



RESPONDING TO A COMPLIANCE INCENTIVE PROGRAM OR A CIVIL PENALTY CASE

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Coast Guard compliance incentive programs allow persons cited for violations of federal boating safety regulations the opportunity to avoid a civil penalty by correcting the specific violation(s) and showing compliance within a prescribed timeframe. While the specifics of compliance incentive programs vary depending on the Coast Guard unit or office offering the program, the common goal is to promote public awareness and improve boating safety by ensuring compliance with applicable federal boating safety regulations.

A compliance incentive program may be offered by the boarding officer's unit, a civil penalty processing office, or both. Typically, persons cited are given 30 to 45 days to respond with evidence showing that any alleged violations were corrected in order to avoid further enforcement action. If satisfactory proof of compliance is shown within the timeframe given, the matter is closed. Failure to respond within the prescribed timeframe, however, will most likely result in civil penalty action. This means your case file will be forwarded to the Hearing Office for adjudication.

Once a case is received by the Hearing Office, the case file is examined by a Hearing Officer. If the Hearing Officer finds prima facie evidence that the alleged violation(s) occurred, the Hearing Officer then issues a Preliminary Assessment Letter ("PAL") to the charged party. The PAL notifies the charged party of the alleged violation(s) against him/her, the maximum civil penalty that may be assessed, and the preliminary penalty amount assessed for each violation. The PAL also explains the party's options to respond within 30 days of receipt. (*See Hearing Office Newsletter article: "The Public in our Process," Vol: VI, Oct 2009.*) In formulating a final assessment for violations found to have been proved, Hearing

Officers take into consideration, among other things, mitigating factors such as timely compliance. (*See Hearing Office Newsletter article: "Evidence of Compliance," Vol: 10, Jan 2011.*)

It is important, however, for charged parties to realize that compliance incentive programs are separate and distinct from the civil penalty process. Once civil penalty action has been initiated and a party receives a PAL from a Hearing Officer, the party must respond to the Hearing Officer and not back to the unit or processing center office that originally offered the opportunity to participate in a compliance incentive program. If a party fails to respond to the Hearing Officer's PAL within 30 days, a final assessment letter ("FLAN"), will automatically be generated and sent to the party, and the preliminary assessed amount will become the final civil penalty amount assessed.

Hearing Officers often receive evidence forwarded from the boarding officer's unit or the processing center office that the party submitted after the PAL had been mailed and well beyond the compliance incentive program deadline. In such cases, the Hearing Officer will typically consider the eventual compliance as a mitigating factor but will likely not give it the same weight as compliance that is achieved in a more timely manner.

Hearing Officers occasionally receive responses in which the party claims they had previously submitted evidence of timely compliance to the boarding officer's unit or the processing center office within the compliance incentive program deadline. For this reason, it is important for unit and case processing officials to closely track and log compliance achieved under a compliance incentive program, and take appropriate action to ensure civil penalty cases are not initiated inadvertently. Generally, in this case, if a party presents proof that evidence of compliance had previously been submitted in accordance with a compliance incentive program, and civil penalty action was initiated inadvertently, the Hearing Officer will dismiss the case.

Remember...

1. If you are cited for an alleged violation of a federal boating safety regulation and you are offered the option of complying

- with the regulation in a timely fashion, then, in order to avoid civil penalty action, and assuming you do not dispute the alleged violation:
- send proof of compliance within the prescribed deadline to avoid further action; and
 - keep copies of any documentation you submit.
2. If you receive a Preliminary Assessment Letter (PAL), from a Hearing Officer notifying you of an alleged violation against you, you must respond to the Hearing Officer in accordance with the PAL even if you were previously sent a compliance incentive program letter.

Of course, the one sure-fire way to avoid either of the above scenarios is to ensure at the outset that your vessel is in compliance with all applicable federal boating safety regulations.