



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**49 CFR Parts 370, 371, 373, 375, 376, 378, 379, 387, 389, 390, 391, 395, 396, and 398**

**[Docket No. FMCSA-2012-0376]**

**RIN 2126 – AB47**

**Electronic Documents and Signatures**

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** FMCSA proposes amendments to its regulations to allow the use of electronic records and signatures to satisfy FMCSA's regulatory requirements. The amendments would permit the use of electronic methods to sign, certify, generate, exchange or maintain records so long as the documents accurately reflect the information in the record and can be used for their intended purpose. This proposed rule would apply only to those documents that FMCSA's regulations obligate entities or individuals to retain; it would not apply to forms or other documents that must be submitted directly to FMCSA. This proposed rule responds in part to the President's January 2011 Regulatory Review and Reform initiative and would implement the Government Paperwork Elimination Act (GPEA) and the Electronic Signatures in Global and National Commerce Act (E-SIGN).

**DATES:** You may submit comments on or before [Insert date 60 days from the date of publication in the FEDERAL REGISTER]. Comments received after this date will be considered to the extent practicable.

**ADDRESSES:** You may submit comments identified by the docket number FMCSA-2012-0376 using any one of the following methods:

- Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov).
- Fax: 202-493-2251.
- Mail: Docket Services (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.
- Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” heading under the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, please call or e-mail Genevieve Sapir, Office of Counsel, FMCSA, telephone: 202-366-7056; e-mail: [Genevieve.Sapir@dot.gov](mailto:Genevieve.Sapir@dot.gov). If you have questions on viewing or submitting material to the docket, please call Barbara Hairston, Docket Services, telephone 202-366-3024.

**SUPPLEMENTARY INFORMATION:**

The Supplementary Information section of this NPRM is organized as follows.

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## **I. Executive Summary**

### A. Purpose and Summary of the Major Provisions

This proposed rule would establish parity between paper and electronic documents and signatures, and expand businesses' and individuals' ability to use electronic methods to comply with FMCSA's requirements. This rule would apply only to documents that FMCSA requires individuals or entities to retain. It would also update references to outdated recordkeeping and reporting methods throughout chapter III of subtitle B of title 49, Code of Federal Regulations (49 CFR parts 300-399) to make them technologically neutral.

This proposed rulemaking would implement the Government Paperwork Elimination Act (GPEA) and the Electronic Signatures in Global and National Commerce Act (E-SIGN).

### B. Benefits and Costs

FMCSA expects this proposed rule to provide regulatory relief to the industry. Under this proposed rule, regulated entities would have the flexibility to conduct business using either electronic or traditional paper-based methods. The Agency also expects

regulated entities to choose technologies that would maximize benefits in accordance with their individual needs and circumstances.

## **II. Public Participation and Request for Comments**

### A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (FMCSA-2012-0376), 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 either online, 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 email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to [www.regulations.gov](http://www.regulations.gov), put the docket number, “FMCSA-2012-0376” in the “Keyword” box, and click “Search.” When the new screen appears, click on the “Comment Now!” button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. 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 and any document mentioned in this preamble, go to [www.regulations.gov](http://www.regulations.gov), insert the docket number, “FMCSA-2012-0376” in the “Keyword” box, and click “Search.” Next, click “Open Docket Folder” button and choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Services in Room W12-140 on the ground floor of the DOT 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

All comments received will be posted without change to [www.regulations.gov](http://www.regulations.gov) and will include any personal information you have provided. Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT Privacy Act Statement for the Federal Docket Management System published in the Federal Register (FR) on December 29, 2010 (75 FR 82132), or you may visit <http://www.gpo.gov/fdsys/pkg/FR-2010-12-29/pdf/2010-32876.pdf>.

## **III. Background**

In recent years, FMCSA has received a number of requests from motor carriers and other interested parties asking permission to use electronic methods to comply with various Agency regulations that require motor carriers and individuals to generate, sign or store documents. Previously, FMCSA made determinations on a case-by-case basis as to whether certain categories of documents could be generated, signed or stored electronically. Modern technologies and evolving business practices, however, have

rendered the distinction between paper and electronic documents and signatures obsolete in most cases. Recognizing that many businesses and individuals can achieve greater efficiencies using electronic methods but that others prefer paper-based recordkeeping, FMCSA decided to give regulated entities the flexibility to choose which methods to use.

As a result, on January 4, 2011, FMCSA issued regulatory guidance (76 FR 23338) on the use of electronic signatures and documents to satisfy FMCSA's regulatory requirements. That guidance provided that, for the purposes of complying with any provision in chapter III of subtitle B of title 49, Code of Federal Regulations (49 CFR parts 300-399) that requires a document to be created, signed, certified or retained by any person or entity, that person or entity may, but is not required to, use electronic methods. The guidance further stated that in order for electronic methods to satisfy FMCSA's regulatory requirements, the documents or signatures had to accurately reflect the information in the record and remain accessible in a form that can be accurately viewed or reproduced according to Agency rules.

In addition, Presidential Executive Order (E.O.) 13563, "Improving Regulation and Regulatory Review" (issued January 18, 2011, and published January 21 at 76 FR 3821), prompted DOT to publish a notice in the Federal Register (76 FR 8940, February 16, 2011). This notice requested comments on a plan for reviewing existing rules, as well as identification of existing rules that DOT should review because they may be outmoded, ineffective, insufficient, or excessively burdensome. DOT placed all retrospective regulatory review comments, including a transcript of a March 14, 2011, public meeting, in docket DOT-OST-2011-0025. This proposed rule responds to a comment submitted to that docket.

This proposed rulemaking would codify FMCSA's guidance in newly proposed § 390.32 and eliminate references to outdated recordkeeping and reporting methods throughout the Agency's regulations. For further description of the proposed changes, please see the Section-by-Section Analysis in Part V of this preamble.

#### **IV. Legal Basis for the Rulemaking**

The Motor Carrier Safety Act of 1984 (Public Law 98-554, Title II, 98 Stat. 2832, October 30, 1984) (the 1984 Act) provides authority to regulate drivers, motor carriers, and vehicle equipment. Section 211 of the 1984 Act 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 FMCSA Administrator has been delegated authority under 49 CFR 1.86(f) 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.

