

## § 107.401

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-

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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

sought, and a statement that the Competent Authority also delegates similar authority to U.S. Citizens or organizations having designations under this subpart from the RSPA.

(3) A listing, by DOT specification (or exemption) number, or U.N. designation, of the types of packagings for which approval authority is sought.

(4) A personnel qualifications plan listing the qualifications that the applicant will require of each person to be used in the performance of each packaging approval or certification function. As a minimum, these qualifications must include:

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

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

(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.

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

(6) A statement that the applicant will allow the Associate Administrator or his representative to inspect its records and facilities in so far as they relate to the approval or certification of specification packagings and shall cooperate in the conduct of such inspections.

(c) The applicant shall furnish any additional information relevant to the applicant's qualifications, if requested by the Associate Administrator.

[Amdt. 107-13, 50 FR 10062, Mar. 13, 1985; 50 FR 16089, Apr. 24, 1985, as amended by Amdt. 107-22, 55 FR 39978, Oct. 1, 1990; Amdt. 107-23, 56 FR 66157, Dec. 20, 1991; 66 FR 45377, Aug. 28, 2001]

#### § 107.403 Designation of approval 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 after considering the amended application, the Associate Administrator determines that it should be denied, he notifies the applicant, and the denial constitutes the final action of the Associate Administrator on the application. Within 60 days of receipt of the final denial the applicant may appeal the denial to the Administrator, RSPA, setting forth in writing where the Associate Administrator for Hazardous Materials Safety erred in this determination.

[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]

#### § 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