stipulations and admissions of fact (but not arguments of counsel unless otherwise ordered by the administrative law judge) in all proceedings. A transcript of the evidence and proceedings at the hearing shall be made in all cases.

§ 71.87 Oath of reporter.

The reporter making the stenographic record shall subscribe an oath before the administrative law judge, to be filed in the record of the case, that he will truly and correctly report the oral testimony and proceedings at such hearing and accurately transcribe the same to the best of his ability.

Subpart G—Administrative Law Judges

§ 71.95 Responsibilities of administrative law judges.

Administrative law judges shall be under the administrative control of the Administrator. They shall be responsible for the conduct of hearings and shall render their decisions as soon as is reasonably possible after the hearing is closed. Administrative law judges shall also be responsible for the preparation, certification and forwarding of reports of hearings, and the administrative work relating thereto, and, by arrangement with the appropriate TTB officer and representatives of the Chief Counsel, shall have access to facilities and temporary use of personnel at such

times and places as are needed in the prompt dispatch of official business.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 43 FR 13531, Mar. 31, 1978; 44 FR 55846, Sept. 28, 1979; T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 71.96 Disqualification.

An administrative law judge shall, at any time, withdraw from any proceeding if he deems himself disqualified; and upon the filing in good faith by the applicant or respondent, or by the attorney for the Government, of a timely and sufficient affidavit of facts showing personal bias or otherwise warranting the disqualification of any administrative law judge, the Administrator shall upon appeal as provided in § 71.115, if the administrative law judge fails to disqualify himself, determine the matter as a part of the record and decision in the proceeding. If he decides the administrative law judge should have declared himself disqualified, he will remand the record for hearing de novo before another administrative law judge. If the Administrator should decide against the disqualification of the administrative law judge, the proceeding will be reviewed on its merits.

§ 71.97 Powers.

Administrative law judges shall have authority to (a) administer oaths and affirmations; (b) issue subpoenas authorized by law; (c) rule upon offers of proof and receive relevant evidence; (d) take or cause depositions to be taken whenever the ends of justice would be served thereby; (e) regulate the course of the hearing; (f) hold conferences for the settlement or simplification of the issues by consent of the parties; (g) dispose of procedural requests or similar matters; (h) render recommended decisions in proceedings on applications for permits, and in suspension, revocation, or annulment proceedings against permits; (i) call, examine and cross-examine witnesses, including hostile or adverse witnesses when he deems such action to be necessary to a just disposition of the cause, and introduce into the record documentary or other evidence; and (j) take any other action authorized by rule of the Alcohol and Tobacco Tax and Trade Bureau consistent with the Administrative Procedure Act.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55846, Sept. 28, 1979; T.D. ATF–119, 50 FR 9197, Mar. 6, 1985]

§ 71.98 Separation of functions.

Administrative law judges shall perform no duties inconsistent with their duties and responsibilities as such. Administrative law judges may be assigned duties not inconsistent with the performance of their functions as administrative law judges. Save to the extent required for the disposition of ex parte matters as required by law, no administrative law judge shall consult any person or party as to any fact in issue unless upon notice and opportunity for all parties to participate. The functions of the administrative law judge shall be entirely separated from the general investigative functions of the agency. No officer, employee, or agent engaged in the performance of investigative or prosecuting functions in any proceeding shall, in that or a factually related proceeding, participate or advise in the administrative law judge's or Administrator's decision, or in the agency review on appeal, except as a witness or counsel in the proceedings. The administrative law judge may not informally obtain advice or opinions from the parties or their counsel, or from any officer or employee of the Alcohol and Tobacco Tax and Trade Bureau, as to the facts or the weight or interpretation to be given to the evidence. He may, however, informally obtain advice on matters of law from officers or employees who were not engaged in the performance of investigative or prosecuting functions in that or a factually related proceeding. This limitation does not apply to the Administrator, and the administrative law judge may, at any time, consult with and obtain instructions from him on questions of law and policy.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 43 FR 13531, Mar. 31, 1978; 44 FR 55846, Sept. 28, 1979]

§ 71.99 Conduct of hearing.

The administrative law judge is charged with the duty of conducting a fair and impartial hearing and of maintaining order in form and manner consistent with dignity. In the event that counsel or any person or witness in any proceeding shall refuse to obey the orders of the administrative law judge, or be guilty of disorderly or contemptuous language or conduct in connection with any hearing, the administrative law judge may, for good cause stated in the record, suspend the hearing, and, in the case of an attorney, recommend that the Administrator report the matter to the Administrator of Practice for disciplinary action. The refusal of a witness to answer any question which has been ruled to be proper shall be considered by the administrative law judge in determining the weight to be given all the testimony of that witness.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 43 FR 13531, Mar. 31, 1978; 44 FR 55846, Sept. 28, 1979]

§ 71.100 Unavailability of administrative law judge.

