



## Motor Carrier Records, Retention and Security

*By Jonathan R. Todd*

Transportation is in many ways a technology-oriented business today. Technology drives safety, operational performance and customer experience across the industry. The industry is also increasingly subject to the new and evolving concerns that follow this reliance on technology. Data privacy, information security, and cybersecurity are top of mind for chief technology officers and chief information officers.

These transportation industry concerns are also capturing the attention of the federal government, particularly the Transportation Security Administration (TSA) and the Cybersecurity and Infrastructure Security Agency (CISA) in recent rulemakings and informal guidance.

Security awareness begins with an internal risk assessment based upon the size, maturity, connectivity and vulnerabilities of information maintained within a company. The starting point is often to determine in systematic fashion the information and data held by the company. Cataloging types of information produces a roadmap for how items are to be handled.

This raises a fundamental question with a great deal of utility for technology sensitivity as well as legal defense and good corporate housekeeping: What information do we hold, what do we need to hold, how long should we keep it and when should it be destroyed?

The “Schedule of Records and Periods of Retention” in 49 C.F.R., Appendix A of Part 379, often serves as the basis for a company’s document retention policy in the space which, in turn, structures all that a company may be deploying for information technology and security purposes. 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 for transportation service agreements, which are to be held until expiration. Real estate-related documents must be held until disposition of the property. 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.
2. **Treasury Records:** Stock records and other securities, as well as their ledgers, may be generally held for as long as necessary similar to general corporate records. There are some exceptions to this rule, including for long-term debt records, which must be held until redemption plus three years.
3. **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 discontinuance of use plus three years. Lesser

documents, such as authorizations to write off receivables or aging reports, may be held only one year.

4. Property and Equipment Records: Property records that address valuation, improvements and depreciation must generally be held for three years after disposition of the property.

5. Personnel and Payroll Records: Personnel and payroll records must be held for one year.

6. Insurance and Claims Records: Insurance records that include policies, their schedules and records of losses or claims must be held until expiration and then for one year afterward. An exception to this general rule is for records 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.

7. Tax Records: Tax records are scheduled but not with specific time periods for preservation. These must be held for as long as necessary under broader best practices, including as may be required by the Internal Revenue Service.

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

9. Certain Other Transportation Records: Specialized transportation services or unique circumstances may necessitate 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.

10. 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 Surface Transportation Board and the Bureau of Transportation Statistics must be held for three years. This includes financial, operational and statistical items that are reported to those agencies in the ordinary course of business.

11. Other Miscellaneous Records: Finally, companies are expected to produce an index of all records (such as a document retention policy) that is 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 maintained for the same period that would otherwise apply to the destroyed or lost document.

Additional targeted recordkeeping requirements also exist for specific functions and services of motor carriers. For example, 49 C.F.R. Section 395.11 contains a list of certain “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 C.F.R. Section 40.333 for periods ranging from one to five years depending on the record. Probably the most well-known example outside of Appendix A are the broker-specific requirements at 49 C.F.R. Section 371.3, which set out a three year preservation rule.

The key to managing a company’s information and data is to plot a clear path forward and, fortunately for our industry, that roadmap exists.

*Jonathan Todd is Vice Chair of the Transportation & Logistics Practice Group at Benesch Law.*

*He may be reached at 216-363-4658 or jtodd@beneschlaw.com.*