Two Federal statutes govern the Agency's implementation of electronic document and signature requirements. The GPEA (Title XVII (Sec. 1701-1710) of Pub. L. 105-277, 112 Stat. 2681-749, 44 U.S.C. 3504 note) was enacted on October 21, 1998, to improve customer service and governmental efficiency through the use of information technology. E-SIGN (Pub. L. 106-229, 114 Stat. 464, 15 U.S.C. 7001-7031) was signed into law on June 30, 2000. E-SIGN was designed to promote the use of electronic contract formation, signatures, and recordkeeping in private commerce by establishing legal equivalence between traditional paper-based methods and electronic methods.

The GPEA defines an electronic signature as a method of signing an electronic communication that: (a) identifies and authenticates a particular person as the source of

the electronic communication; and (b) indicates such person's approval of the information contained in the electronic communication (section 1710(1)). It also requires Federal agencies to provide individuals and entities the options of: (a) submitting information or transacting with the agency electronically; and (b) using electronic records retention when practicable. The GPEA states that electronic records and their related electronic signatures shall not be denied legal effect, validity or enforceability merely because they are in electronic form. It also encourages agencies to use electronic signature alternatives (sections 1704, 1707).

For any transaction in or affecting interstate or foreign commerce, E-SIGN supersedes all pre-existing requirements that paper records be kept so long as: (a) such records are generated in commercial, consumer, and business transactions between private parties; and (b) those parties consent to using electronic methods. Specifically, the statute establishes the legal equivalence for the following types of documents, whether in traditional paper or electronic form: (a) contracts, (b) signatures, and (c) other legally-required documents (15 U.S.C. 7001(a)(1)).

In response to Presidential E.O. 13563, issued January 18, 2011, "Improving Regulation and Regulatory Review" (76 FR 3821, January 21, 2011), DOT published a request for comments in the Federal Register (76 FR 8940, February 16, 2011). It requested comments on a plan for reviewing existing rules, as well as identification of existing rules that DOT should review because they may be outmoded, ineffective, insufficient, or excessively burdensome. As a result of that notice and review, this amendment to regulations was placed on the list of opportunities to relieve the public burden.

## **V. Section-by-Section Analysis**

### A. Part 370

#### 49 CFR 370.3

The Agency proposes non-substantive changes to this section to conform to the proposed definition of “written or in writing” at § 390.5, which would eliminate the distinction between paper and electronic methods of communication. Currently, § 370.3 distinguishes between “written” and “electronic” communications; however, under the proposed definition of “written or in writing,” there is no such distinction. The proposed changes would incorporate both paper-based and electronic communications into the meaning of the terms “written or in writing.” Thus, “written” documentation could mean written on paper or written electronically.

In today’s commercial and legal environment, the term “written” no longer necessarily means “on paper.” To the contrary, it can mean paper-based or electronic communications. Because “written or in writing” would mean either paper or electronic communications, FMCSA proposes to remove reference to electronic methods to eliminate redundancy and confusion. These changes would not mean, however, that parties are prohibited from using electronic methods. All parties would remain free to conduct their business using either paper or electronic means of documentation and communication.

#### 49 CFR 370.5

For the same reasons explained in the discussion of § 370.3, FMCSA proposes to remove references to electronic methods of documentation and communication in § 370.5.

49 CFR 370.9

For the same reasons explained in the discussion of § 370.3, FMCSA proposes to remove references to electronic methods of documentation and communication in § 370.9.

B. Part 371

49 CFR 371.109

For the same reasons explained in the discussion of § 370.3, FMCSA proposes to remove references to electronic methods of documentation and communication in § 371.109.

49 CFR 371.111

For the same reasons explained in the discussion of § 370.3, FMCSA proposes to remove references to electronic methods of documentation and communication in § 371.111.

C. Part 373

For the same reasons explained in the discussion of § 370.3, FMCSA proposes to remove references to electronic methods of documentation and communication in § 373.103. In addition, FMCSA proposes to remove references to “original” documents to reflect the practical reality that there is no real distinction between originals and copies of electronic documents. Moreover, these changes conform to the proposed changes at § 390.31 which permit parties to maintain accurate copies in lieu of originals. FMCSA has determined that in today’s commercial and legal environment, it does not need access to these original documents in order to discharge its regulatory responsibilities as long as the parties maintain accurate copies that otherwise meet the Agency’s requirements.

D. Part 375

49 CFR 375.209

For the same reasons explained in the discussion of § 370.3, FMCSA proposes to remove references to electronic methods of documentation in § 375.209.

49 CFR 375.213

For the same reasons explained in the discussion of § 370.3, FMCSA proposes to remove references to electronic methods of documentation in § 375.213.

49 CFR 375.505

The proposed changes to § 375.505 would make clear that when a household goods motor carrier transports a shipment on a collection-delivery basis, notification of the charges can be made using the following methods of communication: fax, e-mail, overnight courier, and certified mail, or return receipt requested.

E. Part 376

49 CFR 376.11

Currently, § 376.11(b)(1) includes outdated language specifying that receipts for leased equipment may be transmitted by mail, telegraph, or similar means of communication. FMCSA proposes to amend this section by removing all reference to the method of transmitting receipts, thereby leaving the parties the freedom to choose their own medium of communication.

In paragraph (d)(1), FMCSA proposes to eliminate reference to “papers,” replacing the term with the word “documents.” This change recognizes that the records this section requires motor carriers to maintain may be generated or maintained using traditional paper or electronic methods and eliminates any suggestion that the documentation must be in paper form.

## 49 CFR 376.12

In paragraph (f) of § 376.12, FMCSA proposes to eliminate references to “paperwork,” replacing the term with the word “documentation,” for the same reasons explained in the discussion of § 376.11(d)(1), above.

In paragraph (g), FMCSA proposes to eliminate outdated references to computer generated documents to eliminate the distinction between electronic and manually generated documents. In today’s business and legal environment, there is no need to afford special treatment to computer generated documentation; eliminating this special treatment establishes technological neutrality in this section. These changes would not mean, however, that parties are prohibited from using computers to generate the documents required in this section. To the contrary, all parties would remain free to conduct their business using the technology they choose, as long as it otherwise meets the Agency’s requirements.

In paragraph (l), FMCSA proposes to eliminate references to originals and copies of documents for the same reasons explained in the discussion of § 373.103, above.

## F. Part 378

### 49 CFR 378.3

For the same reasons explained in the discussion of § 370.3, FMCSA proposes to remove references to electronic methods of communication in § 378.3.

### 49 CFR 378.4

For the same reasons explained in the discussion of § 370.3, FMCSA proposes to remove references to electronic methods of documentation and communication in § 378.4.

