



U.S. Department of Transportation

**Pipeline and Hazardous Materials  
Safety Administration**

# **Standard Operating Procedures for Explosive Examination Agency Approvals**

**Version 1.0**

**August 2010**

# Disclaimer

The materials contained in this document consist of guidance, procedures and other information for PHMSA's Office of Hazardous Materials Safety and its supporting program offices. This document is issued exclusively for the internal management of PHMSA and the guidance of its officers and employees. This document is U.S. government property and is to be used in conjunction with official duties only.

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# 1 Introduction

## 1.1 Purpose of the Document

As part of the Pipeline and Hazardous Materials Safety Administration's (PHMSA) efforts to improve consistency and transparency within the Approvals Program, the *Standard Operating Procedures for Explosive Examination Agency Approvals* document was developed as a reference for staff in the Office of Hazardous Materials Safety (OHMS).

This standard operating procedure (SOP) document provides clear and detailed procedures covering the approval of explosive examination agencies. Consequently, this SOP document will be used as the main reference for approving prospective explosive examination agencies, and managing explosive examination agencies with existing approvals.

In addition to issuing approvals to explosive examination agencies, PHMSA grants approvals for a wide array of activities in the hazardous materials industry. These activities may include, but are not limited to, classifying, labeling, manufacturing, testing and transporting hazardous materials safely, under conditions defined in the Hazardous Materials Regulations.

For information on other types of approvals issued by PHMSA, see the *Approvals Program Standard Operating Procedures* document, which provides a comprehensive description of the Approvals Program. Note that the *Approvals Standard Operating Procedure* document includes a reference to explosive examination agency approvals; however, the *Standard Operating Procedures for Explosive Examination Agency Approvals* document should serve as the main reference for OHMS staff when approving and managing explosive examination agencies.

## 1.2 Structure of the Document

The document is comprised of two main sections with supporting appendix. Topics covered in this document include:

- Overview of Explosive Examination Agency Approvals
- Policies and Procedures

In addition to these topics, this SOP document includes an appendix that provides definitions for terms used.

This SOP document should be considered a living document that will be revised and updated periodically to improve operations and ensure that policies and procedures remain aligned to the business needs of OHMS.

Specific questions related to the *Standard Operating Procedures for Explosive Examination Agency Approvals* should be addressed to:

Director  
Division of Approvals and Permits  
(202) 366-4511

<i>Policies and Procedures for Application Review</i> Version Number: <u>1.0</u> Effective Date: <u>August 31, 2010</u>		
Title	Name	Date

## 2 Overview of Explosive Examination Agency Approvals

### 2.1 Purpose

An Approval is written consent, including a competent authority approval, from the Associate Administrator for Hazardous Materials Safety or other designated Department official, to perform a function that requires prior consent under the Hazardous Materials Regulations (HMR) (49 CFR parts 171 through 180).<sup>1</sup>

The Associate Administrator for Hazardous Materials Safety may issue approvals to persons, companies or entities seeking to examine and issue explosive classification recommendations (i.e., recommended shipping description, division, and compatibility group) in accordance with the requirements of the HMR. The procedures used by the Associate Administrator to grant explosive examination agency approvals are outlined in 49 CFR Part 107 Subpart H.

Persons or companies approved to issue recommendations for explosive classifications are known as explosive examination agencies. In order to be an explosive examination agency, a person or company must:

- Have (directly, or through an employee involved in the examination) at least ten years of experience in the testing and evaluation of explosives
- Not be involved in the manufacturing or marketing of explosives
- Not be controlled by, or financially dependent on, any entity that manufactures or markets explosives
- Be a resident of the United States

Approvals for explosive examination agencies issued by PHMSA expire after five years. Explosive examination agencies may renew existing approvals.

This SOP document provides clear and detailed procedures covering how PHMSA approves and manages explosive examination agency approvals.

### 2.2 Operational Roles and Responsibilities

A number of roles are required to execute and manage explosive examination agency approvals. Table 2-1 illustrates where operational roles currently reside within PHMSA. It is important to note that the staff and managers assigned operational roles may delegate their official responsibilities to others involved in executing and managing explosive examination agency approvals.

**Table 2-1: Current Organizational Alignment and Roles**

Organizational Role	Organization	Current Organizational Position
Administrator	Office of the Administrator	Administrator of PHMSA
Associate Administrator	Office of Hazardous Material Safety	Associate Administrator for Hazardous Materials Safety

<sup>1</sup> 49 CFR 107.1

Organizational Role	Organization	Current Organizational Position
Approving Official	Office of Hazardous Materials Safety	Associate Administrator for Hazardous Materials Safety
Transportation Assistant	Division of Approvals and Permits	Transportation Assistant
Project Officer	Division of Approvals and Permits	Transportation Specialist, Senior Transportation Specialist
Senior Technical Officer	Division of Engineering and Research	Director of the Division of Engineering and Research
Technical Officer	Division of Engineering and Research	Chemists, Physical Scientists, and Engineers
Enforcement Liaison	Field Operations	Director of Field Operations or designee
Legal Counsel	Office of Chief Counsel	Chief Counsel or Assistant Chief Counsel of the Hazardous Materials Safety Law Division
Safety Review Board	PHMSA	Designated by PHMSA
Applicant or Approval Holder	Industry	NA

### 2.2.1 Administrator

The Administrator is the Administrator of PHMSA. The responsibilities of the Administrator in the approvals process include:

- Reviewing and approving significant approval applications, based on public interest or other criteria as determined by the Administrator
- Granting or denying, in whole or in part, an appeal requested by an Approval Holder or Applicant. The Administrator may delegate this responsibility to another DOT Official
- Participating in discussions to resolve issues among PHMSA staff as determined by the Administrator

### 2.2.2 Associate Administrator

The Associate Administrator for Hazardous Materials Safety is the Approving Official. The responsibilities of the Associate Administrator in the approvals process include:

- Acting as the Approving Official or delegating this responsibility to OHMS staff and overseeing the conduct of this function
- Granting or denying, in whole or in part, a reconsideration request by an Approval Holder or Applicant. The Associate Administrator may delegate this role to another DOT Official

### 2.2.3 Approving Official

The Approving Official is the Associate Administrator for Hazardous Materials Safety. Under Section 107.709(c) of the HMR, the Associate Administrator is responsible for signing approval and denial documents. The Approving Official is also responsible for:

- Determining whether the application evaluation is complete
- Reviewing disposition recommendations
- Approving disposition of approval applications, including rejection letters, denial letters, and approval documents

- Monitoring the volume and status of approval applications
- Maintaining and updating the SOPs for the Approvals Program
- Making recommendations to the Administrator concerning the disposition of significant approval applications (based on public interest or other criteria determined by the Administrator)
- Delegating Approving Official responsibility for specific approvals, based on criteria related to the operations, transport modes, materials, or other criteria, as appropriate

#### **2.2.4 Transportation Assistant**

Depending on the type of approval, the Transportation Assistant is responsible for receiving the approval applications that are submitted via email, regular mail, or fax. The Transportation Assistant is also responsible for:

- Reviewing the application and then separating the application into two parts. The two parts are the Request, and the Background.
- Forwarding the application to a PHMSA designee for data entry

Note: Once the application is entered into the Approvals IT System, the system generates a tracking number and forwards the file for action to the assigned Project Officer.

#### **2.2.5 Project Officer**

The Project Officer is responsible for managing the approval review process for a specific approval application. A Project Officer will be designated for each approval application. The Project Officer is responsible for:

- Providing oversight of the entire application evaluation and disposition processes across PHMSA
- Coordinating the Application Completeness Review process of an approval application, which may include:
  - Creating a folder in the Approvals IT System for application materials
- Coordinating application evaluations, which may include (but not necessarily be conducted by the Project Officer):
  - Conducting Applicant Minimum Level of Fitness Reviews
  - Conducting on-site investigations of Applicants, as needed
  - Coordinating with PHMSA legal staff
  - Drafting and/or reviewing approvals

#### **2.2.6 Senior Technical Officer**

The Senior Technical Officer is responsible for:

- Assigning and managing approval applications among appropriate Technical Officers
- Overseeing the technical evaluation of approval application, which may include:
  - Assigning Technical Officer to each approval application

- Reviewing Technical Officer's evaluation and recommendation
- Conducting equivalent level-of-safety evaluations
- Drafting and/or reviewing approvals

### 2.2.7 Technical Officer

The Technical Officer has subject matter expertise in certain aspects of hazardous materials transportation safety. The Technical Officer may be assigned to participate in the review and evaluation of an approval application, if needed. The Technical Officer is responsible for:

- Completing technical evaluations of approval applications, which may include:
  - Conducting equivalent level-of-safety evaluations
  - Conducting on-site investigations of Applicants, as needed
  - Drafting and/or reviewing approvals

### 2.2.8 Enforcement Liaison

The designated Enforcement Liaison is responsible for:

- Performing Minimum Level of Fitness reviews
- Conducting all preapproval inspections and investigations
- Conducting on-site compliance investigations of Applicants
- Managing and conducting investigations of Applicants and holders of existing approvals

### 2.2.9 Legal Counsel

The designated Legal Counsel is responsible for:

- Providing legal guidance for policies and procedures that pertain to approvals and other dispositions as requested
- Reviewing and providing input on recommendations for Applicant denial

### 2.2.10 Safety Review Board

The Safety Review Board (SRB) is designated by PHMSA to resolve disputes of professional opinion when such disputes cannot be resolved internally among office and/or program staff and management. The SRB is comprised of the chair,<sup>[1]</sup> legal officer,<sup>[2]</sup> board members,<sup>[3]</sup> and senior policy advisor. The board conducts several functions including:

- Resolving issues stemming from differences in professional judgment between or among PHMSA staff members on safety matters, decisions, or actions

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<sup>[1]</sup> The Chief Safety Officer or other senior executive designated in writing by the Chief Safety Officer.

