

§ 107.401

49 CFR Ch. I (10–1–01 Edition)

of either (or both) will depend on the circumstances of the case. The length of a payment plan should be as short as possible, but the plan may consider seasonal fluctuations in a company's income if the company's business is seasonal (e.g., swimming pool chemical sales, fireworks sales) or if the company has documented specific reasons for current non-liquidity.

5. Evidence of financial condition is used only to decrease a penalty, and not to increase it.

E. Penalty Increases for Prior Violations

1. The baseline penalty presumes an absence of prior violations. If prior violations exist, generally they will serve to increase a proposed penalty. The general standard for increasing a baseline proposed penalty on the basis of prior violations is as follows:

- a. One prior case—25% increase over the pre-mitigation recommended penalty
- b. Two prior cases—50% increase over the pre-mitigation recommended penalty
- c. Three prior cases—75% increase over the pre-mitigation recommended penalty
- d. Four or more prior cases—100% increase over the pre-mitigation recommended penalty

2. A case of prior violations closed more than five years previously normally will not be considered in determining a proposed penalty.

F. Penalty Increases for Use of Expired Exemptions

Adjustments to the base line figures for use of expired exemptions can be made depending on how much material has been shipped during the period between the expiration date and the renewal date. If the company previously has been found to have operated under an expired exemption, the penalty is normally doubled. If the company has been previously cited for other violations, the penalty generally will be increased by about 25%.

[Amdt. 107-33, 60 FR 12141, Mar. 6, 1995, as amended by Amdt. 107-40, 62 FR 2972, 2977, Jan. 21, 1997; 62 FR 51556, Oct. 1, 1997; 65 FR 58618, Sept. 29, 2000; 66 FR 45180, Aug. 28, 2001]

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 approval certificates and certifications for types of packagings designed, manufactured, tested, or maintained in conformance with the re-

quirements of this subchapter, subchapter C of this chapter, and standards set forth in the United Nations (U.N.) Recommendations (Transport of Dangerous Goods). 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.

[Amdt. 107-31, 50 FR 10062, Mar. 13, 1985, as amended by Amdt. 107-23, 56 FR 66157, Dec. 20, 1991; 66 FR 45377, Aug. 28, 2001]

§ 107.402 Application for designation as an approval or certification agency.

(a) Any organization or person seeking designation as an approval or certification agency shall apply in writing to the Associate Administrator for Hazardous Materials Safety (DHM-32), Department of Transportation, 400 Seventh Street, SW., Washington DC 20590-0001. 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, result in the denial or termination of a designation.

(b) Each application for designation must be in English and include the following information:

(1) 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 § 107.7 to serve as agent for service of process.

(2) 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