



U.S. Department  
of Transportation  
**Pipeline and Hazardous  
Materials Safety  
Administration**

1200 New Jersey Avenue, SE  
Washington, DC 20590

March 9, 2022

Susan JP Flanagan  
Institute of Makers of Explosives  
1212 New York Avenue, NW, Suite 650  
Washington, DC 20005

Reference No. 21-0062

Dear Ms. Flanagan:

This letter is in response to your June 7, 2021, email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to explosives classification (EX) approvals. Specifically, you ask for clarification on the impact of changes in corporate legal structure on the status of existing EX approvals and ask for clarification on the reciprocity of competent authority approvals authorized in the U.S. and Canada. You reference a Pipeline and Hazardous Materials Safety Administration (PHMSA) guidance document titled, *EXPLOSIVES CLASSIFICATION (EX) APPROVALS (Company Name Changes, Mergers, Acquisitions, and Changes in Legal Structure)*, and provide two scenarios regarding: (1) the transportation of foreign-approved explosives through the U.S.; and (2) the transferability of a PHMSA-issued EX approval issued to a domestic company to a Canadian facility owned and operated by the same company.

For each scenario we have paraphrased and answered your questions as follows:

Scenario #1: Explosives products are manufactured in Canada and are authorized by the Canadian competent authority.

- Q1. You ask whether these products may be transported through the U.S. to a destination outside of the U.S. without an EX approval.
- A1. The answer is no. As specified in § 171.12(a), a hazardous material transported from Canada to the United States, from the United States to Canada, or transiting the United States to Canada or a foreign destination may be offered for transportation or transported by motor carrier and rail in accordance with the Transport Canada TDG Regulations as authorized in § 171.22, provided the requirements in §§ 171.22 and 171.23, as applicable, are met. Section 171.23(b)(4) specifically requires that, prior to being transported within

the United States, Class 1 (explosive) materials must be approved by the Associate Administrator in accordance with § 173.56.

Q2. You ask whether these products may be transported into the U.S. to a distribution center for further distribution outside of the U.S. without an EX approval.

A2. The answer is no. See answer A1.

Q3. You ask whether these products may be transported into the U.S. for use within the U.S. without an EX approval.

A3. The answer is no. See answer A1.

Scenario #2: A U.S.-based manufacturer is contemplating manufacturing products at a company-owned facility in Canada. The products have received EX approvals from PHMSA for domestic manufacture and transportation. The products to be made in Canada would be:

- manufactured to the same specifications as the EX-approved products;
- manufactured using equipment comparable to that used to make the EX-approved products;
- manufactured under the direction and supervision of the U.S. manufacturer; and
- shipped to the U.S. manufacturer for distribution within the U.S. as well as export to other countries.

Q4. You ask whether the existing EX approvals apply, or would separate EX approvals be required for the products intended to be made in Canada.

A4. The answer is no, the existing EX approvals would not apply, Specifically, separate EX approvals are required. All manufacturing locations outside of the U.S. are required to apply for their own EX approval.

Furthermore, on October 8, 2019, PHMSA published a notice and request for comment [84 FR 53822] titled “Hazardous Materials: Clarification of Process to Reissue Explosives Classification Approvals.” While the policies in the table of the guidance document, *EXPLOSIVES CLASSIFICATION (EX) APPROVALS (Company Name Changes, Mergers, Acquisitions, and Changes in Legal Structure)*, remain unchanged, the notice is part of PHMSA’s efforts to update the guidance document while addressing stakeholder comments.

I hope this information is helpful. Please contact us if we can be of further assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dirk Der Kinderen". The signature is fluid and cursive, with the first name "Dirk" being the most prominent part.

Dirk Der Kinderen  
Chief, Standards Development Branch  
Standards and Rulemaking Division

**institute of makers of explosives**

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*The safety and security institute of the commercial explosives industry since 1913*

June 7, 2021

Mr. William Schoonover  
Associate Administrator, Hazardous Materials Safety  
Pipeline and Hazardous Materials Safety Administration  
U.S. Department of Transportation  
East Building, 2nd Floor  
1200 New Jersey Avenue, SE  
Washington, DC 20590

**Re: Explosives Classification (EX) Approvals (Company Name Changes, Mergers, Acquisitions, and Changes in Legal Structure)**

Dear Mr. Schoonover:

This letter concerns the current status and interpretation of the above-captioned document.

IME is occasionally contacted by both member and non-member companies regarding the impact of changes in corporate legal structure on the status of existing EX Classification Approvals. We also receive inquiries regarding reciprocity of approvals/authorizations between the US and Canada. Typically, we refer the companies to the table PHMSA has published at, <https://www.phmsa.dot.gov/registration/faq-mergers-acquisitions-and-legal-status-changes-pdf>.

As an initial matter, it appears that this information was originally published on April 2, 2015 and we would like to confirm that the policies reflected in the table remain unchanged. If PHMSA has updated the table or modified the underlying policies can you direct us to that information?