In the event that the administrative law judge designated to conduct a hearing becomes unavailable before the filing of his findings and decision or recommended decision, the Administrator may assign the case to another administrative law judge for the continuance of the proceeding, in accordance with the regulations in this part in the same manner as if he had been designated administrative law judge at the commencement of the proceeding.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 43 FR 13531, Mar. 31, 1978; 44 FR 55846, Sept. 28, 1979]

Subpart H—Decisions

§ 71.105 Administrative law judge's finding and decision or recommended decision.

Within a reasonable time after the conclusion of the hearing, and as expeditiously as possible, the administrative law judge shall render his decision or recommended decision, as the case may be. All decisions shall become a part of the record and, if proposed findings and conclusions have been filed, shall show the administrative law judge's ruling upon each of such proposed findings and conclusions. Decisions shall consist of (a) a brief statement of the issues of fact involved in the proceeding; (b) the administrative law judge's findings and conclusions, as well as the reasons or basis therefor with record references, upon all the material issues of fact, law or discretion presented on the record (including, when appropriate, comment as to the credibility and demeanor of the witnesses); and (c) the administrative law judge's determination or recommended determination on the record. Where the administrative law judge determines that the imposition of a period of suspension of the permit is appropriate, his decision shall state the length of such period of suspension, to commence at such time as the appropriate TTB officer shall specify.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 71.106 Certification and transmittal of record and decision.

After reaching his decision, the administrative law judge shall certify to the complete record of the proceeding before him and (a) in proceedings on an application, shall immediately forward the complete certified record together with four copies of his recommended decision to the appropriate TTB officer for initial decision, or (b) in revocation, suspension or annulment proceedings, shall immediately forward the complete certified record, together with two copies of his decision, to the appropriate TTB officer, serve one copy of his decision on the respondent or his counsel and transmit a copy of his decision to the attorney for the Government.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–199, 50 FR 9197, Mar. 6, 1985; T.D. ATF–374, 61 FR 29957, June 13, 1996]

ACTION BY THE APPROPRIATE TTB OFFICER

§ 71.107 Application proceedings.

If, upon receipt of the record and the recommended decision of the administrative law judge, the appropriate TTB officer decides that the permit should be issued, he shall thereupon approve the application briefly stating, for the record, his reasons therefor, but if he contemplates the disapproval of the application he shall serve a copy of the administrative law judge's recommended decision on the applicant, informing the applicant of his contemplated action and affording the applicant not more than 10 days in which to submit proposed findings and conclusions or exceptions to the recommended decision with reasons in support thereof. If the appropriate TTB officer, after consideration of the record of the hearing and of any proposed findings, conclusions or exceptions filed with him by the applicant, approves the findings, conclusions and recommended decision of the administrative law judge, he shall by order approve or disapprove of the application in accordance therewith. If, after such consideration, he disapproves of the findings, conclusions and recommended decision of the administrative law judge, in whole or in part, he shall by order make such findings and conclusions as in his opinion are warranted by the law and facts in the record. Any decision of the appropriate TTB officer ordering the disapproval of an application for a permit shall state the findings and conclusions upon which it is based, including his ruling upon each proposed finding, conclusion and exception to the administrative law judge's recommended decision, together with a statement of his findings and conclusions, and reasons or basis therefor, upon all material issues of fact, law or discretion presented on the record. A signed duplicate original of the decision shall be served upon the applicant and the original copy containing certificate of service shall be placed in the official record of the proceeding.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–199, 50 FR 9197, Mar. 6, 1985; T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 71.107a Appropriate TTB officer's decision.

(a) When the appropriate TTB officer issues an initial decision in accordance with § 71.79, the decision shall become a part of the record. The decision shall consist of

(1) A brief statement of the issues involved in the proceedings;

(2) The appropriate TTB officer's findings and conclusions, as well as the reasons therefor; and

(3) The appropriate TTB officer's determination on the record.

[T.D. ATF–244, 51 FR 45764, Dec. 22, 1986, as amended by T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 71.108 Suspension, revocation, or annulment proceedings.

