

FIREWORKS CERTIFICATION PROCEDURES



U.S. Department
of Transportation

Pipeline and
Hazardous Materials
Safety Administration

Compliance Assistance Guide
HM-257 Final Rule
July 2013

NOTE: This compliance assistance guide is for information only and should not be used as a substitute for the applicable regulations.

The Hazardous Materials Regulations (HMR), 49 CFR Parts 107 & 173, are available from the Government Printing Office or may be accessed through our website at <http://hazmat.dot.gov>.

Need help?

Call our Hazardous Materials Information Center at 800-467-4922 between the hours of 9:00 AM and 5:00 PM EST, Monday through Friday except Federal holidays.

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Introduction

Before you attempt to transport, or have transported, any explosives into or within the U.S.—with certain exceptions—you must ensure they are submitted to a DOT-approved explosives testing laboratory where the explosive is tested and assigned a recommended shipping description and hazard class/division, then the laboratory submits a report to PHMSA where the explosive is approved and issued a DOT classification approval number (EX number).

One exception is that Division 1.3 or 1.4 fireworks may be classed, approved, and offered for transportation without prior laboratory examination if the manufacturer certifies that the fireworks conform to the requirements in the American Pyrotechnic Association (APA) Standard 87-1, and have passed a thermal stability test. The manufacturer applies in writing to PHMSA in the method detailed in APA Standard 87-1, and PHMSA notifies the manufacturer in writing that the fireworks have been approved, classed, and assigned an EX-number (see 49 CFR §173.64).

In July 2013, PHMSA established a new exception for Division 1.4G consumer fireworks.¹ **Now, manufacturers of Division 1.4G consumer fireworks have the option of applying to a DOT-approved fireworks certification agency (FCA) instead of applying to PHMSA.** The fireworks still must conform to the requirements in the APA Standard 87-1, and pass a thermal stability test. Instead of applying to PHMSA, the manufacturer may apply in writing to an FCA with the information required in APA Standard 87-1. After reviewing the application, the FCA will send its recommended certification to PHMSA, and PHMSA will acknowledge the certification. Then the FCA will notify the manufacturer, in writing, if the fireworks have been certified, classed, and assigned an FC number, or if the application is denied (see 49 CFR §173.65).



¹ Consumer fireworks are defined in 49 CFR §173.64 and include, but are not limited to, aerial shells, bottle rockets, fountains, Roman candles and sparklers.

What Fireworks Certification Agencies Need to Know

How Do I Become a Fireworks Certification Agency (FCA)?

To become a DOT-approved Fireworks Certification Agency (FCA), you must apply to PHMSA as specified in 49 CFR § 107.402(a), (b) and (d).

Before you apply, you must:

- Be a US citizen, or have a designated agent who is a U.S. citizen (see 49 CFR § 105.40);
- Be independent of, and not owned by, any consumer fireworks manufacturer, distributor, import or export company, or proprietorship;
- Employ personnel with work experience in manufacturing or testing of Division 1.4G consumer fireworks; or a combination of work experience in manufacturing or testing of Division 1.4G consumer fireworks and a degree in the physical sciences or engineering from an accredited university; and
- Have the ability to review design drawings, and applications, to certify that they are in accordance with the APA Standard 87-1; and verify that the applicant has certified the thermal stability test procedures and results.

When you apply, you must include:

- The name, address, and country of each facility where Division 1.4G consumer fireworks applications are reviewed and certified;
- A detailed description of the qualifications of each individual who will be reviewing and certifying that the requirements specified in 49 CFR part 173 and the APA Standard 87-1 have been met;
- 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;

What Fireworks Certification Agencies Need to Know

- The 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
- A statement that the applicant will perform its functions independent of the manufacturers, transporters, importers, and owners of the fireworks.

What Happens After I Submit My Application?

PHMSA will review your application to determine if it meets the required criteria. If it does, PHMSA will issue you an approval to act as a fireworks certification agency and assign you a unique identifier.

The FCA approval documentation will include:

- The FCA's unique identifier;
- Requirements for the periodic renewal of an FCA;
- Details regarding the submission process and method of transmitting FCA certifications to PHMSA;
- Instructions on issuance of FCs, including unique identifier sequence and tracking numbers;
- Recordkeeping requirements specific to the FCA.
- Qualifications of each employee conducting FCA reviews; and
- Procedures to notify PHMSA in the event of operational changes or modifications (i.e., reporting changes in employment status, hiring of new personnel, or changes to standard operating procedures).

If your application does not meet the required criteria, PHMSA will contact the applicant for additional information or deny the application.

