

**(d) Magazines acquired or constructed after permit or license is issued.** A licensee or permittee who intends to construct or acquire additional magazines shall notify the regional director (compliance) in accordance with paragraph (a)(4) of this section describing the additional magazines and the class and quantity of explosives to be stored in the magazine. Unless otherwise advised by the regional director (compliance),

additional magazines may be constructed, or acquired magazines may be used for the storage of explosives. Explosives must not be stored in a magazine under construction. The regional director (compliance) must be notified that construction has been completed.

[T.D. ATF-87, 46 FR 40384, Aug. 7, 1981, as amended by T.D. ATF-400, 63 FR 45002, Aug. 24, 1998]

## Subpart E—License and Permit Proceedings

### § 555.71 Opportunity for compliance.

Except in cases of willfulness or those in which the public interest requires otherwise, and the regional director (compliance) so alleges in the notice of denial of an application or revocation of a license or permit, no license or permit will be revoked or renewal application denied without first calling to the attention of the licensee or permittee the reasons for the contemplated action and affording him an opportunity to demonstrate or achieve compliance with all lawful requirements and to submit facts, arguments, or proposals of adjustment. The notice of contemplated action, ATF F 5400.12, will afford the licensee or permittee 15 days from the date of receipt of the notice to respond. If no response is received within the 15 days, or if after consideration of relevant matters presented by the licensee or permittee, the regional director (compliance) finds that the licensee or permittee is not likely to abide by the law and regulations, he will proceed as provided in §555.74.

[T.D. ATF-87, 46 FR 40384, Aug. 7 1981, as amended by T.D. ATF-446, 66 FR 16602, Mar. 27, 2001]

### § 555.72 Denial of initial application.

Whenever the regional director (compliance) has reason to believe that an applicant for an original license or permit is not eligible to receive a license or permit under the provisions of §555.49, he shall issue a notice of denial on ATF F 5400.11. The notice will set forth the matters of fact and law relied upon in determining that the application should be denied, and will afford the applicant 15 days from the date of receipt of the notice in which to request a hearing to review the denial. If no request for a hearing is filed within that time, a copy of the application, marked “*Disapproved*”, will be returned to the applicant.

### § 555.73 Hearing after initial application is denied.

If the applicant for an original license or permit desires a hearing, he shall file a request with the regional director (compliance) within 15 days after receipt of the notice of denial. The request should include a statement of the reasons for a hearing. On receipt of the request, the regional director (compliance) shall refer the matter to an administrative law judge who shall set a time and place (see §555.77) for a hearing and shall serve notice of the hearing upon the applicant and the regional director (compliance) at least 10 days in advance of the hearing date. The hearing will be conducted in accordance with the hearing procedures prescribed in part 71 of this chapter (see §555.82).

Within a reasonable time after the conclusion of the hearing, and as expeditiously as possible, the administrative law judge shall render his recommended decision. He shall certify to the complete record of the proceedings before him and shall immediately forward the complete certified record, together with four copies of his recommended decision, to the regional director (compliance) for decision.

### § 555.74 Denial of renewal application or revocation of license or permit.

If following the opportunity for compliance under §555.71, or without opportunity for compliance under §555.71, as circumstances warrant, the regional director (compliance) finds that the licensee or permittee is not likely to comply with the law or regulations or is otherwise not eligible to continue operations authorized under his license or permit, the regional director (compliance) shall issue a notice of denial of the renewal application or revocation of the license or permit, ATF F 5400.11 or ATF F 5400.10, as appropriate. In either case, the notice will set forth the matters of fact constituting the violations specified, dates, places, and the sections of law and regulations violated. The notice will, in the case of revocation of a license or permit, specify the date on which the action is effective, which date will be on or after the date the notice is served on the licensee or permittee. The notice will also advise the licensee or permittee that he may, within 15 days after receipt of the notice, request a hearing and, if applicable, a stay of the effective date of the revocation of his license or permit.

