

documented specific reasons for current non-liquidity.

[78 FR 60733, Oct. 2, 2013, as amended at 81 FR 42268, June 29, 2016; 82 FR 18399, Apr. 19, 2017; 84 FR 37071, July 31, 2019; 85 FR 75703, Nov. 25, 2020; 86 FR 1756, Jan. 11, 2021; 86 FR 23252, May 3, 2021; 86 FR 29529, June 2, 2021; 87 FR 15866, Mar. 21, 2022; 88 FR 1125, Jan. 6, 2023; 87 FR 79764, Dec. 27, 2022]

Subpart E—Designation of Approval and Certification Agencies

§ 107.401 Purpose and scope.

(a) This subpart establishes procedures for the designation of agencies to issue certificates and certifications for types of packagings designed, manufactured, tested, or maintained in conformance with the requirements of this subchapter, subchapter C of this chapter, and standards set forth in the United Nations (U.N.) Recommendations (Transport of Dangerous Goods), and for lighters, portable tanks, multi-element gas containers, and Division 1.4G consumer fireworks in conformance with the requirements of this subchapter. Except for certifications of compliance with U.N. packaging standards, this subpart does not apply unless made applicable by a rule in subchapter C of this chapter.

(b) The Associate Administrator may issue approval certificates and certifications addressed in paragraph (a) of this section.

[78 FR 42473, July 16, 2013]

§ 107.402 Application for designation as a certification agency.

(a) Any organization or person seeking to be approved as a certification agency must apply in writing to the Associate Administrator for Hazardous Materials Safety (PHH-32), Department of Transportation, East Building, 1200 New Jersey Avenue SE., Washington DC 20590-0001. Alternatively, the application in an appropriate format may be submitted by facsimile (fax) to: (202) 366-3753 or (202) 366-3308 or by electronic mail to: approvals@dot.gov. Each application must be signed and certified to be correct by the applicant or, if the applicant is an organization, by an authorized officer or official representative of

the organization. Any false statement or representation, or the knowing and willful concealment of a material fact, may subject the applicant to prosecution under the provisions of 18 U.S.C. 1001, and result in the denial or termination of a designation.

(b) Each application for approval as a certification agency must be in English and include the following information:

(1) Information required by the provisions in subpart H of this part;

(2) Name and address of the applicant, including place of incorporation if a corporation. In addition, if the applicant is not a resident of the United States, the name and address of a permanent resident of the United States designated in accordance with § 105.40 of this subchapter to serve as agent for service of process. A person approved as a certification agency is not a PHMSA agent or representative;

(3) A statement acknowledging that the Associate Administrator or a designated official may inspect, on demand, its records and facilities in so far as they relate to the certification activities and will cooperate in the conduct of such inspections; and

(4) Any additional information relevant to the applicant's qualifications, upon request of the Associate Administrator or a designated official.

(c) *UN Third-Party Packaging Certification Agency*. In addition to the requirements in paragraph (b) of this section, the application must include the following information:

(1) A listing, by DOT specification (or special permit) number, or U.N. designation, of the types of packagings for which certification authority is sought;

(2) A statement showing proof that the applicant has:

(i) The ability to review and evaluate design drawings, design and stress calculations;

(ii) The knowledge of the applicable regulations of subchapter C of this chapter and, when applicable, U.N. standards;

(iii) The ability to conduct or monitor and evaluate test procedures and results; and

(iv) The ability to review and evaluate the qualifications of materials and fabrication procedures.

(3) A statement that the applicant will perform its functions independent of the manufacturers and owners of the packagings concerned.

(4) If the applicant's principal place of business is in a country other than the United States, a copy of the designation from the Competent Authority of that country delegating to the applicant an approval or designated agency authority for the type of packaging for which a DOT designation is sought, and a statement that the Competent Authority also delegates similar authority to U.S. Citizens or organizations having designations under this subpart from PHMSA.

(d) *Fireworks Certification Agency.* Prior to reviewing, and certifying Division 1.4G consumer fireworks (UN0336) for compliance with the APA 87–1A, excluding appendices II through VI, (IBR, see §171.7 of this chapter) as specified in part 173 of this chapter, a person must apply to, and be approved by, the Associate Administrator to act as a Fireworks Certification Agency.

(1) *Fireworks Certification Agency applicant requirements.* The Fireworks Certification Agency applicant must—

(i) Be a U.S. resident, or for a non-U.S. resident, have a designated U.S. agent representative as specified in §105.40 of this subchapter;

(ii) Employ personnel with work experience in manufacturing or testing of fireworks or explosives; or a combination of work experience in manufacturing or testing of fireworks or explosives and a degree in the physical sciences or engineering from an accredited university;

(iii) Have the ability to:

(A) Review design drawings, and applications to certify that they are in accordance with the APA Standard 87–1; and

(B) Verify that the applicant has certified the thermal stability test procedures and results.

(iv) Must be independent of and not owned by any consumer fireworks manufacturer, distributor, import or export company, or proprietorship.

