

PROPOSED RULEMAKING

DEPARTMENT OF STATE

[4 PA. CODE CHS. 161, 163 AND 167]

Notaries Public; Revised Uniform Law on Notarial Acts

The Department of State (Department) proposes to amend §§ 161.1 and 163.1 (relating to schedule of fees; and applicability of general rules) and add Chapter 167 (relating to notaries public) to read as set forth in Annex A. This proposed rulemaking implements 57 Pa.C.S. Chapter 3 (relating to Revised Uniform Law on Notarial Acts) (act).

Statutory Authority

The amendments to §§ 161.1 and 163.1 are authorized under section 506 of The Administrative Code of 1929 (71 P.S. § 186), which states that the heads of administrative departments are empowered to prescribe rules and regulations, not inconsistent with law, for the government of their respective departments, the conduct of their employees and clerks, the records, books, documents and property pertaining thereto. Furthermore, section 802(b) of The Administrative Code of 1929 (71 P.S. § 272(b)) grants the Department the power and the duty “to furnish to any person, upon request and the payment of such charges as may be required and fixed by law, certificates of matters of public record in the department, or certified copies of public papers or documents on file therein.” Concurrently, the Department is authorized under section 3 of The Administrative Code of 1929 (71 P.S. § 282) to adopt rules and regulations pertaining to its powers and duties under The Administrative Code of 1929.

The Department has broad authority under 57 Pa.C.S. § 327(a) (relating to regulations) to prescribe the manner of performing all notarial acts, including provisions to prevent fraud or mistake in the performance of notarial acts, and to prescribe the process of granting, renewing, conditioning, denying, suspending or revoking a notary public commission and assuring the competence and trustworthiness of an individual holding a commission as notary public. Proposed Chapter 167 is authorized under 57 Pa.C.S. § 327(a), which authorizes the Department to promulgate regulations to implement the act, and 57 Pa.C.S. § 329.1(a) (relating to fees of notaries public), which states that the fees of notaries public shall be fixed by the Department by regulation. Additionally, the Department is required to promulgate regulations regarding performance of a notarial act performed under 57 Pa.C.S. § 306.1 (relating to notarial act performed for remotely located individual).

Effective Date

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

Background and Need for Amendments

The office of notary public is an important position of public trust that has experienced many changes since this Commonwealth first enacted a law governing notaries public in 1791. Under that first law, the Governor had the authority to appoint six notaries for Philadelphia and three for the remaining counties. The authority to appoint notaries public was transferred to the Secretary of the Commonwealth by the Notary Public Law of 1953 (57 P.S. § 147—169) (Repealed). With the enactment of the act,

the Department continues the regulation of 75,000 notaries public in this Commonwealth, through the Bureau of Notaries, Commissions and Legislation (Bureau). Executive Board resolution number OR-20-018, effective September 28, 2020, reorganized the former Bureau of Commissions, Elections and Legislation and established the Bureau of Elections and Notaries. The Office of Administration granted interim approval on November 30, 2021, for a reorganization separating notary and election functions and creating the Bureau of Notaries, Commissions and Legislation. Under the act, notaries in this Commonwealth are empowered to administer oaths and affirmations, take acknowledgments, take verifications on oath or affirmation, witness or attest signatures, certify copies or depositions, and note protests of negotiable instruments. Notaries serve as impartial witnesses to the signing of important documents and verify the identity of the signers, their willingness to sign the documents and their awareness of the contents of the document or transaction. Their official acts are called notarizations or notarial acts.

The act applies to all notarial officers in this Commonwealth, which include both notaries public and other individuals authorized to perform notarial acts. Additional provisions of the act, such as appointment and commission by the Department, bond and journal requirements, apply only to notaries public. This proposed rulemaking applies only to notaries public.

