



16200  
November 23, 2020

[PARTY]  
[ADDRESS]

RE: Activity No. 5762861  
[PARTY]  
[VESSEL]  
\$150.00

Dear [PARTY]:

The Coast Guard Hearing Office has forwarded the file in Civil Penalty Case No. 5762861, which includes your appeal as operator of the recreational [VESSEL]. The appeal is from the action of the Hearing Officer in assessing a \$400.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
33 CFR § 175.15(c) <sup>1</sup>	Operating a recreational vessel underway with a child under 13 years old, where such child is neither wearing a PFD nor below decks.	\$150.00
46 U.S.C. § 2302(a)	“RECREATIONAL VESSEL” Operating a recreational vessel in a negligent manner or interfering with the safe operation that endangers life, limb or property of a person.	\$250.00

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<sup>1</sup> 33 CFR § 175.15(c) is the applicable citation in states that have not enacted a child PFD wear requirement by statute. Pursuant to 33 CFR § 175.25, where a state has enacted a child PFD wear requirement, that state requirement, and not § 175.15(c), applies on state waters. The alleged violation in this case occurred on the waters of the District of Columbia (DC). DC Municipal Regulations Title 19 § 1026.7(1A), enacted by DC law, provides: “No person may operate a recreational vessel underway with any child under 13 years old aboard unless each such child is below decks, in an enclosed cabin, or wearing a Coast Guard approved personal flotation device of the proper size.” For purposes of 33 CFR Part 175, the District of Columbia is considered to be a state. 33 CFR § 175.3. Because this DC requirement is functionally identical to the federal requirement, application of the federal requirement was harmless error.

The alleged violations occurred on the evening of September 1, 2018, when Coast Guard personnel observed three children riding on [VESSEL]'s bow, without PFDs, while the vessel was underway on the Potomac River, near the Georgetown Waterfront of Washington, DC.

On appeal, you argue that the Hearing Officer failed to give fair consideration to the evidence you supplied in response to the Coast Guard allegations. You also maintain that the Coast Guard failed to provide sufficient evidence as to a required element of the first charge, namely, the ages of the children involved.

As to the first charge, you principally object to the Hearing Officer's finding that, on September 1, 2018, the [VESSEL] was carrying three children under the age of 13: "The passenger[s]' ages have still not been proven. . . . 'This is insufficient evidence'"

The Hearing Officer's finding as to the children's ages relied on the statement of a Coast Guard boarding officer, who wrote: "After boarding the vessel, I approached the children on the bow and asked for each of their ages. The ages provided were 9yrs old, 10yrs old, and 12yrs old." This statement and a corroborating statement provided by another Coast Guard crew member are the only record evidence as to the children's ages. You have not provided any contrary evidence.

You cite a Coast Guard guidance document, "Child Wear of Personal Flotation Devices (PFDs) Federal Versus State Requirements," available on the Hearing Office website, for the principle that, where violation of child PFD regulations are suspected, investigating officers should not "just indicate that there were children on board and not wearing a PFD. This is insufficient evidence."

As the Hearing Officer explained, the boarding officer's actions here complied with the cited guidance document's advice, "Boarding teams should always ask questions, seek evidence or document how they determine the age of the child and provide that information in the violation case." Here, the case file documents that a boarding officer asked questions, and was thereby able to determine the children's ages. Nothing in the cited article is contrary to the Hearing Officer's acceptance of the children's statements as sufficient evidence as to their ages. Your implication that information from an adult would be required to establish a child's age is rejected.

It is the Hearing Officer's responsibility to determine the reliability and credibility of the evidence presented and to resolve any conflicts in the evidence. Here, there is no conflict—you do not dispute the reported ages of the children involved. You may disagree with the Hearing Officer's determination that the Coast Guard evidence was sufficiently reliable and credible, but I find that the Hearing Officer's assessment of that evidence was an appropriate exercise of his discretion as fact-finder. Before making his assessment and determination, the Hearing Officer considered the entire record, including the Coast Guard statements regarding the children's disclosed ages, and your objection to the means of determining the children's ages.

I find that the Hearing Officer's finding as to the children's ages is supported by substantial evidence. I find no error in his findings and determinations as to the first violation.

Regarding the second charge, for negligent operation, you assert that the Hearing Officer failed to give due consideration to the photographic evidence and witness statement you provided.

A violation of 46 U.S.C. § 2302(a) occurs when a recreational vessel operator fails to use such care as a reasonably prudent and careful person would use under similar circumstances. It is alleged that you negligently allowed three children to ride on the bow of the vessel, without PFDs, and allowed one of those children to hang his or her legs off the bow of the vessel. In support of this allegation, the Coast Guard offered statements by the Coast Guard crew, and photographs that purport to show children sitting on the bow of the vessel, without PFDs. The boarding officer stated:

While conducting a marine safety patrol near the Georgetown Waterfront area of the Potomac River, the crew of the CG 29110 observed the M/V “[VESSEL]” transiting southbound on the Georgetown Waterfront area of the Potomac River. Three children were riding on the bow of the vessel without lifejackets and one of the children had their legs hanging over the side of the vessel.

Another crew member stated:

While patrolling the upper Potomac River, the crew of the CG 29110 witnessed three children on the bow of a 40’ Sea Ray without life jackets on. One of the children was sitting on the edge of the bow with their feet hanging off.

In rebuttal, you seek to disprove the allegation that one of the children was hanging his or her legs off the vessel’s bow. You offer a statement from a passenger onboard the vessel, who wrote, “At no point in time was any passenger hanging his or her legs over the side of the vessel,” and you provide photographs purporting to show the Coast Guard boat next to your vessel, with no passenger hanging his or her legs off the bow at that time.

It is possible that the Coast Guard crew saw a child’s legs hanging over the side of your vessel when they first saw the vessel, but the legs were no longer in that position by the time the Coast Guard boat came alongside. It is also possible that the witness was not aware that someone’s legs were actually hanging over the side of the vessel. However, in the face of your response, the boarding officer’s rebuttal statement adds nothing to his original, undetailed statement. He merely stated, “When my crew and I approached the vessel, one of the children sitting on the bow had their legs hanging from the side.” A statement with additional detail, such as the approximate distance to your vessel at the time of the observation, on which side of the vessel the hanging legs were seen, the relationship of the legs’ owner to any railing, and how long the observation continued, would have been more substantial. In view of the lack of effective rebuttal to your witness’s statement, I will dismiss the second charge.

I find that there is substantial evidence in the record to support the Hearing Officer’s conclusion that the PFD violation occurred and that you are the responsible party. The penalty assessed was within the authorized range. The Hearing Officer’s decision was neither arbitrary nor capricious and is hereby affirmed.

In accordance with the regulations governing civil penalty proceedings, 33 CFR Subpart 1.07, this decision constitutes final agency action.

Payment of **\$150.00** 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 979123  
St. Louis, MO 63197-9000

Interest at the annual rate of 2% accrues from the date of this letter but will be waived if payment is received within 30 days. Payments received after 30 days will be assessed an administrative charge of \$12.00 per month for the cost 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,

L. I. McCLELLAND  
Civil Penalty Appellate Authority  
By direction of the Commandant

Copy: Coast Guard Hearing Office  
Coast Guard Finance Center