



West Virginia Department of Transportation Policy: **Electronic Signature**

Issued by the Secretary of Transportation

Policy No: DOT 1.14

Issue Date: 12/05/2022

Revised: 12/05/2022

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1.0 PURPOSE

The purpose of this policy is to provide guidance on the use of electronic signatures and electronic records and when they are considered an acceptable means of validating the identity of a signer of the West Virginia Department of Transportation's (WVDOT) electronic documents and correspondence, and thus a substitute for traditional pen and ink signatures, within the organization. Because communication has become primarily electronic, the goal is to reduce confusion about when an electronic signature is trusted.

In 2001 the Digital Signatures; State Electronic Records and Transacts Act (ESRA), W. Va. Code §39A-3-1 *et seq.* was passed in response to the Global and National Commerce Act (E-SIGN), 15 U.S.C. §7031. In furtherance of promoting e-commerce in government, the Legislature enacted the Uniform Electronic Transactions Act (UETA) in 2001. These federal and state laws form the basis for utilizing electronic signatures and records throughout State government.

2.0 SCOPE

This policy applies to all WVDOT employees, contractors, and other agents conducting WVDOT business with a WVDOT provided electronic key pair. This policy applies to intra-organization electronically signed documents and correspondence where tracking and receipts are necessary and to electronic materials sent to or received from non-WVDOT affiliated persons or organizations.

2.1 Under the provisions of E-SIGN, UETA, and ESRA:

- A. a signature or record cannot be denied legal effect or enforceability solely because it is in electronic form;
- B. if a law requires the record to be in writing, an electronic record satisfies the law; and
- C. if a signature is legally required, an e-signature satisfies the law.

2.2 There are four major requirements for an e-signature to be considered valid under E-SIGN, UETA, and ESRA:

- A. each party intended to execute the document;
- B. the parties have consented to do business electronically (under UETA, consumer consent disclosures may also be required);
- C. the e-signature must be associated with the record, and the system utilized in consummating the transaction must keep a record reflecting the process by which the signature (or other form of e-signature) was created or generated; and
- D. records of the transaction and e-signature must be retained electronically.

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3.0 DEFINITIONS

- 3.1 **Assurance level:** means the degree of certainty that the user of an electronic signature has presented an identifier or credential that refers to his or her identity. For the purpose of this section, assurance levels defined by the United States Office of Management and Budget in the Memorandum M-04-04, E-Authentication Guidance for Federal Agencies dated December 16, 2003, is adopted, as follows:
- A. **'Level 1'**: means little or no confidence in the asserted identity's validity;
 - B. **'Level 2'**: means some confidence in the asserted identity's validity;
 - C. **'Level 3'**: means high confidence in the asserted identity's validity; and,
 - D. **'Level 4'**: means very high confidence in the asserted identity's validity.
- 3.2 **DocuSign:** means a proprietary agreement management application selected by the WVDOT and approved by the West Virginia Secretary of State to enable WVDOT to create, send, sign, and automate a variety of forms and contracts electronically.
- 3.3 **Electronic:** means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- 3.4 **Electronic Notarization:** means the notarial seal, signature, or certificate is created, placed, and stored electronically.
- 3.5 **Electronic record:** means information produced or stored by electronic means such as a contract or other record created, generated, sent, communicated, received, or stored by electronic means.
- 3.6 **Electronic signature:** means an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record. Electronic signatures encrypt documents with digital codes to verify the user's identity and support authentication, data integrity and signer non-repudiation. The electronic record and e-signature must be linked together to remain enforceable, for example, the e-signature must be on the electronic document.
- 3.7 **Information Technology Division (WVDOT-IT):** means the WVDOT Division responsible for the acquisition and administration of data driven solutions to support and enhance the work of WVDOT.
- 3.8 **Public Key Certificate (PKC):** means a set of data that uniquely identifies a public and private key pair needed to compute an electronic signature and the owner that is authorized to use the key pair. The certificate contains the owner's public key and is electronically signed by the issuing certification authority, i.e., a trusted party, thereby binding the public key certificate to the owner. The private key, known only to the owner, is used to compute the electronic signature; the public key can be shared and is used to verify the electronic signature.

