



## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2019-0074]

#### Request for Information Concerning Preservation of Records

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice; request for information.

**SUMMARY:** FMCSA requests information to assist FMCSA in reviewing records retention requirements in Part 379 of the Federal Motor Carrier Safety Regulations (FMCSRs).

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by Docket Number FMCSA-2019-0074 using any of the following methods:

- Federal eRulemaking Portal: Go to <https://www.regulations.gov/docket/FMCSA-2019-0074/document>. Follow the online instructions for submitting comments.
- Mail: Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: Dockets Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: (202) 493-2251.

- Submissions Containing Confidential Business Information (CBI): Mr. Brian Dahlin, Chief, Regulatory Evaluation Division, 1200 New Jersey Avenue, SE, Washington, DC 20590.

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

**FOR FURTHER INFORMATION CONTACT:** Ms. Pearlie Robinson, Driver and Carrier Operations, Office of Carrier, Driver, and Vehicle Safety Standards, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001, (202) 366-4225, [MCPSD@dot.gov](mailto:MCPSD@dot.gov). If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

**SUPPLEMENTARY INFORMATION:**

**A. Submitting Comments**

If you submit a comment, please include the docket number for this Request for Information (RFI) (FMCSA-2019-0074), indicate the specific section of this document to which your 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. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <https://www.regulations.gov/docket/FMCSA-2019-0074/document>, click on this RFI, click “Comment,” and type your comment into the text box on the following screen.

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 comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

### **Confidential Business Information (CBI)**

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the RFI contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to the RFI, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as “PROPIN” to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of the RFI. Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Analysis Division, Office of Policy, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington DC 20590-0001. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this rulemaking.

### **B. Viewing Comments and Documents**

To view comments, as well as any documents mentioned in this RFI as being available in the docket, go to <https://www.regulations.gov/docket/FMCSA-2019-0074/document> and choose the document to review. To view comments, click this RFI, and click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure

someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

### **C. Privacy Act**

DOT posts comments received without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.transportation.gov/privacy](http://www.transportation.gov/privacy).

### **I. BACKGROUND**

The Secretary of Transportation has discretionary authority to prescribe the records required to be prepared or compiled by certain for-hire motor carriers and brokers subject to the commercial regulations implementing Title 49 U.S.C., subtitle IV, part B, including records related to movement of traffic and receipts and expenditures of money. 49 U.S.C. 14122(a). The Secretary may prescribe the time period during which operating, accounting, and financial records must be preserved by for-hire motor carriers and brokers subject to the reporting requirements. 49 U.S.C. 14122(c). In addition, some for-hire motor carriers (transporting either passengers or property) are required to submit annual financial reports under 49 U.S.C. 14123.

FMCSA's regulations include record retention requirements in several places. Appendix A to part 379 provides a generalized listing of retention times for records required to be prepared or compiled by certain for-hire motor carriers and brokers subject to the commercial regulations implementing Title 49 U.S.C., subtitle IV, part B. Parts 369 and 379 of the FMCSRs contain the regulations relating to annual reporting and preservation of records. Other parts of the FMCSRs contain specific record retention requirements for records pertinent to that part.

FMCSA's predecessor agency, the Interstate Commerce Commission, published a final rule on March 18, 1985, (50 FR 10774) which created "Note A" to be applied to

certain records listed in Appendix A. The note is codified at the end of Appendix A to part 379 and is listed as the applicable “Retention Period” for several items and categories of records on the table in Appendix A. Note A indicates that the records so referenced shall be maintained as determined by the designated records supervisory official for the company. It further states that companies should be aware of other regulatory agencies’ record retention requirements and exercise reasonable care in choosing retention periods which reflect past experiences, company needs, pending litigation, and regulatory requirements.

Only a few of the FMCSRs refer to the record-keeping requirements in 49 CFR part 379 as the basis for retention requirements. FMCSA requests comments providing information on the necessity and appropriateness of these references and links described below:

1. Title 49 CFR part 369 contains regulations governing the reporting requirements for motor carriers under the authority of 49 U.S.C. 14123(a). Those reporting requirements are now very minimal. Only large for-hire motor carriers of property and large for-hire motor carriers of passengers are subject to the annual report provisions. See 49 CFR 369.1-369.4. The records necessary to support these reporting requirements are specified in 49 CFR 369.5: “Books, records and carrier operating documents shall be retained as prescribed in 49 CFR part 379, Preservation of Records.”

2. Regulations found in 49 CFR part 373 govern the issuance of bills of lading and freight or expense bills by for-hire motor carriers to shipper and receivers. With some exceptions, for-hire carriers are required to issue bills of lading with certain specified information, such as receipts for property being transported as required by the Carmack Amendment, 49 U.S.C. 14706. 49 CFR 373.101. A record of the information on the bill of lading is required to be kept in accordance with part 379. Property carriers are also required to issue freight or expense bills with specified information, and to retain

copies of such documents in accordance with part 379, 49 CFR 373.103(a). For-hire motor carriers of property may enter into written agreements with shippers to waive any of these requirements, 49 U.S.C. 14101(b)(1).

Part 373 also includes requirements applicable to for-hire passenger carriers to issue an expense bill for charter service, and to retain copies of such documents in accordance with part 379, 49 CFR 373.103(b).

## **II. REQUEST FOR PUBLIC COMMENTS**

FMCSA requests comments on recordkeeping activities associated with Appendix A to part 379 and responses to the questions below.

### **General Question: Records Retention**

1. If other Federal or State entities have record retention requirements for similar or the same records, what type of records are they, how long are you required to retain them, and which Federal or State entities require them?

You may find it useful, when answering this question, to submit your responses in a table format. If you wish to do so, go to the docket FMCSA-2019-0074 at [Regulations.gov](https://www.regulations.gov) and fill out and submit the table as part of your comment to this RFI. This table may be found in the supporting materials for the docket and includes current FMCSA existing recordkeeping requirements in Part 379 and those under consideration. Information can be added to each requirement concerning whether other agencies collect this information from you and for how long they request retention.

### **Retention Times**

2. How long do you hold each of the records listed in Appendix A that are subject to Note A now?

3. Do you hold them that long ONLY because of the requirement in Appendix A?

If yes, how long would you hold them in the ordinary course of business regardless of the Appendix A requirement?

**Numbers and Costs of Records Retention**

4. For each category of records maintained for FMCSA, how many records do you maintain, e.g., how many physical pages/volumes of electronic information do you retain? How many and which categories of records are also subject to the requirements of another regulatory entity?

5. Can you provide an estimate for how much it costs to store each category of records per year? Does this cost reflect retaining paper records, electronic records, or both?

**Note A.**

6. Should any of the items listed in Appendix A that do not refer to Note A be modified to adopt Note A?

7. As Note A does not provide a specific retention period, should those items remain in Appendix A or be removed?

8. Is it helpful to retain Note A? Why or why not?

Issued under authority delegated in 49 CFR 1.87.

**Meera Joshi,**

*Deputy Administrator.*

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