In addition, we understand that there is some reciprocity between the US and Canada regarding explosives approvals/authorizations. Accordingly, we have the following questions regarding interpretation/application of the information in the table as it applies to that reciprocity:

1. Explosives products are manufactured in Canada and are authorized by that country's Competent Authority. Can these products be:
  - a. Transported through the US to a destination outside of the US without an EX approval?
  - b. Transported into the US to a distribution center for further distribution outside of the US without an EX approval?
  - c. Transported into the US for use within the US without an EX approval?
2. A US-based manufacturer is contemplating manufacturing products at a company-owned facility in Canada. The products have received EX approvals from PHMSA. The products would be:
  - a. manufactured to the same specifications as the EX approved products;

- b. manufactured using equipment comparable to that used to make the EX approved products;
- c. manufactured under the direction and supervision of the US manufacturer; and
- d. shipped to the US manufacturer for distribution within the US as well as export to other countries.

In this circumstance, would the existing EX approvals apply or would separate EX approvals be required?

We appreciate your assistance in addressing these questions. Please contact me if you need additional information.

Best Regards,

A handwritten signature in cursive script, appearing to read "Susan JP Flanagan".

Susan JP Flanagan  
Legislative & Regulatory Counsel  
Institute of Makers of Explosives  
202.674.7123  
[sjflanagan@ime.org](mailto:sjflanagan@ime.org)

**From:** [Foster, Glenn \(PHMSA\)](#)  
**To:** [Dodd, Alice \(PHMSA\)](#); [Hillman, Kenetha CTR \(PHMSA\)](#)  
**Cc:** [Burger, Donald \(PHMSA\)](#); [DerKinderen, Dirk \(PHMSA\)](#); [Nickels, Matthew \(PHMSA\)](#); [Pfund, Duane \(PHMSA\)](#)  
**Subject:** FW: FINAL\_EX Numbers\_Canada 07JUN21.docx  
**Date:** Monday, June 7, 2021 11:47:01 AM  
**Attachments:** [FINAL\\_EX Numbers\\_Canada 07JUN21.docx](#)

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Alice and Kenetha,

Please log in the attached request for a Letter of Interpretation and assign it to the next Specialist in the rotation.

Thanks,  
Glenn

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**From:** Pfund, Duane (PHMSA)  
**Sent:** Monday, June 7, 2021 11:30 AM  
**To:** Foster, Glenn (PHMSA) <Glenn.Foster@dot.gov>  
**Cc:** DerKinderen, Dirk (PHMSA) <Dirk.DerKinderen@dot.gov>; Nickels, Matthew (PHMSA) <Matthew.Nickels@dot.gov>; Constantino, Lindsey (PHMSA) <l.constantino@dot.gov>; Wiener, Aaron (PHMSA) <Aaron.Wiener@dot.gov>; Webb, Steven (PHMSA) <steven.webb@dot.gov>; Leary, Kevin (PHMSA) <Kevin.Leary@dot.gov>  
**Subject:** FW: FINAL\_EX Numbers\_Canada 07JUN21.docx

Glenn – can you please log this into the interpretation system? Correct me if that’s not the appropriate process.

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**From:** Schoonover, William (PHMSA)  
**Sent:** Monday, June 7, 2021 11:18 AM  
**To:** Pfund, Duane (PHMSA) <[Duane.Pfund@dot.gov](mailto:Duane.Pfund@dot.gov)>; Quade, William (PHMSA) <[william.quade@dot.gov](mailto:william.quade@dot.gov)>  
**Cc:** Milline, Olivia (PHMSA) <[olivia.milline@dot.gov](mailto:olivia.milline@dot.gov)>  
**Subject:** FW: FINAL\_EX Numbers\_Canada 07JUN21.docx

Please prepare a response. Thanks

### **William S. Schoonover**

Associate Administrator, Office of Hazardous Materials Safety

USDOT, PHMSA  
1200 New Jersey Ave, SE, Washington, DC 20590  
Office: 202.366.0656 ♦ Mobile: 202.495.9510

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**From:** Susan Flanagan [<mailto:sjflanagan@ime.org>]  
**Sent:** Monday, June 07, 2021 10:37 AM

**To:** Schoonover, William (PHMSA) <[william.schoonover@dot.gov](mailto:william.schoonover@dot.gov)>

**Subject:** FINAL\_EX Numbers\_Canada 07JUN21.docx

Mr. Schoonover,

Attached is a request for interpretation regarding reciprocity of approvals/authorizations between the US and Canada.

Please let me know if you'd like additional information or if you have any questions.

I hope all is well!

Regards,

Susan

**IME's "*Explosives: The Power Tool*" video is must-see viewing!**  
**Interested in learning best practices? IME's SLP-based eLearning program is now available!**

**Susan JP Flanagan** | Legislative & Regulatory Counsel | Institute of Makers of Explosives

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