# UNITED STATES COAST GUARD

# CIVIL PENALTY CASE GUIDE



REV 05/2014

*The purpose of this Civil Penalty Case Guide is to provide an overview of what a Coast Guard Hearing Officer expects to see in a well prepared civil penalty case and what a Charged Party can expect to see when they receive a copy of the case file with the preliminary assessment letter.*

*In every case alleging violation of law or regulation, the case file must include sufficient information and evidence to ensure the fair adjudication of the violations. A party charged with a violation is provided with a copy of the civil penalty case file that is sent to the Coast Guard Hearing Office. This copy enables the Charged Party to exercise the due process right to comment. Case files should contain accurate information and present sufficient relevant and reliable evidence so that Coast Guard Hearing Officers can make a fair assessment and Charged Parties can respond in a meaningful manner either by accepting the violation and preliminary assessed penalty or by presenting evidence in defense, mitigation and / or extenuation. This guide provides an explanation of the type of information required in the documents that identify the Charged Party and describe the violations charged. This guide also includes some miscellaneous considerations regarding a civil penalty case and the transfer of control of a case to the Coast Guard Hearing Office. It also provides information regarding evidence and types of information requiring special handling. Finally, this guide provides general and specific examples of relevant documentary evidence for specific violation cases and a sampling of factors that a Coast Guard Hearing Officer might consider during the adjudication process.*

This guide is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

## THE CASE FOLDER

The folder should be letter size with an end tab shelf-cut. It should have prong fasteners on the right side only.

The folder should be labeled with the **enforcement activity number**, not the boarding, incident or investigation number. Numbers should read in a vertical row on the right hand edge of the folder:

Following the input of all relevant details into a MISLE activity, the scanning of all documentary evidence to the MISLE activity, and the preparation of the Enforcement Summary by the appropriate processing official, the activity is ready to be prepared as a civil penalty case.

The case materials are printed and the case file assembled (further explained below). The case file should contain an Enforcement Summary, Activity Summary Report (ASR) where applicable, Factual and Jurisdictional Elements for each violation, the Exhibit List, and all documentary evidence properly labeled and placed in the file folder in the order it appears on the Exhibit List. Two complete copies must be made of the case materials. One copy is inserted into the prongs on the right hand side of the file. The other copy is **stapled or fastened** so that

the documents cannot be easily separated. The case file and the stapled copy are mailed to the Coast Guard Hearing Office. If the case file contains digital materials (CDs, DVDs etc) then they may be attached to the inside back of the file folder in an envelope. Each item of digital material should be labeled with an Exhibit number, the case name and enforcement activity number, and listed on the Exhibit List in the order of the Exhibit number assigned to the item. Again, two copies must be included; one for the Hearing Officer and one for the Charged Party.

## THE ENFORCEMENT SUMMARY

Every case file must include a complete and properly prepared Enforcement Summary. The Enforcement Summary is always the first document in the case file. The Enforcement Summary reflects the following:

**Charged party name**. Required entry. This name should be consistent throughout the case file. Use the same format and spelling throughout. There must be supporting evidence to show that the charged party named on the Enforcement Summary is the correct individual. If the boarding identifies that the operator committed the violation, do not name the owner as the charged party. Be attentive to getting the name right and spelled right. If it is a company that is believed responsible for the violation, it is that company's name that should be reflected in this entry and not a parent or subsidiary company. The same name format should be consistently used throughout the case file.

**Violation location.** Required entry. This can be latitude and longitude and/or the common name of the body of water. More precise detail is required for violations that are based on location such as inside the boundary line or outside the boundary line including the description of the boundary line being referenced. The violation location is not where the boarding took place but where the violation occurred. For instance, if the violation is for failure to have the appropriate survival craft when operating outside the boundary line, evidence establishing that the vessel was operating outside the boundary line should be included especially if the boarding occurred inside the boundary line.

**Violation date.** Required entry. This is the date the alleged violation occurred. This is based on the evidence and when the wrongful act occurred or when the party failed to take the appropriate action, or when the violation was discovered. This date must be consistent throughout the Enforcement Summary and the case file. This date is not the date the Enforcement Summary or case file was created.

**Summary of current violation(s).** Required entry. Reflect in this entry the regulatory cite that is the most specific paragraph cite of the regulation that applies to the situation. Avoid citing general regulatory provisions whenever possible.

Do not cite the same law or regulation more than once on a single Enforcement Summary. If there are multiple deficiencies that apply to the same law or regulation, the narrative overview should detail the multiple deficiencies that were identified under the one law or regulation.

Evidence supporting each deficiency identified under that law or regulation should be included in the case file.

