

## § 107.327

an order directing compliance in force pending appeal.

[70 FR 56090, Sept. 23, 2005]

### § 107.327 **Compromise and settlement.**

(a) At any time before an order issued under §107.317 or §107.323 is referred to the Attorney General for enforcement, the respondent or the Office of Chief Counsel may propose a compromise as follows:

(1) In civil penalty cases, the respondent or Chief Counsel may offer to compromise the amount of the penalty by submitting an offer for a specific amount to the other party. An offer of compromise by the respondent shall be submitted to the Chief Counsel who may, after consultation with the Associate Administrator, accept or reject it.

(i) A compromise offer stays the running of any response period then outstanding.

(ii) If a compromise is agreed to by the parties, the respondent is notified in writing. Upon receipt of payment by Office of Chief Counsel, the respondent is notified in writing that acceptance of payment is in full satisfaction of the civil penalty proposed or assessed, and Office of Chief Counsel closes the case with prejudice to the respondent.

(iii) If a compromise cannot be agreed to, the respondent is notified in writing and is given 10 days or the amount of time remaining in the then outstanding response period, whichever is longer, to respond to whatever action was taken by the Office of Chief Counsel or the Administrator, PHMSA.

(2) In compliance order cases, the respondent may propose a consent agreement to the Chief Counsel. If the Chief Counsel accepts the agreement, he issues an order in accordance with its terms. If the Chief Counsel rejects the agreement, he directs that the proceeding continue. An agreement submitted to the Chief Counsel must include:

(i) A statement of any allegations of fact which the respondent challenges;

(ii) The reasons why the terms of a compliance order or proposed compliance order are or would be too burdensome for the respondent, or why such terms are not supported by the record in the case;

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(iii) A proposed compliance order suitable for issuance by the Chief Counsel;

(iv) An admission of all jurisdictional facts; and

(v) An express waiver of further procedural steps and all right to seek judicial review or otherwise challenge or contest the validity of the order.

(b) Notwithstanding paragraph (a)(1) of this section, the respondent or Office of Chief Counsel may propose to settle the case. If the Chief Counsel agrees to a settlement, the respondent is notified and the case is closed without prejudice to the respondent.

[Amdt. 107-11, 48 FR 2651, Jan. 20, 1983, as amended at 50 FR 45730, Nov. 1, 1985; Amdt. 107-24, 56 FR 8621, Feb. 28, 1991; 56 FR 15510, Apr. 17, 1991; Amdt. 107-29, 58 FR 51527, Oct. 1, 1993; 66 FR 45377, Aug. 28, 2001]

### § 107.329 **Maximum penalties.**

(a) A person who knowingly violates a requirement of the Federal hazardous material transportation law, an order issued thereunder, this subchapter, subchapter C of this chapter, or a special permit or approval issued under this subchapter applicable to the transportation of hazardous materials or the causing of them to be transported or shipped is liable for a civil penalty of not more than \$50,000 and not less than \$250 for each violation, except the maximum civil penalty is \$100,000 if the violation results in death, serious illness or severe injury to any person or substantial destruction of property, and a minimum \$450 civil penalty applies to a violation relating to training. When the violation is a continuing one, each day of the violation constitutes a separate offense.

(b) A person who knowingly violates a requirement of the Federal hazardous material transportation law, an order issued thereunder, this subchapter, subchapter C of this chapter, or a special permit or approval issued under this subchapter applicable to the design, manufacture, fabrication, inspection, marking, maintenance, reconditioning, repair or testing of a package, container, or packaging component which is represented, marked, certified, or sold by that person as qualified for use in the transportation of hazardous materials in commerce is

liable for a civil penalty of not more than \$50,000 and not less than \$250 for each violation, except the maximum civil penalty is \$100,000 if the violation results in death, serious illness or severe injury to any person or substantial destruction of property, and a minimum \$450 civil penalty applies to a violation relating to training.

[71 FR 8487, Feb. 17, 2006]

**§ 107.331 Assessment considerations.**

After finding a knowing violation under this subpart, the Office of Chief Counsel assesses a civil penalty taking the following into account:

- (a) The nature and circumstances of the violation;
- (b) The extent and gravity of the violation;
- (c) The degree of the respondent's culpability;
- (d) The respondent's prior violations;
- (e) The respondent's ability to pay;
- (f) The effect on the respondent's ability to continue in business; and
- (g) Such other matters as justice may require.

[Amdt. 107-11, 48 FR 2651, Jan. 20, 1983, as amended by Amdt. 107-30, 58 FR 50500, Sept. 27, 1993; Amdt. 107-38, 61 FR 21100, May 9, 1996]

CRIMINAL PENALTIES

**§ 107.333 Criminal penalties generally.**

A person who knowingly violates §171.2(l) of this title or willfully or recklessly violates a requirement of the Federal hazardous material transportation law or a regulation, order, special permit, or approval issued thereunder shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both, except the maximum amount of imprisonment shall be 10 years in any case in which the violation involves the release of a hazardous material which results in death or bodily injury to any person.

[71 FR 8487, Feb. 17, 2006]

**§ 107.335 Referral for prosecution.**

If the Associate Administrator becomes aware of a possible willful violation of the Federal hazardous material transportation law, this subchapter, subchapter C of this chapter, or any

special permit, or order issued thereunder, for which the Associate Administrator exercises enforcement responsibility, it shall report it to the Office of the Chief Counsel, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590-0001. If appropriate, the Chief Counsel refers the report to the Department of Justice for criminal prosecution of the offender.

[Amdt. 107-11, 48 FR 2651, Jan. 20, 1983, as amended by Amdt. 107-22, 55 FR 39978, Oct. 1, 1990; Amdt. 107-24, 56 FR 8621, Feb. 28, 1991; 56 FR 15510, Apr. 17, 1991; Amdt. 107-32, 59 FR 49131, Sept. 26, 1994; Amdt. 107-35, 60 FR 49108, Sept. 21, 1995; 66 FR 45377, Aug. 28, 2001]

**§ 107.336 Limitation on fines and penalties.**

If a State or political subdivision or Indian tribe assesses any fine or penalty determined by the Secretary to be appropriate for a violation concerning a subject listed in §107.202(a), no additional fine or penalty may be assessed for such violation by any other authority.

[Amdt. 107-24, 56 FR 8624, Feb. 28, 1991]

INJUNCTIVE ACTION

**§ 107.337 Injunctions generally.**

Whenever it appears to the Office of Chief Counsel that a person has engaged, or is engaged, or is about to engage in any act or practice constituting a violation of any provision of the Federal hazardous material transportation law, this subchapter, subchapter C of this chapter, or any special permit, or order issued thereunder, for which the Office of Chief Counsel exercises enforcement responsibility, the Administrator, PHMSA, or his delegate, may request the Attorney General to bring an action in the appropriate United States District Court for such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages as provided by 49 U.S.C. 5122(a).

[Amdt. 107-11, 48 FR 2651, Jan. 20, 1983, as amended by Amdt. 107-32, 59 FR 49131, Sept. 26, 1994]