



APPLYING COMMON SENSE TO AVOID MULTIPLICIOUS CHARGES

Written By CDR Mark Hammond

Hearing Officers routinely receive cases where the party is charged under multiple cites for a single action or incident. Black's Law Dictionary, 9th edition defines "multiplicity" as "The improper charging of the same offense in more than one count of a single indictment or information." It's important to know that in the Coast Guard's civil penalty process, the Hearing Officer has wide discretion in deciding what is a fair penalty amount when the same action is charged in two (or more) different ways. In cases where it appears the party has been charged under different regulatory cites for the same violation, the Hearing Officer will typically dismiss one of the charges as being multiplicitious.

Here are a few common examples of the types of cases for which we might see charges dismissed for being improper or multiplicitious:

* During the boarding of a 25 net ton Commercial fishing vessel engaged in fishing, the boarding team discovers that the vessel is not documented as required by 46 CFR 67.7. The evidence in this case indicates the vessel owner/operator never documented his vessel. The vessel owner is subsequently charged under 46 CFR 67.323 – *Operation without documentation*. However, the owner is also charged under 46 CFR 67.325 for operating without a fisheries endorsement, and under 46 CFR 67.313 and 315 for failing to have the original Certificate of Documentation (COD), on board and for failing to produce the original COD on demand. Clearly the violation in this example is the vessel was not properly documented as required. Common sense tells us that since the vessel has no COD, there would be no endorsement, a COD would not be on the vessel and the person in command would not be able to produce a COD on demand.

* During an oil transfer from a mobile transfer facility, it is discovered that there is no operations manual on site. The party is then charged under 33 CFR 154.300 for the operations manual not being readily available to the person in charge, and 33 CFR 156.120 for failure to comply with the requirements for oil transfer – specifically (t)(2) which requires that the person in charge have in their possession a copy of the facility’s operations manual. As you can see in this case, the party is being charged twice for the same act of failing to have an operations manual readily available to the person in charge.

* During an inspection of a HAZMAT container, it is discovered that the container is not properly placarded. Upon further inspection, it is also discovered that several individual packages containing HAZMAT within the container are not properly labeled. The party in this case is subsequently charged under 49 CFR 172.504 for failing to comply with the general placarding requirements, and 49 CFR 172.400 for failing to comply with general labeling requirements. Additionally, because there were labeling and placarding violations discovered on a container being offered for shipment, the charging unit also charged the party under 49 CFR 172.2 for failing to comply with the general requirements for HAZMAT shipments contained in subchapter C. For the alleged violations in this example, the additional charge under 49 CFR 172.2 charge would appear multiplicitous since the party is already charged with specific placarding and labeling violations detailed in charges 1 and 2.

When choosing a regulatory cite, applicability to the vessel, party, etc should be verified. The cite used for a particular charge should be supported by the factual elements of the case. If there are multiple charges, each charge should be based on independent evidence that supports the particular violation alleged. There may be cases where exigencies of proof or other factors make it prudent to charge a single act or incident in more than one way. Still, attention should be given to ensure you’re not needlessly “piling on” and charging the party under different cites for the same activity. Applying common sense when determining how to charge a single act or incident can save all of the participants in the civil penalty process from having to spend time on multiple charges that really add nothing in terms of

establishing the charged party's culpability or that the alleged act violated more than one distinct standard of conduct.