



16732
G-MOA Policy Letter 2-
03
9 Oct 03

MEMORANDUM

From: 
M. B. Karr CAPT
Commandant (G-MOA)

To: Distribution

Subj: ENFORCEMENT ACTION: WARNINGS

Ref: (a) Marine Safety Manual, Vol. I, Chapter 4.d.2.c.(1) (COMDTINST M16000.10)
(b) Marine Safety Manual, Vol. II, Section D, Chapter 2.C.1.c.(1) (COMDTINST M16000.10)
(c) Marine Safety Manual, Vol. V, Chapter 2.C.2 (COMDTINST M16000.10)
(d) COMDT COGARD Washington DC ALDIST 137/95
(e) COMDT COGARD Washington DC P 251943Z FEB 97

1. The purpose of this letter is to provide policy to field units regarding the criteria and procedures for issuing warnings in lieu of civil penalty or Suspension and Revocation proceedings. This policy further amplifies and consolidates the guidance provided in references (a), (b), and (c). Reference (d) is superseded by this policy. Reference (e) is cancelled.

2. All Officers in Charge, Marine Inspection (OCMIs) and Captains of the Port (COTPs) shall take the enclosure to this letter for action when issuing warnings. Nothing herein is intended to limit or change OCMI/COTP authority or responsibility to determine appropriate actions in any specific case. This policy will be incorporated into the next change to Volume V of the Marine Safety Manual. Any questions concerning this policy should be addressed to LCDR Scott Budka at 202-267-2026 or LCDR Chuck Barbee at 202-267-1418.

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Enclosures: (1) Policy Regarding Warnings
(2) Sample Letters of Warning
(3) MISLE Documentation Process Flowchart

Dist: All Activities/Marine Safety Offices
All Area/District (m)
National Maritime Center
TRACEN Yorktown (mss)

I. Purpose

The authority for Officers in Charge, Marine Inspections (OCMIs) and Captains of the Port (COTPs) to issue warnings in lieu of civil proceedings was granted by Presidential Memorandum dated April 21, 1995, which was broadly implemented by the Coast Guard on July 14, 1995 via ALDIST 137/95, SUBJ: REGULATORY REFORM-WAIVER OF PENALTIES, and further expanded in message P 251943Z FEB 97, SUBJ: CIVIL PENALTY PROCESS. The authority for OCMIs and Investigating Officers (IOs) to issue warnings in lieu of S&R proceedings comes from 46 CFR 5.105(e). This document updates the policy in the above-mentioned messages and the Marine Safety Manuals for field units regarding the criteria for and procedures to be followed when issuing warnings.

II. Definitions

Warnings – Enforcement action in the form of a formal, written notice of an apparent violation with consequences for its refusal. A warning is an enforcement action that does not meet the level of a Notice of Violation (NOV), Class I Civil Penalty, or a Suspension and Revocation (S&R) proceeding.

III. General

Enforcement action is the next step beyond educational efforts, no-consequence recommendations, compliance requirements, and regulatory controls imposed to minimize maritime risks. It supports the overall goal of the Marine Safety, Security and Environmental Protection Program to promote the safety of life and property at sea and to protect the marine environment. The use of warnings saves staff hours in processing violation cases or preparing for a suspension and revocation proceeding while still serving the purpose of educating the public about federal laws and regulations.

IV. Policy

All warnings shall be in writing. As a matter of policy, there are no “verbal” warnings. What may have previously been called a verbal warning is not authorized. Warnings shall have the regulatory cite that was violated and consequences for refusal or a statement that the matter is being referred to the appropriate agency with jurisdiction.

Warnings are either accepted or declined. There is no appeal process for a warning. Warnings are considered accepted when properly served and may be declined in writing within 30 days after issuance. Service of a warning may be by regular mail, personal delivery, express-courier service, fax, or any combination of the afore-mentioned. The date of the warning must be the same as the date of service. Refusal of a warning shall result in the initiation of the next level of enforcement (e.g. NOV, Class I Civil Penalty, or S&R proceedings).

The following list outlines when issuance of a warning is not permitted:

- Warnings shall not be issued in lieu of Class II Civil Penalty or Criminal Enforcement Actions.
- Warnings shall not be issued in lieu of S&R proceedings for the following:

- Acts or Offenses for which revocation is mandatory or is sought as detailed in 46 CFR 5.59 and 46 CFR 5.61;
- Offenses for which the minimum range of an appropriate order is 3 months; or
- Any second enforcement action against a merchant mariner's credential within a five-year period.
- Warnings shall not be issued in lieu of an NOV or Class I Civil Penalty for the following:
 - Any violation that represents a significant threat to health, safety, or the environment;
 - Any intentional violation;
 - A second violation of the exact same offense (regardless of timeframe);
 - Any second offense within a 12 month period; or
 - When more than three violations of different statutes/regulatory sections are discovered during any single detection activity.

