$ERP = 72.57 - 17.08*\log_{10}(HAAT)$

* * * * *

8. Section 73.622 is amended by revising paragraphs (f)(6) and (f)(7) to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(f) * * *

(6) A DTV station that operates on a channel 2–6 allotment will be allowed a maximum ERP of 40 kW if its antenna HAAT is at or below 305 meters and the station is located in Zone I or a maximum ERP of 45 kW if its HAAT is at or below 305 meters and the station is located in Zone II or Zone III. An existing DTV station that operates on a channel 2–6 allotment may request an increase in power and/or HAAT up to these power levels, provided that the increase also complies with the provisions of paragraph (f)(5) of this section.

(i) For DTV stations located in Zone I that operate on channels 2–6 with an antenna HAAT that exceeds 305 meters, the allowable maximum ERP, expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP_{max} = 98.57 - 33.24*\log_{10}(HAAT)$

(ii) For DTV stations located in Zone II or Zone III that operate on channels 2–6 with an antenna HAAT that exceeds 305 meters, the allowable maximum ERP level is determined from the following table (the allowable maximum ERP for intermediate values of HAAT is determined using linear interpolation based on the units employed in the table):

MAXIMUM ALLOWABLE ERP AND ANTENNA HEIGHT FOR DTV STATIONS IN ZONES II OR III ON CHANNELS 2–6

Antenna HAAT (meters)	ERP (kW)
610	10
580	11
550	12
520	14
490	16
460	19
425	22
395	26
365	31
335	37
305	45

(iii) For DTV stations located in Zone II or Zone III that operate on channels 2–6 with an antenna HAAT that exceeds 610 meters, the allowable maximum ERP expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP_{max} = 57.57 - 17.08*\log_{10}(HAAT)$

(7) A DTV station that operates on a channel 7–13 allotment will be allowed a maximum ERP of 120 kW if its antenna HAAT is at or below 305 meters and the station is located in Zone I or a maximum ERP of 160 kW if its HAAT is at or below 305 meters and the station is located in Zone II or Zone III. An existing DTV station that operates on a channel 7–13 allotment may request an increase in power and/or HAAT up to these power levels, provided that the increase also complies with the provisions of paragraph (f)(5) of this section.

(i) For DTV stations located in Zone I that operate on channels 7–13 with an antenna HAAT that exceeds 305 meters, the allowable maximum ERP, expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP_{max} = 103.35 - 33.24*\log_{10}(HAAT)$

(ii) For DTV stations located in Zone II or Zone III that operate on channels 7–13 with an antenna HAAT above 305 meters, the allowable maximum ERP level is determined from the following table (the allowable maximum ERP for intermediate values of HAAT is determined using linear interpolation based on the units employed in the table):

MAXIMUM ALLOWABLE ERP AND ANTENNA HEIGHT FOR DTV STATIONS IN ZONES II OR III ON CHANNELS 7–13

Antenna HAAT (meters)	ERP (kW)
610	30
580	34
550	40
520	47
490	54
460	64
425	76
395	92
365	110
335	132
305	160

(iii) For DTV stations located in Zone II or Zone III that operate on channels 7–13 with an antenna HAAT that exceeds 610 meters, the allowable maximum ERP expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP_{max} = 62.34 - 17.08*\log_{10}(HAAT)$

* * * * *

[FR Doc. 2011–2102 Filed 1–31–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 385, 390, and 395

[Docket No. FMCSA–2010–0167]

RIN 2126–AB20

Electronic On-Board Recorders and Hours of Service Supporting Documents

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) proposes to amend the Federal Motor Carrier Safety Regulations (FMCSRs) to require certain motor carriers operating commercial motor vehicles (CMVs) in interstate commerce to use electronic on-board recorders (EOBRs) to document their drivers' hours of service (HOS). Under this proposal, all motor carriers currently required to maintain Records of Duty Status (RODS) for HOS recordkeeping would be required to use EOBRs to systematically and effectively monitor their drivers' compliance with HOS requirements. Additionally, this proposal sets forth the supporting documents that all motor carriers currently required to use RODS would still be required to obtain and keep, as required by section 113(a) of the Hazardous Materials Transportation Authorization Act (HMTAA). It explains, however, that although motor carriers subject to the proposed EOBR requirements would still need to retain some supporting documents, they would be relieved of the requirements to retain supporting documents to verify driving time. FMCSA also proposes to require all motor carriers—both RODS and timecard users—to systematically monitor their drivers' compliance with HOS requirements. Motor carriers would be given 3 years after the effective date of the final rule to comply with these requirements.

DATES: Comments must be received on or before April 4, 2011. Comments sent to the Office of Management and Budget (OMB) on the collection of information must be received by OMB on or before April 4, 2011.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–

2010–0167 using any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.

• *Mail:* Docket Management Facility, 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:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

• *Fax:* 202–493–2251.

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 below for instructions on submitting comments, including collection of information comments for the Office of Information and Regulatory Affairs (OIRA), OMB.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001 or by telephone at (202) 366–5370.

SUPPLEMENTARY INFORMATION: This NPRM is organized as follows:

I. Public Participation and Request for Comments
A. Submitting Comments
B. Viewing Comments and Documents
C. Privacy Act
D. Collection of Information Comments
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7. Motor Carrier Self-Compliance Systems
VI. Rulemaking Analyses

I. Public Participation and Request for Comments

FMCSA encourages you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you provide.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (FMCSA–2010–0167), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu, select "Proposed Rules," insert "FMCSA–2010–0167" in the "Keyword" box, and click "Search." When the new screen appears, click on "Submit a Comment" in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit 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 and may change this proposed rule based on your comments.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble, available in the docket, go to *http://www.regulations.gov* and click on the "read comments" box in the upper right hand side of the screen. Then, in the "Keyword" box insert "FMCSA–2010–0167" and click "Search." Next, click the "Open Docket Folder" in the "Actions" column. Finally, in the "Title" column, click on the document you would like to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

C. Privacy Act

Anyone may search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOTs complete Privacy Act Statement in the **Federal Register** notice published on April 11, 2000 (65 FR 19476).

D. Collection of Information Comments

If you have comments on the collection of information discussed in this notice of proposed rulemaking (NPRM), you must also send those comments to the OIRA, OMB. To ensure that your comments are received on time, the preferred methods of submission are by e-mail to *oira_submissions@omb.eop.gov* (include docket number "FMCSA–2010–0167" and "Attention: Desk Officer for FMCSA, DOT" in the subject line of the e-mail) or fax at 202–395–6566. An alternate, though slower, method is by U.S. mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, ATTN: Desk Officer, FMCSA, DOT.

E. Pilot Project on Open Government and the Rulemaking Process

On January 21st, 2009, President Obama issued a Memorandum on Transparency and Open Government in which he described how: "Public engagement enhances the Government's effectiveness and improves the quality of its decisions. Knowledge is widely dispersed in society, and public officials benefit from having access to that dispersed knowledge."

To support the President's open government initiative, DOT has partnered with the Cornell eRulemaking Initiative (CeRI) in a pilot project, Regulation Room, to discover the best ways of using Web 2.0 and social networking technologies to: (1) Alert the public, including those who sometimes

may not be aware of rulemaking proposals, such as individuals, public interest groups, small businesses, and local government entities that rulemaking is occurring in areas of interest to them; (2) increase public understanding of each proposed rule and the rulemaking process; and (3) help the public formulate more effective individual and collaborative input to DOT. Over the course of several rulemaking initiatives, CeRI will use different Web technologies and approaches to enhance public understanding and participation, work with DOT to evaluate the advantages and disadvantages of these techniques, and report their findings and conclusions on the most effective use of social networking technologies in this area.

DOT and the Obama Administration are striving to increase effective public involvement in the rulemaking process and strongly encourage all parties interested in this rulemaking to visit the Regulation Room Web site, *http://www.regulationroom.org,* to learn about the rule and the rulemaking process, to discuss the issues in the rule with other persons and groups, and to participate in drafting comments that will be submitted to DOT. In this rulemaking, CeRI will submit to the rulemaking docket a Summary of the discussion that occurs on the Regulation Room site; participants will have the chance to review a draft and suggest changes before the Summary is submitted. Participants who want to further develop ideas contained in the Summary, or raise additional points, will have the opportunity to collaboratively draft joint comments that will be also be submitted to the rulemaking docket before the comment period closes.

Note that Regulation Room is not an official DOT Web site, and so participating in discussion on that site is not the same as commenting in the rulemaking docket. The Summary of discussion and any joint comments prepared collaboratively on the site will become comments in the docket when they are submitted to DOT by CeRI. At any time during the comment period, anyone using Regulation Room can also submit individual views to the rulemaking docket through the Federal rulemaking portal Regulations.gov, or by any of the other methods identified at the beginning of this Notice.

For questions about this project, please contact Brett Jortland in the DOT Office of General Counsel at (202) 366–9314 or at *brett.jortland@dot.gov.*

II. Abbreviations and Acronyms

Advanced Notice of Proposed Rulemaking—ANPRM
American National Standards Institute—ANSI
American Standard Code for Information Interchange—ASCII
American Trucking Associations—ATA
Automatic On-Board Recording Devices—AOBRD
Behavior Analysis Safety Improvement Categories—BASICs
Clean Air Act—CAA
Code of Federal Regulations—CFR
Commercial Driver's License—CDL
Commercial Motor Vehicle—CMV
Comprehensive Safety Analysis—CSA
Department of Labor—DOL
Department of Transportation—DOT
Electronic On-Board Recorder—EOBR
Environmental Assessment—EA
Federal Highway Administration—FHWA
Federal Motor Carrier Safety Administration—FMCSA
Federal Motor Carrier Safety Regulations—FMCSRs
Federal Register—FR
Fleet Management System—FMS
Global Positioning System—GPS
Hazardous Materials—HM
Hazardous Materials Transportation Authorization Act of 1994—HMTAA
Hours-of-Service—HOS
Interstate Commerce Commission—ICC
Interstate Commerce Commission Termination Act of 1995—ICCTA
Intelligent Vehicle Highway System Act—IVHSA
Long-Haul—LH
Motor Carrier Management Information System—MCMIS
Motor Carrier Safety Assistance Program—MCSAP
National Environmental Policy Act of 1969—NEPA
National Transportation Safety Board—NTSB
North American Industrial Classification System—NAICS
Notice of Proposed Rulemaking—NPRM
Office of Information and Regulatory Affairs—OIRA
Office of Management and Budget—OMB
On-duty-not-driving—ODND
Personal Identification Number—PIN
Personally Identifiable Information—PII
Power Unit—PU
Privacy Impact Assessment—PIA
Record of Duty Status—RODS
Regulatory Impact Analysis—RIA
Safe, Accountable, Flexible, Efficient Transportation Act: A Legacy for Users—SAFETEA–LU
Safety Management System—SMS
Short-Haul—SH
Small Business Administration—SBA
Supplemental Notice of Proposed Rulemaking—SNPRM
Transportation Equity Act for the 21st Century—TEA–21
United States Code—U.S.C.
Value of a Statistical Life—VSL

III. Legal Basis for the Rulemaking

This NPRM would improve CMV safety and reduce paperwork burden by increasing the use of EOBRs within the motor carrier industry, which will improve HOS compliance. The approach has three components: (1) Requiring EOBRs to be used by considerably more motor carriers and drivers than those covered by the Agency's April 5, 2010 final rule that addressed the remedial use of EOBRs for motor carriers with significant HOS violations (2) requiring motor carriers to develop and maintain systematic HOS oversight of their drivers, and (3) simplifying the supporting documents requirements so motor carriers can make the best use of EOBRs and their support systems as their primary means of recording HOS information and ensuring HOS compliance.

A. Authority: EOBR

The Motor Carrier Act of 1935 (Pub. L. 74–255, 49 Stat. 543, August 9, 1935, now codified at 49 U.S.C. 31502(b)) (the 1935 Act) provides that "[t]he Secretary of Transportation may prescribe requirements for—(1) Qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation." This NPRM addresses "safety of operation and equipment" of motor carriers and "standards of equipment" of motor private carriers and, as such, is well within the authority of the 1935 Act.

The Motor Carrier Safety Act of 1984 (Pub. L. 98–554, Title II, 98 Stat. 2832, October 30, 1984, now codified at 49 U.S.C. 31136) (the 1984 Act) provides concurrent authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary to:

> Prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles. At a minimum, the regulations shall ensure that—(1) commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely;

and (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators (49 U.S.C. 31136(a)).