This proposed rulemaking serves to preserve the uniformity of the act (and its predecessor the Uniform Law on Notarial Acts), as promulgated by the Uniform Law Commission. To date, 28 states have adopted the Uniform Law on Notarial Acts as completed by the Uniform Law Commission initially in 1982, revised in 2010 and amended in 2018 and 2021. When appropriate, the Department incorporated the details and explanations provided by the Uniform Law Commission’s comments to the act, dated November 15, 2010. The act is a comprehensive and robust statute that details specific requirements with regard to qualifications, standards of practice, prohibitions, electronic and remote notarization. Because of the comprehensive nature of the statute, the Department’s regulations supplement the requirements of the act. Throughout the regulations, the Department incorporates by reference the statutory requirements to avoid repeating statutory requirements.

The act of October 9, 2013 (P.L. 609, No. 73) (Act 73 of 2013) adopted the act. After the enactment of Act 73, the act of July 9, 2014 (P.L. 1035, No. 119) (Act 119 of 2014) revised the act with regard to appointment and commission as notary public, qualifications and applications. The act became fully effective on October 26, 2017, as described as follows. The act completely replaced the repealed Notary Public Law and Uniform Acknowledgment Act with modern language and best practices.

The act has been implemented in several phases. Under section 5 of Act 73 of 2013, immediately effective on October 9, 2013, was the Department’s authority to promulgate regulations to implement the act, the Department’s authority to approve basic and continuing notary education courses and the Department’s authority to fix the fees of notaries public by regulation. Under the act, the Department was also required to have an examination in place for first-time applicants and those applicants with expired commissions. A contract for development,

administration and maintenance of the exam was awarded in June 2016, with a requirement that the notary public examination be available in summer 2017. The Department issued a call for new notary education courses on September 13, 2016, and began the process of reviewing and approving notary education which was compliant with the new law. The Department published notice at 47 Pa.B. 2518 (April 29, 2017) that it had approved a sufficient number of new notary education courses and that the remainder of the act would take effect on October 26, 2017, 180 days after publication of the notice.

The Department deemed it necessary to adopt comprehensive regulations to implement the act. Under Executive Order 1996-1 (4 Pa. Code §§ 1.371—1.382 (relating to regulatory review and promulgation)), the Department sought comments and suggestions on a draft rulemaking released for public comment on December 16, 2014. Written comments were received from 21 commentators. The Department reviewed those comments and made revisions to the draft rulemaking.

The Department published notice of proposed rulemaking at 48 Pa.B. 5474 (September 1, 2018). Following extensive comments on the proposed rulemaking, the Department advised commentators on October 2, 2020 that it would not submit a final-form rulemaking pertaining to regulation number 16-59 and that it planned to submit a new proposed rulemaking package to ensure sufficient public notice and opportunity to comment. This determination was based on extensive revisions to the proposed rulemaking, the advent of temporary remote notarization as authorized by the act of April 20, 2020 (P.L. 82, No. 15) (Act 15 of 2020) (effective April 20, 2020) and the limited time for review at the end of the 2019-2020 legislative session. Furthermore, the act of October 29, 2020 (P.L. 1030, No. 97) (Act 97 of 2020) amended the act to provide for permanent remote notarization.

Under Executive Order 1996-1, the Department released an exposure draft of the final-form rulemaking for public comment on February 16, 2023. Written comments were received from 11 commentators. The Department reviewed those comments and made revisions to the proposed rulemaking.

Description of Proposed Amendments

Overview

This proposed rulemaking amends existing regulations regarding fees and application of general rules in Chapters 161 and 163 (relating to fees; and Special Rules of Administrative Practice and Procedure). Additionally, proposed Chapter 167 includes 11 subchapters pertaining to notary public qualifications, practice and procedure, notarial seal and journal, discipline, education, notarization of electronic records and notarial acts performed for remotely located individuals, all intended to further clarify the requirements of the act. This proposed rulemaking parallels the statute—it does not broaden the scope of the act, but instead reflects current practices and mandates currently optional best practices.

§ 161.1. Schedule of fees

The Department is proposing to amend the existing regulation on schedule of fees regarding commissions. The authority for proposing to amend Chapter 161 is varied and is explained under Statutory Authority.

