

**RETENTION SCHEDULE
FOR THE FAA CIVIL PENALTY DOCKET**

1. Civil Penalty Hearing Docket Records

1 Dockets relating to civil penalty cases involving alleged violations of the Federal Aviation Regulations (FAR), the Hazardous Materials Regulations (HMR) or Federal statutes pertaining to aviation safety and air transportation of hazardous materials codified in title 49 of the United States Code, and subject to in-house adjudication under 49 U.S.C. § 46301(d)(7)(A) and/or 14 C.F.R. Part 13, subpart G.

Penalty Limits for Cases Subject to In-House Adjudication.

In cases involving violations of the FAR, the Administrator of the Federal Aviation Administration (FAA) is authorized to assess a civil penalty not exceeding \$50,000 against an individual except an individual acting as a pilot, flight engineer, mechanic or repairman. 49 U.S.C. §§ 46301(d)(7) and (8). There is no "cap" on civil penalties in hazardous materials cases under 49 U.S.C. § 5123 subject to FAA in-house adjudication.

Each docket contains some or all of the following records.

- request for hearing,
- complaint;
- answer,
- transcripts of prehearing conferences,
- prehearing orders issued by a Department of Transportation (DOT) administrative law judge (ALJ), including scheduling orders, various prehearing motions and replies thereto;
- discovery requests and responses thereto;
- interlocutory appeal and reply thereto;
- hearing transcript, which may include an oral initial decision rendered by a DOT ALJ, and evidentiary materials introduced at the hearing (transcript may be in paper form and on computer disk);
- evidentiary material such as letters, manuals, photographs, maps, charts, and tapes, introduced at the hearing and not attached to the hearing transcript,
- written initial decision by DOT ALJ;
- notices of appeal to the Administrator and appellate briefs,
- orders issued by the Administrator or his delegate;
- written decision and order by the Administrator;
- petition for reconsideration, rehearing or modification and reply thereto,

- Administrator's decision granting or denying the petition for reconsideration, rehearing or modification,
- other miscellaneous pleadings, motions, requests, orders, or notices relating to a civil penalty action;
- petition for review filed in Federal Court,
- orders of a Federal Court;
- certified index of documents constituting the record filed in Federal Court,
- application for an award of fees and expenses under the Equal Access to Justice Act, 5 U.S.C. § 504 (EAJA) and the FAA's implementing regulations, 14 C.F.R. Part 14, agency's answer thereto, and applicant's reply to agency's answer;
- DOT ALJ's initial decision on the EAJA application;
- notice of appeal of DOT ALJ's initial decision on the EAJA application, and appellate briefs;
- Administrator's decision reviewing the DOT ALJ's initial decision on the EAJA application

a. Original Docket Files Not Optically Scanned by DOT Docket Management System (DMS)

Original records (1) in cases in which the complaint was issued *before* December 1, 1997, or (2) in cases involving sensitive security information (SSI), or (3) not capable of being scanned, or (4) which for any other reason optical scanning was not performed.

Case is resolved after the latest of the following events (including expiration of any appeal rights):

- a request for hearing is filed by respondent but the agency attorney does not file a complaint, or
- a final order issued by a DOT ALJ (and neither party files a notice of appeal to the Administrator within 10 days of the issuance or service of the initial decision under 14 C.F.R. § 13.233); or
- a final agency order issued by the Administrator (and neither party files a petition for reconsideration or modification with the Administrator within 30 days of service of the final order under 14 C.F.R. § 13.234 or a petition for review in the appropriate Federal court within 60 days under 14 C.F.R. § 13.235 or other appropriate time frame); or
- a final order granting or denying a petition for reconsideration or modification (and respondent does not file a petition for review in Federal court within 60 days under 14 C.F.R. § 13.235 or other appropriate time frame); or
- if a petition for review is filed in Federal court, a final order rendered by a Federal court; or

- if an application for attorney's fees and other expenses is filed under the EAJA, 5 U S C § 504, and 14 C F R Part 14, then at such time as the issue of attorney's fees is finally resolved in the agency or in Federal court and the time for any appeal has passed

Upon resolution, case file is closed.

Disposition Cut off closed case files at the end of the fiscal year. Transfer to the Federal Records Center 3 months after cutoff. Destroy 5 years after transfer to Federal Records Center.

b Original Docket Files or Records That Have Been Optically Scanned by the DOT DMS.

[Original records in cases in which the complaint was issued *on or after* December 1, 1997 (excluding case files in cases containing SSI, individual records not capable of being optically scanned, and records not scanned for any other reason.) (*See* paragraph a above.)]

Case is resolved after the latest of the following events (including expiration of any appeal rights):

- a request for hearing is filed by respondent but the agency attorney does not file a complaint; or
- a final order issued by a DOT ALJ (and neither party files a notice of appeal to the Administrator within 10 days of the issuance or service of the initial decision under 14 C F.R. § 13 233); or
- a final agency order issued by the Administrator (and neither party files a petition for reconsideration or modification with the Administrator within 30 days of service of the final order under 14 C.F.R. § 13 234 or a petition for review in the appropriate Federal court within 60 days under 14 C.F.R. § 13 235 or other appropriate time frame), or
- a final order granting or denying a petition for reconsideration or modification (and respondent does not file a petition for review in Federal court within 60 days under 14 C.F R. § 13.235 or other appropriate time frame); or
- if a petition for review is filed in Federal court, a final order rendered by a Federal court; or
- if an application for attorney's fees and other expenses is filed under the EAJA, 5 U.S C. § 504, and 14 C.F R. Part 14, then at such time as the issue of attorney's fees is finally resolved in the agency or in Federal court and the time for any appeal has passed

Upon resolution, case file is closed

Disposition Retain paper records for at least 30 days after optical scanning and verification of imaging. Destroy case files no later than 1 year after case file is closed.

Please note exception in item c

c. Records That Have Been Optically Scanned But Originals Must Be Retained.

[Includes records such as color photographs, charts, etc. that have been scanned but originals must be retained to meet agency needs.]

Disposition. Cut off closed case files of records at the end of the fiscal year Transfer to the Federal Records Center 3 months after cutoff. Destroy 5 years after transfer to Federal Records Center.

d. Optical Disk DOT Docket Management System (DMS) Copy of Civil Penalty Hearing Docket Files or Records

Optical Disk copies of Civil Penalty Hearing Docket Files and Records scanned into the DOT DMS Will include copies of all records listed under item b.

Disposition. Temporary. Delete/Erase 5 years after Civil Penalty Docket File is closed

e. Word Processing and Electronic Records.

Electronic copies of records that are created on electronic mail and word processing systems and used solely to generate a record keeping copy of the records covered by the other items in this schedule. Also includes electronic copies of records created on electronic mail and word processing systems that are maintained for updating, revision, or dissemination.

1 Copies that have no further administrative value after the record keeping copy is made. Includes copies maintained by individuals in personal files, personal electronic mail directories, or other directories on hard disk or network drives, and copies on shared network drives that are used only to produce the record keeping copy

Disposition. Destroy/delete within 180 days after the record keeping copy has been produced

2 Copies used for dissemination, revision, or updating that are maintained in addition to the record keeping copy.

Disposition Destroy/delete when dissemination, revision, or updating is completed.

NOTE: Some FAA Civil Penalty Case Files may be worthy of permanent retention if they significantly interpret FAA regulations, reflect significant developments, or attract extensive public attention. These should be brought to the attention of NARA via a SF-115, Request for Disposition Authority, so that they can be appraised and appropriate disposition authorized. The appraisal process of these records will include a determination of the appropriate medium for transfer of any records determined to be permanent.