When choosing the regulatory cite for the alleged violation, the applicability of that particular regulation to the vessel, charged party, etc should be verified. For instance, some regulations apply only to recreational vessels; if it is a recreational vessel don't cite a regulation that applies to a fishing vessel. Similarly, some regulations are applicable to vessels based on certain gross tonnage. It is important to find and read the applicability section of the regulation cited on the Enforcement Summary to ensure it applies to the vessel, facility, person or company who is the subject of the violation.

Remember that a violation for "missing equipment" or "lack of equipment" is different from equipment that is on board but is "unserviceable." If no regulatory provision exists to require that a certain piece of equipment be maintained in a serviceable condition, then it is likely that the piece of equipment cannot be serviced and the regulation requiring the particular piece of equipment to be on board is the regulation that was violated. The facts and regulations should be scrutinized to determine the proper regulatory citation.

**Recommended penalty.** This amount is the amount of the penalty that the processing official determines appropriate based on the evidence to achieve compliance (remedy or correct the violation), and deter future violations by the charged party. A penalty is not punishment. The recommended penalty should be based on the facts and circumstances surrounding the alleged violation and other known "facts" such as aggravating and mitigating factors. Identifying and explaining any aggravating and mitigating factors (see below) may be helpful in understanding the recommended penalty amount. A processing official's recommended penalty is non-binding on a Coast Guard Hearing Officer. The recommended penalty may be persuasive to the extent that the processing official has set forth valid factors in support of the recommendation. The Hearing Officer makes an independent judgment as to what the preliminary assessed penalty amount should be based on the careful review of the information and evidence in the case file. If the processing official desires to recommend a warning as the recommended penalty, this entry should reflect "warning" instead of "zero (0)."

**Narrative overview of the activity.** Required entry. This is a coherent, big-picture summary of the activity—the who, what, why, how and where that gives a brief review of the evidence that supports the violation(s). It is meant to pull together the detailed information provided by the evidence contained in the case file. It is meant to assist the Coast Guard Hearing Officer and the Charged Party understand the violations alleged in the case.

The "Narrative overview of the activity" should be supported by corresponding evidence included in the case file.

The preparation of this section can be done by an individual simply putting the case file together or by the person who conducted the boarding or inspection, prepared the investigation, etc. An e-signature should be at the end of any content placed in this section. The e-signature should be that of the person who *writes* the content that is placed in this section (not the e-signature of a person who simply copies someone's else's writing and places it in this section). The e-signature

signifies that the content in this section is believed true and accurately recorded by the person whose name appears in the e-signature. The accepted e-signature format is: //s//first name, middle initial, last name, rate/rank//.

Every statement or interview or other similarly prepared document included as evidence in the case file should have an e-signature or penned signature of the person who prepared the document. For Coast Guard personnel including civilians, this signature should be sufficient to determine that the individual signing is a military, Auxiliarist, or civilian member / employee of the Coast Guard. Military members should always include rank/rate.

For Enforcement Summaries relying on an Activity Summary Report (ASR) for the narrative, the narrative on the ASR should have the e-signature of the person who wrote that narrative.

The narrative overview must not contain information not related to the violations. This is not a place for administrative and clerical remarks or notations. This is not a place to discuss internal review of the case file, track internal movement of the case file, or anything but information that is relative to the violations.

The narrative overview must not contain remarks that are unprofessional, defamatory, derogatory, inflammatory, demeaning, or show personal bias. They should not be personal opinions, unsupported conclusions, or unfairly discuss persons. All remarks should be relative to the violations and supported by evidence.

**Charged party's particulars.** Required entry. This section contains information that is automatically transferred from the MISLE database to computer generated documents such as the Enforcement Summary and penalty assessment letters.

This information consists of the party's name being entered into the MISLE database in all CAPITAL letters, spelled correctly and with the first and last name in <u>that</u> order.

The party's address must be accurate and complete. This means a number and street name in one block, the city and state in the appropriate blocks and zip code. Note that post office box numbers (PO Box) have a high rate of delivery failure; valid street addresses should be always obtained especially when the mailing address is a PO Box. Names and addresses obtained should be verified using picture identification.

Processing officials are encouraged to review all address information available to them before finalizing the Enforcement Summary. Often, field personnel entering this information into MISLE enters it incorrectly. Or, the party's name and address may already appear in MISLE and the field personnel responsible for entering this information into MISLE do not update the party's address in MISLE with the new address obtained during the most recent boarding/examination, inspection or investigation.

