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premise or approach, or would be ineffective or unacceptable without a change.

[CGD 94-105, 60 FR 49224, Sept. 22, 1995]

§ 1.05-60 Negotiated rulemaking.

(a) The Coast Guard may establish a negotiated rulemaking committee under the Negotiated Rulemaking Act of 1990 and the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) when it is in the public interest.

(b) Generally, the Coast Guard will consider negotiated rulemaking when:

- (1) There is a need for a rule;
- (2) There are a limited number of representatives for identifiable parties affected by the rule;
- (3) There is a reasonable chance that balanced representation can be reached in the negotiated rulemaking committee and that the committee members will negotiate in good faith;
- (4) There is a likelihood of a committee consensus in a fixed time period;
- (5) The negotiated rulemaking process will not unreasonably delay the rule;
- (6) The Coast Guard has resources to do negotiated rulemaking; and
- (7) The Coast Guard can use the consensus of the committee in formulating the NPRM and final rule.

Subpart 1.07—Enforcement; Civil and Criminal Penalty Proceedings

AUTHORITY: 14 U.S.C. 633; Sec. 6079(d), Pub. L. 100-690, 102 Stat. 4181; 49 CFR 1.46.

SOURCE: CGD 78-82, 43 FR 54186, Nov. 20, 1978, unless otherwise noted.

§ 1.07-1 Purpose.

This part describes procedures for enforcement and administration of all statutory penalty provisions that the Coast Guard is authorized to enforce.

§ 1.07-5 Definitions.

(a) The term *District Commander*, when used in this subpart, means the District Commander, or any person under the District Commander's command, delegated to carry out the provisions of § 1.07-10(b).

(b) The term *Hearing Officer* means a Coast Guard officer or employee who

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has been delegated the authority to assess civil penalties.

(c) The term *issuing officer* means any qualified Coast Guard commissioned, warrant, or petty officer.

(d) The term *Notice of Violation* means a notification of violation and preliminary assessment of penalty, given to a party, in accordance with § 1.07-11.

(e) The term *party* means the person alleged to have violated a statute or regulation to which a civil penalty applies and includes an individual or public or private corporation, partnership or other association, or a governmental entity.

[CGD 93-079, 59 FR 16560, Apr. 7, 1994]

§ 1.07-10 Reporting and investigation.

(a) Any person may report an apparent violation of any law, regulation, or order that is enforced by the Coast Guard to any Coast Guard facility. When a report of an apparent violation has been received, or when an apparent violation has been detected by any Coast Guard personnel, the matter is investigated or evaluated by Coast Guard personnel. Once an apparent violation has been investigated or evaluated, a report of the investigation may be sent to the District Commander or other designated official in accordance with paragraph (b) of this section or a Notice of Violation under § 1.07-11 may be given to the party by an issuing officer.

(b) Reports of any investigation conducted by the Coast Guard or received from any other agency which indicate that a violation may have occurred may be forwarded to a District Commander or other designated official for further action. This is normally the District Commander of the District in which the violation is believed to have occurred, or the District in which the reporting unit or agency is found. The report is reviewed to determine if there is sufficient evidence to establish a *prima facie* case. If there is insufficient evidence, the case is either returned for further investigation or closed if further action is unwarranted. The case is closed in situations in which the investigation has established that a violation did not occur, the violator is unknown, or there is little likelihood of discovering additional relevant facts. If

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it is determined that a *prima facie* case does exist, a case file is prepared and forwarded to the Hearing Officer, with a recommended action. A record of any prior violations by the same person or entity, is forwarded with the case file.

[CGD 78-82, 43 FR 54186, Nov. 20, 1978, as amended by CGD 87-008a, 52 FR 17554, May 11, 1987; CGD 93-079, 59 FR 16560, Apr. 7, 1994; USCG-2000-7223, 65 FR 40054, June 29, 2000]

§ 1.07-11 Notice of violation.

(a) After investigation and evaluation of an alleged violation has been completed, an issuing officer may issue a Notice of Violation to the party.

(b) The Notice of Violation will contain the following information:

(1) The alleged violation and the applicable law or regulations violated;

(2) The amount of the maximum penalty that may be assessed for each violation;

(3) The amount of proposed penalty that appears to be appropriate;

(4) A statement that payment of the proposed penalty within 45 days will settle the case;

(5) The place to which, and the manner in which, payment is to be made;

(6) A statement that the party may decline the Notice of Violation and that if the Notice of Violation is declined, the party has the right to a hearing prior to a final assessment of a penalty by a Hearing Officer.

(7) A statement that failure to either pay the proposed penalty on the Notice of Violation or decline the Notice of Violation and request a hearing within 45 days will result in a finding of default and the Coast Guard will proceed with the civil penalty in the amount recommended on the Notice of Violation without processing the violation under the procedures described in 33 CFR 1.07-10(b).

(c) The Notice of Violation may be hand delivered to the party or an employee of the party, or may be mailed to the business address of the party.

(d) If a party declines the Notice of Violation within 45 days, the case file will be sent to the District Commander for processing under the procedures described in 33 CFR 1.07-10(b).

(e) If a party pays the proposed penalty on the Notice of Violation within

45 days, a finding of proved will be entered into the case file.

(f) If within 45 days of receipt a party—

(1) Fails to pay the proposed penalty on the Notice of Violation; and

(2) Fails to decline the Notice of Violation—the Coast Guard will enter a finding of default in the case file and proceed with the civil penalty in the amount recommended on the Notice of Violation without processing the violation under the procedures described in 33 CFR 1.07-10(b).

[CGD 93-079, 59 FR 66482, Dec. 27, 1994, as amended by USCG-2001-9175, 67 FR 38388, June 4, 2002]

§ 1.07-15 Hearing Officer.

(a) The Hearing Officer has no other responsibility, direct or supervisory, for the investigation of cases referred for the assessment of civil penalties. The hearing officer may take action on a case referred by any District Commander.

(b) The Hearing Officer decides each case on the basis of the evidence before him, and must have no prior connection with the case. The Hearing Officer is solely responsible for the decision in each case referred to him.

(c) The Hearing Officer is authorized to administer oaths and issue subpoenas necessary to the conduct of a hearing, to the extent provided by law.

[CGD 78-82, 43 FR 54186, Nov. 20, 1978, as amended by CGD 87-008a, 52 FR 17554, May 11, 1987; USCG-2002-12471, 67 FR 41331, June 18, 2002]

§ 1.07-20 Initiation of action.

(a) When a case is received for action, the Hearing Officer makes a preliminary examination of the material submitted. If, on the basis of the preliminary examination, the Hearing Officer determines that there is insufficient evidence to proceed, or that there is any other reason which would make penalty action inappropriate, the Hearing Officer returns the case to the District Commander with a written statement of the reason. The District Commander may close the case or cause a further investigation of the alleged violation to be made with a view toward resubmittal of the case to the Hearing Officer.