

§ 142.312 What EPA action is necessary when a State proposes to grant a small system variance to a public water system serving a population of more than 3,300 and fewer than 10,000 persons?

(a) At the time a State proposes to grant a small system variance to a public water system serving a population of more than 3,300 and fewer than 10,000 persons, the State must submit the proposed small system variance and all supporting information, including public comments received prior to proposal, to the Administrator.

(b) The Administrator must approve or disapprove the small system variance within 90 days of receipt of the proposed small system variance and supporting information. The Administrator must approve the small system variance if it meets each requirement within the Act and this subpart.

(c) If the Administrator disapproves the small system variance, the Administrator must notify the State in writing of the reasons for disapproval and the small system variance does not become effective. The State may resubmit the small system variance for review and approval with modifications to address the objections stated by the Administrator.

§ 142.313 How will the Administrator review a State's program under this subpart?

(a) The Administrator must periodically review each State program under this subpart to determine whether small system variances granted by the State comply with the requirements of the Act, this subpart and the affordability criteria developed by the State.

(b) If the Administrator determines that small system variances granted by a State are not in compliance with the requirements of the Act, this subpart or the affordability criteria developed by the State, the Administrator shall notify the State in writing of the deficiencies and make public the determinations.

(c) The Administrator's review will be based in part on quarterly reports prepared by the States pursuant to § 142.15(a)(1) relating to violations of increments of progress or other violated terms or conditions of small system variances.

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 390 and 395

[Docket No. FHWA-98-3706]

RIN 2125-AD52

Hours of Service of Drivers; Supporting Documents

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA proposes to amend the hours-of-service (HOS) recordkeeping requirements of its regulations. The Hazardous Materials Transportation Authorization Act of 1994 mandated that amendments be made to these regulations. The FHWA, with this NPRM, proposes a supporting document auditing system that all motor carriers would use to support the accuracy of the drivers' Records of Duty Status (RODS) and Hours of Service (HOS). Additionally, this NPRM would specify that failure to have such a system would require the motor carrier to maintain various types of business documents and all drivers employed by that motor carrier to collect and submit such documents in order to support the accuracy of the drivers' RODS. The proposed auditing systems and document retention proposal would enable the motor carriers, Federal, State, and local enforcement officials to compare business documents with drivers' records of duty status to monitor drivers' compliance with the HOS and RODS requirements. This proposed rule would require drivers and motor carriers to make use of documents generated or received in the normal course of business to verify the accuracy of a driver's record of duty status. The use of electronic recordkeeping methods is proposed as a preferred alternative to paper supporting document records.

DATES: Comments should be received by June 19, 1998.

ADDRESSES: Signed, written comments should refer to the docket number appearing at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

For Internet users, all comments received will be available for examination at the universal resource locator—<http://dms.dot.gov>—24 hours each day, 365 days each year. Please follow the instructions on-line for more information and help.

FOR FURTHER INFORMATION CONTACT: For information regarding program issues: Mr. David Miller, Office of Motor Carrier Research and Standards, (202) 366-4009, or for information regarding legal issues: Mr. Joseph Solomey, Office of the Chief Counsel, (202) 366-0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

The Difference Between This RIN 2125-AD52 and RIN 2125-AD93

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. This NPRM is the first document being published for RIN 2125-AD52. Use this RIN when cross referencing this action with the Unified Agenda.

This document is not an NPRM for RIN 2125-AD93, Hours of Service of Drivers. The FHWA published an ANPRM on November 5, 1996 for RIN 2125-AD93 (61 FR 57251). The FHWA is analyzing the comments for RIN 2125-AD93 and will publish an NPRM in the future based upon those comments and the accompanying scientific data.

The FHWA will likely incorporate this NPRM, or any final rule resulting from this NPRM, into the upcoming NPRM for RIN 2125-AD93. Please limit your analysis, though, and any comments you may have, to how this NPRM would affect the current 49 CFR part 395. Please do not comment on how these changes might affect RIN 2125-AD93 and the ICC Termination Act of 1995. You will be given an additional opportunity to comment at the time the FHWA publishes the NPRM for RIN 2125-AD93.

Electronic Availability

An electronic copy of this document may be downloaded using a computer, modem, and suitable communications software from the Government Printing Office (GPO) electronic bulletin board service (telephone: 202-512-1661). Internet users may reach the GPO's web page at: http://www.access.gpo.gov/su_docs/aces/aces002.html

Background of Daily Logs (RODS) and the Verification of RODS

The HOS rules were first issued in the late 1930's (Ex Parte No. MC-2, 3 M.C.C. 665). Since that time, drivers have had the responsibility to prepare a RODS. The original pocket rulebook from 1939 states that carriers and drivers would be liable for the accuracy of entries made by drivers on the RODS. The Interstate Commerce Commission explained the original purposes of the RODS as follows:

[to provide] a standardized type of record to be maintained of the daily driving time and the weekly hours on duty which would be in the possession of each driver and which would enable a highway patrolman or other enforcement officer to determine immediately upon the stopping of the vehicle whether the driver had been on duty or was driving in violation of our regulations. * * * [and] to provide a record from which our field representatives could readily determine whether or not the carriers are complying with the regulations. 24 M.C.C. 413

In order to determine whether carriers are complying with the HOS regulations, the FHWA is authorized, by statute, to inspect and copy any record, and to inspect any property, or equipment of a carrier, lessor, association, or other person subject to the provisions of 49 U.S.C. 31502, as long as these actions were made in furtherance of an investigation and regardless of whether or not the records were required to be maintained by the FHWA regulations or orders. See 49 U.S.C. 501(b).

A third purpose of the RODS is that they enable motor carriers, at the time of dispatch, to ensure their drivers have sufficient time to safely complete trips within the HOS regulations. The FHWA believes many motor carriers began to realize this purpose in the early years of the regulation.

Over the last 60 years, many motor carriers have regularly audited or inspected drivers' RODS for accuracy to ensure their drivers are complying with the HOS regulations. This enables the motor carriers to verify, through their own self-monitoring system, that drivers are accurately reporting their HOS. It also allows drivers to calculate their available hours prior to being dispatched. This provides the motor carrier with a valuable management tool to efficiently dispatch trips within the HOS limitations.