Similarly, processing officials should verify the address on the Enforcement Summary to the extent possible. It is important that processing officials work with field units to secure addresses, phone numbers, date of birth, and other identifying information from driver's licenses and other

forms of picture identification during a boarding. Every effort should be made to ensure that the information obtained is current and properly entered into MISLE.

**Capacity in which charged.** Required entry. The "capacity" means the role held by the party charged at the time of the violation. This can be owner, operator, master, person-in-charge, etc. The capacity of the person charged must be one that can be held responsible under the regulation cited for the violation. For instance, for negligent operation of a vessel only the operator can be charged. The applicability section of the regulation cited for the violation identifies who can be charged with the violation. The capacity of the charged party must be a capacity (role) that can be held responsible under the regulation.

**Involved subjects.** When included, this section typically will list the vessel or entity involved in the violation.

**Other Involved Parties (besides the Charged Party).** When included, this section lists other persons (NOT the charged party) involved at the time of the violation.

**Past violation(s) history.** This is section is automatically populated by MILSE to reflect past violations associated with the charged party.

**Charge sheet / Details of the violation.** Required entry. A separate sheet is created for each charged violation. The Statutory Authority and Maximum Penalty is populated by MISLE. If these fields do not populate, the regulation cited for the violation may be incorrect.

The details of the violation should be completed. This section has two parts, Jurisdictional and Factual Elements. For each element listed, the facts that support it should be identified. The facts identified should be supported by evidence in the case file. There should be some evidence in the case file to support every element of the violations charged. Jurisdictional and factual elements should be completed for every violation in the case file.

Jurisdictional elements include at a minimum the charged party's capacity (role) and the location of the violation. The charged party's capacity and / or the location of the violation must be subject to the regulation that is alleged to have been violated. The applicability provision for the regulation cited should be reviewed to ensure that the charged party's capacity and / or location of the violation is "covered" by the regulation.

Factual elements should be a brief statement of how the charged party was not in compliance with federal law or regulation. Each factual element reflected in this section should be supported by some evidence in the case file. The exhibits which contain the evidence to support the specific factual elements should be referenced.

**Aggravating/Mitigating factors** is a useful section to include factors that may increase or decrease a penalty amount that would have otherwise been recommended without the consideration of these factors. This section should include an explanation of these factors. Aggravating or mitigating factors should be relevant to the violations, charged party's actions or charged party's inactions. Statements should not attack the charged party's character, should not

be based on opinion or speculation, and should not be unprofessional. When addressing financial ability to pay, statements should be based on facts.

**Exhibits list.** Required entry. The individual exhibits or enclosures in a case file must be marked to reflect the same numbering as shown on the Coast Guard Exhibit List. This List is part of the Enforcement Summary. Typically, when a case file only contains an Activity Summary Report (ASR), the Coast Guard Exhibit List (as a page of the Enforcement Summary) is not necessary to list the ASR.

Any exhibits or enclosures listed on the Coast Guard Exhibit List but not included in the case file should have an explanation. For example, "This exhibit/enclosure is a physical oil sample maintained at the oil analysis lab." This way the charged party knows what it represents and understands why it is not in the case file. There should be a properly labeled document or explanation for every enclosure/exhibit identified in the Coast Guard Exhibit List. Enclosures/exhibits should be placed in the case file in the order that is shown on the Coast Guard Exhibit List.

**In summary**, the entire Enforcement Summary will contain:

a. page(s) identifying the charged party, date of violation, location of violation, violations, narrative, party particulars, involved subjects and parties and violation history;

b. pages reflecting the factual and jurisdictional elements for each violation; and

c. pages reflecting a list of all exhibits/enclosures.

The Enforcement Summary will be followed by all documentary evidence in the order identified on the Coast Guard Exhibit List.

Note that the Enforcement Summary is not by itself evidence. All entries and narratives made on the Enforcement Summary should be supported by evidence.

## ACTIVITY SUMMARY REPORT

Case files for violations resulting from safety inspections onboard recreational vessels or commercial fishing vessels will likely have an Activity Summary Report (ASR). ASRs reflect the conduct of an examination or boarding on these vessels. The information for the ASR typically comes from a Coast Guard Boarding Report (CG-4100 form or Personal Digital Assistant (PDA)). Anytime an ASR is produced in a case, it should be included in the case file.

All information in the ASR should be identical to the information reflected on the Enforcement Summary. For example, the charged party, capacity in which charged, address, vessel information, violation date and violation location. Both owner and operator information should be reflected on the ASR.