Section 211 of the 1984 Act also grants the Secretary broad power in carrying out motor carrier safety statutes and regulations to "prescribe recordkeeping and reporting requirements" and to "perform other acts the Secretary considers appropriate" (49 U.S.C. 31133(a)(8) and (10)).

The HOS regulations are designed to ensure that driving time—one of the principal "responsibilities imposed on the operators of commercial motor vehicles"—does "not impair drivers' ability to operate the vehicles safely" (49 U.S.C. 31136(a)(2)). EOBRs that are properly designed, used, and maintained would not only permit motor carriers to schedule vehicle and driver operations more efficiently, but would also enable motor carriers to more effectively and accurately track their drivers' on-duty driving hours, thus preventing HOS violations and resulting crashes. Requirements that motor carriers retain certain other supporting documents, in addition to EOBR records, further assist the Agency in ensuring driver and motor carrier compliance with the HOS rules. Driver compliance with the HOS rules, in turn, helps ensure that "the physical condition of [commercial motor vehicle drivers] is adequate to enable them to operate the vehicles safely" (49 U.S.C. 31136(a)(3)). Indeed, the Agency considered whether this proposal would impact driver health under 49 U.S.C. 31136(a)(3) and (a)(4). Because the proposal could increase compliance with the HOS regulations, including driving and off-duty time requirements, it would actually have a positive effect on the physical condition of drivers. (*See* the discussion of health impacts at Section VI of this NPRM regarding environmental analyses.)

The requirements in 49 U.S.C. 31136(a)(1) concerning safe motor vehicle maintenance, equipment, and loading are not germane to this proposed rule because EOBRs and supporting documents influence driver operational safety rather than vehicular and mechanical safety. Consequently, the Agency has not assessed the proposed rule against that requirement. However, to the limited extent 49 U.S.C. 31136(a)(1) pertains specifically to driver safety, the Agency has taken this statutory requirement into account throughout the proposal.

Section 9104 of the Truck and Bus Safety and Regulatory Reform Act (Pub. L. 100–690, November 18, 1988, 102 Stat. 4181, at 4529) also anticipates the Secretary promulgating "a regulation about the use of monitoring devices on commercial motor vehicles to increase compliance by operators of the vehicles with hours of service regulations" and requires the Agency to ensure that any such device is not used to "harass vehicle operators" (49 U.S.C. 31137(a)).

Based on the statutory framework reviewed previously, FMCSA has the authority to adopt an industry-wide requirement that all motor carriers subject to HOS requirements under 49 CFR part 395 install and use EOBR-based systems.

B. Authority: Supporting Documents

Section 113(a) of the HMTAA requires the Secretary to prescribe regulations to improve—(A) compliance by CMV drivers and motor carriers with HOS requirements; and (B) the effectiveness and efficiency of Federal and State enforcement officers reviewing such compliance. The cost of such regulations must be reasonable to drivers and motor carriers (section 113(a)(2)).

HMTAA section 113(b) describes what elements must be covered in the new regulations. HMTAA section 113(b)(1) states that the regulations must allow for a "written or electronic document * * * 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 [RODS]." The legislative history emphasizes that requiring the retention of supporting documents would allow enforcement personnel to support or disprove allegations of HOS violations, including preventing firms from playing "hide and seek" or discarding supporting documents (S. 1640, 140 Cong. Rec. S11320, S11323, 1994 WL 422479, August 11, 1994). Section 113(b)(1) further directs the Secretary to include in the regulations a description of identification items (that include either driver name or vehicle number) that would facilitate matching these supporting documents with RODS.

Section 113(b)(2) states that the regulations shall specify the "number, type, and frequency of supporting documents that must be retained by the carrier."

Section 113(b)(3) requires that the regulations specify that supporting documents shall be retained by the motor carrier for at least 6 months from the date of a document's receipt.

Section 113(b)(4) calls for the Agency to draft regulations "* * * to authorize, on a case-by-case basis, self compliance systems * * *" for motor carriers, including "a group" of motor carriers.

Under section 113(b)(5), the Agency shall include a provision in its regulations that allows the Agency to issue waivers from certain requirements under 49 CFR 395.8(k) when sufficient supporting documentation is provided to enforcement personnel through an intelligent-vehicle highway system, as defined by section 6059 of the Intelligent Vehicle Highway Systems Act (IVHSA) (Pub. L. 102–240, December 18, 1991, 105 Stat. 2189, 2195). The Federal Highway Administration (FHWA), the predecessor organization to FMCSA within the Department of Transportation (DOT), did not draft the regulations authorized under section 113(b)(5). The IVHSA was subsequently repealed (*see* section 5213 of TEA–21, 112 Stat. 463); there currently is no statutory guidance on waivers as the term was used in section 113(b)(5). However, this provision does not affect this rulemaking because other regulatory avenues exist for motor carriers to apply for waivers, exemptions, and pilot programs.

Section 113(c) defines a supporting document as "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." Consequently, this NPRM does not propose to require generation of new documents *outside* the normal course of the carrier's business.

IV. Background

A. On-Board Recording Devices—History of HOS Records of Duty Status (RODS) Regulations [1]

Current Federal HOS regulations (49 CFR part 395) limit the number of hours a CMV driver may drive. The regulations also limit, during each 7- or 8-day period, the maximum on-duty time before driving is prohibited (exceptions are listed in 49 CFR 395.1(k), (n), and (o)). Such rules are needed to prevent CMV operators from driving for long periods without opportunities to obtain adequate sleep. Sufficient sleep is necessary to ensure that a driver is alert behind the wheel and able to respond appropriately to changes in the driving environment.

With certain exceptions,[2] motor carriers and drivers are required by 49 CFR 395.8 to keep RODS to track

[1] For a more complete regulatory history of EOBRs, please refer to the preambles of the 2004 EOBR ANPRM and 2007 EOBR NPRM (Docket: FMCSA–2004–18940).

[2] These exceptions are listed in 49 CFR 395.1.

driving, on-duty, and off-duty time. FMCSA and State agencies use these records to ensure compliance with the HOS rules.

On April 5, 2010, the Agency issued a final rule that addressed the limited, remedial use of EOBRs for motor carriers with significant HOS violations (75 FR 17208). That final rule required a motor carrier that was found during a compliance review to have a 10 percent violation rate for any HOS regulation in Appendix C of 49 CFR part 385 to install and use EOBRs on all of that carrier's CMVs. The compliance or implementation date for the rule is June 4, 2012. Although FMCSA received comments recommending expanding the reach of the rule beyond the number of motor carriers the 2010 remedial directive is estimated to affect, the limited scope of the NPRM prevented the Agency from doing so. As noted in the preamble to the 2010 final rule, however, FMCSA recognizes that the potential safety risks associated with HOS violations are such that mandatory EOBR use for a broader population might be appropriate. Accordingly, this proposed rule would expand the scope of mandatory EOBR use beyond the population of motor carriers that are or would be subject to a remedial directive as a result of the April 2010 final rule.

This NPRM honors the Agency's commitment to safety by taking action to improve compliance with the HOS rules. It responds to issues that would have been addressed in the April 2010 final rule were it not for the limited scope of the NPRM. As FMCSA noted in its April 2010 final rule:

> Numerous commenters to the NPRM [January 18, 2007 (72 FR 2340)] stated that the proposal still would not require EOBR use by enough carriers to make a meaningful difference in highway safety, relative to the total carrier population. The FMCSA acknowledges the safety concerns of the commenters. In response to those concerns, the Agency will explore the safety benefits of a broader EOBR mandate in a new rulemaking proceeding that will begin in the near future.

B. Supporting Documents Requirements

1. History of Supporting Documents Requirement

A fundamental principle of the FMCSRs, stated in 49 CFR 390.11, is that a motor carrier has the duty to require its drivers to comply with the FMCSRs, including HOS-related duties and prohibitions. Motor carriers have historically required their drivers, as a condition of employment, to provide supporting documents, such as fuel receipts, toll receipts, bills of lading, and repair invoices. They compare these documents to the drivers' entries on the RODS (or the record provided by the automatic on-board recording device (AOBRD) or EOBR, if such a device is used) to help verify the accuracy of the HOS reported by their CMV drivers. The FMCSRs require motor carriers to retain these supporting documents, as well as the paper and electronic RODS, for a period of 6 months from the date of receipt.

Although the FMCSRs have always required a "remarks" section to augment the duty status information contained in the RODS document, it was not until January 1983 that the use of supporting documents was explicitly required. The final rule revising the recordkeeping requirements for 49 CFR part 395 to explicitly require supporting documents was published November 26, 1982 (47 FR 53383); but the rule did not define the term "supporting documents," and questions arose concerning what the Agency expected motor carriers to retain.

On November 17, 1993 the Agency published regulatory guidance (Regulatory Guidance for the Federal Motor Carriers Safety Regulations (58 FR 60734)) on a variety of topics, including supporting documents. Supporting documents were the subject of Question 10 for 49 CFR 395.8 which provides in pertinent part:

> *Question 10:* What regulation, interpretation, and/or administrative ruling requires a motor carrier to retain supporting documents and what are those documents?
>
> *Guidance:* Section 395.8(k)(1) requires motor carriers to retain all supporting documents at their principal places of business for a period of 6 months from date of receipt.
>
> Supporting documents are the records of the motor carrier which are maintained in the ordinary course of business and used by the motor carrier to verify the information recorded on the driver's record of duty status.
>
> Examples are: Bills of lading, carrier pros, freight bills, dispatch records, driver call-in records, gate record receipts, weight/scale tickets, fuel receipts, fuel billing statements, toll receipts, international registration plan receipts, international fuel tax agreement receipts, trip permits, port of entry receipts, cash advance receipts, delivery receipts, lumper receipts, interchange and inspection reports, lessor settlement sheets, over/short and damage reports, agricultural inspection reports, CVSA reports, accident reports, telephone billing statements, credit card receipts, driver fax reports, on-board computer reports, border crossing reports, custom declarations, traffic citations, overweight/oversize reports and citations, and/or other documents directly related to the motor carrier's operation, which are retained by the motor carrier in connection with the operation of its transportation business.

The following year, in HMTAA section 113, Congress directed the Agency to prescribe regulations to amend 49 CFR part 395 to improve driver and motor carrier compliance with the HOS regulations. (*See* the Legal Basis section of this NPRM.) Section 113 also defined supporting documents in a manner nearly identical to the Agency's regulatory guidance: "For purposes of this section, a supporting document is 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" (HMTAA sec. 113(b)(1)).

In its revised regulatory guidance, published on April 4, 1997 (*Regulatory Guidance for the Federal Motor Carrier Safety Regulations* (62 FR 16370)), the Agency emphasized the need for motor carriers to provide adequate HOS oversight. Specifically, the Agency added two Q&A guidance items to 49 CFR 395.3:

> *Question 7:* What is the liability of a motor carrier for hours of service violations?
>
> *Guidance:* The carrier is liable for violations of the hours of service regulations if it had or should have had the means by which to detect the violations. Liability under the FMCSRs does not depend upon actual knowledge of the violations.
>
> *Question 8:* Are carriers liable for the actions of their employees even though the carrier contends that it did not require or permit the violations to occur?
>
> *Guidance:* Yes. Carriers are liable for the actions of their employees. Neither intent to commit, nor actual knowledge of, a violation is a necessary element of that liability. Carriers "permit" violations of the hours of service regulations by their employees if they fail to have in place management systems that effectively prevent such violations (65 FR 16370, 16424).

A year later, on April 20, 1998, the Agency published an NPRM in which it proposed to define "supporting documents" identically to the HMTAA definition (63 FR 19457). It also proposed requiring motor carriers to develop and use an HOS supporting document auditing system that would include a procedural manual. The manual would identify the types of documents used, specify how the audit system would work, how drivers recording inaccurate information on their RODS would be notified, and how a carrier would take corrective action to improve drivers' compliance. If a motor carrier did not have a supporting document auditing system, it would have to maintain various types of business documents and require its drivers to collect and submit those

documents in order to support the accuracy of the drivers' RODS. Finally, the NPRM proposed to allow use of "automated, electronic, or laser technology" systems to maintain copies of records or documents, including those requiring a signature, so long as the motor carrier was able to provide alternate means for signature verification.

