



THE PRELIMINARY AND FINAL ASSESSED PENALTY AMOUNTS

Written by: Hearing Office Staff

We continue to receive much “discussion” regarding the assessed penalty amounts especially when they are compared to the maximum penalties allowed by law or to the penalty amounts recommended by a unit for a particular violation.

There is an important principle to remember. Penalties imposed by the Hearing Office are intended to be remedial; that is, to cause the charged party to “remedy” the violation. They are also intended to discourage the occurrence of future violations. Penalties imposed by the Hearing Office are not intended to be “punishment” for violations found “proved.” The Hearing Office does not impose fines.

When a Coast Guard unit forwards a violation case file to the Hearing Office, the violations alleged in the case file are not “proved” at that time. The charged party receives a copy of the violation case file with the Hearing Officer’s letter assessing a preliminary penalty amount. What does this mean? This means that the Hearing Officer found sufficient evidence in the case file to proceed with a preliminary finding and that a civil penalty is warranted. The preliminary assessed penalty amount is the amount that the Hearing Officer determines appropriate for the violation(s) after reviewing the Coast Guard’s evidence in the case file. It may not be the maximum allowed by law and it may be different than the unit’s recommended penalty amount. Why?

The Hearing Officer is not required to assess the unit’s recommended penalty amount. The Hearing Officer considers the facts and circumstances presented in the case file surrounding the alleged violation. The Hearing Officer weighs the strength of the

evidence, past violation history, and aggravating and mitigating factors, and considers every piece of information in the case file including the unit's penalty recommendation to formulate the preliminary penalty amount. The Hearing Officer also considers the maximum penalty allowed by law including any inflation adjustment that may have been authorized. It is after due consideration of the entire case file that the Hearing Officer formulates the preliminary penalty amount.

A determination as to whether the violation occurred as alleged and any appropriate final penalty is made after the party has had an opportunity to respond to the Hearing Officer's preliminary assessment letter and case file. This means that the charged party may provide evidence to show that the violation did not occur as alleged (evidence in defense), or the charged party may admit the violation but provide an explanation that excuses the violation (evidence in extenuation), or the charged party may admit the violation but provide a basis as to why the penalty should be less than it otherwise might be (evidence in mitigation). The Hearing Officer considers and weighs the strength of all of the evidence submitted by the charged party.

To find the violation "proved" the Hearing Officer applies a standard of proof. The standard of proof is the "preponderance of evidence" standard. This means that the Hearing Office must determine, after due consideration of the Coast Guard's evidence and the charged party's evidence, whether it is more likely than not the violation occurred as alleged. If so, the violation is "proved."

The final assessed penalty amount is an amount equal to the preliminary assessed penalty amount or an amount that is less than the preliminary assessed penalty amount. All evidence presented in the Coast Guard's case file and by the charged party is carefully considered and weighed to formulate the final penalty amount.

In order that determinations made by the Hearing Officer are fair to both the Coast Guard unit submitting the violation case and to the mariner responding to the violation(s), both the Coast Guard unit and the mariner would be well served by submitting complete, relevant, reliable, and credible evidence.