



16200
August 30, 2021

[REPRESENTATIVE]
[ADDRESS]

RE: Activity No. 5774918
[PARTY]
[VESSEL]
Warning

Dear [REPRESENTATIVE]:

The Coast Guard Hearing Office has forwarded the file in Civil Penalty Case No. 5774918, which includes your appeal on behalf of [PARTY] as owner of the vessel [VESSEL]. The appeal is from the action of the Hearing Officer in assessing a Warning for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 CFR § 67.313	Failure of person in command of a documented vessel to have on board the original Certificate of Documentation currently in effect.	Warning
46 CFR § 25.25-5(b)(2)	Operation of a vessel carrying passengers for hire or a vessel 40 ft. or more in length with an insufficient number or type of approved personal flotation devices.	Warning
46 CFR § 25.25-5(b)(3)	Operation of a vessel 26 ft. or more in length without at least one Coast Guard approved ring life buoy.	Warning
46 CFR § 26.20-1	Failure to have valid CG license in possession and available for CG boarding officer when vessel is carrying passengers for hire.	Warning

The alleged violations were discovered on May 21, 2019, when the Coast Guard boarded the vessel one mile east of Manele Bay, Lanai, Hawaii.

On appeal, you assert that the vessel was operating under a demise charter and you believe you were operating in accordance with maritime law. Your appeal is granted in part and denied in part, as explained below.

According to the record, the documented [VESSEL] is a motorboat 42 ft. in length. When the Coast Guard boarded the vessel, there were 11 persons aboard, of whom 3 were crew. The vessel was under charter by [CORPORATION], and the passengers were attendees at a corporate retreat of [CORPORATION], their company, which had chartered the vessel to carry them from Lanai to Maui. The vessel had sufficient personal flotation devices (PFDs) for all persons aboard, but only one of them was of Type I. The vessel had no ring life buoy. The vessel's Certificate of Documentation was not aboard, and the vessel operator did not have his Coast Guard license aboard.

46 CFR § 67.313(a) provides: "The person in command of a documented vessel must have on board that vessel the original Certificate of Documentation currently in effect for that vessel." This regulation applies regardless of the charter status of the documented vessel.

The statute providing for the civil penalty, 46 U.S.C. § 12151, makes any person, including the owner as well as the operator, managing operator and other persons, liable for the civil penalty.

I turn to the violations involving lifesaving equipment. 46 CFR § 25.25-5(b)(2) provides, "Each vessel carrying passengers for hire, and each vessel not carrying passengers for hire and 40 feet in length or longer, must have at least one PFD approved under approval series 160.055, 160.155, or 160.176, and of a suitable size for each person on board."

46 CFR § 25.25-5(b)(3) provides in pertinent part, "In addition to the equipment required by [paragraph (b)(2)] of this section, each vessel 26 feet in length or longer . . . must have at least one approved life buoy"

PFDs approved under approval series 160.055, 160.155, and 160.176 are called Type I PFDs.

Concerning the applicability of these regulations, they are part of 46 CFR Subchapter C, which consists of Parts 24-28. 46 CFR § 24.05-1, referencing table 2.01-7(a) of 46 CFR, indicates that the subchapter is applicable to all motor-propelled vessels except seagoing motor vessels of 300 gross tons or more, other than tank vessels (covered by Subchapter D), passenger vessels and small passenger vessels (covered by Subchapters H, K and T), cargo and miscellaneous vessels (covered by Subchapter I), and oceanographic vessels (covered by Subchapter U).

46 CFR § 25.01-1 provides, "The provisions of this part shall apply to all vessels except as specifically noted."

46 CFR § 25.25-1 provides:

This subpart [25.25, concerning life preservers and other lifesaving equipment] applies to each vessel to which this part applies, except:

- (a) Vessels used for noncommercial use; and
- (b) Vessels leased, rented, or chartered to another for the latter's noncommercial use.

In this case, the vessel was chartered by [CORPORATION]; the persons aboard were attendees at a [CORPORATION] corporate retreat. It is well known that [CORPORATION] is a commercial enterprise that sells vehicles. However, drawing inferences from Coast Guard guidance in Volume II of the Marine Safety Manual, COMDTINST 16000.7B, at page B4-2, corporate-owned vessels carrying employees of the corporation, where the employees are not paying for passage, are generally assessed as operating for pleasure. It may be inferred that a corporation that charters a vessel to carry its employees without the employees paying would likewise be chartering the vessel for pleasure, which is a noncommercial use. If the vessel had been carrying customers, franchisees, or other business partners, such would likely be a commercial use. In this case, there is no evidence that the passengers were other than employees and no evidence that they paid for passage. Thus, the vessel must be considered to be excepted from 46 CFR Subpart 25.25.

In short, the record does not contain substantial evidence to support a determination that the lifesaving equipment violations occurred. Those charges are dismissed.

I note that the evidence in the record supports a theory that the vessel was operating as a small passenger vessel, notwithstanding the putative demise charter. If so, other regulations requiring Type I PFDs would apply, rather than the cited regulations. Since the Coast Guard took the position that the vessel was not a small passenger vessel, the case was analyzed consistent with that position.

Concerning the fourth charge, for the license violation, 46 CFR § 26.20-1 provides:

If a person operates a vessel that carries one or more passengers-for-hire, he or she is required to have a valid Coast Guard license or MMC officer endorsement suitable for the vessel's route and service. He or she must have the license or MMC in his or her possession and must produce it immediately upon the request of a Coast Guard boarding officer.

Although it appears true that a person operating the vessel in this case was required to be licensed, there is no evidence that the vessel was carrying a passenger for hire within the meaning of the law. Accordingly, this particular regulation does not apply. The charge is dismissed.

I find that there is substantial evidence in the record to support the Hearing Officer's conclusion that the Certificate of Documentation violation occurred and that [PARTY] is a responsible party. 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.

Sincerely,

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

Copy: Coast Guard Hearing Office
By email to [REPRESENTATIVE'S EMAIL]