

EXPLOSIVES CLASSIFICATION (EX) APPROVALS

(Company Name Changes, Mergers, Acquisitions, and Changes in Legal Structure)

This table is intended to provide basic guidance on corporate structure as it relates to PHMSA-issued EX Approvals.

GENERAL RULE: An EX approval is non-transferable in any merger, acquisition, sale of assets, or other business transaction. Also, an EX approval is non-transferrable in bankruptcy proceedings, and thus, a debtor may not use an EX approval as an asset to sell in order to drive up the purchase price. However, PHMSA may reissue the EX approvals to reflect the new company name when adequate documentation is provided.

Scenario	Question	Answer
Merger	<p>Hazmat companies A, B, C, and D are merging to create new company X, which is legally distinct from its predecessors. Company X wants to perform activities that require an EX approval.</p> <p>What must be done?</p>	<p><u>Option 1: Apply for a new EX approval.</u> Company X must apply for its own EX approval prior to performing activities that require an EX approval. 49 CFR § 173.56</p> <p><u>Option 2: Reissue EX approval</u> If Company X wants PHMSA to reissue the EX approvals formerly held by companies A, B,C, and D, Company X may submit a request with the following documentation to PHMSA–</p> <ol style="list-style-type: none"> 1. A certification letter that must: <ol style="list-style-type: none"> a. Be signed by a director or officer of Company X b. State that Company X will continue to manufacture and produce the same explosives in accordance with the approvals issued to Company A,B,C, and D using the same procedures.

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		<ul style="list-style-type: none"> c. Include the following unsown declaration: “I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on [date]” 2. A list of EX numbers, product description and a copy of the EX approval for each EX approval Company X is asking PHMSA to reissue. 3. Copies of any laboratory reports in Company X possession relating to the explosives needing approval. 4. Certificate of Merger
<p>Total Purchase</p>	<p>Company A buys Company B. Both companies hold EX approvals. Company B will now operate under Company A’s name.</p> <p>Company A wants to use Company B’s EX approvals.</p> <p>What must be done regarding EX approval?</p>	<p><u>Option 1: Apply for a new EX approval.</u> Company X must apply for its own EX approval prior to performing activities that require an EX approval. 49 CFR § 173.56</p> <p><u>Option 2: Request Reissuance of EX approval</u> If Company A wants PHMSA to reissue the EX approval formerly held by Company B, Company A may submit a request with the following documentation –</p> <ul style="list-style-type: none"> 1. A certification letter that must: <ul style="list-style-type: none"> a. Be signed by a director or officer of Company A b. State that Company A will continue to manufacture and produce the same explosives in accordance with the approvals issued to Company B using the same procedures. c. Include the following unsworn declaration: “I certify under penalty of perjury under the laws of the United

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		<p>States of America that the foregoing is true and correct. Executed on [date]”</p> <ol style="list-style-type: none"> 2. A list of EX numbers, product description and a copy of the EX approval for each EX approval Company A is asking PHMSA to reissue. 3. Copies of any laboratory reports in Company A’s possession relating to the explosives needing approval. 4. Sales agreement documenting Company A’s acquisition of Company B.
<p>Asset Purchase</p>	<p>Company A buys 100% or less of Company B’s assets. Company A wants to use Company B’s EX approvals.</p> <p>What must be done regarding EX approval?</p>	<p><u>Option 1: Apply for a new EX approval.</u> Company X must apply for its own EX approval prior to performing activities that require an EX approval. 49 CFR § 173.56</p> <p><u>Option 2: Request Reissuance of EX approval</u> If Company A wants PHMSA to reissue the EX approval formerly held by Company B, Company A may submit a request with the following documentation –</p> <ol style="list-style-type: none"> 1. A certification letter that must: <ol style="list-style-type: none"> a. Be signed by a director or officer of Company A b. State that Company A will continue to manufacture and produce the same explosives in accordance with the approvals issued to Company B using the same procedures. c. Include the following unsworn declaration: “I certify under penalty of perjury under the laws of the United