Many commenters to the 1998 NPRM expressed concern that the Agency was considering addressing HOS supporting documents separately from the HOS advance notice of proposed published on November 5, 1996 (61 FR 57252). FMCSA responded by including proposed changes to the methods of verifying HOS compliance through supporting documents in its May 2, 2000, NPRM on HOS regulations (65 FR 25540). The supporting documents section of that NPRM focused upon operations involving long or regional trips away from a home base with little supervision of, contact with, or control over the driver. The Agency proposed that the paperwork burdens for all other operations be minimized and stated that, whenever possible, FMCSA would be prepared to accept records that are required by other Federal agencies. Notably, the Department of Labor's (DOLs) Wage and Hour Division regulations require motor carrier employers to maintain time records for 2 years (29 CFR part 516). The Agency believed this approach would meet the requirements of section 113 of the HMTAA and be consistent with the dual objectives of (1) improving the enforcement of the HOS regulations and (2) simplifying the recordkeeping requirements of motor carriers.

The April 2003 HOS final rule did not implement the HMTAA provision for supporting documents as proposed. One of the reasons was that the Agency decided to not move forward with its May 2000 proposal for five motor carrier operational categories (long-haul (LH), regional, and three types of local operations), with significantly different recordkeeping requirements for the local and for the regional and LH carriers. However, the final rule did state (at 68 FR 22490):

> A motor carrier's responsibility for compliance with the HOS regulations remains clear. The motor carrier is responsible for and must police the actions of its employees. This obligation under the FMCSRs was affirmed by the Associate Administrator for what was then the Office of Motor Carriers (of the FHWA). *In the Matter of Horizon Transportation, Inc.,* 55 FR 43292 (October 26, 1990) (Final Order February 12, 1990). A motor carrier's responsibility for the actions of independent contractors and owner operators it uses was outlined in the matter of *In re R.W. Bozel Transfers, Inc,* 58 FR 16918 (March 31, 1993) (Final Order August 6, 1992); and more recently *In the Matter of Commodity Carriers, Inc.,* (Order Appointing Administrative Law Judge March 25, 1997). Likewise, each motor carrier must have a system in place that allows it to effectively monitor compliance with the FMCSRs, especially those aimed at the issue of this Final Rule—driver fatigue [*see In re National Retail Transportation, Inc.* (Final Order: Decision on Review September 12, 1996)]. The United States Court of Appeals for the Sixth Circuit affirmed in *A.D. Transport Express Inc.* v. *Federal Motor Carrier Safety Administration,* 290 F. 3d 761 (6th Cir. 2002), that supporting documents must be maintained in a common sense manner so that FMCSA investigators can "verify dates, times, and locations of drivers recorded on the RODS." More recently, the DC Circuit agreed that the term "supporting documents" in the current rule encompasses any document that could be used to support the RODS. That decision also found an FMCSA requirement that supporting documents must be maintained in a fashion that permits the matching of those records to the original drivers' RODS as a reasonable interpretation of 49 CFR 395.8(k)(1). In fact, the Court concluded that all the FMCSA is asking is that carriers refrain from destroying the agency's ability to match records with their associated drivers (*Darrell Andrews Trucking* v. *Federal Motor Carrier Safety Administration,* 296 F. 3d 1120 (DC Cir. 2002)).

FMCSA published a supplemental NPRM (SNPRM) on supporting documents on November 3, 2004 (69 FR 63997). The SNPRM proposed that motor carriers must review and verify the HOS records of both employee drivers and independent owner-operators proposed to require that drivers submit to the motor carrier all supporting documents along with the RODS; and specified that motor carriers must maintain supporting documents in a method that allows cross reference to the RODS. The SNPRM also proposed a self-monitoring system for supporting documents that would be a carrier's primary method for ensuring compliance with the HOS regulations: An FMCSA Special Agent or other authorized government safety official could deem a system to be effective if fewer than 10 percent of the drivers' paper RODS or AOBRD records were found to be false. Finally, the SNPRM also proposed to permit the use of electronic documents as a supplement to, and, in certain circumstances, in lieu of, paper supporting documents.

Commenters on the SNPRM raised concerns with the number and quality of supporting documents drivers and carriers were expected to obtain and retain; the lack of specificity of the self-monitoring system; the potential burdens for motor carriers to verify, inspect, and maintain these documents and link them to RODS; and the availability of sufficient FMCSA resources to enforce the regulation and to assess applications for exemptions. In addition, the Agency discovered a longstanding error in the computation of the information collection burden associated with the HOS regulations. This error had caused the Agency to significantly underestimate the information collection burden attributable to the SNPRM. FMCSA withdrew the SNPRM on October 25, 2007 (72 FR 60614).

The use of advanced technologies in the supporting documents context was the subject of FMCSA and predecessor agency enforcement policy. In August 1997, an enforcement policy memorandum limited the use of advanced technology, mainly global positioning system (GPS) records, during investigations regarding motor carrier compliance with FMCSRs. At the time the memorandum was issued, the Agency stated that it recognized that the technologies, which were emerging and being implemented within the industry in 1997, offered a positive opportunity to advance operational safety performance. At the same time, the time-and-location information the new technologies provided was noted to be considerably more precise than location information handwritten in a paper RODS and could tip the playing field to the disadvantage of carriers that had adopted those technologies. In order to promote and encourage motor carriers to use these new technologies in their operations and safety management systems, the Agency decided to limit its use of technology data and electronically produced records during reviews and for regulatory enforcement purposes.

In the years since the Agency established that policy, the use of advanced vehicle location tracking technologies has become widely accepted and an integral component of motor carriers' logistics, fleet operations, and safety management systems. Reasoning that the 1997 policy had achieved its purpose, FMCSA rescinded the policy on November 19, 2008 (73 FR 69717). On a related matter, the Agency formally re-initiated work on the Supporting Documents Rulemaking in July 2009.

On January 15, 2010, the American Trucking Associations (ATA) filed a Petition for a Writ of Mandamus in the United States Court of Appeals for the District of Columbia Circuit (DC Cir. No. 10–1009). ATA petitioned the court to direct FMCSA to issue an NPRM on

"supporting documents" in conformance with the requirements set forth in section 113 of the HMTAA within 60 days after the issuance of the writ and a final rule no later than 6 months after the issuance of the NPRM. The court granted the petition for writ of mandamus on September 30, 2010, ordering FMCSA to issue an NPRM on the supporting document regulations by December 30, 2010. A copy of the Petition for Writ has been placed in the docket for this NPRM. Partially in response to petitioner's court filing, FMCSA issued interim guidance on HOS supporting documents and mobile communications/tracking policy on June 10, 2010 (75 FR 32984). In addition to removing certain documents from the list of supporting documents a carrier must maintain, that guidance confirmed that carriers are liable for the actions of their employees if they have the means by which to detect HOS violations. The guidance made it clear that the 1997 enforcement policy memorandum had been made less relevant by the widespread use of vehicle location tracking technologies. Today's proposed rule would supersede, in most respects, that interim guidance.

2. Treatment of Supporting Documents in the April 5, 2010, EOBR Final Rule

The April 2010 final rule sets forth new performance standards for devices and systems used to produce electronic HOS records. It also mandates the use of these devices by motor carriers that have demonstrated serious noncompliance with the HOS regulations. In addition, the rule provides incentives to encourage motor carriers to use EOBRs on a voluntary basis by providing relief from the requirement that such motor carriers maintain supporting documents to verify driving time. Because the Agency agrees with numerous commenters that EOBRs with GPS or similar location data produce regular time and CMV location position histories sufficient to verify adequately a driver's on-duty driving activities, motor carriers voluntarily maintaining the time and location data produced by EOBRs would need to maintain only those additional supporting documents that are necessary to verify on-duty not driving (ODND) activities and off-duty status (75 FR 17208, at 17212, 17233, and 17234).

V. Agency Proposal

This NPRM would improve CMV safety and reduce paperwork burdens by increasing the use of EOBRs within the motor carrier industry, which will improve HOS compliance. The approach has three components: (1) Requiring EOBRs to be used by considerably more motor carriers and drivers than the April 2010 final rule, (2) requiring motor carriers to develop and maintain systematic HOS oversight of their drivers, and (3) simplifying the supporting documents requirements so motor carriers can make the best use of EOBRs and their support systems as their primary means of recording HOS information and ensuring HOS compliance. FMCSA believes this approach strikes an appropriate balance between promoting highway safety and minimizing cost and operational burdens on motor carriers in certain operations that have inherently less crash risk.

A. Requirement for Mandatory EOBR Use (49 CFR 395.8)

FMCSA proposes mandatory installation and use of EOBRs in all CMVs for which the use of RODS is currently required. CMVs operating in interstate commerce using accurate and true time records to record drivers' HOS under the provisions of 49 CFR 395.1(e)(1) and (2) may continue to use these records. While they are not required to install and use EOBRs, nothing in this proposed rule precludes them from doing so.

A key factor that allowed the Agency to consider proposing a broader EOBR mandate was the rise in the estimate of the Economic Value of a Statistical Life (VSL). As FMCSA discussed in the April 2010 EOBR final rule, DOT issued a memorandum on February 5, 2008, instructing its modal agencies to estimate the economic value of preventing a human fatality at $6 million. *See* "Treatment of the Economic Value of a Statistical Life in Departmental Analyses" (available at: *http://ostpxweb.dot.gov/policy/reports/080205.htm*). FMCSA also published a notice in the **Federal Register** describing this policy change (73 FR 35194, June 20, 2008). The previous VSL, which was used in the Regulatory Impact Analysis (RIA) for the EOBR NPRM (Docket: FMCSA–2004–18940), was $3.0 million. Given that the VSL doubled, the net benefits of the April 5, 2010, rule, as well as those of other FMCSA rules under development, were recalculated using the new figures. This recalculation resulted in a reappraisal of the regulatory options by the Agency. Moreover, a broader mandate is more cost effective because of the widespread availability and functionality of on-board communications and logistics management systems already adopted in the motor carrier industry.[3]

1. Scope

FMCSA proposes mandatory installation and use of EOBRs in interstate CMVs currently required to complete RODS under 49 CFR 395.8. Under today's proposal, motor carriers currently allowed to use time cards could continue to do so under the provisions of 49 CFR 395.1(e)(1).

The provisions of 49 CFR 395.1(e)(2),[4] which also permit time-card use, are available to drivers of property-carrying CMVs that do not require a CDL and who operate within a 150 air-mile radius of the driver's normal work-reporting location under the current provisions.

In short, all SH drivers that record their HOS using the timecard provision of 49 CFR 395.1(e)(1) and (2) may continue to use timecards. The Agency acknowledges that drivers working for motor carriers that keep timecards under 49 CFR 395.1(e)(1) and (2) may occasionally operate beyond the parameters of those provisions (for example, by operating outside the specified 100- or 150-air-mile radii). Under this NPRM, they would be allowed to continue using RODS for those days, as opposed to using EOBRs. The Agency requests commenters' views related to this matter. Specifically, should motor carriers whose drivers usually operate within the limits of the 49 CFR 395.1(e)(1) and (2) provisions, but occasionally beyond them, be required always to use EOBRs? For these carriers, what threshold should trigger EOBR use? Should the threshold be based upon the amount of time drivers operate beyond the time limits or the number of miles traveled beyond the distance limits (for example, 1 day per week, 2 days per week, 5 days per month, or another threshold)? Should the threshold be based upon the proportion of drivers working for a given motor carrier who operate beyond the time or distance limits?

The Agency considered including carriers, vehicles, and drivers of bulk HM in this NPRM. It did so because a crash involving a CMV transporting bulk HM can endanger a large number of people, cause significant damage to infrastructure, and generate greater traffic congestion than a crash involving a CMV transporting other cargoes. Although these events are infrequent,

[3] More information about the widespread availability can be found in Appendix F of the RIA associated with this rulemaking.

[4] There are currently proposals to change these. Please *see* NPRM for the HOS Rulemaking (75 FR 80014, December 21, 2010) for more information.

the Pipeline and Hazardous Materials Safety Administration's Hazardous Materials Risk Management Program considers the potential risks they pose to persons, property, and the environment to be "low probability, high consequence events" (Comparative Risks of Hazardous Materials and Non-Hazardous Materials Truck Shipment Accidents/Incidents, Final Report. Prepared for Federal Motor Carrier Safety Administration, March 2001). The Agency seeks additional data and information concerning the safety of bulk HM carriers in that are not currently required to use RODS. This will aid the Agency in determining whether to require this category of motor carriers to use EOBRs.