In general, motor carriers use many different types of business records to document various business transactions: Accident and incident reports are used, for instance, to support claims to insurers and defend against lawsuits; bills of lading are written transportation

contracts between shippers and carriers that identify the freight, who is to receive it, the place of delivery, and the terms of the agreement; and border crossing reports are used to establish time and mileage in a foreign country. Carrier pros (waybills) are descriptions of the goods sent with a carrier freight shipment. Cash advance receipts are used to document cash advances to drivers. Credit and debit card receipts and statements are used to reconcile credit and debit account balances. Customs declarations are used to document the type and quantity of freight which crossed a border point. Delivery receipts are used to document the act of transferring possession of a shipment, usually between a carrier and a consignee, but also between a consignor and a carrier, and one carrier to another carrier who receives the freight. Dispatch and assignment records are used to schedule and control pickup and delivery of freight, especially in the scheduling and control of intercity traffic and intracity pickup and delivery. Driver reports (facsimile or call-in logs) are used to track a driver's progress. Expense vouchers are used to account for all expenses. Freight bills are used to describe the freight, its weight, amount of charges, taxes, and whether collect or prepaid charges. Fuel billing statements are used to reconcile the quantity of fuel consumed and the cost of the fuel for internal expense reports. Fuel receipts are used in conjunction with fuel billing statements to reconcile the quantity of fuel consumed and the cost of the fuel for internal expense reports. Gate receipts are used to control access to terminals and to determine when access and departure from the terminal were accomplished. Global positioning and cellular systems provide two-way communications technology between the driver and the carrier. The global positioning systems also provide a means by which motor carrier management may determine the CMVs operational efficiency. Such operating parameters including engine speed, engine oil pressure, and cargo space temperature may be provided by such systems. Data provided by the global and cellular systems help management estimate a driver's time of arrival at the next destination and the condition of the CMV and its contents much faster than land-based, wire telephone communications. Inspection reports are used to determine whether the motor carrier needs to improve monitoring of its vehicles or drivers. Invoices are used to notify payees of the charges to be paid for transportation services.

Interchange reports are used to determine when and where freight was transferred from one transportation carrier to another carrier. International Registration Program (IRP) receipts are used to determine the registration for the specified vehicles. International Fuel Tax Agreement (IFTA) receipts are used to determine the payment of fuel tax charges. Lessor settlement sheets are used to determine the terms of a lease and when a lease has been settled. Lodging receipts are used to determine driver expenses. Lumper receipts are used to determine driver expenses for the temporary labor at a consignor or consignee. On-board computer reports are used to determine the proper operation of CMVs, including the efficiency of the engine, transmission, and accessories hooked up to the computer. Over/short and damage reports are used to make claims for cargo liability claims and to account to shippers for the freight that has been damaged or freight that was over counted or under counted. Overweight/oversize reports and citations are used to determine driver expenses for State size and weight violations. Port of entry receipts are used to determine when freight was delivered to or received from a port of entry. Telephone billing statements are used to determine driver expenses and to reconcile driver and global positioning system reports. Toll receipts are used to determine driver expenses. Traffic citations are used to determine driver expenses for motor carriers that reimburse drivers for such violations. Reports of CMVs with transponders participating in automated toll or clearance programs are used to reconcile proper payment and clearance. Trip permits are used to show that a CMV is properly authorized by a jurisdiction to operate in that jurisdiction under the conditions specified in the permit. Trip reports are used to track driver and CMV actions and weight/scale tickets are used to determine the net weight of shipments to accurately charge shippers for transportation services.

These records, among others, are generated by motor carriers for their own business purposes, or they are received from third parties, such as consignors, consignees, and vendors for other motor carrier purposes. Motor carriers have been using these records not only to document various business transactions, but also to verify the accuracy of their driver's RODS. Many motor carriers regularly maintain self-monitoring records for their own internal management purposes. This practice, over the years, has become a

standard motor carrier practice among well run, successful, and safe motor carriers.

The FHWA has learned from safe motor carriers that in order for the carriers to ensure that drivers are alert and not fatigued, motor carriers must maintain self-monitoring systems comparing RODS to supporting business documents. The FHWA decided to adopt this practice of maintaining "RODS supporting documents" as a part of its regulatory oversight to assist motor carriers in operating safely. The FHWA published a final rule on November 26, 1982 (47 FR 53383) which, in part, requires motor carriers operating in interstate commerce to retain supporting documents, along with drivers' records of duty status, for at least six months from the date of receipt (49 CFR 395.8(k)). The FHWA did not define the term "supporting document" in that final rule.

The FHWA intended that the term "supporting document" refer to those specific documents, and only those specific documents, that a motor carrier used in its internally-developed system or program to verify the accuracy of the driver's duty activities. It was not meant to encompass all records, but only those that were, indeed, used by the motor carrier, to verify the dates, times, and locations the driver recorded. The FHWA received requests in the 1980's and early 1990's for an interpretation of the term "supporting document."

The FHWA published regulatory guidance in the **Federal Register** on November 17, 1993 (58 FR 60734, 60761), which provided examples of the types of supporting documents that should be retained. The regulatory guidance stated that supporting documents are the records of the motor carrier maintained in the ordinary course of business that are used, or could be used, by the motor carrier to verify the information recorded on a driver's record of duty status. An extensive, but not a complete, list of the various types of records considered to be examples of supporting documents was provided in this guidance.

On August 26, 1994, the Hazardous Materials Transportation Authorization Act of 1994, Pub. L. 103-311, 108 Stat. 1673 (August 26, 1994) (hereinafter the Act) was enacted. Under section 113 of the Act, the Secretary of Transportation is required to prescribe regulations amending 49 CFR Part 395 to improve both (A) compliance by commercial motor vehicle (CMV) drivers and motor carriers with the HOS requirements, and (B) the effectiveness and efficiency of Federal and State enforcement officers reviewing such compliance.

The Act directed that the regulations include the following items:

(1) A description of identification items (which include either driver name or vehicle number) that shall be part of a written or electronic document to enable such written or electronic documents to be used by a motor carrier or by an enforcement officer as a supporting document to verify the accuracy of a driver's record of duty status;

(2) A provision specifying the number, type, and frequency of supporting documents that must be retained by a motor carrier so as to allow verification of the accuracy of the RODS at a reasonable cost, to the driver and the motor carrier, of record acquisition and retention;

(3) A provision specifying the period during which supporting documents shall be retained by the motor carrier. The period shall be at least six months from the date of a document's receipt;

(4) A provision to authorize, on a case-by-case basis, motor carrier self-compliance systems that ensure driver compliance with hours of service requirements and allow Federal and State enforcement officials the opportunity to conduct independent audits of such systems to validate compliance with section 395.8(k) of title 49, Code of Federal Regulations (or successor regulations thereto). Such authorization may also be provided by the Secretary to a group of motor carriers that meet specific conditions that may be established by regulation by the Secretary and that are subject to audit by Federal and State enforcement officials; and

(5) A provision to allow a waiver, on a case-by-case basis, of certain requirements of section 395.8(k) of title 49, Code of Federal Regulations (or successor regulations thereto), when sufficient supporting documentation is provided directly and at a satisfactory frequency to enforcement personnel by an intelligent vehicle-highway system (now referred to as an "Intelligent Transportation System" (ITS)), as defined by section 6059 of the Intelligent Vehicle-Highway Systems Act of 1991 (23 U.S.C. 307 note). Such waiver may also be allowed for a group of motor carriers that meet specific conditions that may be established by regulation.

For purposes of the Act, the term "supporting document" was defined to mean "any document that is generated or received by a motor carrier or commercial motor vehicle driver in the normal course of business that could be used, as produced or with additional identifying information, to verify the

accuracy of a driver's record of duty status."