#### 49 CFR 378.5

For the same reasons explained in the discussion of § 370.3, FMCSA proposes to remove references to electronic methods of communication in § 378.5.

#### 49 CFR 378.6

For the same reasons explained in the discussion of § 370.3, FMCSA proposes to remove references to electronic methods of documentation in § 378.6.

#### 49 CFR 378.7

For the same reasons explained in the discussion of § 370.3, FMCSA proposes to remove references to electronic methods of documentation and communication in § 378.7.

#### 49 CFR 378.8

For the same reasons explained in the discussion of § 370.3, FMCSA proposes to remove references to electronic methods of documentation and communication in § 378.8.

### G. Part 379

#### 49 CFR 379.5

Section 379.5 requires motor carriers to protect records required under FMCSA's regulations from damage or loss. The current language in paragraph (a) is outdated in that it refers to physical damage that generally applies only to paper records. FMCSA proposes to update this paragraph by changing it to require motor carriers to protect records against destruction, deterioration, and data corruption. This change reflects the importance of maintaining the integrity of records regardless of the method used to maintain them.

#### 49 CFR 379.7

Section 379.7 currently contains outdated record preservation language that does not take into account the use of computers and modern technology. FMCSA proposes to replace this language with new language that permits companies to preserve records using any technology that accurately reflects all of the information in the record and remains accessible for later use in accordance with the Agency's record keeping requirements. These proposed changes conform to the requirements for electronic methods proposed in new § 390.32.

#### 49 CFR part 379 Appendix A

FMCSA proposes to eliminate references to "papers" in Appendix A, replacing the term with the word "documents" for the same reasons explained in the discussion of § 376.11(d)(1), above.

#### H. Part 387

##### 49 CFR 387.7

Paragraph (b)(1) of § 387.7 requires insurers and motor carriers to give 35 days' notice prior to cancelling the financial responsibility policies required in § 387.9. Currently, this section establishes mail as the only method of communicating cancellations. FMCSA proposes to amend this section by replacing the word "mailed" with the more technologically neutral term "transmitted," and "Proof of mailing" with "Proof of transmittal" thus establishing parity between mailing and other methods of transmission as proof of cancellation.

#### 49 CFR 387.31

FMCSA proposes to amend § 387.31(b)(1) by replacing the term “mailed” with “transmitted,” and “Proof of mailing” with “Proof of transmittal” for the reasons explained in the discussion of § 387.7, above.

#### I. Part 389

##### 49 CFR 389.19

Currently, § 389.19 requires members of the public who submit a petition for an extension of time within which to submit comments to a rulemaking to do so in duplicate. This language is outdated because members of the public have the option of submitting electronic or paper petitions and there is no need to submit multiple electronic copies. In addition, FMCSA no longer requires multiple paper copies to process these requests. As a result, FMCSA proposes to eliminate the requirement that these petitions be filed in duplicate.

##### 49 CFR 389.21

Currently, § 389.21 requires members of the public who wish to comment on a rulemaking to submit five copies of those comments. For the reasons explained in the discussion of § 389.19, above, FMCSA proposes to eliminate the requirement that multiple copies be filed.

##### 49 CFR 389.31

Currently, § 389.31(b)(1) requires members of the public to submit petitions for rulemaking in duplicate. For the reasons explained in the discussion of § 389.19, above, FMCSA proposes to eliminate the requirement that multiple copies be filed.

#### 49 CFR 389.35

Currently § 389.35 requires members of the public to submit five copies of a petition for reconsideration. For the reasons explained in the discussion of § 389.19, above, FMCSA proposes to eliminate the requirement that multiple copies be filed.

#### J. Part 390

#### 49 CFR 390.5

FMCSA proposes to add a definition of “written or in writing” to § 390.5. The new definition would be technologically neutral and would include anything typed, handwritten, or printed on a tangible medium, such as paper, as well as anything typed or generated electronically, as long as it otherwise meets the new standards proposed in § 390.32. This definition would establish technological neutrality through the Federal Motor Carrier Safety Regulations (FMCSRs) and eliminate any distinction between paper and electronic documentation as being “written or in writing.”

#### 49 CFR 390.7

FMCSA proposes to remove the outdated explanation of the term “writing” from the rules of construction in § 390.7(b)(2). As explained above, FMCSA proposes to include a new definition of “written or in writing” in § 390.5.

#### 49 CFR 390.31

Revised § 390.31 would permit persons or entities subject to document retention requirements to keep copies in lieu of originals. This change would remove reference to microfilm as the only acceptable method for storing such copies. It would also remove the prohibition on using computer technology to maintain documents with signatures. This change would provide the flexibility to choose the type of recordkeeping and storage that best suits a person’s or entity’s capacities and business needs. To comply with the

requirements of this section, copies must be legible; anyone entitled to inspect them must be able to view and read the content required to be in the record. The requirement that the Agency be able to inspect records applies regardless of whether the copy is in paper or electronic form.

#### 49 CFR 390.32

New § 390.32 would permit any person or entity to use electronic methods to comply with any provision in chapter III of subtitle B of title 49, Code of Federal Regulations (49 CFR parts 300-399) that requires a document to be signed, certified, generated, maintained or exchanged. It would apply to all forms of written documentation, including forms, records, notations and other documents. This would establish parity between paper and electronic documents and signatures, greatly expanding interested parties' ability to use electronic methods to comply with FMCSA's requirements.

Paragraph (a) would specify that the rule would apply only to documents that FMCSA requires entities or individuals to retain, regardless of whether the Agency subsequently requires them to be produced or displayed at the request of an FMCSA official or other parties entitled to access. It would not apply to documents that individuals or entities are required to file directly with the Agency. For more information about electronic filing methods for documents filed directly with FMCSA, interested parties can consult specific program information on FMCSA's Web site ([www.fmcsa.dot.gov](http://www.fmcsa.dot.gov)).

Paragraph (b) would permit, but not require, anyone to satisfy FMCSA requirements by using electronic methods to generate, maintain or exchange documents.

The substance of the document would otherwise have to comply with applicable Federal laws and Agency rules.

Paragraph (c) would permit, but not require, anyone required to sign or certify a document to do so using electronic signatures. The rule would define an electronic signature as a method of signing an electronic communication that: (1) identifies and authenticates a particular person as the source of the electronic communication; and (2) indicates such person's approval of the information contained in the electronic communication. The rule would specify that a person may use any available technology so long as the signature otherwise complies with FMCSA's requirements.