Similarly, the risk of fatalities or serious injuries when a crash involves a passenger-carrying CMV is such that the Agency considered proposing a requirement for EOBR use in this industry sector (excluding the 9–15 passenger carriers not for direct compensation segment). DOT's Motor Coach Safety Action Plan notes seven priority action items to reduce motorcoach crashes, fatalities, and injuries. The first priority action item is to initiate rulemaking to require EOBRs on all motorcoaches. The provisions of today's proposal would apply only to those passenger carrier operations where the driver is required to complete a RODS. The Agency, however, considered proposing a requirement for SH motor carriers of passengers to use EOBRs. It seeks additional data and information about the safety of this group of carriers, drivers, and vehicles.

FMCSA considered requiring only drivers in LH operations (that is, those operating beyond a 150 air-mile radius) to use EOBRs. An "LH only" option would address the segment of the motor carrier industry with the highest safety and HOS compliance gaps and has the highest estimated net benefit. However, it would not address the safety concerns associated with SH motor carriers, especially those operations on the days when RODS, rather than timecards, are required. FMCSA requests comment on the costs, benefits, and practicality of implementing a "LH Only" option.

The Agency also considered requiring EOBRs for all motor carriers subject to 49 CFR part 395. The estimated compliance costs of this "true universal" approach, which the National Transportation Safety Board (NTSB) [5] and others advocated, exceed the estimated safety benefits for most SH motor carriers; and the overall net benefits are negative. The option selected in the proposed rule is estimated to generate benefits that exceed the costs of installing EOBRs and the costs associated with increased levels of compliance with the HOS rules. This option also has the highest estimated net benefits of the options considered for this proposed rulemaking. It also acknowledges the operational distinctions between motor carriers allowed to use timecards under 49 CFR 395.1(e)(1) and (2) exclusively, and the other motor carriers that would be required to use EOBRs. More information concerning the estimated costs and benefits is available in the RIA associated with this rulemaking.

Although not analyzed as part of this rulemaking action, FMCSA also requests comments on the advantages, disadvantages, and practicality of a potential exemption from the EOBR requirements for motor carriers with few or no HOS violations.

Finally, FMCSA proposes changing the term "activity" to "status" in § 395.8(e)(1) to clarify that HOS requirements include completing records of duty status—a commonly used term of art in part 395.

2. Transition Period and Compliance Date

It is likely that a final rule resulting from this NPRM would be published sometime prior to the June 4, 2012, compliance date for the April 2010 EOBR final rule. As stated in 49 CFR 385.805, FMCSA can issue remedial directives to any motor carrier subject to 49 CFR part 395 of the FMCSRs on and after June 4, 2012. Even if the final rule were to take effect shortly after publication, today's NPRM does not propose to change the compliance date of the April 2010 final rule.

The remedial directive provision in the April 2010 rule allows the Agency to require motor carriers to use EOBRs and also to retain a wider range of supporting documents than otherwise would be required. Even after the compliance date proposed in this NPRM for the transition to mandatory EOBR use, the Agency would retain the authority to issue remedial directives to:

- Motor carriers subject to 49 CFR part 395 but not otherwise required to use AOBRDs or EOBRs, and
- Motor carriers who use EOBRs, but have HOS violations that would trigger a remedial directive could be required to retain and maintain supporting documents verifying driving time.

In proposing a compliance date for mandatory use of EOBRs, the Agency considered the safety benefits as well as the potential cost impacts to motor carriers. The annualized cost for a motor carrier that does not currently use a fleet management system (FMS) or other "EOBR-ready" system ranges from $525 to $785 per power unit (PU). For a motor carrier that uses an "EOBR-ready" FMS, the annualized cost is $92 per PU. Considering that the estimated annual revenue per PU (on an industry-wide basis) is approximately $172,000, the annual cost of an EOBR is between 0.3 percent and 0.5 percent of operating revenue. When the costs of purchasing, completing, auditing, and storing paper RODS, and the potential for improved productivity resulting from motor carriers' having access to more comprehensive EOBR data are considered, using EOBRs can actually be less expensive than using RODS.[6]

The fact remains, however, that the aggregate impact of a wider EOBR mandate will be significant because of the large number of small business entities that will be required to install and use EOBRs in their CMVs. The motor carrier industry is extremely diverse in terms of the size of fleets, the types of passengers or commodities transported, and the size of businesses. The Agency anticipates that a motor carrier operating a fleet of 150 or fewer PUs would likely be considered small under Small Business Administration (SBA) guidelines. About 99 percent of motor carriers of property and 96 percent of motor carriers of passengers in FMCSA's Motor Carrier Management Information System (MCMIS) would be considered small businesses.

For these reasons, FMCSA is proposing a compliance date for mandatory EOBR use 3 years after the effective date of a final rule. The Agency seeks comment on factors it should consider to determine if the compliance date might need to be adjusted and, if so, how. For example, should larger motor carriers be required to install and use EOBRs earlier than smaller ones; and what should the number of PUs be to determine this size threshold? Should EOBR use be phased-in over a period of time, in proportion to the number of PUs in a motor carrier's fleet? Are there other potential phase-in schedules FMCSA should consider? If so, please provide supporting data and information.

3. Incentives During the Transition

In the January 2007 NPRM, FMCSA acknowledged the concern at that time of many motor carriers that voluntary installation of EOBRs would place them

[5] NTSB Safety Recommendation H–07–041 issued on December 17, 2007.

[6] Keith R. Klein, Transport America, Chairman MTA, "Electronic Onboard Recorders and You" *Trucking Minnesota,* May 2010.

at a competitive disadvantage compared to carriers not using EOBRs. In response, FMCSA's April 2010 EOBR final rule provided two incentives to promote motor carriers' use of EOBRs that comply with 49 CFR 395.16:

(1) Motor carriers voluntarily using EOBRs that comply with 49 CFR 395.16 will receive partial relief from the supporting documents requirements of 49 CFR part 395. Specifically, these motor carriers will no longer be required to retain and maintain supporting documents related to driving time because this information will be maintained by and be accessible from the EOBR.

(2) The HOS portion of a compliance review will include both focused and random samples, but only the random sample results will be used to assign the carrier a safety fitness rating under 49 CFR part 385. If FMCSA finds a 10 percent or higher HOS-violation rate based on an initial focused sample, this may be used as the basis for a possible civil penalty. The assessment would also include a random sampling of the motor carrier's overall HOS records; this would be used as the basis for a safety fitness rating. Motor carriers required to use EOBRs under the terms of a remedial directive do not have access to this incentive.

These incentives would continue to be available to motor carriers that voluntarily use EOBRs, until the compliance date of the final rule resulting from this rulemaking.

B. Supporting Documents: Discussion of New Proposal

1. HOS Management System

Motor carriers have a duty to ensure that their drivers are complying with the requirements and prohibitions imposed upon them (49 CFR 390.11). This proposed rulemaking would explicitly continue the obligation of motor carriers to use the information contained in supporting documents to ensure that their drivers comply with prescribed HOS limits.[7] The manner in which those documents are generated would not be material—the duty applies equally to documents generated by electronic mobile communications/tracking systems as well as to paper records (49 CFR 395.11(a)). Motor carriers could be deemed to have knowledge of the contents of those documents (49 CFR 395.11(b)).

An HOS management system refers to the controls, policies, programs, practices, and procedures used by a motor carrier to systematically and effectively monitor each driver's compliance with HOS requirements and to verify the accuracy of the information contained in each driver's RODS (49 CFR 395.11(a)). A motor carrier's duty to maintain an HOS management system, as explained in this NPRM, is analogous to its duties in other management areas that are already prescribed in the driver and vehicle regulations, such as 49 CFR 382.10 (motor carrier duty to ensure compliance with part 40 controlled substances and alcohol regulations), 49 CFR 391.1 (general duty of motor carriers to ensure qualifications of drivers), 49 CFR 391.25 (motor carrier duty to make annual inquiry and review of driving record), and 49 CFR 396.3 (motor carrier duty to make systematic inspection, repair, and maintenance of CMVs).

FMCSA also proposes to amend 49 CFR part 385, Safety Fitness Procedures, Appendices B and C, to include among the listed acute and critical citations a motor carrier's failure to adopt and properly administer an "hours of service management system." To meet the safety fitness standard in 49 CFR part 385, a motor carrier would have to have in place the controls, policies, programs, practices, and procedures to systematically and effectively monitor each driver's compliance with HOS requirements.

2. Definition of "Supporting Document" (49 CFR 395.2)

FMCSA proposes to adopt verbatim the statutory definition from HMTAA section 113(c): "A supporting document is any document that is generated or received by a motor carrier or CMV 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 RODS." Significantly, this Congressional direction expands the definition of "supporting documents" beyond Agency practice to include all documents that "could be used" to verify drivers' RODS.

3. Information in Supporting Documents (49 CFR 395.11(e))

Collectively, the supporting documents required must provide the motor carrier (and a safety investigator) with the driver's identification and a complete and accurate history of the driver's duty status, by date, time, and location. Therefore, as proposed in 49 CFR 395.11(e)(1), the proposed requirements for supporting documents would include certain elements. The descriptions of these elements would be consistent with the requirements of the April 2010 EOBR final rule. Safety investigators and other designated officials of FMCSA have the authority to request any record of a motor carrier, lessor, or person controlling or controlled by the motor carrier (49 U.S.C. 504(c)).

Supporting documents must contain the following required elements: Personal identification, date, time, and location, either in an individual document or in specified combination, as set forth in section 395.11(e).

Driver Identification

The driver's name, or a personal identification number (PIN) associated with the driver's name, is central to developing a RODS for each driver subject to the HOS regulations. A unit (vehicle) number may be used so long as it can be associated with the driver operating the vehicle at a specific date, time, and location.

Date and Time

The date of an event and the time the event began and ended (time-stamp) are central to place an event within a sequence of duty status items. For activities that represent a single point in time, this would include, for example, the time a CMV entered a shipper's or consignee's location.

Location

The location description associated with the supporting document must be sufficiently precise to enable Federal, State, and local enforcement personnel to quickly determine the vehicle's geographic location on a standard map or road atlas; "location" means the nearest city, town, or village. If the location information is automatically recorded on an electronic document, it must be derived from a source not subject to alteration by the motor carrier, driver, or third party. Because AOBRDs and EOBRs play a significant role in motor carrier safety, FMCSA is proposing to modify 49 CFR 395.8(e) to prohibit tampering with or modifying these devices in such a way that driver duty status is not accurately recorded.

Related to this, the Agency is also proposing expressly to prohibit the use of electronic jamming devices that interfere with EOBRs and other electronic communication or vehicle tracking systems. Although FMCSA's goal is to forestall the use of jammers to avoid HOS compliance, some of these devices can interfere with air traffic

[7] Drivers operating under the 49 CFR 395.1(e) and (2) provisions are not subject to 49 CFR 395.8. 49 CFR 395.8(k) is the requirement for supporting documents. If a driver is eligible to use timecards, the carrier does not have to maintain supporting documents for those days.

control and other critical safety communication systems and thus pose additional safety risks.

4. Number, Type, and Frequency of Supporting Documents (49 CFR 395.11(e)(2) and (3))

Number

The number of documents that a motor carrier would need to examine, review, and retain will vary according to the motor carrier's operational circumstances. For example, operations where a motor carrier's drivers pick up fully-loaded trailers at one consignee, drive for several hundred miles, drop the trailer at its destination, and pick up another fully-loaded trailer from another consignee would have fewer on-duty non-driving periods than an operation where a driver brings an empty trailer to a shipper, loads it, and drops portions of the load at many receivers' locations. The number of documents could also vary according to the type and variety of a driver's daily assignments the quality and completeness of the supporting documents available, as well as the geographic area and commercial character of the region in which the carrier operates.

Type

Consistent with the direction provided in section 113(b)(2) of the HMTAA, this NPRM addresses the "type" of supporting documents that must be used to verify RODS. In doing so, the Agency recognizes the diversity of carrier operations and operational circumstances, and provides a flexible range of document types that a carrier can use to define its compliance system, appropriate with its needs. Examples of the types of documents that may be used to satisfy the supporting documents requirement are set out in the definition of "hours of service management system" in proposed 49 CFR 395.2. In contrast to the broad range of documents used as examples of supporting documents in current guidance at 49 CFR 395.8(k)(1), the Agency would require the motor carrier to retain sufficient supporting documents from the following four categories: (1) Payroll; (2) trip-related expense records and receipts; (3) FMS communication logs; and (4) a bill of lading or equivalent document. The supporting documents retained in the four categories identified might be individual records within a supporting document that covers multiple activities of individual drivers (such as dispatch records organized according to individual driver assignments) or specific types of activities of multiple drivers (such as pickup and delivery records for drivers assigned to one shipper's account) to reflect the beginning and end of each on-duty non-driving period.

