

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 authorized 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 in-

terest 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 submissions 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

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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

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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 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, the appropriate TTB officer shall issue a citation for the revocation or suspension of such permit.

[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-374, 61 FR 29957, June 13, 1996]