<sup>[2]</sup> The PHMSA Chief Counsel or other senior attorney designated in writing by the PHMSA Chief Counsel.

<sup>[3]</sup> The Associate Administrator (or a designee) for Pipeline Safety. (The Associate Administrator for the program in which the concern has been raised shall not serve on the SRB). In his/her place, the Administrator will appoint an individual with subject matter expertise.

- Resolving issues referred to it by any PHMSA employee (but only after internal processes for achieving consensus have been exhausted)
- Referring an issue (at its discretion) to the Deputy Administrator and Administrator for resolution or to the Associate Administrator for consideration of an issue or implementation of an action

### **2.2.11 Applicant or Approval Holder**

The Applicant or Approval Holder is a person, company or entity requesting an approval from PHMSA to act as an approved explosive examination agency under the authority of 49 CFR Part 107, Subpart H – Approvals, Registrations and Submissions. The Applicant or Approval Holder is responsible for:

- Submitting a complete application for an approval as required under 49 CFR Part 107, Subpart H – Approvals, Registrations and Submissions. Applications that do not meet these requirements shall be rejected
- Providing PHMSA with additional information or data if necessary
- Complying with the requirements of an approval when issued
- Remaining independent of the manufacturers or markets of the explosives it is classifying
- Allowing the Approving Official to inspect its records and facilities
- Notifying the Approving Official within 20 days of any change in the information submitted in the original application
- Submitting an annual report of activity to the Approving Official
- Submitting an annual certification of compliance to Approving Official

## 3 Policies and Procedures

Section 3 of this SOP document outlines the policies and procedures utilized by PHMSA to manage explosive examination agency approvals. This section includes detailed policies and procedures for:

- Application Completeness Review
- New Approval
- Application Disposition
- Approval Renewal
- Approval Modification, Suspension or Termination
- Reconsideration
- Appeal
- Minimum Level of Fitness Review
- Dispute Resolution
- Post-Approval Responsibilities
- Forms and Documents

## **Policies and Procedures for Application Completeness Review**

## 3.1 Application Completeness Review

### 3.1.1 Purpose

The purpose of the Application Completeness Review procedure is to determine:

- If the Applicant submitted the information required under 49 CFR Part 107 for PHMSA to begin the evaluation of the proposed approval

### 3.1.2 Overview

An Applicant may submit an application through the online application system available on PHMSA's website, by email, mail or facsimile. Once submitted, the application, regardless of the approval type, is reviewed for completeness.

#### *Conduct Completeness Review*

If an Applicant submits their application through the online application system, the system automatically reviews the application materials and informs the Applicant if the information is incomplete. The online application system effectively prevents an Applicant from submitting an incomplete application.

If an Applicant mails, emails or faxes an application to PHMSA, the Transportation Assistant reviews the application and separates it into two parts: the Request and the Background. The application is then forwarded to the contractor for data entry with instructions on the assignment of the application to a Project Officer. Once the application is entered into the Approvals IT System, the system generates a tracking number and forwards the file for action to the assigned Project Officer. The Project Officer conducts an initial completeness review, which consists of ascertaining whether or not the Applicant submitted all requisite information to become an explosive examination agency. If the application is incomplete, the Project Officer drafts a *Rejection Letter* to send to the Applicant. Otherwise, the Project Officer continues to evaluate the application as described in Section 3.2.

### 3.1.3 Procedures

Table 3-1 describes the detailed procedures used to determine if an application is complete.

Documents and forms utilized during specific procedures in the table appear in italicized text, and are also described in detail in Section 3.11.

**Table 3-1: Procedures for Application Completeness Review**

#	Procedure Description	Responsibility	Duration
1	<b>Applicant Submits Application.</b> The Applicant submits an application for approval through PHMSA's online application system or by email, mail or facsimile. If the Applicant utilizes the electronic submission option, continue to step 2. If the Applicant emails, mails, or faxes the application, skip to step 7.	Applicant	NA
2	<b>Conduct Initial Completeness Review.</b> If the application is submitted online, the Approvals IT System determines whether or not the Applicant has submitted all necessary documents and application materials to become an approved explosive examination agency. Note this activity does not constitute a comprehensive review of the Applicant's qualifications.	Approvals IT System	NA
3	<b>Determines Application is Complete.</b> If the application is submitted online, the Approvals IT System determines if the Applicant has submitted all necessary documents and application	Approvals IT System	NA

#	Procedure Description	Responsibility	Duration
	materials. If the application is complete, skip to step 6. Note this activity does not constitute a comprehensive review of the Applicant's qualifications.		
4	<b>Notify Applicant of Necessary Modifications.</b> The Approvals IT System instructs the Applicant to submit the missing application materials.	Approvals IT System	NA
5	<b>Make Necessary Modifications.</b> The Applicant submits the missing application materials.	Applicant	NA
6	<b>Generate Folder in the Approvals IT System and Assign Tracking Number.</b> The Approvals IT System creates a folder for the application and assigns it a unique tracking number. Skip to step 15.	Approvals IT System	NA
7	<b>Route Application to Appropriate Project Officer.</b> If the application is received by email, or mail or fax, the Transportation Assistant reviews the application and separates it into two parts: the Request and the Background. The application is then forwarded to the contractor for data entry and with the instructions on the assignment of the application to a Project Officer. Once the application is entered into the Approvals IT System, the system generates a tracking number and forwards the file for action to the assigned Project Officer.	Transportation Assistant	NA
8	<b>Conduct Initial Completeness Review.</b> The Project Officer conducts an initial completeness review.	Project Officer	NA
9	<b>Determines Application is Complete.</b> The Project Officer determines if the Applicant has submitted all necessary application materials. If the application is complete, skip to step 15. Note this activity does not constitute a comprehensive review of the Applicant's qualifications.	Project Officer	NA
10	<b>Draft Rejection Letter.</b> If the application is not complete, the Project Officer drafts a <i>Rejection Letter</i> that includes the rationale for rejecting the application and sends it to the Approving Official.	Project Officer	NA
11	<b>Review Rejection Letter.</b> The Approving Official reviews the <i>Rejection Letter</i> .	Approving Official	NA
12	<b>Concurs with Rejection Decision.</b> If the Approving Official does not concur, skip to Dispute Resolution Procedures.	Approving Official	NA
13	<b>Sign Rejection Letter.</b> If the Approving Official agrees with the decision to reject the Applicant, the <i>Rejection Letter</i> is signed.	Approving Official	NA
14	<b>Send Rejection Letter to Applicant.</b> The Approvals IT System automatically sends the <i>Rejection Letter</i> to the Applicant after it is signed by the Approving Official.	Approvals IT System	NA
15	<b>Notify Applicant of Receipt of Application and Post Status on PHMSA Website.</b> The Approvals IT System notifies the Applicant that PHMSA has received and is in the process of evaluating the application.	Approvals IT System	NA

#	Procedure Description	Responsibility	Duration
16	<b>Notify PHMSA Offices of Application Receipt.</b> The Approvals IT System sends an automatic message to relevant PHMSA offices that the application has been received. Proceed to the appropriate procedure. <End>	Approvals IT System	NA

## **Policies and Procedures for a New Approval**

## 3.2 New Approval

### 3.2.1 Purpose

The purpose of the New Approval Procedure is to determine whether a person, company or entity seeking to become an approved explosive examination agency is capable of examining and issuing recommendations for explosive classifications (i.e., recommended shipping description, division, and compatibility group) in accordance with the requirements of the HMR.

### 3.2.2 Overview

Once PHMSA receives a complete approval application, the agency conducts a comprehensive evaluation that involves two procedures: (1) An assessment of the Applicant's capabilities to test and issue recommendations for explosive classifications; and (2) an on-site fitness inspection of the Applicant's outdoor test range and related facilities.

#### *Evaluate Applicant's Capabilities*

Once PHMSA receives a complete application, the Project Officer and the Technical Officer coordinate to evaluate the Applicant's capabilities to test and issue recommendations for explosive classifications. This evaluation includes assessing the qualifications of personnel who will be testing and issuing explosive classification recommendations and are requesting signatory approval; reviewing the list of test equipment owned or contracted for use by the Applicant; and verifying that the Applicant does not have any improper relationships with manufacturers or marketers of explosives which may constitute undue influence.

#### *Conduct On-Site Fitness Inspection*

Prior to granting an approval, the Project Officer, Technical Officer or Enforcement Liaison must conduct an on-site fitness inspection of the Applicant's outdoor explosives test range and related facilities. Once PHMSA has evaluated the application and conducted an on-site fitness inspection, the Approving Official makes a decision to approve or deny the Applicant. This on-site fitness inspection constitutes the Minimum Level of Fitness Review for explosive examination agencies.

### 3.2.3 Procedures

Table 3-2 describes the detailed procedures used by PHMSA to evaluate an application from a person, company or entity seeking to become an explosive examination agency. Documents and forms utilized during specific procedures in the table appear in italicized text, and are also described in detail in 3.11.