**ASR Narrative Summary**. Required entry. This section should contain the big-picture summary of the boarding: who, what, when, how, and why. The “lengthy” details regarding each violation should be reflected in the narrative section for each violation or in statements from

Coast Guard personnel, charged party, parties involved, and / or witnesses. The ASR Narrative Summary is written by a boarding officer/team member, inspector or investigator as a result of the boarding/examination, inspection or investigation. This narrative should have an e-signature. The e-signature signifies that the statements and information contained in the narrative summary are believed true and accurately recorded by the person whose name appears in the e-signature. The accepted e-signature format is: //s//first name, middle initial, last name, rate/rank//.

The ASR should be complete. This means that all sections should be completed in sufficient detail for a person to understand why a certain violation is alleged. This means including a description of the violation, when the violation occurred, the location of the violation, and the details of how the regulation or law was violated. Conclusory statements, such as "there were insufficient personal flotation devices (PFDs)," are generally insufficient to support a finding of a violation. Documenting the number of people on board the vessel and how many PFDs were available can provide the factual detail to support a violation for insufficient PFDs. Similarly it is important to note sunrise and sunset times and time of the boarding. This is especially important to support a finding of a violation that is dependent upon the time of day, such as the lack of visual distress signals for night use.

Most of the information described above for the Enforcement Summary is applicable to the ASR. It will not be repeated here. Boarding officers/team members, inspectors, and investigators entering case information into MISLE should be familiar with the data fields for the particular type of case they are processing. Data fields should not be left blank as missing or insufficient information could have an adverse impact on case processing and adjudication.

## MARINE INFORMATION FOR SAFETY AND LAW ENFORCEMENT (MISLE) FUNCTIONS

The main MISLE database screen for an enforcement activity should reflect the following *when the civil penalty case file is placed in the mail to the Coast Guard Hearing Office*.

**Activity Title**. This should be the manner in which to identify the enforcement activity; typically it is the charged party's name.

**Activity Status**. This should reflect "Open—In Progress."

**Enf Type**. This should reflect "Administrative Civil Penalty (Class I)."

**Originating Unit**. This is the unit who performed the boarding/examination, inspection or investigation that identified the violations.

**Activity Owner**. This is the unit who created the enforcement activity for civil penalty case processing. This is the unit (processing official) who creates the Enforcement Summary.

**Controlling Unit**. This is the same as the Activity Owner until the civil penalty case file is placed in the mail to the Coast Guard Hearing Office. When the civil penalty case file is

placed in the mail to the Coast Guard Hearing Office, then the unit (processing official) must transfer control to the Coast Guard Hearing Office.

Remember, only control (Controlling Unit) is transferred to the Coast Guard Hearing Office; never transfer originator (Originating Unit) or ownership (Activity Owner) to the Coast Guard Hearing Office.

When creating a civil penalty case from a declined Notice of Violation "ticket", additional action must be taken to ensure that the NOV ticket status "default" is removed, FINCEN is notified that the party declined to pay the NOV ticket, and that the enforcement type is changed from NOV ticket to Administrative Civil Penalty (Class I).

The procedures to change the case from an NOV ticket case to a civil penalty case may be obtained from the MISLE program manager.

## EVIDENCE

A civil penalty case typically involves two parties; namely, the Coast Guard and the Charged Party. Both parties submit evidence to the Coast Guard Hearing Officer. The below information discusses the evidence that the Coast Guard might include in its case file to initiate the civil penalty process. Charged Parties can apply the below information to evidence submitted in response to the Coast Guard's case file. The weight of the evidence submitted by the Charged Party in defense, extenuation and mitigation can often be maximized when taking into consideration the guidance below.

It is necessary for the originating Coast Guard unit to collect all evidence relevant to a violation and include it in the case file to provide the Coast Guard Hearing Officer and the Charged Party with a fair picture of what occurred. Such evidence supports the narrative summaries found on the Enforcement Summary and ASR. Evidence includes those documents, statements, etc that support an alleged violation. It also includes those documents, statements, etc that were obtained during the boarding, inspection or investigation that do not support, or tend to refute, an alleged violation. Efforts should be made to resolve any conflicting statements obtained during the course of an investigation. An explanation of the efforts made and how the conflict was resolved should be included in the case file. The lack of evidence is often a reason a violation or entire civil penalty case cannot be adjudicated.

The evidence that should be included in a case file is evidence that is relevant to the violations alleged and the formulation of any penalty that may be imposed.. If the evidence is not relevant to these factors, then it is likely that the evidence should not be included in the case file.

The source of the evidence should be clear. Ideally, every exhibit (every piece of documentary evidence) should be clearly marked with an enclosure number, should be identified as to what it is, and should be identified as to where and when it was obtained and from whom it was obtained. Failure to do so may cause the exhibit to have less evidentiary value than it might otherwise have.

