

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 6002 Class E airspace designated as surface areas.

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AEA MD E2 Salisbury, MD [REVISED]

Salisbury-Ocean City, Wicomico County Regional Airport
(Lat 38°20.43' N/long. 75°30.62' W)

That airspace extending upward from the surface within a 4.1 mile radius of the Salisbury-Wicomico County Airport and within 3.1 miles each side of the Salisbury VORTAC 209° radial extending from the 4.1 mile radius to 9.2 miles southwest of the VORTAC and within 3.1 miles each side of the Salisbury VORTAC 052° radial extending from the 4.1 mile radius to 8.3 miles northeast of the VORTAC and within 1 mile each side of the Salisbury-Wicomico County Airport localizer northwest course extending from the 4.1 mile radius to 4.8 miles northwest of the localizer and within 3.1 miles each side of the Salisbury VORTAC 132° radial extending from the 4.1 mile radius to 9.2 miles southeast of the VORTAC. This Class E airspace area is effective during those times when the Class D airspace is not in effect.

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Issued in Jamaica, New York on March 12, 2001.

F.D. Hatfield,

Manager, Air Traffic Division, Eastern Region.
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DEPARTMENT OF THE TREASURY**Bureau of Alcohol, Tobacco and Firearms****27 CFR Part 13**

[T.D. ATF-449]

RIN 1512-AC21

Labeling Proceedings; Delegation of Authority

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: Authority delegation. This final rule places all ATF authorities contained in regulations on "Labeling Proceedings" with the "appropriate ATF officer" and requires that persons file documents required by those regulations with the "appropriate ATF officer" or in accordance with the

instructions on the ATF form. This final rule removes the definitions of, and references to, specific ATF officers subordinate to the Director. Concurrently with this Treasury Decision, ATF Order 1130.21 is being published. Through this order, the Director has delegated the authorities in those regulations to the appropriate ATF officers and specified the ATF officers with whom appeals and other documents are filed.

EFFECTIVE DATE: April 13, 2001.

FOR FURTHER INFORMATION CONTACT: Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226, (202-927-9347) or e-mail at alctob@atfhq.atf.treas.gov.

SUPPLEMENTARY INFORMATION:**Background**

Pursuant to Treasury Order 120-01 (formerly 221), dated June 6, 1972, the Secretary of the Treasury delegated to the Director of the Bureau of Alcohol, Tobacco and Firearms (ATF), the authority to enforce, among other laws, the provisions of the Federal Alcohol Administration Act (FAA). The Director has subsequently redelegated certain of these authorities to appropriate subordinate officers by way of various means, including by regulation, ATF delegation orders, regional directives or similar delegation documents. ATF has determined that this multiplicity of delegation instruments complicates and hinders the task of determining which ATF officer is authorized to perform a particular function.

ATF has decided that all delegations of the Director's authorities will be compiled in ATF Delegation Orders. Each part or related parts of title 27 Code of Federal Regulations (CFR) will have its own corresponding order in which all authorities of the Director are delegated. Using a delegation order for this purpose eliminates the necessity of rewriting the regulations each time there is a change in authority or a change to the title of an ATF officer. This action both simplifies the process for determining what ATF officer is authorized to perform a particular function and facilitates the updating of delegations in the future.

ATF has begun making these changes to all other parts of 27 CFR through separate rulemakings. By amending the regulations part by part, rather than in one large rulemaking document and ATF delegation order, ATF minimizes the time expended in notifying interested parties of current delegations of authority.

Accordingly, this final rule rescinds all authorities of the Director in part 13 that were previously delegated. All references to specific ATF officers, other than the Director, have been removed and replaced with the words "appropriate ATF officer." Along with this final rule, ATF is publishing ATF Order 1130.21, Delegation Order—Delegation of the Director's Authorities in Part 13—Labeling Proceedings. This Order lists the specific ATF officers with whom appeals and other documents are to be filed.

In addition, this final rule also eliminates all references in the regulations that identify the ATF officer with whom an ATF form is filed. This is because ATF forms will indicate the officer with whom they must be filed. Similarly, this final rule also amends part 13 to provide that submission of documents other than ATF forms (such as letterhead applications, notices and reports) must be filed with the "appropriate ATF officer" identified in ATF Order 1130.21. These changes will facilitate the identification of the officer with whom forms and other required submissions are filed.

This final rule amends Subpart A—Scope and Construction of Regulations, and Subpart C—Applications of 27 CFR part 13. Specifically, two new sections, § 13.2 and § 13.20, are added. Section 13.2 is added to recognize the authorities in part 13 and to identify ATF Order 1130.21 as the instrument reflecting such delegations. Section 13.20 is added to indicate who is authorized to prescribe the forms required by this part and how to access those forms, and to provide that the instructions for an ATF form identify the ATF officer with whom it must be filed.

This final rule also makes a typographical amendment correcting the reference to § 13.45 to read § 13.44 in § 13.72(b).

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104-13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no new or revised recordkeeping or reporting requirements.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under the Administrative Procedures Act (5 U.S.C. 553), the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. We sent a copy of this final rule to the Chief Counsel for

Advocacy of the Small Business Administration in accordance with 26 U.S.C. 7805(f). No comments were received.

