

Commercial Advertising (May 2018)

The Contractor shall not make reference in its commercial advertising to Department of Veterans Affairs contracts in a manner that states or implies the Department of Veterans Affairs approves or endorses the Contractor's products or services or considers the Contractor's products or services superior to other products or services.

(End of clause)

852.203–71 [Removed and reserved]

■ 38. Section 852.203–71 is removed and reserved.

852.214–70 [Removed and reserved].

■ 39. Section 852.214–70 is removed and reserved.

■ 40. Section 852.214–71 is revised to read as follows:

852.214–71 Restrictions on alternate item(s).

As prescribed in 814.201–6(a)(1), insert the following provision:

Restrictions on Alternate Item(s) (May 2018)

Bids on []* will be considered only if acceptable bids on []** are not received or do not satisfy the total requirement.

*Contracting Officer will insert an alternate item that is considered acceptable.

**Contracting Officer will insert the required item and item number.

(End of provision)

■ 41. Section 852.214–72 is revised to read as follows:

852.214–72 Alternate item(s).

As prescribed in 814.201–6(a)(2), insert the following provision:

Alternate Item(s) (May 2018)

Bids on []* will be given equal consideration along with bids on []** and any such bids received may be accepted if to the advantage of the Government. Tie bids will be decided in favor of []**.

*Contracting Officer will insert an alternate item that is considered acceptable.

**Contracting Officer will insert the required item and item number.

(End of provision)

■ 42. Section 852.214–73 is revised to read as follows:

852.214–73 Alternate packaging and packing.

As prescribed in 814.201–6(a)(3), insert the following provision:

Alternate Packaging and Packing (May 2018)

The bidders offer must clearly indicate the quantity, package size, unit, or other different feature upon which the quote is made. Evaluation of the alternate or multiple alternates will be made on a common denominator such as per ounce, per pound, etc., basis.

(End of provision)

■ 43. Section 852.214–74 is revised to read as follows:

852.214–74 Marking of bid samples.

As prescribed in 814.201–6(b), insert the following provision:

Marking of Bid Samples (May 2018)

Any bid sample(s) furnished must be in the quantities specified in the solicitation. Cases or packages must be plainly marked 'Bid Sample(s)' with the complete lettering/ numbering and description of the related bid item(s), the number of the Invitation for Bids, and the name of the bidder submitting the bid sample(s).

(End of provision)

■ 44. Section 852.222–70 is revised to read as follows:

852.222–70 Contract work-hours and safety standards—nursing home care for veterans.

As prescribed in 822.305, insert the following clause:

Contract Work Hours and Safety Standards—Nursing Home Care for Veterans (May 2018)

(a) No Contractor and subcontractor under this contract shall prohibit the payment of overtime wages to their employees for work in excess of 40 hours in any workweek, which would otherwise be a violation of Contract Work Hours and Safety Standards (the statute) (40 U.S.C. 3701, *et seq.*), provided—

(1) The Contractor or subcontractor is primarily engaged in the care of nursing home patients residing on the contractor's or subcontractor's premises;

(2) There is an agreement or understanding between the Contractor or subcontractor and their employees, before performance of work, that a work period of 14 consecutive days is acceptable in lieu of a work period of 7 consecutive days for the purpose of overtime compensation;

(3) Employees receive overtime compensation at a rate no less than 1½ times the employees' regular hourly rate of pay for work in excess of 80 hours in any 14 day period; and

(4) Pay is otherwise computed in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended.

(b) *Subcontracts.* The Contractor shall insert the text of this clause, including this paragraph (b), in subcontracts at any tier. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (b) of this clause.

(End of clause)

[FR Doc. 2018–07833 Filed 4–13–18; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF TRANSPORTATION**Federal Motor Carrier Safety Administration**

49 CFR Parts 370, 371, 373, 375, 376, 378, 379, 380, 382, 387, 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: Final rule.

SUMMARY: FMCSA amends its regulations to allow the use of electronic records and signatures to satisfy FMCSA's regulatory requirements. These amendments permit the use of electronic methods to generate, certify, sign, maintain, or exchange records so long as the documents accurately reflect the required information and can be used for their intended purpose. This rule applies only to those documents that FMCSA's regulations obligate entities or individuals to retain; it does not apply to forms or other documents that must be submitted directly to FMCSA unless there are already procedures in place in the regulations for electronic submission to FMCSA. This rule partially implements the Government Paperwork Elimination Act (GPEA) and the Electronic Signatures in Global and National Commerce Act (E-SIGN).

DATES: This final rule is effective June 15, 2018.

Petitions for Reconsideration of this final rule must be submitted to the Administrator of FMCSA in accordance with 49 CFR 389.35 no later than May 16, 2018.

FOR FURTHER INFORMATION CONTACT: Mr. David Miller, Office of Policy, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, david.miller@dot.gov.

If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: This final rule is organized as follows:

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 - O. National Technology Transfer and Advancement Act (Technical Standards)
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I. Rulemaking Documents

A. Availability of Rulemaking Documents

For access to docket FMCSA–2012–0376 to read background documents and

comments received, go to <http://www.regulations.gov> at any time, or to Docket Services at U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at www.dot.gov/privacy.

II. Executive Summary

A. Summary and Purpose of the Major Provisions

This rule establishes parity between paper and electronic documents and signatures, and expands businesses' and individuals' ability to use electronic methods to comply with FMCSA's requirements. This rule applies only to documents that FMCSA requires entities to retain. It also updates 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 rulemaking implements portions of the Government Paperwork Elimination Act (GPEA) and the Electronic Signatures in Global and National Commerce Act (E–SIGN).

B. Benefits and Costs

This rule does not impose new requirements, and it is expected to provide regulatory relief to the industry. It codifies previously issued regulatory guidance that provides flexibility to the industry in the use of electronic documents and electronic signatures, and removes outdated and obsolete

references in the regulatory text. Examples of documents affected by this rule include vehicle maintenance records, driver qualification files, bills of lading, and business records. Regulated entities are provided additional flexibility and may choose to conduct business using either electronic versions or traditional paper-based versions of these types of documents. Because the choice of using electronic methods is optional and not mandatory, and regulated entities may continue to use traditional paper-based methods if they desire to do so, the Agency expects regulated entities will choose those methods that best suit their individual needs. For those regulated entities that do choose to use electronic documents and methods under this rule, potential cost savings may include reduced expenditures on labor time, office and storage space, materials, and office equipment.

Because the previously issued regulatory guidance that is now being codified in this final rule has been in place for several years, since January 4, 2011, it is believed that many regulated entities for whom the use of electronic documents and methods best suits their needs may have already made this transition from traditional paper-based methods. Therefore, many of the potential cost savings possible from this rule may have largely already occurred. It is estimated that though there may still be some additional incremental cost savings that could result from the regulatory flexibility being codified by this final rule (e.g., for any remaining regulated entities that may desire at some time to use electronic documents and methods but have not yet made this transition), overall these additional cost savings will be minimal.

III. Abbreviations and Acronyms

Full name	Abbreviation or acronym
American Moving and Storage Association	AMSA.
Automatic On-Board Recording Device	AOBRD.
Atlas Van Lines	Atlas.
American Trucking Associations	ATA.
Clean Air Act	CAA.
Code of Federal Regulations	CFR.
Commercial Motor Vehicle	CMV.
U.S. Department of Transportation	DOT.
Electronic Logging Device	ELD.
Executive Order	EO.
Electronic Signatures in Global and National Commerce Act	E–SIGN.
Fixing America's Surface Transportation Act	FAST.
Federal Register	FR.

Full name	Abbreviation or acronym
Federal Motor Carrier Safety Administration	FMCSA.
Federal Motor Carrier Safety Regulations	FMCSRs.
Government Paperwork Elimination Act	GPEA.
Household Goods	HHG.
Hours of Service	HOS.
Motor Carrier Safety Act of 1984	1984 Act.
National Motor Freight Traffic Association	NMFTA.
National Environmental Policy Act	NEPA.
Notice of Proposed Rulemaking	NPRM.
Office of Drug and Alcohol Policy and Compliance	ODAPC.
Owner-Operator Independent Drivers Association, Inc	OOIDA.
Office of Management and Budget	OMB.
Paperwork Reduction Act	PRA.
Portable Document Format	PDF.
Privacy Impact Assessment	PIA.
Record of Duty Status	RODS.
United States Code	U.S.C.

IV. Legal Basis for the Rulemaking

The Motor Carrier Safety Act of 1984 (Pub. L. 98–554, Title II, 98 Stat. 2832, October 30, 1984), as amended, (the 1984 Act) provides broad 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 1.87(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 (CMV) programs and safety regulation.

Two Federal statutes govern the Agency’s implementation of electronic document and signature requirements. The GPEA (Pub. L. 105.277, Title XVII (Secs. 1701–1710), 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 to 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 (section 1707). It also encourages agencies to use electronic signature alternatives (section 1704). This final rule is concerned only with implementing the use of electronic document creation and retention with regard to documents and records required to be maintained, and does not cover electronic submission to FMCSA, as is discussed more broadly in the response to comments below.

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 contracts, signatures, and other legally-required documents, whether in traditional paper or electronic form (15 U.S.C. 7001(a)(1)).