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4.0 POLICY

Electronic signatures apply to individuals only. Electronic signatures for roles, positions, or titles (e.g., the Secretary of Transportation) are not valid.

The following language must be added to any contract or agreement executed by electronic means:

"The parties agree and consent to the use of electronic signatures solely for the purposes of executing the Agreement, Contract, or any related transactional document. Such electronic signature in all respects has the same full and binding effect as a handwritten signature."

- 4.1 Electronic signature acceptance requires specific action on both the part of the employee signing the document or correspondence (hereafter the *signer*), and the employee receiving and reading the document or correspondence (hereafter the *recipient*).

A. SIGNER RESPONSIBILITIES

1. Signers must obtain a signing key pair from WVDOT-IT Division. This key pair will be generated using DocuSign's Public Key Infrastructure (PKI). The public key will be signed by the Company Name's Certificate Authority (CA).
2. Signers must sign documents and correspondence using software approved by WVDOT-IT Division.
3. Signers must secure and protect their private key. The key may not be shared or revealed at any time.
4. If a signer believes that the signer's private key was stolen or otherwise compromised, the signer must contact WVDOT-IT Division immediately to have the signer's electronic key pair revoked.

B. RECIPIENT RESPONSIBILITIES

1. Recipients must read documents and correspondence using software approved by WVDOT-IT Division.
2. Recipients must verify that the signer's public key was signed by the Company's Named Certificate Authority by viewing the details about the signed key using the software they are using to read the document or correspondence.
3. If the signer's electronic signature does not appear valid, the recipient must not trust the source of the document or correspondence.

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4. If a recipient believes that an electronic signature has been abused, the recipient must report the recipient's concern to the WVDOT-IT Division.

C. EXCEPTIONS TO THE USE OF ELECTRONIC SIGNATURES

The following types of documents may require handwritten signatures on a paper record:

1. the Uniform Commercial Code, other than sections 1-107 and 1-206 and Articles 2 and 2A (mostly respecting bank documents, checks, letters of credit, securities and the like);
2. court orders or notices, or official court documents (including briefs, pleadings, and other writings) unless the court accepts electronic document filing;
3. notices for the cancellation or termination of health insurance or benefits or life insurance benefits (excluding annuities); and
4. any document required to accompany any transportation or handling of hazardous materials, pesticides, or other toxic and dangerous materials.

5.0 ADOPTION OF SOFTWARE

Upon approval of the Secretary of Transportation, WVDOT may adopt commercial software for transaction of electronic commerce in accordance with this policy.

Whenever any rule of law requires or authorizes the filing of any information, notice, lien, or other document or record with any entity doing business with WVDOT, a filing made by an electronic record has the same force and effect as a filing made on paper in all cases where the WVDOT has authorized or agreed to the electronic filing and the filing is made in accordance with applicable rules or agreement.

Subject to prior notice by WVDOT, submission of an electronic record containing an electronic signature constitutes an agreement by the sender to accept equivalent electronic signature types on return or corresponding electronic records.

6.0 ENFORCEMENT & AUTHORITY

Any employee found to have violated this policy may be subject to disciplinary actions up to and including dismissal.

7.0 RELEVANT MATERIALS

- 7.1 Digital Signatures; State Electronic Records and Transacts Act (ESRA), [W. Va. Code §39A-3-1 et seq.](#)
- 7.2 [Global and National Commerce Act \(E-SIGN\), 15 U.S.C. §7031.](#)

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7.3 [Uniform Electronic Transactions Act \(UETA\)](#)

8.0 CHANGE LOG

December 5, 2022 –

- Policy Developed.

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Approved by:



Jimmy D. Wriston, P.E.
Secretary of
Transportation
Commissioner of
Highways



Date

*The Secretary of the West Virginia Department of Transportation or the Commissioner of Highways may, pursuant to the authority vested with the Secretary and Commissioner in W. Va. Code §5F-2-2, §17-2A-1 *et seq.*, and §17-2-1 *et seq.*, waive the requirements of this policy if the circumstances, in the Secretary or Commissioner's sole discretion, warrant such action.