

Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. Massachusetts Bay Transportation Authority ("MBTA") and Massachusetts Bay Commuter Railroad Company, L.L.C.*, D.J. Ref. 90-5-2-1-09617.

During the public comment period, the Decree may also be examined on the following Department of Justice Web site, http://www.usdoj.gov/enrd/Consent_Decrees.html. A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$7.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1933-PXI Systems Alliance, Inc.

Correction

In notice document 2010-12033 appearing on page 28294 in the issue of Thursday, May 20, 2010 make the following correction:

In the second column, in the last paragraph, in the second line "April 1, 2010" should read "April 15, 2010".

[FR Doc. C1-2010-12033 Filed 8-9-10; 8:45 am]

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DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[Docket No. ATF 36N]

Hearing Procedures Relating to Federal Firearms Licenses (2010R-2T)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice.

ACTION: General notice.

SUMMARY: In this notice, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) advises federal firearms licensees and other interested parties of its current procedures regarding administrative hearings held as part of firearms license proceedings. The intended purpose of the notice is to ensure that federal firearms licensees and persons applying for a federal firearms license are familiar with the hearing process relative to the denial, revocation, or suspension of a federal firearms license, or the imposition of a civil fine. This notice does not contain any policy guidelines as to whether a notice of denial, revocation, suspension or fine should be issued.

FOR FURTHER INFORMATION CONTACT: Gary Taylor; Office of Field Operations; Bureau of Alcohol, Tobacco, Firearms and Explosives; U.S. Department of Justice; 99 New York Avenue, NE., Washington, DC 20226, telephone (202) 648-7259.

SUPPLEMENTARY INFORMATION:

I. Background

The Attorney General is responsible for enforcing the provisions of the Gun Control Act of 1968 ("the Act"), 18 U.S.C. Chapter 44. He has delegated that responsibility to the Director of ATF, subject to the direction of the Attorney General and the Deputy Attorney General. 28 CFR 0.130(a). ATF has promulgated regulations that implement the provisions of the Act in 27 CFR Part 478.

Pursuant to the authority vested in the Director of ATF by 28 U.S.C. 599A and 28 CFR 0.130-0.133, the authority to issue notices, conduct licensing hearings, render final decisions and issue final notices after a firearms licensing hearing has been redelegated to the Director of Industry Operations (DIO) in each field division in most instances. However, these same authorities are redelegated to the Deputy Assistant Director, Industry Operations, for all matters that he/she determines to involve novel or unusual issues of fact, law, or enforcement policy; matters of national or international significance; or matters that involve or are related to issues arising in more than one ATF field division. Thus, the term "Director" in this document is referring to the deciding official who may be the ATF Director, or a delegate, including the DIO, in most instances, or the Deputy Assistant Director, Industry Operations.

The regulations in Subpart E of Part 478, §§ 478.71-478.78, relate to proceedings involving federal firearms licenses, including the denial,

revocation, or suspension of a license, or the imposition of a civil fine. In particular, § 478.71 provides that the Director of ATF may issue a notice of denial on ATF Form 4498 (Notice of Denial of Application for License) to an applicant for a license if he has reason to believe that the applicant is not qualified, under the provisions of § 478.47, to receive a license. The notice sets forth the matters of fact and law relied upon in determining that the application should be denied, and affords the applicant 15 days from the date of receipt of the notice in which to request a hearing to review the denial. If a request for a hearing is not filed within such time, the application is disapproved and a copy, so marked, is returned to the applicant.

Under § 478.72, an applicant who has been denied an original or renewal license may file a request with the Director of Industry Operations (DIO) for a hearing to review the denial of the application. On conclusion of the hearing and after consideration of all relevant facts and circumstances presented by the applicant or his representative, the Director (or his or her delegate) renders a decision confirming or reversing the denial of the application. If the decision is that the denial should stand, a certified copy of the Director's findings and conclusions are furnished to the applicant with a final notice of denial, ATF Form 4501 (now ATF Form 5300.13), Final Notice of Denial of Application or Revocation of Firearms License. In addition, a copy of the application, marked "Disapproved," is furnished to the applicant. If the decision is that the license applied for should be issued, the applicant will be so notified, in writing, and the license will be issued.