The Department proposes to delete the fees under “Commissions.” The fee for Commissioner of Deeds must

be deleted because of the act of December 9, 2002 (P.L. 1269, No. 151) (Act 151 of 2002). This act, effective July 1, 2003, repealed the office of Commissioner of Deeds. The fees for Railroad Police or Institutional Police commission, notice of election of Sheriff (called Sheriff’s writ), Treasures commission, District Justices, Register of Wills bond and Recorder of Deeds bond are commission and bond fees which are no longer collected by the Department under 16 Pa.C.S. §§ 1121—1133 (relating to County Officer and Employee Fiscal Security Act). These fees were previously authorized by section 809 of The Administrative Code of 1929 (71 P.S. § 279), which requires the Department to file bonds of county officers in addition to issuing commissions to those county elected officials. Section 1131(b)(3) of 16 Pa.C.S. (relating to custody and filing of required security documents) mandates that, after filing a copy of the recorded fiscal security documents with the Department, no tax, fee or other charge shall be imposed as a result of the issuance of the commissions to elected county officials. Since the enactment of the County Officer and Employee Fiscal Security Act on November 22, 2011, the Department has not charged the enumerated fees for the issuance of commissions specified under § 161.1 and is proposing to delete these fees, as part of the overhaul of Subpart C (relating to commissions and notaries public).

Under Certificates in the schedule of fees, the certificate fees for Great Seal certificate and Certificate requiring Secretary’s seal are replaced with fees for certifying copies of any public papers or records on file with the Bureau and certifying matters of public record with the Bureau. Public papers or records on file with the Bureau include notary public records as well as public officer oaths of office and commissions, for which the Bureau receives requests for certified copies. Matters of public record with the Bureau include the authentication of the seal and signature of public officials in this Commonwealth under the 1961 Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents (Apostille Convention). Since October 15, 1981, the United States has been part of the Apostille Convention. The Convention provides for the simplified certification of public (including notarized) documents to be used in countries that have joined the Convention. Under the Apostille Convention, signatory countries have agreed to recognize public documents issued by other signatory countries if those public documents are authenticated by the attachment of an internationally recognized form of authentication known as an apostille. The apostille ensures that public documents issued in one signatory country will be recognized as valid in another signatory country. Apostilles require no further diplomatic or consular legalization. Under the Apostille Convention, the United States Department of State certifies to the seal and signature of Federal public officials and each state Department of State or equivalent certifies to state officials. For documents intended for use in countries which are not signatories to the Apostille Convention, the Department of State attaches a certification, which similarly attests to the seal and signature of the public official in this Commonwealth. The \$15 fee for certifying matters of public record with the Bureau includes both types of authentications.

Under Miscellaneous in the schedule of fees, the Department proposes to delete the fees for writs including Great Seal and filing recognition for public office because the fees are no longer collected by the Department

under 16 Pa.C.S. §§ 1121—1133, as noted previously. The Department has not collected these fees since November 22, 2011.

The fees for application for appointment and commission as a notary public and renewal of appointment and commission are listed solely for clarity and are set as \$42 by 57 Pa.C.S. § 321(b)(2) (relating to appointment and commission as notary public; qualifications; no immunity or benefit). The Department also clarifies that the cost of copies is \$1 per page.

The Department proposes new fees for lists of notaries public and data requests. List and data requests are frequently made by companies seeking to contact notaries for commercial purposes. The generation of these lists involves Bureau and information technology staff time to generate. On August 3, 2018, user fees for enhanced electronic access to public records were approved by the Office of Open Records under the authority of section 1307(e) of the Right-to-Know Law (65 P.S. § 67.1307(e)). They are the fees for master lists of notaries public and other notary public-related lists and data requests.

The Department proposes to add fees for approval and renewal of notary public education courses. The act requires that both notary public basic education and continuing education courses be approved by the Department. The fee for approval and renewal of approval of notary public courses is based on Bureau and legal staff time to review and approve the 3-hour education courses.

The notary public fee schedule is moved from this section to proposed § 167.3 (relating to fees) because the notary public fee schedule sets forth the maximum permissible fees which may be charged by notaries public and not by the Department.

§ 163.1. Applicability of general rules

The Department proposes to amend this section by revising the former name of the Bureau (Commission Bureau) to the Department to make it clear that the provisions of the general rules of administrative practice and procedure apply to the activities of the Department pertaining to commissions and notaries public.