V. Background

In recent years, FMCSA 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 whether certain categories of documents could be generated, signed, or stored

electronically on a case-by-case basis. However, FMCSA recognized that modern technologies and evolving business practices rendered the distinction between paper and electronic documents and signatures obsolete in most cases.

FMCSA determined that many businesses and individuals could achieve greater efficiencies using electronic methods, but that others might prefer paper-based recordkeeping. As a result, FMCSA decided to give regulated entities the flexibility to choose which methods to use. On January 4, 2011, FMCSA issued regulatory guidance to 49 CFR 390.31 on the use of electronic signatures and documents to satisfy FMCSA’s regulatory requirements. (76 FR 411). 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 viewed or reproduced according to agency rules.

On April 28, 2014, FMCSA issued a Notice of Proposed Rulemaking (NPRM) that proposed incorporating the 2011 guidance into regulations. (79 FR 23306). Subsequent to the issuance of the NPRM, FMCSA removed guidance question 27 and revised question 28 for 49 CFR 395.8, addressing the use of logging software programs for drivers’ records of duty status (RODS) in order to ensure consistency with FMCSA’s

January 2011 guidance (79 FR 39342, July 10, 2014).

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** on February 16, 2011 (76 FR 8940). This notice requested readers to comment on a plan for reviewing existing rules, as well as to identify existing rules that 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. One of the comments submitted to that docket was relevant to this rule, and has been included in the comment summary below.¹

VI. The 2014 Proposed Rule

On April 28, 2014, FMCSA published an NPRM titled “Electronic Signatures and Documents” in the **Federal Register** (79 FR 23306). FMCSA received 17 comments on the NPRM. No public meetings were requested and none was held.

The NPRM proposed to codify FMCSA’s guidance issued under § 390.31 and eliminate references to outdated recordkeeping and reporting methods throughout the Agency’s regulations. The proposed rule was intended to 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. It applied only to documents that FMCSA requires individuals or entities to retain. It also updated references to outdated recordkeeping and reporting methods throughout 49 CFR parts 300–399 to make them technologically neutral.

VII. Comments and Responses

A. Overview

Seventeen submissions were posted to the docket. One submission was a duplicate² and three were outside the scope of this rulemaking, leaving 13 relevant submissions. Commenters

included four trade associations: American Moving and Storage Association (AMSA), American Trucking Associations (ATA), National Motor Freight Traffic Association (NMFTA), and Owner, Operator, Independent Driver Association (OOIDA). Three businesses, Atlas Van Lines (Atlas), KeepTruckin (sic), and First Advantage, also provided comments, as did six individuals.

Comments Supporting the Rulemaking

Eight commenters, including the four trade associations, three individuals and a business expressed their support for the proposed rule. First Advantage agreed with the rule and recommended that 49 CFR part 382 be included in its adoption. Trade associations AMSA and NMFTA both strongly supported the rulemaking. OOIDA and ATA supported the rulemaking, although each had concerns (which are addressed further below). Finally, an individual stated “with technology these days, this makes perfect sense.”

B. Electronic Signature

Comment. An individual commenter expressed concern about the lack of description in the preamble concerning the new regulatory language in § 390.32(c)(2) and (d). Paragraph § 390.32(c)(2) in the NPRM provided a definition of the term electronic signature, using terms from the GPEA, to set the performance standard for allowing use of electronic signatures. The subparagraph also provided flexibility that such an electronic signature may be made using any available technology that otherwise satisfies FMCSA’s requirements. Paragraph § 390.32(d) in the NPRM provided that 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. Paragraph (d) also provided that records, documents, or signatures generated, maintained, or exchanged using electronic methods would not satisfy FMCSA requirements if they are not legible or capable of being retained, used for the purpose for which they were created, or accurately reproduced for reference by any party entitled to access them. This individual commenter noted that “identification and authentication” have specific meanings defining levels of security. This same commenter wrote that the NPRM seemed to assume that electronic signatures are legible, rather than being nothing more than a PIN or user ID and password. Another individual

commenter wrote that “allowing electronic signatures needs to be defined.”

OOIDA was concerned about the security of electronic documents. It requested that FMCSA provide clarification through a supplemental notice of proposed rulemaking and allow for public comment.

An anonymous commenter noted FMCSA’s requirements implied that it would require a level 2 or 3 authentication of a signature, and wrote, “FMCSA should explain exactly what it will require in terms of authentication and identity proofing (a necessary step in ensuring authentication).” This commenter did not see why FMCSA should require that level of authentication. Further, the individual pointed out there would be a cost to impose level 2 or 3 authentication requirements that FMCSA has not considered.

FMCSA Response. Based on the confusion generated by the NPRM’s placement of the definition in § 390.32(c)(2), FMCSA has decided to move the definition of “electronic signature” to the general definition section for all Federal Motor Carrier Safety Regulations (FMCSRs) in §§ 390.5 and 390.5T. The definition in §§ 390.5 and 390.5T will continue to provide that 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.”

FMCSA recognizes that the terms “identifies” and “authenticates” carry distinct meanings in the world of information technology, particularly when dealing with information security. However, these are the terms used in the GPEA to set the performance standard for allowing use of electronic signatures. Changing them here could have unintended consequences. FMCSA does not use the terms to mean that a specific level of information or authentication security must be used. Those companies and individuals who would like to use electronic signatures are free to decide, for themselves, what level of information security they are most comfortable maintaining.

For FMCSA purposes, we require only that the electronic signatures have some level of security to meet the performance standard set forth in the statute and regulations. To make it clear that the §§ 390.5 and 390.5T definition of “electronic signature” follows the GPEA performance standard, this rule will add at the end of the §§ 390.5 and

¹ While the Fixing America’s Surface Transportation (FAST) Act was enacted after publication of the NPRM, FMCSA notes that publication of this Final Rule also complies with the mandate found in section 5203 of the FAST Act, requiring FMCSA to incorporate guidance into regulations if the guidance is still valid after a period of 5 years. See, Public Law 114–94, 129 Stat. 1312, 1535.

² Submission number 013 is a duplicate of number 005.

390.5T definitions a cross reference to the GPEA for the benefit of the public's understanding as to where the definition originated.

Comment. ATA wrote that motor carriers create and store records used to demonstrate compliance using electronic on-board recorders. ATA commented that FMCSA must explicitly allow drivers to sign and store documents transmitted through the electronic on-board recorder by clicking an "I agree" button. ATA said the NPRM was ambiguous on this issue and explained that there is a distinction between the characterizations of an electronic signature in § 390.32 of the NPRM and in the 2011 guidance, which stated that signatures must "accurately reflect the information in the record and remain accessible in a form that can be accurately viewed and/or reproduced according to agency rules."

FMCSA response. We do not believe that the regulation needs to be revised to explicitly state that clicking an "I agree" button on an electronic on-board recorder is an electronic signature. Sections 390.5T and 390.32, when read together, would already allow for such an interpretation so long as the on-board recorder satisfies FMCSA's requirements. This means the on-board recorder must accurately reflect the information and/or data it is designed to record, must retain the information and/or data for the proscribed time period, and must be able to accurately reproduce the information and/or data within the required timeframes (49 CFR 390.32(d)). Additionally, it must be able to show that the user approved the information contained in the on-board recorder (49 CFR 390.5T).

C. Household Goods (HHG)

Information Provided to a Prospective Shipper (§ 375.213)

Comment. Both AMSA and Atlas strongly supported the ability to provide the *Ready to Move* brochure and *Rights and Responsibilities* booklet to consumers electronically, rather than by hyperlink to FMCSA's website. AMSA and Atlas noted, however, that the word "paper" still remains in § 375.213(a), (b)(1), and (e)(2). AMSA indicated that it believed this is an "oversight" on the Agency's part. Furthermore, AMSA pointed out: "Eliminating the paper requirement for the required *Ready to Move* brochure and *Rights and Responsibilities* booklet will allow carriers to provide all of that information together electronically."

Both commenters noted that the only currently available electronic method for delivering the required *Ready to*

Move brochure and *Rights and Responsibilities* booklet "is basically unusable by carriers because: (a) It requires that the carrier obtain a receipt that the individual shipper has actually received both booklets when the carrier is not actually providing them the documents, so does not know when the shipper has actually received them in order to be able to obtain an honest and truthful receipt; (b) the regulation does not allow the carrier to have the shipper access the documents on its website, but requires that the shipper go to the FMCSA website to obtain them, eliminating any means for the carrier to electronically track that the shipper has actually received the documents; and (c) the regulation requires that the carrier obtain and keep the required receipt for 3 years (versus the one year period required for most other documents)."

FMCSA Response. The Agency agrees with the commenters and amends the language in § 375.213(e)(2), by removing the words "electronic or paper." FMCSA also eliminates the requirement in § 375.213 for the *Ready to Move* brochure and *Rights and Responsibilities* booklet to be provided only in paper copy or retrieved at a URL. Finally, FMCSA removes the need to receive a physical receipt of waiver from the shipper as well.

The proposed rule did not address the length of time a carrier needs to keep the receipt in § 375.213(e)(3) because FMCSA resolved the issue in 2012. AMSA's and Atlas' June 27, 2014, comments discussed reducing the length of time required to maintain the receipt from a three-year period to a one-year period. This was almost two years after FMCSA harmonized the retention period for the required receipt to one year based on AMSA's January 11, 2011, petition. The Agency published a direct final rule (DFR) on July 16, 2012 (77 FR 41699), establishing the retention period as one year.

