



## **THE DISMISSED ENFORCEMENT ACTIVITY**

*Written by: Hearing Office Staff*

An enforcement activity is dismissed when the deficiency identified is not one that is amenable to simple correction. For instance, a case is returned to the program manager with a statement of what is deficient when the deficiency is an obvious error such as the cite for the violation, the second page of the Field Sobriety Tests (FSTs) worksheet is missing and so on. Enforcement activities are dismissed when there is insufficient evidence to establish a *prima facie* case or the deficiency is not one that is believed to be quickly or easily corrected. An example might be the case in which the operator is charged but only the owner can be held responsible under the cited regulation and the enforcement activity shows no evidence that the owner is known.

A dismissal is not a death knell for the enforcement activity but really quite the opposite. A dismissal is without prejudice. This means that the unit may endeavor to correct the reason for the dismissal and resubmit the enforcement activity for Hearing Office adjudication. However there is a caveat. Due process requires timely notice to the mariner of the violation. Units should proceed at deliberate speed to correct the deficiency and resubmit a dismissed enforcement activity so that the necessary due process can be afforded to the mariner.