Enforcement action shall be initiated on all discharges of oil when the investigation enables you to document each of the five (5) elements of an unlawful discharge. The following categories of discharges of harmful quantities of oil as defined by table 1-C of COMDTINST M16200.3A establish the maximum quantity of oil spilled in which the OCMI/COTP may opt not to pursue NOV or Civil Penalty enforcement action:

- All Category A (non-commercial source) discharges where the quantity of oil spilled is less than fifty (50) gallons; and
- All Category B (commercial source) discharges where the quantity of oil spilled is less than twenty-five (25) gallons.

A warning must be issued whenever NOV or Civil Penalty enforcement action is waived.

V. Process

Upon completion of the detection activity and a determination based upon review of the criteria above that a warning is appropriate, a letter shall be drafted using the formats provided in enclosure (2) for signature by the appropriate unit personnel.

Upon signature the unit will ensure the letter and service date are the same. Upon service, the enforcement action is complete.

The subject of the enforcement action has 30 days to decline the warning. The refusal must be signed by the subject. Upon receipt of the refusal, the next level of enforcement shall be pursued. The policy and procedures for that enforcement action shall then be followed.

Warnings shall be electronically attached to the Enforcement Activity within the Marine Information for Safety and Law Enforcement (MISLE) data system in accordance with the MISLE Process Guides. Hard copies shall be maintained at the unit in accordance with COMDTINST M5212.12, Coast Guard Paperwork Management Manual, until further notice.

SAMPLE WARNING IN LIEU OF SUSPENSION AND REVOCATION PROCEEDINGS

**U.S. Department of
Homeland Security**

**United States
Coast Guard**



Commanding Officer
United States Coast Guard
Marine Safety Office
San Francisco Bay

Building 14 Coast Guard Island
Alameda, CA 94501-5100 Phone:
Phone: (510) 437-3149
FAX: (510) 437-3072

16722
January 22, 2003

Mr. Michael Myers
123 Maple Drive
Oakland, CA 94501

Subject: WARNING IN LIEU OF SUSPENSION AND REVOCATION PROCEEDINGS

Dear Mr. Myers:

An investigation has revealed the following conduct on your part while serving aboard the M/V SEA LION, O.N. D123456, under the authority of Merchant Mariner's Document No. 123456789:

Complaint: Misconduct (46 CFR 5.27)

Violation Cite: (applicable only for Violation of Law or Regulation (46 CFR 5.33))

To wit: While serving as able seaman aboard said vessel on 5 and 6 January 2002, you wrongfully threatened to set the ship on fire.

It was determined that justice will be best served by issuing a warning rather than conducting a formal proceeding for your conduct as set forth above. You are advised that this warning will become a part of your merchant mariner's record and will be considered during any future enforcement actions involving you. If you feel this warning is not warranted, you may decline it by signing and dating under the statement below and returning this letter to the address above within 30 days of the date of the letter. However, your refusal will result in suspension and revocation proceedings being initiated against your Merchant Mariner's Credential in accordance with Title 46 USC Chapter 77. You may contact me at the number above with questions.

Sincerely,

John H. Dough
Lieutenant Commander, U. S. Coast Guard
Investigating Officer
By direction

I hereby decline the above-mentioned warning.

Michael Myers

Date

SAMPLE WARNING IN LIEU OF CIVIL PENALTY

**U.S. Department of
Homeland Security**

**United States
Coast Guard**



Commanding Officer
United States Coast Guard
Marine Safety Office
San Francisco Bay

Building 14, Coast Guard Island
Alameda, CA 94501-5100
Phone: (510) 437-3082
FAX: (510) 437-3072

16731
January 22, 2002

Mr. Jason Voorhees
57 Sky High Drive
Oakland, CA 94501

Subject: WARNING IN LIEU OF CIVIL PENALTY

Dear Mr. Voorhees:

Coast Guard personnel from my office visited your (insert facility/vessel/terminal/etc) on January 21, 2002, and discovered the following violation:

Violation Cite: 33 CFR 128.210(b)(1)

To wit: While serving as terminal security officer at the San Francisco Passenger Terminal from January 01, 2002 to January 21, 2002, you failed to ensure that the comprehensive security survey was updated.

It was determined that justice will be best served by issuing you a warning rather than pursuing a monetary civil penalty for your conduct as set forth above. You are advised that this warning will become a matter of Coast Guard record and will be considered for any future enforcement actions against you. If you feel this warning is not warranted, you may decline it by signing and dating under the statement below and returning this letter to the address above within 30 days of the date of the letter. However, your refusal will result in civil penalty proceedings being initiated against you in accordance with 33 CFR 1.07. You may contact me at the number above with any questions.

Sincerely,

Sam Wester
Lieutenant Commander, U. S. Coast Guard
Chief, Port Operations
By direction

I hereby decline the above-mentioned warning.

Jason Voorhees

Date

