



## **COAST GUARD CIVIL PENALTY HEARINGS EXPLAINED**

*Written By CDR Mark Hammond*

So you've just received a Preliminary Assessment Letter (PAL) from a Coast Guard Hearing Officer notifying you of a civil penalty action against you for an alleged violation of federal law. The PAL: 1) provides notice of the alleged violation(s) and the preliminary penalty amount assessed; and 2) describes available options that must be exercised within 30 days. One such option is to request a hearing in the matter. In accordance with due process rights, you ("the party"), are afforded an opportunity to be heard. This article briefly outlines the Coast Guard's civil penalty hearing process (including the procedure for requesting a hearing) and provides some insight as to what a party who requests a hearing can expect.

The regulations governing the conduct of Coast Guard civil penalty hearings are found at Title 33 Code of Federal Regulations (CFR), Part 1.07-55. Hearings are informal, non-judicial administrative proceedings. Hearings are held to provide the charged party an opportunity to present evidence in defense, extenuation, and mitigation pertaining to the alleged violations in their case. That is, a party is given the opportunity to present evidence to show that either the violation(s) did not occur (defense); the violation(s) did occur but here's why (extenuation); or that the violation(s) occurred but here's why the final civil penalty amount should be less than what was preliminarily assessed (mitigation).

A party's request for a hearing must be submitted in writing. Further, the party must specify the issues s/he wishes to raise in dispute at the hearing as required by 33 CFR 1.07-25. These are statements identifying the facts and circumstances surrounding the alleged violation about which the party wishes to dispute, explain, or provide mitigating evidence. When a Hearing Officer receives a party's request for a hearing and no issues in dispute are specified, typically the hearing officer will write back to the party and allow additional time to present such issues before scheduling a hearing. Once the issues are received by the Hearing Officer, hearings are promptly scheduled. If a party does not specify the issues in dispute, the applicable regulations will generally preclude consideration of those issues which may result in a party forfeiting its right to have a hearing at which their issues can be

considered. Specified issues in dispute may be amended at any time up to 10 days before the scheduled date of the hearing.

Hearings are currently held in-person at the Hearing Office in Arlington, Virginia, or via video teleconference (VTC) for parties not wishing to travel to Arlington. VTC hearings are typically conducted at the Coast Guard District Office closest to where the party resides.

At a typical hearing, only the party, his/her representative (if applicable), any witnesses whose testimony s/he wishes to offer, and the Hearing Officer are present. Parties are often surprised learn that boarding team members or representatives of the charging unit are not present for cross-examination. Coast Guard civil penalty hearings are not subject to the stricter procedural requirements of the Administrative Procedures Act (APA). Basic due process standards must still be accorded, but not the strict and full due process standards established by the APA for formal hearings. There is, therefore, no right to cross-examine witnesses.

At the hearing the party may offer any facts, statements, explanations, sworn or unsworn testimony, or other exculpatory items which bear on the appropriate issues or which may be relevant to the size of an appropriate penalty. Upon hearing all of the evidence the party has presented on the specified issues, the hearing is closed and the Hearing Officer issues a final determination in writing. If the party desires to submit additional information, evidence, or other submission in writing after the hearing, s/he will normally have 10 days after the hearing to do so.

A verbatim transcript of the hearing is not routinely made. If a party wishes to have a transcript of the hearing, s/he must arrange and pay for a recorder and any copies of the transcript, including copies that must be furnished to the Coast Guard in case of an appeal.

It is important to note that there is no “extra credit” for attending a hearing. The Hearing Officer’s duty is to consider the Coast Guard’s evidence as provided in the case file, and evidence in defense, mitigation and extenuation provided by the party, whether presented in person at a hearing, or presented in writing in lieu of a hearing. Often parties will request a hearing only to rehash what had already been provided to the Hearing Officer. It is more meaningful if the issues and evidence presented by the party at the hearing provide additional information for the Hearing Officer to consider beyond what is already before him/her