Proposal

To satisfy the legislative mandate, the FHWA is proposing to amend part 395 to include in § 395.2 a definition for the term "supporting document" and to add a section entitled *§ 395.10 Verification and Record Retention*.

Definition of Supporting Documents

The FHWA is proposing to use the statutory definition of supporting documents as provided by Congress in the Act, with the addition of clarifying language and a list of examples. The proposed list is only a sampling of the types of documents that the FHWA believes could support the HOS and the accuracy of RODS. The FHWA is particularly interested in receiving comments on this approach to implementation of the Act.

Motor Carrier Self-Compliance Systems

Under section 113 of the Act, the FHWA is required to authorize, on a case-by-case basis, motor carrier self-compliance systems that ensure driver compliance with FHWA HOS requirements and afford Federal and State enforcement officers the opportunity to conduct independent investigations of such systems to assess compliance with 49 CFR 395.3 and 395.8.

The FHWA has considered this requirement and believes that most motor carriers and drivers are meeting their responsibility to conduct safe operations by complying with the HOS regulations. The FHWA further believes that responsible motor carriers have already developed self-compliance or self-monitoring systems and have these systems in place. The FHWA does not believe it should impose additional stringent record-collection and maintenance requirements on motor carriers and drivers, when most motor carriers already have such systems and are successfully monitoring and enforcing the regulations.

The FHWA believes it should continue to allow each motor carrier to maintain such a system. The FHWA, though, believes each carrier should presently be able to describe and validate to the FHWA that they have an effective system in place using supporting documents to audit their drivers' HOS and RODS in an accurate and timely fashion.

In addition, the FHWA seeks comments on these additional issues:

Question (1) What types of self-monitoring systems should be

considered in addition to the type proposed in this document?

Question (2) Whether and what conditions should be imposed upon motor carriers (such as accident or out of service prevention performance history) before the FHWA would authorize a different self-monitoring system as an alternative to compliance with this proposed rule?

Question (3) Whether motor carriers seeking additional authorization should have some established safety record with the FHWA or other State or local enforcement agencies?

Question (4) What must happen before the FHWA should disallow the use of a self-monitoring system or an alternative system?

Ability to Transfer Paper Supporting Documents That Contain A Signature to Automated, Electronic, or Laser Technology Formats

The FHWA believes that an alternative self-monitoring system would have to provide the same capacity for verification that would be produced by the collection and retention of all supporting documents in their original form. The FHWA proposes to allow motor carriers to transfer supporting documents to electronic or laser technology systems. Section 390.31(d), 49 CFR, now allows all records to be maintained in computer technology format, except those documents containing signatures.

Under this proposal, all supporting documents, including those requiring a signature, would be eligible for retention in electronic, laser or other automated format, if the motor carrier can produce and verify, upon demand, hard copies of the required data. The FHWA is proposing a conforming amendment to § 390.31(d). Automated, electronic, or laser technology systems that report directly to the driver or the motor carrier would also be acceptable. However, the FHWA is also proposing a requirement that automatic, electronic, or laser technology systems must be capable of reproducing the information stored in such systems for inspection at the motor carrier's place of business within 48 hours of a demand.

Motor Carrier's Discretion To Use Technology in Lieu of Paper Supporting Documents

The FHWA is also proposing to allow motor carriers to use electronic, laser or automated technology, (e.g., global positioning systems (GPS), automatic vehicle identifier (AVI) transponders, electronic bills of lading used by customs officials in the U.S. and other countries, and State driver-vehicle

inspection reports prepared by using pen-based computer systems) in lieu of paper supporting documents.

Other similar technologies that may now be available or developed in the future could also be acceptable in lieu of paper supporting documents.

Question (5) Are there any other advanced technology systems currently in use or under development that the motor carrier industry may use to validate HOS or support the RODS?

The FHWA would accept the data supplied by these technologies as alternatives to supporting documents, if the motor carrier can produce a printed copy of the required information at its principal place of business or other location within 48 hours after a request has been made. The FHWA would allow motor carriers to use any intelligent transportation system developed now or in the future in the manner and to the extent it is effective for HOS and RODS verification if that system complies with these general requirements.

Question (6) Should waivers be considered on a case-by-case basis for other systems that do not quite meet these requirements, but may have other compensating features that produce equivalent safety results?

Question (7) Under what circumstances should the use of such alternatives systems also operate as a substitute for the requirement to prepare and maintain RODS? Demonstration of the effective use of a system in whole or in part, for verification should obviate any necessity to further examine the information produced by the system by enforcement personnel.

Verification of Records of Duty Status Using A Self-Monitoring System

As a result of this rulemaking, motor carriers would be required to maintain a self-monitoring system capable of verifying drivers' HOS and the accuracy of the duty report categories (on duty, driving, sleeper berth, off duty, time reporting for duty each day, time released from duty each day, and the total number of hours on duty each day) recorded by drivers on their RODS for each trip. The FHWA believes that most trips produce, or could with relative ease produce, a document to verify the time and place of the driver and mileage of the vehicle at the beginning and completion of each work day. Various other supporting documents may be obtained during the trip. This rule would require the motor carrier to have a self-monitoring system to verify the accuracy of the beginning, intermediate, and ending times of each working day on each trip, as well as beginning, ending and intermediate mileage for

each trip. Absent such a system, which must be in verifiable, demonstrable form and used by the motor carrier, possession and retention of all supporting documents that could have been obtained on any given trip would be presumed and required.

Nothing in this proposal would have any effect on current exceptions for automatic on-board recording devices in accordance with § 395.15.

Section 395.10 would be added to require motor carriers to have a system in place that enables the motor carrier to effectively audit its RODS with documents that the motor carrier chooses. The FHWA believes a motor carrier could fully comply with this requirement using documents generated wholly within the motor carrier's operation, such as accurate dispatch records, bills of lading, daily call-in records, and a variety of receipts.

The motor carrier's auditing system must have a reviewable written procedure that explains in sufficient detail what documents are used by the motor carrier's clerks and management and how they serve to verify the accuracy of driver's RODS. The procedure would further be required to explain access to each type of record used and where maintained, how drivers are notified of violations found by the motor carrier, and what corrective action the motor carrier takes for violations found by the employer during its audit.

The motor carrier has the discretion to develop and use whatever system it believes would effectively enable it to ensure that all drivers accurately record their HOS on the RODS. The system must, at a minimum, verify the driver's beginning and ending times, as well as such intermediate times, as would effectively detect HOS violations and preclude opportunities for false or inaccurate reporting. It must also include a system to cross-check mileage and locations. The FHWA believes that most motor carriers already have such a system and others should be able to establish their self-monitoring system by describing it in a manual or handbook. The FHWA believes the proposed manual may be written on one page or less in length.

Paragraph (b) of this proposed rule would specify that the manual be provided to personnel responsible for verification of HOS and RODS. The manual would also be required to be made available to the FHWA and other appropriate enforcement agencies upon a request. Accessibility to the written system description (manual or handbook) by FHWA and other appropriate enforcement agencies

would normally be required during compliance reviews at the motor carrier's terminals or principal places of business where records required by part 395 are maintained. The FHWA does not intend that enforcement officers conducting roadside inspections would have access to such a manual or handbook. These officers would continue to have full access to RODS and all supporting documents on the vehicle or in a driver's possession at the time of inspection.