Paragraph (d) would establish the minimum requirements for electronic documents and signatures. Any electronic document or signature would be considered the legal equivalent of a paper document or signature if it is the functional equivalent with respect to integrity, accuracy and accessibility. In other words, the electronic documents or signatures would have to be legible as well as accurately and reliably reflect the information in the record. They would have to remain accessible in a form that could be accurately viewed or reproduced according to Agency rules.

Electronic documents would not be considered the legal equivalent of traditional paper documents if they are not capable of being retained and accurately reproduced for reference by any individual or entity entitled to access by law, for the period of time required by the Agency's recordkeeping requirements. For example, if Agency rules require that a document be produced upon demand, the individual or entity must be able to provide the Agency with an accurate copy of the electronic record upon demand. Similarly, if Agency rules require that a document be produced to the Agency within 48 hours, the individual or entity would have to provide the Agency with an accurate copy of

the electronic record within 48 hours. The person inspecting the document must be able to view and read the content of that electronic record. As with any documents, paper or electronic, documents that are not legible—for any reason—do not satisfy the Agency’s requirements.

This proposed rule would not apply to other agencies’ rules, even if FMCSA requires compliance with those rules. For example, some of FMCSA’s regulations cross-reference other agencies’ rules, such as those related to drug and alcohol testing (49 CFR part 40) and hazardous materials (49 CFR parts 105-109). This proposed rule would not apply to those requirements. In addition, if a motor carrier is operating in a foreign country, it must follow the rules that apply in that country.

#### K. Part 391

Currently, 49 CFR 391.55 requires each motor carrier to maintain a “photographic” copy of a Longer Combination Vehicle driver-instructor’s commercial driver’s license. But current technology for reproducing documents is not limited to photographic methods; other methods for capturing digital images also exist. As a result, FMCSA proposes to remove the word “photographic” to make this section technologically neutral. Motor carriers would still be required to maintain a copy of the Longer Combination Vehicle driver-instructor’s commercial driver’s license, but they would be free to choose the method of making that copy.

#### L. Part 395

##### 49 CFR 395.8

Currently, § 395.8(f)(2) requires that records of duty status (RODS) be made in the driver’s own handwriting. Recognizing that many drivers and motor carriers prefer to use electronic RODS, including electronic signatures, FMCSA proposes to remove the

requirement that RODS be in the driver's own handwriting. But drivers would still be required to make their own entries; and those entries would have to be legible, regardless of the medium used to record them. This change would permit drivers to choose whether to use electronic or handwritten entries and signatures. For example, a driver could make RODS entries in his or her own handwriting with a handwritten signature; electronically with an electronic signature; or typed and printed with a handwritten signature.

Currently, paragraph (i) requires drivers to submit or mail their RODS to employers within 13 days. Recognizing that many drivers and motor carriers prefer to use electronic or other methods to submit RODS, FMCSA proposes to remove the reference to mail. Drivers would still be required to submit RODS to employers within 13 days, however, they would be free to choose the method of submission as long as the documents submitted otherwise meet FMCSA's requirements.

#### 49 CFR 395.15

Currently, § 395.15 (b)(2) permits use of automatic on-board recording devices (AOBRDs) in conjunction with handwritten or printed RODS. Recognizing that many drivers and motor carriers prefer to use electronic means of recording duty status, FMCSA proposes to remove reference to handwritten or printed RODS. The proposed changes would permit drivers and motor carriers to use RODS maintained in other media in conjunction with AOBRDs as long as they otherwise meet FMCSA's requirements.

Currently, paragraph (b)(4) requires a driver to have the previous 7 consecutive days of RODS available for inspection and specifies that those RODS can be from an AOBRD, handwritten records, computer generated records, or any combination thereof. FMCSA proposes to make this section technologically neutral by removing reference to handwritten and computer generated records. Drivers would still be permitted to use

handwritten or computer generated records, but they would be free to choose any medium for maintaining these records that otherwise meets FMCSA's requirements.

Currently, paragraph (b)(5) references "hard copies" of the RODS documents described in paragraph (b)(4). FMCSA proposes to remove reference to "hard copies" for the same reasons explained in the discussion of paragraph (b)(4), above.

In paragraph (e), FMCSA proposes to remove the requirement that RODS be made in a driver's own handwriting for the reasons explained in the discussion of § 395.8(f)(2), above.

In paragraph (f), FMCSA proposes to remove the requirement that RODS be made in a driver's own handwriting for the reasons explained in the discussion of § 395.8(f)(2), above.

In paragraph (h), FMCSA proposes to remove the requirement that RODS be submitted to employers via mail for the same reasons explained in the discussion of § 395.8(i), above.

In the introduction to paragraph (i), FMCSA proposes to remove reference to handwritten RODS for the reasons explained in the discussion of § 395.8(f)(2), above. In paragraphs (i)(4) and (7), FMCSA proposes to remove outdated language applicable to AOBRDs installed before October 31, 1988. FMCSA does not believe that AOBRDs installed before this date are still in use. As such, this language is no longer necessary.

#### M. Part 396

##### 49 CFR 396.11

FMCSA proposes to remove all uses of the word "original" in this section for the reasons explained in the discussion of § 373.103, above.

## 49 CFR 396.12

FMCSA proposes to remove the word “original” in this section for the reasons explained in the discussion of § 373.103, above.

## N. Part 398

FMCSA proposes to remove the requirement in 49 CFR 398.3 that certain documents must be “photographically reproduced” for the same reasons explained in the discussion of § 391.55, above.

## **VI. Rulemaking Analysis**

### E.O. 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures as Supplemented by E.O. 13563)

FMCSA has determined that this action is not a “significant regulatory action” under E.O. 12866 as supplemented by E.O. 13563 (76 FR 3821, January 18, 2011), or within the meaning of the DOT regulatory policies and procedures (44 FR 1103, February 26, 1979). The Agency believes that this proposed rule would not impose new costs on the industry since carriers are allowed to choose to continue to handle documents as they had before. The proposed rule would not impose new requirements on the industry; it would simply codify existing regulatory guidance and remove outdated and obsolete references in the regulatory text. The benefits of the rule would stem from savings in paper and printing expense and other efficiency gains. Examples of documents affected by this rule are vehicle maintenance records, driver qualification files, and business records. There is no way to estimate how many carriers would change their practices given the options, or how many documents would be affected. Neither the benefits nor the costs of this rule can be reliably estimated. The Agency does not believe that the economic costs of the rule, if any, would exceed the \$100 million threshold for

economic significance. It is clear, however, that this proposed rule would be expected to provide considerable flexibility and relief to the industry.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) 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 a population 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. Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), the proposed rule is not expected to have a significant economic impact on a substantial number of small entities. Consequently, I certify the proposed action would not have a significant economic impact on a substantial number of small entities. FMCSA invites comment from members of the public who believe there will be a significant impact either on small businesses or on governmental jurisdictions with a population of less than 50,000.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), FMCSA wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking initiative. If the proposed rule would affect your small business,

organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the FMCSA point of contact, Genevieve Sapir, listed in the **For Further Information Contact** section of this proposed rule.

#### Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$151.0 million (which is the 2012 value of \$100 million in 1995 dollars after adjusting for inflation) or more in any 1 year. As far as determined, this proposed rule would not result in any such expenditure.

#### National Environmental Policy Act and Clean Air Act

FMCSA analyzed this NPRM for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.) and determined under its environmental procedures Order 5610.1, published February 24, 2004 (69 FR 9680), that this proposed action does not have any effect on the quality of the environment. Therefore, this NPRM is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1, paragraphs 6(q) and (y). A Categorical Exclusion determination is available for inspection or copying in the regulations.gov Web site listed under ADDRESSES.

In addition to the NEPA requirements, the Clean Air Act (CAA) as amended (42 U.S.C. 7401 et seq.) also requires FMCSA to analyze the potential impact of its actions on air quality and to ensure that FMCSA actions conform to State and local air quality

implementation plans. No additional contributions to air emissions are expected from this proposed rule, and FMCSA expects the rule to not be subject to the Environmental Protection Agency's General Conformity Rule (40 CFR parts 51 and 93).

FMCSA seeks comment on these determinations.

E.O. 12898 (Environmental Justice)

FMCSA evaluated the environmental effects of this proposed rule in accordance with E.O. 12898 and determined that there are no environmental justice issues associated with its provisions nor any collective environmental impact resulting from its promulgation. Environmental justice issues would be raised if there were "disproportionate" and "high and adverse impact" on minority or low-income populations. None of the alternatives analyzed in the Agency's environmental assessment, discussed under National Environmental Policy Act, would result in high and adverse environmental impacts.

Paperwork Reduction Act

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The rulemaking would likely provide a reduction in information collections. However, the Agency is unable to calculate those reductions because there is no way to estimate how many carriers would change their practices given the option and how many documents that would affect. The Agency requests comments on this issue.

E.O. 12630 (Taking of Private Property)

This rule does 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.

E.O. 12988 (Civil Justice Reform)

This rule 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. 13045 (Protection of Children)

E.O. 13045, “Protection of Children from Environmental Health Risks and Safety Risks” (April 23, 1997, 62 FR 19885), requires that agencies issuing economically significant rules, which also concern an environmental health or safety risk that an Agency has reason to believe may disproportionately affect children, must include an evaluation of the environmental health and safety effects of the regulation on children. Section 5 of E.O. 13045 directs an Agency to submit for a covered regulatory action an evaluation of its environmental health or safety effects on children. The FMCSA has determined that this rule is not a covered regulatory action as defined under E.O. 13045. This determination is based on the fact that this proposal would not constitute an environmental health risk or safety risk that would disproportionately affect children.

E.O. 13132 (Federalism)

A rule has implications for federalism under E.O. 13132, Federalism, 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 States or localities. FMCSA has analyzed this rule under that Order and has determined that it does not have implications for federalism.

E.O. 12372 (Intergovernmental Review)

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

#### E.O. 13175 (Consultation and Coordination with Indian Tribal Governments)

FMCSA analyzed this rulemaking in accordance with the principles and criteria in E.O. 13175, Consultation and Coordination with Indian Tribal Governments. This rulemaking is required by law and does not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on tribal governments. Thus, the funding and consultation requirements of E.O. 13175 do not apply and no tribal summary impact statement is required.

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

The FMCSA has analyzed this rule under E.O. 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.” This proposed rule is not a significant energy action within the meaning of section 4(b) of the E.O. This proposed rule is a procedural action, is not economically significant, and does not have a significant adverse effect on the supply, distribution, or use of energy.

#### Privacy Impact Assessment

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108-447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment of a regulation that will affect the privacy of individuals. This proposed rule would not require the collection of any personally identifiable information.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency which receives records contained in a system of records from a Federal agency for use in a matching program. FMCSA has determined this proposed rule would not result in a new or revised Privacy Act System of Records for FMCSA.

### E-Government Act of 2002

The E-Government Act of 2002, Pub. L. 107-347, section 208, 116 Stat. 2899, 2921 (Dec. 17, 2002), requires Federal agencies to conduct a privacy impact assessment for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information as a result of this rule. As a result, FMCSA has not conducted a privacy impact assessment.

### National Technology Transfer and Advancement Act (Technical Standards)

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### **List of Subjects**

#### **49 CFR Part 370**

Freight forwarders, Investigations, Motor carriers.

#### **49 CFR Part 371**

Brokers, Motor carriers, Reporting and recordkeeping requirements.

**49 CFR Part 373**

Buses, Freight, Freight forwarders, Motor carriers, Moving of household goods.

**49 CFR Part 375**

Advertising, Consumer protection, Freight, Highways and roads, Insurance, Motor carriers, Moving of household goods, Reporting and recordkeeping requirements.

**49 CFR Part 376**

Motor carriers, Reporting and recordkeeping requirements.

**49 CFR Part 378**

Freight forwarders, Investigations, Motor carriers, Moving of household goods.

**49 CFR Part 379**

Freight forwarders, Maritime carriers, Motor carriers, Moving of household goods, Reporting and recordkeeping requirements.

**49 CFR Part 387**

Buses, Freight, Freight forwarders, Hazardous materials transportation, Highway safety, Insurance, Intergovernmental relations, Motor carriers, Motor vehicle safety, Moving of household goods, Penalties, Reporting and recordkeeping requirements, Surety bonds.

**49 CFR Part 389**

Administrative practice and procedure, Highway safety, Motor carriers, Motor vehicle safety.

**49 CFR Part 390**

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

**49 CFR Part 391**

Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Reporting and recordkeeping requirements, Safety, Transportation.

