

3. On page 19816—

a. First and second columns, second paragraph from the bottom of the page through the sixth full paragraph; the paragraph beginning with the phrase “61. Section 423.100” through the paragraph ending with the phrase “on various individuals.” is corrected by deleting these paragraphs.

b. In the third column, second full paragraph, in the amendatory statement for § 423.120 (statement number 64), line 6 (immediately following amendatory statement C), the paragraph is corrected by adding the following amendatory statement “D. Adding a new paragraph (b)(2)(vi).”

4. On page 19817, third column, after the third full paragraph ((b)(1)(ix)) which ends with “\* \* \* \* \*”, the paragraph is corrected by adding the following paragraphs:

“(2) \* \* \*

(vi) Exceptions to paragraph (b)(2)(v) of this section are as follows:

(A) Drug products that are rated as therapeutically equivalent (under the Food and Drug Administration’s most recent publication of “Approved Drug Products with Therapeutic Equivalence Evaluations,” also known as the Orange Book).

(B) Utilization management processes that limit the quantity of drugs due to safety.

(C) Other drugs that CMS specifies through a process that is based upon scientific evidence and medical standards of practice (and, in the case of antiretroviral medications, is consistent with the Department of Health and Human Services Guidelines for the Use of Antiretroviral Agents in HIV-1-Infected Adults and Adolescents) and which permits public notice and comment.

5. On page 19818, second column, fifth paragraph from the bottom (regulations text for § 423.153(d)(1)(vii)(B)), lines 3 and 4, the term “comprehensive medical review” is corrected to read “comprehensive medication review”.

6. On page 19822, in the third column, third paragraph from the bottom of the page, in the amendatory statement for § 423.551 (statement number 84), line 2, the phrase “adding a new paragraph (g) is corrected to read “revising paragraph (g).”

**Authority:** Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program.

Dated: June 4, 2010.

**Dawn L. Smalls,**

*Executive Secretary to the Department.*

[FR Doc. 2010-13923 Filed 6-7-10; 4:15 pm]

**BILLING CODE 4120-01-P**

## GENERAL SERVICES ADMINISTRATION

### 48 CFR Part 505

**[GSAR Amendment 2010-02; GSAR Case 2008-G503 (Change 45) Docket 2008-0007; Sequence 11]**

**RIN 3090-AI71**

### General Services Administration Acquisition Regulation; GSAR Case 2008-G503, Rewrite of GSAR Part 505, Publicizing Contract Actions

**AGENCIES:** Office of Acquisition Policy, General Services Administration (GSA).

**ACTION:** Final rule.

**SUMMARY:** The General Services Administration (GSA) is issuing a final rule amending GSA Acquisition Regulation (GSAR) which provides requirements for publicizing contract actions.

**DATES:** *Effective Date:* June 10, 2010.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Beverly Cromer, Procurement Analyst, at (202) 501-1448. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite Amendment 2010-02, GSAR Case 2008-G503 (Change 45).

#### SUPPLEMENTARY INFORMATION:

##### A. Background

The GSA published a proposed rule, with request for comments, in the **Federal Register** at 73 FR 53404 on September 16, 2008. No comments were received in response to the proposed rule. This rule covers the GSAR portion of part 505. Currently, subparts 505.1, 505.2, and 505.5 are identified as “shaded” for regulatory coverage; however, the agency has deemed, these subparts as non-regulatory because the coverage addresses internal agency acquisition policy. These subparts have been revised and are moved to the non-regulatory portion of the GSA Acquisition Manual (GSAM).

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

## B. Regulatory Flexibility Act

The General Services Administration certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the revisions are not considered substantive.

## C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the GSAR do not impose recordkeeping or information collection requirements, or otherwise collect information from offerors, contractors, or members of the public that require approval of the Office of Management and Budget under 44 U.S.C. chapter 35, *et seq.*

### List of Subjects in 48 CFR Part 505

Government procurement.

Dated: May 17, 2010.

**Rodney P. Lantier,**

*Acting Senior Procurement Executive, Office of Acquisition Policy, General Services Administration.*

■ Therefore, under the authority of 40 U.S.C. 121(c), GSA removes and reserves 48 CFR part 505.

### PART 505 [Removed and Reserved]

[FR Doc. 2010-13902 Filed 6-9-10; 8:45 am]

**BILLING CODE 6820-61-S**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Parts 390 and 395

### Regulatory Guidance Concerning the Preparation of Drivers’ Record of Duty Status To Document Compliance With the Hours-of-Service Requirements

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

**ACTION:** Notice of regulatory guidance.

**SUMMARY:** The FMCSA announces regulatory guidance concerning the requirement for interstate commercial motor vehicle (CMV) drivers to prepare, in duplicate, a record of duty status for each 24-hour period. FMCSA has determined that the current requirement may be satisfied through the preparation of an original handwritten record, and subsequent electronic submission to the motor carrier of a scanned image of the original record; the driver would retain the original while the carrier maintains the electronic scanned electronic image along with any supporting documents.

The guidance is applicable to all interstate drivers of CMVs subject to the Federal Motor Carrier Safety Regulations (FMCSRs).

**DATES:** *Effective Date:* This regulatory guidance is effective on June 10, 2010.

**FOR FURTHER INFORMATION CONTACT:**

Thomas L. Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590.

E-mail: [MCPSD@dot.gov](mailto:MCPSD@dot.gov). Phone (202) 366-4325.

**SUPPLEMENTARY INFORMATION:**

**Legal Basis**

The Motor Carrier Safety Act of 1984 (Pub. L. 98-554, Title II, 98 Stat. 2832, October 30, 1984) (the 1984 Act) provides authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary of Transportation to prescribe regulations which ensure that: (1) CMVs are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of CMVs is adequate to enable them to operate the vehicles safely; and (4) the operation of CMVs 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), respectively).