The FHWA would allow motor carriers to specify in their system the supporting documents, including automated, electronic, or laser systems, that would provide the best opportunities to verify the accuracy of the records of duty status. If the motor carrier chooses to require its drivers, including leased owner-operators and contractors, to submit toll, bridge, and fuel receipts as a part of its system, those drivers must do so.

During a compliance review of the HOS requirements at the motor carrier's place of business, the FHWA or authorized State inspectors would be empowered to inspect the motor carrier's self-monitoring system's manual or handbook to determine its compliance with this rule, how the motor carrier is complying with its self-enforcing record-of-duty-status system, how audit-responsible personnel obtain, audit, and store inspected supporting documents, how many violations the motor carrier has found on its own, and corrective actions the carrier has taken with its drivers to improve their compliance with the HOS requirements. The reviewer may inspect other motor carrier records not identified in the motor carrier's system, to determine whether the system is effectively verifying the accuracy of the RODS. If the reviewer discovers that the supporting documents identified by the motor carrier's system are not effective for verifying the accuracy of the RODS, the reviewer would have several options ranging from recommending the motor carrier revise its system to better verify the RODS accuracy to taking some enforcement action based upon evidence of noncompliance or deception. Subsequent investigations would determine whether the revised system is effective, again using other records not necessarily identified in the system. If continued problems or a pattern of HOS violations, falsification, or inaccurate RODS is discovered, the FHWA reserves the right to inspect and copy any other records not identified in the motor carrier's system to gauge the ineffectiveness of the system.

If the reviewer determines that the motor carrier's system is deficient (as opposed to non-existent or unenforced) because HOS or RODS violations are going undetected or uncorrected, the carrier will be put on notice of those deficiencies and directed to collect and maintain specific supporting documents necessary to prevent violations. A motor carrier would not be cited for failing to maintain specific types or numbers of supporting documents on the first review of the system. Failure to maintain the documents after the first review as directed (or as agreed) will be the basis for future enforcement action. In addition, penalties may be imposed for violations of Part 395 discovered during the compliance review.

This rule would allow the motor carrier to specify the type and number of supporting documents used in its system. If the motor carrier's self-monitoring system is effective at controlling drivers HOS and accuracy of RODS, the motor carrier would not be required to maintain other documents that could be used to support the record of duty status, but which the motor carrier does not use in its system.

For example, a motor carrier's self-monitoring system specifies five types of documents (i.e., bills of lading, delivery receipts, toll receipts, carrier pros, cellular telephone statements) which are used effectively by the motor carrier's auditing clerks to verify the accuracy of the drivers HOS and RODS. If the motor carrier also used satellite technology to track CMVs, but did not use the system to verify the drivers' HOS and RODS, the reviewer would not necessarily require or expect that motor carrier to maintain any such electronic records for the time periods specified in the rule. Conversely, if the motor carrier used advanced technology systems to verify HOS and RODS, the motor carrier would not be required to maintain the more conventional supporting documents. After encountering a system which is effective on its face, enforcement personnel need not demand access to additional records that the motor carrier is not using in the system.

Requirements for Motor Carriers Who Fail To Have a Self-Monitoring System

If it is determined that a motor carrier does not have a self-monitoring system to verify the accuracy of the drivers' RODS, the FHWA would presume that the motor carrier collects and retains all supporting documents coming into its possession directly or through its drivers or agents for all trips. The FHWA would demand access to supporting documents for the beginning

of a trip (or when the driver picks up passengers or property), and for the end of the trip (or the delivery of the same passengers or property). The FHWA would also demand access to all receipts, bills, and other documents supporting the times and locations of intermediate operations that the motor carrier knew or should have known had come into its actual or constructive possession during regulated transportation.

A motor carrier who fails to have a self-monitoring system must require the drivers to examine all documents they receive during the normal course of their duties, including, but not limited to, documents regarding the operation of CMVs for motor carriers. The drivers would have to ensure that the documents include the necessary items required by § 395.10(g). The motor carrier and drivers would both be liable for violations of this requirement. The motor carrier may also require, if it chooses, that its drivers forward all supporting documents they receive during their trips as allowed under § 395.10(d).

In § 395.10(f), motor carriers that do not have a self-monitoring system must require drivers to retain all supporting documents for the same time periods as they retain records of duty status. Records of duty status may be forwarded to the regular employing motor carrier immediately after the record of duty status is completed, or may be retained by the driver for up to 13 days after completion. Section 395.10(f) would require a driver to forward all supporting documents to the motor carrier at the same time the driver forwards the records of duty status. This requirement would ensure that drivers who work for motor carriers that do not have auditing systems would have all of the documents that support their records of duty status and would be able to make these documents available for inspection by Federal, State, or local enforcement officials on the highway. As a result, drivers would be better motivated toward HOS compliance and ensuring the accuracy of their records of duty status. This would in turn tend to improve the safety of both the driver's performance and the motor carrier's CMV operation. Therefore, this proposal, in the absence of a supporting document auditing system, should help to achieve the goal of improving the safety of CMV operations and the enforcement of the HOS regulations.

The FHWA currently does not directly require drivers, including those used for single trips or drivers used on an intermittent, casual, or occasional basis, to provide motor carriers with

supporting documents. The FHWA believes, however, that drivers have an obligation not only to comply with the HOS and RODS requirements, but also to cooperate with their motor carrier employers by collecting and submitting the supporting documents needed to verify compliance with the rules. Therefore, the FHWA is proposing to require drivers to submit supporting documents to the motor carrier at the time the corresponding record of duty status is submitted for those motor carriers that choose not to maintain a written, verifiable HOS auditing system.

With this rulemaking, the FHWA would also require motor carriers who fail to have a self-monitoring system to retain all "supporting documents" that all drivers, including owner-operators and independent contract drivers, receive during a trip, no matter how the carrier pays drivers for these trips. This requirement would be imposed on the motor carrier under whose authority the driver is performing transportation services. Documents passing through the hands of leased drivers would be, in effect, passing through the hands of the motor carrier because drivers are, in fact, the representatives of the motor carrier during the course of the transportation service provided. Thus, the FHWA does not believe that holding the motor carrier responsible for maintaining those documents would be an undue burden if the motor carrier does not otherwise provide a verification system demonstrating its safety management control.

The Senate report accompanying the Act discussed those situations where a motor carrier leases the service of drivers, such as independent contractors, owner-operators, and fleet-broker drivers employed by other motor carriers. S. Rep. No. 217, 103d Cong., 1st Sess. 1640 (1994). The report noted that documentation of a leased driver's duty status was frequently not obtained and retained by the motor carrier using the driver. This report also stated that it was the intent of the Act to ensure that supporting documents, generated by such business arrangements, be retained by the motor carriers that perform the transportation service. Additionally, it is clear that it was Congress' intent to facilitate Federal and State enforcement efforts to document violations of the HOS regulations.

