



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

49 CFR Part 375

[Docket No. FMCSA-2011-0313]

RIN 2126-AB41

Transportation of Household Goods in Interstate Commerce; Consumer Protection Regulations: Household Goods Motor Carrier Record Retention Requirements

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: FMCSA amends the regulations governing the period during which household goods (HHG) motor carriers must retain documentation of an individual shipper's waiver of receipt of printed copies of consumer protection materials. This change harmonizes the retention period with other document retention requirements applicable to HHG motor carriers. FMCSA also amends the regulations to clarify that a HHG motor carrier is not required to retain waiver documentation from any individual shippers for whom the carrier does not actually provide services. This rule responds to a petition filed by the American Moving and Storage Association (AMSA).

DATES: This final rule is effective **[INSERT DATE 120 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, unless an adverse comment, or notice of intent to submit an adverse comment, is either submitted to the above docket via <http://www.regulations.gov> on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** or reaches the Docket Management Facility by that date. If an adverse comment, or notice of intent to submit an adverse comment, is received by **[INSERT DATE 30 DAYS AFTER DATE OF**

PUBLICATION IN THE FEDERAL REGISTER], we will withdraw this direct final rule and publish a timely notice of withdrawal in the **Federal Register**.

ADDRESSES: You may submit comments identified by docket number FMCSA-2011-0313 using any one of the following methods:

(1) **Federal eRulemaking Portal:** <http://www.regulations.gov>.

(2) **Fax:** 202-493-2251.

(3) **Mail:** Docket Management Facility (M-30) West Building Ground Floor Room W12-140, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

(4) **Hand Delivery:** Same as mail address above, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these methods. See the “Public Participation and Comments” portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Mr. Brodie Mack, FMCSA Household Goods Enforcement and Compliance Team Leader, (202) 385-2400.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Comments

If you would like to participate in this rulemaking, you may submit comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

A. Submitting comments

If you submit a comment, please include the docket number for this rulemaking (FMCSA-2011-0313), indicate the specific section of this direct final rule to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. As a reminder, FMCSA will only consider adverse comments as defined in 49 CFR 389.39(b) and explained below.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Final Rule" and insert "FMCSA-2011-0313" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

B. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "FMCSA-2011-0313" and click "Search." Click the "Open Docket Folder" in the "Actions"

column. If you do not have access to the Internet, you may also view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

II. Regulatory Information

FMCSA publishes this direct final rule under 49 CFR 389.39 because the Agency determined that the rule is a routine and non-controversial amendment to 49 CFR part 375. The rule reduces the record retention period in 49 CFR 375.213(e)(3) from three years to one year to harmonize it with the retention period required for other household goods shipping documents. It also clarifies that a household goods motor carrier is not required to retain waiver documentation from an individual shipper for whom the carrier does not transport household goods or provide related services. FMCSA does not expect any adverse comments to this rule because it merely makes this recordkeeping requirement consistent with others in 49 CFR part 375. If no adverse comments, or notices of intent to submit an adverse comment, are received by **INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**, this rule will become effective as stated in the DATES section. In that case,

approximately 30 days before the effective date, we will publish a document in the Federal Register stating that no adverse comments were received and confirming that this rule will become effective as scheduled. However, if we receive any adverse comments or notices of intent to submit an adverse comment, we will publish a document in the Federal Register announcing the withdrawal of all or part of this direct final rule. If we decide to proceed with a rulemaking following receipt of any adverse comments, we will publish a separate notice of proposed rulemaking (NPRM) and provide a new opportunity for comment.

A comment is considered “adverse” if the comment explains why this rule or a part of this rule would be inappropriate, including a challenge to its underlying premise or approach, or would be ineffective or unacceptable without a change.

III. Legal Basis for the Rulemaking

The Secretary of Transportation’s (Secretary) general jurisdiction to establish regulations over transportation of property by motor carrier is found at 49 U.S.C. 13501. Household goods motor carriers are a subset of all property motor carriers and are required by 49 U.S.C. 13902 to register with FMCSA as HHG motor carriers. The Secretary’s authority to inspect, copy and set retention periods for HHG motor carriers’ records is found at 49 U.S.C. 14122. This rulemaking only applies to HHG motor carriers that provide for-hire transportation in interstate or foreign commerce.

This rulemaking is based on the statutory provisions cited above and on the Household Goods Mover Oversight Enforcement and Reform Act of 2005, Title IV, Subtitle B of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L.109-59). Section 4205 of SAFETEA-LU,

codified at 49 U.S.C. 14104(b)(2), requires HHG motor carriers to distribute the following two FMCSA consumer pamphlets to prospective shippers: “Your Rights and Responsibilities When You Move,” and “Ready to Move?—Tips for a Successful Interstate Move.”

