



Motor Vehicle Division Policy Memo # 19-07 **ACCEPTANCE OF ELECTRONIC SIGNATURE**

DATE: September 6, 2019

FROM: Angel Robinson, Director
Vehicle & Motor Carrier Services

TO: Iowa County Treasurers
Iowa DOT Vehicle & Motor Carrier Services personnel

SUBJECT

This policy memo clarifies our policy regarding acceptance of documents and forms affixed with electronic signatures. This memo was originally issued July 17, 2019, and was revised September 6, 2019 to incorporate additional guidance in the question and answer section.

EXPLANATION

Iowa Code chapter 554D, the Uniform Electronic Transactions Act, governs e-signature transactions for state-based documents and transactions. This statute includes several provisions that apply if the parties wish to conduct a transaction by electronic means.

- Iowa Code 554D.103(8) defines an electronic signature as "... an electronic sound, symbol or process ... executed or adopted by a person with the intent to sign the record." Based on this code, an electronic signature does not necessarily have to be represented by a graphic representation of a signature but instead can be a process that clearly indicates the intent of an individual to sign a record.
- Iowa Code 554D.108 outlines legal recognition of electronic signatures and specifically states that an electronic signature satisfies all legal requirements of an ink signature.

In addition, Iowa Code 321.20(3) directs Iowa DOT to adopt rules for e-signature for the title and registration application.

Based on the provisions of Iowa Code 554D and Iowa Code 321.20(3), we confirm that any VMCS form, application or similar document that may be signed with an ink signature may also be accepted and transacted with an electronic signature. The exception is for federally-required odometer disclosure statements or other federally-required forms subject to federal laws and rules (see below). County Treasurer offices should adopt this policy for VMCS forms.

Similar to Iowa Code chapter 554D, Iowa Code chapter 9B governs notarial acts including witnessing or attesting a signature electronically. While Iowa Code 9B authorizes electronic signatures and electronic stamping devices, the chapter retains the requirement for a notarial officer to witness the signature. Therefore, under the authority in chapter 9B, we will accept electronic notarization of documents if the notarial officer conforms with all attestation requirements of that chapter, including being physically present to attest to the signature. This policy applies to VMCS forms processed by a county treasurer.

In line with this policy, all staff that process VMCS forms should continue to use due diligence to review any electronic signature to ensure compliance with Iowa Code 554D and Iowa Code 9B for notarial functions. We do, however, retain the right to require an ink signature or require additional documentation of an electronic signature on any VMCS form if, after examination, an electronic signature is suspected to be fraudulent, inaccurate or in any other way does not represent the intent of the individual.

EXCEPTIONS

There are two exceptions to this policy of accepting electronic signatures:

- In federal law, 49 USC 32705 and 49 CFR 580 provides the ability for states to accept an odometer disclosure in an electronic medium. However, the National Highway Traffic Safety Administration (NHTSA) has not yet published final rules to implement this process. To ensure compliance with federal direction, we will not accept odometer disclosure in an electronic medium or with electronic signatures until NHTSA adopts final rules related to this law.
- Any other VMCS form, application or similar document that requires signature by a federal agent or submission from a federal agency shall be subject to all applicable federal laws, rules and processes. In such cases, we will abide by the laws, rules and processes for electronic signature as established for those agencies.

QUESTIONS AND ANSWERS

WHY ARE WE ISSUING THIS POLICY?

We are providing clarification on this policy to confirm that VMCS documents and forms that may be signed with an ink signature may also be accepted and transacted with an electronic signature.

E-signature usage is common in financial, real estate, medical, legal and government transactions. Motor vehicle dealers in Iowa are also increasingly seeking to use e-signatures for title and registration transactions.

HOW WILL CUSTOMERS BE IMPACTED?

Customers will be allowed to submit documents with electronic signatures that comply with Iowa Code chapter 554D and notarized documents that comply with Iowa Code chapter 9B. This will be more efficient for many customers who may be able to more quickly sign and submit documents for VMCS transactions, especially those customers who do not reside in Iowa or need documents submitted by non-Iowa residents.

Our customers and partners may take advantage of the efficiencies offered by electronic signatures. At the same time, customers and partners will still be allowed to use ink signatures on any documents.

WHAT DOES A VALID E-SIGNATURE LOOK LIKE?