The FHWA's motor carrier safety enforcement personnel have experienced difficulties in obtaining supporting documents for trip lease arrangements between motor carriers and owner-operators. Senator Exon, the legislation's sponsor, discussed the need for this provision during the floor

debate preceding final passage of the Act. He explained that "reports that auditors have been forced to retrieve documents from garbage dumpsters or play hide-and-seek with firms that have a history of habitual HOS violation give rise to the need for this provision." Further, Senator Exon stated that "the object of this provision is to help make the roads safer by giving enforcement personnel the ability to catch flagrant abusers. It is not designed to create a trap for drivers who receive, for example, a pre-stamped toll receipt or to unfairly punish drivers for a de minimis deviation from the current rules." 140 Cong. Rec. S11323 (daily ed. August 11, 1994).

The legislation sets a record retention period of at least six months. The FHWA believes that this requirement was based upon Congress' intent to have supporting documents maintained for an identical period as the time required for duty status record retention, which is six months. The FHWA is considering reducing the record of duty status retention period to four months, as the FHWA believes it is better able to investigate and sufficiently document a current pattern of HOS violations with records of more recent vintage. If the FHWA reduces the retention period for RODS to four months, the FHWA believes it would be unnecessary to require motor carriers to keep the documents that support the RODS for an additional two months. The FHWA believes that keeping a supporting record for two months beyond that which is needed by the FHWA would be contrary to the intent of the Paperwork Reduction Act of 1995. The FHWA is proposing a six-month retention period for supporting documents in this NPRM, but the FHWA would like comments on whether the FHWA should reduce the period for retaining RODS to four months. The FHWA would also like comments whether it should seek legislative authority to (1) reduce the supporting document retention period to four months or (2) eliminate the supporting document retention period mandate and allow the FHWA to set the supporting document retention period to any future RODS retention period.

The FHWA has identified a retention period for "Supporting Data for Reports and Statistics; Supporting data for periodical reports of * * * hours of service, * * *, etc." See 49 CFR 379, Appendix A, Item K.2. The FHWA has received a few telephone inquiries regarding this retention period. This retention period relates to an old FHWA monthly report acquired from the Interstate Commerce Commission (ICC) in 1966. The FHWA required the report

until December 15, 1967. The FHWA had required every motor carrier, other than a private carrier of property, to report on a Form BMC 60:

every instance during the calendar month covered thereby in which a driver employed or used by it has been required or permitted to be on duty, or to drive or operate a motor vehicle in excess of the hours * * *

Class I motor carriers of passengers and Classes I and II motor carriers of property also had to file the same Form BMC 60 report—

for every calendar month in which no driver employed or used by it has been required or permitted to be on duty, or to drive or operate a motor vehicle in excess of the hours * * * See 32 FR 7128, May 11, 1967.

The FHWA had a retention period of three years. The FHWA removed the reporting requirement on December 15, 1967 (32 FR 17941). The ICC and the Surface Transportation Board never removed the retention period from its preservation of records list. Based upon the savings clause in the ICC Termination Act of 1995, the FHWA transferred the former ICC's preservation of records lists to the FHWA regulations on June 21, 1997 (62 FR 32040). This action provided the initial appearance of a conflict between parts 379 and 395 with respect to HOS supporting data and HOS supporting documents.

The proposal in this document in no way involves "reporting" data similar to the former report Form BMC-60. This proposal only relates to motor carrier recordkeeping requirements and a motor carrier's comparison of its own records to the driver's records of duty status. The OMB's regulations in 5 CFR 1320.3(m) identifying the definitions of a "recordkeeping requirement" explain a report is different than the retention of a record, notification of the existence of records, and disclosure of records. The FHWA believes a report is a document submitted to the FHWA, as was Form BMC 60 up until December 15, 1967. Item K.2.'s reference to hours of service data, therefore, does not have any actual effect upon this proposal.

The FHWA believes it should cite RODS violations primarily when an investigator finds drivers or carriers are concealing excess hours. The FHWA does not wish to expend scarce enforcement resources on mere recordkeeping violations that may result from sloppy bookkeeping. The FHWA believes motor carriers should provide drivers adequate opportunities for sleep, personal hygiene, and family matters, and limit the driver's hours on duty to prevent CMV crashes caused by loss of alertness from working too long or not

getting enough rest. Accurate recording of hours driven, on duty, and off duty, of course, is intended to assure that drivers are afforded the rest periods they need and plays an important role in monitoring and enforcing compliance with the driving limitations.

Question (8) What impact would a six-month or longer record retention requirement have on the Federal government, State governments, and motor carriers?

Question (9) Would we enhance enforcement and prosecution efforts with the longer retention requirement (e.g., the ability to adequately enforce the rules, collect evidence for a criminal case, prepare the case, and successfully prosecute drivers or motor carriers for deliberately or recklessly violating HOS restrictions)?

Under this proposal, motor carriers could retain their time records, RODS and supporting documents at a location of their choice. However, the location would have to be suitable for preserving the records so that they would not be damaged or lost. In addition, a motor carrier must be able to produce such records at its principal place of business within 48 hours of a request by an authorized enforcement official. This request for documents could be made by telephone, fax, mail, or by other means. Saturdays, Sundays and holidays would be excluded from the computation of the 48-hour period of time. This 48-hour period would provide a reasonable amount of time for documents to be sent via overnight mail. Furthermore, most business operations with electronic transfer capabilities could probably produce information in a shorter period.

The FHWA is proposing that, in the absence of a written and operational verification system, *ALL* supporting documents be retained for the entire retention period. In this proposal, the term "all supporting documents" means all documents that are used to support the driver's RODS and time record entries for any particular trip. These documents must be connected to the driver or the vehicle used on the trip. A variety of documents may be obtained by a driver, or provided directly to a motor carrier, which could meet the requirements of this proposed rule. Some trips may result in only two or three supporting documents while others may result in many more documents. In addition, supporting documents may be required to be kept for longer periods based upon other Federal, State, or local laws, rules, or orders (e.g., Internal Revenue Service rules). The FHWA is proposing that the supporting documents must be kept for six months after receipt by the motor

carrier, unless a longer period of time is required by another authority.