The Secretary has delegated these various authorities to the FMCSA Administrator (49 CFR 1.73(a)).

IV. Background

On November 29, 2010, FMCSA published a final rule entitled “Brokers of Household Goods Transportation by Motor Vehicle” (73 FR 72987). That rule amended FMCSA’s regulations to require HHG brokers to comply with certain consumer protection requirements. As a part of that rule, FMCSA also amended existing regulations to permit HHG motor carriers to provide FMCSA’s consumer protection publications by Internet in place of paper copies (49 CFR 375.213(a) and (b)). In accordance with that rule, if an individual shipper elects to waive physical receipt of the consumer protection information and instead chooses to access the information via hyperlink on the Internet, HHG motor carriers must obtain a signed paper or electronic receipt from the shipper documenting this waiver (49 CFR 375.213(e)(2)). Household goods motor carriers must keep this receipt on file for three years (49 CFR 375.213(e)(3)).

On January 11, 2011, the American Moving and Storage Association (AMSA) submitted a petition for rulemaking to amend 49 CFR 375.213(e). AMSA requested that FMCSA reduce the retention period for the waiver documentation from three years to one year to harmonize this requirement with other one-year document retention requirements in 49 CFR part 375. AMSA also requested that FMCSA amend § 375.213(e)(3) to clarify

that household goods motor carriers are only required to retain receipts from those shippers for whom they actually provide moving services.

A copy of AMSA's current petition is in Docket FMCSA-2011-0313, as well as Docket FMCSA-2004-17008.

V. Discussion of the Rule

FMCSA amends 49 CFR 375.213(e)(3) by reducing the retention period from three years to one year for signed receipts documenting an individual shipper's waiver of physical receipt of the consumer protection publications "Your Rights and Responsibilities When You Move," and "Ready to Move?—Tips for a Successful Interstate Move." This change would harmonize this requirement with other requirements in part 375 that require HHG motor carriers to retain shipping documents for only one year. See, for example, 49 CFR 375.403(c) (binding estimates); § 375.405(d) (non-binding estimates); and § 375.501(g) (orders for service). FMCSA does not believe that any valid consumer protection purpose would be served by requiring HHG motor carriers to retain the consumer protection waiver receipt documentation two years longer than the other documentation about a shipper's move. In any event, without the other documentation related to a shipper's move, FMCSA would be limited in its ability to use the waiver for enforcement purposes.

FMCSA also amends 49 CFR 375.213(e)(3) by clarifying that a HHG motor carrier that obtains a signed waiver from a shipper is required to comply with the retention requirements in § 375.213(e)(3) only if the carrier actually provides moving services to the shipper. FMCSA estimates that shippers solicit approximately three estimates from different household goods carriers before choosing one. The Agency does

not believe there are any significant consumer protection benefits associated with requiring a HHG carrier to retain receipts for prospective shippers that ultimately do not use its services. As a result, § 375.213(e)(3) no longer requires HHG carriers to retain receipts from shippers who decide not to use that particular HHG motor carrier.

VI. Regulatory Analyses

Executive Order (E.O.) (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

FMCSA has determined that this direct final rule is not a “significant regulatory action” within the meaning of Executive Order (E.O.) 12866, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), or within the meaning of DOT regulatory policies and procedures. The estimated cost or benefit of the direct final rule is not expected to exceed the \$100 million annual threshold for economic significance; therefore, any costs or benefits associated with the rule are expected to be minimal. Moreover, the Agency does not expect the direct final rule to generate substantial Congressional or public interest. Therefore, this rule has not been formally reviewed by the Office of Management and Budget. No expenditures are required of the affected population because this rule reduces a regulatory burden

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FMCSA is not required to prepare a final regulatory flexibility analysis under 5 U.S.C. 604(a) for this final rule because the agency has not issued a notice of proposed rulemaking prior to this action.

Unfunded Mandates Reform Act

FMCSA is not required to prepare an assessment under the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531, et seq., evaluating a discretionary regulatory action because the Agency has not issued an NPRM prior to this action.

E.O. 13132 (Federalism)

A rule has implications for Federalism under Section 1(a) of E.O. 13132 if it has “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” FMCSA has determined that this rule would not have substantial direct effects on States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), a Federal agency must obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations.

