AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

or delete conditions in the application which are unnecessary.

(d) The Associate Administrator may grant an application on finding that—

(1) The application complies with this subpart;

(2) The application demonstrates that the proposed activity will achieve a level of safety that—

(i) Is at least equal to that required by the regulation, or

(ii) If the regulations do not establish a level of safety, is consistent with the public interest and adequately will protect against the risks to life and property inherent in the transportation of hazardous materials in commerce;

(3) The application states all material facts, and contains no materially false or materially misleading statement;

(4) The applicant meets the qualifications required by applicable regulations; and

(5) The applicant is fit to conduct the activity authorized by the approval, or renewal or modification of approval. This assessment may be based on information in the application, prior compliance history of the applicant, and other information available to the Associate Administrator.

(e) Unless otherwise specified in this chapter or by the Associate Administrator, an approval in which a term is not specified does not expire.

(f) The Associate Administrator notifies the applicant in writing of the decision on the application. A denial contains a brief statement of reasons.

§ 107.711 Withdrawal.

An application may be withdrawn at any time before a decision to grant or deny it is made. Withdrawal of an application does not authorize the removal of any related records from the PHMSA dockets or files. Applications that are eligible for confidential treatment under §105.30 will remain confidential after the application is withdrawn. The duration of this confidential treatment for trade secrets and commercial or financial information is indefinite, unless the party requesting the confidential treatment of the materials notifies the Associate Administrator that the confidential treatment is no longer required.

[Amdt. 107–38, 61 FR 21100, May 9, 1996, as amended at 67 FR 61011, Sept. 27, 2002]

§ 107.713 Approval modification, suspension or termination.

(a) The Associate Administrator may modify an approval on finding that—

(1) Modification is necessary to conform an existing approval to relevant statutes and regulations as they may be amended from time to time; or

(2) Modification is required by changed circumstances to enable the approval to continue to meet the standards of §107.709(d).

(b) The Associate Administrator may modify, suspend or terminate an approval, as appropriate, on finding that—

(1) Because of a change in circumstances, the approval no longer is needed or no longer would be granted if applied for;

(2) The application contained inaccurate or incomplete information, and the approval would not have been granted had the application been accurate and complete;

(3) The application contained deliberately inaccurate or incomplete information; or

(4) The holder knowingly has violated the terms of the approval or an applicable requirement of this chapter in a manner demonstrating lack of fitness to conduct the activity for which the approval is required.

(c) Except as provided in paragraph (d) of this section, before an approval is modified, suspended or terminated, the Associate Administrator notifies the holder in writing of the proposed action and the reasons for it, and provides an opportunity to show cause why the proposed action should not be taken.

(1) The holder may file a written response with the Associate Administrator within 30 days of receipt of notice of the proposed action.

(2) After considering the holder's or party's written response, or after 30 days have passed without response since receipt of the notice, the Associate Administrator notifies the holder in writing of the final decision with a brief statement of reasons.

(d) The Associate Administrator, if necessary to avoid a risk of significant harm to persons or property, may in the notification declare the proposed action immediately effective.

§ 107.715 Reconsideration.

(a) An applicant or a holder may request that the Associate Administrator reconsider a decision under § 107.709(f) or § 107.713(c). The request must:

(1) Be in writing and filed within 20 days of receipt of the decision;

(2) State in detail any alleged errors of fact and law;

(3) Enclose any additional information needed to support the request to reconsider; and

(4) State in detail the modification of the final decision sought.

(b) The Associate Administrator considers newly submitted information on a showing that the information could not reasonably have been submitted during application processing.

(c) The Associate Administrator grants or denies, in whole or in part, the relief requested and informs the requesting person in writing of the decision.

§ 107.717 Appeal.

(a) A person who requested reconsideration under § 107.715 may appeal to the Administrator the Associate Administrator's decision on the request. The appeal must:

(1) Be in writing and filed within 30 days of receipt of the Associate Administrator's decision on reconsideration;

(2) State in detail any alleged errors of fact and law;

(3) Enclose any additional information needed to support the appeal; and

(4) State in detail the modification of the final decision sought.

(b) The Administrator, if necessary to avoid a risk of significant harm to persons or property, may declare the Associate Administrator's action effective pending a decision on appeal.

(c) The Administrator grants or denies, in whole or in part, the relief requested and informs the appellant in writing of the decision on appeal. The Administrator's decision on appeal is the final administrative action.

Subpart I—Approval of Independent Inspection Agencies, Cylinder Requalifiers, and Non-domestic Chemical Analyses and Tests of DOT Specification Cylinders

SOURCE: 67 FR 51639, Aug. 8, 2002, unless otherwise noted.

§ 107.801 Purpose and scope.

(a) This subpart prescribes procedures for—

(1) A person who seeks approval to be an independent inspection agency to perform tests, inspections, verifications and certifications of DOT specification cylinders or UN pressure receptacles as required by parts 178 and 180 of this chapter;

(2) A person who seeks approval to engage in the requalification (*e.g.* inspection, testing, or certification), rebuilding, or repair of a cylinder manufactured in accordance with a DOT specification or a pressure receptacle in accordance with a UN standard, under subchapter C of this chapter or under the terms of a special permit issued under this part;

(3) A person who seeks approval to perform the manufacturing chemical analyses and tests of DOT specification cylinders, special permit cylinders, or UN pressure receptacles outside the United States.

(b) No person may engage in a function identified in paragraph (a) of this section unless approved by the Associate Administratior in accordance with the provisions of this subpart. Each person must comply with the applicable requirements in this subpart. In addition, the procedural requirements in subpart H of this part apply to the filing, processing, and termination of an approval issued under this subpart.

[67 FR 51639, Aug. 8, 2002, as amended at 71 FR 33873, June 12, 2006]

§ 107.803 Approval of an independent inspection agency (IIA).

(a) *General.* Prior to performing cylinder inspections and verifications required by parts 178 and 180 of this chapter, a person must apply to the Associate Administrator for an approval as