Chapter 167. Notaries public

Subchapter A. General Provisions

The scope of Chapter 167 is stated in § 167.1 (relating to scope) and terms used in Chapter 167 are defined in § 167.2 (relating to definitions). The definitions of the act are proposed to be incorporated by reference and have the same meaning when used in this proposed rulemaking. Definitions are proposed to be added to clarify the status of an individual (“applicant,” “appointee,” “electronic notary public” and “remote notary public”). Definitions are proposed to be added to explain the process of becoming a notary public (“appoint or appointment,” “certificate of education,” “examination” and “renewal of appointment and commission”). The terms “office address” and “home address” are specified to include street and number, because a post office box is not a sufficient address for the Department to locate a notary. Only a notary’s office address (the place of employment or practice in the Commonwealth) is available to the public. Definitions proposed to be added clarify the notarization of electronic records (“electronic notarization,” “electronic notarization technology provider” and “tangible”) and notarizations for remotely located individual (“remote notarization” and “remote notarization technology provider”). Definitions are proposed to be added to explain conflict of interest (“direct or pecuniary interest” and “spouse”). Lastly, defi-

nitions are proposed to be added to clarify the meaning of stamping device (“non-inking embosser”).

Proposed § 167.3 (relating to fees) sets for the maximum permissible fees which may be charged by notaries public. Under 57 Pa.C.S. § 329.1, the Department is required to set fees that may be charged by notaries public. Section 329.1(b) of 57 Pa.C.S. prohibits a notary public from charging or receiving a fee in excess of the fee fixed by the Department and 57 Pa.C.S. § 329.1(c) allows a notary public to waive the right to charge a fee. Based upon these provisions, the Department set the fees in proposed § 167.3 as maximum fees rather than fixed mandatory fees. The Department proposes to move the fees notaries public may charge from § 161.1 to § 167.3 to clarify that these fees are not fees charged by the Department.

The fee schedule is proposed to be amended to change the terminology from the notarial acts permitted by the repealed Notary Public Law to those permitted by the act. The fees for taking acknowledgments, administering oaths, taking affidavits (now called taking a verification on oath or affirmation) and executing protests (now called noting protests) remain the same. A fee for witnessing or attesting a signature (a new notarial act per the act) is proposed, while the fee for taking depositions, per page is proposed to be deleted. The act does not contain taking depositions as a distinct notarial act, but it does include certifying or attesting a copy or deposition as a notarial act. As notarial officers authorized to administer oaths or affirmations, notaries public may continue to take depositions and charge separately for administering the oath and later certifying a copy of the deposition. Nothing in these regulations or the act precludes notaries from charging for their services in taking depositions.

Three commentators, all companies or associations representing approximately 40,000 notaries, requested that all notary fees be doubled, to up to \$10. The Department declines to raise the fees that notaries may charge at this time. The Department acknowledges that notary fees were set at \$2 in 1984 and were last raised to \$5 on May 28, 2005. The Department also acknowledges that the act imposes additional costs on some notaries—an examination cost for first-time notary applicants and continuing education costs for those notaries who were “grandfathered in” by the Pennsylvania Supreme Court ruling in *Tritt v. Cortés* 851 A.2d 903 (Pa. 2004) and not obligated to comply with the education requirement imposed by 2002 amendments to the former Notary Public Law. Notary operating expenses, such as the option for professional liability insurance (errors and omissions), have also increased over the past 10 years.

Clearly, notaries perform valuable services preventing fraud and forgery and providing confidence that a signature is authentic and was made voluntarily. However, the Consumer Price Index does not justify a doubling of fees at this time for notarizing tangible (paper) records, which requires no additional technology. Raising notary fees to \$10 would make notary fees in this Commonwealth higher than in the surrounding states. According to the Department’s research in May 2023, the states surrounding this Commonwealth (Delaware, Maryland, New Jersey, New York and Ohio) cap fees at levels between \$2 and \$6 per notarial act for most transactions, with the exception of West Virginia, which permits \$10. Thirteen states (Arizona, Florida, Indiana, Michigan, Montana, New Hampshire, North Carolina, Oregon, South Dakota, Utah, Washington, West Virginia and Wyoming) permit fees up to \$10 for most notarial acts performed tradition-

ally (in person and on paper). California, Colorado and Nevada permit a fee of \$15. Ten states (Alaska, Arkansas, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Tennessee and Vermont) do not have a specific cap on permissible fees. The remaining 17 states specify various caps ranging from \$1 to \$5 (Texas alone permits \$6). Finally, while there are organized notary associations coordinating the request to raise fees, there is not an organized group representing the users of notary services to request lower or unchanged fees.