HHG Filing of Claims

Comment. Atlas stated that the rewording of § 370.3 left the process for filing complaints unclear. Specifically, Atlas objected to the removal of the phrase "or electronic" and FMCSA's failure to delete the parenthetical statement that followed.

FMCSA Response. In response to Atlas' comment, the Agency removes the parenthetical "(when agreed to by the carrier and shipper or receiver involved)" from § 370.3(b), because the form of communication used is determined by agreement of the parties involved. This will clarify that the claimants need to file a claim, either in

writing or electronically, rather than orally stating a claim. For the same reason, the Agency also removes the identical parenthetical phrase in § 378.3(a) for the filing and processing of overcharge, duplicate payment, or overcollection payments for motor carrier and household goods freight forwarder transportation of property.

D. Lease and Interchange of Vehicles (Part 376)

Comment. OOIDA was concerned that the protections established by a lease "will be compromised if a motor carrier exercises its rights under the proposed rule to use electronic documents, but the owner-operator does not have the means to maintain personal possession at all times and refer to it when necessary during the course of the lease." OOIDA requested several clarifications regarding the proposed regulatory text in part 376 related to the responsibility of the motor carrier to make documents available to the owner-operator. OOIDA also asked how the owner-operator was to store the document on the CMV. OOIDA wrote that anything other than a paper copy may be less than effective in achieving the purposes of the leasing regulations.

OOIDA also asked FMCSA to clarify in the final rule that the new requirements for electronic signatures are not intended to permit easy amendment of a lease or its addendums.

FMCSA Response. As stated in the introduction, the E-SIGN statute requires consent from the consumer to share documents in electronic format. This consent should be part of the contract reached by the parties, in normal business arrangements, which must be signed by all parties indicating their consent to the requirements. We have added this requirement (that consent be documented) into 49 CFR 390.32(d), to ensure it is clear to all who wish to take advantage of the electronic documents and signatures options. If the owner-operator does not have the ability to receive and maintain the lease in electronic format, the owner-operator should obtain the lease in a format he or she can use, *i.e.*, a printed copy.

In response to OOIDA's request for clarification that the requirements for electronic signatures are not intended to permit easy amendment of a lease or its addendums, without ratification by both parties, FMCSA reiterates that the purpose of this rule is to give regulated entities the choice to conduct business using either electronic or traditional paper-based methods. This rule does not change any substantive legal requirements or business practices. We have added language into 49 CFR 379.5

to include a requirement for the protection of records from unauthorized access and modification, to make this clear.

E. Drug and Alcohol Testing

Comment. First Advantage encouraged the Agency to use electronic records and signatures under part 382, “Controlled Substances and Alcohol Use and Testing,” as this would provide regulatory relief to the industry.

ATA requested that the Agency work with the DOT Office of the Secretary to create identical allowances for electronic signatures and transmissions related to drug and alcohol testing requesting requirements found in 49 CFR part 40.

FMCSA Response. While FMCSA did not include specific changes to part 382 in its NPRM of April 28, 2014, the addition of a new § 390.32 in this final rule applies to those records that are created under part 382. Thus, industry parties may now use electronic records to comply with the records retention requirements found in 49 CFR 382.401, so long as their electronic records captured the information required by § 382.401. On December 5, 2016, FMCSA published a final rule titled “Commercial Driver’s License Drug and Alcohol Clearinghouse,” (81 FR 87686). That final rule, which falls under part 382, contemplates the use of electronic signatures for certain transactions related to the reporting and receipt of drug and alcohol testing information, including an employer’s ability to obtain driver consent.

In reviewing the CFR for any additional terms to align with the changes proposed in the NPRM, the Agency has included a revision to § 382.601(d). FMCSA removes the phrase “the original of” in this section to reflect the practical reality that there is no real distinction between originals and copies of electronic documents. Moreover, this change conforms to the changes at § 390.31 which permit parties to maintain accurate copies in lieu of originals.

The DOT Office of Drug and Alcohol Policy and Compliance (ODAPC) has not approved the use of electronic signatures or documents to satisfy the requirements of the DOT-wide drug and alcohol testing regulations, which are found at 49 CFR part 40. The Agency has no authority over regulations under 49 CFR part 40. Any questions about part 40 regulations should be directed to ODAPC. You may find ODAPC contact information at <https://www.transportation.gov/odapc>.

F. Driver’s Records of Duty Status

Comment. Commenters asked that the regulatory guidance for § 395.8, regarding the use of electronic devices to keep a driver’s RODS, be addressed. Commenters, including ATA and KeepTruckin (sic), a mobile technology-related firm, wanted the new rule to specifically address how RODS and other HOS documents could be provided to an enforcement officer at roadside. ATA interpreted the need for an “accurate copy” as requiring that drivers retain paper copies to satisfy law enforcement requests. Two individual commenters and KeepTruckin asked if RODS would have to be printed or if they could be displayed on a tablet or smart phone. A commenter asked if RODS and supporting documents could be sent electronically. A commenter asked if a driver had to submit the original log book or if it could be faxed to the motor carrier and printed out when needed.

ATA stated that FMCSA should allow the use of electronic documents at roadside, and eliminate question 28 of the DOT Interpretations for § 395.8 that requires the ability to print paper RODS. It did not believe that there is a “compelling government interest” in requiring paper copies at roadside inspection. ATA said that, currently, the risk of fraud is no greater than for paper documents. Tablet and smart phone technology can present the documents required at roadside in an easily reviewable format and transmit them electronically.

FMCSA Response. As noted in Section V, Background, above, interpretative guidance issued under 49 CFR 395.8 that was in effect during the NPRM comment period was subsequently revised, consistent with FMCSA’s July 2014 guidance on electronic signatures and documents (79 FR 39342, July 10, 2014). This revision rendered multiple comments obsolete. The July 2014 guidance addressed logging software programs that do not qualify as automatic on-board recording devices (AOBRDs) or electronic logging devices (ELDs). The Agency is in the process of reviewing all regulatory guidance previously issued by FMCSA. Any changes to existing guidance for § 395.8, § 395.15, or other sections addressed in this rulemaking will be considered during that review. In the meantime, the existing guidance remains in effect.

This rule modifies 49 CFR 395.15 governing use of AOBRDs. Provisions pertaining to ELDs were addressed in a separate rulemaking (80 FR 78292, December 16, 2015). The ELD final rule

also addressed the handling of supporting documents during inspections beginning December 18, 2017. The ATA comment erroneously presumes that the reference to an electronic document constituting an “accurate copy” would mean that drivers would need to have paper documents available for inspections. While there will be circumstances where paper RODS may be required, the need for production of paper records will diminish over time with the adoption of this rule and implementation of FMCSA’s ELD final rule.

FMCSA has long acknowledged drivers’ ability to satisfy their obligation to submit paper RODS to their motor carrier employer by scanning the original documents and submitting them electronically (75 FR 32860, June 10, 2010). Submission of supporting documents can be handled in the same manner.

G. Miscellaneous Comments

Comment. NFMTA and ATA recommended that the rule be expanded to include documents that FMCSA receives as well. An individual commenter stated that “FMCSA regulations still require paper signatures on many daily reports; creating a paperwork burden to technology adoption.” This commenter requested that FMCSA adopt technology and remove current barriers.

OOIDA was concerned that the Agency would consider electronic documents as more accurate than other methods in regards to the recording of HOS. OOIDA wrote that a document is only as accurate as the information recorded by its author.

ATA expressed their confusion of what constitutes an electronic signature.

FMCSA Response. FMCSA understands the position of those who seek to broaden the scope of this rule to allow electronic signatures on forms submitted to FMCSA. In fact, FMCSA has in certain situations made it possible for industry to use electronic signatures and submit information in limited electronic format. As an example, Certified Medical Examiners may use electronic signatures, if they choose to do so, to sign medical forms, certificates, and a new driver medication report. If FMCSA requests these forms, they are uploaded in portable document format (PDF) to the Medical Examiner’s account associated with the National Registry of Certified Medical Examiners for FMCSA to access. Unfortunately, adapting all FMCSA systems to allow for use of electronic signatures and submissions

would significantly delay the implementation of this rule for use by third parties, as it would require FMCSA to develop and implement technology systems to allow for direct submission to FMCSA from regulated parties. Such development is often a multi-year process, as has been seen in the ongoing implementation for the online Unified Registration System. FMCSA sees no reason the opportunity for private parties to use electronic signatures and records retention should be dependent on FMCSA's ability to receive submissions electronically. Doing so would delay potential benefits to be gained by third parties. Thus, FMCSA is moving forward with this final rule, and will continue to look for opportunities to expand electronic submission options in the future.

FMCSA's intent is to provide the industry with an electronic signature option for all instances where regulations currently require the more traditional pen and ink signatures on documents to be created and maintained by third parties (*i.e.*, not submitted to FMCSA). We welcome any input as to specific instances where we may have inadvertently omitted the electronic signature option. This input can be submitted using the information listed in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

In response to OOIDA's concern, FMCSA notes that this rule merely establishes parity between paper and electronic documents and gives the industry more flexibility. The Agency does not intend to give preference to electronic or paper records.

