

Document Retention for Motor Carriers and Transportation Brokers

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Transportation services providers are increasingly facing new technology-oriented threats in day-to-day business.

Recent cyberattacks and the potential for severe disruption from threat actors have drawn the attention of the Transportation Security Administration (TSA) and the Cybersecurity and Infrastructure Security Agency (CISA) in recent rulemakings and informal guidance. Data privacy, information security and cybersecurity are top of mind for Chief Technology and Information Officers.

Technology drives safety, operational performance and customer experience across the industry. This raises strategic risk management decision points beyond merely having a Document Retention Policy and following it closely. Savvy enterprises will focus on broader impacts, including regulatory compliance and legal exposure based upon records held or destroyed in the event of litigation, as well as the security awareness and assessed risks essential to information technology best practices. At the core of this exercise is a key question: What information do we hold, what do we need to have, how long should we keep it and when should it be destroyed?

The "Schedule of Records and Periods of Retention" in Appendix A of 49 CFR Part 379 often serves as the foundation for a transportation provider's Document Retention Policy, upon which all other compliance, information technology and security items may be added as appropriate. At a very high level, this "Schedule" includes the following categories and minimum preservation requirements:

1. **Corporate and General Records** - Transportation operating authorities must be held until expiration or cancellation. Annual reports and service contracts must be held for three years, except transportation service agreements, which will be held until expiration. Real estate-related documents must be held until the property disposition. Most other corporate records, such as documents of formation and minutes, may be held for as long as necessary under broader best practices, such as may be required by other federal or state agencies.
Treasury Records - Stock records and other securities, as well as their ledgers may be generally held for as long as necessary, like general corporate records. This rule has some exceptions, including long-term debt records, which must be held until redemption plus three years.
Financial and Accounting Records

- General ledgers, balance sheets, cash books, vouchers, accounts receivable and records of accounting codes or instruction must generally be held until discontinuing use plus three years. Lesser documents, such as authorizations to write off receivables or aging reports, may be held for only one year.

Property and Equipment Records - Property records that address valuation, improvements and depreciation must generally be held for three years after the property's disposition.

Personnel and Payroll Records - Personnel and payroll records must be kept for one year.

Insurance and Claims Records - Insurance records that include policies, their schedules and records of losses or claims must be held until expiration and for one year afterward. An exception to this general rule is for documents related to specific transportation-related claims, such as details of authorities issued to others for participation in claims, reports of personal injury or property damage not necessary to support a claim, or authorities for disposal of unclaimed, damaged and refused freight. Those items must be held for three years.

Tax Records - Tax records are scheduled but not with specific preservation periods. They must be held for as long as necessary under broader best practices, including as may be required by the Internal Revenue Service (IRS).

Purchases and Stores Records - Most day-to-day shipping documents, including bills of lading, shipper's instructions, waybills, freight bills, agency records and other core transportation documents, must generally be held for one year.

Certain Other Transportation Records - Specialized transportation services or unique circumstances must observe specific other requirements in addition to the general rule of one year. For example, any import and export records, including those for bonded freight, must be held for at least two years. Records of diversion or reconsignment must also be held for two years. Weight tickets, their records and reports must be held for three years.

Supporting Data for Reports and Statistics - Basic supporting data for periodic reporting of accidents, inspections, tests, hours of service and repairs must be maintained for six months. All other statistical reporting data used by the FMCSA, the STB and the BTS must be held for three years. Those items include financial, operational and statistical items reported to those agencies in the ordinary course of business.

Other Miscellaneous Records - Finally, companies are expected to produce an index of all records (such as a Document Retention Policy) maintained until it is updated with a new structure. Any records prematurely destroyed or lost should also be identified and that record is to be kept for the same period as required that would otherwise apply.

The key to managing a company's information and data is to plot a clear path forward and, fortunately for our industry, that road map exists - but the inquiry does not end there. These basic rules get a little more complex when you closely read Appendix A or recognize the other

recordkeeping requirements in Title 49 of the regulations. Additional targeted recordkeeping requirements also exist for specific functions and services of motor carriers.

For example, 49 CFR Section 395.11 contains a list of specific "supporting documents" that a motor carrier must retain on a 24-hour basis to verify a driver's on-duty, not driving time. Similarly, drug and alcohol records must be maintained under 49 CFR Section 40.333 for periods ranging from one to five years, depending on the record, although electronic record storage is expressly permitted. Probably the most well-known example of another requirement outside Appendix A is the broker-specific requirements at 49 CFR Section 371.3, which set out a three-year preservation rule.

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