However, in response to numerous requests from notaries and notary associations, the Department proposes to authorize notaries public to charge up to an additional \$20 per notarial act performed with respect to electronic records or using communication technology. This fee is designed to offset the significant cost of the technology required for electronic and remote notarization. While each technology differs in price structure, some charge monthly fees, while others charge per notarial act. All require the purchase of a digital certificate. Some even itemize charges for each knowledge-based authentication and storage of the audio-visual recordings. If remote online notaries store the recordings themselves, this alone requires additional storage space. This fee is also in keeping with the 29 states that have authorized a separate fee for electronic or remote notarization, or both—over 2/3 (20) permit a maximum of \$25 per notarial act performed with respect to electronic records or using communication technology. The ability for an electronic or remote notary to charge the usual notarial fee plus \$20 per notarial act performed with respect to electronic records or using communication technology will bring this Commonwealth in line with the rest of the nation and permit them to recoup the costs for these technologies. Lastly, proposed § 167.3 codifies the best practice of providing itemized receipts for notary services.

Subchapter B. Qualifications for Appointment and Commission

Notaries public are commissioned for 4-year terms. Every 4 years, an applicant must meet the eligibility requirements for appointment as a notary public specified in the act. The requirements include all of the following:

- Age (be at least 18 years of age)
- Citizenship or permanent legal residence in the United States
 - Residence or place of employment or practice in this Commonwealth
 - Ability to read and write English
 - Honesty, integrity, competence and reliability (shown by the lack of disqualification because of character, criminal convictions or prior sanctions)
 - Education (at least 3 hours of approved notary education within the 6 months immediately preceding the application for appointment or reappointment)

In addition, notary public applicants who do not hold a current and unexpired commission must pass an examination administered by the Department's examination vendor, Pearson VUE. This includes new applicants who have never held notary commissions and applicants who previously held notary commissions but whose commissions have lapsed or expired at the time the application for reappointment is received by the Department.

An applicant must complete the mandatory education prior to applying to the Department. The applicant may apply online at www.notaries.pa.gov or by mail. A copy of

the education certificate must be uploaded or included with the application. The nonrefundable application fee is \$42, as specified by the act. The act authorizes the Department to deny an application for an act or omission which demonstrates that the individual lacks the honesty, integrity, competence and reliability to act as a notary public, subject to the right of notice, hearing and adjudication and the right of appeal. After the Department's review and approval of the notary application, those applicants who are required to take the examination are notified by e-mail about Pearson VUE's testing procedures and sites. The examination is a computer-based test offered at 52 Pearson VUE test centers throughout this Commonwealth. The cost of the examination is \$65 per test. Examination results are electronically reported to the Department.

Applicants who pass the examination and renewing notaries who are not required to take the examination receive an e-mail from the Department, with their appointment information, instructions and an official bond and oath form to be executed by a bonding company and the appointee. The act requires that appointees must obtain a bond, take the oath of office and record their oath, completed bond and commission in the Recorder of Deeds in the county where the individual maintains an office. The appointees must also register their signature with the Prothonotary's office in the county where the notary's office is located. Both of these steps must be completed within 45 calendar days after the date of appointment or 45 days after the expiration of the current commission, or the notary's commission becomes null and void, as specified by the act. Following the completion of these steps, an individual holds a notary public commission and may serve in that capacity for a 4-year term.