### § 555.75 Hearing after denial of renewal application or revocation of license or permit.

If a licensee or permittee whose renewal application has been denied or whose license or permit has been revoked desires a hearing, he shall file a request for a hearing with the regional director (compliance). In the case of the revocation of a license or permit, he may include a request for a stay of the effective date of the revocation. On receipt of the request the regional director (compliance) shall advise the licensee or permittee whether the stay of the effective date of the revocation is granted. If the stay of the effective date of the revocation is granted, the regional director (compliance) shall refer the matter to an administrative law judge who shall set a time and place (see §555.77) for a hearing and shall serve notice of the hearing upon the licensee or

permittee and the regional director (compliance) at least 10 days in advance of the hearing date. If the stay of the effective date of the revocation is denied, the licensee or permittee may request an immediate hearing. In this event, the regional director (compliance) shall immediately refer the matter to an administrative law judge who shall set a date and place for a hearing, which date shall be no later than 10 days from the date the licensee or permittee requested an immediate hearing. The hearing will be held in accordance with the applicable provisions of part 71 of this chapter. Within a reasonable time after the conclusion of the hearing, and as expeditiously as possible, the administrative law judge shall render his decision. He shall certify to the complete record of the proceeding before him and shall immediately forward the complete certified record, together with two copies of his decision, to the regional director (compliance), serve one copy of his decision on the licensee or permittee or his counsel, and transmit a copy to the attorney for the Government.

### **§ 555.76 Action by regional director (compliance).**

**(a) Initial application proceedings.** If, upon receipt of the record and the recommended decision of the administrative law judge, the regional director (compliance) decides that the license or permit should be issued, the regional director (compliance) shall cause the application to be approved, briefly stating, for the record, his reasons. If he contemplates that the denial should stand, 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 supporting reasons. If the regional director (compliance), 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, the regional director (compliance) shall cause the license or permit to be issued or disapproved the application accordingly. If he disapproves the findings, conclusions, and recommendation 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 the facts in the record. Any decision of the regional director (compliance) ordering the disapproval of an initial application for a license or 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 for his findings and conclusions, upon all material issues of fact, law or discretion presented on the record. A signed duplicate original of the decision will be served upon the applicant and the original copy containing certificate of service will be placed in the official

record of the proceedings. If the decision of the regional director (compliance) is in favor of the applicant, he shall issue the license or permit, to be effective on issuance.

**(b) Renewal application and revocation proceedings.** Upon receipt of the complete certified records of the hearing, the regional director (compliance) shall enter an order confirming the revocation of the license or permit, or disapproving the application, in accordance with the administrative law judge's findings and decision, unless he disagrees with the findings and decision. A signed duplicate original of the order, ATF F 5400.9, will be served upon the licensee or permittee and the original copy containing certificate of service will be placed in the official record of the proceedings. If the regional director (compliance) disagrees with the findings and decision of the administrative law judge, he shall file a petition with the Director for review of the findings and decision, as provided in §555.79. In either case, if the renewal application denial is sustained, a copy of the application marked "Disapproved" will be returned to the applicant. If the renewal application denial is reversed, a license or permit will be issued to become effective on expiration of the license or permit being renewed, or on the date of issuance, whichever is later. If the proceedings involve the revocation of a license or permit which expired before a decision is in favor of the licensee or permittee, the regional director (compliance) shall:

**(1)** If renewal application was timely filed and a stay of the effective date of the revocation was granted, cause to be issued a license or permit effective on the date of issuance;

**(2)** If renewal application was not timely filed but a stay of the effective date of the revocation had been granted, request that a renewal application be filed and, following that, cause to be issued a license or permit to be effective on issuance; or

**(3)** If a stay of the effective date of the revocation had not been granted, request that an application be filed as provided in §555.45, and process it in the same manner as for an application for an original license or permit.

**(c) Curtailment of stay of revocation effective date.** If, after approval of a request for a stay of the effective date of an order revoking a license or permit but before actions are completed under this subpart, the regional director (compliance) finds that it is contrary to the public interest for the licensee or permittee to continue the operations or activities covered by his license or permit, the regional director (compliance) may issue a notice of withdrawal of the approval, effective on the date of issuance. Notice of withdrawal will be served upon the licensee or permittee in the manner provided in §555.81.

[T.D. ATF-87, 46 FR 40384, Aug. 7, 1981, as amended by T.D. ATF-290, 54 FR 53054, Dec. 27, 1989]

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### **§ 555.77 Designated place of hearing.**

The designated place of hearing set as provided in §555.73 or §555.75, will be at the location convenient to the aggrieved party.

