

## Electronic Documents & Signatures



In the Spring of 2018, FMCSA formally amended its motor carrier safety regulations to allow the use of electronic records and signatures to satisfy the Agency’s many regulatory requirements. The Agency’s April 16, 2018 rule, entitled “Electronic Documents and Signatures,” amended 15 different parts of the Federal Motor Carrier Safety Regulations (FMCSRs), and 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.”

Examples of documents affected by FMCSA’s 2018 rule include driver applications for employment, vehicle maintenance records, driver qualification files, bills of lading, and insurance records. FMCSA’s intent in amending its rules is to establish “parity between paper and electronic documents and signatures,” and expand carriers’ and drivers’ ability to use electronic methods to comply.

More specifically, FMCSA explained that its rule provides 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...” And, FMCSA purposely provided a performance standard in its new electronic signatures definition in Section 390.5, as opposed to defining a specific technology or approach to be used, in order to provide maximum flexibility.

Beyond adding new definitions of “Electronic signature,” and “Written or in writing,” in the General section of the FMCSRs (i.e., Part 390), the Agency also scrubbed many other Parts of its rules and either removed or modified outdated language that suggested the retention of paper, the use of paper-based processes, or the use of old-fashioned pen and ink signatures.

For example, in the insurance section of its rules (i.e., Part 387), FMCSA replaced the word “mailed” with the more technologically neutral term “transmitted,” and replaced “Proof of mailing” with “Proof of Transmission.” Other changes include removing the references to “hard copies” and “in a driver’s own handwriting” in Section 395.15 related to hours of service records; and removing a requirement in Section 398.3 that certain documents must be “photographically reproduced”.

The effective date of FMCSA’s new “Electronic Documents and Signatures” rule was listed as June 15, 2018. However, in practical terms, these changes were already in effect since the vast majority of them are based on past Agency regulatory guidance, and the remainder are terminology changes intended to communicate its support for electronic signatures and recordkeeping.

If you’d like to read the full April 16, 2018 rule, click on this link:  
<https://www.fmcsa.dot.gov/regulations/rulemaking/2018-07749>



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