

An Ounce of Prevention is Worth a Pound of Cure: The Importance of a Robust Document Retention Policy for Motor Carriers

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For transportation services providers, proper document retention is an essential pillar of their operations. Carriers should ensure they have a comprehensive document retention policy in place to promote safe operations, ensure regulatory compliance, maximize operational efficiency and manage legal exposure. Having a well-articulated policy and ensuring that it is followed can prevent serious regulatory and legal headaches down the road.

In Canada, there is no consolidated source that motor carriers and transportation brokers can refer to in developing their document retention policy. Instead, record keeping and retention requirements are spread across various jurisdictions in Canada and outlined in their respective legislative and regulatory frameworks.

These various sources are largely informed by Canada's *National Safety Code* ("NSC"), a comprehensive code of minimum performance standards for the safe operation of passenger and commercial vehicles developed by the Canadian Council of Motor Transport Administrators, a body organized by the Government of Canada and those of the provinces and territories. The NSC was developed in consultation with the motor carrier industry to provide guidance for the legislative, regulatory and administrative actions taken by each jurisdiction.

Safety and Regulatory Compliance

The provinces and territories are responsible for the enforcement of safety on Canada's roads and highways. Each jurisdiction is free to make its own regulations governing commercial vehicles, drivers, and motor carriers which are informed by the NSC's minimum standards. It is essential that carriers be familiar with the regulations in those jurisdictions in which they operate. While local carriers, particularly those operating within cities or regions in a province can safely limit themselves to their home jurisdiction, any company whose vehicles cross provincial borders should ensure they are in compliance with those aspects of the local regulatory framework applying to extra-provincial companies.

The NSC offers a general starting point for carriers who are developing their document retention policy:

Vehicle Inspections

The NSC identifies minimum standards with respect to vehicle inspections. A person conducting an inspection shall prepare a report in a written or electronic format. Carriers must retain the original copy of the vehicle inspection report and any certification of repairs stemming from the inspection for at least 6 months from the date the report was prepared.

Daily Logs and Supporting Documents

Carriers are to receive a driver's daily log or record of duty status no later than 20 days after it was completed by the driver. The NSC provides that motor carriers shall deposit daily logs or records of duty status and their supporting documents relating to those records at its principal place of business within 30 days after receiving them. These records must thereafter be retained for a period of at least 6 months after the day on which they are received.

These 'supporting documents' include records (handwritten and electronic) of the motor carrier which are maintained in the ordinary course of business such as bills of lading, freight bills, dispatch records, fuel and toll receipts, custom declarations, traffic citations, accident reports, data from a driver's electronic logging device (if applicable), etc.

Electronic Logging Devices

Some trucks are not required to use certified electronic logging devices when carrying out their commercial duties but those that are required must ensure that their devices are in working order to properly complete their records of duty status. As stated above, records from a driver's electronic logging device must be retained by a carrier for at least 6 months to support a driver's record of duty status.

In the event that any malfunction with an electronic logging device occurs, the NSC provides that the carrier shall maintain a register of information relevant to the malfunction, and shall retain this information for a period of 6 months from the date on which the device was replaced or repaired.

Facility Audits

Carriers may be subject to a Facility Audit, the purpose of which is to monitor carriers for compliance with applicable highway safety regulations, including those covered by the NSC. Regulations enforced in a particular jurisdiction will dictate the frequency of such audits, the precise documents which a carrier must retain to satisfy an auditor, and the length of time those documents are to be retained. At a minimum, all carriers must maintain the following records and be prepared to produce copies when audited:

1. Records of the driver licensing qualifications of each person who operates a commercial vehicle on its behalf, the hours of service worked by each driver and supporting documents, convictions for traffic offences or criminal driving offences incurred by such drivers, traffic accidents, and training records;
2. Records of interviews with drivers post offences and remedial measures implemented;
3. Records of vehicle maintenance and inspection procedures and proof that any defects uncovered have been corrected;
4. A written program which provides for a regimen of continuous and regular inspection, maintenance and repair of commercial vehicles.

If the appropriate records are not available, an inspector may report this to the authority charged with overseeing the safe operation of commercial vehicles in that jurisdiction. Carriers should therefore ensure not only that they meet the minimum requirements for document retention, but also familiarize themselves with the regulations in their relevant jurisdiction to ensure their retention policy can satisfy an audit, if and when it arises.