(a) Upon receipt of the complete certified record of the hearing the appropriate TTB officer shall enter an order suspending, revoking, or annulling the permit (on TTB F 5000.5) or dismissing the proceedings in accordance with the administrative law judge's findings and decision, unless he disagrees with such findings and decision and files a petition with the Administrator, for review thereof, as provided in § 71.115. If the appropriate TTB officer files such petition, he shall withhold issuance of the order, pending the decision of the Administrator, upon receipt of which he shall issue the order in accordance therewith. A signed duplicate original of the order of the appropriate TTB officer shall be served upon the respondent and the original copy containing certificate of service shall be placed in the official record of the proceeding. In all proceedings in which a suspension is imposed, the appropriate TTB officer's order shall state the time when the suspension period set forth in the administrative law judge's decision shall commence and terminate.

(b) In a case where the initial decision is made by the appropriate TTB officer in accordance with § 71.79, the appropriate TTB officer will also issue an order suspending, revoking or annulling the permit (on Form 5000.5), or dismissing the proceedings in accordance with his initial decision. A signed duplicated original of the decision and order of the appropriate TTB officer shall be served upon the respondent

and the original copy placed in the official record of the proceeding. In all proceedings in which a suspension is imposed, the appropriate TTB officer's order shall state the time when the suspension period set forth in the initial decision shall commence and terminate.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–199, 50 FR 9196, 9197, Mar. 6, 1985; T.D. ATF–244, 51 FR 45764, Dec. 22, 1986; T.D. ATF–374, 61 FR 29957, June 13, 1996; T.D. TTB–91, 76 FR 5482, Feb. 1, 2011]

§ 71.109 Notice to Administrator.

When the appropriate TTB officer makes an order suspending, revoking or annulling a permit, he will furnish a copy of the order and of the decision on which it is based to the Administrator. Should such order be subsequently set aside on review by the courts, the appropriate TTB officer will so advise the Administrator.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–199, 50 FR 9197, Mar. 6, 1985; T.D. ATF–374, 61 FR 29957, June 13, 1996]

Subpart I—Review

§ 71.115 Appeal on petition to the Administrator.

An appeal to the Administrator is required prior to application to the Federal courts for review. An appeal may be taken by the applicant or respondent or by the appropriate TTB officer. Such appeal shall be taken by filing a petition for review on appeal with the Administrator within 15 days of the service of the order disapproving an application for a permit or the initial decision suspending, revoking or annulling a permit. The petition must set forth facts tending to show action of an arbitrary nature, or action without reasonable warrant in fact, or action contrary to law and regulations. A copy of the petition shall be filed with the appropriate TTB officer or served on the respondent or applicant as the case may be. In the event of such appeal, the appropriate TTB officer shall immediately certify and forward the complete original record, by certified mail, to the Administrator, for his consideration and review.

[T.D. ATF–244, 51 FR 45764, Dec. 22, 1986, as amended by T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 71.116 Review by Administrator.

The Administrator, on appeal on petition for review, shall afford a reasonable opportunity for the submission of proposed findings, conclusions or exceptions with reasons in support thereof and an opportunity for oral argument. He may alter or modify any finding of the administrative law judge (or of the appropriate TTB officer in application proceedings) and may affirm, reverse, or modify the decision of the administrative law judge (or of the appropriate TTB officer in initial application proceedings), or he may remand the case for further hearing, but he shall not consider evidence which is not a part of the record. Appeals and petitions for review shall not be decided by the Administrator in any proceeding in which he has engaged in investigation or prosecution, and in such event he shall so state his disqualification in writing and refer the record to the Under Secretary for appropriate action. The Under Secretary may designate an Assistant Secretary or one of his principal aides to consider any proceeding instead of the Administrator. The original copy of the decision on review shall be placed in the official record of the proceeding, a signed duplicate original shall be served upon the applicant or respondent and a copy shall be transmitted to the appropriate TTB officer. When, on appeal, the Administrator affirms the decision of the appropriate TTB officer or the administrative law judge, as the case may be, disapproving an application or suspending, revoking or annulling a permit, such action shall not supersede

the decision of the appropriate TTB officer or the administrative law judge and such decision shall be final.

(26 U.S.C. 7805 (68A Stat. 917), 27 U.S.C. 205 (49 Stat. 981 as amended), 18 U.S.C. 926 (82 Stat. 959), and Sec. 38, Arms Export Control Act (22 U.S.C. 2778, 90 Stat. 744))

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 43 FR 13531, Mar. 31, 1978; T.D. ATF–199, 50 FR 9197, Mar. 6, 1985; T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 71.117 Permit privileges, exceptions.