Section 478.73 provides that whenever the Director has reason to believe that a firearms licensee has willfully violated any provision of the Act or part 478, a notice of revocation of the license (ATF Form 4500) may be issued. In addition, a notice of revocation, suspension, or imposition of a civil fine may be issued on Form 4500 whenever the Director has reason to believe that a licensee has knowingly transferred a firearm to an unlicensed person and knowingly failed to comply with the requirements of 18 U.S.C. 922(t)(1), relating to a NICS (National Instant Criminal Background Check System) background check or, in violation of 18 U.S.C. 922(z) and 924 (p), has sold, delivered, or transferred any handgun to any unlicensed person without providing a secure gun storage or safety device.

As specified in § 478.74, a licensee who receives a notice of license suspension or revocation, or imposition of a civil fine, may file a request for a hearing with the DIO. On conclusion of the hearing and after consideration of all the relevant information presented at the hearing, the Director renders a decision and prepares a brief summary of the findings and conclusions on which the decision was based. If the decision is that the license should be revoked or, in actions under 18 U.S.C. 922(t)(5) or 924(p), that the license should be revoked or suspended, and/or that a civil fine should be imposed, a certified copy of the summary is furnished to the licensee with the final notice of revocation, suspension, or imposition of a civil fine on ATF Form 4501. If the decision is that the license should not be revoked, or in actions under 18 U.S.C. 922(t)(5) or 924(p), that the license should not be revoked or suspended, and a civil fine should not be imposed, the licensee will be notified in writing.

Under § 478.76, a firearms licensee or an applicant for a firearms license may be represented at a hearing by an attorney, certified public accountant, or other person recognized to practice before ATF, provided certain requirements are met. The Director may be represented in hearing proceedings by an attorney in the Office of Chief Counsel. Pursuant to § 478.77, hearings concerning notification of license denials, suspensions, revocations, or the imposition of a civil fine are held in a location convenient to the aggrieved party.

Currently, ATF has procedures in place regarding administrative hearings held as part of federal firearms license proceedings. Those procedures are set forth in the following section. ATF believes that providing this information will ensure that federal firearms licensees and persons applying for a federal firearms license are familiar with the hearing process relative to the denial, revocation, or suspension of a firearms license, or imposition of a civil fine.

II. Hearing Procedures Relating to Federal Firearms Licenses

The law and regulations (18 U.S.C. 923(f)(2) and 27 CFR part 478, subpart E) provide for a hearing if requested by an applicant or licensee upon receipt of a Notice of Denial or Revocation. If the Director's decision is to revoke or deny the license subsequent to the hearing, the aggrieved party may file a petition in the U.S. District Court for a *de novo* judicial review of the denial or revocation. In a *de novo* proceeding, a

court may consider any evidence submitted by the parties, whether or not the evidence was considered at the hearing.

Hearing procedures in firearms licensing matters are informal in nature; the regulations found in the Administrative Procedure Act (APA) (5 U.S.C. 554) do not apply to hearings held under 18 U.S.C. 923(f)(2) because a federal firearms licensing hearing is subject to *de novo* judicial review in district court under 18 U.S.C. 923(f)(3).

Authorities

Delegation of Authority: Pursuant to authorities vested in the Director, ATF, by 6 U.S.C. 531 and 28 CFR 0.130–0.133, the Chief, Firearms and Explosives Services (FES) Division is authorized and retains full authority to designate hearing officers.

Designation of Hearing Officers: Unless otherwise noted, the Chief, FES Division delegates the authority to assign hearing officers to FES Division program managers as designees. This authority may not be redelegated.

Selection and Training of Hearing Officers

The Chief, FES Division will select hearing officers from a list of contractors and volunteers furnished by the Office of Field Operations. While there are no formal selection requirements, at a minimum, candidates for hearing officer should possess the following:

- Comprehensive knowledge of firearms laws and regulations.
- Excellent oral and written communication skills.
- Ability to condense complex information into a clear and concise report.
- Ability to maintain order and decorum in an adversarial proceeding.
- Not have been the subject of adverse action as the result of an investigation by the Office of Professional Responsibility and Security Operations (OPRSO) within 5 years preceding selection to serve as a hearing officer.
- If, subsequent to being selected as a hearing officer, the subject is the recipient of adverse action as the result of an investigation by the OPRSO, the hearing officer will be removed from performing those duties.