Frequency

The Agency proposes to require carriers to retain, for each driver, at least one supporting document for the beginning and end of each ODND period. Only one document would be needed for the beginning and end of each ODND period if that document contained all of the data elements set forth in proposed 49 CFR 395.11(e) (*i.e.,* driver name or PIN, date and time, and location).

If the motor carrier does not retain one single supporting document that shows all of the required data elements, it would be required to retain sufficient documents, from any of the four categories listed above, to show collectively all of the required information: the driver identification and the location, date and time of the duty status changes. Such an approach addresses the requirements of section 113(c) of HMTAA regarding documents that can be used "as produced" separately or collectively, "with additional identifying information," to verify the accuracy of the driver's RODS.

The Agency stresses that the types of documents proposed to be retained would *not normally* be generated *during periods when drivers are actually off-duty.* However, FMCSA has the statutory authority to request any documents related to the operation of CMVs in interstate commerce.

Additionally, the Agency is responding to section 113(b)(2) of the HMTAA concerning "frequency" of supporting documents retention by adding proposed language under 49 CFR 395.8(h) to require the driver to submit all corresponding supporting documents to the employing motor carrier within 3 days following the completion of the RODS. Drivers will be required to forward supporting documents for which they are responsible (mainly, trip-related expense reports and receipts) for each day that they provide a RODS. Additionally, reflecting the widespread use of both electronic documents and document scanning systems, drivers would be required to forward those documents to the motor carrier within 3 days of receipt, instead of the 13 days in the current regulations (*see* 49 CFR 395.8(i)). Motor carriers and their customers are rapidly moving to electronic, paperless systems that can provide near-instantaneous access to HOS-relevant data and records. If a supporting document is submitted electronically, the driver should submit it the same duty day (49 CFR 395.11(h)).

5. Certification Provision (49 CFR 395.11(f))

The proposed "certification provision" acknowledges the diversity of carrier operations and the fact that the proposed minimum number of supporting documents will not be available to all drivers and/or carriers for all periods for each day of operation. The certification provision would allow a carrier that retains none of these supporting documents in its normal course of business or, alternatively, does not retain sufficient documents from the four categories noted above, to certify that no supporting documents were available.

The certification provision is not a "loophole," however; motor carriers that falsely certify the absence of supporting documents would be subject to the maximum penalty authorized by law. It is true that Congress instructed FMCSA, when assessing civil penalties, to consider a number of factors, including the nature, circumstances, extent, and gravity of the violation committed, as well as the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and other such matters as justice and public safety may require (49 U.S.C. 521(b)(2)(D)). But the overriding concern of Congress was clearly stated in the final sentence of that provision: "In each case, the assessment shall be calculated to induce further compliance." Because motor carriers that submit false certifications are deliberately subverting an essential element of the hours-of-service regulations and may well be concealing practices that place both their own drivers and the public at increased risk, FMCSA believes that nothing less than the maximum penalty would "induce further compliance." The Agency has no desire to impose the maximum penalty and does not expect to do so frequently; FMCSA's hope is that the deterrent effect of maximum penalties will make such action unnecessary. However, the Agency believes it should have these penalties available to deal with extreme violations. False certification is an egregious—indeed fraudulent—violation of the FMCSRs.

6. Retention and Maintenance of Supporting Documents (49 CFR 395.8(k)(1))

FMCSA proposes a retention period of 6 months as specified in section 113(b)(3) of the HMTAA. This is consistent with the existing retention

period for other HOS paper and electronic documents. However, the Agency seeks to clarify that while the section heading for current 49 CFR 395.8(k) is "*Retention* of driver's record of duty status," paragraph (k)(1) discusses the requirement to "maintain" such documents, which is consistent with judicial interpretation of maintaining documents for subsequent use by carrier and Agency personnel. Consequently, 49 CFR 395.8(k)(1) would be amended merely to add the phrase "retain and" prior to the term "maintain," to indicate the relationship between the terms.

7. Motor Carrier Self-Compliance Systems

The statute requires FMCSA to provide exemptions for qualifying "self-compliance systems," instead of supporting documents retention. In satisfaction of HMTAA section 113(b)(4), the proposed rule would add a provision to authorize, on a case-by-case basis, motor carrier self-compliance systems (49 CFR 395.11(i)). A motor carrier could apply for an exemption under existing part 381 provisions for additional relief from the requirements for retaining supporting documents for RODS. Among other things, an application for exemption must include a statement that explains how the applicant would ensure that he or she could achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with 49 CFR part 395. We request that commenters provide information describing their self-compliance systems, or the systems they might anticipate developing.

VI. Rulemaking Analyses

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

Under E.O. 12866 (58 FR 51735, October 4, 1993) and DOT policies and procedures, FMCSA must determine whether a regulatory action is "significant," and therefore subject to OMB review and the requirements of the E.O. The Order defines "significant regulatory action" as one likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal government or communities.

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency.

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.

FMCSA determines that this proposed rule would have an annual effect of $100 million or more. In addition, because of public interest about the rulemakings related to HOS compliance, it is a significant regulatory action within the meaning of the E.O. and under the regulatory policies and procedures of DOT. The Agency has, therefore, conducted an RIA of the costs and benefits of this NPRM. The RIA is summarized below. The full analysis is available in the docket pertaining to this rulemaking.

FMCSA evaluated the costs and benefits associated with the proposed rule on EOBRs and their affect on improving compliance with the underlying HOS rules. In the RIA associated with this rulemaking, the Agency updated its assessment of the baseline level of non-compliance with the current HOS rules to account for changes in certain factors such as inflation, a decline in HOS violations that has preceded the mandate for EOBR use, and the decline in CMV-related crashes. Included in this analysis as alternative baselines are Options 2 and 3 from the recently published NPRM for the HOS rules for property carriers (Option 1 of the HOS NPRM is to retain the current HOS rules). The major changes for both HOS options 2 and 3 are to: Allow at most 13 hours of on-duty time within the daily driving window; limit continuous on-duty drive time to 7 hours, at which point a 30 minute off-duty or sleeper-berth period would be required; and to require at least two overnight periods in each 34-hour restart period. HOS Option 2, however, also reduces daily drive time from 11 to 10 hours, while HOS Option 3 retains 11 hours of drive time. To avoid confusion between the HOS options and the options for the EOBR NPRM, HOS Option 2 and HOS Option 3 are referred to as Baseline 2 and Baseline 3, respectively.

The Agency is currently considering three options for the EOBR mandate. Option 1 would require EOBRs for all drivers required to use paper RODS. Option 2 expands Option 1 to include all passenger-carrying CMVs subject to the FMCSRs and all shipments of bulk HM, regardless of whether the drivers use paper RODs or are exempted from doing so, as described under the SH operations provisions in § 395.1(e). Option 3 would include all CMV operations subject to the HOS requirements.

In this NPRM, FMCSA also proposes changes to requirements concerning HOS supporting documents. The Agency has clarified its supporting document requirements, recognizing that EOBRs themselves serve as the most robust form of documentation for on-duty driving periods. The Agency has been careful not to increase the burden associated with retention of the supporting documents; but it also cannot claim, even with EOBR use, that it has reduced the burden of supporting documents.

Although the "foundation" RODS burden would drop dramatically, primarily due to the elimination of paper RODS, the overall supporting documents burden would not be reduced. This is because carriers will still be required to maintain supporting documents. In addition, while motor carriers may gain efficiencies in reviewing electronic RODS, as opposed to paper RODS, against supporting documents to ensure driver compliance, the overall burden of review for this task is not expected to change. These proposed changes are expected to improve the quality and usefulness of the supporting documents and, thereby, (1) improve the Agency's ability to effectively and efficiently review motor carriers' HOS records, and (2) detect and assess violations during on-site compliance reviews. The Agency is currently unable to evaluate the extent to which the proposed changes to the supporting documents requirements will lead to reductions in crashes.

The following table (Table 1) summarizes the analysis. The figures presented are annualized using 7 percent and 3 percent discount rates.

TABLE 1—ANNUALIZED COSTS AND BENEFITS (2008 $ MILLIONS) [8]

	7 Percent discount rate			3 Percent discount rate		
	Option 1	Option 2	Option 3	Option 1	Option 2	Option 3
I—EOBR Costs	1,586	1,643	1,939	1,554	1,610	1,900

TABLE 1—ANNUALIZED COSTS AND BENEFITS (2008 $ MILLIONS) [8]—Continued

	7 Percent discount rate			3 Percent discount rate		
	Option 1	Option 2	Option 3	Option 1	Option 2	Option 3
II—HOS Compliance Costs	398	404	438	398	404	438
III—Total Costs (I+II)	1,984	2,047	2,377	1,952	2,014	2,338
IV—Paperwork Savings [9]	1,965	1,965	1,965	1,965	1,965	1,965
V—Safety Benefits	734	736	746	734	736	746
VI—Total Benefits (IV+V)	2,699	2,701	2,711	2,699	2,701	2,711
VII—Net Benefits (VI–III)	715	654	334	747	687	373
VIII—Baseline 2 (HOS Option 2) Net Benefits	799	738	418	831	771	457
IX—Baseline 3 (HOS Option) Net Benefits	859	798	478	891	831	517

FMCSA estimates that all options presented in this RIA have positive net benefits under any baseline, that is, under any version of the HOS rules. However, the greatest safety impacts of the HOS rules are seen in LH operations, and the inclusion of SH operations diminishes the net benefits of this EOBR rule. Therefore Option 3, which includes all carrier operations, results in much lower net benefits as compared to Options 1 and 2. The alternative baselines reflect changes to the HOS rules that affect only LH, RODS-using operations.

A fundamental purpose of the HOS regulations is to reduce crash risk in order to improve safety, and as elaborated at length in the 2010 HOS proposed rule, the Agency has concluded that the proposed rules will have significant safety benefits. Ideally, the agency would have data to directly measure crash risk by hours of driving and other dimensions for which regulations are proposed. Because the Agency has been not been able to gather such data, it has based its analysis, in significant part, on share of crashes that are fatigue-coded.

The agency recognizes that using share of crashes that are fatigue-coded could have two possible problems: Accident inspectors may be more likely to code crashes as fatigue-related if the driver has been on the road longer. Also, the share of crashes that are coded as fatigue-related may conceivably increase simply because the share of crashes caused by other factors goes down. There could be no increase in the risk of a fatigue-related crash (the central question), but an increase in the share of fatigue-related crashes. The Agency has little evidence that either of these factors is a significant problem. Nonetheless, while the data are not as complete as FMCSA would like them to be, the Agency aimed to limit, to the extent possible, the likelihood that drivers will be fatigued, either when they come on duty or during or at the end of a working period. Safety benefits are based on this reduction in fatigue and an associated reduction in fatigue-coded crashes.

FMCSA sought information from the public on driving exposure data at each hour in order to be able to calculate relative crash risk at each hour. FMCSA seeks the same information for this rule since fatigue coded crashes are not the perfect measure of safety benefits from HOS compliance. If the agency receives information about relative crash risk, the agency will revise and update the benefits calculations for this EOBR provision in the final rule stage.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term "small entities" comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses.

Number of Small Entities to Which the Rulemaking Would Apply

Under criteria established by the SBA, firms with annual revenues of less than $25.5 million are considered small for all North American Industrial Classification System (NAICS) codes falling under the truck transportation sub-sector (NAICS 484) or the bus transportation sub-sector (NAICS 485). Many motor carriers, however, are private carriers that transport goods or passengers for parent companies who are not primarily engaged in truck-transportation, for example, airlines, railroads, retail stores, and landscaping or home contracting businesses with SBA size thresholds associated with their industries that are different from those used for truck or bus transportation.