**49 CFR Part 395**

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

**49 CFR Part 396**

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

**49 CFR Part 398**

Highway safety, Migrant labor, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, FMCSA proposes to amend 49 CFR, chapter III, to read as follows:

**PART 370—PRINCIPLES AND PRACTICES FOR THE INVESTIGATION AND VOLUNTARY DISPOSITION OF LOSS AND DAMAGE CLAIMS AND PROCESSING SALVAGE**

1. The authority citation for part 370 continues to read as follows:

**Authority:** 49 U.S.C. 13301 and 14706; and 49 CFR 1.87.

**§ 370.3 [Amended]**

2. Amend § 370.3 as follows:

a. Remove the words “or electronic” from paragraph (b), and

b. Remove the phrase “where claims are electronically handled,” from paragraph

(b)(3).

**§ 370.5 [Amended]**

3. Amend § 370.5(a) as follows:
  - a. Remove the phrase “or by electronic transmission”, and
  - b. Remove both instances of the words “or electronically”.

**§ 370.9 [Amended]**

4. Amend § 370.9(a) as follows:
  - a. Remove the phrase “or electronically transmitted”, and
  - b. Remove both additional instances of the words “or electronically”.

**PART 371—BROKERS OF PROPERTY**

5. The authority citation for part 371 continues to read as follows:

**Authority:** 49 U.S.C. 13301, 13501, and 14122; subtitle B, title IV of Pub. L. 109–59; and 49 CFR 1.87.

**§ 371.109 [Amended]**

6. Amend § 371.109 as follows:
  - a. Remove the last sentence in paragraph (a), and
  - b. Remove the last sentence in paragraph (b).

**§ 371.111 [Amended]**

7. Amend § 371.111(c) by removing the words “electronic or paper”.

**PART 373—RECEIPTS AND BILLS**

8. The authority citation for part 373 continues to read as follows:

**Authority:** 49 U.S.C. 13301, 13531 and 14706; and 49 CFR 1.87.

9. Amend § 373.103 by revising the undesignated paragraphs following paragraphs (a)(11) and (b)(11) to read as follows:

**§ 373.103 Expense bills.**

(a) \* \* \*

(11) \* \* \*

The shipper or receiver owing the charges shall be given the freight or expense bill and the carrier shall keep a copy as prescribed at 49 CFR part 379.

(b) \* \* \*

(11) \* \* \*

The carrier shall keep a copy of all expense bills issued for the period prescribed at 49 CFR part 379. If any expense bill is spoiled, voided, or unused for any reason, a written record of its disposition shall be retained for a like period.

**PART 375—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE COMMERCE; CONSUMER PROTECTION REGULATIONS**

10. The authority citation for part 375 continues to read as follows:

**Authority:** 49 U.S.C. 13102, 13301, 13501, 13704, 13707, 13902, 14104, 14706, 14708; subtitle B, title IV of Pub. L. 109–59; and 49 CFR 1.87.

11. Amend § 375.209 by revising paragraph (b)(3) to read as follows:

**§ 375.209 How must I handle complaints and inquires?**

\* \* \* \* \*

(b) \* \* \*

(3) A system for recording in writing all inquiries and complaints received from an individual shipper by any means of communication.

\* \* \* \* \*

**§ 375.213 [Amended]**

12. Amend paragraph (e)(2) of § 375.213 by removing the words “electronic or paper”.

13. Amend § 375.505 by revising paragraph (b)(5) to read as follows:

**§ 375.505 Must I write up a bill of lading?**

\* \* \* \* \*

(b) \* \* \*

(5) When you transport on a collect-on-delivery basis, the name, address, and if furnished, the telephone number, fax number, or e-mail address of a person to notify about the charges. The notification may be made by fax transmission; e-mail; overnight courier; or certified mail, return receipt requested.

\* \* \* \* \*

**PART 376—LEASE AND INTERCHANGE OF VEHICLES**

14. The authority citation for part 376 continues to read as follows:

**Authority:** 49 U.S.C. 13301 and 14102; and 49 CFR 1.87.

**§ 376.11 [Amended]**

15. Amend § 376.11 as follows:

- a. Remove the last sentence in paragraph (b)(1);
- b. Remove the word “papers” and add in its place “documents” in the third and fourth sentences of paragraph (d)(1); and
- c. Remove the words “or papers” from the fifth sentence of paragraph (d)(1).

16. Amend § 376.12 by revising paragraphs (f), (g), and (l) to read as follows:

**§ 376.12 Written lease requirements.**

\* \* \* \* \*

(f) Payment period. The lease shall specify that payment to the lessor shall be made within 15 days after submission of the necessary delivery documents concerning a trip in the service of the authorized carrier. The documentation required before the lessor can receive payment is limited to log books required by the Department of Transportation and those documents necessary for the authorized carrier to secure payment from the shipper. In addition, the lease may provide that, upon termination of the lease agreement, as a condition precedent to payment, the lessor shall remove all identification devices of the authorized carrier and, except in the case of identification painted directly on equipment, return them to the carrier. If the identification device has been lost or stolen, a letter certifying its removal will satisfy this requirement. Until this requirement is complied with, the carrier may withhold final payment. The authorized carrier may require the submission of additional documents by the lessor but not as a prerequisite to payment. Payment to the lessor shall not be made contingent upon submission of a bill of lading to which no exceptions have been taken. The authorized carrier shall not set time limits for the submission by the lessor of required delivery documents.

(g) Copies of freight bill or other form of freight documentation. When a lessor's revenue is based on a percentage of the gross revenue for a shipment, the lease must specify that the authorized carrier will give the lessor, before or at the time of settlement, a copy of the rated freight bill, or, in the case of contract carriers, any other form of documentation actually used for a shipment containing the same information that would appear on a rated freight bill. Regardless of the method of compensation, the lease must

permit lessor to examine copies of the carrier's tariff or, in the case of contract carriers, other documents from which rates and charges are computed, provided that where rates and charges are computed from a contract of a contract carrier, only those portions of the contract containing the same information that would appear on a rated freight bill need be disclosed. The authorized carrier may delete the names of shippers and consignees shown on the freight bill or other form of documentation.

\* \* \* \* \*

(l) Copies of the lease. The parties must sign the lease. The authorized carrier shall keep a copy and shall place another copy of the lease on the equipment during the period of the lease unless a statement as provided for in § 376.11(c)(2) is carried on the equipment instead. The owner of the equipment shall keep a copy of the lease.