**Table 3-2: Procedures for a New Explosive Examination Agency Approval**

#	Procedure Description	Responsibility	Duration
1	<p><b>Verify Application Materials are Satisfactory.</b> The Project Officer reviews the application to confirm that it includes:</p> <ul style="list-style-type: none"> <li>• A personnel qualifications plan that lists the qualifications that the Applicant will require of each person to be used in the performance of each classification function</li> <li>• A listing of test procedures that the Applicant intends to use in the performance of each classification function</li> <li>• A listing of equipment that the Applicant intends to use in the performance of each classification function</li> <li>• A listing of the ATF-licensed outdoor explosive test ranges to be used in the testing of explosives</li> <li>• A statement that the Applicant will perform its functions</li> </ul>	Project Officer	NA

#	Procedure Description	Responsibility	Duration
	<p>independent of the manufacturers or markets of the explosives concerned</p> <ul style="list-style-type: none"> <li>• A statement that the Applicant will allow the Approving Official or his representative to inspect its records and facilities in so far as they relate to classification of explosives and shall cooperate in the conduct of such inspections</li> <li>• A statement that the Applicant will agree to reimburse PHMSA for expenses incurred during the on-site technical inspection</li> </ul> <p>During this review, the Project Officer assesses the application materials to determine whether or not they contain sufficient information to continue the application. The Project Officer documents the review in the <i>Application Completeness Checklist</i>.</p>		
2	<p><b>Decides Application Materials are Satisfactory.</b> The Project Officer determines whether the application is satisfactory based on the results of their review of the application. If the application is satisfactory, skip to step 9.</p>	Project Officer	NA
3	<p><b>Draft Denial Letter.</b> If the application is not complete, the Project Officer drafts a <i>Denial Letter</i> that includes the rationale for rejecting the application and sends it to the Approving Official.</p>	Project Officer	NA
4	<p><b>Review Denial Letter.</b> The Approving Official reviews the <i>Denial Letter</i>.</p>	Approving Official	NA
5	<p><b>Concurs with Denial Decision.</b> If Approving Official does not concur, skip to Dispute Resolution Procedures.</p>	Approving Official	NA
6	<p><b>Sign Denial Letter.</b> The Approving Official signs the <i>Denial Letter</i>.</p>	Approving Official	NA
7	<p><b>Send Denial Letter to Applicant.</b> The Approvals IT System automatically sends the <i>Denial Letter</i> to the Applicant after it is signed by the Approving Official.</p>	Approvals IT System	NA
8	<p><b>Change Application Status on PHMSA Website.</b> After the <i>Rejection Letter</i> is sent to the Applicant, the Approvals IT System automatically changes the application status on the PHMSA website, informing the Applicant that his/her application has been rejected. &lt;End&gt;</p>	Approvals IT System	NA
9	<p><b>Assign Application to Appropriate Specialist.</b> The Senior Technical Officer assigns the application to a Technical Officer based on their expertise and workload.</p>	Senior Technical Officer	NA
10	<p><b>Evaluate Applicant's Capabilities.</b> The Technical Officer evaluates the application to review the Applicant's capabilities to conduct approval-related activities using the <i>Evaluation Criteria for Third Party Approval for Testing Explosives</i>. His/her review includes:</p> <ul style="list-style-type: none"> <li>• A personnel qualifications plan that lists the qualifications that the Applicant will require of each person to be used in determining each explosive classification recommendation</li> </ul> <p>Each Applicant must name one or more personnel for which they are requesting PHMSA signatory approval, and for each must include a resume showing requisite testing experience acquired over more than 10 years' time</p>	Technical Officer	NA

#	Procedure Description	Responsibility	Duration
	<ul style="list-style-type: none"> <li>• A listing of UN test procedures that the Applicant intends to use in determining each explosive classification recommendation</li> <li>• A listing of equipment that the Applicant intends to use in determining each explosive classification recommendation. This list must specify the location/test site capabilities for all equipment, including where the Applicant has testing capability at multiple locations. The Applicant must have the capability to carry out all of the UN test methods required for testing and classification purposes</li> <li>• A listing of the ATF-licensed outdoor explosive test ranges to be used in the testing of explosives, ensuring that the Applicant included copies of all pertinent ATF licenses</li> <li>• A statement that the Applicant will perform its functions independent of the manufacturers or markets of the explosives concerned. This requirement will in part be evaluated by the restriction that no single identifiable revenue source may provide more than 20% of the Applicant's gross income during the approval period, the details of which will be listed in the Applicant's required activity report</li> <li>• A statement that the Applicant will allow the Approving Official or his representative to inspect its records and facilities in so far as they relate to classification of explosives and shall cooperate in the conduct of such inspections</li> </ul> <p>Note that the Project Officer should refer to the <i>Evaluation Criteria for Third Party Approval for Testing Explosives</i> when completing this review.</p>		
11	<b>Needs Additional Information.</b> The Technical Officer determines whether he/she needs additional information to complete the evaluation of the application per 49 CFR 107.709. If no, skip to 19.	Technical Officer	NA
12	<b>Draft Information Request Letter.</b> The Project Officer drafts an <i>Information Request Letter</i> , requesting the specific information that the Technical Officer needs to complete the evaluation of the application.	Project Officer	NA
13	<b>Review and Sign Information Request Letter.</b> The Approving Official reviews and signs the <i>Information Request Letter</i> .	Approving Official	NA
14	<b>Send Information Request Letter to Applicant.</b> The Approvals IT System sends the <i>Information Request Letter</i> to the Applicant.	Approvals IT System	NA
15	<b>Responds in 30 Days.</b> The Applicant is given 30 days from the day the <i>Information Request Letter</i> was received to respond. If the Applicant responds <sup>2</sup> within the allotted timeframe, skip to step 17.	Applicant	30 days

<sup>2</sup> If the Applicant responds in writing within the 30-day period requesting an additional 30 days within which it will gather the requested information, the Associate Administrator may grant the 30-day extension (49 CFR 107.709).

#	Procedure Description	Responsibility	Duration
16	<b>Notify Project Officer of Non-Response.</b> If the Applicant does not respond to the <i>Information Request Letter</i> within 30 days, then the Approvals IT System automatically notifies the Project Officer that the Applicant has failed to respond. Skip to step 18.	Approvals IT System	NA
17	<b>Determine Whether Additional Information is Satisfactory.</b> The Technical Officer reviews the requested information provided from the Applicant to determine whether the information is sufficient to continue to evaluate the application. If the information is unsatisfactory, continue to step 18 to begin drafting a <i>Denial Letter</i> . If it is satisfactory, skip to step 19.	Technical Officer	NA
18	<b>Draft Denial Letter.</b> If the Technical Officer decides the application is unacceptable he/she informs the Project Officer, and the Project Officer drafts a <i>Denial Letter</i> . Skip to step 34.	Project Officer	NA
19	<b>Complete Evaluation.</b> The Technical Officer completes the evaluation and notifies the Project Officer that it is time to inspect the Applicant.	Technical Officer	NA
20	<b>Determine if Inspection is Required.</b> The Project Officer determines if an on-site fitness inspection is required and coordinates with the Enforcement Liaison and Technical Officer.	Project Officer	NA
21	<b>Determine Investigator.</b> If an inspection is deemed necessary in step 20, the Enforcement Liaison determines who in Field Operations conducts the on-site fitness inspection based on expertise and workload. The Enforcement Liaison coordinates this decision with relevant staff in Engineering and Research and Approvals and Permits and an investigation team is established.	Enforcement Liaison/ Technical Officer	
22	<b>Coordinate Fitness Inspection Logistics with Applicant.</b> The Field Operations investigator and other members of the investigation team establish a time to conduct the on-site fitness inspection(s). The investigator communicates with the Applicant to ensure the Applicant is prepared to perform the necessary tests during the on-site fitness inspection.	Enforcement Liaison/ Technical Officer	NA
23	<b>Draft Fitness Inspection Notification Letter.</b> The investigator in coordination with the Technical Officer drafts an <i>Fitness Inspection Notification Letter</i> that includes: <ul style="list-style-type: none"> <li>• Date, time and location(s) of the on-site facility inspection(s)</li> <li>• Procedures, equipment and documents to be inspected during the on-site facility inspection</li> <li>• Methods for reimbursing PHMSA allowable expenses</li> </ul>	Enforcement Liaison/ Technical Officer	NA
24	<b>Review and Sign Fitness Inspection Notification Letter.</b> The Approving Official reviews and signs the <i>Fitness Inspection Notification Letter</i> .	Approving Official	NA
25	<b>Send Fitness Inspection Notification Letter to Applicant.</b> The Approvals IT System automatically sends the <i>Fitness Inspection Notification Letter</i> to the Applicant once the Approving Official signs it.	Approvals IT System	NA
26	<b>Conduct Fitness Inspection.</b> The investigation team travels to the location(s) where the Applicant is seeking approval to test and	Enforcement Liaison/	NA