Prior to conducting a firearms hearing, hearing officers will complete the appropriate training on hearing procedures conducted by the Office of Training and Professional Development (TPD) or by an experienced hearing officer. If an experienced hearing officer, who has received training on hearing procedures conducted by the Office of

Training and Professional Development (TPD), provides training on hearing procedures to a newly selected hearing officer who has not had the opportunity to attend hearing officer training provided by TPD, such training will be deemed adequate.

Hearing officers are appointed by and serve at the discretion of the Chief, FES Division with the concurrence of the hearing officer's DIO or other appropriate field division management official. Expenses for hearing officer travel and equipment needs will be funded by the FES Division.

Designation of Hearing Officer and Preliminary Procedures

Upon receipt of a timely filed request for a hearing, the DIO will advise the Chief, FES Division that a request for a hearing has been made. The Chief, FES Division will designate a hearing officer for the case. The selection of the hearing officer will be made according to the following criteria:

- Complexity and nature of the case will be considered. More experienced hearing officers will be assigned to complex cases.
- The hearing officer's impartiality and/or prior relationship with or knowledge of the applicant or licensee will be considered. The Chief, FES Division will consider whether there is reasonable cause to believe that the hearing officer's ability to conduct a fair and impartial inquiry is impaired by the hearing officer's prior knowledge of the case or interactions with the applicant/licensee.
- The hearing officer's location will be considered. To ensure impartiality, the hearing officer will generally be appointed from outside the applicant's/licensee's division; however, if staffing and resource issues demand, a hearing officer from within the applicant's/licensee's division may be assigned.
- When assigning cases, the Chief, FES Division will attempt to rotate selection among all eligible hearing officers in order to maintain a high level of proficiency in conducting hearings.

Upon selection, the Chief, FES Division will notify the hearing officer or the hearing officer's DIO, the Office of Chief Counsel, and the DIO of the division which issued the notice of denial, revocations, suspension or fine. A Hearing Officer's Assignment Notification will be issued to the DIO of the division where the hearing will be held.

An individual should decline to act as a hearing officer in a particular case if he/she is not fully confident that he/she can administer a fair and impartial proceeding. If, at any time after being

designated as hearing officer for a case, the officer determines that he/she cannot administer a fair and impartial proceeding, the hearing officer should immediately recuse himself or herself from the matter and notify the Chief, FES Division.

The Office of Chief Counsel will represent the Government, unless, upon review of the facts of a case, the DIO and Chief Counsel's office concur that counsel's presence is not warranted at the hearing.

Notification of Applicant/Licensee

The DIO in the applicant's/licensee's division will make arrangements for the hearing and advise the applicant/licensee in writing (by certified mail, return receipt requested, contract carrier or hand delivery) of the date, time, place, and name of the hearing officer, in accordance with 27 CFR 478.72, 478.74, 478.76, and 478.77. Copies of this notification will be provided to the Chief, FES Division and the designated hearing officer.

The specific location for the hearing is within the discretion of the agency, as is the time for the commencement of the hearing, and both should be set with due regard for the convenience of the parties, the availability of an appropriate setting for the hearing, and security considerations.

The DIO will coordinate the scheduling of the hearing with the hearing officer and the assigned counsel, if any, to ensure that there is no scheduling conflict and to ensure that all notifications are conducted according to law and regulation. Within 30 days of the assignment of a hearing officer, a hearing date is to be established. This hearing date is to be no later than 90 days from the date the hearing officer was assigned, except for good cause shown and approved by the Chief, FES Division. A party's initial request for the rescheduling of a hearing may be approved if the party establishes a legitimate need for the rescheduling. The rescheduled date should be within 30 days of the original hearing date. Subsequent requests for rescheduling by a party should be denied unless the request is a result of an emergency outside the party's control, e.g., illness or similar personal or family emergency.

Hearing officers should not have any contact with the licensee/applicant prior to the hearing. All questions/inquiries should be directed to the DIO of the applicant's/licensee's division.

The individual who presents the case for the Government will make all arrangements for witnesses and documentary evidence relevant to the

Government's case, with the assistance of the DIO, if needed.

Recording of the Hearing

The hearing shall be recorded using an audiotape recorder or digital voice recorder, which will be provided by the agency and operated by the hearing officer. The tape or recording, along with the exhibits, shall constitute the official record of the hearing.