The FHWA believes that all motor carriers obtain many records and documents in the normal course of business that link the records or documents to the driver or vehicle and that motor carriers have not always considered these other records or documents when asked to produce supporting documents in past compliance reviews. A motor carrier, however, would now have the duty to ensure that it has an independent means of verifying the driver's HOS and the accuracy of the driver's RODS for trips made on behalf of the motor carrier, including those trips made using leased drivers and/or vehicles.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date shown above will be considered and will be available for examination in the FHWA Docket at the above address. Comments received after the comment closing date will be filed in the FHWA Docket identified above and will be considered to the extent practicable, but the FHWA may issue a final rule anytime after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

For Internet users, all comments received will be available for examination at the universal resource locator—<http://dms.dot.gov>—24 hours each day, 365 days each year.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this document does not contain a significant regulatory action under Executive Order 12866. The FHWA has estimated that this rulemaking will have an annual economic impact on the motor carrier industry of less than \$100 million. It is a significant regulation under the Department of Transportation's regulatory policies and procedures, because this regulation has substantial public interest. As discussed below, current FHWA regulations have required the retention of supporting documents since 1982, and responsible motor carriers have collected and retained such documents both in the ordinary course of business and for purposes of regulatory compliance. This rule would require motor carriers to establish systems to verify drivers'

RODS or, alternatively, to describe HOS supporting documents in terms of their effectiveness to verify drivers' HOS. In addition, this rule explains how supporting documents are to be collected, where they must be kept, and for how long. This rulemaking action would not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Evaluation of the costs of this proposed rule is fully described below in the Paperwork Reduction Act section.

Regulatory Flexibility Act

To meet the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612), the FHWA has evaluated the effects of this rule on small entities and has determined that this regulatory action would not have a significant economic impact on a substantial number of small entities.

The FHWA estimates there are about 422,000 motor carriers subject to this rule, 90 percent of which are small entities. For the purposes of this evaluation, the FHWA considered motor carriers with ten or fewer drivers to qualify as small entities.

Small entities, as well as large entities, have been prosecuted for making, or allowing drivers to make, false entries upon RODS since the late 1930's. Since 1982, small entities have been required to maintain supporting documents along with their drivers' RODS. As a good business practice, small entities are believed to be reviewing, inspecting, or auditing their drivers' RODS and comparing them with the motor carrier's supporting documents to determine the accuracy of the RODS. This rule would convert a previously established motor carrier business practice into an explicit requirement. Small entities would be required to document the system they have been using to verify the drivers' RODS are accurate. It is believed that most small entities have not documented the system they are using to verify their drivers' RODS. This rule would require these systems to be reduced to writing.

After a small entity has documented its self-monitoring system in writing, the FHWA would not require the entity to retain subsequently generated or received documents which were not called for by that entity's self-monitoring system. This would relieve small entities from a potentially large burden of record collection. Many noncompliant small entities may perceive an increased burden; however, the FHWA believes that this increased

burden will actually result from the entities finally having to comply with the preexisting supporting document requirement the cost of which these entities have been avoiding by not complying with the rule until now.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed by the principles and criteria contained in Executive Order 12612, and it has been determined that this proposal does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

The amendments proposed in this document would not preempt any State law or regulation. These changes, if adopted, would not limit the policy making discretion of the States. The only additional cost or burden potentially imposed on the States because of this action would be the requirement that the States incorporate these proposed changes into their safety regulations as a condition of the receipt of Federal grants for safety enforcement. This requirement would not infringe upon the State's ability to discharge traditional State governmental functions because interstate commerce, which is the subject of these regulations, has traditionally been governed in the first instance by Federal laws. In addition, the FHWA would not require as a condition of the Motor Carrier Safety Assistance Program (MCSAP) that the States adopt this proposal for intrastate safety regulations, but would expect phased in voluntary compatibility.

Public Law 104-4 (Unfunded Mandates Reform Act of 1995)

This action has also been analyzed by the principles and criteria contained in Public Law 104-4, and it has been determined that this proposal does not have an unfunded mandate within the meaning of the Unfunded Mandates Reform Act.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This proposal contains new collection of information requirements for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520. The new information collection requirements in this proposal are

mandated by section 113 of the Hazardous Materials Transportation Authorization Act of 1994 (Pub. L. 103-311, 108 Stat. 1676). This section requires that each written or electronic document that is used as a supporting document have a description of identification items to include either the driver's name or vehicle number. This would require motor carriers to ensure that the driver's name or vehicle number is on each document used to verify time records. The statute also requires the supporting document must be kept for at least six months. The FHWA, since 1982, has required that all supporting documents must be collected and kept for six months. This collection of documents and retention period is not a new paperwork burden. This collection of documents and retention period has been calculated into past paperwork burden approvals of the Office of Management and Budget (OMB).

New Information Collection Proposal

Collection of Information: Driver's Records of Duty Status.

Under the new OMB regulations found at 5 CFR 1320 and entitled *Controlling Paperwork Burdens on the Public* (1995), the FHWA is required to estimate the burden its regulations impose to generate, maintain, retain, disclose, or provide information to or for the FHWA including (i) reviewing instructions; (ii) developing, acquiring, installing, and utilizing technology and systems for the purpose of collecting, validating, and verifying information; (iii) developing, acquiring, installing, and utilizing technology and systems for the purpose of processing and maintaining information; (iv) developing, acquiring, installing, and utilizing technology and systems for the purpose of disclosing and providing information; (v) adjusting the existing ways to comply with any previously applicable instructions and requirements; (vi) training personnel to be able to respond to a collection of information; (vii) searching data sources; (viii) completing and reviewing the collection of information; and (ix) transmitting, or otherwise disclosing the information.

This proposed rule would add additional requirements to the OMB-approved budget for 2125-0016. Each motor carrier would be required to develop and implement an effective self-monitoring system that audits supporting documents and compares the supporting documents to RODS. Motor carriers failing to develop and implement an effective self-monitoring system would be presumed to be taking

the necessary actions to obtain and retain every supporting document that the carriers or their drivers generate or receive in the normal course of business that would accurately support the beginning, intermediate, and ending times of each driver's daily trips in interstate commerce.

If the carrier fails to have a self-monitoring system, the carriers would also have to ensure that each document has the driver's name or vehicle number on it. In addition, the motor carrier would have to ensure that reasonably reliable references to date, time, and location on the documents corroborate the date, times, and locations on the driver's record of duty status.

In the statute, as stated above, the term "supporting document" was defined to mean "any document that is generated or received by a motor carrier or commercial motor vehicle driver in the normal course of business that could be used, as produced or with additional identifying information, to verify the accuracy of a driver's record of duty status." The FHWA believes that every document that is generated and received by a motor carrier or commercial motor vehicle driver in the normal course of business is used or retained by the motor carrier for usual and customary purposes and should not be considered to be a burden for purposes of 5 CFR 1320.3(b).

The FHWA's Motor Carrier Management Information System (MCMIS) indicated that in October 1997 there were about 2,216,000 drivers and 422,000 motor carriers operating in interstate commerce. Of the 2.216 million drivers, the FHWA estimates 20 percent (443,200 drivers) operate within 241 air-kilometer (100 air-mile) radius from their normal work reporting location, five percent (110,800) operate for motor carriers who equip CMVs with automatic on-board recording devices, and the remaining 75 percent use the paper log book system.

In the March 11, 1998 **Federal Register** (63 FR 11948), the FHWA opened a docket and requested comments regarding the current collection of information requirements without respect to this proposal. This proposal would add collection of information requirements to the March 11 estimate.