#	Procedure Description	Responsibility	Duration
	classify explosives and conducts a fitness inspection using the <i>Fitness Inspection Form</i> . The fitness inspection should include a review of the tests and other functions the Applicant will be performing under the authority of their approval.	Technical Officer	
27	<b>Draft Inspection Report.</b> The investigator drafts the <i>Fitness Inspection Report</i> and puts it in the application folder in the Approvals IT System.	Enforcement Liaison/ Technical Officer	NA
28	<b>Pay Inspection Expenses.</b> The Applicant reimburses PHMSA for all allowable expenses.	Applicant/ Project Officer	NA
29	<b>Needs Additional Tech Review.</b> If the investigator from Field Operations believes the inspection results merit review by the Technical Officer, he/she sends the application materials to the Technical Officer for review (continue to step 30). If no, skip to step 32.	Enforcement Liaison	NA
30	<b>Review Application Materials.</b> The Technical Officer reviews the additional application materials provided by either the Project Officer or Enforcement Liaison.	Technical Officer	NA
31	<b>Recommend Approval or Denial.</b> The Technical Officer documents his/her recommendation on whether PHMSA should approve or deny the application.	Technical Officer	NA
32	<b>Recommend Approval or Denial.</b> The investigator documents a recommendation on whether PHMSA should approve or deny the application.	Enforcement Liaison	NA
33	<b>Draft Approval or Denial Letter.</b> The Project Officer drafts an <i>Approval Letter</i> or <i>Denial Letter</i> . If the application is being denied, the Project Officer includes justification for why the approval is being denied.	Project Officer	NA
34	<b>Review Application Materials for Accuracy.</b> After drafting the <i>Approval Document</i> or <i>Denial Letter</i> , the Project Officer reviews all application materials for accuracy, checking all the documents for quality and ensuring that all required documents are present in the Approvals IT System. At this time, the Project Officer also confirms that the Applicant has paid all allowable inspection expenses. If the Applicant has not paid all allowable expenses, the Project Officer refrains from sending the application materials to the Approving Official.  Legal Counsel will review all denials based on substantive reasons. See Application Disposition (Section 3.3) for details.	Project Officer	NA
35	<b>Send Application Materials to Approving Official.</b> The Project Officer sends the application materials to the Approving Official via the Approvals IT System. Continue to the Application Disposition Procedures. <End>	Project Officer	NA

## **Policies and Procedures for Application Disposition**

### 3.3 Application Disposition

#### 3.3.1 Purpose

The purpose of this process, which is uniform across all approval types, is to review the recommendation to deny or issue an approval and then inform the Applicant of the decision reached by PHMSA.

#### 3.3.2 Overview

After a recommendation is made by the Project Officer and an *Approval Document* or *Denial Letter* is sent to the Approving Official to review, the Approving Official makes a final determination regarding whether to grant the approval. Note that this procedure is standard for all approval types. The application disposition process for proposed approvals involves two basic procedures: (1) Review Approval Document or Denial Letter and (2) Issue Determination to Applicant.

##### *Review Approval Document or Denial Letter*

The Approving Official reviews all supporting application materials as well as the *Approval Document* or *Denial Letter* to make a final decision on whether to grant or issue the approval. If the approval is denied based on regulatory or technical justification, the *Denial Letter* and supporting justification are sent to Legal Counsel for review. Legal Counsel may determine a denial is unnecessary. If the Approving Official and Legal Counsel do not concur, a meeting can be requested between the Associate Administrator and the Chief Counsel to make the final decision to issue an *Approval Document* or *Denial Letter*. The Approving Official will sign off on either the *Approval Document* or *Denial Letter*. The signed document is then sent to the Applicant and relevant PHMSA and OA offices.

##### *Issue Determination to Applicant*

If the Applicant is granted an approval, he/she is sent an *Approval Document* and the approval status is updated on the PHMSA website. If the Applicant is denied an approval, he/she is given the opportunity to submit a request for reconsideration and, if necessary, follow that request with a request for an appeal. If the Applicant chooses not to submit a request for reconsideration then the denial status is updated on the PHMSA website. If the Applicant is not granted an approval through the reconsideration or the appeals process the denial status is updated on the PHMSA website.

#### 3.3.3 Procedures

Table 3-3 describes the detailed procedures used to conduct application disposition activities. Documents and forms utilized during specific procedures in the table appear in italicized text, and are also described in detail in Section 3.11.

**Table 3-3: Procedures for Application Disposition**

#	Procedure Description	Responsibility	Duration
1	<b>Review Application Materials and Approval Document or Denial Letter.</b> The Approving Official reviews all relevant application materials and the justification for issuing an approval or denial. This review includes verifying that reporting or other compliance requirements for the Applicant are clearly outlined. The Approving Official will coordinate with the Administrator for review of approvals proposed to be issued based on public interest or other significant approvals, as determined by the Administrator. The Approving Official may also request further explanation from the Project Officer or Technical Officer, as necessary.	Approving Official	NA

#	Procedure Description	Responsibility	Duration
2	<b>Concurs with Recommendation.</b> If the Approving Official does not agree with the denial or approval issued, go to the Dispute Resolution Procedures (Section 3.9). If the Approving Official agrees with the Project Officer's decision to issue an approval, skip to step 15. If the Approving Official agrees with the Project Officer's decision to deny the application, continue to step 3.	Approving Official	NA
3	<b>Review Denial Letter and Consult with Project Officer as Necessary.</b> The Legal Counsel reviews the <i>Denial Letter</i> (i.e., the justification for denial), and provides comments to the Project Officer.	Legal Counsel	NA
4	<b>Concurs with Denial Decision.</b> Based on the information in the denial letter, Legal Counsel either concurs with the decision to deny the application or recommends the Applicant be approved. If Legal Counsel does not alter the decision to deny the application, skip to step 7.	Legal Counsel	NA
5	<b>Document Non-Concurrence.</b> If Legal Counsel does not concur with the decision to deny the application, he/she documents his/her rationale and provides it to the Project Officer.	Legal Counsel	NA
6	<b>Discard Denial Letter and Draft Approval Document.</b> The Project Officer, based on the justification provided by the Legal Counsel, removes the <i>Denial Letter</i> from the Approvals IT System and drafts an <i>Approval Document</i> .	Project Officer	NA
7	<b>Sign Denial Letter.</b> The Approving Officials signs off on the <i>Denial Letter</i> .	Approving Official	NA
8	<b>Send Denial Letter to Appropriate Parties.</b> The Approvals IT System automatically sends the signed <i>Denial Letter</i> to the Applicant and all relevant PHMSA Office Liaisons.	Approvals IT System	NA
9	<b>Submits Request for Reconsideration.</b> The Applicant has 30 days to submit a request for reconsideration. If the Applicant chooses to exercise this option, follow the procedures for Reconsideration Procedures (Section 3.6). If the Applicant does not request reconsideration, skip to step 18.	Applicant	NA
10	<b>Follow Reconsideration Procedures.</b> If the Applicant chooses to exercise his/her option to submit a request for reconsideration, see for Reconsideration Procedures (Section 3.6).	Applicant	NA
11	<b>Reconsideration Decision.</b> Upon completion of the reconsideration process, the Approving Official will either choose to grant the Applicant an approval or continue to deny their application request. If an Approval is granted, skip to step 15.	Approving Official	NA
12	<b>Submits Request for Appeal.</b> If the Applicant's request for approval was denied during the reconsideration process, the Applicant has a 30 day window to submit a request for an appeal. If the Applicant chooses to exercise this option, follow the procedures for Appeal (Section 3.7). If the Applicant does not request an appeal, skip to step 18.	Applicant	NA
13	<b>Follow Appeal Procedures.</b> If the Applicant chooses to exercise his/her option to submit a request for appeal, see Appeal Process (Section 3.7).		

#	Procedure Description	Responsibility	Duration
14	<b>Appeal Decision.</b> Upon completion of the appeal process, the Administrator will decide to either grant or deny the appeal. The decision resulting from the process is final. (See Appeal Process 3.7)	Approving Official	NA
15	<b>Sign Approval Document.</b> If the approval is granted, the Approving Official signs off on the <i>Approval Document</i> .	Approving Official	NA
16	<b>Assign Approval Expiration Date.</b> The Approvals IT System automatically generates an expiration date based on the type of approval being granted.	Approvals IT System	NA
17	<b>Send Approval Document to Appropriate Parties.</b> The Approvals IT System automatically sends the signed <i>Approval Document</i> to the Applicant and all relevant PHMSA Office Liaisons.	Approvals IT System	NA
18	<b>Change Application Status on PHMSA Website.</b> After the document has been electronically signed, the Approvals IT System will also trigger a change in application status to reflect the decision made on the PHMSA Website. <End>	Approvals IT System	NA

## **Policies and Procedures for Approval Renewal**

## 3.4 Approval Renewal

### 3.4.1 Purpose

The purpose of the Approval Renewal Procedure is to renew existing approvals for approved explosive examination agencies in accordance with the requirements of the HMR.

### 3.4.2 Overview

Approvals for explosive examination agencies expire after five years and Approval Holders may request a renewal of their approval from the Approving Official. Applications for renewal should be received by the Approving Official at least 120 days before the expiration of the approval.

Once PHMSA receives an application for renewal of an existing approval, the Project Officer follows procedures outlined in the Application Completeness Review Procedures (Section 3.1). The agency then conducts a brief evaluation that involves two basic procedures: (1) An assessment to determine if a complete evaluation of the application can be conducted prior to the approval expiration date; and (2) A decision on whether to issue an extension of the approval if sufficient time to conduct a full evaluation does not exist.

#### *Conduct Complete Evaluation*

If the Applicant submits an application for renewal 120 days before the expiration date of its approval, or if the Project Officer determines there is sufficient time to conduct an evaluation prior to the expiration date of the approval, then the New Approval Procedures (Section 3.2) are used to evaluate the application for renewal.

