

Coast Guard, DHS

§ 1.07-20

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.

§ 1.07-25

(b) If on the basis of the preliminary examination of the case file, the Hearing Officer determines that a violation appears to have been committed, the Hearing Officer notifies the party in writing of:

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

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

(3) The general nature of the procedure for assessing and collecting the penalty;

(4) The amount of penalty that appears to be appropriate, based on the material then available to the Hearing Officer;

(5) The right to examine all materials in the case file and have a copy of all written documents provided upon request; and,

(6) The fact that the party may demand a hearing prior to any actual assessment of a penalty.

(c) If at any time it appears that the addition of another party to the proceedings is necessary or desirable, the Hearing Officer provides the additional party with notice as described above.

§ 1.07-25 Preliminary matters.

(a) Within 30 days after receipt of notice of the initiation of the action, as described above, the party, or counsel for the party, may request a hearing, provide any written evidence and arguments in lieu of a hearing, or pay the amount specified in the notice as being appropriate. A hearing must be requested in writing; the request must specify the issues which are in dispute. Failure to specify a nonjurisdictional issue will preclude its consideration.

(b) The right to a hearing is waived if the party does not submit the request to the Hearing Officer within 30 days after receiving notice of the alleged violation. At the discretion of the Hearing Officer, a hearing may be granted if the party submits a late request.

(c) The Hearing Officer must promptly schedule all hearings which are requested. The Hearing Officer shall grant any delays or continuances which may be necessary or desirable in the interest of fairly resolving the case.

33 CFR Ch. I (7-1-08 Edition)

(d) A party who has requested a hearing may amend the specification of the issues in dispute at any time up to 10 days before the scheduled date of the hearing. Issues raised later than 10 days before the scheduled hearing may be presented only at the discretion of the Hearing Officer.

[CGD 78-82, 43 FR 54186, Nov. 20, 1978, as amended by CGD 85-001A, 51 FR 19329, May 29, 1986]

§ 1.07-30 Disclosure of evidence.

The alleged violator may, upon request, receive a free copy of all the written evidence in the case file, except material that would disclose or lead to the disclosure of the identity of a confidential informant. Other evidence or material, such as blueprints, sound or video tapes, oil samples, and photographs may be examined in the Hearing Officer's offices. The Hearing Officer may provide for examination or testing of evidence at other locations if there are adequate safeguards to prevent loss or tampering.

§ 1.07-35 Request for confidential treatment.

(a) In addition to information treated as confidential under §1.07-30, a request for confidential treatment of a document or portion thereof may be made by the person supplying the information on the basis that the information is:

(1) Confidential financial information, trade secrets, or other material exempt from disclosure by the Freedom of Information Act (5 U.S.C. 552);

(2) Required to be held in confidence by 18 U.S.C. 1905; or

(3) Otherwise exempt by law from disclosure.

(b) The person desiring confidential treatment must submit the request to the Hearing Officer in writing and state the reasons justifying nondisclosure. Failure to make a timely request may result in a document being considered as nonconfidential and subject to release.

(c) Confidential material is not considered by the Hearing Officer in reaching a decision unless:

(1) It has been furnished by a party, or