

§ 107.401

1. For each prior civil or criminal enforcement case—25% increase over the pre-mitigation recommended penalty.

2. For each prior ticket—10% increase over the pre-mitigation recommended penalty.

3. A baseline proposed penalty will not be increased more than 100% on the basis of prior violations.

4. A case or ticket of prior violations initiated in a calendar year more than six years before the calendar year in which the current case is initiated normally will not be considered in determining a proposed penalty for the current violation(s).

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; 68 FR 52848, 52855, Sept. 8, 2003; 69 FR 54044, Sept. 7, 2004; 70 FR 56090, Sept. 23, 2005]

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 requirements 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]

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§ 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 (PHH-32), Department of Transportation, 400 Seventh Street, SW., Washington DC 20590-0001. Alternatively, the application with any attached supporting documentation in an appropriate format may be submitted by facsimile (fax) to: (202) 366-3753 or (202) 366-3308 or by electronic mail (e-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, 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 § 105.40 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 PHMSA.

(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