#### *Issue Approval Extension*

If the Applicant submits an application for renewal within 120 days of the expiration date of its approval, or if the Project Officer determines there is not sufficient time to conduct an evaluation prior to the expiration date of the approval, then the Approving Official may grant an extension of the approval pending a review of all available data on the explosive examination agency. Note that PHMSA may decide to deny an extension.

Following the granting of an extension by the Approving Official, the application undergoes a full evaluation as outlined in the New Approval Procedures (Section 3.2).

### 3.4.3 Procedures

Table 3-4 describes the detailed procedures used to renew an explosive examination agency approval. Documents and forms utilized during specific procedures in the table appear in italicized text, and are also described in detail in Section 3.11.

**Table 3-4: Procedures for Renewal of an Explosive Examination Agency Approval**

#	Procedure Description	Responsibility	Duration
1	<b>Submits Renewal Application.</b> The Applicant submits an application to renew an existing approval.	Applicant	NA
2	<b>Review Approval Holder's Compliance Record.</b> The Project Officer reviews the record of the Approval Holder to ensure that they have complied with the terms and conditions of their approval, including that they have submitted all required reports described in Post-Approval Responsibilities (Section 3.10).	Project Officer	NA

#	Procedure Description	Responsibility	Duration
3	<b>Has Approval Holder Complied with Approval?</b> The Project Officer conducts a review to determine if the Approval Holder has complied with the terms of their approval. If no, complete the Approval Modification, Suspension or Termination Procedures (Section 3.5). If yes, continue to step 4.	Project Officer	NA
4	<b>Complete Application Completeness Review Procedures.</b> Complete procedures described in Application Completeness Review (Section 3.1) and then return to the Approval Renewal.	Project Officer	NA
5	<b>Determine if Application Submitted 120 Days Before Approval Expiration Date.</b> The Project Officer determines whether the Applicant submitted the application for renewal 120 days prior to the approval expiration date. If no, continue to step 6. If yes, go to the New Approval Procedures (Section 3.2) for a complete review of the application. <End>	Project Officer	NA
6	<b>Determine If PHMSA Can Process Application Prior to Approval Expiration Date.</b> The Project Officer confers with the Technical Officer to determine if the application can be evaluated prior to the expiration date of the approval. If yes, go to the New Approval Procedures (Section 3.2). If no, continue to step 7.	Project Officer	NA
7	<b>Approval Extension Based on Available Data.</b> The Project Officer reviews the available data (e.g., Approval Holder's compliance record, etc.) and determines whether PHMSA should grant the Approval Holder an extension of their approval. If yes, skip to step 11.	Project Officer	NA
8	<b>Draft Denial Letter.</b> If an extension cannot be granted, the Project Officer drafts the <i>Denial Letter</i> .	Project Officer	NA
9	<b>Review Application Materials for Accuracy.</b> The Project Officer reviews the application materials for accuracy, ensuring all necessary files are in the folder for the Approving Official to review.	Project Officer	NA
10	<b>Send Application Materials to Approving Official.</b> The Project Officer sends the application materials to the Approving Official. Continue to Application Disposition Procedures (Section 3.3). <End>	Project Officer	NA
11	<b>Draft Approval Extension Letter.</b> The Project Officer drafts the <i>Approval Extension Letter</i> informing the Applicant that it may continue to operate under the conditions of its existing approval.	Project Officer	NA
12	<b>Review Approval Extension Letter.</b> The Approving Official reviews the <i>Approval Extension Letter</i> .	Approving Official	NA
13	<b>Concurs with Decision?</b> If Approving Official does not concur, skip to Dispute Resolution Procedures (Section 3.9).	Approving Official	NA
14	<b>Sign Approval Extension Letter.</b> The Approving Official signs the <i>Approval Extension Letter</i> .	Approving Official	NA
15	<b>Send Approval Extension Letter to Applicant.</b> The Approvals IT System sends the <i>Approval Extension Letter</i> to the Applicant. Go to the New Approval (Section 3.2) to complete full application evaluation (Section 3.2). <End>	Approvals IT System	NA

## **Policies and Procedures for Approval Modification, Suspension or Termination**

## 3.5 Approval Modification, Suspension or Termination

### 3.5.1 Purpose

The purpose of the Approval Modification, Suspension or Termination Procedure is to modify, suspend or terminate an approval for an approved explosive examination agency.

### 3.5.2 Overview

The Approving Official may modify, suspend or terminate an approval issued to an explosive examination agency under the authority of 49 CFR 107.713 for reasons, including, but not limited to:

- The approval represents a risk of significant harm to persons or property
- The approval no longer is needed or no longer would be granted if applied for because of a change in circumstances
- The original application contained inaccurate or incomplete information, and the approval would not have been granted had the application been accurate and complete
- The original application contained deliberately inaccurate or incomplete information
- The holder knowingly has violated the terms of the approval or an applicable requirement of the HMR in a manner demonstrating lack of fitness to conduct the activity for which the approval is required

The modification, suspension or termination of an approval is initiated by the Approving Official by reviewing the reasons for suspending or terminating the approval. At the conclusion of this review, the Approving Official either: (1) Modifies, suspends or terminates the approval immediately; or (2) Issues a *Show Cause Letter* to the Applicant.

#### *Modify, Suspend or Terminate Approval*

If the approval represents a significant risk to persons or property, the Approving Official may modify, suspend or terminate the approval immediately by notifying the Approval Holder that their approval is no longer valid.

#### *Issue Show Cause Letter*

If the approval does not represent a significant risk, the Approving Official must notify the Approval Holder of his/her intent to suspend or modify the approval and provide an opportunity for the Approval Holder to show cause why the approval should remain valid. Once the Approval Holder responds, the Approving Official makes a final determination.

### 3.5.3 Procedures

Table 3-5 describes the detailed procedures used to suspend or terminate an explosive examination agency approval. Documents and forms utilized during specific procedures in the table appear in italicized text, and are also described in detail in Section 3.11.

**Table 3-5: Procedures for Modification, Suspension or Termination of an Explosive Examination Agency Approval**

#	Procedure Description	Responsibility	Duration
1	<b>Review Reasons for Modification, Suspension, or Termination.</b> The Project Officer, and/or the Enforcement Liaison review the approval and determines if:	Project Officer/ Enforcement Liaison	NA

#	Procedure Description	Responsibility	Duration
	<ul style="list-style-type: none"> <li>The approval represents a risk of significant harm to persons or property</li> <li>The approval no longer is needed or no longer would be granted if applied for because of a change in circumstances</li> <li>The original application contained inaccurate or incomplete information, and the approval would not have been granted had the application been accurate and complete</li> <li>The original application contained deliberately inaccurate or incomplete information</li> <li>The holder knowingly has violated the terms of the approval or an applicable requirement of the HMR in a manner demonstrating lack of fitness to conduct the activity for which the approval is required</li> </ul>		
2	<b>Decide if Significant Risk Exists.</b> The Project Officer, Technical Officer, and/or the Enforcement Liaison reach consensus on if the approval represents a significant risk to persons or property based on review in step 1. If the approval represents a significant risk, skip to step 15.	Project Officer/ Technical Officer/ Enforcement Liaison	NA
3	<b>Recommend Modification, Suspension, or Termination.</b> The Project Officer, and/or the Enforcement Liaison recommend modification, suspension, or termination of the approval based on review in step 1. If modification, suspension or termination is not recommended the process ends. <End>	Project Officer/ Enforcement Liaison	NA
4	<b>Draft Show Cause Letter.</b> If the approval is recommended for modification, suspension or termination, the Project Officer, and/or the Enforcement Liaison draft a <i>Show Cause Letter</i> that includes the rationale for suspending or terminating the approval and sends it to the Approving Official.	Project Officer/ Enforcement Liaison	NA
5	<b>Review Show Cause Letter.</b> The Approving Official reviews the <i>Show Cause Letter</i> .	Approving Official	NA
6	<b>Concur with Show Cause Decision.</b> If the Approving Official does not concur, skip to Dispute Resolution Procedures (Section 3.9) to reach concurrence before continuing with the process.	Approving Official	NA
7	<b>Review Show Cause Letter and Consult with Approving Official as Necessary.</b> The Legal Counsel reviews the <i>Show Cause Letter</i> to verify PHMSA has a sound legal argument for issuing a <i>Show Cause Letter</i> . The Legal Counsel consults with the Approving Official as necessary.	Legal Counsel	NA
8	<b>Concur with Show Cause Decision.</b> If the Legal Counsel concurs, skip to step 10.	Legal Counsel	NA
9	<b>Document Non-Concurrence.</b> The Legal Counsel documents why PHMSA should not issue a <i>Show Cause Letter</i> .	Legal Counsel	NA
10	<b>Sign Show Cause Letter.</b> The Approving Official signs the <i>Show Cause Letter</i> .	Approving Official	NA
11	<b>Send Show Cause Letter to Approval Holder and Notify All Relevant OHMS Divisions.</b> The Approvals IT System sends the	Approvals IT System	NA