All documentary evidence should be scanned into the corresponding MISLE enforcement activity.

**Statements**. Statements should be signed by the writer and dated. In the case of Coast Guard personnel, the signature of the person writing the statement should be followed by the printed name, rank/rate where applicable, and unit of the person. The date should be the date the statement is prepared. Statements from Charged Parties should also be signed and dated, with printed name, position when relevant, and employer when relevant. A statement submitted by a witness typically has more value than a summary of an interview with a witness. Statements must be legible; if a statement cannot be read then the statement has no value. Statements by witnesses should include printed name, relation to the violation, position held at the time of the violation when relevant and explain the witness's actions or inactions regarding the violation. Witness statements should not be copied verbatim from one another. This diminishes the credibility of such statements.

**Photographs**. Photographs can be valuable to assist a reader in understanding the violation alleged. Photographs are not valuable when they do not depict clearly what is important regarding the violation. For example, a picture of a vessel is not helpful when the violation concerns an improperly installed marine sanitation device. However, a picture of the vessel if accompanied by a picture of the improperly installed marine sanitation device is helpful in providing the full picture. Close-up pictures should include a known scale in the picture—this is usually a ruler—so that the reader can better appreciate the size of the object in the photograph.

Photographs should not be included in a case file unless they are attached to a sheet of paper and are properly labeled. Include in the labeling of a photograph, a description of the subject of the photograph, date and time taken, place taken, and who took the photograph.

Both the case file and the charged party's copy of the case file that are forwarded to the Coast Guard Hearing Office must contain the same photographs. If color photographs are used, both case copies must have color photographs. The same is true for black and white photographs.

Often, original photographs "melt" together in the handling and delivery of mail. Paper copies of photographs or documents in "color" often "melt" together as well. If photographs or paper "color" copies are necessary, consider using overnight delivery service where possible as these services tend to be less damaging to items being shipped. If photographs or "color" paper copies are necessary to constitute "good and sufficient" evidence, black and white copies should not be substituted.

Also, including multiple similar or duplicate photographs is unnecessary absent a specific reason to do so. A photograph that supports statements in the case file is valuable as it corroborates the statements. A photograph that more or less shows the same thing as another photograph is simply a duplicate and should not be included.

**CDs, DVDs, and similar media**. The inclusion of CDs or DVDs and similar media in a case file is routine. However, from time to time, the media cannot be read. Not all Coast Guard

personnel, Coast Guard Hearing Officers, or Charged Parties have desktop capability to read all media formats. When practicable, those parts of any CD or DVD that are considered necessary as evidence in the case file might be printed as still pictures and placed in the case file in lieu of submitting digital media. If CDs or DVDs are included in the case file, remember there must be two copies – one for the Coast Guard Hearing Officer and one for the Charged Party.

Both the Coast Guard Hearing Officer and the Charged Party must be able to read the CD or the DVD. Failure of either the Coast Guard Hearing Officer or the Charged Party to be able to read the CD or DVD will result in a temporary delay of the adjudication of the case until such time as replacement CDs / DVDs (in the case of damage) or printed still pictures (in the case of lack of capability to read) can be provided. Note that CDs and DVDs occasionally "melt" during mail handling and delivery. Consider using overnight delivery service where possible as these services tend to be less damaging to items shipped.

## SPECIAL INFORMATION TYPES

Certain types of information require special attention. Properly address information in a case file that is Sensitive Security Information (SSI), Personally Identifiable Information (PII), For Official Use Only (FOUO), or Law Enforcement Sensitive (LES).

**Sensitive Security Information (SSI)**. SSI is information obtained or developed in the conduct of transportation security activities the disclosure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information obtained from any person, or be detrimental to transportation safety. Typically, security plans and other documents relevant to maritime security are identified as SSI. SSI requires special handling and marking. Seek guidance from the Sector or District before including SSI in a case file.

**Personally Identifiable Information (PII).** This includes any information about an individual including education, financial transactions, medical history, criminal or employment history, and information which can be used to distinguish or trace an individual's identity, such as their name, social security number (SSAN), date and place of birth, mother's maiden name, etc. should not be released to anyone other than the person to whom the information belongs. If the information relates to a person who is not the party, the information should be redacted from the case documents before they are included in the case file. However, information necessary to prove a violation or to assist the Hearing Officer in assessing the weight or credibility of evidence, such as the names of witnesses or law enforcement officials, should not be redacted.

