

**QUESTION:** We're being asked to print off policies more and more. How does the New York State Department of Financial Services (DFS) feel about us mailing USB drives to insureds? I'm wondering if they still deem this electronic.

**ANSWER:** Based on the legal advisory opinions that DFS used to issue, I would assume that they would classify any delivery of an insurance document in a format other than paper to be electronic. They have traditionally interpreted the state's technology law to mean that insurers, agents and brokers must obtain the insured's consent before delivering documents electronically.

They have based their opinion on New York's [Electronic Signatures and Records Act](#) (ESRA). [Section 302](#) of that law, titled *Definitions*, states:

1. "Electronic" shall mean of or relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
2. "Electronic record" shall mean information, evidencing any act, transaction, occurrence, event, or other activity, produced or stored by electronic means and capable of being accurately reproduced in forms perceptible by human sensory capabilities.

[Section 309](#) of the law, titled *Use of electronic records and signatures to be voluntary*, states:

Nothing in this article [*"Article" means the ESRA*] shall require any entity or person to use an electronic record or an electronic signature unless otherwise provided by law.

Since the law says that people cannot be required to use electronic records, DFS has said that insurers and producers must obtain an insured's consent before delivering documents electronically. One example of their position is an opinion dated [August 7, 2009](#):

... even if the insurer electronically sends the insurance policy to the insurance producer, the producer may not electronically forward the policy to the insured unless the insured consents to receive the policy in that format.

Information about the department's past statements, as well as a sample consent form you can ask your clients to sign, are available on the [Electronic Policy Delivery page](#) in the Answer Center of our website.