With regard to ATA's confusion over what constitutes an electronic signature, FMCSA is purposely providing a performance standard, as opposed to defining a specific technology to be used. There are numerous ways to electronically sign a document. We leave to the parties involved in the transaction to determine the method most appropriate for their purposes.³

VIII. This Final Rule

This final rule adopts the NPRM substantially as proposed, thereby incorporating previously issued guidance into the CFR. This rule establishes parity between paper and electronic documents and signatures, and expands businesses' and

individuals' ability to use electronic methods to comply with certain of the Agency's requirements. This rule only applies to documents between private parties that FMCSA requires individuals or entities to retain. It also updates 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 rulemaking implements portions of the GPEA and E-SIGN. It removes the words "original" and "written and electronic" in many cases where they still appeared in the regulatory text, in order to provide parity between electronic and paper records.

In response to comments by AMSA and Atlas, FMCSA has also updated § 375.213 to allow electronic copies of the *Ready to Move* brochure and *Rights and Responsibilities* document, provided they receive agreement from the customer. Finally, the parenthetical has been removed in §§ 370.3(b) and 378.3(a) to ensure all claims are filed in writing, either by paper or electronically.

This final rule does not adopt the changes proposed in part 389, FMCSA's rulemaking procedures. Those changes are included in the August 7, 2017, document "Rulemaking Procedures Update" covering broader changes to part 389 (82 FR 36719). The timing of the part 389 NPRM and this final rule were such that addressing all part 389 changes in one rulemaking was less confusing than attempting to finalize a few changes in this final rule while proposing others in the August 7, 2017, part 389 NPRM.

In addition, this rule reflects changes made in the CFR between April 2014 when the NPRM was published and April 16, 2018. For further discussion of the changes, please see the Section-by-Section Analysis in Part IX of this preamble.

IX. Section-by-Section Analysis

The Agency makes changes throughout its regulations to conform to the new definition of "written or in writing" at §§ 390.5 and 390.5T, which eliminates the distinction between paper and electronic methods of communication. The term "written" no longer means "on paper." As a result the words "electronic" and "paper" are removed throughout as long as they are no longer needed for an alternative reason. This change can be found in parts 370, 371, 373, 375, 376, 378, 379, 382, 387, 391, 395, 396, and 398, and are not discussed any further in this

section as they remain unchanged from what was proposed in the NPRM.⁴

A. Part 370

49 CFR 370.3, 370.5, 370.9

FMCSA is removing the parenthetical "(when agreed to by the carrier and shipper or receiver involved)" from 370.3(b) in response to comments. All other changes to part 370 remain as proposed in the NPRM.

49 CFR 370.7

In reviewing the CFR, FMCSA discovered an additional instance in § 370.7 where existing regulatory text could be updated to align with the changes proposed in the NPRM. The Agency is removing "original" as referenced in the "original bill of lading," "original invoice," and "a photographic copy of the original invoice, or an exact copy thereof or any extract made therefrom . . ." These are either identical or similar to those that were included in the NPRM, similar to the discussion in § 390.32 below. FMCSA also removes the word "photographic" to make this section technologically neutral. Motor carriers, freight forwarders, consignees, and consignors may still maintain a copy of the invoice or an extract made therefrom, but they are free to choose the method of making that copy. We believe that notice and comment on these changes is unnecessary as the additional revisions are similar, if not identical, to changes that were included in the NPRM and garnered no adverse comments.

B. Part 373

49 CFR 373.103

As proposed in the NPRM, in § 373.103, FMCSA removes 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 changes at § 390.31 that permit parties to maintain accurate copies in lieu of originals.

C. Part 375

49 CFR 375.505

The changes to § 375.505 make clear that when a household goods motor carrier transports a shipment on a collect-on-delivery basis, notification of the charges can be made using any method of communication, including, but not limited to fax, email, overnight

³ For general information on electronic signatures, the agency recommends Nunno, Richard M., "Electronic Signatures", Library of Congress' Congressional Research Service, CRS Rep. RS20344, Jan. 19, 2001, pgs. 1–2 at https://digital.library.unt.edu/ark:/67531/metacrs1448/m1/1/high_res_d/RS20344_2001Jan19.pdf, accessed March 9, 2018.

⁴ Because the changes made in parts 371 and 396 are limited to the removal of the words "electronic" and "paper," they are not discussed any further in the section-by-section analysis.

courier, certified mail, or return receipt requested.

D. Part 376

49 CFR 376.11

As proposed in the NPRM, FMCSA amends § 376.11(b)(1) to remove the outdated language specifying that receipts for leased equipment may be transmitted by mail, telegraph, or similar means of communication. Accordingly, the amended section no longer includes references to the method of transmitting receipts, thereby giving the parties the freedom to choose their own delivery method.

49 CFR 376.12

In paragraph (g), as proposed in the NPRM, FMCSA eliminates 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 do not mean, however, that parties are prohibited from using computers to generate the documents required in this section. To the contrary, all parties are free to conduct their business using the technology they choose, as long as it otherwise meets the Agency's requirements.

Also, as proposed in the NPRM, in paragraph (1), FMCSA eliminates reference to the original of each lease for the same reasons explained in the discussion of § 373.103 above.

E. Part 378

49 CFR 378.4

In addition to removing "original" in § 378.4(c) for the reasons discussed in §§ 370.7 and 373.103 above, FMCSA has introduced a technical amendment in § 378.4(e) to correct a misspelling of the word "original" to be "original". The use of this "original" continues to be proper in this context of informing the carrier that it must accept copies, but doing so means no one else can come forward with the originals and make a duplicate claim. Otherwise, this section remains as proposed.

F. Part 379

49 CFR 379.5

As previously drafted, section 379.5 required motor carriers to protect records required under FMCSA's regulations from damage or loss. The outdated language in paragraph (a) referred to physical damage that

generally can pertain only to paper records. FMCSA updates this paragraph by changing it to require motor carriers to protect records against destruction, deterioration, unauthorized access and modification, and data corruption. This change reflects the importance of maintaining the integrity of records regardless of the method used to maintain them, and responds to those commenters who requested that FMCSA ensure electronic records are protected from unauthorized amendment. We have updated paragraph (b) to ensure FMCSA is notified in any case where the integrity of the record is at issue.

49 CFR 379.7

As previously drafted, section 379.7 contained outdated record preservation language that does not take into account the use of computers and modern technology. As proposed in the NPRM, FMCSA replaces this language with 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 changes conform to the requirements for electronic methods in new § 390.32.

G. Part 380

49 CFR 380.715

Also in reviewing the CFR, FMCSA discovered an additional instance where recently added regulatory text could be updated to align with the changes proposed in the NPRM. The Agency has included a revision to § 380.715(a). FMCSA replaces the phrase "assessments (in written or electronic format)" in this section with the phrase "written assessments" to conform to the new definition of "written or in writing" at §§ 390.5 and 390.5T, which eliminates the distinction between paper and electronic methods of communication. We believe that notice and comment on this change is unnecessary as the additional revision in § 380.715 is similar, if not identical, to changes that were included in the NPRM.

49 CFR 380.725

Entry-level driver training providers are required by § 380.725(b)(2) to maintain a copy of the driver-trainee's commercial learner's permit(s) or commercial driver's license, and § 380.725(b)(3) requires these training providers maintain copies of commercial driver's licenses and applicable endorsements held by behind-the-wheel and theory

instructors. As mentioned throughout this preamble about copies of records, entry-level driver training providers are free to choose the method of maintaining copies as long as it meets the requirements in § 390.31 which permit parties to maintain accurate copies in lieu of originals.

H. Part 382

49 CFR 382.601

Also while reviewing the CFR, the Agency discovered an additional instance where existing regulatory text could be updated to align with the changes proposed in the NPRM. In this final rule, FMCSA made an additional revision to § 382.601(d). FMCSA removes the phrase "the original of" in this section for the reasons explained in the discussion of § 373.103, above.

I. Part 387

49 CFR 387.7

As previously drafted, paragraph (b)(1) of § 387.7 required insurers and motor carriers to give 35 days' notice prior to cancelling the financial responsibility policies required in § 387.9. This section formerly established mail as the only method of communicating cancellations. As proposed in the NPRM, FMCSA amends this section by replacing the word "mailed" with the more technologically neutral term "transmitted," and "Proof of mailing" with "Proof of transmission." This establishes parity between mailing and other methods of transmission as proof of cancellation.

49 CFR 387.15

FMCSA amends § 387.15 by removing the outdated 1982 illustration I and the outdated 1983 illustration II. These illustrations represent FMCSA's predecessor Federal Highway Administration's Forms MCS-90 and MCS-82. FMCSA will update the forms by making non-substantive changes to these OMB-approved forms by replacing the terms "mailed" with "transmitted," and "Proof of mailing" with "Proof of transmission" for the reasons explained in the discussion of § 387.7, above. FMCSA adds a reference to the section that the public may access the current OMB-approved versions of Forms MCS-90 and MCS-82 at FMCSA's website <https://www.fmcsa.dot.gov/mission/forms>. Thus, the public will have access to the most current OMB-approved forms via FMCSA's website rather than outdated forms in § 387.15. This change is in addition to what was proposed in the NPRM. Because the illustrations were not representations of the current OMB-approved forms, we believe that

this change is not subject to notice and comment. It is a ministerial action that removes confusion from the regulations. As such, notice and comment are unnecessary.

49 CFR 387.31

As proposed, FMCSA amends § 387.31(b)(1) by replacing the term “mailed” with “transmitted,” and “Proof of mailing” with “Proof of transmission” for the reasons explained in the discussion of § 387.7, above.

