

## § 13.21

## 27 CFR Ch. I (4–1–04 Edition)

### § 13.21 Application for certificate.

(a) *Form of application.* An applicant for a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval, must send or deliver signed duplicate copies of ATF Form 5100.31, "Application For And Certification/Exemption Of Label/Bottle Approval" according to the instructions for that form. If the application complies with applicable laws and regulations, a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval will be issued. If the approval is qualified in any manner, such qualifications will be set forth in the appropriate space on the form.

(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.

[T.D. ATF-406, 64 FR 2129, Jan. 13, 1999, as amended by T.D. ATF-449, 66 FR 19085, Apr. 13, 2001]

### § 13.22 Withdrawal of applications.

A person who has filed an application for a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval, may withdraw such application at any time before ATF takes action on the application.

### § 13.23 Notice of denial.

Whenever an application for a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval is denied, the appropriate ATF officer must

issue to the applicant a notice of denial on ATF Form 5190.1, entitled "ATF F 5100.31 Correction Sheet," briefly setting forth the reasons why the label or bottle is not in compliance with the applicable laws or regulations. The applicant may then submit a new application for approval after making the necessary corrections.

[T.D. ATF-406, 64 FR 2129, Jan. 13, 1999, as amended by T.D. ATF-449, 66 FR 19085, Apr. 13, 2001]

### § 13.25 Appeal of qualification or denial.

(a) *Form of appeal.* If an applicant for a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval wishes to appeal the qualified approval or denial of an application, the applicant may file a written appeal with the appropriate ATF officer within 45 days after the date of the notice of qualification or denial. The appeal should explain why the applicant believes that the label or bottle is in compliance with applicable laws and regulations. If no appeal is filed within 45 days after the date of the notice of qualification or denial, the notice will be the final decision of ATF.

(b) *Informal resolution.* Applicants may choose to pursue informal resolution of disagreements regarding correction sheets or qualifications by requesting an informal conference with the appropriate ATF officer. However, formal administrative appeals must comply with the provisions of paragraph (a) of this section.

### § 13.26 Decision after appeal of qualification or denial.

(a) *Decision.* After considering any written arguments or evidence presented by the applicant, the appropriate ATF officer must issue a written decision to the applicant. If the decision is that the qualified approval or denial should stand, 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 decision is that the certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle application should be approved without qualification, the applicant should resubmit ATF Form 5100.31 and the certificate will be issued.

(b) *Time limits for decision.* Within 90 days of receipt of an 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 issues presented by an appeal. If the appropriate ATF officer extends the period, he or she must notify the applicant by letter, briefly explaining the issues presented by the label. If the appellant receives no decision from the appropriate ATF officer within the time periods set forth in this paragraph, the appellant may appeal as provided in §13.27.

(c) *Judicial review.* Prior to applying to the Federal courts for review, an applicant must first exhaust his or her administrative remedies, including the appeal rights set forth in this section and §13.27.

#### §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.

(c) *Judicial review.* An appeal to the appropriate ATF officer is required prior to application to the Federal courts for review of any denial or qualification of an application.

[T.D. ATF-406, 64 FR 2129, Jan. 13, 1999; T.D. ATF-406a, 64 FR 10949, Mar. 8, 1999, as amended by T.D. ATF-449, 66 FR 19086, Apr. 13, 2001]

### Subpart D—Revocations of Specific Certificates

#### §13.41 Authority to revoke certificates.

Certificates of label approval, certificates of exemption from label approval, and distinctive liquor bottle approvals, previously approved on ATF Form 5100.31, may be revoked by the appropriate ATF officer upon a finding that the label or bottle at issue is not in compliance with the applicable laws or regulations.

#### §13.42 Notice of proposed revocation.

Except as provided in §13.51, when the appropriate ATF officer determines