The Administrator of FMCSA has been delegated authority under 49 CFR 1.73(g) to carry out the functions vested in the Secretary of Transportation by 49 U.S.C. chapter 311, subchapters I and III, relating to commercial motor vehicle programs and safety regulation.

**Background**

This document provides regulatory guidance concerning 49 CFR 395.8, “Driver’s record of duty status,” specifically paragraphs (a)(1) and (i). Currently, 49 CFR 395.8(a)(1) states, “Every driver who operates a commercial motor vehicle [in interstate commerce] shall record his/her duty status, in duplicate, for each 24 hour period.” Section 395.8(i) requires that drivers submit or forward by mail the original records of duty status (RODS) to the regular employing motor carrier

within 13 days following the completion of the form.

With regard to record retention, 49 CFR 395.8(k)(1) states, “Each motor carrier shall maintain records of duty status and all supporting documents for each driver it employs for a period of six months from the date of receipt.” Section 395.8(k)(2) states, “The driver shall retain a copy of each record of duty status for the previous 7 consecutive days which shall be in his/her possession and available for inspection while on duty.”

**Basis for This Notice**

FMCSA currently requires (49 CFR 390.31, Copies of records or documents) that records and documents specified under this subchapter be preserved in their original form for the periods specified, unless the records and documents are suitably photographed and the microfilm is retained in lieu of the original record for the required retention period. As used in § 390.31, “this subchapter” means Subchapter B [49 CFR parts 350–399] of Chapter III of Subtitle B of Title 49, Code of Federal Regulations (CFRs). Section 390.31(b) provides criteria for use in determining whether photographic copies of records may be acceptable in lieu of original records.

On April 4, 1997 (62 FR 16370, 16408), FMCSA published “Regulatory Guidance for the Federal Motor Carrier Safety Regulations” which included guidance concerning 49 CFR 390.31. The guidance reads as follows:

*Question:* May records required by the FMCSRs be maintained in an electronic format?

*Guidance:* Yes, provided the motor carrier can produce the information required by the regulations. Documents requiring a signature must be capable of replication (*i.e.*, photocopy, facsimile, etc.) in such form that will provide an opportunity for signature verification upon demand. If computer records are used, all of the relevant data on the original documents must be included in order for the record to be valid.

FMCSA received an exemption application from a motor carrier requesting relief from the requirement to prepare RODS in duplicate. The motor carrier explained that it plans to implement a new approach for receiving and processing RODS. Its drivers would complete their RODS and then electronically scan them at one of the carrier’s terminals or at a truck stop that offers the scanning service. The image would then be electronically transmitted to the motor carrier while the driver retains the original paper RODS.

Upon reviewing the carrier’s application for an exemption, FMCSA determined that an exemption is not necessary. Admittedly, 49 CFR 395.8(a)(1) and 395.8(i) could be construed as limiting the processing of RODS between drivers and carriers to the submission of the original paper documents either in person or via mail, thereby necessitating the preparation of the RODS, in duplicate. However, FMCSA has opted for a more pragmatic application of the rules.

Because existing regulations concerning the preservation of records (49 CFR 390.31) allow motor carriers to store electronically a scanned image of the original RODS submitted by drivers and essentially dispose of the original paper document, there is no discernible safety benefit to disallowing the driver’s submission of a scanned image of the RODS to the carrier. There is no readily apparent reason that the location at which the original RODS is scanned into an image for subsequent electronic storage and retrieval should matter for the purposes of compliance with the recordkeeping requirements. Furthermore, there is no apparent reason to limit the means of submitting the information to the carrier; electronic submission is an efficient and reasonable alternative to mailing the document to the carrier or delivering it in person.

**Summary**

Based on a review of the regulatory text of 49 CFR 395.8(a)(1), 395.8(i) and 395.8(k), and in consideration of 49 CFR 390.31 and the 1997 regulatory guidance concerning electronic recordkeeping, FMCSA issues guidance allowing interstate CMV drivers to prepare single originals of RODS and to submit electronically to the employing motor carrier a scanned image of the completed RODS.

Regulatory Guidance:

**Part 395—Hours of Service of Drivers**

*Section Interpreted*

Section 395.8 Driver’s Record of Duty Status

*Question:* Are drivers who electronically scan a copy of their original record of duty status (RODS) for subsequent submission to the motor carrier required to prepare the RODS in duplicate?

*Guidance:* No. Although 49 CFR 395.8(a)(1) states, “Every driver who operates a commercial motor vehicle [in interstate commerce] shall record his/her duty status, in duplicate, for each 24-hour period,” the intent of the requirement may be fulfilled through

the electronic submission of a scanned image of the original handwritten RODS to the regular employing motor carrier within 13 days following the completion of the form, while the driver retains the original records for the current day and the previous 7 consecutive days. Because existing regulations concerning the preservation of records (49 CFR 390.31) allow motor carriers to store electronically a scanned

image of the original handwritten RODS submitted by drivers and essentially dispose of the original paper document, there is no adverse impact on the enforcement of the HOS regulations, and subsequently no compromise on the application of the safety requirement by allowing the driver to submit a scanned image of the original signed RODS to the regular employing motor carrier within 13 days of the completion of the record.

Motor carriers must maintain the scanned image of the signed RODS and all supporting documents for each driver for a period of six months from the date of receipt (49 CFR 395.8(k)).

Issued on: June 4, 2010.

**William A. Quade,**

*Associate Administrator for Enforcement and Program Delivery.*

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