This proposed subchapter clarifies the eligibility for appointment and commission as a notary public stated in 57 Pa.C.S. § 321 of the act in proposed §§ 167.11—167.13 (relating to eligibility and application requirements for initial appointment and commission; eligibility and application requirements for renewal of appointment and commission where there has been no lapse in commission; and eligibility and application requirements for renewal of appointment and commission where there has been a lapse in commission). The long-time requirement for education as part of appointment and commission under the former notary law remains largely the same under the act, with the addition of an examination for those applicants who do not hold a commission at the time they apply. Applicants who have never held a commission are included under § 167.11. Applicants who hold a notary commission at the time their application for renewal is received are included under § 167.12. Applicants who previously held a notary commission at the time of renewal are included under § 167.13. This section makes it clear that applicants for appointment and commission who do not hold a current and unexpired notary public commission at the time the application is received by the Department must pass an examination. This includes applicants who have never held notary commissions and applicants who previously held notary commissions but whose commissions have lapsed or expired at the time their application for reappointment is received by the Department, even just for 1 day.

Proposed § 167.14 (relating to name of notary public on application for appointment and commission) codifies long-standing Department policy on names. It is important that notaries, charged with ensuring that individuals appearing before them have the identity claimed, also have satisfactory evidence of their own identity if re-

quested by the Department. Further, the notary will be required to present satisfactory evidence of their identity when taking their oath of office and if their identity credentials do not match the name on the commission, the entire commissioning process grinds to a halt until the correct name is sorted out.

Proposed § 167.15 (relating to notary public examination) sets forth details on the examination required under 57 Pa.C.S. § 322(a) (relating to examination, basic education and continuing education) for first-time applicants and those notaries who previously held a commission but whose commission has since expired. This section establishes the rules for passing scores and retaking the examination, which is administered by the Department's examination vendor (currently Pearson VUE). Computer-based testing is available widely throughout this Commonwealth. Pearson VUE has made available 52 testing sites across this Commonwealth. Since August 2022, test-takers have been able to test at their convenience from their home or office with an online proctored exam. Notary applicants have 6 months from the time they are authorized to sit for the examination to successfully pass the test. They may take it as many times as needed within the 6-month period. This policy is timed to match the expiration of education, which must be completed in the 6 months immediately preceding the application.

Proposed § 167.16 (relating to notary public bond) implements a recommendation from the Fraudulent Conveyance Task Force of the Philadelphia Bar Association (Task Force) to raise the required notary bond amount from \$10,000 to \$25,000 for each 4-year term. The Task Force was convened to address the outbreak of deed fraud in Philadelphia and is utilizing a variety of legal and administrative solutions to respond to this unique crime. Deed fraud is where fraudsters create fake documents and dupe innocent victims, convincing others that they own a property that belongs to someone else. Notaries public are sometimes part of the scheme, as deeds must be notarized to be recorded. In the Department's experience, these notaries are rarely fraudsters, but more often simply not doing their job correctly. Notary errors can cost consumers hundreds of thousands of dollars, regardless of where they are located. The amount of the notary bond was \$3,000 from 1953 to 2002. The bond has been set at \$10,000 since 2003.

Notary bonds are designed to protect the consumer. A notary bond is a guarantee of payment to the obligee (the consumer) should a loss occur for a penalty amount of the bond. Notary bonds are provided by a surety company (typically an insurance carrier, even though bonds are not an insurance policy). The bond runs concurrently with the term of the notary public's 4-year commission. Unlike an insurance policy, if the surety pays out on the bond, it will seek to recover the amount paid from the notary. A notary bond is required by law and costs much less than errors and omissions insurance, which is optional.

It is estimated that the additional cost to notaries to raise the bond amount from \$10,000 to \$25,000 will be \$5 per year. The current cost for a 4-year \$10,000 notary bond is \$30 for most notaries in this Commonwealth. Discussions with underwriters indicate that the premium for a \$25,000 bond would be \$50. The Department expects most companies to follow this pricing model. It should also be noted that much of the time, the notary does not pay for the bond, but the notary's employer, who pays for most of the costs of appointment and commission.

Proposed §§ 167.17 and 167.18 (relating to appointment and issuance of commission; and effect of failure to

record bond, oath and commission and register official signature within 45 days) underscore the timelines for appointment and commission required by the act and make clear that an appointee who fails to meet these statutory timelines is considered an applicant where there has been a lapse in commission under proposed § 167.13.