\* \* \* \* \*

**PART 378—PROCEDURES GOVERNING THE PROCESSING, INVESTIGATION, AND DISPOSITION OF OVERCHARGE, DUPLICATE PAYMENT, OR OVERCOLLECTION CLAIMS**

17. The authority citation for part 378 continues to read as follows:

**Authority:** 49 U.S.C. 13321, 14101, 14704 and 14705; and 49 CFR 1.87.

**§ 378.3 [Amended]**

18. Amend § 378.3(a) by removing the words “or electronically communicated (when agreed to by the carrier and shipper or receiver involved)” from the first sentence.

19. Amend § 378.4 by revising the introductory text of paragraph (b) and paragraph (c) to read as follows:

**§378.4 Documentation of claims.**

\* \* \* \* \*

(b) Claims for overcharge shall be accompanied by the original freight bill.

Additional information may include, but is not limited to, the following:

\* \* \* \* \*

(c) Claims for duplicate payment and overcollection shall be accompanied by the original freight bill(s) for which charges were paid and by freight bill payment information.

\* \* \* \* \*

**§ 378.5 [Amended]**

20. Amend § 378.5(c) by removing the words “or electronically transmitted”.

**§ 378.6 [Amended]**

21. Amend § 378.6 by removing the words “or electronic”.

22. Revise § 378.7 to read as follows:

**§ 378.7 Acknowledgment of claims.**

Upon receipt of a written claim, the carrier shall acknowledge its receipt in writing to the claimant within 30 days after the date of receipt except when the carrier shall have paid or declined in writing within that period. The carrier shall include the date of receipt in its written claim which shall be placed in the file for that claim.

23. Revise § 378.8 to read as follows:

**§ 378.8 Disposition of claims.**

The processing carrier shall pay, decline to pay, or settle each written claim within 60 days after its receipt by that carrier, except where the claimant and the carrier agree in writing to a specific extension based upon extenuating circumstances. If the

carrier declines to pay a claim or makes settlement in an amount different from that sought, the carrier shall notify the claimant in writing of the reason(s) for its action, citing tariff authority or other pertinent information developed as a result of its investigation.

**PART 379—PRESERVATION OF RECORDS**

24. The authority citation for part 379 continues to read as follows:

**Authority:** 49 U.S.C. 13301, 14122 and 14123; and 49 CFR 1.87.

25. Revise § 379.5(a) to read as follows:

**§ 379.5 Protection and storage of records.**

(a) The company shall protect records subject to this part from destruction, deterioration, and data corruption.

\* \* \* \* \*

26. Revise § 379.7 to read as follows:

**§ 379.7 Preservation of records.**

(a) All records may be preserved by any technology that accurately reflects all of the information in the record and remains accessible in a form that can be accurately reproduced later for reference.

(b) Common information, such as instructions, need not be preserved for each record as long as it is common to all such forms and an identified specimen of the form is maintained for reference.

**Appendix A to Part 379 [Amended]**

27. Amend Appendix A by removing the word “papers” wherever it appears and adding in its place the word “documents”.

**PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS**

28. The authority citation for part 387 is revised to read as follows:

**Authority:** 49 U.S.C. 13101, 13301, 13906, 13908, 14701, 31138, and 31139; and 49 CFR 1.87.

29. Revise § 387.7(b)(1) to read as follows:

**§ 387.7 Financial responsibility required.**

\* \* \* \* \*

(b)(1) Policies of insurance, surety bonds, and endorsements required under this section shall remain in effect continuously until terminated. Cancellation may be effected by the insurer or the insured motor carrier giving 35 days' notice in writing to the other. The 35 days' notice shall commence to run from the date the notice is transmitted. Proof of transmission shall be sufficient proof of notice.

\* \* \* \* \*

30. Revise § 387.31(b)(1) to read as follows:

**§ 387.31 Financial responsibility required.**

\* \* \* \* \*

(b) \* \* \*

(1) Cancellation may be effected by the insurer or the insured motor carrier giving 35 days notice in writing to the other. The 35 days notice shall commence to run from the date the notice is transmitted. Proof of transmission shall be sufficient proof of notice.

\* \* \* \* \*

**§ 387.313 [Amended]**

31. Amend § 387.313(b) by removing the words “in triplicate”.

**PART 389—RULEMAKING PROCEDURES—FEDERAL MOTOR CARRIER SAFETY REGULATIONS**

32. The authority citation for part 389 continues to read as follows:

**Authority:** 49 U.S.C. 113, 501 *et seq.*, subchapters I and III of chapter 311, chapter 313, and 31502; 42 U.S.C. 4917; and 49 CFR 1.87.

**§ 389.19 [Amended]**

33. Amend § 389.19 by removing the words “in duplicate”.

**§ 389.21 [Amended]**

34. Amend § 389.21 by removing the phrase “and submitted in five (5) legible copies, unless the number of copies is specified in the notice”.

**§ 389.31 [Amended]**

35. Amend § 389.31(b)(1) by removing the words “in duplicate”.

**§ 389.35 [Amended]**

36. Amend § 389.35(a) by removing the words “in five (5) legible copies”.

**PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL**

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

**Authority:** 49 U.S.C. 504, 508, 31132, 31133, 31136, 31144, 31151, 31502; sec. 114, Pub. L. 103-311, 108 Stat. 1673, 1677-1678; sec. 212, 217, 229, Pub. L. 106-159, 113 Stat. 1748, 1766, 1767; sec. 229, Pub. L. 106-159 (as transferred by sec. 4114 and amended by secs. 4130-4132, Pub. L. 109-59, 119 Stat. 1144, 1726, 1743-1744); sec. 4136, Pub. L. 109-59, 119 Stat. 114, 1745; sections 32101(d) and 34934, Pub. L. 112-141, 126 Stat. 405, 778, 830; and 49 CFR 1.87.

38. Amend § 390.5 by adding a definition of “Written or in writing” in alphabetical order to read as follows:

**§ 390.5 Definitions.**

\* \* \* \* \*

Written or in writing means printed, handwritten, or typewritten either on paper or other tangible medium, or by any method of electronic documentation that meets the requirements of 49 CFR 390.32.

**§ 390.7 [Amended]**

39. Amend § 390.7 by removing paragraph (b)(2) and redesignating paragraphs (b)(3) through (7) as (b)(2) through (6).

40. Revise § 390.31 to read as follows:

**§ 390.31 Copies of records and documents.**

All records and documents required to be maintained under this subchapter must be maintained for the periods specified. Except as otherwise provided, copies that are legible and accurately reflect the information required to be contained in the record or document may be maintained in lieu of originals.

