

§ 71.61

director of industry operations may allow.

(b) Where a respondent requests a hearing, the director of industry operations shall forward a copy of the request together with a copy of the citation to the Director for the assignment of an administrative law judge.

(c) After the Director notifies the director of industry operations of the assignment of the administrative law judge, the director of industry operations 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 director of industry operations 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 director of industry operations may in his discretion allow, the director of industry operations 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]

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§ 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 district director 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 director of industry operations 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 director of industry operations 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 director of industry operations 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 director of industry operations 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 director of industry operations, 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 director of industry operations shall move the administrative law judge to dismiss the proceedings as moot. If such a notice is filed while the proceeding is before the director of industry operations 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 director of industry operations' order disapproving the application, the director of industry operations 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 director of industry operations based upon written submissions. Written submissions may include stipulations of law or facts,