Executive Order 12866

It has been determined that this rule is not a significant regulatory action because it will not: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Administrative Procedure Act

Because this final rule merely makes technical amendments and conforming changes to improve the clarity of the regulations, it is unnecessary to issue this final rule with notice and public procedure under 5 U.S.C. 553(b). Similarly it is unnecessary to subject this final rule to the effective date limitation of 5 U.S.C. 553(d).

Drafting Information

The principal author of this document is Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 13

Administrative practice and procedure, Alcohol and alcoholic beverages, Appeals, Applications, Certificates of label approval, Certificates of exemption from label approval, Denials, Distinctive liquor bottle approvals, Informal conferences, Labeling, Revocations.

Authority and Issuance

Title 27, Code of Federal Regulations is amended as follows:

PART 13—LABELING PROCEEDINGS

Paragraph 1. The authority citation for part 13 continues to read as follows:

Authority: 27 U.S.C. 205(e), 26 U.S.C. 5301 and 7805.

Par. 2. In Subpart A, add § 13.2 to read as follows:

* * * * *

§ 13.2 Delegations of the Director.

All of the regulatory authorities of the Director contained in part 13 of the regulations are delegated to appropriate ATF officers. These ATF officers are specified in ATF Order 1130.21, Delegation Order—Delegation of the Director's Authorities in 27 CFR Part 13—Labeling Proceedings. ATF delegation orders, such as ATF Order 1130.21, are available to any interested person by mailing a request to the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5950, or by accessing the ATF web site (<http://www.atf.treas.gov>).

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§ 13.11 [Amended]

Par. 3. Amend § 13.11 as follows:

a. Remove the definitions of “Assistant Director, Alcohol and Tobacco,” “Chief, Alcohol and Tobacco Programs Division,” “Chief, Product Compliance Branch” and “Product Compliance Branch Specialist.”

b. Add and list alphabetically, the new definition “Appropriate ATF officer,” to read as follows:

§ 13.11 Meaning of terms.

* * * * *

Appropriate ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.21, Delegation Order—Delegation of the Director's Authorities in 27 CFR Part 13—Labeling Proceedings.

* * * * *

c. Remove the word “Director” in the definition of the term “Liquor bottle” and add, in substitution, the words “appropriate ATF officer.”

Par. 4. In Subpart C, add § 13.20 to read as follows:

§ 13.20 Forms prescribed.

(a) The appropriate ATF officer is authorized to prescribe all forms required by this part. All of the information called for in each form must be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, the information called for in each form is that which is required by this part. The form will be filed in accordance with the instructions on the form.

(b) Forms may be requested from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5950, or by accessing the ATF web site (<http://www.atf.treas.gov>).

§ 13.21 [Amended]

Par. 5. Amend § 13.21 as follows:

a. In the first sentence of paragraph (a), remove the words “to the Product Compliance Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226” and add, in substitution, the words “according to the instructions for that form”; and

b. Revise paragraph (b) to read as follows:

§ 13.21 Application for certificate.

* * * * *

(b) *Time period for action on application.* Within 90 days of receipt of an application, the appropriate ATF officer must notify the applicant whether the application has been approved or denied. The appropriate ATF officer may extend this period of time once, by an additional 90 days, if he or she finds that unusual circumstances require additional time to consider the issues presented by an application. If the appropriate ATF officer extends the period, he or she must notify the applicant by letter, along with a brief explanation of the issues presented by the label. If the applicant receives no decision from the appropriate ATF officer within the time periods set forth in this paragraph, the applicant may file an appeal as provided in § 13.25.

§ 13.23 [Amended]

Par. 6. In § 13.23, remove the words “a Product Compliance Branch Specialist” and add, in substitution, the words “the appropriate ATF officer.”

§§ 13.25, 13.26, 13.27, 13.41, 13.42, 13.43, 13.52, 13.53, 13.54, and 13.61 [Amended]

Par. 7. Amend part 13 by removing the words “Chief, Product Compliance Branch,” and the words “Chief, Alcohol and Tobacco Programs Division,” each place they appear, and adding, in substitution, the words “appropriate ATF officer” in the following places:

- a. Section 13.25(a);
- b. Section 13.26(a) and (b);
- c. Section 13.27(c);
- d. Section 13.41;
- e. Section 13.42;
- f. Section 13.43(a) and (b);
- g. Section 13.52;
- h. Section 13.53;
- i. The first sentence of paragraph (a) and the first, third, and fourth sentences of paragraph (b) in § 13.54; and
- j. Section 13.61(b).

§ 13.25 [Amended]

Par. 8. Amend paragraph (b) of § 13.25 by removing the words “Specialist or the Chief, Product Compliance Branch” and add, in

substitution, the words “appropriate ATF officer.”

Par. 9. Revise paragraphs (a) and (b) of § 13.27 to read as follows:

§ 13.27 Second appeal of qualification or denial.