49 CFR 387.39

FMCSA amends § 387.39 by removing the outdated 2003 illustrations I and II. These illustrations represent FMCSA’s Forms MCS–90B and MCS–82B. FMCSA will update the forms for the same reasons explained in the discussion of §§ 387.7 and 387.15, above. FMCSA also adds a reference to the section that the public may access the current OMB-approved versions of Forms MCS–90B and MCS–82B at FMCSA’s website <https://www.fmcsa.dot.gov/mission/forms>. This change is in addition to what was proposed in the NPRM. Because the illustrations were not representations of the current OMB-approved forms, we believe that this change is not subject to notice and comment. It is a ministerial action that removes confusion from the regulations. As such, notice and comment are unnecessary.

J. Part 390

49 CFR 390.5 and 390.5T

FMCSA moves the definition for “electronic signature” from proposed § 390.32(c)(2) to §§ 390.5 and 390.5T, and adds a § 390.5T cross reference for the term to § 390.32(c)(1). As discussed in the response to comments about electronic signatures earlier in this preamble, an electronic signature continues to mean 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.

Based on a few commenters’ confusion with the definition, FMCSA adds a clarifying phrase that the definition is in accordance with the Government Paperwork Elimination Act (Pub. L. 105–277, Title XVII, Secs. 1701–1710, 112 Stat. 2681–749, 44 U.S.C. 3504 note). This will ensure that regulated entities know FMCSA is using GPEA’s performance standard for allowing use of electronic signatures. This change also is made to the

currently suspended § 390.5, to ensure that when FMCSA rescinds the suspension, the changes made by this final rule will remain intact.

As proposed, FMCSA introduces the definition of “written or in writing” in §§ 390.5 and 390.5T. The new definition is technologically neutral and includes 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 in § 390.32. This definition establishes technological neutrality throughout the FMCSRs and eliminates any distinction between paper and electronic documentation as being “written or in writing.”

49 CFR 390.7

As proposed in the NPRM, FMCSA removes the outdated explanation of the term “writing” from the rules of construction in § 390.7(b)(2). As explained above, FMCSA has implemented a new definition of “written or in writing” in §§ 390.5 and 390.5T.

49 CFR 390.31

Revised § 390.31 permits persons or entities subject to document retention requirements to keep copies in lieu of originals. As proposed in the NPRM, FMCSA removes the reference to microfilm as the only acceptable method for storing such copies. It also removes the prohibition on using computer technology to maintain documents with signatures. This change provides the flexibility to choose the type of recordkeeping and storage that best suits an 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

As proposed in the NPRM, new § 390.32 permits 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 applies to all forms of written documentation, including forms, records, notations, and other documents. This rule establishes 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) specifies that the rule applies 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 does 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 website (www.fmcsa.dot.gov).

Paragraph (b) permits, but does not require, any entity 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) permits, but does not require, any entity required to sign or certify a document to do so using electronic signatures. The rule specifies that a person may use any available technology so long as the signature otherwise complies with FMCSA’s requirements. In response to comments, this paragraph has been further revised to include that any electronically signed documents must incorporate or otherwise include evidence that both parties have consented to the use of electronic signatures, as required by the E–SIGN Act (15 U.S.C. 7001(c)).

Paragraph (d) establishes 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 need to accurately and reliably reflect the information in the record. They must remain accessible in a form that could be accurately viewed or reproduced according to Agency rules.

Electronic documents are not to be considered the legal equivalent of traditional paper documents if they are not capable of being retained and accurately reproduced for reference by any 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, such as a record of duty status requested by an enforcement officer, the 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, such as a motor carrier with multiple offices, the 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 rule does 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 105–199). In addition, if a motor carrier is operating in a foreign country, it must follow any rules that apply in that country.

K. Part 391

Former 49 CFR 391.55 required 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. Accordingly, as proposed in the NPRM, FMCSA removes the word “photographic” to make this section technologically neutral. Motor carriers are still required to maintain a copy of the Longer Combination Vehicle driver-instructor's commercial driver's license, but they are free to choose the method of making that copy.

L. Part 395

49 CFR 395.8

Former § 395.8(f)(2) required that 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 proposed removal of the requirement that RODS be in the driver's own handwriting and adopts the rule as proposed. But drivers are still required to make their own entries; and those entries are required to be legible, regardless of the medium used to record them. This change permits 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 then subscribed with a handwritten signature, depending on the method used to record RODS.

49 CFR 395.15

Formerly § 395.15 (b)(2) permitted 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 removes reference to handwritten or printed RODS, as proposed in the NPRM. The changes 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.

Former paragraph (b)(4) required a driver to have the previous 7 consecutive days of RODS available for inspection and specified that those RODS can be from an AOBRD, handwritten records, computer generated records, or any combination thereof. As proposed in the NPRM, FMCSA makes this section technologically neutral by removing reference to handwritten and computer generated records. Drivers are still permitted to use handwritten or computer generated records, but they are free to choose any medium for maintaining these records that otherwise meets FMCSA's requirements.

As previously drafted, paragraph (b)(5) referenced “hard copies” of the RODS documents described in paragraph (b)(4). As proposed, FMCSA removes reference to “hard copies” for the same reasons explained in the discussion of paragraph (b)(4) above.

In paragraph (e), FMCSA removes, as proposed, 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 removes, as proposed, 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 removes, as proposed, the option that RODS may be submitted to employers via mail for the same reasons explained in the discussion of § 387.7, above.

In the introduction to paragraph (i), FMCSA removes, as proposed, reference to handwritten RODS for the reasons explained in the discussion of § 395.8(f)(2), above. In paragraphs (i)(4) and (7), FMCSA removes, as proposed, 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 398

As proposed in the NPRM and for the same reasons explained in the discussion of § 391.55 above, FMCSA removes the requirement in 49 CFR 398.3 that certain documents must be “photographically reproduced.”

X. International Impacts

The FMCSRs, and any exceptions to the FMCSRs, apply only within the United States (and, in some cases, United States territories). Motor carriers and drivers are subject to the laws and regulations of the countries that they operate in, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences amongst nations.

XI. Regulatory Analyses

A. E.O. 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

FMCSA determined that this final rule is not a significant regulatory action under section 3(f) of E.O. 12866 (58 FR 51735, October 4, 1993), Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. Accordingly, the Office of Management and Budget (OMB) has not reviewed it under that Order. It is also not significant within the meaning of DOT regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, February 26, 1979).

This final rule does not impose new requirements, and it is expected to provide regulatory relief to the industry. It codifies previously issued regulatory guidance that provides flexibility to the industry in the use of electronic documents and electronic signatures, and removes outdated and obsolete references in the regulatory text. Examples of documents affected by this rule include vehicle maintenance records, driver qualification files, bills of lading, and business records. Regulated entities are provided additional flexibility and may choose to conduct business using either electronic versions or traditional paper-based versions of these types of documents.

Because the choice of using electronic methods is optional and not mandatory, and regulated entities may continue to use traditional paper-based methods if

they desire to do so, the Agency expects regulated entities will choose those methods that best suit their individual needs. For those regulated entities that do choose to use electronic documents and methods under this rule, potential cost savings may include reduced expenditures on labor time, office and storage space, materials, and office equipment. For example, specific types of savings could include purchasing less paper and toner/ink, printing fewer documents, requiring fewer file cabinets or document boxes for storage of paper documents, using less space for storage of paper documents, expending less labor time in activities such as handling and filing of paperwork, expending less labor time in identifying and retrieving documents, and transmitting fewer paper documents by mail or courier services.

Because the previously issued regulatory guidance that is now being codified in this final rule has been in place for several years, since January 4, 2011, it is believed that many regulated entities for whom the use of electronic documents and methods best suits their needs may have already made this transition from traditional paper-based methods. Therefore, many of the potential cost savings possible from this rule may have largely already occurred. It is estimated that though there may still be some additional incremental cost savings that could result from the regulatory flexibility being codified by this final rule (e.g., for any remaining regulated entities that may desire at some time to use electronic documents and methods but have not yet made this transition), overall these additional cost savings will be minimal. Furthermore, these potential remaining additional cost savings cannot be reliably quantified or monetized. Factors contributing to difficulties in quantifying the potential cost savings include the variety of records and documents potentially affected across multiple FMCSA regulations, a lack of information regarding the number of records or documents signed, certified, generated, exchanged, or maintained, and a lack of information regarding the extent to which electronic documents and signatures have already been voluntarily adopted under existing FMCSA guidance.

Of the comments submitted to the April 28, 2014, NPRM, discussed earlier in Section VII, Comments and Responses, none provided data or information to suggest that this final rule would be a significant regulatory action.

In light of the above considerations, the Agency does not believe that the

rule would have an annual effect on the economy of \$100 million or more, nor would it meet any of the other criteria presented in section 3(f) of E.O. 12866, Regulatory Planning and Review, for a significant regulatory action. Therefore, as noted earlier, FMCSA has determined that this final rule is not a significant regulatory action.

B. E.O. 13771 (Reducing Regulation and Controlling Regulatory Costs)

E.O. 13771 (82 FR 9339, February 3, 2017), Reducing Regulation and Controlling Regulatory Costs, requires that for “every one new [E.O. 13771 regulatory action] issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.” Implementation guidance for E.O. 13771 issued by the Office of Management and Budget (OMB) (Memorandum M–17–21, April 5, 2017) defines two different types of E.O. 13771 actions: An E.O. 13771 regulatory action, and an E.O. 13771 deregulatory action.