Although e-signature technology will continue to evolve, the most likely formats include (but are not limited to) the following:

- Script-style writing affixed through a system such as DocuSign or Adobe
- A printed name or code with specific notation that the document was e-signed
- A graphic image of signature affixed through a pre-generated computer graphic file (ex. JPG) or electronic signature pad

The e-signatures that we are anticipating most are those through proprietary systems such as DocuSign or Adobe Sign. These systems are very common with insurance companies and financial institutions and in real estate transactions. A PinPad or similar touch screen device is also an electronic signature.

We cannot anticipate every technology option for e-signature, therefore we should primarily evaluate a transaction based on its accuracy and not the format or look of the signature.

CAN YOU WALK US THROUGH THE SIGNATURE REQUIREMENTS FOR THE FOLLOWING FORMS?

- Insurers Affidavit Form 411356.
- Affidavit of Death Testate/Intestate Form 411008.
- Affidavit of Foreclosure Form 411067.

All the forms listed in a-c above must be signed and notarized. An e-signature and e-notarization of these forms is allowed assuming the notary has witnessed the e-signature. The county must then receive the original document.

- Cancellation of Security Interest Form 411168.

If the lien holder uses Form 411168, an e-signature may be used but the original document must be provided. Fax or photocopies are not acceptable. If the lien holder submits its own letter to cancel a security interest, the letter must be signed and notarized. E-signature and e-notarization is allowed assuming the notary has witnessed the e-signature. The county must receive the original document.

- Abandoned Vehicle police authority Form 411163.

E-signature is acceptable on this form. The form itself is only accessible to authorized agencies although counties may want to review the overall veracity of the transaction.

- Artisan's Lien

VMCS does not have a specific form to claim an artisan's lien. This process is covered by Iowa Code chapter 577. The county may make its own determination as to whether to accept e-signature on any form outside of VMCS, including documentation for an artisan's lien.

- Odometer Disclosure Statement Form 411077.

At this time, the federal government has not established rules for e-signature or e-filing of this federal form. Therefore, VMCS does not accept e-signature on any odometer disclosure document.

- h. Damage Disclosure Statement Form 411008.

This form may be transacted with electronic signature.

- i. Power of Attorney Authorization Form 411021.

This form may use electronic signature and electronic notary stamp. However, we would stress that use of an electronic notary stamp still requires the notary to witness in person the electronic signature that is applied by the signatory.

The Secure Power of Attorney Authorization is required to be on secure paper as provided by VMCS with a unique control number. While it is theoretically possible to run this form through a computer printer to allow for electronic signature, we do not recommend the practice as there is a strong potential for misalignment of the various fields. Furthermore, if Part A of this form is used for odometer disclosure, then that process is subject to federal rules and as previously mentioned, electronic signature may not be used.

SHOULD COUNTIES ACCEPT OTHER DOCUMENTS WITH E-SIGNATURE?

This policy memo specifically applies to VMCS forms and documents.

Iowa Code section 554D.120(1) allows for any other governmental agency – including a county – to determine whether and to what extent it will accept e-signatures on any other forms or documents such as county forms or private forms, or for example, the artisan lien documentation referenced above. Because VMCS forms are used by the counties to process motor vehicle transactions, it is our policy that counties accept e-signature on private forms routinely used for vehicle title and registration transactions if there is no reason to question the veracity of the transaction.

HOW WILL MOTOR VEHICLE DEALERS BE IMPACTED?

Iowa motor vehicle dealers will experience more efficiencies by offering electronic signature options to customers for relevant VMCS documents. Dealers shall comply with all requirements for notarial transactions as indicated in Iowa Code chapter 9B. Dealers should particularly note that while Iowa Code chapter 9B allows for electronic notary functions, all attestation must still take place in person and may not occur by remote or delayed methods.

Dealers must still use ink signatures on any odometer disclosure statements that are governed by federal law.

Dealers and customers of dealers will still be allowed to use ink signatures on any VMCS documents. A dealer shall not require a customer or external agent to complete an VMCS form using electronic signature.

HOW WILL COUNTY TREASURER OFFICES BE IMPACTED?

Iowa County Treasurer offices must accept electronic signatures on VMCS documents in accordance with Iowa Code chapter 554D or Iowa Code chapter 9B for notarial transactions except for the cases noted above. County Treasurer offices should still require ink signatures on

federally-required odometer disclosure statements. Iowa Administrative Code chapter 400 already authorizes us to accept an electronic signature as part of an application submitted through the Electronic Registration & Titling (ERT) system. We will also review our administrative rules for any additional changes that may be needed to conform with this policy and the Iowa Code sections referenced in this memo.

