



## *Illegal Passenger for Hire operations*

*Written by the Hearing Office staff*

In a recent Civil Penalty case, a vessel owner was charged with (1) operating a vessel as a small passenger vessel (SPV) without a valid COI (46 CFR 176.100(a)), (2) employing an individual to serve as the vessel's operator without the appropriate license (46 CFR 15.401), (3) failure to ensure the life jackets aboard were the type required when engaged in commercial passenger operations (46 CFR 180.71); and (4) failure to ensure that the operator met the chemical testing requirements (46 CFR 16.203(a)(1)).

On appeal, the Appellate Authority upheld the violations for operating a vessel as a SPV without a valid COI and employing an individual to serve as the vessel's operator without having the appropriate license. The Appellate Authority dismissed the violation for failing to ensure the life jackets were the type required when engaged in a passenger for hire operation. Also dismissed was the violation for failing to ensure that the operator met the chemical testing requirements.

With regard to the 46 CFR 180.71 violation, the Appellate Authority wrote:

"The Hearing Officer did not cite to any specific evidence that the life jackets did not comply with 46 CFR 180.71."

In looking through the case file, the only information pertaining to this violation was the 4100 form that the Boarding Officer completed at the time of the boarding. Under the 4100 form's "Summary of Boarding Violations," the Boarding Officer wrote "46 CFR 180.71" next to the "other (specify)" block. Nothing more was included in the case package pertaining to the charge of failing to ensure the vessel was equipped with the proper type of life jacket.

One may wonder what should the Boarding Officer have included in his report to establish a violation of 46 CFR 180.71? The answer is simple: The boarding officer could have inserted a handwritten notation in the written summary portion of the 4100 form that stated what type of life jacket was on board, i.e. "The vessel only had Type III PFDs" or "Vessel had no Type 1 PFD aboard." Because vessels carrying passengers for hire are required to carry a Type I PFD for each passenger, a written note that the vessel only had Type III PFDs or no Type 1 PFD aboard would have been sufficient evidence to support a violation of 46 CFR 180.71. Alternatively, instead of annotating the 4100 form regarding the type of life jacket that was (or was not) on board, the boarding officer could have made these same notations in the MISLE Activity Summary Report (ASR) at the time the boarding officer created the enforcement action.

With regard to the 46 CFR 16.203(a)(1) violation, the Appellate Authority dismissed this charge based upon the same reasoning and analysis provided above. The Appellate Authority wrote “There is no evidence in the file to support the Hearing Officer’s finding a violation of 46 CFR 16.203(a)(1). Indeed, there is no indication in the file that the matter was investigated.” As with the life jacket charge, the only information pertaining to this violation was the 4100 form that the Boarding Officer completed at the time of the boarding. Under the 4100 form’s “Summary of Boarding Violations,” the Boarding Officer wrote “46 CFR 16.203” next to the “other (specify)” block. Simply citing the applicable regulation, however, is not evidence of a violation; it is merely a conclusion that a violation exists without any substantiating evidence.

One may wonder what kind of evidence is needed to substantiate a charge that the vessel operator was not enrolled in a chemical testing program. The answer again is simple: The boarding officer merely needs to ask the vessel operator if he or she is enrolled in a chemical testing program and then include a notation of the operator’s answer on either the 4100 form or the ASR . Example: “Operator said he is not part of a drug testing program” or “When asked if the operator is enrolled in a drug testing program, the operator did not answer.” Of course, if the vessel operator says that he or she is enrolled in a chemical testing program, the boarding officer should ask for proof of enrollment.

An important distinction between the evidence needed for the life jacket violation versus the chemical testing program violation is that the life jacket violation can be proven by visually inspecting whether the vessel was equipped with the proper type and number of life jackets and then noting on the 4100 form or the ASR that the vessel did not have the required number of Type 1 PFDs; whereas, when it comes to proving a violation of 46 CFR Part 16.203(a)(1) -- employing an operator who is not enrolled in a chemical testing program – the simplest way is to ask the operator if he or she is enrolled in a drug testing program and then noting the operator’s response on the 4100 form or the ASR.