41. Add a new § 390.32 to read as follows:

**§ 390.32 Electronic documents and signatures.**

(a) Applicability. This section applies to documents documents that entities or individuals are required to retain, regardless of whether FMCSA subsequently requires them to be produced or displayed to FMCSA staff or other parties entitled to access. This section does not apply to documents that must be submitted directly to FMCSA.

(b) Electronic records or documents. Anyone required to generate, maintain or exchange documents to satisfy requirements in chapter III of subtitle B of title 49, Code of Federal Regulations (49 CFR parts 300 through 399) may use electronic methods to satisfy those requirements.

(c) Electronic signatures. (1) Anyone required to sign or certify a document to satisfy the requirements of chapter III of subtitle B of title 49, Code of Federal Regulations (49 CFR parts 300 through 399) may use an electronic signature.

(2) An electronic signature is a method of signing an electronic communication that identifies and authenticates a particular person as the source of the electronic communication and indicates such person's approval of the information contained in the electronic communication. An electronic signature may be made using any available technology that otherwise satisfies FMCSA's requirements.

(d) Requirements. Any person or entity may use documents signed, certified, generated, maintained or exchanged using electronic methods if the documents accurately reflect the information otherwise required to be contained in them. Records, documents or signatures generated, maintained or exchanged using electronic methods do not satisfy the requirements of this section if they are not legible or capable of being retained, used for the purpose they were created for, or accurately reproduced for reference by any party entitled to access.

#### **PART 391—QUALIFICATIONS OF DRIVERS AND LONGER COMBINATION VEHICLE (LCV) DRIVER INSTRUCTORS**

42. The authority citation for part 391 continues to read as follows:

**Authority:** 49 U.S.C. 504, 508, 31133, 31136, and 31502; sec. 4007(b) of Pub. L. 102-240, 105 Stat. 1914, 2152; sec. 114 of Pub. L. 103-311, 108 Stat. 1673, 1677; sec. 215 of Pub. L. 106-159, 113 Stat. 1748, 1767; sec. 32934 of Pub. L. 112-141, 126 Stat. 405, 830; and 49 CFR 1.87.

#### **§ 391.55 [Amended]**

43. Amend § 391.55(b)(2) by removing the word "photographic".

#### **PART 395—HOURS OF SERVICE OF DRIVERS**

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

**Authority:** 49 U.S.C. 504, 31133, 31136, 31137, and 31502; sec. 113, Pub. L. 103–311, 108 Stat. 1673, 1676; sec. 229, Pub. L. 106–159 (as transferred by sec. 4115 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743, 1744); sec. 4133, Pub. L. 109–59, 119 Stat. 1144, 1744; sec. 108, Pub. L. 110–432, 122 Stat. 4860–4866; sec. 32934, Pub. L. 112–141, 126 Stat. 405, 830; and 49 CFR 1.87.

45. Amend § 395.8 by revising paragraphs (f)(2) and (i) to read as follows:

**§ 395.8 Driver's record of duty status.**

\* \* \* \* \*

(f) \* \* \*

(2) Entries made by driver only. All entries relating to a driver's duty status must be legible and made by the driver.

\* \* \* \* \*

(i) Filing driver's record of duty status. The driver shall submit the driver's record of duty status to the regular employing motor carrier within 13 days following completion of the form.

\* \* \* \* \*

46. Amend § 395.15 by revising paragraphs (b)(2), (4), and (5), (e), (f), (h)(1), (i) introductory text, and (i)(4) and (7) to read as follows:

**§ 395.15 Automatic on-board recording devices.**

\* \* \* \* \*

(b) \* \* \*

(2) The device shall provide a means whereby authorized Federal, State, or local officials can immediately check the status of a driver's hours of service. This information may be used in conjunction with records of duty status maintained in other media, for the previous 7 days.

\* \* \* \* \*

(4) The driver shall have in his/her possession records of duty status for the previous 7 consecutive days available for inspection while on duty. These records shall consist of information stored in and retrievable from the automatic on-board recording device, other written records, or any combination thereof.

(5) All copies of other written records of duty status referenced in paragraph (b)(4) of this section must be signed by the driver. The driver's signature certifies that the information contained thereon is true and correct.

\* \* \* \* \*

(e) Entries made by driver only. If a driver is required to make written entries relating to the driver's duty status, such entries must be made by the driver and be legible.

(f) Reconstruction of records of duty status. Drivers are required to note any failure of automatic on-board recording devices, and to reconstruct the driver's record of duty status for the current day, and the past 7 days, less any days for which the drivers have records, and to continue to prepare a written record of all subsequent duty status until the device is again operational.

\* \* \* \* \*

(h) \* \* \*

(1) The driver shall submit to the employing motor carrier, each record of the driver's duty status within 13 days following the completion of each record;

\* \* \* \* \*

(i) Performance of recorders. Motor carriers that use automatic on-board recording devices for recording their drivers' records of duty status shall ensure that:

\* \* \* \* \*

(4) The automatic on-board recording device warns the driver visually and/or audibly that the device has ceased to function.

\* \* \* \* \*

(7) The on-board recording device/system identifies sensor failures and edited data.

\* \* \* \* \*

#### **PART 396—INSPECTION, REPAIR, AND MAINTENANCE**

47. The authority citation for part 396 continues to read as follows:

**Authority:** 49 U.S.C. 504, 31133, 31136, 31151, and 31502; sec. 32934, Pub. L. 112-141, 126 Stat. 405, 830; and 49 CFR 1.87.

#### **§ 396.11 [Amended]**

48. Amend § 396.11 by removing the word “original” from paragraphs (a)(3)(ii), (a)(4), (b)(4), and (c)(1) and (2).

#### **§ 396.12 [Amended]**

49. Amend § 396.12 by removing the word “original” from paragraph (d).

#### **PART 398—TRANSPORTATION OF MIGRANT WORKERS**

50. The authority citation for part 398 continues to read as follows:

**Authority:** 49 U.S.C. 13301, 13902, 31132, 31133, 31136, 31502, and 31504; sec. 204, Pub. L. 104-88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 212, Pub. L. 106-159, 113 Stat. 1748, 1766; and 49 CFR 1.87.

**§ 398.3 [Amended]**

51. Amend § 398.3(b)(8) by removing the words “photographically reproduced” wherever they appear.

Issued under the authority of delegation in 49 CFR 1.87: April 2, 2014.

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Anne S. Ferro,  
Administrator.

**[FR Doc. 2014-09376 Filed 04/25/2014 at 8:45 am; Publication Date: 04/28/2014]**