

Legal Operation of Charter Boats-Guidance for Masters

This message is intended to provide clarification to recreational boaters seeking people to share expenses in the Hampton Roads area.

It is illegal for an uninspected vessel engaged in passenger for hire operations to be operated by an individual who is not licensed by the U.S. Coast Guard. Specifically, each uninspected passenger vessel of less than 100 gross tons as defined by 46 CFR 24.10-1 that carries *six passengers or less*, including one or more passengers for hire, must be under the direction and control of an individual licensed by the U.S. Coast Guard. The license must be kept in the operator's possession (46 CFR 26.20-1). In addition to needing a licensed operator, each uninspected passenger vessel must meet all safety requirements outlined in 46 CFR 25.

Additionally, in accordance with 46 CFR 175.110, if a vessel carries *more than six* passengers, including at least one for hire, it must meet all Coast Guard safety requirements for an inspected passenger vessel.

The question of at what point an individual becomes a "passenger for hire" has caused confusion but is very straightforward. "Passenger for hire" means a passenger for whom consideration is contributed as a condition of carriage, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person having interest in the vessel (46 CFR 24.10-1). Therefore, requiring strangers to share expenses constitutes a passenger for hire operation.

"Consideration" means an economic benefit or profit including payment of money or donation of fuel, food, beverage, or supplies. It does not include a voluntary sharing of the actual expense of the voyage (46 CFR 175.400).

If a vessel carries just one individual passenger, or "hop on," who provides anything more than a voluntary sharing of the actual cost of the trip, the vessel is operating as a passenger vessel and requires a Coast Guard licensed operator. If more than six passengers are involved, the vessel will require certification as a Coast Guard inspected vessel, as well as a licensed operator. In other words, if the owner, charterer, operator, agent or anyone else who has an interest in the vessel receives any money, fuel, or supplies that the passenger did not **freely** choose to share as part of the actual cost of the trip, the vessel is carrying a passenger for hire and must meet the following requirements:

- (1) The master in command of a passenger for hire vessel must be an individual licensed by the U.S. Coast Guard.
- (2) Vessels carrying more than six passengers, in which at least one is for hire, must be inspected and certified by the U.S. Coast Guard.
- (3) This inspection includes but is not limited to certificates and documents, navigation safety, structural integrity, general health and safety, ground tackle, lifesaving equipment, fire protection, machinery/electrical equipment,

pollution prevention, and completion of emergency drills. Different regulations apply depending on service and route.

It is important to consider potential liability for violating these rules. If a passenger receives an injury as minor as a fishhook in their finger, the owner may face insurance liability. In addition, many boat loans have conditions in their terms that the vessel may not be used for commercial purposes. If an operator takes a paying passenger onboard without meeting the requirements for an inspected vessel and the passenger is injured or drowns, the vessel may be held to the inspected passenger vessel standard for purposes of criminal liability. If the operator does not have a license and was operating the vessel as an inspected passenger vessel, their insurance company may deny a claim. Compared to this legal and financial distress, acquiring a Coast Guard license and passing a Coast Guard passenger vessel inspection are much less burdensome tasks.

It is the owner's responsibility to determine the legal requirements applicable to the type of operation in which the vessel is to be employed and to ensure every requirement is fully complied with before operations begin.

The Coast Guard is committed to the enforcement of all applicable federal regulations for passenger vessels. In accordance with Coast Guard Notice of Violation policies, maximum civil penalties up to \$1,100 for failure to have a valid Coast Guard license in possession and available when vessel is carrying passenger(s) for hire will be sought in cases involving unlicensed operators in accordance with 46 CFR 26.20-1, and licensed operators found to be operating in violation of applicable regulations will face suspension and/or revocation of their merchant mariner credentials. The Coast Guard may notify operators' banks and insurance companies which may change rates and coverage. In addition, the Coast Guard will submit leads to the IRS for unreported income that could result in civil fines and criminal prosecution by the IRS.

Further, we will take steps to educate the public in the area about federal requirements for passenger vessels. It is our goal that an educated consumer will seek out only properly licensed operators for their business to ensure their safety.

If you have any additional questions, please do not hesitate to contact my staff at the following address and telephone number:

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