Pending final determination of any timely appeal in revocation, suspension, or annulment proceeding to the Administrator, the permit involved shall continue in force and effect except that, in the case of industrial use permits, any time after a citation has been issued withdrawals of tax-free spirits or specially denatured spirits by such permittee may, in the discretion of the appropriate TTB officer or Administrator, be restricted to the quantity which, together with the quantity then on hand, is necessary to carry on legitimate operations under such permit. The appropriate TTB officer may, in restricting the permittee to his legitimate needs, refuse to issue any withdrawal permit.

[T.D. 6389, 24 FR 4791, June 12, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975; T.D. ATF–199, 50 FR 9197, Mar. 6, 1985; T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 71.118 Court review.

If an applicant or respondent files an appeal in Federal court of the Administrator's decision, the Administrator, upon notification that an appeal has been taken, shall prepare the record for submission to the court in accordance with the applicable court rules.

[T.D. ATF–244, 51 FR 45764, Dec. 22, 1986]

§ 71.119 [Reserved]

Subpart J—Miscellaneous

§ 71.125 Depositions.

The administrative law judge may take or order the taking of depositions by either party to the proceeding at such time and place as he may designate before a person having the power to administer oaths, upon application therefor and notice to the parties to the action. The testimony shall be reduced to writing by the person taking the deposition, or under his direction, and the deposition shall be subscribed by the deponent unless subscribing thereof is waived in writing by the parties. Any person may be subpoenaed to appear and depose and to produce documentary evidence in the same manner as witnesses at hearings.

§ 71.126 Subpoenas.

On written application by a party to a proceeding, the attendance and testimony of any person, or the production of documentary evidence in proceedings instituted under this part may be required by personal subpoena (Form 5600.10) or by subpoena duces tecum (Form 5600.11). Application should be addressed to, and subpoenas should be issued by, the administrative law judge before whom the proceedings are pending, but may be issued by the appropriate TTB officer or by the Administrator, if the administrative law judge is unavailable. Both the application and the subpoena shall set forth the title of the proceedings, the name and address of the person whose attendance is required, the date and place of his attendance and, if documents are to be produced, a description thereof; and the application must have reasonable scope and specify as exactly as possible the documents required, if any, and show their general relevance. Subpoenas shall be served in person. When issued on behalf of the United States, service shall be made by an officer, employee, or agent of the Treasury Department; when issued on behalf of a permittee or applicant, service shall be made by any person who is not a party to the proceeding and is not less than 18 years of age.

(49 Stat. 977, 72 Stat. 1372; 27 U.S.C. 202, 26 U.S.C. 5274)

[21 FR 1441, Mar. 6, 1956, as amended by T.D. 6389, 24 FR 4791, June 12, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–244, 51 FR 45764, Dec. 22, 1986; T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 71.127 Witnesses and fees.

Witnesses summoned before the administrative law judge may be paid the

same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear and the person taking the deposition shall be paid by the party at whose instance the deposition is taken.

RECORD

§ 71.128 What constitutes record.

The transcript of testimony, pleadings and exhibits, all papers and requests filed in the proceeding, together with all findings, decisions and orders, shall constitute the exclusive record. Where the decision rests on official notice of material fact not appearing in the record, the administrative law judge shall so state in his findings and any party shall, on timely request, be afforded an opportunity to show facts to the contrary.

§ 71.129 Availability.

A copy of the record shall be available for inspection by the parties to the proceedings during business hours at the office of the administrative law judge or the appropriate TTB officer or, pending administrative review, at the office of the Administrator. Copies of the record desired by the respondent or applicant may be purchased from the contract reporter or may be obtained in accordance with part 71 of this chapter.

(5 U.S.C. 552(a) (80 Stat. 383, as amended))

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–92, 46 FR 46918, Sept. 23, 1981; T.D. ATF–374, 61 FR 29957, June 13, 1996]

PART 72—DISPOSITION OF SEIZED PERSONAL PROPERTY

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AUTHORITY: 18 U.S.C. 921, 1261; 19 U.S.C. 1607, 1610, 1612, 1613, 1618; 26 U.S.C. 7101, 7322–7325, 7326, 7805; 31 U.S.C. 9301, 9303, 9304, 9306; 40 U.S.C. 304(k); 49 U.S.C. 784, 788.

SOURCE: T.D. ATF–9, 39 FR 9954, Mar. 15, 1974, unless otherwise noted.