**For Official Use Only (FOUO).** Unclassified information of a sensitive nature and for which the unauthorized disclosure of which could adversely impact a person's privacy or welfare, the conduct of Federal program, or other programs or operations essential to the national interest should not be included in the case file unless the originator has properly authorized the release of such material. Typically, a report or document will be marked as FOUO. If such documents are included in the case file, they should be stamped or marked reflecting that the originator has authorized release of the report or document to the public.

**Law Enforcement Sensitive (LES).** This material includes law enforcement investigative methods; information that could obstruct impair official law enforcement or regulatory functions; reveal Coast Guard operations that are sensitive in nature, reveal Coast Guard law enforcement methods, policies, etc. As with FOUO, if such documents are included in the case file, they should be stamped or marked reflecting that the originator has authorized release of the document to the public. Often Reports of Casualty or other investigative reports indicate that they may not be published or otherwise released outside the Coast Guard without permission of the appropriate office of the Commandant. Such reports generally do not need to be included in a case file forwarded for civil penalty action. The information that might be relevant from the report can usually be found in some other document. If the report is included in the case file, ensure authorization for release has been obtained and that the report is either properly stamped or marked for release or a statement reflecting authorization for its release is included.

## MISCELLANEOUS

In those cases in which a Notice of Violation (NOV) "ticket" has been declined by the party, a copy of the NOV "ticket" and a copy of the back of the "ticket" showing the declination or a letter / statement from the party declining the "ticket" should be included in the case file. If the party refused acceptance, a statement from the responsible person at the Coast Guard unit explaining the refusal should be included in the case file. This is important because NOV "tickets" that are not properly declined are not processed as civil penalty cases by the Coast Guard Hearing Office.

In those cases in which a Letter of Undertaking (LOU) has been obtained, the original LOU must be included in the Coast Guard Hearing Office copy of the case file. The front of the file folder containing the Hearing Office copy of the case file should be marked with the letters "LOU" to alert the Coast Guard Hearing Office that it contains an original LOU. A copy of the LOU should be included in the Charged Party's copy of the case file. The original LOU remains with the case file through every stage of processing and through appeal in order that it is not lost or separated from the case to which it pertains. It is returned to the party either upon payment of any final assessed penalty or upon dismissal of the entire violation case.

In those cases in which a boarding report or other type of deficiency report is issued, include a legible copy of the report in the case file as an exhibit/enclosure. In the case of a recreational or commercial fishing vessel safety inspection, the report is typically a Coast Guard Boarding Report (either form CG-4100 or the printout from a Personal Digital Assistant (PDA)).

When referring to a program manual or instruction to support a violation, properly reference it with title and number. Where feasible and deemed appropriate for release, include a copy of the page as an exhibit/enclosure in the case file and mark the relevant sentences.

If documents are two-sided, both sides of the document should be copied and included in the case file. Common double-sided forms are the Notice of Violation " ticket" and the Field Sobriety Tests (FSTs) report.

Case files should contain all of the evidence that is relevant to the civil penalty case. Miscellaneous documents should not be attached to the top of a case file. Similarly such documents should not be mailed under separate cover.. Case files already forwarded to the Coast Guard Hearing Office may be supplemented with relevant evidence; in such a case forward two copies of the relevant evidence with a request that the Coast Guard Hearing Officer's copy and the charged party's copy be supplemented. Coast Guard Hearing Officers do not receive for consideration any documentation that is not intended to be also provided to the charged party.

The case file is an official document. All information contained in the case file should be, to the extent possible, accurate in content, grammar and spelling. All information should be relevant to the alleged violation(s) and formulation of any appropriate penalty. The case file should not include personal comments or expressions of opinion.

Internal unit or agency comments and clerical notations as to the tracking and processing of the MISLE case or activity are inappropriate for inclusion in the case file. As mentioned above, such notations should not be reflected in the Enforcement Summary narrative or ASR narrative sections.

## EXAMPLES OF RELEVANT EVIDENCE FOR CASE TYPES

*The following is meant to assist in understanding an alleged violation and making informed decisions. Both the Coast Guard unit originating the case file and the Charged Party may consider the examples below when making decisions about evidence to present to a Coast Guard Hearing Officer in support of their relative positions. A Coast Guard unit's failure to provide, satisfy or in any manner address the below in a civil penalty case does not provide a basis for any type of relief to a Charged Party. Every civil penalty case will be reviewed and adjudicated based on all information and evidence presented in the case file. The adjudication process requires the independent and impartial assessment of the sufficiency, relevancy and reliability of any information and evidence presented.*

**Generally, examples of relevant evidence:**

1. Sunrise and sunset times for the days when the violation is alleged to have occurred.
2. Local time of day on documentation instead of Zulu or Greenwich Mean Time (GMT). Times of day should be consistent throughout the evidence / case file.
3. Vessel information, owner information and operator information for vessel cases.
4. Accurate boarding start and stop times.
5. Actual location of the violation with specific descriptions such as the anchorage, or body of water and location within body of water. Placement of the vessel inside or outside of the boundary line and identification of applicability of Inland Rules or COLREGS.
6. For expired equipment, the expiration date on the equipment; for serviceability of equipment, the type and condition of the equipment; for missing equipment or equipment that is not located in its proper place, where the equipment

should have been located and if found, where it was found.

