



Certificate of Number (CON) and Certificate of Documentation (COD) Requirements and Proper Cites for Violation

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Most vessels owned by United States citizens and operating on the navigable waters of the United States must have either a Certificate of Documentation (COD) or a Certificate of Number (CON) on board when operating. A vessel, equipped with propulsion machinery and operating on U.S. waters, must have on board a valid (current/not expired) Certificate of Number (CON), or temporary certificate, unless the vessel qualifies under an exception listed in 33 CFR § 173.11. Most vessel owners obtain the CON from the state in which they spend the most time operating (the state “in which the vessel is principally used,” per 33 CFR § 173.21(a)(1)). Vessels under 26’ and leased for recreational purposes for less than 7 days must have the lease agreement on board when operating, according to 33 CFR § 173.21(a)(2).

Alternatively, qualifying vessels may operate under a U.S. Coast Guard-issued COD. The minimum requirements for a COD are that the vessel must be: 1) at least five net tons and 2) wholly owned by a U.S. citizen (or an entity which qualifies as a U.S. documentation citizen). See 46 CFR § 67.5.

A party operating a vessel must keep the original document on board. A party whose vessel has a COD or CON, but does not have the respective document on board, would be appropriately charged with a violation of either 46 CFR § 67.313(a) for lack of COD, or 33 CFR § 173.21(a)(1) for lack of a state CON. When Coast Guard Boarding Officers conduct law enforcement boardings on U.S. documented or state numbered vessels, they will almost certainly ask to see the COD or CON. Boarding Officers usually confront one of three situations: 1) the valid COD or CON is on board, and is presented to the Boarding Officer; 2) the COD or CON is not on board; or 3) the party claims to have a COD or CON, but cannot locate it at the time the Boarding Officer asks to see it.

The Hearing Office sees many cases alleging a violation of 33 CFR § 173.23 when the party claims to have the CON, but cannot locate it (the comparable regulation for a COD is 46 CFR § 67.315). This regulation states that persons

operating vessels shall present the CON to “any federal, state or local law enforcement officer for inspection upon his or her request.” It is good practice, therefore, for Boarding Officers to document the Boarding Officer’s request for the CON in the narrative of the Activity Summary Report. Additionally, because Coast Guard enlisted members below the grade of E-4 are not law enforcement officers, the evidence should show that the request was made by a member in the grade of E-4 or above. Most narratives, however, skip over these necessary elements and state, “Party could not produce CON,” or words to that effect.

Section 173.25 of title 33 is charged almost as often. That section essentially states that no person may operate a recreational vessel (or, to be more precise, a vessel described in 33 CFR § 173.11) unless the Certificate of Number is carried in a manner that it can be shown to a person authorized by 33 CFR § 173.23. That section is most pertinent when the CON is being carried on board the boat; then the focus of the regulation is on how the document is carried on the boat.

The Boarding Officer is presented with two basic scenarios when it comes to state-issued numbers. Either there is no CON on board the vessel, or the CON is not readily presentable to a law enforcement official. In a case where the Coast Guard can

prove that the CON was not onboard the vessel, or that the vessel’s CON is expired or otherwise invalid, the appropriate cite for the alleged violation is section 173.21(a)(1). In a case where the party credibly states that the CON is on board but cannot be located/is not accessible, then the charging unit can choose between sections 173.23 and 173.25.

Boarding Officers should document the facts of the boarding that correspond to the elements of the charge, for example, a statement by the party that the vessel: a) had a Certificate of Number from state X; b) had a temporary CON from state X; c) did not have a valid CON; d) was under 26’ and leased for recreational purposes for less than 7 days; or e) had a COD. The following should also be documented: There was no COD or CON onboard or, 1) the Boarding Officer asked to see the respective document; and 2) the document was: a) not on board; or b) on board but inaccessible (for example, the vessel owner or operator credibly states that the CON is onboard but that it is in an inaccessible compartment or box, or under a pile of gear that is too heavy to move).

To recap: When operating a vessel in U.S. waters, the party must have the original document on board, must show it to the Boarding Officer when the Boarding Officer requests it, and must carry it on board in such a way that it can be shown to the Boarding Officer. In cases where the document is not presented, but there is some doubt about whether the document is on board the vessel, it is appropriate to allege the failure to present the document or carry it in a manner so it can be shown. If the document is clearly not on board, it is more straightforward to allege operation of the boat without a document on board.

For more on this subject, see “CON vs. COD,” CG Hearing Office Newsletter Vol. 8.