What Fireworks Certification Agencies Need to Know

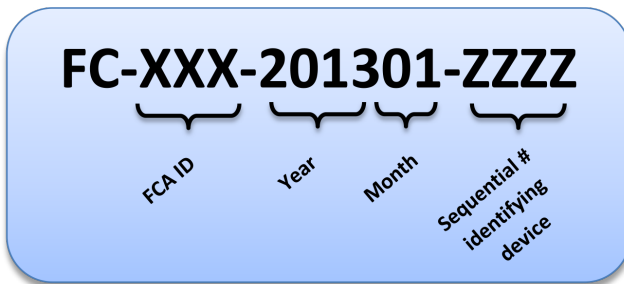
What Options Do I Have If PHMSA Denies My Approval Application?

Within 30 days of an initial denial of an application, the applicant may file an amended application. If the application is again denied by PHMSA, the applicant may, within 20 days of receipt of the decision, request reconsideration as set forth in § 107.715. If the reconsideration is denied by PHMSA, the applicant may appeal the decision, within 30 days, to the Administrator of PHMSA, as specified in § 107.717.

How Does the Certification Process Work?

The FCA will review the application for completeness and determine that the fireworks comply with APA Standard 87-1. The FCA must submit a certification report to PHMSA with a number that is unique to the fireworks being certified, indicating that the fireworks are certified in compliance with the APA 87-1 Standard for transportation. After PHMSA acknowledges the certification report, the FCA may send the certification to the manufacturer. Certification only becomes valid when the FCA has received this acknowledgement from PHMSA.²

The unique identifier will look very much like an EX number, but will begin with “FC” instead of “EX,” for example:



² PHMSA will simply send an acknowledgement of receipt immediately after the FCA submits the appropriate documentation to PHMSA. PHMSA will not conduct an additional review of the application. As part of PHMSA’s quality control procedures, PHMSA may randomly sample and verify an FCA’s certification at a later date.

What Fireworks Certification Agencies Need to Know

Must an FCA Report to PHMSA When it Has Denied A Fireworks Certification Application?

Yes. When an FCA has denied an application, it must provide PHMSA with the application and its reasons for the denial. Common reasons include the following:

- The application does not comply with APA 87-1;
- The application, diagram, and chemical composition sheet are inconsistent;
- The fireworks exceed composition limits;
- The chemical composition does not total 100%;
- The fusing is not sequential; and
- There is no designated US agent for foreign manufacturer.

PHMSA anticipates that as part of the operating procedures submitted by the FCA to PHMSA, each FCA will develop a method to help manufacturers quickly handle applications with formatting or minor editorial errors, such as obvious typographical errors, or misplaced information. It is not PHMSA's intention for FCA's to report denials attributed to non-safety issues.

Must an FCA Keep Records of the Fireworks Certifications That it Issues?

Yes. While the recordkeeping requirements will be detailed in each FCA's individual approval, each record must clearly provide the unique identifier that the FCA has assigned to the fireworks. Copies of the FCA certification records must be maintained for five (5) years after the FCA certifies the fireworks. The record must be accessible at or through the FCA's principal place of business and be made available, upon request, to an authorized official of a Federal, State, or local government agency at a reasonable time and location.

What Manufacturers or U.S. Agents Need to Know

How Does a Manufacturer Apply for an FCA Certification?

If a manufacturer chooses to have its fireworks certified by an FCA rather than submitting an approval application to PHMSA, a manufacturer may submit its application directly to an FCA or, in the case of a foreign manufacturer, a U.S. Agent may submit an application on behalf of the manufacturer. Similar to the approval process, a manufacturer must prove that the fireworks conform to the requirements in the APA Standard 87-1 and have passed a thermal stability test. A manufacturer would apply in writing to an FCA in the method detailed in APA Standard 87-1, and the FCA would assign an FC number.

The application must include:

- Name, address, telephone and fax numbers of the manufacturer and U.S. Agent, if applicable;
- A detailed diagram of the fireworks;
- A complete list of the chemical compositions, formulations, and quantities used in the fireworks;
- The results of the thermal stability test; and
- A signed certification declaring that the fireworks for which certification is requested conforms to the APA Standard 87-1, that the descriptions and technical information contained in the application are complete and accurate, and no duplicate applications have been submitted to PHMSA.

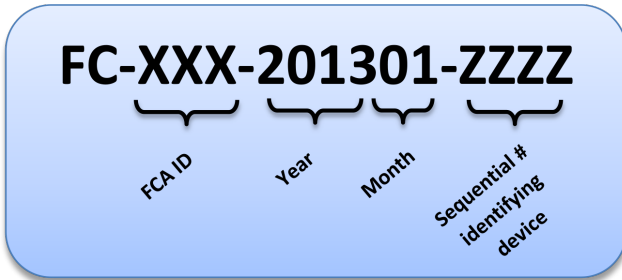
What if the FCA Denies a Manufacturer's Application?

