

Volume 1

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Coast Guard Hearing Office

“Hearing Office is our Name, Maritime Safety and Security is our Aim”

Adjudicate civil penalty cases in support of the Commandant’s maritime safety and security strategy to compel compliance with federal laws and regulations, and deter violations in the maritime domain. By balancing national interests, fairness, and the fundamental right to due process, we promote protection of the environment, vessel safety, and security at facilities, ports and waterways.

GREETINGS

From CAPT R. Trabocchi, USCG
Commanding Officer, Coast Guard Hearing Office

Welcome to our first edition of the Coast Guard Hearing Office newsletter. A little bit about this newsletter. This newsletter is about what we are doing at the Coast Guard Hearing Office and how we do business. Our intent is to be visible and allow both Coast Guard field units and mariners to understand our process and see it in action.

I am excited to provide information as well as Hearing Office news to you. We hope that field units and mariners can come to know us and our process and as a result, have a better appreciation for what we do to gain compliance with maritime laws and regulations, and deter future violations..

These newsletters will be posted on our website www.uscg.mil/legal/cgho.

HEARING OFFICE NEWS

To date, we have received approximately 1, 500 enforcement activities with violation dates in 2007 and 2008. Most of these are for recreational and commercial fishing vessel safety violations.



All enforcement activities with violation dates in 2006 and prior years have been initially adjudicated.

The Hearing Officers are gearing up to travel and conduct hearings. Our last travel took us to Cleveland, Ohio. We are currently conducting hearings in Arlington, Virginia.

SUMMER BOATING SEASON AND “UNDER THE INFLUENCE” *Danielle Davis*



It is that time of the year when we begin to see a rise in the number of alcohol related boating violations. Boating “under the influence” is a violation of 46 USC 2302(c). Coast Guard boarding teams may conduct Field Sobriety Tests (FSTs), obtain breathalyzer readings, and observe the overall behavior and appearance of a mariner to make a determination whether the mariner is under the influence of alcohol or a dangerous drug. Frequently, one or more of these tests are done by local authorities. Anyone operating a vessel while found to be “under the influence” may be charged with this violation and be subject to a civil penalty.

Copies of the FSTs *with all of the blocks completed in a readable manner and with signatures* as required, breathalyzer readings obtained by Coast Guard and local authorities, documented observations of behavior and appearance, and a narrative of the events of the boarding help to determine and support that a violation occurred. Additionally, if the mariner refuses a breathalyzer test, the circumstances of the offer and refusal of the test should be documented. 33 CFR 95.040 provides that a refusal creates a presumption of intoxication. 33 CFR 95.030 makes either personal observations or a chemical test sufficient to form a basis for a charge that the mariner is boating “under the influence.”

Boating “under the influence” is a serious violation. Mariners have a responsibility to avoid boating “under the influence.” Boarding teams have a responsibility to properly and accurately record the events, FSTs, breathalyzer readings or refusal of breathalyzer testing when alleging that a mariner has been boating under the influence.

LOOKIN' THE WAY IT SHOULD

YN3 C. Brown, YN3 V. Anderson

The civil penalty process must afford due process to the mariner alleged to have violated a federal law or regulation enforced by the Coast Guard. Due process affords the mariner with this opportunity to make comment concerning the violation and present evidence in defense, and mitigation and extenuation. So that a mariner may exercise the opportunity to comment, the mariner is provided with a complete copy of the enforcement activity that is submitted to the Hearing Office.

Frequently, the documentation is less than presentable. Party names and addresses should be entered into MISLE and reflected in the documentation with appropriate upper and lower case letters. Grammar and spelling should be reviewed for errors and corrected. Failure to do these simple tasks causes delay at the Hearing Office. Information in MISLE is automatically transferred to assessment letters. Inappropriate formatting, incorrect information, and other data entry deficiencies in MISLE cause the Hearing Office to have to manually correct the auto-inserted information. In terms of hundreds of assessment letters, this amounts to a significant amount of time and delay. Timely adjudication of violations is always a goal and the failure to properly enter information into MISLE works against that goal.

KNOT

The Hearing Office receives many enforcement activities (cases) that cannot be adjudicated. This is because one or more deficiencies relating to one or more violations are identified upon receipt. More often than not, these deficiencies can be avoided



with a little knowledge and attention to detail. In each newsletter publication we will include a **KNOT** corner. No, not the kind you tie but rather a **K**nowledge

Note Or Tip. Be sure to watch for this corner.

You may see the same subject addressed more than once...it will be because our first KNOT on the subject failed!

SENDING AN ENFORCEMENT ACTIVITY

TO THE HEARING OFFICE?

