

§ 71.79

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]

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§ 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