(2) *Fireworks Certification Agency application submittal requirements.* In addition to the requirements of paragraphs (b) and (d)(1) of this section, the Fire-

works Certification Agency application must include—

(i) Name, address, and country of each facility where Division 1.4G consumer fireworks applications are reviewed and certified;

(ii) A detailed description of the qualifications of each individual the applicant proposes to employ to review, and certify that the requirements specified by part 173 of this chapter and the APA Standard 87–1 have been met;

(iii) Written operating procedures to be used by the Fireworks Certification Agency to review and certify that a Division 1.4G consumer fireworks application meets the requirements specified in the APA Standard 87–1;

(iv) Name, address, and principal business activity of each person having any direct or indirect interest in the applicant greater than three percent and any direct or indirect ownership interest in each subsidiary or division of the applicant; and

(v) A statement that the applicant will perform its functions independent of the manufacturers, transporters, importers, and owners of the fireworks.

(e) *Lighter certification agency.* Prior to examining and testing lighters (UN1057) for certification of compliance with the requirements of §173.308 of this chapter a person must submit an application to, and be approved by, the Associate Administrator to act as a lighter certification agency. In addition to paragraph (b) of this section, the application must include the following information:

(1) The name and address of each facility where lighters are examined and tested;

(2) A detailed description of the applicant's qualifications and ability to, examine and test lighters and certify that the requirements specified by §173.308 of this chapter have been met; and

(3) A statement that the agency is independent of and not owned by a lighter manufacturer, distributor, import or export company, or proprietorship.

(f) *Portable tank and MEGC certification agencies.* Prior to inspecting portable tanks or multi-element gas containers (MEGCs) for certification of compliance with the requirements of

§§178.273 and 178.74 of this chapter, respectively, a person must submit an application to, and be approved by, the Associate Administrator to act as a certification agency. In addition to paragraph (b) of this section, the application must provide the following information:

(1) The name and address of each facility where the portable tank or MEGC, as applicable, is examined and tested;

(2) A detailed description of the applicant's qualifications and ability to examine and test portable tanks or MEGCs, as applicable, and certify that the requirements specified by §178.273 of this chapter for the approval of UN portable tanks, or §178.74 of this chapter for the approval of MEGCs have been met; and

(3) A statement indicating that the agency is independent of and not owned by a portable tank or MEGC manufacturer, owner, or distributor.

[78 FR 42473, July 16, 2013, as amended at 78 FR 60750, Oct. 2, 2013; 81 FR 35512, June 2, 2016; 85 FR 75704, Nov. 25, 2020]

§ 107.403 Designation of certification agencies.

(a) If the Associate Administrator determines that an application contains all the required information, the applicant is sent a letter of designation and assigned an identification code.

(b) If the Associate Administrator determines that an application does not contain all the required information, the application is denied and the applicant is sent a written notice containing all the reasons for the denial.

(c) Within 30 days of an initial denial of an application under paragraph (b) of this section, the applicant may file an amended application. If the application is denied by the Associate Administrator of Hazardous Materials Safety, the applicant may, within 20 days of receipt of the decision, request reconsideration by the Associate Administrator as set forth in §107.715. If the reconsideration is denied by the Associate Administrator, the applicant may appeal the Associate Administrator's decision, within 30 days of the Associate Administrator's decision, to the Administrator of PHMSA, as specified in §107.717.

(d) The Associate Administrator may modify, suspend, or terminate an approval submitted under this subpart as set forth in §107.713.

[Amdt. 107-13, 50 FR 10062, Mar. 13, 1985, as amended by Amdt. 107-23, 56 FR 66157, Dec. 20, 1991; Amdt. 107-32, 59 FR 49131, Sept. 26, 1994; 66 FR 45377, Aug. 28, 2001; 78 FR 42474, July 16, 2013]

§ 107.404 Conditions of designation.

(a) Each designation made under this subpart contains the following conditions:

(1) The designated approval or certification agency may use only testing equipment that it has determined, through personal inspection, to be suitable for the purpose.

(2) Each approval certificate and certification issued by the designated approval agency must contain the name and identification code of the approval agency.

(3) Each approval certificate and certification must be in a format acceptable to the Associate Administrator.

(b) The designated approval agency shall notify the Associate Administrator within 20 days after the date there is any change in the information submitted under §107.402.

(c) The designated approval agency shall comply with all of the terms and conditions stated in its letter of designation under the subpart.

(d) Nothing in this part relieves a manufacturer or owner of a packaging of responsibility for compliance with any of the applicable requirements of this title.

[Amdt. 107-13, 50 FR 10062, Mar. 13, 1985, as amended by Amdt. 107-23, 56 FR 66157, Dec. 20, 1991; 66 FR 45377, Aug. 28, 2001]

§ 107.405 [Reserved]

Subpart F—Registration of Cargo Tank and Cargo Tank Motor Vehicle Manufacturers, Assemblers, Repairers, Inspectors, Testers, and Design Certifying Engineers

§ 107.501 Scope.

(a) This subpart establishes a registration procedure for persons who are engaged in the manufacture, assembly,