If the application is denied, the FCA must notify the applicant in writing of the reasons for the denial. Following the issuance of a denial from an FCA, the applicant may seek reconsideration from the FCA, or appeal to PHMSA the reconsideration decision of the FCA (see § 173.65(a)(4)(iv)).

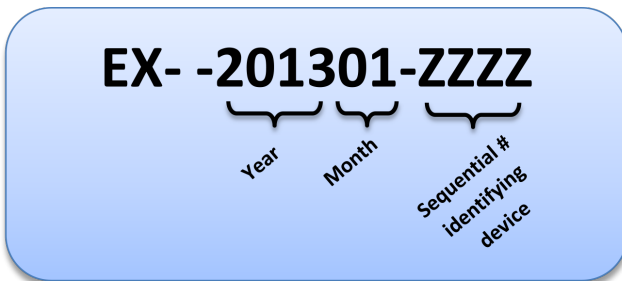
What Manufacturers or U.S. Agents Need to Know

Are There Differences in the Way a Manufacturer, U.S. Agent or Shipper Prepares Division 1.4G Consumer Fireworks for Transportation if They Have Been Certified by an FCA Rather than Approved by PHMSA?

The FCA will issue the manufacturer an “FC” number rather than an “EX” number, for example:



Just as with an EX number, for transportation within the U.S., the manufacturer must either mark the FC number on the packaging, or write the FC number on the shipping paper in conjunction with the proper shipping name, i.e., “consumer fireworks.” For international transportation, the manufacturer is required to mark the EX or FC number on the shipping paper.³



³ It should be noted that for international air and vessel transport, in accordance with the International Civil Aviation Organization’s Technical Instructions Part 5.4.1.5.6 and the International Maritime Dangerous Goods Code Part 5.4.1.5.15, it is required that dangerous goods transport document (shipping papers) for UN 0336 or UN 0337 (and for surface transport UN 0333, UN 0334 and UN 0335) must include a classification reference issued by the competent authority (i.e., FC or EX number).

What Manufacturers or U.S. Agents Need to Know

May a Manufacturer Submit an Application to an FCA and PHMSA for the Same Fireworks?

No. The manufacturer must certify that the application has not been submitted to PHMSA and an FCA. Submitting duplicate applications to PHMSA and FCAs is prohibited, and a manufacturer may be fined for doing so.

Must a Manufacturer Keep Records of the Fireworks Certifications it Receives?

Yes. The certification must be accessible at or through the manufacturer's principal place of business and be made available, upon request, to an authorized official of a Federal, State, or local government agency at a reasonable time and location. Copies of certification records must be maintained for five (5) years following import of fireworks. Further, the manufacturer must provide the certification record to each entity e.g., importers or shippers, responsible for offering the fireworks during transportation, to ensure they are in possession of the certification record.



What Importers & Shippers Need to Know

How Does the FCA Certification Process Affect an Importer's or Shipper's Role in Transporting Division 1.4G Consumer Fireworks?

The biggest difference is, for shipments certified by an FCA, the importer or shipper will be required to maintain a paper record or electronic image of the certification when the fireworks are in transportation, and the importer or shipper must keep a record of the certification for five (5) years following import of the fireworks. The certification record must be made available to an authorized official of a Federal, State, or local government agency upon request (see § 173.65(b)).

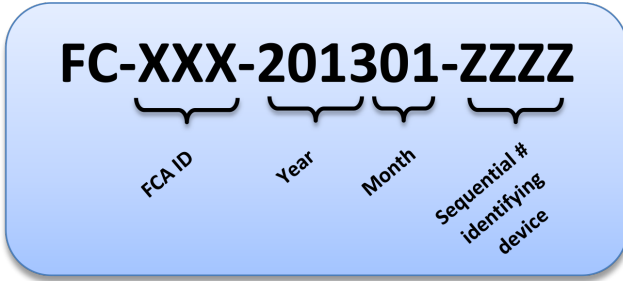
What if the Carrier Refuses to Transport Fireworks Assigned an FC Number?

While our intent is to notify all stakeholders in the Division 1.4G supply chain of the new FCA certification option, we cannot guarantee that everyone will receive the information before FCA-certified fireworks are being transported. We recommend that an importer or shipper contact its carrier in advance to make them aware of the new FCA option, and send them a copy of this guidance document and 49 CFR § 173.65.

What Carriers Need to Know

What is the Difference Between Transporting FCA-certified Division 1.4G Consumer Fireworks and DOT-approved Division 1.4G Consumer Fireworks?

The wording on the shipping paper provided to you and the markings on the packaging will show an “FC” number rather than an “EX” number.



There are no other differences for a carrier transporting Division 1.4G consumer fireworks.





GOT A HAZMAT QUESTION?

INFO-LINE:

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