FMCSA does not collect revenue data for most carriers nor can it identify, carrier-by-carrier, to which industry sub-sectors each firm belongs. Carriers do, however, report the number of PUs they operate in the U.S. on Form MCS–150. With regard to truck PUs, the Agency determined in the 2003 Hours of Service Rulemaking RIA [10] that a PU produces about $172,000 in revenue annually (adjusted for inflation).[11] According to the SBA, motor carriers with annual gross revenue of $25.5 million are considered small businesses.[12] This equates to about 150 PUs (25,500,000/172,000). FMCSA believes that this 150 PU figure would be applicable to private carriers as well: Because the sizes of the fleets they are able to sustain are indicative of the overall size of their operations, large

[8] Compliance costs and safety benefits of the current HOS rules and the two alternate baselines reflect an estimated EOBR efficacy of 40 percent. Carriers would bear compliance costs that they are currently avoiding for the 40 percent of the HOS violations that continue to occur, and the public would accrue the safety benefits from eliminating these violations. The full analysis is available in the docket pertaining to this rulemaking. The steps used to derive the annualized figures in this table are also presented in detail in that analysis.

[9] There will be paperwork savings due to the elimination of paper RODS, but the Agency does not expect paperwork savings from changes to the supporting document requirements. Reductions to paperwork burden accrue only to operations required to use RODS, which are fully included in Option 1. The operations added in options 2 and 3 are exempt from paper RODS, and consequently would experience no paperwork savings from their elimination.

[10] Regulatory Analysis for: Hours of Service of Drivers; Driver Rest and Sleep for Safe Operations, Final Rule—Federal Motor Carrier Safety Administration. 68 FR 22456—Published 4/23/2003.

[11] The 2000 TTS Blue Book of Trucking Companies, number adjusted to 2008 dollars for inflation.

[12] U.S. Small Business Administration, Table of Small Business Size Standards matched to North American Industry Classification (NAIC) System codes, effective August 22, 2008. *See* NAIC subsector 484, Truck Transportation.

CMV fleets can generally only be managed by large firms. There is a risk, however, of overstating the number of small businesses because the operations of some large non-truck or bus firms may require only a small number of CMVs. The Agency has identified about 482,000 motor carriers that operate 150 or fewer power units, about 99% of property carriers.

For passenger carriers, the Agency conducted a preliminary analysis to estimate the average number of PUs for a small entity earning $7 million annually, based on an assumption that a passenger carrying CMV generates annual revenues of $150,000. This estimate compares reasonably to the estimated average annual revenue per PU for the trucking industry ($172,000). A lower estimate was used because buses generally do not accumulate as many vehicle miles traveled (VMT) per PU as trucks,[13] and it is assumed, therefore, that they would generate less revenue on average. The analysis concluded that passenger carriers with 47 PUs or fewer ($7,000,000 divided by $150,000/PU = 46.7 PU) would be considered small entities. The Agency examined its registration data and found that 96 percent of, or just over 19,000, interstate passenger carriers have 47 PUs or fewer.

Reporting and Recordkeeping

FMCSA believes that implementation of the proposed rule would not require additional reporting, recordkeeping, or other paperwork-related compliance requirements beyond those that are already required in the existing regulations. In fact, the proposed rule is estimated to result in paperwork savings, particularly from the elimination of paper RODS. Drivers can complete, review, and submit EOBR records much more rapidly compared to paper RODS. Furthermore, motor carriers would experience compensatory time-saving and administrative efficiencies as a result of using EOBR records in place of paper RODS. The level of savings would vary with the size of the carrier implementing the systems (larger carriers generally experience greater savings).

Under current regulations, most CMV drivers are required to fill out RODS for every 24-hour period. The remaining population of CMV drivers is required to fill out time cards at their workplace (reporting location). Motor carriers must retain the RODS (or timecards) for 6 months. FMCSA estimates annual recordkeeping cost savings from this proposed rule of about $688 per driver. This is comprised of $486 for a reduction in time drivers spend completing paper RODS and $56 submitting those RODS to their employers; $116 for motor carrier clerical staff to handle and file the RODS; and $30 for elimination of expenditures on blank paper RODS for drivers. Two of the options discussed in this NPRM would extend the EOBR mandate to carrier operations that are exempt from the RODS. Paperwork savings would not accrue to drivers engaged in these operations.

Help for Small Entities

Of the population of motor carriers that FMCSA regulates, 99 percent of motor carriers of property and 96 percent of motor carriers of passengers are considered small entities under the SBA's definition. Because small businesses are such a large part of the demographic the Agency regulates, providing exemptions to small business to permit noncompliance with safety regulations is not feasible and not consistent with good public policy. The safe operation of CMVs on the Nation's highways depends on compliance with all of FMCSA's Safety Regulations. Accordingly, the Agency would not allow any motor carriers to be exempt from coverage of the rule based solely on a status as a small entity.

FMCSA analyzed an alternative 5-year implementation schedule that would have provided a longer implementation period for small businesses. However, the estimated cost of compliance for motor carriers, including small businesses, did not decrease from the 3-year "baseline" proposed implementation period. Furthermore, a considerably longer implementation period could compromise the consistency of compliance-assurance and enforcement activities, and, thereby, diminish the rule's potential safety benefits. Therefore, the Agency's proposal includes a single compliance date for all motor carriers that would be subject to the new rule's requirements.

However, the Agency recognizes that small businesses may need additional information and guidance in order to comply with the proposed regulation. In order to improve their understanding of the proposal and any rulemaking that would result from it, FMCSA proposes to conduct outreach aimed specifically at small businesses. FMCSA would conduct Webinars and other presentations as needed and upon request, at no charge to the participants. These would be held after the final rule has published and before the rule's compliance date. To the extent practicable, these presentations would be interactive. Their purpose would be to describe in plain language the compliance and reporting requirements so that they are clear and readily understood by the small entities that would be affected

EOBRs can lead to significant paperwork savings that can in part or fully offset the costs of the devices. The Agency, however, recognizes that these devices entail a significant up-front investment than can be burdensome for small carriers. At least one vendor, however, provides free hardware and recoups the cost of the device over time in the form of higher monthly operating fees. The Agency is also aware of lease-to-own programs that allow the carriers to spread the purchase costs over several years. Nevertheless, the typical carrier would likely be required to spend $1,500–$2,000 per CMV to purchase and install EOBRs, and several hundred dollars per year for service fees. This estimate is higher than the estimate used in the April 2010 EOBR rulemaking for two primary reasons.

This proposed mandate would be permanent and also would require EOBRs to be installed and used in approximately 20 times as many CMVs than were estimated to be affected by the April 5, 2010, final rule. Therefore, the Agency cannot assume that an adequate number of the lower-cost devices would be available to meet the needs of that larger market. Current revenue data from the manufacturer of the device cited in the April 2010 final rule indicate that its market share is relatively low.

A second reason for using a higher cost for this analysis is that, in response to motor carrier customer demand, EOBR suppliers have expanded the functionality of their products and services. Hours-of-service recording and monitoring are functions commonly offered as part of comprehensive fleet management systems, rather than in stand-alone devices. Many motor carriers are recognizing the potential operational benefits they can gain from the use of fleet management systems, and the marketplace is responding with products and services tailored to motor carriers of all sizes. However, the Agency is not dismissing the possibility that "stand-alone" EOBRs, providing only hours-of-service recording and reporting (similar to the first AOBRDs in the 1980s), may be offered for sale or lease at a lower cost than devices with other functionalities in addition to HOS compliance. The Agency requests comments and data about EOBR cost.

[13] FMCSA, "Large Truck and Bus Crash Facts 2008," Tables 1 and 20; *http://fmcsa.dot.gov/facts-research/LTBCF2008/Index-2008LargeTruckandBusCrashFacts.aspx.*

Based on direct experience with the devices and conversations with vendors, the Agency believes these devices are extremely durable and can be kept operational for many years. In addition to purchase costs, carriers would also likely spend about $40 per month per CMV for monthly service fees.

On January 18, 2011, the President issued a memorandum entitled *Regulatory Flexibility, Small Business, and Job Creation.* In it, the President directed agencies to consider certain flexibilities for small entities. Furthermore, the President directed agencies to include an explicit justification for not providing such flexibilities and directs the agencies, when initiating rulemaking that will have a significant economic impact on a substantial number of small entities, to give serious consideration to whether and how it is appropriate, consistent with law and regulatory objectives, to reduce regulatory burdens on small businesses, through increased flexibility. Such flexibility may take many forms, including:

- Extended compliance dates that take into account the resources available to small entities;
- Performance standards rather than design standards;
- Simplification of reporting and compliance requirements (as, for example, through streamlined forms and electronic filing options);
- Different requirements for large and small firms; and
- Partial or total exemptions.

The President further directs that whenever an executive agency chooses, for reasons other than legal limitations, not to provide such flexibility in a proposed or final rule that is likely to have a significant economic impact on a substantial number of small entities, it should explicitly justify its decision not to do so in the explanation that accompanies that proposed or final rule. The Agency requests public comment on the extent to which flexibility could be incorporated into the rulemaking, beyond the options considered in the proposal, while fulfilling its safety mandate.

In establishing FMCSA, Congress's enabling legislation called safety "our highest priority." Motor Carrier Safety Improvement Act of 1999, sec. 113, Public Law 106–159, 113 Stat. 1748, 1750. Our regulatory authority over motor carriers stems from 1935 and has since been augmented by comprehensive legislation that conferred broad rulemaking authority. We have attempted to balance our statutory obligations with the need to consider regulatory alternatives and the burdens they present to various entities, including small entities. But given our safety mandate, exempting 98% of our regulated population from this new requirement based simply on their small business status would severely undermine our safety mission and ignore our congressional mandate. Our proposal did consider alternatives and exemptions, as discussed earlier in this document. The Agency does not believe that it is feasible to exempt small businesses from a requirement to use EOBRs. Because of the nature of the commercial motor vehicle industry, there would be no reliable way for an enforcement official to determine if a driver or CMV is operating as a small business on a particular day. Even if the Agency could develop a system to make that daily determination, it has not been analyzed to determine if it could be implemented in a cost beneficial manner.

Also, as we propose in the regulatory text at 49 CFR 395.11(i) to address supporting documents, motor carriers can apply for an exemption based on a process under 49 CFR part 381. A motor carrier could apply for an exemption under existing part 381 provisions for additional relief from the requirements for installing and using EOBRs. Such exemptions can be granted for up to two years, and the Agency believes this is the best way to balance regulatory relief with its safety mission.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires Agencies to evaluate whether an Agency action would result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of $140.8 million or more (as adjusted for inflation) in any 1 year, and if so, to take steps to minimize these unfunded mandates. This rule would not result in the expenditure by State, local and Tribal governments, in the aggregate, of $140.8 million or more in any 1 year, nor would it affect small governments. As Table 2 shows, this rulemaking would result in private sector expenditures in excess of the threshold for any of the proposed options. Gross costs, however, are expected to be more than offset in savings from paperwork burden reductions.

TABLE 2—ANNUALIZED NET EXPENDITURES BY PRIVATE SECTOR (MILLIONS)

	Option 1	Option 2	Option 3
Total EOBR Cost	$1,586	$1,643	$1,939
Total Paperwork Savings	1,965	1,965	1,965
Net EOBR Cost	−379	−322	−26

E.O. 13132 (Federalism)

A rule has implications for Federalism under Executive Order 13132 if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on such governments. This proposed action has been analyzed in accordance with E.O. 13132. FMCSA has determined that this rule would not have a substantial direct effect on States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. A State that fails to adopt the proposed amendments, if finalized, within 3 years of the effective date of the final rule, will be deemed to have incompatible regulations and will not be eligible for Basic Program or Incentive Funds under the Motor Carrier Safety Assistance Program in accordance with 49 CFR 350.335(b).

E.O. 12372 (Intergovernmental Review)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rule.

Indian Tribal Governments

This proposed rule does not have Tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulations. This NPRM proposes regulatory changes to several parts of the FMCSRs, but only those applicable to part 395, "Hours of Service of Drivers," would alter or impose information collection requirements. The information collection requirements of this NPRM would affect OMB Control Number 2126–0001, which is currently approved through August 31, 2011, at 181,270,000 burden hours.

As described under the analysis concerning E.O. 12866, nearly all of the estimated reduction in paperwork burden that would result from this rulemaking would come from a reduction in the burden associated with the elimination of RODS for nearly all motor carrier operations. This reduction would not take place, however, until three years after the effective date of a final rule resulting from this proposed rulemaking action.

