

Coast Guard, DHS

§ 1.07-55

sound or video tapes, oil samples, and photographs may be examined in the Hearing Officer's offices. The Hearing Officer may provide for examination or testing of evidence at other locations if there are adequate safeguards to prevent loss or tampering.

§ 1.07-35 Request for confidential treatment.

(a) In addition to information treated as confidential under § 1.07-30, a request for confidential treatment of a document or portion thereof may be made by the person supplying the information on the basis that the information is:

(1) Confidential financial information, trade secrets, or other material exempt from disclosure by the Freedom of Information Act (5 U.S.C. 552);

(2) Required to be held in confidence by 18 U.S.C. 1905; or

(3) Otherwise exempt by law from disclosure.

(b) The person desiring confidential treatment must submit the request to the Hearing Officer in writing and state the reasons justifying nondisclosure. Failure to make a timely request may result in a document being considered as nonconfidential and subject to release.

(c) Confidential material is not considered by the Hearing Officer in reaching a decision unless:

(1) It has been furnished by a party, or

(2) It has been furnished pursuant to a subpoena.

[CGD 78-82, 43 FR 54186, Nov. 20, 1978, as amended by USCG-2002-12471, 67 FR 41331, June 18, 2002]

§ 1.07-40 Counsel.

A party has the right to be represented at all stages of the proceeding by counsel. After receiving notification that a party is represented by counsel, the Hearing Officer directs all further communications to that counsel.

§ 1.07-45 Location of hearings and change of venue.

(a) The hearing is normally held at the office of the Hearing Officer.

(b) The Hearing Officer may transfer a case to another Hearing Officer on re-

quest or on the Hearing Officer's own motion.

(c) A request for change of location of a hearing or transfer to another Hearing Officer must be in writing and state the reasons why the requested action is necessary or desirable. Action on the request is at the discretion of the Hearing Officer.

[CGD 87-008a, 52 FR 17554, May 11, 1987]

§ 1.07-50 Witnesses.

A party may present the testimony of any witness either through a personal appearance or through a written statement. The party may request the assistance of the Hearing Officer in obtaining the personal appearance of a witness. The request must be in writing and state the reasons why a written statement would be inadequate, the issue or issues to which the testimony would be relevant, and the substance of the expected testimony. If the Hearing Officer determines that the personal appearance of the witness may materially aid in the decision on the case, the Hearing Officer seeks to obtain the witness' appearance. Because many statutes prescribing civil penalties do not provide subpoena power, there may be cases where a witness cannot be required to attend. In such a case, the Hearing Officer may move the hearing to the witness' location, accept a written statement, or accept a stipulation in lieu of testimony. If none of these procedures is practical, the Hearing Officer shall proceed on the basis of the evidence before him.

[CGD 78-82, 43 FR 54186, Nov. 20, 1978, as amended by USCG-2002-12471, 67 FR 41331, June 18, 2002]

§ 1.07-55 Hearing procedures.

(a) The Hearing Officer must conduct a fair and impartial proceeding in which the party is given a full opportunity to be heard. At the outset of the hearing, the Hearing Officer insures that the party is aware of the nature of the proceeding and of the alleged violation, and of the provisions of the law or regulation allegedly violated.

(b) The material in the case file pertinent to the issues to be determined by the Hearing Officer is presented. The party has the right to examine,