The applicant/licensee may make an audiotape recording or digital voice recording of the proceedings, or have the proceedings recorded by a stenographer, at his/her own expense, provided this is not disruptive to the proceedings. The proceedings will not be videotaped.

Any person (including the applicant/licensee) desiring a copy of the official record of the hearing may make a written request to ATF's Disclosure Division at the following address: Disclosure Division, Office of the Director, Bureau of Alcohol, Tobacco, Firearms and Explosives, 99 New York Avenue, NE., Washington, DC 20226.

Prior to concluding the hearing, the hearing officer shall ensure that the hearing has been recorded properly. If the hearing, or any portion thereof, was not recorded properly, the DIO may consult with agency counsel, the hearing officer, or any other party he/she deems necessary, including opposing counsel, to determine the appropriate remedy. The DIO may consider all legal remedies available in such circumstances including, but not limited to, repeating the hearing. The DIO will determine the appropriate remedy for an inadequate recording or poor sound quality in a recording.

Conduct of the Hearing

Hearings are informal in nature, and adherence to civil court rules and procedures is not required. However, the hearing officer will ensure that the proceedings are conducted in an orderly and professional manner. The purpose of the hearing is to allow both parties to fully present all relevant evidence and arguments deemed necessary regarding the denial, revocation, or suspension of a license, or the imposition of a civil fine. The hearing is properly closed when these issues have been fully explored in the judgment of the hearing officer.

The hearing officer is responsible for all materials necessary to conduct the hearing, e.g., audiotape recorder, tapes, digital voice recorder, batteries, labels to mark exhibits, writing materials, memorandum designating the hearing officer, and a copy of the written notice

giving the time and place of the proceeding.

The hearing officer will advise the parties that firearms are not permitted at the hearing, and that all proceedings will cease if this policy is violated.

The hearing officially begins at the time the audiotape recorder or digital voice recorder is activated by the hearing officer. The hearing officer will explain general procedures to be followed.

There may be some preliminary comments regarding the hearing procedures before the audiotape recorder or digital voice recorder is activated. Following activation of the audiotape recorder or digital voice recorder, the hearing officer will:

- State the purpose of the hearing;
 - State the hearing officer's identity, and have all persons present identify themselves on the record;
 - Address whether any non-witness observers may attend the hearing; the hearing officer may also exclude witnesses from the hearing until their appointed time to testify;
 - State the time, date, and location of the hearing;
 - State that the proceeding is being recorded, and that the recording being made by him/her is the official recording of the proceeding;
 - State that if the DIO decides to deny the application, revoke or suspend the license, or impose a civil fine, the aggrieved party is entitled to *de novo* judicial review of the decision, and that the record of the present proceedings may become part of that review;
- In addition, during the hearing, the hearing officer will identify and enter into the official record:
- All exhibits, including his/her designation as hearing officer;
 - Any power of attorney, if filed;
 - The license or application;
 - Notice of denial or revocation;
 - Proof of delivery of notice of denial or revocation;
 - Notice of hearing; and
 - Proof of delivery of notice of hearing;

At the hearing, the Government will present its evidence first. The applicant/licensee will then present evidence for its case. The hearing officer has the discretion to allow the rebuttal of evidence. All evidence offered by either party (including hearsay, whether offered through a witness or by document) shall be admissible, unless the hearing officer determines that the evidence is completely irrelevant, manifestly unreliable, or unduly repetitive.

Both parties shall have the right to question all witnesses. The party calling

a witness shall have the right to re-direct examination of the witness. The hearing officer may permit further questioning beyond re-direct examination for good cause. The hearing officer may question the parties and the parties' witnesses at any time during the hearing.

In the event that a hearing becomes disorderly, the hearing officer may take one or more of the following actions to regain control of the proceedings:

- Caution the parties to conduct themselves in an orderly manner;
- Call for a short recess;
- Express disapproval on the record and warn against repetition of the offensive conduct;
- Postpone the proceedings; or
- Suspend the proceedings, in which case the hearing officer shall notify the DIO of his/her action and the reason(s) immediately, to be followed by written notification to the Chief, FES Division as soon as possible. In such circumstances, the hearing officer shall grant the parties an appropriate period of time to submit additional written evidence.