OMB requires agencies to provide a specific, objective estimate of the burden hours imposed by their information collection requirements (5 CFR 1320.8(a)(4)). This NPRM proposes a compliance date 3 years after the date of publication of the final rule to allow regulated entities a reasonable opportunity to satisfy its requirements. The PRA limits estimates of paperwork burdens to a 3-year period. During the initial 3 years following publication of the final rule, the requirements of part 395, including information collection requirements, would remain unchanged. At an appropriate time, the Agency would provide notice and request public comment on the changes in the paperwork burden of part 395 resulting from implementation of the rule after the 3-year period. At the present time, the Agency believes that the regulatory changes proposed by this NPRM will ultimately effect a net reduction in the paperwork burden of OMB Control Number 2126–0001 (*See* the RIA for more information). The Agency requests information concerning any changes in paperwork burden from motor carriers currently using EOBR devices.

National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.,* as amended) requires Federal agencies to consider the consequences of, and prepare a detailed statement on, all major Federal actions significantly affecting the quality of the human environment. In accordance with its procedures for implementing NEPA (FMCSA Order 5610.1, Chapter 2.D.4(c) and Appendix 3), FMCSA prepared a draft Environmental Assessment (EA) to review the potential impacts of this proposed rulemaking. The draft EA findings are summarized below. The full EA is in the docket pertaining to this rulemaking.

Implementation of this proposed action would alter to some extent the operation of CMVs. However, the proposal, if implemented, would not require any new construction or change significantly the number of CMVs in operation. FMCSA finds, therefore, that noise, endangered species, cultural resources protected under the National Historic Preservation Act, wetlands, and resources protected under section 4(f) would not be impacted by this rulemaking.

The EA finds negligible impacts on air quality and no adverse effect on public safety. FMCSA anticipates that drivers of CMVs operated by carriers required to use EOBRs would increase their compliance with the requirements of the HOS rules. From an emissions standpoint, this could lead to drivers taking more off-duty time parked with the engine idling, which increases engine emissions on a per-mile basis. This rulemaking, however, also has the potential to prevent CMV crashes and resulting emissions. When emissions that would otherwise result from prevented CMV crashes are subtracted from the emissions generated by additional compliance with the HOS regulations, FMCSA determines that the overall change in pollutants would be negligible. Because of the enhanced HOS compliance that is likely to result from this rulemaking, it is also likely that the rulemaking would result in an increase in public safety. Drivers for carriers brought into HOS compliance would experience reduced crash risk and be less likely to have crashes. Separately, the rulemaking proposes to eliminate the use of paper-based RODS documentation, which reduces paper use.

As discussed in the EA, FMCSA also analyzed this proposed rule under the Clean Air Act, as amended (CAA) section 176(c), (42 U.S.C. 7401 *et seq.*) and implementing regulations promulgated by the Environmental Protection Agency.

FMCSA concludes that the rule changes would have an overall minimal impact on the environment, and therefore would not require an environmental impact statement. The provisions under the proposed action do not, individually or collectively, pose any significant environmental impact. FMCSA requests comments on this analysis.

E.O. 13211 (Energy Supply, Distribution, or Use)

FMCSA determines that the proposed rule would not significantly affect energy supply, distribution, or use. Therefore, no Statement of Energy Effects is required.

E.O. 13045 (Protection of Children)

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks, requires agencies issuing "economically significant" rules that involve an environmental health or safety risk that may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. As discussed previously, this proposed rule is economically significant; but it would cause no environmental or health risk that disproportionately affects children.

E.O. 12988 (Civil Justice Reform)

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

E.O. 12630 (Taking of Private Property)

This rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) requires Federal agencies proposing to adopt Government technical standards to consider whether voluntary consensus standards are available. If the Agency chooses to adopt its own standards in place of existing voluntary consensus standards, it must explain its decision in a separate statement to OMB.

FMCSA determined that there are no voluntary national consensus standards for the design of EOBRs as complete units. However, as a part of the April 2010 EOBR final rule, the Agency found there are many voluntary consensus standards concerning communications and information interchange methods that could be referenced as part of comprehensive performance-based requirements for EOBRs to ensure their reliable and consistent utilization by motor carriers and enforcement officers. For example, the digital character set

requirement references the American Standard Code for Information Interchange (ASCII) character set specifications, the most widely used form of which is ANSI X3.4–1986. This is described in the Document Information Systems—Coded Character Sets—7-Bit ASCII (ANSI document ANSI INCITS 4–1986 (R2002)) published by the American National Standards Institute (ANSI). In another example, the Agency would reference the 802.11 family of standards for wireless communication published by Institute of Electrical and Electronics Engineers (IEEE). The April 2010 EOBR final rule incorporated by reference these standards, and others, in 49 CFR 395.18.

As part of the development of the April 2010 EOBR final rule, FMCSA reviewed and evaluated the European Commission Council Regulations 3821/85 (analog tachograph) and 2135/98 (digital tachograph). These are not voluntary standards, but rather are design-specific type-certification programs. The Agency concluded that these standards lack several features and functions (such as CMV location tracking and the ability for the driver to enter remarks) that FMCSA believes are necessary to include in its proposed performance-based regulation. It further concluded that the standards require other features (such as an integrated license document on the driver's data card) that are not appropriate for U.S. operational practices.

Privacy Impact Assessment

Section 522(a)(5) of the Transportation, Treasury, Independent Agencies, and General Government Appropriations Act, 2005 (Pub. L. 108–447, div. H, 118 Stat. 2809 at 3268) requires DOT and certain other Federal agencies to conduct a privacy impact assessment of each proposed rule that will affect the privacy of individuals. Although the Agency determined that the same personally identifiable information (PII) for CMV drivers currently collected as part of the RODS and supporting documents requirements would continue to be collected under this rulemaking, it recognizes the significance of the decision to require, even in limited circumstances, that PII, previously kept in paper copy, now be kept electronically. Privacy is a significant consideration in FMCSA's development of this proposal. As stated earlier, FMCSA recognizes that the need for a verifiable EOBR audit trail (a detailed set of records to verify time, date, and physical location data for a particular CMV) must be counterbalanced by privacy considerations. As part of the development of the April 2010 EOBR final rule, the Agency considered, but rejected, certain alternative technologies to monitor drivers' HOS (including in-cab video cameras and bio-monitors) as too invasive of personal privacy. All CMV drivers subject to 49 CFR part 395 must have their HOS accounted for to ensure they have adequate opportunities for rest. This NPRM would not change the Agency's policies, practices, or regulations regarding its own collection and storage of HOS records of individual drivers whose RODS are reviewed. It would not change the technology by which compliance is to be documented, as stated in the April 2010 EOBR final rule, in a way that enhances both the sharing of information and its capacity to be data processed.

As stated in the April 2010 final rule, and as is the case with all FMCSRs, the HOS information recorded on EOBRs would be accessible to Federal and State enforcement personnel only when compliance assurance activities are conducted at the facilities of motor carriers subject to the RODS requirement or when the CMVs of those carriers are inspected at roadside. Motor carriers would not be required to upload this information into Federal or State information systems accessible to the public. This would aid data security and ensure that general EOBR data collection does not result in a new or revised Privacy Act System of Records for FMCSA. (Evidence of violation of any FMCSA requirements uncovered during a compliance or enforcement activity is transferred to a DOT/FMCSA Privacy Act System of Records.) As FMCSA has previously discussed regarding EOBRs, the Agency complies with the Freedom of Information Act in implementing DOT regulations (75 FR 17221, April 5, 2010; 49 CFR part 7).

What this NPRM would change, and change significantly, is the capacity of HOS data to be processed and converted to more usable information for the purpose of determining drivers' and motor carriers' compliance with the HOS regulations. Although no CMV operator would be required to upload this data to a Federal or State database accessible to the public, the electronic formulation of the data would make it easier for a CMV operator to keep track of the activities of its drivers. Similarly, Federal and State law enforcement and safety authorities, including FMCSA, would be better able to do the same. As shown in other contexts, the increased accessibility, accuracy, and reliability of geospatial location information has made electronically generated and preserved data attractive to a variety of audiences. As discussed above, the Agency has tailored this NPRM to recognize the privacy interests of CMV drivers.

The entire privacy impact assessment is available in the docket for this proposed rule.

List of Subjects

49 CFR Part 385

Administrative practice and procedure, Highway safety, Mexico, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 395

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, FMCSA is proposing to amend 49 CFR Chapter III as follows:

PART 385—SAFETY FITNESS PROCEDURES

1. The authority citation for part 385 continues to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(e), 5109, 5113,13901–13905, 31133, 31135, 31136, 31137(a), 31144, 31148, and 31502; Sec. 113(a), Pub. L. 103–311; Sec. 408, Pub. L. 104–88; Sec. 350, Pub. L. 107–87; and 49 CFR 1.73.

2. Amend § 385.3 by adding a definition for the term "Hours of Service Management System" in alphabetical order to read as follows:

§ 385.3 Definitions and acronyms.

* * * * *

Hours of Service Management System is defined in § 395.2 of this subchapter.

* * * * *

3. Amend Section VII of Appendix B to part 385, by adding the following violations in numerical order to read as follows:

Appendix B to Part 385—Explanation of Safety Rating Process

* * * * *

VII. List of Acute and Critical Regulations

* * * * *

§ 395.8(e)(1) Failing to require a driver to complete the record of duty status required by either this section, § 395.15 or § 395.16; failing to preserve a record or making false reports (critical).

§ 395.8(e)(2) Failure to prohibit a driver from disabling, deactivating, disengaging,

jamming or otherwise blocking or degrading a signal transmission or reception; tampering with an automatic on-board recorder or electronic on-board recorder (critical).

* * * * *

§ 395.11(a) Failing to establish, implement, and maintain an hours-of-service management system with controls, policies, programs, practices, and procedures to effectively monitor each driver's compliance with the hours of service requirements, and to prevent and detect violations of Part 395 (acute).

§ 395.11(c) Failing to identify each supporting document or maintain the supporting documents in such a manner that permits the matching of those records to the driver's original record of duty status (critical).

§ 395.11(d) Intentionally destroying, mutilating, or altering a supporting document; or failing to prevent alteration of supporting documents; failing to prevent alteration of supporting documents which reduces their accuracy (acute).

§ 395.11(e) Failing to maintain all elements of the supporting documents as required by this section or § 395.8. (critical).

§ 395.11(f) Making a false certification regarding the receipt or retention of supporting documents (acute).

§ 395.11(g) Failing to maintain all elements of the supporting documents as required in a remedial directive (acute).

§ 395.11(h) Failing to forward, within 3 days of the 24-hour period to which the document pertains, or the day the document comes into the driver's or motor carrier's possession, whichever is later, all required supporting documents and the original of the record of duty status. Failing to forward supporting documents provided electronically from the driver to the carrier within 24 hours (critical).

* * * * *

4. Amend Appendix C to part 385 by adding the following violations in numerical order to read as follows:

Appendix C to Part 385—Regulations Pertaining to Remedial Directives in Part 385, Subpart J

* * * * *

§ 395.8(e)(1) Failing to require a driver to complete the record of duty status required by either this section, § 395.15 or § 395.16; failing to preserve a record or making false reports (critical).

§ 395.8(e)(2) Failure to prohibit a driver from disabling, deactivating, disengaging, jamming or otherwise blocking or degrading a signal transmission or reception; tampering with an automatic on-board recorder or electronic on-board recorder (critical).

* * * * *

§ 395.11(a) Failing to establish, implement, and maintain an hours-of-service management system with controls, policies, programs, practices, and procedures to effectively monitor each driver's compliance with the hours of service requirements, and to prevent and detect violations of part 395 (acute).

§ 395.11(c) Failing to identify each supporting document or maintain the supporting documents in such a manner that permits the matching of those records to the driver's original record of duty status (critical).

§ 395.11(d) Intentionally destroying, mutilating, or altering a supporting document; or failing to prevent alteration of supporting documents; failing to prevent alteration of supporting documents which reduces their accuracy (acute).

§ 395.11(e) Failing to maintain all elements of the supporting documents as required by this section or § 395.8. (critical).

§ 395.11(f) Making a false certification regarding the receipt or retention of supporting documents (acute).

§ 395.11(g) Failing to maintain all elements of the supporting documents as required in a remedial directive (acute).

§ 395.11(h) Failing to submit or forward by mail the driver's supporting documents, within 3 days of the 24-hour period to which the document pertains, or the day the document comes into the driver's or motor carrier's possession, whichever is later, all required supporting documents and the original of the record of duty status. Failing to forward supporting documents provided electronically from the driver to the carrier within 24 hours (critical).

