

§ 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

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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.

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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

Subpart A—Scope of Regulations

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