(a) *Form of appeal.* The decision after appeal of qualification or denial may be appealed in writing to the appropriate ATF officer within 45 days after the date of that decision. If the appropriate ATF officer concludes that the qualified approval or denial was correct, a copy of the application, marked “appeal denied,” must be returned to the applicant, with an explanation of the decision and the specific laws or regulations relied upon in qualifying or denying the application. If the appropriate ATF officer concludes that the certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle application should be approved without qualification, the applicant may resubmit ATF Form 5100.31 and the certificate will be issued.

(b) *Time limits for decision after second appeal.* Within 90 days of receipt of the second appeal, the appropriate ATF officer must notify the appellant whether the appeal has been granted or denied. If an applicant requests an informal conference as part of an appeal, as authorized in § 13.71, the 90-day period will begin 10 days after the date of the conference to allow for consideration of any written arguments, facts or evidence submitted after the conference. The appropriate ATF officer may extend this period of time once, by an additional 90 days, if he or she finds that unusual circumstances require additional time to consider the unique issues presented by an appeal. If the appropriate ATF officer extends the time period, he or she must notify the applicant by letter, briefly explaining the issues presented by the label. The decision made on the second appeal shall be the final decision of ATF.

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Par. 10. Revise § 13.44 to read as follows:

§ 13.44 Appeal of revocation.

(a) *Filing of appeal.* A certificate holder who wishes to appeal the decision to revoke a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval, may file a written appeal setting forth why the holder believes that the decision was erroneous. The appeal must be filed with the appropriate ATF officer within 45 days after the date of receipt of the

decision to revoke a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval.

(b) *Judicial review.* An appeal to the appropriate ATF officer is required prior to application to the Federal courts for review of any revocation of a certificate.

§ 13.45 [Amended]

Par. 11. Amend § 13.45 as follows:

a. Remove the words “Assistant Director, Alcohol and Tobacco” from the first sentence in paragraph (a) and from the first, third and fourth sentences in paragraph (b), and add, in substitution, the words “appropriate ATF officer”; and

b. Revise the last sentence of paragraph (b) to read “The final decision after appeal will be the final decision of ATF.”

§ 13.54 [Amended]

Par. 12. Amend § 13.54 as follows:

a. Revise the last sentence of paragraph (a) to read “The decision after appeal will be the final decision of the ATF.”

b. Revise the last sentence of paragraph (b) to read “The decision of the appropriate ATF officer shall be the final decision of the ATF.”

Par. 13. Revise § 13.62 to read as follows:

§ 13.62. Third-party comment on certificates.

When a third party (such as foreign government, another Federal agency, a State agency, an industry association, a competitor of a certificate holder, a consumer or consumer group, or any other interested person) wishes to comment on an approved certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval, such comments should be submitted in writing to the appropriate ATF officer who will review the subject of the comment. If the comment raises an issue that is outside the scope of ATF’s statutory or regulatory authority, or the appropriate ATF officer determines that the certificate is in compliance with applicable law and regulations, the commenter will be informed that no further action will be taken. If the appropriate ATF officer determines that the commenter has raised a valid issue that ATF has authority to address, he or she will initiate appropriate action. The appropriate ATF officer may, in his or her discretion, notify the commenter as to the action being taken by ATF with respect to the certificate.

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§ 13.71 [Amended]

Par. 14. Revise § 13.71 to read as follows:

§ 13.71 Informal conferences.

(a) *General.* As part of a timely filed written appeal of a notice of denial, a notice of proposed revocation, or a decision to revoke a certificate, an applicant or certificate holder may file a written request for an informal conference with the appropriate ATF officer deciding the appeal.

(b) *Informal conference procedures.* The appropriate ATF officer and the applicant or certificate holder will agree upon a date for an informal conference. The informal conference is for purposes of discussion only, and no transcript shall be made. If the applicant or certificate holder wishes to rely upon arguments, facts, or evidence presented at the informal conference, he or she has 10 days after the date of the conference to incorporate such arguments, facts, or evidence in a written submission to the appropriate ATF officer.

§ 13.72 [Amended]

Par. 15. Amend § 13.72(b) as follows:

a. Remove the words “from the Chief, Alcohol and Tobacco Programs Division, pursuant to § 13.45” and add, in substitution, the words “pursuant to § 13.44”; and

b. Remove the words “Assistant Director, Alcohol and Tobacco” and add, in substitution, the words “appropriate ATF officer.”

§ 13.74 [Amended]

Par. 16. Amend the first sentence of § 13.74 by removing the words “by the Chief, Alcohol and Tobacco Programs Division, or the Assistant Director, Alcohol and Tobacco.”

§ 13.92 [Amended]

Par. 17. Amend § 13.92 by removing the words “Chief, Product Compliance Branch, the Chief, Alcohol and Tobacco Programs Division, or the Assistant Director, Alcohol and Tobacco” and add, in substitution, the words “appropriate ATF officer deciding the appeal.”

Bradley A. Buckles,
Director.

Approved: March 13, 2001.

Timothy E. Skud,
Acting Deputy Assistant Secretary
(Regulatory, Tariff and Trade Enforcement).
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