



16200

[Redacted]
[Redacted]
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August 1, 2011

RE: Case No. 2602646
[Redacted]
M/V [REDACTED]
Warning

Dear Mr. [Redacted]:

The Coast Guard Hearing Office has forwarded the file in Civil Penalty Case No. 2602646, which includes your appeal as operator of the M/V [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$200.00 penalty for the following violation:

| <u>LAW/REGULATION</u> | <u>NATURE OF VIOLATION</u> | <u>ASSESSED PENALTY</u> |
|-----------------------|--|-------------------------|
| 46 CFR 25.25-13(b) | An approved personal flotation device light was not provided for each immersion suit, life preserver, marine buoyant device, and buoyant vest. | \$200.00 |

The violation was observed on May 26, 2005, when Coast Guard boarding officers boarded the M/V [REDACTED] while it was underway on Manele Bay near Lanai, Hawaii.

On appeal, although you do not deny that the life jackets aboard your vessel did not have lights on them, you contend that a violation of 46 CFR § 25.25-13(b) did not occur. You contend that the regulation does not apply to you because the area of water you were operating in was designated "Partially Protected Waters" by MSO Honolulu and you were not involved in a "coastwise" voyage as the Hearing Officer determined. You note that the Coast Guard's pre-inspection checklist for small passenger vessels, which you used as guidance with regard to compliance with relevant Coast Guard regulations, states that lights are required on PFDs only when a boat is operating more than 20 miles from a harbor of refuge.

The key issue presented in your appeal is whether your vessel was on a "coastwise voyage." You contend that it was not. I disagree.

You are charged with violating 46 CFR § 25.25-13(b). The regulation provides:

Each immersion suit carried in accordance with §25.25-5(e), each life preserver, each marine buoyant device intended to be worn, and each buoyant vest must have a personal flotation device light that is approved under subpart 161.012 of this chapter.

According to 46 CFR § 25.25-13(a) and § 25.25-1, the regulation applies to all uninspected vessels that engage in ocean, coastwise, or Great Lakes voyages, except vessels used for noncommercial use, vessels leased, rented, or chartered to another for the latter's noncommercial use, commercial vessels propelled by sail not carrying passengers for hire, and commercial barges not carrying passengers for hire. In your letter to the Hearing Officer dated May 22, 2007, you state that on the date of the violation, your vessel was operating under a charter to carry snorkelers in Manele Bay. Since your vessel was, by your own admission, being operated for commercial purposes, your vessel is not exempt from the requirement for personal flotation device lights. Therefore, if your vessel was on an ocean, coastwise, or Great Lakes voyage, you were required to have personal flotation device lights on your life preservers (PFDs).

According to 46 CFR § 24.10-1, "Oceans means a route that goes beyond 20 nautical miles offshore on any of the following waters: (1) any ocean, (2) the Gulf of Mexico, (3) the Caribbean Sea, (4) the Bering Sea, (5) the Gulf of Alaska, (6) such other similar waters as may be designated by a Coast Guard District Commander." It follows that a "coastwise" voyage involves an offshore route that is not more than 20 nautical miles from shore.

The Coast Guard Boarding Report fixes the location of the M/V [REDACTED] at 20°44.5 North latitude, 156°52.8 West longitude, which is approximately 0.02 nautical miles off Lanai, Hawaii. Because the vessel was being operated less than 20 nautical miles from shore, it was on a coastwise voyage and the regulations in 46 CFR Subpart 25.25 apply. (If it had been operated more than 20 nautical miles from shore, it would have been on an ocean voyage and the regulations would still apply.) Hence, the vessel was required to have personal flotation device lights on each life preserver carried onboard the vessel.

In your appeal letter, you remark that perhaps you were wrong to assume that if you met the standards for an inspected vessel operating on the same route, your uninspected vessel would comply with all requirements. That seems to be the case. The corresponding requirement for small passenger vessels requires life jacket lights (defined the same as personal flotation device lights in 46 CFR § 25.25-13(b)) on oceans, coastwise, and Great Lakes routes, but with a specific exception for vessels "with Certificates of Inspection endorsed only for routes that do not extend more than 20 miles from a harbor of safe refuge." 46 CFR § 180.75(b)(2).

(The term "partially protected waters" that you mention is defined as waters within 20 nautical miles of the mouth of a harbor of safe refuge, with some exceptions, in the regulations on subdivision and stability. 46 CFR § 170.050(i).)

It is clear that an uninspected vessel operating within 20 miles of a harbor of safe refuge is required to have personal flotation device lights even though an inspected vessel operating on the same route is not required to have them. This may be because an inspected vessel is subject

to other requirements that provide alternate safety features, lessening the need for such lights. Whatever the reason, the difference in requirements exists, and the absence of the requirement for an inspected vessel does not excuse the failure of an uninspected vessel to comply.

I find that there is substantial evidence in the record to support the Hearing Officer's conclusion that the violation occurred and that you are the responsible party.

In view of the lengthy period of time that has passed since your appeal was filed and the excessive period of time since the violation occurred, I am reducing the penalty to a warning.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action.

Sincerely,

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L. I. McCLELLAND
Civil Penalty Appellate Authority
By direction of the Commandant

Copy: Commanding Officer, Coast Guard Hearing Office
Commanding Officer, Coast Guard Finance Center
Coast Guard LSC-5, Claims and Collections Branch
Commander, 14th Coast Guard District (dpi)