The FHWA estimates the public recordkeeping burden for this proposed collection of information to be 949,500 burden hours for the first year of implementation and 17,737 for the second and subsequent years. This would result from the necessary system changes the regulations would require a

motor carrier to do with respect to the following six things:

(1) A motor carrier must determine the types of supporting documents providing the most effective means to compare drivers RODS to supporting documents.

(2) A motor carrier must prepare a written document, in either an electronic or paper format, definitively specifying the auditing system's capabilities.

(3) The written document must identify the supporting documents, by common name, the motor carrier uses to verify the accuracy of the driver's hours of service or record of duty status.

(4) The written document must describe how the system is used.

(5) The written document must describe the procedure to be used to promptly notify a driver who has recorded information inaccurately on a record of duty status which is required by § 395.8.

(6) The written document must describe the corrective action the motor carrier would take to improve the driver's compliance with providing accurate information.

The FHWA assumes most motor carriers, especially the 90 percent of motor carriers who are small entities, would not incur any reproduction costs or distribution costs under this proposed rule. Most motor carriers would have one manual with system description for office use and would not need to reproduce the document. Motor carriers with ten or fewer drivers generally do not have multiple terminals and the FHWA would presume the carrier have only one or two people involved in the verification of RODS at their principal place of business. For the ten percent of motor carriers that are large entities, the FHWA estimates they would make an average of ten copies and distribute them accordingly.

The FHWA intends that this document would be a working document and would not be archived. It would be used by personnel on a daily basis as an important reference and management tool for the self-monitoring auditing procedure as many responsible motor carriers do now. The FHWA would also expect motor carriers to review and revise the system on a periodic, but infrequent, basis as the need arises. The FHWA has computed the paperwork burden based upon an annual review and revision schedule.

Since the FHWA has required motor carriers ensure the accuracy of the RODS and the regulations provide that they are liable to prosecution for the making of false reports in connection

with such duty activities, the FHWA believes most motor carriers choose to fulfill their responsibilities for highway safety by auditing and comparing their RODS and supporting documents to determine whether drivers have made false reports of their duty activities. Thus, the FHWA believes the time necessary to audit and compare RODS and supporting documents does not need to be included in the burden estimate. The FHWA's time estimate for identifying supporting documents and preparing a written system description would be 3 additional hours per carrier per year.

The FHWA calculates motor carriers must develop a policy in the first year this proposed rule would be final. The FHWA calculates motor carriers would spend an average of 3 hours developing and writing out the policy. The FHWA calculates motor carriers would consume an estimated 949,500 burden hours developing its policies.

The FHWA calculates an estimated 17,737 burden hours for the second and third years. The FHWA estimates there are new carriers equaling one percent of the total number of motor carriers beginning business each year who must develop a policy and the other motor carriers must review their policies. The FHWA estimates 50 percent of the reviewed policies would have to be amended.

Organizations and individuals desiring to submit comments only on the information collection requirements must direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Desk Officer for Federal Highway Administration.

Please send a copy of any comments you send to the OMB to the FHWA, too.

The FHWA considers comments by the public on this proposed collection of information in the following four ways:

(1) Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the FHWA, including whether the information will have a practical use.

(2) Evaluating the accuracy of the FHWA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

(3) Enhancing the quality, usefulness, and clarity of the information to be collected.

(4) Minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological

collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB must make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment made directly to OMB will have its full effect of OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the FHWA on the proposed regulations.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations to the FHWA docket found at the top of this document.

What If the FHWA Had Implemented the Statute As Written

The FHWA has calculated the burden hours for the statute. The FHWA has named 45 possible documents as examples in the definition of "supporting documents" proposed in this NPRM. The FHWA estimated one half of these 45 would generally be available each trip for most runs. Using 23 of the 45 documents and based upon the statute, the motor carrier would have had to audit each one as the carrier obtained or received the document for the following five minimum items.

1. Date.
2. Time.
3. Location.
4. Driver's name.
5. Vehicle's number.

The time to compare the documents to the RODS, filing, and storing the 23 records would be more than is currently expected and more than is proposed in this NPRM. The FHWA believes the increased burdens would be unusual and uncustomary and thus believe a burden would be imposed by the statute. Calculating these costs into the estimate, the FHWA believes the burden imposed by the statute would be at least 219,095,423 hours.

The FHWA has calculated the second year total operating and maintenance financial burden for maintaining the records for the current six-month retention period and also for a four-month and one-year retention period. The FHWA's estimate of the total costs before subtracting the costs of the wages paid to recordkeepers would be as follows for RODS and supporting documents.

SECOND YEAR TOTAL OPERATING AND MAINTENANCE COSTS

4 month retention period ..	\$1,112,614,000
6 month retention period ..	1,114,201,000
One year retention period	1,122,611,000

National Environmental Policy Act

The agency has analyzed this action for the purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) and has determined that this action will not affect the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 390

Highway safety, Highways and roads, Motor carriers, Motor vehicle identification and marking, Reporting and recordkeeping requirements.

49 CFR Part 395

Global positioning systems, Highway safety, Highways and roads, Intelligent Transportation Systems, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

Issued: April 10, 1998.

Gloria J. Jeff,

Deputy Administrator, Federal Highway Administration.

In consideration of the foregoing, the FHWA is proposing to amend Title 49, CFR, chapter III, parts 390 and 395 as set forth below:

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

1. The authority citation for part 390 is revised to read as follows:

Authority: 49 U.S.C. 5901-5907, 31132, 31133, 31136, 31502, and 31504; and 49 CFR 1.48.

§ 390.31 [Amended]

2. Section 390.31(d) is revised to read as follows:

§ 390.31 Copies of records or documents.

* * * * *

(d) *Exception.* All records may be maintained through the use of automated, electronic, or laser

technology systems provided the motor carrier can produce, within 48 hours of a demand, a printed copy of the required data; provided that alternate means for signature verification are available.

PART 395—HOURS OF SERVICE OF DRIVERS

3. The authority citation for part 395 is revised to read as follows:

Authority: 49 U.S.C. 504, 14122, 31133, 31136, and 31502; sec. 113, Pub. L. 103-311, 108 Stat. 1676; and 49 CFR 1.48.

4. Section 395.2 is amended by adding the following definition, alphabetically, to read as follows:

§ 395.2 Definitions.

* * * * *

Supporting document means any document that is generated or received by a motor carrier or commercial motor vehicle driver in the normal course of business that could be used, as produced or with additional identifying information, to verify the accuracy of a driver's record of duty status. For the purposes of this definition, any *document* means any record or document, either written or electronic, that is available individually or in combination with other records or documents, to verify the accuracy of a driver's record of duty status because of its potential to provide a reasonably accurate reference to dates, times and locations. Examples of supporting documents are: Accident/incident reports, bills of lading, border crossing reports, carrier pros (waybills), cash advance receipts, credit card receipts and statements, customs declarations, delivery receipts, dispatch/assignment records, driver reports (facsimile or call-in logs), expense vouchers, freight bills, fuel billing statements, fuel receipts, gate receipts, global positioning reports, inspection reports, invoices, interchange reports, International Registration Program receipts, International Fuel Tax Agreement receipts, lessor settlement sheets, lodging receipts, lumper receipts, on-board computer reports, over/short and damage reports, overweight/oversize reports and citations, port of entry receipts, telephone billing statements, toll receipts, traffic citations, transponder reports, trip permits, trip reports, waybills, and weight/scale tickets.