7. For improper visual distress signals, how were the visual distress signals were improper (ie, day versus night); for improper charts, why were the charts not proper.
8. For expired fire extinguishers, how were they determined to be expired; was there a a fixed fire extinguishing system was located in the machinery space (s).
9. For violation for persons failing to perform certain duties and functions, what was the requirement and what was that person's explanation for the alleged failure.
10. For marine sanitation device (MSD) violations, where the installed toilet was located on the vessel and whether the installed toilet was operational and connected to the MSD.
11. For survival craft violations, what kind of survival craft the vessel is required to carry and why and what kind of survival craft the vessel is carrying or if there is no survival craft on board.
12. For an expired EPIRB battery, whether the battery is installed in the EPIRB and expiration date.
13. For the lack of a hydrostatic release, where the EPIRB was stowed and why it would not float free.
14. For vessel violations dependent on the characteristics of the vessel, the vessel length, tonnage, and type of vessel (ie, fishing, oceangoing, passenger etc).
15. For "operator" cases, how it was determined that the person named as operator was identified as operator (observation and / or operator and witness statements) and where the operator was located at the time of the determination.

**Examples of relevant evidence for Marine Transportation Security Act (MTSA) violations:**

1. Signed investigator and witness statements
2. Pictures of on-site deficiencies applicable to the violation i.e. (structural: fence, lighting, and signs)
3. Copy of facility's Letter of Intent
4. Copy of vessel's particulars
5. Copy of approved letter for the Facility Security Plan, Vessel Security Plan as applicable
6. Designation letter for the Facility Security Officer, Vessel Security Officer as applicable
7. A copy of the Facility Security Plan, Vessel Security Plan is generally not necessary; a statement as to the provisions relevant to the alleged violations and how the facility or vessel was not in compliance is most often sufficient

**Examples of relevant evidence for Commercial Vessel (excludes commercial fishing vessel) violations:**

1. Documentation of violation on applicable Coast Guard deficiency / compliance report
2. Applicable Report of Marine Accident, Injury or Death (CG-2692)
3. Standard Operating Procedures i.e.,: Cargo Handling Gear Manual, Oil Transfer Procedures, Stowage and Segregation Manual
4. Vessel particulars
5. Pictures
6. Signed investigator and witness statements
7. Excerpts from logs that pertain to the casualty or violations: bridge log, tank soundings, watch logs, and applicable safety inspection logs

8. Documents: Declaration of Cargo Manifest, Shipping Papers, Explosive Handling Permit, Declaration of Inspection, applicable International Safety Management certificates, Certificate of Inspection, Certificate of Compliance
9. Copy of Merchant Mariner Document; license; Standards of Training, Certification and Watchkeeping (STCW); designation letters (qualified individual, alternative qualified individual, person-in-charge)
10. Captain of the Port orders issued with regard to a violation
11. Copy of latest tests/inspections conducted relevant to the violation
12. Copies of past Coast Guard non-compliance reports of same violation

**Examples of relevant evidence for Advanced Notice of Arrival (ANOA) violations:**

1. Copies of Captain of the Port orders if issued
2. History of prior expulsions and violations
3. Vessel particulars
4. Print out of SANS showing vessel not listed for specific time frame
5. Print out of MISLE showing vessel not listed for specific time frame
6. Statement from SANS confirming non-existing ANOA for vessel
7. Vessel's Notice of Arrival (NOA) showing last five port calls
8. Statement from vessel agent
9. Statement from master of vessel
10. Statement from harbor master
11. Copy of vessel's ANOA procedures

**Examples of relevant evidence for Commercial Fishing Vessel and Recreational Vessel cases containing Boating Under the Influence and / or Negligent Operations violations:**