An E.O. 13771 regulatory action is defined as:

(i) A significant action as defined in Section 3(f) of E.O. 12866 that has been finalized, and that imposes total costs greater than zero; or

(ii) A significant guidance document (e.g., significant interpretive guidance) reviewed by OIRA under the procedures of E.O. 12866 that has been finalized and that imposes total costs greater than zero.

The Agency action, in this case a rulemaking, must meet both the significance and the total cost criteria to be considered an E.O. 13771 regulatory action. This rulemaking is not a significant regulatory action as defined in Section 3(f) of E.O. 12866, and therefore does not meet the significance criterion for being an E.O. 13771 regulatory action. Consequently, this rulemaking is not an E.O. 13771 regulatory action.

An E.O. 13771 deregulatory action is defined as “an action that has been finalized and has total costs less than zero.” As discussed earlier, this final rule does not impose new requirements, and it is expected to provide regulatory relief to the industry. Because the choice of using electronic methods is optional and not mandatory, and regulated entities may continue to use traditional paper-based methods if they desire to do so, the Agency expects regulated entities will choose those methods that best suit their individual needs. For those regulated entities that do choose to use electronic documents

and methods under this rule, potential cost savings may include reduced expenditures on labor time, office and storage space, materials, and office equipment. Consequently, this rule has total costs less than zero, and therefore is a deregulatory action under E.O. 13771. However, as discussed earlier, it is believed that many regulated entities for whom the use of electronic documents and methods best suits their needs may have already made this transition from traditional paper-based methods under existing FMCSA guidance, and therefore many of the potential cost savings possible from this rule may have largely already occurred. It is estimated that though there may still be some additional incremental cost savings that could result from the regulatory flexibility being codified by this final rule (e.g., for any remaining regulated entities that may desire at some time to use electronic documents and methods but have not yet made this transition), overall these additional cost savings will be minimal. Furthermore, these potential remaining additional cost savings cannot be reliably quantified or monetized because of the large variety of records and documents potentially affected across multiple FMCSA regulations, a lack of information regarding the number of records or documents signed, certified, generated, exchanged, or maintained, and a lack of information regarding the extent to which electronic documents and signatures have already been voluntarily adopted under existing FMCSA guidance. Therefore, though it is expected that there will be some additional incremental cost savings that will result from this final rule, these cost savings are expected to be minimal and are not quantified.

As a deregulatory action under E.O. 13771, this rule contributes to Agency compliance with section 2(a) of E.O. 13771 regarding issuing at least two E.O. 13771 deregulatory actions for each E.O. 13771 regulatory action. Because the cost savings resulting from this rule are not quantified, this rule does not however contribute towards Agency compliance with section 2(c) of E.O. 13771 regarding offsetting the costs of E.O. 13771 regulatory actions with cost savings from E.O. 13771 deregulatory actions.

C. 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 populations of less than 50,000. Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses. 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 rule is not expected to have a significant economic impact on a substantial number of small entities. As discussed earlier, though it is expected that there will be some additional incremental cost savings that will result from this final rule, these cost savings are expected to be minimal, and to the extent that they occur they will be beneficial to the entities that realize these cost savings. Consequently, I certify the action will not have a significant economic impact on a substantial number of small entities.

D. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this final rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the rule will 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 listed in the **FOR FURTHER INFORMATION CONTACT** section of this rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration’s Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

E. 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 \$156 million (which is the value equivalent of \$100,000,000 in 1995, adjusted for inflation to 2015 levels) or more in any one year. Though this final rule will not result in such an expenditure, the Agency does discuss the potential effects of this rule elsewhere in this preamble.

F. Paperwork Reduction Act (Collection of Information)

This final rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). This rule codifies FMCSA regulatory guidance within the CFR, allowing those documents that FMCSA’s regulations obligate entities or individuals to retain, many of which are generated as part of customary and usual business or private practices, to be maintained electronically or in paper form. This rule does not apply to forms or other documents that must be submitted directly to FMCSA; the regulations which state that those documents either must or may be submitted to FMCSA in electronic format (such as those covered by 49 CFR part 382, subpart G) are not impacted by this final rule, and any paperwork burdens associated with those rules were already analyzed by FMCSA in prior rulemakings.

For this final rule, FMCSA reviewed all current, active, OMB-approved information collection request (ICR) supporting statements. These statements are available for public inspection via www.reginfo.gov. Table 1 shows the 27 active ICRs covering the rules in 49 CFR parts 300 to 399 that are being impacted by this final rule allowing electronic methods or signatures. Each of these listed collections currently allows for electronic creation, retention, or signature of records covered by the collection. We also show the current expiration date for each collection.

TABLE 1

OMB Control No.	Title	OMB Current expiration date
2126–0001	Hours of Service (HOS) of Drivers Regulations	6/30/2019
2126–0003	Inspection, Repair and Maintenance	7/31/2018
2126–0004	Driver Qualification Files	1/31/2020
2126–0006	Medical Qualification Requirements	8/31/2018
2126–0008	Financial Responsibility for Motor Carriers of Passengers and Motor Carriers of Property	1/31/2020
2126–0009	Accident Recordkeeping Requirements	9/30/2020
2126–0011	Commercial Driver Licensing and Test Standards	10/31/2018
2126–0013	Motor Carrier Identification Report	4/30/2019
2126–0014	Transportation of Hazardous Materials, Highway Routing	4/30/2020
2126–0015	Designation of Agents, Motor Carriers, Brokers and Freight Forwarders	1/31/2020
2126–0016	Licensing Applications for Motor Carrier Operating Authority	1/31/2020
2126–0017	Financial Responsibility, Trucking and Freight Forwarding	5/31/2020
2126–0018	Request for Revocation of Authority Granted	9/30/2020
2126–0019	Application for Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers.	10/31/2018
2126–0025	Transportation of Household Goods; Consumer Protection	8/31/2019
2126–0026	Training Certification for Drivers of Longer Combination Vehicles	5/31/2020
2126–0028	Training Certification for Entry-Level Commercial Motor Vehicle Operators	4/30/2020
2126–0030	Hazardous Materials Safety Permits	8/31/2020
2126–0051	FMCSA Registration/Update(s)	1/31/2020
2126–0054	Commercial Motor Vehicle Marking Requirements	8/31/2018
2126–0056	Lease and Interchange of Vehicles	8/31/2018
2126–0057	Commercial Driver’s License Drug and Alcohol Clearinghouse	1/31/2020

TABLE 1—Continued

OMB Control No.	Title	OMB Current expiration date
2126–0060	Motor Carrier Records Change Form	7/31/2018
2126–0062	Electronic Logging Device (ELD) Registration	12/31/2018
2126–0063	State Commercial Driver’s License Program Plan	12/31/2018
2126–0064	391.41 CMV Driver Medication Form	1/31/2020
2126–0065	Commercial Driver’s License Skills Testing Delays	2/28/2019

Each of the above-listed collections has a section in its supporting statement discussing the extent to which automated information collection, creation, or storage is expected to occur. For example, FMCSA’s “Lease and Interchange of Vehicles” ICR, 2126–0056, states “Leases may be created and maintained electronically. FMCSA estimates that 50% of the leases are electronic.”

Therefore, there are no new collections of information under the Paperwork Reduction Act of 1995 for OMB to approve, nor are there any revisions of currently approved collections required by this final rule.

G. E.O. 13132 (Federalism)

A rule has implications for federalism under Section 1(a) of E.O. 13132, if it has “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” FMCSA has determined that this rule would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

H. E.O. 12988 (Civil Justice Reform)

This final 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.

I. E.O. 13045 (Protection of Children)

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), requires agencies issuing “economically significant” rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation’s environmental health and safety effects

on children. The Agency determined this final rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, the Agency does not anticipate that this regulatory action could in any respect present an environmental or safety risk that could disproportionately affect children.

J. E.O. 12630 (Taking of Private Property)

FMCSA reviewed this final rule in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have taking implications.

K. Privacy

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 (PIA) of a regulation that will affect the privacy of individuals. This final rule does not require the collection of personally identifiable information (PII).

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

The E-Government Act of 2002, Public Law 107–347, sec. 208, 116 Stat. 2899, 2921 (December 17, 2002), requires Federal agencies to conduct a PIA 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. Accordingly, FMCSA has not conducted a privacy impact assessment.

L. 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.

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

FMCSA has analyzed this final rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

N. E.O. 13175 (Indian Tribal Governments)

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

O. 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 rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

P. Environment (NEPA, CAA, E.O. 12898 Environmental Justice)

FMCSA analyzed this rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, March 1, 2004), Appendix 2, paragraph (6)(q) and paragraph (6)(y). The Categorical Exclusion (CE) in paragraph (6)(q) covers regulations implementing record preservation procedures for motor carriers, brokers, and household goods freight forwarders, including record types retained and retention periods. The CE in paragraph (6)(y) covers motor carrier identification and registration reports, and requirements about motor carriers', drivers', brokers', and freight forwarders' copies of records. The content in this rule is covered by these CEs and the final action does not have any effect on the quality of the environment. The CE determination is available for inspection or copying in the Federal eRulemaking Portal: <http://www.regulations.gov>.

FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

Under E.O. 12898, each Federal agency must identify and address, as appropriate, "disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations" in the United States, its possessions, and territories. FMCSA evaluated the environmental justice effects of this proposed rule in accordance with the E.O., and has determined that no environmental justice issue is associated with this final rule, nor is there any collective environmental impact that would result from its promulgation.

List of Subjects

49 CFR Part 370

Freight forwarders, Investigations, and Motor carriers.

49 CFR Part 371

Brokers, Motor carriers, and Reporting and recordkeeping requirements.

49 CFR Part 373

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

49 CFR Part 375

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

49 CFR Part 376

Motor carriers, and Reporting and recordkeeping requirements.

49 CFR Part 378

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

49 CFR Part 379

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

49 CFR Part 380

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

49 CFR Part 382

Administrative practice and procedure, Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Penalties, Safety, and Transportation.

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, and Surety bonds.

49 CFR Part 390

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

49 CFR Part 391

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

49 CFR Part 395

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

49 CFR Part 396

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

49 CFR Part 398

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

For the reasons stated in the preamble, FMCSA amends 49 CFR, chapter III, 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, 14706; and 49 CFR 1.87.

§ 370.3 [Amended]

- 2. Amend § 370.3 as follows:
 - a. Remove the words "or electronic" and the parenthetical "(when agreed to by the carrier and shipper or receiver involved)" from paragraph (b) introductory text, and
 - b. Remove the phrase "where claims are electronically handled," from paragraph (b)(3).

§ 370.5 [Amended]

- 3. Amend § 370.5 in paragraph (a) as follows:
 - a. Remove the phrase "or by electronic transmission", and
 - b. Remove both additional instances of the words "or electronically".
- 4. Amend § 370.7 by revising paragraph (b) to read as follows:

§ 370.7 Investigation of claims.

* * * * *

(b) *Supporting documents.* When a necessary part of an investigation, each claim shall be supported by the bill of lading, evidence of the freight charges, if any, and either the invoice, a copy of the invoice, or an exact copy thereof or any extract made therefrom, certified by the claimant to be true and correct with respect to the property and value involved in the claim; or certification of prices or values, with trade or other discounts, allowance, or deductions, of any nature whatsoever and the terms thereof, or depreciation reflected thereon; *Provided, however,* That where property involved in a claim has not been invoiced to the consignee shown on the bill of lading or where an invoice does not show price or value, or where the property involved has been sold, or where the property has been transferred

at bookkeeping values only, the carrier shall, before voluntarily paying a claim, require the claimant to establish the destination value in the quantity, shipped, transported, or involved; *Provided, further*, That when supporting documents are determined to be a necessary part of an investigation, the supporting documents are retained by the carriers for possible FMCSA inspection.

§ 370.9 [Amended]

■ 5. Amend § 370.9 in paragraph (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

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

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

§ 371.109 [Amended]

■ 7. 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]

■ 8. Amend § 371.111 in paragraph (c) as follows:

- a. Remove the comma after the word “dated”; and
■ b. Remove the words “electronic or paper”.

PART 373—RECEIPTS AND BILLS

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

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

■ 10. Amend § 373.103 by:

- a. Redesignating paragraph (a) introductory text as (a)(1) and paragraphs (a)(1) through (11) as paragraphs (a)(1)(i) through (xi);
■ b. Designating the undesignated paragraph following newly redesignated paragraph (a)(1)(xi) as paragraph (a)(2);
■ c. Redesignating paragraph (b) introductory text as paragraph (b)(1) and paragraphs (b)(1) through (11) as (b)(1)(i) through (xi);
■ d. Designating the undesignated paragraph following newly redesignated paragraph (b)(1)(xi) as paragraph (b)(2); and
■ e. Revising newly designated paragraphs (a)(2) and (b)(2).

The revisions read as follows:

§ 373.103 For-hire, non-exempt expense bills.

(a) * * *

(2) 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) * * *

(2) 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

■ 11. 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, Pub. L. 109–59; and 49 CFR 1.87.

■ 12. 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.

* * * * *

■ 13. Amend § 375.213 by revising paragraphs (a), (b)(1), (e) introductory text, and (e)(2) to read as follows:

§ 375.213 What information must I provide to a prospective individual shipper?

(a) When you provide the written estimate to a prospective individual shipper, you must also provide the individual shipper with the DOT publication titled “Ready to Move?—Tips for a Successful Interstate Move” (Department of Transportation publication FMCSA–ESA–03–005, or its successor publication). You must provide the individual shipper with a copy or provide a hyperlink on your internet website to the FMCSA website containing that publication.

(b) * * *

(1) The contents of appendix A of this part, titled “Your Rights and Responsibilities When You Move” (Department of Transportation publication FMCSA–ESA–03–006, or its successor publication). You must provide the individual shipper with a copy or provide a hyperlink on your internet website to the FMCSA website

containing the information in FMCSA’s publication “Your Rights and Responsibilities When You Move.”

* * * * *

(e) If an individual shipper elects to waive receipt of the Federal consumer protection information by one of the methods described in paragraphs (a) and (b)(1) of this section, and elects to access the same information via the hyperlink on the internet:

* * * * *

(2) You must obtain a signed, dated receipt showing the individual shipper has received both booklets that includes, if applicable, verification of the shipper’s agreement to access the Federal consumer protection information on the internet.

* * * * *

■ 14. 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 email address of a person to notify about the charges. The notification may be made by any method of communication, including, but not limited to, fax transmission; email; overnight courier; or certified mail, return receipt requested.

* * * * *

PART 376—LEASE AND INTERCHANGE OF VEHICLES

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

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

§ 376.11 [Amended]

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

§ 376.12 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

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

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

§ 378.3 [Amended]

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

■ 20. Amend § 378.4 as follows:

■ a. Revise paragraph (b) introductory text;

■ b. Revise paragraph (c); and

■ c. In paragraph (e) remove the term “original” and add in its place “original”.

The revisions read as follows:

§ 378.4 Documentation of claims.

* * * * *

(b) Claims for overcharge shall be accompanied by the 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 freight bill(s) for which charges were paid and by freight bill payment information.

* * * * *

§ 378.5 [Amended]

■ 21. Amend § 378.5 in paragraph (c) by removing the words “or electronically transmitted”.

§ 378.6 [Amended]

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

■ 23. 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.

■ 24. 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

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

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

■ 26. Revise § 379.5 to read as follows:

§ 379.5 Protection and storage of records.

(a) The entity shall protect records subject to this part from destruction, deterioration, unauthorized access, modification and/or data corruption.

(b) The entity shall notify the Secretary if prescribed records are substantially destroyed, damaged, accessed and modified without authorization, or otherwise corrupted.

■ 27. 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]

■ 28. Amend appendix A to part 379 in sections A.3.(d), B.3., F.1.(b), I.3.(c), I.5.(b), and I.5.(c) by removing the word “papers” and adding in its place the word “documents”.

PART 380—SPECIAL TRAINING REQUIREMENTS

■ 29. The authority citation for part 380 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31305, 31307, 31308, and 31502; sec. 4007(a) and (b) of Pub. L. 102-240 (105 Stat. 2151-2152); sec. 32304 of Pub. L. 112-141; and 49 CFR 1.87.

■ 30. Amend § 380.715 by revising paragraph (a) to read as follows:

§ 380.715 Assessments.

(a) Training providers must use written assessments to determine driver-trainees' proficiency in the knowledge objectives in the theory portion of each unit of instruction in appendices A

through E of part 380, as applicable. The driver-trainee must receive an overall minimum score of 80 percent on the theory assessment.

* * * * *

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

■ 31. The authority citation for part 382 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31301 *et seq.*, 31502; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; and 49 CFR 1.87.

§ 382.601 [Amended]

■ 32. Amend § 382.601 by removing the phrase “the original of” from the second sentence of paragraph (d).

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

■ 33. The authority citation for part 387 continues to read as follows:

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

■ 34. Amend § 387.7 by revising paragraph (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.

* * * * *

■ 35. Revise § 387.15 to read as follows:

§ 387.15 Forms.

Endorsements for policies of insurance (Form MCS–90) and surety bonds (Form MCS–82) must be in the form prescribed by the FMCSA and approved by the OMB. Endorsements to policies of insurance and surety bonds shall specify that coverage thereunder will remain in effect continuously until terminated, as required in § 387.7 of this subpart. The continuous coverage requirement does not apply to Mexican motor carriers insured under § 387.7(b)(3) of this subpart. The endorsement and surety bond shall be issued in the exact name of the motor carrier. The Forms MCS–82 and MCS–90 are available from the FMCSA website at <http://www.fmcsa.dot.gov/mission/forms>.

■ 36. Amend § 387.31 by revising paragraph (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.

* * * * *

■ 37. Revise § 387.39 to read as follows:

§ 387.39 Forms.

Endorsements for policies of insurance (Form MCS–90B) and surety bonds (Form MCS–82B) must be in the form prescribed by the FMCSA and approved by the OMB. Endorsements to policies of insurance and surety bonds shall specify that coverage thereunder will remain in effect continuously until terminated, as required in § 387.31 of this subpart. The continuous coverage requirement does not apply to Mexican motor carriers insured under § 387.31(b)(3) of this subpart. The endorsement and surety bond shall be issued in the exact name of the motor carrier. The Forms MCS–82B and MCS–90B are available from the FMCSA website at <http://www.fmcsa.dot.gov/mission/forms>.