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		<p>States of America that the foregoing is true and correct. Executed on [date]”</p> <ol style="list-style-type: none"> 2. A list of EX numbers, product description and a copy of the EX approval for each EX approval Company A is asking PHMSA to reissue. 3. Copies of any laboratory reports in Company A’s possession relating to the explosives needing approval. 4. A relinquishment letter that must: <ol style="list-style-type: none"> a. Be signed by a director or officer of Company B. b. State that Company B voluntarily relinquishes all the rights to the EX approval numbers listed [provide a list of EX numbers] and that Company B will no longer manufacture the explosives approved under those respective EX approvals. c. Include the following unsworn declaration: “I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on [date]” <p>Sales agreement documenting Company A’s acquisition of Company B.</p>
<p>Subsidiaries – Separate Legal Entities</p>	<p>X Corporation has three subsidiaries that are distinct legal entities:</p> <ul style="list-style-type: none"> • X LLC, • X Inc., and • X LP. <p>What must be done regarding EX approval?</p>	<p>All four entities must apply for an EX approval prior to engaging in activities that require an EX approval.</p> <p>Each of these entities is a separate “person” based on the definition PHMSA uses.</p> <p>The term "<u>person</u>" means <u>each separate legal entity</u>, such as a</p>

Scenario	Question	Answer
		<p>corporation, partnership, association, or LLC or LP. This means that a separately incorporated subsidiary (or LLC or LP) must apply for their own approval if it engages in activities that require an EX approval, even when a parent company already holds an EX approval.</p>
<p>Additional Facilities</p>	<p>Company X purchases additional manufacturing plant location 1 (in the US).</p> <p>What must be done regarding EX approval?</p>	<p>If plant location 1 will not be Company X’s “principal place of business” then location 1 does not need to apply for its own EX approval.</p> <p><i>PLEASE NOTE: This <u>ONLY</u> applies for additional plants within the US, <u>NOT</u> outside of the US (foreign manufacturing plants). All manufacturing locations outside of the US are required to apply for their own EX approval.</i></p> <p>If plant location 1 will be Company X’s new “principal place of business” then Company X must submit an application to amend its EX approval and include the following supporting documentation:</p> <ol style="list-style-type: none"> 1. A copy of the EX approval for each EX approval Company X is seeking to amend. 2. Copies of any laboratory reports in Company X’s possession relating to the explosives approved under those respective EX approvals.
<p>Name Change – Without Change in</p>	<p>Company X changes its name to “Company Y,” but does not change the legal structure or ownership of the company.</p>	<p>Company X must submit an application to amend its EX approval and include the following supporting documentation:</p> <ol style="list-style-type: none"> 1. A copy of the EX approval for each EX approval Company Y is

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Legal Status	What must be done regarding EX approval?	<p>seeking to amend.</p> <ol style="list-style-type: none"> 2. Copies of any laboratory reports in Company Y’s possession relating to the explosives approved under those respective EX approvals.
<p>Name Change Indicating Possible Change in Legal Status, e.g. INC., LLC, LLP</p>	<p>Company X, LLC changes its name to “Company X, Inc.”</p> <p>What must be done regarding EX approval?</p>	<p>This change may indicate a change in legal structure. EX approvals cannot be transferred.</p> <p><u>Option 1: Apply for a new EX approval.</u> The new company (“Company X, Inc.”) must apply for its own EX approval before it engages in regulated activity. 49 CFR § 173.56</p> <p><u>Option 2: Request Reissuance of EX approval</u> Company X, Inc. may submit a request with the following documentation –</p> <ol style="list-style-type: none"> 1. A certification letter that must: <ol style="list-style-type: none"> a. Be signed by a director or officer of Company X, Inc. b. State that Company X, Inc. will continue to manufacture and produce the same explosives in accordance with the approvals issued to Company X, LLC using the same procedures. c. Include the following unsworn declaration: “I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on [date]” 2. A list of EX numbers, product description and a copy of the EX approval for each EX approval Company X is asking PHMSA to reissue.

Scenario	Question	Answer
		<p>3. Copies of any laboratory reports in Company X's possession relating to the explosives needing approval.</p>
<p>Bankruptcy</p>	<p>Debtor holds an EX approval with PHMSA and goes into bankruptcy.</p> <p>Can Debtor's EX approval be listed as an asset in the bankruptcy proceeding?</p>	<p>No. EX approvals are non-transferrable and cannot be treated as assets for the purpose of a bankruptcy proceeding.</p>