

§ 107.333

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 Jus-

49 CFR Ch. I (10-1-07 Edition)

tice 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]

§ 107.339 Imminent hazards.

Whenever it appears to the Office of the Chief Counsel that there is a substantial likelihood that death, serious illness, or severe personal injury will result from the transportation of a particular hazardous material or hazardous materials container, before a compliance order proceeding or other administrative hearing or formal proceeding to abate the risk of that harm