

Subpart C [Reserved]

Subpart D—Transactions Involving Maritime Interests in Time of War or National Emergency Under 46 App. U.S.C. 835 [Reserved]

Subpart E—Civil Penalties

§ 221.61 Purpose.

This subpart describes procedures for the administration of civil penalties that the Maritime Administration may assess under 46 U.S.C. 31309 and 31330, and section 9(d) of the Shipping Act, 1916, as amended (46 App. U.S.C. 808(d)), pursuant to 49 U.S.C. 336.

NOTE: Pursuant to 46 U.S.C. 31309, a general penalty of not more than \$12,000 may be assessed for each violation of chapter 313 or 46 U.S.C. subtitle III administered by the Maritime Administration, and the regulations in this part that are promulgated thereunder, except that a person violating 46 U.S.C. 31328 or 31329 and the regulations promulgated thereunder is liable for a civil penalty of not more than \$30,000 for each violation. A person that charters, sells, transfers or mortgages a vessel, or an interest therein, in violation of 46 App. U.S.C. 808 is liable for a civil penalty of not more than \$12,000 for each violation. These penalty amounts are in accordance with Pub. L. 101-410, amended by Pub. L. 104-134. Criminal penalties may also apply to violations of these statutes.

[68 FR 33406, June 4, 2003]

§ 221.63 Investigation.

(a) When the Vessel Transfer Office obtains information that a Person may have violated a statute or regulation for which a civil penalty may be assessed under this subpart, that Officer may investigate the matter and decide whether there is sufficient evidence to establish a *prima facie* case that a violation occurred.

(b) If that Officer decides there is a *prima facie* case, then that Officer may enter into a stipulation with the Party in accordance with § 221.67 of this subpart, or may refer the matter directly to a Hearing Officer for procedures in accordance with § 221.73 to 221.89 of this subpart.

§ 221.65 Criteria for determining penalty.

In determining any penalties assessed, the Vessel Transfer Officer under § 221.67 and the Hearing Officer under §§ 221.73 to 221.89 of this part shall take into account the nature, circumstances, extent and gravity of the violation committed and, with respect to the Party, the degree of culpability, any history of prior offenses, ability to pay and other matters that justice requires.

§ 221.67 Stipulation procedure.

(a) When the Vessel Transfer Office decides to proceed under this section, that Office shall notify the Party in writing by registered or certified mail—

- (1) Of the alleged violation and the applicable statute and regulations;
- (2) Of the maximum penalty that may be assessed for each violation;
- (3) Of a summary of the evidence supporting the violation;
- (4) Of the penalty that the Vessel Transfer Officer will accept in settlement of the violation;
- (5) Of the right to examine all the material in the case file and have a copy of all written documents provided upon request;
- (6) That by accepting the penalty, the Party waives the right to have the matter considered by a Hearing Officer in accordance with §§ 221.73 to 221.89 of this subpart, and that if the Party elects to have the matter considered by a Hearing Officer, the Hearing Officer may assess a penalty less than, equal to, or greater than that stipulated in settlement if the Hearing Officer finds that a violation occurred; and
- (7) That a violation will be kept on record and may be used by the Maritime Administration in aggravation of an assessment of a penalty for a subsequent violation by that Party.

(b) Upon receipt of the notification specified in paragraph (a) of this section, a Party may within 30 days—

- (1) Agree to the stipulated penalty in the manner specified in the notification; or
- (2) Notify in writing the Vessel Transfer Officer that the Party elects to have the matter considered by a Hearing Officer in accordance with the

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procedure specified in §§221.73 through 221.89 of this subpart.

(c) If, within 30 days of receipt of the notification specified in paragraph (a) of this section, the Party neither agrees to the penalty nor elects the informal hearing procedure, the Party will be deemed to have waived its right to the informal hearing procedure and the penalty will be considered accepted. If a monetary penalty is assessed, it is due and payable to the United States, and the Maritime Administration may initiate appropriate action to collect the penalty.

§ 221.69 Hearing Officer.

(a) The Hearing Officer shall have no responsibility, direct or supervisory, for the investigation of cases referred for the assessment of civil penalties.

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

(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.

§ 221.71 Hearing Officer referral.

If, pursuant to §221.67(b)(2) of this subpart, a Party elects to have the matter referred to a Hearing Officer, the Vessel Transfer Officer may—

(a) Decide not to proceed with penalty action, close the case, and notify the Party in writing that the case has been closed; or

(b) Refer the matter to a Hearing Officer with the case file and a record of any prior violations by the Party.

§ 221.73 Initial Hearing Officer consideration.

(a) When a case is received for action, the Hearing Officer shall examine the material submitted. If 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 shall return the case to the Vessel Transfer Officer with a written statement of the reason. The Vessel Transfer Officer may close the case or

investigate the matter further. If additional evidence supporting a violation is discovered, the Vessel Transfer Officer may resubmit the matter to the Hearing Officer.

(b) If the Hearing Officer determines that there is reason to believe that a violation has been committed, the Hearing Officer notifies the Party in writing by registered or certified mail of—

(1) The alleged violation and the applicable statute and regulations;

(2) 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 the penalty that appears to be appropriate, based on the material then available to the Hearing Officer;

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

(6) The right to request a hearing.

(c) If at any time it appears that the addition of another Party to the proceedings is necessary or desirable, the Hearing Officer will provide the additional Party and the Party alleged to be in violation with notice as described above.

(d) At any time during a proceeding, before the Hearing Officer issues a decision under §221.89, the Hearing Officer and the Party may agree to a Settlement of the case.

§ 221.75 Response by party.

(a) Within 30 days after receipt of notice from the Hearing Officer, the Party, or counsel for the Party, may—

(1) Pay the amount specified in the notice as being appropriate;

(2) In writing request a hearing, specifying the issues in dispute; or

(3) Submit written evidence or arguments in lieu of a hearing.

(b) The right to a hearing is waived if the Party does not submit a request to the Hearing Officer within 30 days after receipt of notice from the Hearing Officer, unless additional time has been granted by the Hearing Officer.

(c) The Hearing Officer has discretion as to the venue and scheduling of a hearing. The hearing will normally be