

Stability Letters and Uninspected Vessels operating as Small Passenger Vessels

Written by Genelle Vachon

In a recent Civil Penalty case, a vessel owner was charged with operating two vessels in commercial service as small passenger vessels without a valid COI (46 CFR 176.100(a)), for operating without a stability letter (46 CFR 170.120) and for failure of a marine employer to comply with the requirements concerning chemical testing of personnel (46 CFR 16.201). The discussion in this article is limited to the stability letter violation.

On appeal, the Appellate Authority dismissed the violation for operating without a stability letter, finding that the requirement to have a stability letter before entering commercial service applies to inspected vessels. Because neither of the vessels were inspected at the time of the alleged violations, nor required to have a stability letter under either Subchapter C or E, the requirement to have a stability letter did not apply to them based on the plain language of 46 CFR 170.001.

The requirement to have a stability letter is set forth in Subchapter S, Part 170 – Stability Requirements for All Inspected Vessels. In 46 CFR 170.001 (Applicability), it says in pertinent part:

“a) This subchapter applies to each vessel that is—

(1) Contracted for on or after March 11, 1996, except where specifically stated otherwise; and

(2) Either—

(i) Inspected under another subchapter of this chapter, or is a foreign vessel that must comply with the requirements in subchapter O of this chapter; or

(ii) Required by either subchapter C or subchapter E of this chapter to meet applicable requirements contained in this subchapter.”

Conclusion: In light of the wording in 46 CFR 170.001 and the recent Appeal Decision, Coast Guard units should not charge the operator of an uninspected vessel for not having a stability letter even when the uninspected vessel is operating as a vessel that is subject to inspection, i.e. a “T” boat. The wording in 46 CFR 170.001 is very clear that Subchapter S only applies to inspected vessels (or those vessels required in either Subchapter C or E to meet Subchapter S requirements). If, however, 46 CFR 170.001 was written to say: “This subchapter applies to each vessel that is ... *subject to inspection* under another subchapter of this chapter...” then the requirement to have a stability letter would arguably apply to an uninspected vessel that is operating as a Small Passenger Vessel.