### **§ 555.78 Representation at a hearing.**

An applicant, licensee, or permittee may be represented by an attorney, certified public accountant, or other person recognized to practice before the Bureau of Alcohol, Tobacco and Firearms as provided in 31 CFR Part 8, if he has otherwise complied with the applicable requirements of 26 CFR 601.521 through 601.527. The regional director (compliance) shall be represented in proceedings under §§555.73 and 555.75 by an attorney in the office of the chief counsel or regional counsel who is authorized to execute and file motions, briefs, and other papers in the proceedings, on behalf of the regional director (compliance), in his own name as *“Attorney for the Government”*.

[T.D. ATF-87, 46 FR 40384, Aug. 7, 1981, as amended by T.D. ATF-92, 46 FR 46916, Sept. 23, 1981]

### **§ 555.79 Appeal on petition to the Director.**

An appeal to the Director is not required prior to filing an appeal with the U.S. Court of Appeals for judicial review. An appeal may be taken by the applicant, licensee, or permittee to the Director from a decision resulting from a hearing under §555.73 or §555.75. An appeal may also be taken by a regional director (compliance) from a decision resulting from a hearing under §555.75 as provided in §555.76(b). The appeal shall be taken by filing a petition for review on appeal with the Director within 15 days of the service of an administrative law judge’s decision or an order. The petition will set forth facts tending to show (a) action of an arbitrary nature, (b) action without reasonable warrant in fact, or (c) action contrary to law and regulations. A copy of the petition will be filed with the regional director (compliance) or served on the applicant, licensee, or permittee, as the case may be. In the event of appeal, the regional director (compliance) shall immediately forward the complete original record, by certified mail, to the Director for his consideration, review, and disposition as provided in subpart I of part 71 of this chapter. When, on appeal, the Director affirms the initial decision of the regional director (compliance) or the administrative law judge, as the case may be, the initial decision will be final.

### **§ 555.80 Court review.**

An applicant, licensee, or permittee may, within 60 days after receipt of the decision of the administrative law judge or the final order of the regional director (compliance) or the Director, file a petition for a judicial review of the decision, with the U.S. Court of Appeals for the district in which he resides or has his principal place of business. The Director, upon notification that a petition has been filed, shall have prepared a complete transcript of the record of the proceedings. The regional director (compliance) or the Director, as the case may be, shall certify to the correctness of

the transcript of the record, forward one copy to the attorney for the Government in the review of the case, and file the original record of the proceedings with the original certificate in the U.S. Court of Appeals.

### **§ 555.81 Service on applicant, licensee, or permittee.**

All notices and other formal documents required to be served on an applicant, licensee, or permittee under this subpart will be served by certified mail or by personal delivery. Where service is by personal delivery, the signed duplicate original copy of the formal document will be delivered to the applicant, licensee, or permittee, or, in the case of a corporation, partnership, or association, by delivering it to an officer, manager, or general agent, or to its attorney of record.

### **§ 555.82 Provisions of part 200 made applicable.**

The provisions of subpart G of part 200 of this chapter, as well as those provisions of part 71 relative to failure to appear, withdrawal of an application or surrender of a permit, the conduct of hearings before an administrative law judge, and record of testimony, are hereby made applicable to application, license, and permit proceedings under this subpart to the extent that they are not contrary to or incompatible with this subpart.

### **§ 555.83 Operations by licensees or permittees after notice of denial or revocation.**

In any case where a notice of revocation has been issued and a request for a stay of the effective date of the revocation has not been granted, the licensee or permittee shall not engage in the activities covered by the license or permit pending the outcome of proceedings under this subpart. In any case where notice of revocation has been issued but a stay of the effective date of the revocation has been granted, the licensee or permittee may continue to engage in the activities covered by his license or permit unless, or until, formally notified to the contrary: Provided, That in the event the license or permit would have expired before proceedings under this subpart are completed, timely renewal application must have been filed to continue the license or permit beyond its expiration date. In any case where a notice of denial of a renewal application has been issued, the licensee or permittee may continue to engage in the activities covered by the existing license or permit after the date of expiration of the license or permit until proceedings under this subpart are completed.