The FMCSA seeks approval of the collection of information requirements in this direct final rule to generate, maintain, retain, disclose, and provide information to, or for, the agency under 49 CFR part 375. The information collected will assist individual household goods shippers in their commercial dealings with interstate household goods carriers, thereby providing a desirable consumer protection service. The collection of information would be used by prospective household goods shippers to make informed decisions about contracts and services to be ordered, executed, and settled within the interstate household goods carrier industry.

FMCSA estimates there are approximately 6,000 active household goods carriers.¹ This direct final rule reducing the record retention time from 3 years to one year results in a smaller burden on the HHG motor carrier industry. However, necessary adjustments were made to baseline annual burden and cost estimates because the Agency previously failed to account for the paperwork burden/reduction the November 29, 2010, final rule “Brokers of Household Goods Transportation by Motor Vehicle” (73 FR 72987) would have on household goods carriers who provide consumers electronic access to the mandated consumer protection information. FMCSA has calculated a program adjustment decrease of 31,900 estimated annual burden hours [5,524,500 proposed estimated annual burden hours – 5,556,400 currently-approved estimated annual burden hours = (31,900)] and a decrease of \$5,328,000 in estimated annual costs to respondents [\$4,516,000 proposed annual cost to respondents - \$9,844,000 currently-approved annual cost to respondents = -\$5,328,000].²

The Agency has updated its baseline for burden estimates and costs to respondents in regard to consumers (shippers) requesting either printed or electronic copies of Federal consumer protection information, specifically, Department of Transportation publications FMCSA–ESA–03–005 entitled “Ready to Move?” and FMCSA-ESA-03-006 “Your Rights and Responsibilities When You Move.” The Agency estimates that forty percent of consumers will request printed copies and the remaining sixty percent will request electronic copies. HHG motor carriers may provide a hyperlink directed to each of these documents from their websites, but are required to obtain a receipt that indicates verification of the shipper's agreement to access the Federal

¹ Three year average for 2008 – 2010. See <http://www.fmcsa.dot.gov/documents/facts-research/CMV-Facts.pdf>.

² See http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201007-2126-002.

consumer protection information on the Internet. Although an increase in burden hours is associated with carriers providing hyperlinks, obtaining, and retaining receipts from shippers who elect to access these publications electronically, there is a substantial reduction in material costs from producing and storing documents. In addition to these adjustments, the Agency identified and corrected a calculation error regarding annual burden hours in the currently approved Information Collection Request (ICR).

Table 1 summarizes the revision to annual burden estimates for IC1: “Required Information for Prospective Individual Shippers” based on Agency errors found in the calculations done in 2010. A detailed analysis of the burden hours can be found in the Paperwork Reduction Act supporting statement that corresponds with this direct final rule. The supporting statement and its attachments are in the docket associated with this direct final rule (Docket No. FMCSA–2011–0313).

Table 1: Summary of Revisions to Annual Hourly Burden Estimates Due to Agency Errors

Collection		Old Burden	Revision Due to Error	Revision Due to Agency Error (Old - Error)
IC1	"Ready to Move?"	3,000	0	3,000
	"Rights & Responsibilities"	68,000	-34,000	34,000
	Complaint & Inquiry Program Summary	1,000	-500	500
	Arbitration Procedure Summary	1,000	-500	500
	Create Summaries	2,400	0	2,400
	Website Hyperlink	0	0	0
	Signed Receipts		0	0
	Total for IC1	75,400	-35,000	40,400

Table 2 below summarizes the revisions to annual burden estimates based on the Household Goods Broker final rule of November 29, 2010. The direct final rule to reduce the record retention period for receipts from three years to one year does not affect the annual burden hour estimates, only the capital costs shown in Table 3.

Table 2: Summary of Revisions to Annual Hourly Burden Estimates Based on HHG Broker Final Rule of November 29, 2010

Collection		Revision Due to Agency Error	Revision Due to HHG Broker Final Rule	Total After HHG Broker Final Rule (Error – HHG Broker final rule)
IC1	"Ready to Move?"	3,000	-1,500	1,500
	"Rights & Responsibilities"	34,000	-20,400	13,600
	Complaint & Inquiry Program Summary	500	0	500
	Arbitration Procedure Summary	500	0	500
	Create Summaries	2,400	0	2,400
	Website Hyperlink	0	1,000	1,000
	Signed Receipts	0	24,000	24,000
	Total for IC1	40,400	3,100	43,500

Table 3 summarizes the revision to annual costs to respondents. Revisions are due to consumer requests for electronic pamphlets instead of printed ones. A detailed analysis of annual costs can be found in the Paperwork Reduction Act supporting statement that corresponds with this direct final rule. The supporting statement and its attachments are in the docket associated with this direct final rule (Docket No. FMCSA–2011–0313).

