

§ 71.107

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 DIRECTOR OF INDUSTRY OPERATIONS

§ 71.107 Application proceedings.

If, upon receipt of the record and the recommended decision of the administrative law judge, the director of industry operations 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 director of industry operations, 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 director of industry operations 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 pre-

27 CFR Ch. I (4-1-04 Edition)

sented 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 Director of Industry Operations' decision.

(a) When the director of industry operations 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 director of industry operations' findings and conclusions, as well as the reasons therefor; and
- (3) The director of industry operations' 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 director of industry operations shall enter an order suspending, revoking, or annulling the permit (Form 1430-B) 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 Director, for review thereof, as provided in § 71.115. If the director of industry operations files such petition, he shall withhold issuance of the order, pending the decision of the Director, upon receipt of which he shall issue the order in accordance therewith. A signed duplicate original of the order of the director of industry operations 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 director of industry operations' 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 director of industry operations in accordance with § 71.79, the director of industry operations 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 director of industry operations 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 director of industry operations' 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 and 9197, Mar. 6, 1985; T.D. ATF-244, 51 FR 45764, Dec. 22, 1986; T.D. ATF-374, 61 FR 29957, June 13, 1996]

§ 71.109 Notice to Director.

When the director of industry operations 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 Director. Should such order be subsequently set aside on review by the courts, the director of industry operations will so advise the Director.

[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]

§ 71.110 Proceedings involving violations not within region of issuance of permit.

In the event violations occurred at a place not within the region of issuance of a permit, the director of industry operations of the region of issuance will take jurisdiction over any proceeding including issuing the citation, and taking appropriate action in accordance with § 71.108.

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

Subpart I—Review

§ 71.115 Appeal on petition to the Director.

An appeal to the Director is required prior to application to the Federal courts for review. An appeal may be taken by the applicant or respondent or by the director of industry operations. Such appeal shall be taken by filing a petition for review on appeal with the Director 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 director of industry operations or served on the respondent or applicant as the case may be. In the event of such appeal, the director of industry operations shall immediately certify and forward the complete original record, by certified mail, to the Director, 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 Director.

The Director, 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 director of industry operations in application proceedings) and may affirm, reverse, or modify the decision of the administrative law judge (or of the director of industry operations 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 Director 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