#	Procedure Description	Responsibility	Duration
	<i>Show Cause Letter</i> to the Approval Holder and OHMS Divisions.		
12	<b>Respond in 30 Days.</b> The Approval Holder is given 30 days from the day the <i>Show Cause Letter</i> was received to respond. If the Approval Holder does not respond within the allotted timeframe, skip to step 14.	Applicant/ Approval Holder	30 Days
13	<b>Recommend Modification, Suspension, or Termination.</b> The Project Officer and/or the Enforcement Liaison review the information provided by the Approval Holder to determine whether to recommend modification, termination, or suspension of the approval. If it is decided not to recommend modification, suspension, or termination, skip to step 23. If it is decided to recommend modification, suspension, or termination, skip to step 15.	Project Officer/ Enforcement Liaison	NA
14	<b>Notify Project Officer of Non-Response.</b> If the Approval Holder does not respond to the <i>Show Cause Letter</i> within 30 days, then the Approvals IT System automatically notifies the Project Officer/Enforcement Liaison that the Approval Holder has failed to respond.	Approvals IT System	NA
15	<b>Draft Modification, Suspension, or Termination Letter.</b> If the Project Officer and/or Enforcement Liaison decide the approval needs to be modified, suspended, or terminated they draft the <i>Modification, Suspension, or Termination Letter</i> that includes justification for modifying, suspending, or terminating the approval.	Project Officer/ Enforcement Liaison	NA
16	<b>Review the Modification, Suspension, or Termination Letter.</b> The Approving Official reviews the <i>Modification, Suspension, or Termination Letter</i> .	Approving Official	NA
17	<b>Concur with Modification, Suspension, or Termination Letter.</b> If the Approving Official does not concur, skip to Dispute Resolution Procedures to reach concurrence before continuing with the process.	Approving Official	NA
18	<b>Review Modification, Suspension, or Termination Letter and Consult with Approving Official as Necessary.</b> The Legal Counsel reviews the <i>Modification, Suspension, or Termination Letter</i> to verify PHMSA has a sound legal argument for modifying, suspending, or terminating the approval. The Legal Counsel consults with the Approving Official as necessary.	Legal Counsel	NA
19	<b>Concur with Modification, Suspension, or Termination Decision.</b> If the Legal Counsel concurs, skip to step 21.	Legal Counsel	NA
20	<b>Document Non-Concurrence.</b> If Legal Counsel does not concur with the decision, it documents why PHMSA should not issue a <i>Modification, Suspension, or Termination Letter</i> .	Legal Counsel	NA
21	<b>Sign Termination or Suspension Letter.</b> If the Legal Counsel concurs, the Approving Official signs the <i>Modification, Suspension, or Termination Letter</i> .	Approving Official	NA
22	<b>Send Modification, Suspension, or Termination Letter to Approval Holder and All Relevant OHMS Divisions.</b> The Approvals IT System sends the <i>Modification, Suspension, or</i>	Approvals IT System	NA

#	Procedure Description	Responsibility	Duration
	<i>Termination Letter</i> to the Approval Holder and all relevant OHMS Divisions. <End>		
23	<b>Draft General Correspondence Letter.</b> The Project Officer and/or Enforcement Liaison drafts a <i>General Correspondence Letter</i> to inform the Approval Holder that it may retain its approval.	Project Officer/ Enforcement Liaison	NA
24	<b>Review General Correspondence Letter.</b> The Approving Official reviews the <i>General Correspondence Letter</i> .	Approving Official	NA
25	<b>Concur with Decision.</b> If the Approving Official does not concur, skip to Dispute Resolution Procedures to reach concurrence before continuing with the process.	Approving Official	NA
26	<b>Sign General Correspondence Letter.</b> The Approving Official signs the <i>General Correspondence Letter</i> .	Approving Official	NA
27	<b>Send Letter to Approval Holder and Notify All Relevant OHMS Divisions.</b> The Approvals IT System sends the <i>General Correspondence Letter</i> to Approval Holder and notifies all relevant OHMS Divisions. <End>	Approvals IT System	NA

## **Policies and Procedures for Reconsideration**

## 3.6 Reconsideration

### 3.6.1 Purpose

The purpose of the reconsideration process is to allow new Applicants or Approval Holders the opportunity to request that PHMSA reconsider its decision to deny, suspend, or terminate an application or existing approval.

### 3.6.2 Overview

Applicants and Approval Holders may petition for reconsideration if an application is denied or an approval is suspended or terminated. If Applicants and Approval Holders choose to submit a request for reconsideration, PHMSA will reevaluate the application or approval taking into consideration the new information provided. As outlined in 49 CFR 107.715, requests for reconsideration must:

- Be in writing and filed within 20 days of receipt of the decision
- State in detail any alleged errors of fact and law
- Enclose any additional information needed to support the request to reconsider
- State in detail the modification of the final decision sought

The reconsideration process involves two basic procedures: (1) Completeness Review; and (2) Evaluation.

#### *Completeness Review*

Upon receipt of the petition for reconsideration, the Project Officer reviews the petition to determine whether the reconsideration materials are satisfactory. This review assesses whether the petition meets all of the criteria required by the HMR.

#### *Evaluation*

If satisfactory, the petition is evaluated by either a Project Officer or Technical Officer (based on the nature of the approval). Once a decision is made, the responsible party drafts a justification that recommends issuing an *Approval Document* or *Denial Letter*.

### 3.6.3 Procedures

Table 3-6 describes the detailed procedures used to conduct reconsideration activities. Documents and forms utilized during specific procedures in the table appear in italicized text, and are also described in detail in Section 3.11.

**Table 3-6: Procedures for Reconsideration**

#	Procedure Description	Responsibility	Duration
1	<b>Submit Petition for Reconsideration.</b> Once denied, modified, suspended or terminated, the Applicant or Approval Holder completes and submits a petition for reconsideration.	Applicant/ Approval Holder	NA
2	<b>Generate Folder in the Approvals IT System and Assign Tracking Number.</b> The Project Officer is responsible for creating a new application folder in the Approvals IT System for the application and assigns it a unique tracking number. Information in the folder includes: <ul style="list-style-type: none"> <li>• Petition for reconsideration</li> <li>• Information from the initial approval application (original application, safety evaluation, and justification)</li> </ul>	Project Officer	NA

#	Procedure Description	Responsibility	Duration
3	<b>Verify Petition Materials are Satisfactory.</b> The Project Officer determines whether the petition meets the criteria outlined in the HMR and whether the information provided is adequate to conduct an appropriate evaluation. The request must be in writing and filed within 20 days of receipt of the decision, state in detail any alleged errors of fact or law, enclose any additional information needed to support the request to reconsider, and state in detail the modification of the final decision sought. If the information provided is insufficient, PHMSA may reject the petition.	Project Officer	NA
4	<b>Decide Petition Materials are Satisfactory.</b> The Project Officer determines whether the petition is satisfactory based on the results of his/her review of the petition (step 3). If the petition is satisfactory, skip to step 11.	Project Officer	NA
5	<b>Draft Rejection Letter.</b> If the petition is not satisfactory, the Project Officer drafts a <i>Rejection Letter</i> that includes the rationale for rejecting the petition and sends it to the Approving Official.	Project Officer	NA
6	<b>Review Rejection Letter.</b> The Approving Official reviews the <i>Rejection Letter</i> .	Approving Official	NA
7	<b>Concurs with Rejection Decision.</b> If Approving Official does not concur, skip to Dispute Resolution Procedures to reach concurrence before continuing with the process.	Approving Official	NA
8	<b>Sign Rejection Letter.</b> The Approving Official signs the <i>Rejection Letter</i> .	Approving Official	NA
9	<b>Send Rejection Letter to Applicant.</b> The Approvals IT System automatically sends the <i>Rejection Letter</i> to the Applicant/ Approval Holder after it is signed by the Approving Official.	Approvals IT System	NA
10	<b>Change Status on PHMSA Website.</b> After the <i>Rejection Letter</i> is sent to the Applicant, the Approvals IT System automatically changes the application status on the PHMSA website; informing the Applicant that his/her application has completed the review process. <End>	Approvals IT System	NA
11	<b>Needs Technical Evaluation.</b> After reviewing the petition, the Project Officer determines whether a technical evaluation is necessary. If not, skip to step 17.	Project Officer	NA
12	<b>Assign to Appropriate Technical Specialist.</b> If a technical review is needed, the Senior Technical Officer assigns the evaluation to the appropriate specialist based on expertise and work load.	Senior Technical Officer	NA
13	<b>Conduct Technical Evaluation of Petition.</b> The Technical Officer evaluates the petition to determine whether PHMSA should issue the Applicant an approval.	Technical Officer	NA
14	<b>Recommend Approval or Denial.</b> The Technical Officer makes a recommendation on whether PHMSA should approve or deny the request for reconsideration.	Technical Officer	NA
15	<b>Review Evaluation and Recommendation.</b> The Senior Technical Officer reviews the recommendation and evaluation.	Senior Technical Officer	NA