HOW WILL YOU KNOW IF THE SIGNATURE IS AUTHENTIC?

Just as you may not currently know if an ink signature is authentic, electronic signatures will not be any different. You should continue to perform due diligence in reviewing any signatures or notarial transactions.

If all aspects of a transaction are accurate and if there are no anomalies, then the transaction should not be questioned solely based on concern over an e-signature format or an ink signature. However, if there are inaccuracies with the transaction, if completed forms are inconsistent or if there are other suspicious circumstances regarding the transaction, that might be grounds to request any party to verify a signature or intent to transact.

We retain the right to require an ink signature or require additional documentation of an electronic signature on a VMCS form if, after examination, an electronic signature is suspected to be fraudulent, inaccurate or in any other way does not represent the intent of the individual.

IS THERE ANY PROOF OR AUTHORIZATION THAT THE COUNTIES NEED TO SEE FROM THE CUSTOMER THAT THEIR SIGNATURE IS BEING CAPTURED ELECTRONICALLY?

This is not required but we would consider it to be a best practice for dealers or institutions to adopt, especially if multiple forms will use an e-signature. Many e-signature systems – such as DocuSign or Adobe Sign – automatically include a notation along with the e-signature image. If there is reason to question the intent of the individual based on the veracity of the transaction, then a county may either confirm the signature with the customer or require an ink signature.

WILL INK SIGNATURES STILL BE ACCEPTABLE?

Customers will still be allowed to use ink signatures on any documents. A dealer or agency shall not require a customer to complete a VMCS form using electronic signature.

WILL DOCUMENTS SUBMITTED ELECTRONICALLY STILL BE SCANNED?

Yes, documents that are submitted electronically through the Electronic Registration & Titling (ERT) system and that have an electronic signature must still be scanned into ERMS in the same way that documents with an ink signature are scanned and filed into ERMS.

DOES “ELECTRONIC SUBMISSION” COUNT AS “ELECTRONIC SIGNATURE,” FOR EXAMPLE, CAN A CUSTOMER FAX OR EMAIL A COPY OF A VMCS FORM THAT THEY’VE SIGNED AND PAY BY TELEPHONE?

How a document is transmitted is a different matter from the signature. A document that is e-signed can be brought to the counter by hand; it does not have to be transmitted electronically. Likewise, a document signed in ink may be scanned and transmitted electronically. VMCS already accepts signed applications via fax for persons-with-disability products. ERT already accepts documents signed in both ink and by e-signature.

Therefore, you may receive an application through electronic means if you have the ability and confidence to accurately track the payment with an application. For example, a customer who faxes an application and pays by phone is not fundamentally different than a customer who mails an application without payment and then shows up a week later to pay the fees in cash.

It is permissible for a county to receive an application electronically, but it is not required except for applications submitted through ERT.

Any document that is legally required to be an original MUST be an original and may not be submitted electronically except for documents submitted through ERT, as per Iowa Administrative Code 761.400.3(j). The Administrative Code sets requirements for the submitter to retain and present the original document for given time periods.

MAY A TRANSACTION INVOLVING TWO CUSTOMERS IN TWO LOCATIONS START WITH AN APPLICATION SIGNED BY THE FIRST INDIVIDUAL, WHICH IS THEN FAXED TO BE SIGNED BY THE SECOND INDIVIDUAL?

This is not allowed because both signatures need to be on the same document and a faxed incomplete document is not the actual application. A better way would be for Customer #1 to sign the application and then mail the original to customer #2 for completion. If both individuals sign the same original document, then the county may receive it through electronic means. That is already happening in ERT.

However, if an individual or dealer is using an e-signature system (like DocuSign), these systems typically allow for the document to be e-signed by one individual and then forwarded to the next signatory. This situation is allowed because the e-signature system is maintaining the integrity of the single application and is not duplicating the application.

HOW WILL IOWA DOT NOTIFY CUSTOMERS AND PARTNERS?

We will use a variety of outreach methods to notify customers and partners of this policy, including (but not limited to) the following:

- Distribution of this policy to the recipients noted above
- Announcements at regularly scheduled meetings with dealers and counties
- Web site notices

WHO WILL BE THE BEST CONTACT PERSON REGARDING QUESTIONS?

Daniel Yeh

Daniel.Yeh@iowadot.us