

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 TTB 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 TTB Form 5100.31 and the certificate will be issued.

(b) *Time limits for decision.* Within 90 days of receipt of an appeal, the appropriate TTB 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 TTB 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 TTB 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 TTB 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 TTB officer within 45 days after the date of that decision. If the appropriate TTB 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 TTB 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 TTB 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 TTB 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 TTB 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 TTB 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 TTB.

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

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