#	Procedure Description	Responsibility	Duration
16	<p><b>Concur with Reconsideration Decision.</b> The Senior Technical Officer either agrees with the recommendation for approval or denial of the reconsideration petition, or disagrees with the recommendation made by the Technical Officer.</p> <p>If the Senior Technical Officer agrees with the recommendation, skip to step 18.</p> <p>If the Senior Technical Officer disagrees with the recommendation, move to the Disposition Resolution Procedures to reach concurrence before continuing with the process.</p>	Senior Technical Officer	
17	<p><b>Evaluate Petition.</b> If a Technical Review is unnecessary, the Project Officer reviews the petition for reconsideration. They evaluate the newly submitted information to determine whether the information could have reasonably been submitted during the application processing.</p>	Project Officer	NA
18	<p><b>Recommend Approval or Denial.</b> Based on his/her evaluation or the Technical Officer's evaluation, the Project Officer recommends either approving (in whole or in part) or denying the request for reconsideration.</p>	Project Officer	NA
19	<p><b>Review Denial Letter or Approval Document and Consult with Project Officer as Necessary.</b> Legal Counsel reviews the <i>Denial Letter</i> (i.e., the justification for denial) or <i>Approval Document</i> and provides comments to the Project Officer.</p>	Legal Counsel	NA
20	<p><b>Concurs with Approval or Denial Decision.</b> Based on the information in the <i>Approval Document</i> or <i>Denial Letter</i>, Legal Counsel either concurs with the decision or recommends it be reversed. If Legal Counsel concurs with the decision, skip to step 23.</p>	Legal Counsel	NA
21	<p><b>Document Non-Concurrence.</b> If Legal Counsel does not concur with the decision, he/she documents his/her rationale and provides it to the Project Officer.</p>	Legal Counsel	NA
22	<p><b>Discard Denial Letter or Approval Document.</b> The Project Officer, based on the justification provided by the Legal Counsel, removes either the <i>Approval Document</i> or <i>Denial Letter</i> from the Approvals IT System and drafts an <i>Approval Document</i> or <i>Denial Letter</i>, respectively.</p>	Project Officer	NA
23	<p><b>Draft Approval or Denial Letter.</b> The Project Officer drafts an <i>Approval Document</i> or <i>Denial Letter</i>. If the petition for reconsideration is being denied, the Project Officer includes justification for why the approval is being denied.</p>	Project Officer	NA
24	<p><b>Review Petition Materials for Accuracy.</b> After drafting the <i>Approval Document</i> or <i>Denial Letter</i>, the Project Officer reviews all petition materials for accuracy, checking all the documents for quality and ensuring that all required documents are present in the Approvals IT System.</p>	Project Officer	NA

#	Procedure Description	Responsibility	Duration
25	<b>Send Petition Materials to Approving Official.</b> The Project Officer sends the application materials to the Approving Official via the Approvals IT System. See Disposition Phase. <End>	Project Officer	NA

## **Policies and Procedures for Appeal**

## 3.7 Appeal

### 3.7.1 Purpose

The purpose of the appeal process is to allow Applicants and Approval Holders who were denied a request for reconsideration, the opportunity to appeal PHMSA's decision and provide new information and receive additional review from the agency.

### 3.7.2 Overview

Applicants and Approval Holders may request an appeal if an approval is denied after a petition for reconsideration. If an appeal request is made, PHMSA's Administrator will reevaluate the application or approval taking into consideration the new information provided. As outlined in 49 CFR 107.717, the appeal must:

- Be in writing and filed within 30 days of receipt of the Associate Administrator's decision on reconsideration
- State in detail any alleged errors of fact and law
- Enclose any additional information needed to support the appeal
- State in detail the modification of the final decision sought

The appeal process involves two basic procedures: (1) Completeness Review; and (2) Evaluation

#### *Completeness Review*

Upon receipt of the request for appeal, the Administrator (or the Administrator's staff) reviews the request to determine whether the appeal materials are satisfactory. This review assesses whether the request meets all of the criteria required by the HMR.

#### *Evaluation*

If satisfactory, the request is evaluated by the Administrator, or a designee appointed by the Administrator. Upon review, the reviewer may require additional information. If such information is necessary, OHMS staff will review the request and provide all necessary information. Once all documents are reviewed, the responsible party decides whether to approve or deny the request for appeal and drafts a justification for issuing an *Approval Document* or *Denial Letter*.

### 3.7.3 Procedures

Table 3-7 describes the detailed procedures used to conduct appeals activities. Documents and forms utilized during specific procedures in the table appear in italicized text, and are also described in detail in Section 3.11.

**Table 3-7: Procedures for Appeal**

#	Procedure Description	Responsibility	Duration
1	<p><b>Submit Request for Appeal.</b> After being denied a request for reconsideration, the Applicant or Approval Holder completes and submits a request for appeal to the Administrator in accordance with 49 C.F.R. § 107.717. The request for appeal must:</p> <ul style="list-style-type: none"> <li>• Be in writing and filed within 30 days of receipt of the Associate Administrator's decision on reconsideration</li> <li>• State in detail any alleged errors of fact and law</li> <li>• Enclose any additional information needed to support</li> </ul>	Applicant/ Approval Holder	NA

#	Procedure Description	Responsibility	Duration
	<p>the appeal</p> <ul style="list-style-type: none"> <li>State in detail the modification of the final decision sought.</li> </ul>		
2	<b>Notification of Appeal.</b> The Office of the Administrator, upon receipt of an appeal, forwards the appeal to the Adjudications Counsel in the Office of the Chief Counsel for review, recommendation, and the drafting of a decision. The Administrator's Office will also notify the Associate Administrator, Office of Hazardous Materials Safety, and the Director of the Office of Hazardous Materials Special Permits and Approvals of the appeal request.	Administrator	NA
3	<b>Place Appeal Request in Applicant/Approval Holder Folder.</b> The Project Officer originally assigned to handle the Petition for Reconsideration places the appeal request into the pre-existing applicant/approval holder approval folder. The Project Officer delivers all documents, evidence, and materials used to formulate the original and reconsideration decisions to the Adjudications Counsel for review. The Project Officer assists the Adjudications Counsel with the preparation of the administrative case file and follow-up matters.	Project Officer	NA
4	<b>Establish a Case Docket.</b> The Adjudications Counsel establishes a case docket and materials are placed in the docket.	Legal Counsel	NA
5	<b>Verify Appeal Materials are Satisfactory.</b> The Adjudications Counsel determines whether the request meets the criteria outlined in the HMR and whether the information provided is adequate to conduct an appropriate evaluation.	Legal Counsel	NA
6	<b>Are Appeal Materials Satisfactory?</b> If the Adjudications Counsel determines that the request meets the criteria outlined in the HMR and the information provided is adequate to conduct an appropriate evaluation, skip to 8. If not, continue to step 7.	Legal Counsel	NA
7	<b>Request Additional Information (if needed).</b> The Adjudications Counsel may request additional information from the agency or the Applicant/Approval Holder including, but not limited to, additional filings or briefings (written or oral) as needed to obtain a complete history and administrative case file. Any "in person" meeting must include representatives of both agency personnel and the Applicant or Approval Holder in accordance with required due process.	Legal Counsel	NA
8	<b>Is Interim Decision Needed?</b> The Administrator may issue an interim decision, if necessary, to avoid the risk of significant harm to persons or property, declaring the Associate Administrator's action effective pending a decision on appeal.	Administrator	NA
9	<b>Issue Interim Decision.</b> The Approving Official Issues an interim decision to avoid the risk of significant harm to persons or property, declaring the Associate Administrator's	Administrator	NA

#	Procedure Description	Responsibility	Duration
	action effective, pending a decision on appeal.		
10	<b>Review of Decision on Reconsideration and Recommendation.</b> The Adjudication Counsel reviews the completed administrative case file and formulates an initial decision. The Adjudications Counsel will informally meet with the Administrator to discuss the appeal, provide legal guidance, and seek the decision of the Administrator. The Administrator will provide direction to the Adjudications Counsel so that a written decision can be prepared and issued.	Legal Counsel	NA
11	<b>Draft Order.</b> The Adjudications Counsel drafts a decision on appeal. The decision may grant or deny the relief requested, in whole or in part.	Legal Counsel/ Administrator	NA
12	<b>Sign Order and Issue Final Decision.</b> The Administrator then signs the order and the Adjudications Counsel serves the order in accordance with the rules of service. The Administrator issues the final decision and directs the Associate Administrator to issue the approval if necessary. The decision on appeal is the final administrative action.	Administrator	NA
13	<b>Issuance of Approval (if necessary).</b> If the Administrator's decision on appeal directs that an approval be issued to the Applicant or Approval Holder, the Associate Administrator shall issue the approval consistent with the Administrator's decision.	Associate Administrator	NA

## **Policies and Procedures for Minimum Level of Fitness Review**

## **3.8 Minimum Level of Fitness Review**

### **3.8.1 Purpose**

The purpose of the Minimum Level of Fitness Review Process is to determine whether an Applicant is fit to hold an approval.

### **3.8.2 Overview**

Under 49 CFR 107.709(d) PHMSA may only grant an approval on finding that an Applicant is fit to conduct the activity authorized by the approval, or renewal or modification of approval. PHMSA may determine an Applicant's fitness through the information provided in the application, the Applicant's prior compliance history, or other information that is available to the Associate Administrator.

### **3.8.3 Procedures**

The Approving Official is responsible for evaluating what is known as a Minimum Level of Fitness Review prior to granting an Applicant approval to act as an explosive examination agency.

Prospective explosive examination agencies receive an on-site fitness inspection after they submit a complete application. This on-site fitness inspection, which is described in detail in the New Approvals (Section 3.2), constitutes the Minimum Level of Fitness Review for explosive examination agencies.

## **Policies and Procedures for Dispute Resolution**

## 3.9 Dispute Resolution

### 3.9.1 Purpose

PHMSA OHMS developed procedures for resolving differences of professional judgment on hazardous materials safety issues. These procedures apply to differences in professional judgment involving an:

- Approval
- Denial
- Rejection
- Suspension
- Termination
- Modification
- Declaration
- Interpretation
- Clarification
- Order
- Similar action that affects the safe transportation of hazardous materials in commerce

Note that this procedure does not apply to differences in professional judgment involving legal matters<sup>3</sup> or personnel actions.