Table 3: Summary of Revisions of Estimates of Annual Costs to Respondents

Collection		New Cost	Old Cost	Total Cost Reduction (New – Old)
IC1	"Ready to Move?"	\$288,000	\$720,000	-\$432,000
	"Rights & Responsibilities"	\$3,264,000	\$8,160,000	-\$4,896,000
	Complaint & Inquiry Program Summary	\$120,000	\$120,000	0
	Arbitration Procedure Summary	\$120,000	\$120,000	0
	Total Capital Costs for IC1	\$3,792,000	\$9,120,000	-\$5,328,000

We particularly request your comments on whether the collection of information is necessary for the FMCSA to meet the goal of 49 CFR part 375 to protect consumers, including: (1) Whether the information is useful to this goal; (2) the accuracy of the estimate of the burden of the information collection; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. You may submit comments on the information collection burden addressed by this direct final rule to the Office of Management and Budget (OMB). The OMB must receive your comments by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. You must mail or hand deliver your comments to: Attention: Desk Officer for the Department of Transportation, Docket Library, Office of Information and

Regulatory Affairs, Office of Management and Budget, Room 10102, 725 17th Street, NW., Washington, DC 20503. Please also provide a copy of your comments on the information collection burden addressed by this direct final rule to docket FMCSA-2011-0313 in www.regulations.gov by one of the four ways shown above under the ADDRESSES heading.

National Environmental Policy Act and Clean Air Act

FMCSA analyzed this rule in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). The Agency has determined under its environmental procedures Order 5610.1, published March 1, 2004 in the Federal Register (69 FR 9680), that this action is categorically excluded (CE) from further environmental documentation under Appendix 2, Paragraph 6(q) of the Order (69 FR 9703). This CE relates to regulations implementing record preservation procedures for household goods freight forwarders, brokers, and motor carriers, including record types and retention periods. In addition, the Agency believes this rule includes no extraordinary circumstances that will have any effect on the quality of the environment. Thus, the action does not require an environmental assessment or an environmental impact statement.

FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

E.O. 13211 (Energy Effects)

FMCSA has analyzed this direct final rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under E.O. 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, no Statement of Energy Effects is required.

E.O. 13045 (Protection of Children)

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies issuing "economically significant" rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. As discussed previously, this direct final rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, FMCSA does not anticipate that this regulatory action could in any respect present an environmental or safety risk that could disproportionately affect children.

E. O. 12988 (Civil Justice Reform)

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of E. O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

E. O. 12630 (Taking of Private Property)

FMCSA reviewed this final rule in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not affect a taking of private property or otherwise have taking implications.

Privacy Impact Assessment

FMCSA conducted a privacy impact assessment of this rule as required by section 522(a)(5) of the FY 2005 Omnibus Appropriations Act, Pub. L. 108-447, 118 Stat. 3268 (Dec. 8, 2004) [set out as a note to 5 U.S.C. 552a]. Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108-447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note) requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This rule does not require the collection of any personally identifiable information.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency which receives records contained in a system of records from a Federal agency for use in a matching program. FMCSA has determined this rule will not result in a new or revised Privacy Act System of Records for FMCSA.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

List of Subjects in 49 CFR Part 375

Advertising, Arbitration, Consumer protection, Freight, Highways and roads, Insurance, Motor carriers, Moving of household goods, Reporting and recordkeeping requirements.

VII. THE FINAL RULE

For the reasons stated in the preamble, FMCSA amends 49 CFR part 375 in title 49, Code of Federal Regulations, chapter III, subchapter B, as follows:

PART 375—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE COMMERCE; CONSUMER PROTECTION REGULATIONS

1. The authority citation for part 375 continues to read as follows:

Authority: 49 U.S.C. 13102, 13301, 13501, 13704, 13707, 13902, 14104, 14706, 14708; subtitle B, title IV of Pub. L. 109–59; and 49 CFR 1.73.

2. Revise § 375.213, paragraph (e)(3), to read as follows:

§ 375.213 What information must I provide to a prospective individual shipper?

* * * * *

(e) * * *

(3) You must maintain the signed receipt required by paragraph (e)(2) of this section for one year from the date the individual shipper signs the receipt. You are not required to maintain the signed receipt when you do not actually transport household goods or perform related services for the individual shipper who signed the receipt.

Issued on: July 6, 2012

Anne S. Ferro
Administrator

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