



16780  
November 10, 2008

[REDACTED]  
[REDACTED]  
[REDACTED]

RE: Case No. 2531559  
[REDACTED]  
[REDACTED]  
\$100.00

Dear [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case No. 2531559, which includes your appeal as owner/operator of the [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$100.00 penalty for the following violation:

| <u>LAW/REGULATION</u> | <u>NATURE OF VIOLATION</u>  | <u>ASSESSED PENALTY</u> |
|-----------------------|---|-------------------------|
| 33 CFR 175.15(b)      | Recreational vessels 16+ ft. must have one Type IV PFD on board in addition to at least one Type I, II, or III PFD for each person. | \$100.00                |

The violation was first observed on October 4, 2005, when Coast Guard boarding officers boarded your vessel while it was underway on Port Jefferson Harbor, near Port Jefferson, New York.

On appeal, although you do not deny that the violation occurred, you question the Hearing Officer's conclusion that you were not the only individual aboard the vessel at the time of the boarding. While you asserted, before the Hearing Officer, that there was really no need for you to have a Type IV throwable PFD aboard your vessel at the time of the relevant boarding, because there would be no one to throw it to you in the event that you fell overboard, the Hearing Officer concluded, based on an examination of the case file, that your argument in that regard was without merit because there were four passengers aboard your vessel at the relevant time. As a consequence, you ask that I "reexamine [sic] the report and question the captain of the Coast Guard boat involved on this matter to confirm" your version of the events. Your appeal is denied for the reasons discussed below.

I will begin by noting that the Coast Guard's civil penalty program is a critical element in the enforcement of numerous marine safety and environmental laws. The civil penalty process is remedial in nature and is designed to achieve compliance through either the issuance of warnings or the assessment of monetary penalties by Coast Guard Hearing Officers when violations are proved. Procedural rules, at 33 CFR 1.07, are designed to ensure that parties are afforded due process during informal administrative proceedings. The procedures in 33 CFR 1.07 have been sanctioned by Congress and have been upheld in Federal courts. *See* H. Rep. No. 95-1384, 95th Cong., 2d Sess. 27 (1978); S. Rep. No. 96-979, 96th Cong., 2d Sess. 25 (1980); H. Rep. No. 98-338, 98th Cong., 1st Sess. 133 (1983); *United States v. Independent Bulk Transport, Inc.*, 480 F. Supp. 474 (S.D.N.Y. 1979).

I will now address the violation. 33 CFR 175.15 establishes the personal flotation devices (PFDs) required aboard boats used on waters subject to U.S. jurisdiction. In addition to requiring that all boats operated on waters subject to the jurisdiction of the United States must have at least one Type I, II, or III PFD on board for each person aboard the vessel, 33 CFR 175.15(b) makes clear that “[n]o person may use a recreational vessel 16 feet or more in length unless one Type IV PFD is on board.” The boarding report for the relevant incident shows that your vessel is 20 feet in length. As a result, it is required to—irrespective of the number of persons present on board—carry at least one Type IV PFD whenever it is being operated. The record shows that, at the time of the boarding, your vessel did not have a Type IV PFD on board. Moreover, in correspondence with the Hearing Officer, you admitted that, on the day of the relevant incident, you errantly left your Type IV PFD in your trunk, rather than bringing it aboard the vessel. Therefore, based both on the evidence contained in the case file and your admission, I find substantial evidence in the record to support the Hearing Officer’s conclusion that the violation occurred.

The record shows that while the matter was pending before the Hearing Officer, you argued that, in your position as an aeronautical engineer with the FAA, when you are “enforcing safety rules,” you always keep in mind that “there can be an alternative way” to achieve compliance with the applicable regulations and that “an equivalent safety way...could be used to satisfy compliance with the intent of the rule.” Based on your assertion in this regard, you asserted that you “interpret” 33 CFR 175.15(b) to “mean that a Type IV PFD is required to assure that if a member of a boat party fell overboard, then the Type IV PFD would be quickly dispensed to that individual” and assert that in your case “since...[you were]...alone on the [REDACTED], if...[you]...fell overboard there would be no one to toss...[you]...any kind of PFD.” You informed the Hearing Officer that was your “rationale” in leaving the Type IV PFD in your car on the day of the boarding. In her Final Letter of Decision, the Hearing Officer stated as follows with regard to your assertion:

Throwable PFDs are required not just to accommodate you and the passengers on your boat, but are also intended to be immediately available in the event that you see a person in the water who was not on your boat, or should you need to respond to some other emergency for which the cushion might be useful. In addition, the Type IV PFD is required to be immediately available, while the Type I, II, or III PFDs may be stored in an accessible location. Consequently, you

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are required to carry both wearable PFD[s] for each person on board and a throwable cushion. In your case, however, this discussion is purely academic. As indicated in the CG4100 Report of Boarding Form, which is included in the copy of the case file you received, you were not the only person aboard your boat on October 4, 2005, and you did not have just two Type I, II, or III PFDs aboard. The CG4100 and the Activity Summary Report prepared from it, both of which are documents made either at the time of the boarding or shortly thereafter, indicate that there were four people aboard your boat that day, and there were four Type [sic] wearable PFDs to accommodate them. Thus, you did not have an extra wearable PFD.

In Coast Guard civil penalty cases, it is the Hearing Officer's responsibility to decide the reliability and credibility of evidence and resolve any conflicts in evidence. Although you contend that you were the only person aboard your vessel at the relevant time, a careful review of the Coast Guard Form 4100 Boarding Report for the incident shows that the boarding officers indicate that there were "04 POB," or 4 persons aboard your vessel. Regardless of that fact, however, I do not find your arguments regarding compliance with the applicable regulations to be persuasive. Whether you were the only person aboard your vessel, or not, by virtue of its size, your vessel was required to have a Type IV (throwable) PFD on board. As the owner/operator of a vessel, you are required to comply with all applicable regulations, whether you believe they are justified or not. Given the evidence contained in the case file, a violation clearly occurred and, as such, the assessment of a monetary penalty is appropriate.

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer's determination that the violation occurred and that you are the responsible party. The Hearing Officer's decision was neither arbitrary nor capricious and is hereby affirmed. For the reasons discussed above, I find the \$100.00 penalty assessed by the Hearing Officer, rather than the \$1,100.00 maximum permitted by statute to be appropriate under the circumstances of the case.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **\$100.00** by check or money order payable to the U.S. Coast Guard is due and should be remitted promptly, accompanied by a copy of this letter. Send your payment to:

U.S. Coast Guard - Civil Penalties  
P.O. Box 70945  
Charlotte, NC 28272

Payments received within 30 days will not accrue interest. However, interest at the annual rate of 1.00% accrues from the date of this letter if payment is not received within 30 days. Payments received after 30 days will be assessed an administrative charge of \$12.00 per month for the cost

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of collecting the debt. If the debt remains unpaid for over 90 days, a 6% per annum late payment penalty will be assessed on the balance of the debt, the accrued interest, and administrative costs.

Sincerely,

//s//

DAVID J. KANTOR  
Deputy Chief,  
Office of Maritime and International Law  
By direction of the Commandant

Copy: Commanding Officer, Coast Guard Hearing Office  
Commanding Officer, Coast Guard Finance Center