

Operational Policy NO. OP-439

Subject: Electronic Signature Policy

Effective: PY2019 May 11, 2020

References

- The Electronic Signatures in Global and National Commerce Act (ESIGN, Pub.L. 106–229, 114 Stat. 464, enacted June 30, 2000, 15 U.S.C. Ch. 96)
- New Mexico Statutes, Chapter 14, Article 16, Uniform Electronic Transactions (UETA)

Background

ESIGN is a United States federal law passed by the U.S. Congress to facilitate the use of electronic records and electronic signatures in interstate and foreign commerce by ensuring the validity and legal effect of contracts entered into electronically. In 2010, both houses of Congress passed a resolution at the request of industry leaders. The ESIGN Act established that its specific guidelines may only be modified or limited by states in the case of adopting the Uniform Electronic Transactions Act (UETA), which almost all states (including New Mexico) subsequently did, or when alternative and similar procedures were provided.

The general intent of the ESIGN Act is spelled out in the very first section (101.a), that a contract or signature “may not be denied legal effect, validity, or enforceability solely because it is in electronic form.” This simple statement provides that electronic signatures and records are just as good as their paper equivalents, and therefore subject to the same legal scrutiny of authenticity that applies to paper documents.

Definitions

ELECTRONIC– The term 'electronic' means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

ELECTRONIC AGENT – The term ‘electronic agent’ means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances, in whole or in part, without review or action by an individual;

ELECTRONIC RECORD – The term 'electronic record' means a contract or other record created, generated, sent, communicated, received, or stored by electronic means.

ELECTRONIC SIGNATURE – The term '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.

General Intent and Purpose

- (1) a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and
- (2) a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation.
- (3) a record and/or a signature that is required by law, is satisfied if recorded electronically.

Legal recognition of electronic records, electronic signatures and electronic contracts. (NM Stat § 14-16-7 (1996 through 1st Sess, 50th Legis))

- a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.
- b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.
- c) If a law requires a record to be in writing, an electronic record satisfies the law.
- d) If a law requires a signature, an electronic signature satisfies the law.

The WCCNM will follow the recommended processes of best practices when securing and utilizing electronic signatures services. The service will:

Authenticate the signature's identity - The process of creating a valid e-signature requires that the signer be identified and authenticated to the time of the signature. To meet the requirements of state evidence laws on authentication and FRR 901(a), the law generally requires that a proponent of a document produce sufficient evidence to support a finding that the item is what he or she claims it to be, and that the signing process be sufficiently described to show that it produces an accurate result.

Account for consent - Section 101(c)(1)(C) states that the consumer also "consent electronically, in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent."

The consumer must provide affirmative consent, meaning that it cannot be assumed that a consumer has given consent simply because he/she has not chosen the option to deny consent, or has not responded to an option to grant consent.

Establish intent to be bound - Section 101 of the ESIGN Act, sub-section (b), preserves the rights of individuals to NOT USE electronic signatures. Here the law provides that individuals reserve the right to use a paper signature. Sub-section (c) is in direct support of (b) by requiring a "Consumer Disclosure" that the signatory has consented to use an electronic format.

Attribution – Establish attributions to a particular individual and/or representative of a company:

- a) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.
- b) The effect of an electronic record or electronic signature attributed to a person under Subsection (a) is determined from the context and surrounding circumstances at the time of its creation, execution or adoption, including the parties' agreement, if any, and otherwise as provided by law.

Security – Provide a binding of a signature to the document and proof of no alterability after the signature has been affixed to the document.

Record retention – offer secure storage and access processes. Section 101(d) provides that if a law requires that a business retain a record of a transaction, the business satisfies the requirement by retaining an electronic record, as long as the record:

- 1) "accurately reflects" the substance of the original record in an unalterable format,
- 2) is "accessible" to people who are entitled to access it,
- 3) is "in a form that is capable of being accurately reproduced for later reference, whether by transmission, printing or otherwise," and
- 4) is retained for the legally required period of time.

Applicability:

Chief Elected Officials (CEOs), WCCNM Executive Board, WCCNM Local Board, WCCNM Administrative Entity/Fiscal Agent, Adult/Dislocated Worker and Youth Provider.

Inquiries:

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