Audits are often the first step in what could become a costly and prolonged regulatory investigation which could imperil a company's licence to operate as a commercial carrier. This can lead to a carrier's safety status being downgraded which has the potential to place it in violation of existing agreements with shippers and brokers and to make future customers less inclined to engage it.

The Government of Canada provides further requirements for document retention related to certain federally-regulated aspects of the industry. In particular:

Records of Imports and Exports

Commercial carriers must keep books and records related to the movement of commercial goods at their place of business in Canada for three years after they transported the imported or exported goods. These records must include dispatch logs, bills of lading, proof of customs report and release, invoices, and other documents such as commercial invoices or trip logs.

Financial, Accounting and Tax Records

Persons carrying on a business or engaged in commercial activity are required by the CRA to keep accounting and financial records to support their tax submissions for a period of six years from the end of the last tax year they relate to.

Personnel and Payroll Records

If a carrier employs operators who cross jurisdictions during the course of their services, whether they be inter-provincial or international, their employment is regulated by the [Canada Labour Code](#). Under the *Code*, a carrier, as an employer, is required to keep an employee's records for 36 months. When employment ends, a carrier must keep the employee's records for an additional 36 months thereafter.

As always, any carrier involved in cross-border operations should be mindful of the relevant United States government regulations respecting motor carriers.

Managing Legal Risk



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Depending on the regulations of a carrier's respective jurisdiction, the guidelines set out above may represent minimum standards for document retention, but carriers should strongly consider implementing policies that go beyond the bare minimum. Not only will this ensure regulatory compliance within their jurisdiction, it also serves to protect their interests in the event that legal claims arise.

In most jurisdictions, the statute of limitations on legal claims is two years from the date of the incident giving rise to the loss. The best practice for carriers is to retain all documents relating to their shipments for a period of at least three years, as a claim may be issued in court but not served until after the two years are up.

Keep in mind that if an incident involves injury to a minor, the limitation does not start to run until the minor reaches the age of majority. For example, an action for an accident involving a minor in Ontario can be commenced until two years after the minor reaches the age of 18.

If the injured person is mentally incapable of filing a claim due to a physical or psychological condition, and they are not represented by a litigation guardian, the limitation period does not start running. This ensures that individuals who are unable to manage their own legal affairs due to their condition have the opportunity to pursue their claims at a later date when they are capable or represented. It is recommended that records be kept for 20 years in such cases.

The documentation includes accident/incident reports, vehicle inspection reports, drivers logs, contracts of carriage, employment records and documents relating to individual shipments such as bills of lading, carrier confirmations and emails. A party is placed at a serious disadvantage in litigation where they are unable to produce documents supporting their version of events or they are forced to rely on spotty records to demonstrate the same.

Maximizing Operational Efficiency

A thoughtfully organized document retention policy can offer benefits beyond simply mitigating risk. As competition in the industry continues to increase, it can serve as the competitive edge that carriers are looking for.

Assurances that relevant documents are retained can provide peace of mind to carriers and reduce the time spent retrieving and organizing such records when inevitable audits or legal claims arise. Doing so will not only help carriers maintain their favourable safety ratings with regulatory bodies but it will provide peace of mind to shippers and brokers who can satisfy themselves that they are dealing with an efficient and well-run organization.

Reviewing past documents can also provide insight into costly areas of business operations, such as driver performance and maintenance issues. Historical data can inform future operational decisions and help identify inefficiencies, thereby assisting carriers in reducing costs and optimizing their operations.

Perhaps most importantly, a review of past accidents and damages can provide insight into how the overall safety of a carrier's operations can be improved.

Many carriers appreciate the value of having a proper document retention system only after dealing with the consequences of a failure to do so. Carriers would be wise to invest in developing a comprehensive and organized system for their business to ensure not only that they reap the benefits of proper document retention and record keeping but avoid the fallout of failure to retain critical records.

Whether a new carrier is looking to start off on the right foot or an existing carrier is seeking to overhaul its existing policies and procedures, organizations will benefit from seeking the advice of seasoned transportation regulatory and compliance specialists. The Transportation and Logistics Group at Gardiner Roberts offers the full spectrum of such services to motor carriers and other industry players. A PDF version is available for download [here](#).

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).



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