AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO



from the general investigative functions of the agency. No officer, employee, or agent engaged in the performance of investigative or prosecuting functions in any proceeding shall, in that or a factually related proceeding, participate or advise in the administrative law judge's or Administrator's decision, or in the agency review on appeal, except as a witness or counsel in the proceedings. The administrative law judge may not informally obtain advice or opinions from the parties or their counsel, or from any officer or employee of the Alcohol and Tobacco Tax and Trade Bureau, as to the facts or the weight or interpretation to be given to the evidence. He may, however, informally obtain advice on matters of law from officers or employees who were not engaged in the performance of investigative or prosecuting functions in that or a factually related proceeding. This limitation does not apply to the Administrator, and the administrative law judge may, at any time, consult with and obtain instructions from him on questions of law and policy.

[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]

### § 71.99 Conduct of hearing.

The administrative law judge is charged with the duty of conducting a fair and impartial hearing and of maintaining order in form and manner consistent with dignity. In the event that counsel or any person or witness in any proceeding shall refuse to obey the orders of the administrative law judge, or be guilty of disorderly or contemptuous language or conduct in connection with any hearing, the administrative law judge may, for good cause stated in the record, suspend the hearing, and, in the case of an attorney, recommend that the Administrator report the matter to the Administrator of Practice for disciplinary action. The refusal of a witness to answer any question which has been ruled to be proper shall be considered by the administrative law judge in determining the weight to be given all the testimony of that witness.

[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]

### § 71.100 Unavailability of administrative law judge.

In the event that the administrative law judge designated to conduct a hearing becomes unavailable before the filing of his findings and decision or recommended decision, the Administrator may assign the case to another administrative law judge for the continuance of the proceeding, in accordance with the regulations in this part in the same manner as if he had been designated administrative law judge at the commencement of the proceeding.

[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]

## Subpart H—Decisions

### § 71.105 Administrative law judge's finding and decision or recommended decision.

Within a reasonable time after the conclusion of the hearing, and as expeditiously as possible, the administrative law judge shall render his decision or recommended decision, as the case may be. All decisions shall become a part of the record and, if proposed findings and conclusions have been filed, shall show the administrative law judge's ruling upon each of such proposed findings and conclusions. Decisions shall consist of (a) a brief statement of the issues of fact involved in the proceeding; (b) the administrative law judge's findings and conclusions, as well as the reasons or basis therefor with record references, upon all the material issues of fact, law or discretion presented on the record (including, when appropriate, comment as to the credibility and demeanor of the witnesses); and (c) the administrative law judge's determination or recommended determination on the record. Where the administrative law judge determines that the imposition of a period of suspension of the permit is appropriate, his decision shall state the length of

such period of suspension, to commence at such time as the appropriate TTB officer shall specify.

[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]

### § 71.106 Certification and transmittal of record and decision.

After reaching his decision, the administrative law judge shall certify to the complete record of the proceeding before him and (a) in proceedings on an application, shall immediately forward the complete certified record together with four copies of his recommended decision to the appropriate TTB officer for initial decision, or (b) in revocation, suspension or annulment proceedings, shall immediately forward the complete certified record, together with two copies of his decision, to the appropriate TTB officer, serve 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 THE APPROPRIATE TTB OFFICER

### § 71.107 Application proceedings.

If, upon receipt of the record and the recommended decision of the administrative law judge, the appropriate TTB officer 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 appropriate TTB officer, 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 appropriate TTB officer 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 presented 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 Appropriate TTB officer's decision.

(a) When the appropriate TTB officer 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 appropriate TTB officer's findings and conclusions, as well as the reasons therefor; and

(3) The appropriate TTB officer's 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 appropriate TTB officer shall enter an order suspending, revoking, or annulling the permit (on TTB F 5000.5) or dismissing the proceedings in accordance with the