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

5. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. 508, 13301, 13902, 31132, 31133, 31136, 31144, 31151, 31502, 31504; sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 212, 217, 229, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767, 1773; sec. 4136, Pub. L. 109–59, 119 Stat. 1144, 1745 and 49 CFR 1.73.

6. Amend § 390.5 by adding a definition for "Document," in alphabetical order, to read as follows:

§ 390.5 Definitions.

* * * * *

Document means any writing and any electronically-stored information, including data or data compilation(s), stored in any medium from which information may be obtained.

* * * * *

PART 395—HOURS OF SERVICE OF DRIVERS

7. The authority citation for part 395 continues to read as follows:

Authority: 49 U.S.C. 504, 14122, 31133, 31136, 31502, Sec. 229, Pub. L. 106–159, 113 Stat. 1748, 1773 (as transferred by Sec. 4415 and amended by Sec. 4130–4132 of Pub. L. 106–59, 119 Stat. 1144, at 1726, 1743–1744); Sec. 4143, Pub. L. 106–59, 119 Stat. 1144, 1744; Sec. 113, Pub. L. 103–311, 108 Stat. 1673, 1676; and 49 CFR 1.73.

8. Amend § 395.2 by adding the following definitions in alphabetical order, to read as follows:

§ 395.2 Definitions.

* * * * *

Hours of service management system means the controls, policies, programs, practices, and procedures used by a motor carrier systematically and effectively to monitor drivers' compliance with hours of service requirements and to verify the accuracy of the information contained in drivers' records of duty status. The management system must include, at a minimum, the use of documents, records, and information generated or received by the motor carrier in the normal course of business. These documents and records, and this information must include, but are not limited to, driver payroll records, trip-related expense reports and receipts, bills of lading or equivalent documents, and fleet management system communication records (any record of communication between a motor carrier and a driver in the normal course of business).

* * * * *

Motor carrier, as defined in § 390.5, includes, for purposes of this part, an owner-operator leased to a carrier subject to a remedial directive issued under part 385, subpart J, regardless of whether the owner-operator has separate operating authority under part 365 of this subchapter.

* * * * *

Supporting document, for the purposes of this part, means a document that is generated or received by the motor carrier 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.

* * * * *

9. Amend § 395.8 by revising paragraphs (a) and (e), the heading of paragraph (k), and paragraph (k)(1) to read as follows:

§ 395.8 Driver's record of duty status.

(a) Except as provided in § 395.1(e)(1) and (2), every motor carrier subject to the requirements of this part must require every driver used by the motor carrier to record his/her duty status for each 24-hour period using the methods prescribed in either paragraphs (a)(1) or (2) of this section.

(1) Every driver who operates a commercial motor vehicle in operations other than those described in paragraph (a)(2) of this section must record his/her duty status, in duplicate, for each 24-hour period. The duty status time

must be recorded on a specified grid, as shown in paragraph (g) of this section. The grid and the requirements of paragraph (d) of this section may be combined with any company forms. This format may be used:

(i) By those operations described in § 395.1(e)(1) and (2), where a driver operates a commercial motor vehicle outside of the distance radius or for longer periods of time specified in those provisions no more than 2 days in any 7-day period; and

(ii) By those operations subject to § 395.16(a)(3) until [INSERT DATE THREE YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE].

(2) Every driver operating a commercial motor vehicle must record his/her record of duty status using either an automatic on-board recording device meeting the requirements of § 395.15 or an electronic on-board recorder meeting the requirements of § 395.16 installed in the vehicle. The requirements of this section apply to: All motor carriers required to maintain RODS except those eligible to use time records under § 395.1(e)(1) and (2).

* * * * *

(e)(1) A motor carrier must require drivers to complete the record of duty status required by either this section, § 395.15 or § 395.16 and must preserve a record of such duty status. A motor carrier must not make false reports in connection with such duty status.

(2) No motor carrier shall permit or require any driver used by it to disable, deactivate, disengage, jam or otherwise block or degrade a signal transmission or reception; or reengineer, reprogram, or otherwise tamper with an automatic on-board recorder or electronic on-board recorder so that the device does not accurately record the duty status of a driver; nor shall any driver engage in the activities prohibited under this paragraph.

* * * * *

(k) *Retention of driver's record of duty status and supporting documents.* (1) Each motor carrier shall retain and maintain records of duty status and all supporting documents required under this part, for each of its drivers, for a period of 6 months from the date of receipt.

* * * * *

10. Revise § 395.11 to read as follows:

§ 395.11 Motor carrier's hours of service management system and oversight.

(a) *Scope.* (1) Every motor carrier subject to the requirements of this part shall establish, use, and maintain an hours of service management system, as defined in § 395.2, capable of preventing and detecting violations of this part by each of its drivers. The management system must include, at a minimum, the use of documents, records, and information generated or received by the motor carrier in the normal course of business.

(2) This section also applies to motor carriers and owner-operators that have been issued a remedial directive to install, use, and maintain EOBRs unless otherwise provided in the remedial directive.

(b) A motor carrier shall be deemed to have knowledge of any and all documents in its possession, and any and all documents that are available to the motor carrier and that the carrier could use in its hours of service management system. "Knowledge of a document" means knowledge of both the fact that it exists and its specific contents.

(c) The motor carrier must maintain supporting documents in such a way that they may be effectively matched to the corresponding driver's record of duty status.

(d) A motor carrier or a driver must not obscure, deface, destroy, mutilate, or alter existing information contained in the supporting document.

(e) *Supporting documents required (motor carriers not subject to a Remedial Directive under 49 CFR part 385, subpart J):*

(1) In addition to records generated from EOBRs that meet, at a minimum, the requirements of § 395.16, motor carriers must retain and maintain the documents required by this section for every drivers' duty day. Except as provided in paragraph (e)(3) of this section, a supporting document or documents must contain the following information:

(i) *Driver name or personal identification number (PIN) associated with the driver's name, or another identifying number that is issued to the driver.* A unit (vehicle) number may be used so long as it can be associated with the driver operating the vehicle at a specific date, time, and location.

(ii) *The date.* The date recorded must be the date at the location where it is recorded. If the date is automatically recorded on an electronic document, it must be obtained, transmitted, and recorded in such a way that it cannot be altered by a motor carrier, driver, or third party.

(iii) *The time.* The time recorded must be convertible to the local time at the location where it is recorded. If the time is automatically recorded on an electronic document, it must be obtained, transmitted, and recorded in such a way that it cannot be altered by a motor carrier, driver, or third party.

(iv) *The location.* The location description must include the name of the nearest city, town, or village to enable Federal, State, and local enforcement personnel to quickly determine the vehicle's geographic location on a standard map or road atlas. If the location information is automatically recorded on an electronic document, it must be derived from a source not subject to alteration by the motor carrier, driver, or third party.

(2) For any non-driving period after coming on duty following 10 consecutive hours off duty, with the exception of any sleeper berth period of at least 2 hours but less than 10 consecutive hours pursuant to § 395.1(g)(1)(ii)(A)(2) and any off-duty period of at least 2 hours but less than 8 consecutive hours pursuant to § 395.1(g)(3), drivers and motor carriers must retain and maintain at least one document as described in this paragraph from among the four categories listed below:

(i) Payroll;

(ii) Trip-related expense records and receipts;

(iii) Fleet management system communication logs; and

(iv) A bill of lading or equivalent document.

(3) If a motor carrier retains a single supporting document that shows the driver identification, date, time, and location for the beginning and end of any on-duty not driving period, that is the only document the carrier must retain and maintain for that period. However, if the motor carrier does not retain and maintain one single supporting document that shows all of these items, it must retain and maintain sufficient documentation from the categories listed above to show the driver identification and (i) the location, and date, and time of the duty status change, when used together, or (ii) the location, date, and time of the duty status changes.

(f) If a motor carrier does not receive or retain any supporting documents from the classes of documents listed in paragraph (e)(2) of this section, then the motor carrier must certify that it does not or did not receive these documents. If a motor carrier is found to have falsely certified to not having supporting documents, it would be subject to a civil penalty for falsification. Motor carriers submitting false certifications are subject to the maximum penalty authorized under 5 U.S.C. 521, irrespective of the Uniform Fine Assessment algorithm or other Agency

penalty calculations implementing 49 U.S.C. 521(b)(2)(D).

(g) *Supporting documents required (motor carriers subject to a Remedial Directive under 49 CFR part 385, subpart J).* Motor carriers subject to a Remedial Directive must retain and maintain all supporting documents as described in that directive.

(h) The driver must submit or forward by mail the driver's supporting documents and the original record of duty status to the regular employing motor carrier within 3 days of the 24-hour period to which the receipt pertains, or the day the document comes into the driver's or motor carrier's possession, whichever is later. If a supporting document is submitted electronically, the driver shall submit the supporting document within 24 hours.

(i) FMCSA may authorize on a case-by-case basis, motor carrier self-compliance systems.

(1) Requests for supporting document self-compliance systems may be submitted to FMCSA under the procedures described in 49 CFR part 381, subpart C (Exemptions).

(2) FMCSA will consider requests concerning types of supporting documents maintained by the motor carrier under § 395.8(k)(1) and the method by which a driver retains and maintains a copy of the record of duty status for the previous 7 days and makes it available for inspection while on duty in accordance with § 395.8(k)(2).

(j) Motor carriers maintaining date, time, and location data produced by an EOBR that complies with § 395.16 need only maintain additional supporting documents (*e.g.,* driver payroll records, fuel receipts) that provide the ability to verify non-driving status according to the requirements of § 395.8(a)(2).

11. Amend § 395.16 by revising paragraph (a) to read as follows:

§ 395.16 Electronic on-board recording devices.

(a) This section applies to electronic on-board recording devices (EOBRs) used to record the driver's hours of service as specified by part 395. Every driver required by a motor carrier to use an EOBR shall use such device to record the driver's hours of service.

(1) Motor carriers subject to a remedial directive to install, use, and maintain EOBRs, issued in accordance with 49 CFR part 385, subpart J, must comply with this section.

(2) For commercial motor vehicles manufactured on and after June 4, 2012, motor carriers must install and use an electronic device that meets the requirements of this section to record hours of service.

(3) Motor carriers operating commercial motor vehicles must install EOBRs and require their drivers to use an EOBR to record the driver's hours of service except for commercial motor vehicles operated by drivers eligible to use only accurate and true time records to record drivers' hours of service under the provisions of § 395.1(e)(1) and (2).

(4) Motor carriers must install and require their drivers to use hours-of-service recording devices in accordance with this section in their commercial motor vehicles no later than [INSERT DATE THREE YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE].

* * * * *

Issued on: January 26, 2011.

Anne S. Ferro,

Administrator, FMCSA.

[FR Doc. 2011–2093 Filed 1–31–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648–AX70

Fisheries of the Northeastern United States; Monkfish; Amendment 5

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of a fishery management plan amendment; request for comments.

SUMMARY: NMFS announces that the New England Fishery Management Council (NEFMC) has submitted Amendment 5 to the Monkfish Fishery Management Plan (FMP) (Amendment 5), incorporating a draft Environmental Assessment (EA) and an Initial Regulatory Flexibility Analysis (IRFA), for review by the Secretary of Commerce. NMFS is requesting comments from the public on Amendment 5, which was developed by the New England and Mid-Atlantic Fishery Management Councils (Councils) to bring the Monkfish FMP into compliance with the annual catch limit (ACL) and accountability measure (AM) requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Public comments must be received on or before April 4, 2011.

ADDRESSES: A draft EA was prepared for Amendment 5 that describes the proposed action and other considered alternatives, and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of Amendment 5, including the draft EA and the IRFA, are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council (Council), 50 Water Street, Newburyport, MA 01950. These documents are also available online at *http://www.nefmc.org.*

You may submit comments, identified by 0648–AX70, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov.*
- *Fax:* (978) 281–9135, Attn: Allison McHale.
- *Mail:* Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Monkfish Amendment 5."

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Allison McHale, Fishery Policy Analyst, (978) 281–9103; fax: (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

The monkfish fishery is jointly managed by the Councils, with the NEFMC having the administrative lead. The fishery extends from Maine to North Carolina, and is divided into two management units: The Northern Fishery Management Area (NFMA) and the Southern Fishery Management Area (SFMA).

The Councils developed Amendment 5 with the primary goal of bringing the