1. Coast Guard boarding report (CG-4100 or PDA printout)
2. Signed statements of CG boarding officer, boarding team members and witnesses
3. Field sobriety tests (FSTs) results with alco-sensor calibration date and boarding officer's certification date
4. Copy of Merchant Mariner Document, license, and other identification of persons on board a vessel
5. Applicable Report of Marine Accident, Injury or Death (CG-2692)
6. Pictures and / or diagrams
7. Copy of Certificate of Inspection if applicable
8. Copy of Certificate of Documentation if applicable
9. Copy of vessel registration if applicable
10. For negligence operations, how the charged party operated in a negligent manner or interfered with the safe operation of a vessel so as to endanger the life, limb, or property of a person; who / what was in danger and how; speed of vessel, visibility, weather conditions, sea conditions; details as to how reasonable care was not exercised by the operator
11. For boating under the influence with refusal of a breathalyzer test, how the person was directed to give a breathalyzer sample and how the person refused
12. Other assisting agency documents
13. For injuries or property damage in negligent operations cases, a description of the same and any medical bills or damage quotes

14. For child personal flotation device (PFD) violations, statement including children's names, ages, and location of child at time of violation
15. For Certificate of Number violations, statement as to whether the Certificate of Number was not on board or simply not presented

**Examples of relevant evidence for Commercial Fishing Vessel and Recreational Vessel cases NOT containing Boating Under the Influence and / or Negligent Operations violations:**

1. Coast Guard boarding report (CG-4100 or PDA printout)
2. Signed statements of CG boarding officer, boarding team members and witnesses regarding alleged violations where applicable
3. Copy of Certificate of Inspection if applicable
4. Copy of Certificate of Documentation if applicable
5. Clear description of how the violation was discovered and why the deficiency is considered a violation
6. Statement including children's names, ages, and location in child personal flotation device (PFD) cases
7. Statement for lack of Certificate of Numbers cases describing whether it was not on board or simply not presented
8. Vessel particulars regarding construction, fuel compartment, firefighting system, etc where applicable to support alleged violations

**Examples of relevant evidence for Container case violations:**

1. Hazardous Materials and Intermodal Container Inspection Report (CG-5577)
2. Container number(s)
3. Documentation for the International Convention for Safe Containers (CSC) safety approval plate where applicable
4. Documentation of compliance with safety approval and periodic container examinations (ACEP) where applicable
5. Department of Transportation training records
6. Signed statements of Coast Guard inspectors, investigators, persons- in-charge, witnesses
7. Cargo Manifest
8. Documentation for noncompliant explosive containers
9. Copy of alleged improper shipping papers
10. Pictures regarding structural damage, improper blocking and bracing, improper packaging, placards etc

**Examples of relevant evidence for Facility case violations:**

1. Pictures regarding alleged violations
2. Copy of Facility's Letter of Intent
3. Excerpts from the following manuals that pertain to the violation: Facility's Operations Manual, Facility Response Plans and Emergency Response Plans, and Standard Operating Procedures
4. Copy of logs, training records, Declaration of Inspection, hydrostatic tests of equipment and other equipment tests where applicable

5. Designation letter for qualified individual, alternative qualified individual, person-in-charge, etc.
6. Copy of permits, i.e. hot work, explosive permits
7. Copy of certificates, i.e. Certificate of Adequacy

**Examples of relevant evidence for Discharge/Pollution case violations:**

1. Notice of Designation
2. Letter of Assumption
3. Administrative Order
4. Federal Project Number (FPN); CERCLA project number (CPN)
5. Oil sampling analyses when obtained to include statements as to what was sampled and where the samples were taken, methodology of selecting possible sources and excluding other sources
6. Description of location of facility, tank truck, vessel etc and proximity to discharge/pollution
7. Signed statements from Coast Guard investigators, persons responsible, and witnesses regarding how the discharge/pollution occurred, what was discharged (oil or hazardous substance), what was discovered (ie, film, sheen, discoloration, sludge or emulsion), where the discharge originated and where it was discovered; how the responsible person or entity was identified
8. Pictures regarding the discharge/pollution and surrounding area, involved vessels, facilities, tank trucks etc
9. Signed statements / pictures as to the navigable waters or adjoining shoreline affected
10. Calculations and signed statements as to the actual or estimated quantity discharged, how the quantity was determined or estimated
11. National Response Center notification fax if any
12. Signed statements and / or invoices as to cleanup efforts and costs

**Examples of factors for which relevant evidence may be presented for consideration:**
Coast Guard Hearing Officers may consider, and Charged Parties may submit evidence in defense, mitigation, and extenuation, with regard to the below factors.

1. type of violation
2. degree of seriousness of the violation
3. the degree of the charged party's culpability
4. the nature, extent and degree of success of any efforts of the charged party to minimize or mitigate the effects of the violation
5. demonstrated good faith of the charged party in attempting to achieve rapid compliance after notification of the violation
6. whether the charged party was able to continue the activity or business despite the violation
7. prior violation history
8. other aggravating or mitigating factors