§ 387.313T [Amended]

■ 38. Amend § 387.313T in paragraph (b) by removing the words “in triplicate”.

§ 387.413T [Amended]

■ 39. Amend § 387.413T in paragraph (b) by removing the words “in triplicate”.

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

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

Authority: 49 U.S.C. 504, 508, 31132, 31133, 31134, 31136, 31137, 31144, 31151, 31502; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677–1678; sec. 212, 217, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; 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. 4136, Pub. L. 109–59, 119 Stat. 1144, 1745; sections 32101(d) and 32934, Pub. L. 112–141, 126 Stat. 405, 778, 830; sec. 2, Pub. L. 113–125, 128 Stat. 1388; and 49 CFR 1.87.

■ 41. Amend § 390.5 as follows:

- a. Lift the suspension of the section;
- b. Add definitions of “electronic signature” and “written or in writing” in alphabetical order; and

■ c. Suspend § 390.5 indefinitely. The additions read as follows:

§ 390.5 Definitions.

* * * * *

Electronic signature means 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, in accordance with the Government Paperwork Elimination Act (Pub. L. 105–277, Title XVII, Secs. 1701–1710., 44 U.S.C. 3504 note, 112 Stat. 2681–749).

* * * * *

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.

■ 42. Amend § 390.5T by adding definitions of “electronic signature” and “written or in writing” in alphabetical order to read as follows:

§ 390.5T Definitions

* * * * *

Electronic signature means 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, in accordance with the Government Paperwork Elimination Act (Pub. L. 105–277, Title XVII, Secs. 1701–1710., 44 U.S.C. 3504 note, 112 Stat. 2681–749).

* * * * *

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]

■ 43. Amend § 390.7 by removing paragraph (b)(2) and redesignating paragraphs (b)(3) through (7) as (b)(2) through (6), respectively.

■ 44. 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.

■ 45. Add § 390.32 to read as follows:

§ 390.32 Electronic documents and signatures.

(a) *Applicability.* This section applies to 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.* Any person or entity 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 300–399) may use electronic methods to satisfy those requirements.

(c) *Electronic signatures.* (1) Any person or entity 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 300–399) may use an electronic signature, as defined in § 390.5T of this part.

(2) 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 capable of being retained, are not used for the purpose for which they were created, or cannot be accurately reproduced within required timeframes for reference by any party entitled to access. Records or documents generated electronically do not satisfy the requirements of this section if they do not include proof of consent to use electronically generated records or documents, as required by 15 U.S.C. 7001(c).

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

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

Authority: 49 U.S.C. 504, 508, 31133, 31136, 31149, 31502; sec. 4007(b) Pub. L. 102–240, 105 Stat. 1914, 2152; sec. 114 Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 215 Pub. L. 106–159, 113 Stat. 1748, 1767; sec. 32934 Pub. L. 112–141, 126 Stat. 405, 830; sec. 5524 Pub. L. 114–94, 129 Stat. 1312, 1560; and 49 CFR 1.87.

§ 391.55 [Amended]

■ 47. Amend § 391.55 in paragraph (b)(2) by removing the word “photographic”.

PART 395—HOURS OF SERVICE OF DRIVERS

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

Authority: 49 U.S.C. 504, 31133, 31136, 31137, 31502; sec. 113, Pub.L. 103–311, 108 Stat. 1673, 1676; sec. 229, Pub.L. 106–159 (as added and 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; sec. 5206(b) of Pub. L. 114–94, 129 Stat. 1312, 1537; and 49 CFR 1.87.

■ 49. Amend § 395.8 by revising paragraph (f)(2) 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.

* * * * *

■ 50. 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) 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

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

Authority: 49 U.S.C. 504, 31133, 31136, 31151, 31502; sec. 32934, Pub. L. 112–141, 126 Stat. 405, 830; sec. 5524 Pub. L. 114–94, 129 Stat. 1312, 1560; and 49 CFR 1.87.

§ 396.11 [Amended]

■ 52. Amend § 396.11 by removing the word “original” from paragraphs (a)(3)(ii), (a)(4), and (b)(4).

§ 396.12 [Amended]

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

PART 398—TRANSPORTATION OF MIGRANT WORKERS

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

Authority: 49 U.S.C. 13301, 13902, 31132, 31133, 31136, 31502, 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]

■ 55. Amend § 398.3 in paragraph (b)(8) by removing the words “photographically reproduced” wherever they appear.

Issued under the authority of delegation in 49 CFR 1.87: April 6, 2018.

Raymond P. Martinez,
Administrator.

[FR Doc. 2018-07749 Filed 4-13-18; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R2-ES-2016-0110;
FXES1113090000 178 FF09E42000]

RIN 1018-BB79

Endangered and Threatened Wildlife and Plants; Removing the Black-Capped Vireo From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: Under the authority of the Endangered Species Act of 1973 (Act), as amended, we, the U.S. Fish and Wildlife Service (Service), remove the black-capped vireo (*Vireo atricapilla*, listed as *Vireo atricapillus*) from the Federal List of Endangered and Threatened Wildlife due to recovery. This determination is based on a thorough review of the best available scientific and commercial information, which indicates that the threats to this species have been reduced or managed to the point that the species has recovered and no longer meets the definition of endangered or threatened under the Act.

DATES: This rule is effective May 16, 2018.

ADDRESSES: This final rule is available on the internet at <http://www.regulations.gov> under Docket No. FWS-R2-ES-2016-0110 and at <https://www.fws.gov/southwest/es/arlingtontexas/>. Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at <http://www.regulations.gov>. Comments, materials, and documentation that we considered in this rulemaking will be available by appointment, during normal business hours, at: U.S. Fish and Wildlife Service, Arlington Ecological Services Field Office, 2005 NE Green Oaks Blvd., Arlington, TX 76006; telephone 817-277-1100; facsimile 817-277-1129; ARLES@fws.gov.

FOR FURTHER INFORMATION CONTACT: Debra Bills, Field Supervisor, U.S. Fish

and Wildlife Service, Arlington Ecological Services Field Office, 2005 NE Green Oaks Blvd., Suite 140, Arlington, TX 76006; telephone 817-277-1100; or facsimile 817-277-1129. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Endangered Species Act, a species may be removed (delisted) from the Federal List of Endangered and Threatened Wildlife if it is determined it has recovered and is no longer endangered or threatened. Delisting can only be completed by issuing a rule.

*This rule removes the black-capped vireo (*Vireo atricapilla*, listed as *Vireo atricapillus*) from the Federal List of Endangered and Threatened Wildlife.*

The basis for our action. Under the Endangered Species Act, we determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We must consider the same factors in delisting a species. We may delist a species if the best scientific and commercial data indicate the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is extinct; (2) the species has recovered and is no longer threatened or endangered; or (3) the original scientific data used at the time the species was classified were in error. We have determined that the primary threats to the black-capped vireo have been reduced or managed to the point that the species is recovered.

Peer review and public comment. We completed a Species Status Assessment (SSA) to evaluate the species' needs, current conditions, and future conditions to support our proposed rule. We sought comments from independent specialists to ensure that our determination is based on scientifically sound data, assumptions, and analyses. We invited these peer reviewers to comment on the SSA report. We considered all comments and information we received during the comment period on the proposed rule to delist the black-capped vireo when finalizing our SSA report and this final rule.

Previous Federal Actions

Please refer to the proposed delisting rule for the black-capped vireo (81 FR 90762, December 15, 2016) for a detailed description of previous Federal actions concerning this species.

Background

Please refer to the proposed delisting rule for the black-capped vireo (81 FR 90762, December 15, 2016) for a summary of species information.

Our December 15, 2016, proposed rule was based largely on the SSA report, which characterized the species' overall viability in the future. Please see **ADDRESSES**, above, for information on how to obtain a copy of the SSA report.

Summary of Biological Status and Threats

Species Description and Needs

The black-capped vireo is a migratory songbird that breeds and nests in south-central Oklahoma, Texas, and the northern states of Mexico (Coahuila, Nuevo León, Tamaulipas), and winters along Mexico's western coastal states. In general, black-capped vireo breeding habitat is shrublands and open woodlands.

The resource needs of the black-capped vireo are described in the SSA report for individuals, populations, and for the species rangewide. Life-history needs are generally categorized as breeding, feeding, and sheltering; for migratory species, this may also include habitat for migration and wintering. Individual black-capped vireos need a suitable breeding habitat patch of at least 1.5 hectares (ha) (3.7 acres (ac)) of shrublands with between 35 and 55 percent shrub cover that consists largely of deciduous shrubs, often oaks in mesic areas, and with a low proportion of junipers. Within breeding habitat patches, shrub mottes (groups of shrubs) with deciduous foliage from ground level to 3 meters (m) (0 to 9.8 feet (ft)) in height are needed for nest concealment and foraging.

Populations of black-capped vireos are described based on the number of adult males the breeding habitat can support. Those sites (defined as geographical areas with suitable breeding habitat) capable of supporting at least 30 adult males are considered "manageable populations." Those sites with suitable breeding habitat capable of supporting 100 or more adult males are considered "likely resilient populations," that have the ability to withstand disturbances of varying magnitude and duration. Brown-headed cowbird (*Molothrus ater*) brood parasitism rates below 40 percent (Tazik