When the hearing officer is satisfied that all evidence and arguments have been fully presented by the parties, the hearing officer will state that the DIO will make a decision in the matter and will notify the licensee/applicant of the final decision in writing. The hearing officer will state for the record that if the licensee/applicant is not satisfied with the final decision, he/she may appeal this decision to Federal district court within 60 days, according to 18 U.S.C. 923(f)(3), and that these proceedings may become part of that review.

If either party states that he/she wishes to submit additional documents, which are not available in the hearing, the hearing officer may state on the record, during the hearing, that such specified documents will be received and considered along with other evidence in the case. The hearing officer should specify a time frame for the submission of such documents. The hearing officer will declare the proceedings closed on the record; however, the record will remain open for the timely submission of the specified documents not available at the hearing pursuant to the hearing officer's instructions. The hearing officer may set conditions under which additional documentation, including rebuttal documentation, may be submitted.

Hearing Officer Report

Following the completion of the proceedings, the hearing officer shall prepare a report summarizing the proceedings. The report shall be

completed within 30 calendar days of the conclusion of the hearing and at a minimum include the following items:

- An introduction outlining the reason for the hearing, notification procedures, date and location of the hearing, and persons present at the hearing;
- Summaries of the presentations by the Government and by the applicant/licensee party;
- Findings of fact based only upon the information presented, including applicable references to laws and regulations;
- Conclusions based only upon the findings of fact;
- Recommendation; and
- List of exhibits.

Upon completion of the report, the hearing officer will forward the report and the recording of the proceedings directly to the DIO via the carrier under ATF contract. The hearing officer will retain a receipt of shipping and notify the Chief, FES Division or his/her designee. The recording will be labeled with the licensee's/applicant's name, Federal Firearms License (FFL) number, date of hearing, and tape, CD, or cassette number (*i.e.*, Tape or Cassette 1 of 3).

Following a decision by the DIO, the report and the recording should be maintained by the DIO, unless counsel requests the recording to be forwarded for review.

The DIO should notify the Chief, FES Division or the designee of the date of receipt of the hearing officer's report; the date the report is forwarded to ATF Counsel for final review; and the date final action is taken on the case.

Post Hearing Procedures

The original report, including exhibits and recording, shall become part of the applicant's/licensee's official file at the Federal Firearms Licensing Center.

The hearing officer will be provided a copy of the Final Notice, if issued, or be advised of other action taken by the DIO in lieu of the recommended denial, revocation, suspension, or fine.

Drafting Information

The author of this document is James P. Ficaretta; Enforcement Programs and Services; Bureau of Alcohol, Tobacco, Firearms and Explosives.

Authority and Issuance

This notice is issued pursuant to 5 U.S.C. 552(a).

Approved: August 2, 2010.

Kenneth E. Melson,
Deputy Director.

[FR Doc. 2010-19740 Filed 8-9-10; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—NIC Cost Containment Online Resource Center Project

AGENCY: National Institute of Corrections, U.S. Department of Justice.

ACTION: Solicitation for cooperative agreement.

SUMMARY: The National Institute of Corrections (NIC) is soliciting proposals from organizations, groups, or individuals to enter into a cooperative agreement for an 18-month project period. The goal of this agreement is the development of a cost containment online resource center. The NIC Cost Containment Online Resource Center (CCORC) will be housed on the NIC Web site and contain materials to assist corrections practitioners with developing and implementing systems-level cost containment strategies. The CCORC will serve as a forum for information exchange and a repository for current, practical evidence-based information about cost containment. The project's four tasks are to (1) compile a guide providing a detailed review of existing evidence-based models, including their strengths, weaknesses, and applicability to correctional agencies, for managing cost containment interventions at the systems level; (2) gather supplemental materials designed to provide concrete and practical strategies for planning, implementing, and sustaining cost containment interventions (The intent is to combine packaged materials with "off-the-shelf" modules that agencies can use to develop workable solutions.); (3) work with the NIC Information Center's Contracting Officer's Technical Representative (COTR), NIC's intermediary with the Information Center, to develop the online site; and (4) coordinate two meetings of a review panel to advise the project early in the development of its products and near the end to evaluate their utility for the corrections field. All expenses for these meetings will be provided out of the funding awarded under this agreement. The two meetings are expected to last one and a half days for up to 10 participants. With the assistance of the recipient, NIC will identify the participants for each meeting. The recipient of this award will assist NIC in locating an appropriate venue and coordinating local arrangements at the site, including meeting rooms and food and beverage services. The recipient will also assist participants in arranging