For additional information refer to PHMSA Order 3770.1 Safety Review Board.<sup>4</sup>

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<sup>3</sup> Including legal matters, responsibilities, duties, or decisions delegated and required by law as being within the purview of the Office of Chief Counsel (to include but not limited to enforcement actions initiated to address non-compliance within hazardous materials regulatory requirements).

<sup>4</sup> Cynthia Quarterman, PHMSA Order 3770.1, Subject: Safety Review Board, April 5, 2010.

## **Policies and Procedures for Post-Approval Responsibilities**

## 3.10 Post-Approval Responsibilities

### 3.10.1 Purpose

PHMSA is responsible for providing oversight of explosive examination agencies that issue recommendations for explosive classifications. This section identifies and describes the oversight responsibilities PHMSA has with respect to explosive examination agencies.

### 3.10.2 Explosive Examination Agency Reports

Approved explosive examination agencies are responsible for annually submitting a report of activity and a certificate of compliance to the Approving Official. These reporting requirements are detailed on approved explosive examination agencies' approvals and include:

- **Annual Report of Activity:** The annual report of activity provides a detailed listing of all the activities the explosive examination agency engaged in during the previous year with respect to issuing recommended explosive classifications in accordance with the HMR. For each explosive examination conducted by the lab, the report must include:
  - The date(s) and location(s) of the tests, and the name(s) of the authorized experts who designed and witnessed the testing
  - Whether the explosive required a tentative authorization in order for unapproved explosive samples to be sent to the testing site
  - A statement that no single identifiable revenue source provided more than 20% of the Applicant's gross income during the approval period
- **Annual Certificate of Compliance:** The annual certificate of compliance provides a statement from the lab indicating that it is in compliance with the terms of its approval

The Approving Official is responsible for verifying that each approved explosive examination agency submits the report of activity and certificate of compliance in accordance with the conditions of its approval. If an approved explosive examination agency does not comply with the annual reporting requirements, then the Approving Official may suspend or terminate the approval as described in Section 3.5.

### 3.10.3 Explosive Examination Agency Compliance Inspections

PHMSA conducts compliance inspections of approved explosive examination agencies to ensure that they are operating in accordance with the conditions of their approvals and the requirements of the HMR. The Approving Official is responsible for ensuring that inspections of explosive examination agencies occur to ensure compliance with the law.

The Enforcement Liaison, however, is responsible for conducting compliance inspections of explosive examination agencies in accordance with the procedures documented in the *Office of Hazardous Materials Enforcement Operations Manual*.

## **Policies and Procedures for Forms and Documents**

### 3.11 Forms and Documents

All forms and documents, including evaluation forms and letter templates, utilized by the Approvals and Permits must be standardized. Paper forms will be replaced with automated forms where possible and advantageous to Approvals and Permits. The purpose of standardization is to provide clear and consistent information and instructions to Applicants and staff so that Approvals and Permits will receive and maintain high quality information in its records. Forms and documents utilized by Approvals and Permits include:

#### 3.11.1 Application Completeness Form

The Application Completeness Form is prepared and maintained by the Division of Approvals and Permits. The form is used by Approvals and Permits staff to determine whether information provided by the Applicant is complete to evaluate.

#### 3.11.2 Rejection Letter

The Rejection Letter is a letter prepared and maintained by the Division of Approvals and Permits. The letter is used by Approvals and Permits staff to inform Applicants that their application has been rejected. Among other data, the standard letter contains:

- Date and brief description of the approval request from the Applicant
- Reasons why PHMSA rejected the application
- Signature of the Approving Official

#### 3.11.3 General Correspondence Letter

The General Correspondence Letter is a letter prepared and maintained by the Division of Approvals and Permits. The letter is used, during the Completeness Review Procedures, by Approvals and Permits staff to inform Applicants that an approval is not required to perform requested functions. Among other data, the standard letter contains:

- Date and brief description of the approval request from the Applicant
- Signature of the Approving Official

#### 3.11.4 Evaluation Criteria for Third Party Approval for Testing Explosives

The Evaluation Criteria for Third Party Approval for Testing Explosives is maintained by the Division of Engineering and Research. The document contains criteria for evaluating prospective explosive examination agencies and is used by Engineering and Research staff to aid in the evaluation of an application received by PHMSA. Among other data, the document contains:

- List of personnel qualifications needed by an explosive examination agency
- List of test equipment that must be available to an explosive examination agency
- List of other information that must be provided by the Applicant

#### 3.11.5 Information Request Letter

The Information Request Letter is prepared and maintained by the Division of Approvals and Permits. The letter is used by Approvals and Permits staff to request additional information from approval Applicants. Among other data, the letter contains:

- Date and brief description of the approval request from the Applicant

- Information requested by PHMSA
- Signature of the Approving Official

### **3.11.6 Denial Letter**

The Denial Letter is prepared and maintained by the Division of Approvals and Permits. The letter is used by the Division of Approvals and Permits staff to inform Applicants that their application has been rejected. Among other data, the standard letter contains:

- Date and brief description of the approval request from the Applicant
- Reasons why PHMSA denied the application
- Signature of the Approving Official

### **3.11.7 Inspection Notification Letter**

The Inspection Notification Letter is a form prepared and maintained by Field Operations. This form is used to provide Applicants with the details surrounding an impending on-site facility inspection. Among other information, the standard letter contains:

- Date, time and location(s) of the on-site facility inspection(s)
- Procedures, equipment and documents to be inspected during the on-site facility inspection
- Methods for reimbursing PHMSA allowable expenses
- Signature

### **3.11.8 Inspection Form**

The Inspection Form is a form prepared and maintained by the Field Operations and developed in coordination with Engineering and Research and Permits and Approvals. It is used to conduct on-site inspections.

### **3.11.9 Inspection Report**

The Inspection Report is a standard form prepared and maintained by the Field Operations and developed in coordination with Engineering and Research, and Approvals and Permits to document the results of an inspection.

### **3.11.10 Approval Extension Letter**

The Approval Extension Letter is prepared and maintained by the Division of Approvals and Permits. The letter is used by staff in Approvals and Permits to inform an Applicant who has applied for renewal that the expiration date on their existing approval is being extended until PHMSA can process their renewal application. Among other data, the letter contains:

- New expiration date for approval
- Signature of Approving Official

### **3.11.11 Show Cause Letter**

The Show Cause Letter is prepared by the Office of Chief Counsel, in cooperation with the Office of Hazardous Materials Special Permits and Approvals. The letter is used by Approvals and Permits staff to inform an explosive examination agency that PHMSA has learned of facts or conduct believed to warrant suspension or termination of the explosive examination agency's approval. Among other data, the letter contains:

- Reasons why PHMSA is either seeking to modify, terminate or suspend the explosive examination agency's approval
- Signature of the Approving Official

### **3.11.12 Approval Modification, Termination or Suspension Letter**

The Approval Modification, Termination or Suspension Letter is prepared and maintained by the Division of Approvals and Permits. The letter is used by Approvals and Permits and Engineering and Research staff to inform an explosive examination agency that PHMSA is modifying, terminating or suspending its approval. Among other data, the letter contains:

- Reasons why PHMSA is either modifying, terminating or suspending the explosive examination agency's approval
- Signature of the Approving Official

### **3.11.13 Approval Document**

The Approval Document is prepared and maintained by the Division of Approvals and Permits. The letter is used by Approvals and Permits staff to respond positively to requests for approvals. Among other data, the document contains:

- Expiration date of the approval
- Name and address of Approval Holder
- Regulatory authority under which the approval is issued
- Conditions and special provisions attached to the approval
- Date that Applicant should apply for renewal of expiration
- Signature of the Approving Official

## Appendix A: Definitions

- **Administrator:** The Administrator, Pipeline and Hazardous Materials Safety Administration.
- **Approval:** Written consent, including a competent authority approval, from the Associate Administrator or other designated Department official, to perform a function that requires prior consent under subchapter C of this chapter (49 CFR parts 171 through 180).<sup>5</sup>
- **Associate Administrator:** The Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.
- **EX Number:** A number preceded by the prefix “EX”, assigned by the Associate Administrator, to an item that has been evaluated under the provisions of 49 CFR 173.56.
- **Federal Hazardous Materials Transportation Law:** 49 U.S.C. 5101 *et seq.*
- **Hazard Class:** Means the category of hazard assigned to a hazardous material under the definitional criteria of part 173 of this subchapter and the provisions of the 49 CFR 172.101 table. A material means the category of hazard assigned to a hazardous material under the definitional criteria of part 173 of this subchapter and the provisions of the 49 CFR 172.101 table.
- **Hazardous Material:** A substance or material that the Secretary of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and has designated as hazardous under section 5103 of the Federal Hazardous Materials Transportation Law (49 U.S.C. 5103). The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table (see 49 CFR 172.101), and materials that meet the defining criteria for hazard classes and divisions in part 173 of subchapter C of this chapter.<sup>6</sup>
- **Hazardous Materials Regulations:** The regulations at 49 CFR parts 171 through 180.<sup>7</sup>
- **Packaging:** A receptacle and any other components or materials necessary for the receptacle to perform its containment function in conformance with the minimum packing requirements of this subchapter. For radioactive materials packaging, see 49 CFR 173.403 of this subchapter.

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<sup>5</sup> 49 CFR 105.5

<sup>6</sup> 49 CFR 105.5

<sup>7</sup> 49 CFR 105.5