* * * * *

5. Section 395.8 is amended by revising paragraph (k) to read as follows:

§ 395.8 Driver's record of duty status.

* * * * *

(k) *Retention of driver's record of duty status.* (1) Driver's records of duty status for each calendar month may be retained at the driver's home terminal or other regular reporting location until the 20th day of the succeeding calendar month. Such records shall then be forwarded to the carrier's principal place of business, or such alternate location as the motor carrier designates for record retention purposes, where they shall be retained with all supporting documents for six months from the original date of receipt. Within 48 hours (*Saturdays, Sundays and official holidays excluded*) after a Federal, State, or local enforcement official has made an authorized request (for inspection and verification of the hours-of-service requirements and the accuracy of the driver's records of duty status), a motor carrier shall make available all records of duty status and supporting documents at the motor carrier's principal place of business.

(2) The driver shall retain a copy of each record of duty status for the previous 7 consecutive days that shall be in his or her possession and available for inspection while on duty.

6. Section 395.10 is added to read as follows:

§ 395.10 Verification and record retention.

(a) Every motor carrier must have a self-monitoring auditing system, adequately described in writing, that can be used effectively to verify the driver's hours of service and the accuracy of the information contained on the driver's record of duty status. The auditing system must be capable of reproduction and an explanation of the system must be available in written form for inspection by authorized Federal, State or local enforcement personnel. The explanation of the system must include:

(1) Identification of the supporting documents, by common name, the motor carrier uses to verify the accuracy of the driver's hours of service or record of duty status;

(2) A description of how the system is used; and

(3) The procedure used to promptly notify a driver who has recorded information inaccurately on a record of duty status which is required by § 395.8 of this part; and

(4) The corrective action the motor carrier takes or has taken to improve the driver's compliance with providing accurate information.

(b)(1) The supporting document auditing system's procedural manual must be available to all motor carrier personnel with responsibility to control or audit compliance with this part and must be made available to the FHWA and other appropriate enforcement agencies for inspection upon authorized request or demand. The FHWA and other appropriate enforcement agencies will only request inspection of the written manuals at motor carriers' principal places of business or other terminal locations where records required by this part are maintained. The manual is not required to be produced at roadside driver-vehicle inspection locations.

(2) If the audit system can be demonstrated to be effective to verify the actual hours of service performed and the accuracy of the driver's record of duty status, the motor carrier is not required to maintain any additional supporting documents, and, in the absence of reasonably reliable information supported by documentary evidence to contradict the system found to be effective, no demand will be made for additional supporting documents the motor carrier may maintain for other purposes.

(c)(1) Each motor carrier who fails to have a supporting document auditing system in accordance with paragraphs (a) and (b) of this section or fails to provide the FHWA or other enforcement officers with a written explanation of the supporting document auditing system (manual), will be responsible for requiring every driver to obtain all supporting documents from the beginning of every trip to the end of every trip, including intermediate points during the trip. All supporting documents must be made available for inspection at the motor carrier's location and the FHWA or other enforcement officers will use a reasonably sufficient number, in the appropriate enforcement agency's discretion, to verify the accuracy of records of duty status.

(2) Failure by a motor carrier to have either a supporting document auditing system, required by paragraphs (a) and (b) of this section, or, in the absence of the system, to require the driver to obtain and forward to the motor carrier every supporting document that is provided to the driver during a trip, as required by this section, may result in monetary penalties or a compliance order for failure to comply with the supporting document auditing system requirement. A failure by the motor carrier to adequately control the drivers' falsification of their records of duty status may also result in a compliance order. Failure to comply with such

order may subject a motor carrier to civil or criminal penalties under 49 U.S.C. 521.

(d) In the absence of a verifiable and effective record of duty status auditing system, every motor carrier must require every driver who is required to prepare records of duty status to retain and every driver must retain all supporting documents containing reasonably reliable references to date, time, or location, which may come into the possession of the driver in the ordinary course of the driving operation. The driver must provide the supporting documents and the records of duty status:

(1) To any duly authorized enforcement official of Federal, State or local government upon request or demand; and

(2) To the motor carrier at the time the corresponding record of duty status is required to be submitted.

(e) The driver must identify the supporting document required under paragraph (d) of this section by adding his or her name, and the time, date, location and vehicle number, if those items do not already appear on the document. The driver's signature certifies that all entries required by this section made by the driver are true and correct.

(f) The driver must retain a copy of each supporting document with the record of duty status to which it relates for the previous seven consecutive days in his or her possession and available for inspection while on duty. *Exception.* The requirements of this paragraph do not apply if the driver has submitted the original record of duty status with the supporting documents annexed to the motor carrier following § 395.8(k)(1) of this part.

(g) The motor carrier must identify each supporting document received from the driver under paragraph (d) of this section, or from any other source including self-generated documents, by noting on the document the following information, if the information does not already appear on the document:

(1) The time, date or location of the event that produced the document;

(2) The driver's name; and

(3) The vehicle number (i.e., truck, tractor, or coach).

(h) *Retention of supporting documents.* Supporting documents for each calendar month may be retained at the driver's home terminal or other regular work reporting location until the 20th day of the succeeding calendar month. Such documents must then be forwarded to the carrier's principal place of business, or any location the motor carrier chooses, where they must

be retained with all records of duty status for six months from the original date of receipt. Within 48 hours (*Saturdays, Sundays and official holidays excluded*) after a Federal, State, or local enforcement official has made a valid request or demand (for inspection and verification of the hours of service requirements and the accuracy of the driver's records of duty status), a motor carrier must make available all records of duty status, time records in cases of 100-air mile radius exception, and supporting documents at the motor carrier's principal place of business.

(i) The FHWA may use any evidence whether or not in the motor carrier's possession, to determine compliance with hours of service requirements and verify the accuracy of the drivers records of duty status and the motor carrier's supporting document auditing system. If the FHWA discovers that the motor carrier's system is ineffective, misrepresented, or abused, the FHWA may require the motor carrier to modify its system or may require the motor carrier to collect and maintain all supporting documents as required by paragraphs (d) through (h) of this section. Civil or criminal penalties may also apply if the motor carrier or driver are determined to have misrepresented or abused the system.

[Approved by the Office of Management and Budget under control number _____]

[FR Doc. 98-10252 Filed 4-17-98; 8:45 am]
BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Child Restraint Systems; Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies a petition for rulemaking from The Booster Seat Company Ltd., Hamilton, New Zealand, requesting that NHTSA amend the structural integrity requirement of its Federal motor vehicle safety standard on child restraint systems so as to allow its product, a belt-positioning booster seat made entirely of polystyrene, to be manufactured and sold in the United States. The petitioner believes