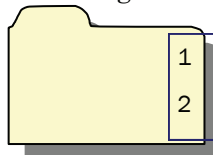
YN3 C. Brown, YN3 V. Anderson

Sending an enforcement activity to the Hearing Office requires more than putting it in the mail. It requires the processing official to transfer control of the enforcement activity in MISLE to the Hearing Office. Failure to do so, prevents the Hearing Office from accepting the activity for civil penalty action. And routinely our efforts to gain control of the activity are met with considerable delay.

We have instituted what we hope will be an expedited procedure to eliminate delay due to failure to transfer control to the Hearing Office. Upon discovery of the receipt of an enforcement activity for which control was not transferred to the Hearing Office, we will send an email requesting that control be transferred to us. Failure to transfer control within 4 business days from the date of the email will cause the enforcement activity to be returned to the sending unit without action.

Similarly but not quite as often, we find that ownership of an enforcement activity has been transferred to us. Ownership of an enforcement activity should *NEVER* be transferred to the Hearing Office. In this situation, the Hearing Office will transfer ownership of the enforcement activity in MISLE back to the originating unit.

And don't forget when sending an enforcement activity to the Hearing Office for civil penalty action that two (2) copies are required of *everything* that is in the file; one copy for the Hearing Officer and one copy for the party. Failure to do so will cause the enforcement activity to be returned without action. Beware of CDs and DVDs - the party may not be able to read them. More to come on this later! Finally, we need to be able to find the activity when you call to make an inquiry concerning it. This is akin to finding a needle in a haystack due to the number of files moving at any given time in the Hearing Office. Help us help you! Each file folder should be labeled with the enforcement activity number, not the investigation number. And the numbers should read in a vertical row on the right hand edge of the folder:



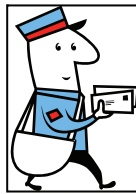
Thanks from the Administrative Support Staff !!

SO WHAT ABOUT THOSE ACTIVITIES RETURNED TO THE PROGRAM MANGER OTHERWISE KNOWN AS "RPM" FILES

Vernon Slape

On the first page under Hearing Office Notes you see that the total number of files with violation dates in 2007 and 2008 so far received are approximately 1,500. Since we began processing these enforcement activities, we have already returned 89 of them to the field processing officials. This is a significant number especially in view of the reasons we returned the activities.

A review of the 89 activities reveal that the number one deficiency remains insufficient evidence in the case file to support a determination that the violation occurred. Often the deficiency starts with the Boarding Report, CG4100 or PDA. Location, sunrise / sunset times, vessel particulars, etc are missing. If missing here, they are missing from the Activity Summary Report and Enforcement Summary.



Violations of the personal flotation device, visual distress signal and fire extinguisher requirements are often not supported with evidence. For these requirements and other requirements that are based on number, serviceability, and location, the evidence needs to be specific. How many visual distress signals were on board and how many were expired, what was the size of the rip in fabric and what was the adverse impact on the buoyancy of the personal flotation device, and similar details surrounding equipment need to be documented.

Of course there are the more mundane reasons for the return of an enforcement activity such as the violations on the Activity Summary Report and the Enforcement Summary do not match, inconsistent violation dates are reflected in the file, missing exhibits, and no mailing address for the party on the Enforcement Summary.

Stand by.....more to come on this "return" subject!

THE REFLECTION OF PROFESSIONALISM

You have heard it before and should hear it often. Be professional, exhibit professionalism and the like. But what does that mean? A walk through the dictionary is not much help. And isn't it true - there is a great difference between being a professional and behaving in a professional manner? Perhaps like some other things, it is easier to define what is not "professional" as opposed to defining what is "professional."

What does this have to do with the assessment of civil penalties? At least two very distinct and identifiable things.

A boarding team's lack of professional behavior is often the subject of lengthy letters from parties asserting that the boarding team's behavior should be a mitigating factor when assessing a civil penalty. This means the party is asking the Hearing Officer to take into consideration that the boarding team was unprofessional during the boarding in some aspect and that should reduce the civil penalty that the Hearing Officer might have otherwise assessed. Depending on the effect that any unprofessional conduct may have had directly relative to a violation, unprofessional conduct by a boarding team may be a factor affecting the Hearing Officer's final civil penalty decision.

Too often we receive an Enforcement Summary that is unprofessional in content. In this situation, the Hearing Officer will not send a copy of the enforcement activity to the party, and that prevents the adjudication process from going forward. Similar to the reasons stated to the left, this is a reason for which we return an activity without action. Specifically, we find that internal unit or agency comments and clerical notations as to the tracking and processing of the activity are included in the Narrative Overview block on the Enforcement Summary. This is not the appropriate place for such comments and such comments should not be in the file. Any and all comments should relate to the alleged violations, aggravating, mitigating, and extenuating circumstances, and violation history. While this might not capture everything that can be included, this is the information that is properly included in the file's documentation.