Subchapter C. Official Stamp and Stamping Device

The equipment required to act as a notary public includes a stamping device, which produces an official stamp or official seal. Both the physical stamping device and the image it produced were formerly known as a notary seal and were required under the Notary Public Law; however, the act changes the terminology and modifies the requirements for the official stamp or notary seal. The term "official stamp" is defined in the act to include a notary seal. Notaries may obtain stamping devices from the vendors of their choice, as long as the appearance of the official stamp or notary seal complies with the act and these regulations. The act does not give the Department the authority to regulate stamping device providers.

Proposed § 167.21 (relating to official stamp) sets forth the requirements for the appearance of the former notary seal, now known as the official stamp under the act. This section adds the notary commission identification number to the stamp, which will enable the public to distinguish between notaries when there is a common name and large county (for example, John Smith, Allegheny County). This section sets forth a visual example of the required stamp. This section also prohibits abbreviations on the official stamp, except for name suffixes. This proposed rulemaking contains transitional provisions for the notary seal that a notary public who holds a commission on the effective date of this rulemaking may continue to use the notary public's official stamp until the expiration of that commission. However, since all notaries have been commissioned at least once since the time the act became fully effective (that is, October 26, 2017), it is expected that their seals already comply with the official stamp requirements set forth in 57 Pa.C.S. § 317 (relating to official stamp).

Proposed § 167.22 (relating to stamping device) sets forth the requirements for use, security and reporting of loss or theft of the physical stamping device. This section also continues the Department's existing policy on non-inking embossers (defined in proposed § 167.2). Because a non-inking embosser is not "capable of being copied together with the record to which it is affixed or attached," under 57 Pa.C.S. § 317(3), a non-inking embosser may not be used as a stamping device. There is nothing to prohibit notaries public using a non-inking embosser on tangible records in conjunction with a stamping device that produces an official stamp. Proposed § 167.22 makes clear that the stamping device is not the property of the notary's employer, even if the employer paid for it. The notary is charged with having custody and control of the stamping device at all times, and this proposed rulemaking explains how that is to occur. The Department has determined that 15 days is the appropriate period for prompt notification of loss or theft, as required by 57 Pa.C.S. § 318(b) (relating to stamping device). Loss or theft of the stamping device could lead to compromise of the seal or use by others. Prompt notification to the Department will be entered on the Department's records. If a complaint is filed about the subsequent misuse of the official seal, the notification may serve to protect the notary public. The Department has

developed a form for reporting the loss or theft of both the stamping device and the journal, found on its web site at <https://dos.pa.gov/notaries>.

Subchapter D. Journal

The equipment required to act as a notary public includes a journal. The journal was required under the Notary Public Law but was known as a register. Notaries may obtain journals from the vendors of their choice, as long as the appearance of the journal entries comply with the act and these regulations. The act does not give the Department the authority to regulate journal providers. This proposed rulemaking contains no transitional provisions for the journal, because all notaries have been commissioned at least once since the time the act became fully effective (that is, October 26, 2017). Therefore, it is expected that their journals already comply with the fundamental journal entry requirements set forth in 57 Pa.C.S. § 319 (relating to journal).

Subchapter D (relating to journal) proposes to implement the requirements in 57 Pa.C.S. § 319 for the notary journal. Proposed § 167.31 (relating to identification of notary public in journal) requires the attribution of basic information about the notary in each journal, as well as meanings of abbreviations and instructions for proper delivery of the journal in the event of incapacity. Busy notaries may fill many journals. Each journal should identify the notary, which is particularly helpful if the journal is lost or stolen and when the journals are provided to the recorder of deeds upon termination of office. Proposed § 167.32 (relating to journal entries) clarifies 57 Pa.C.S. § 319(c). Although the act requires “full name and address of each individual for whom the notarial act is performed,” notaries may not record information that might materially compromise the security or confidentiality of the individual, such as full social security number, full driver’s license number, date and place of birth, mother’s maiden name or biometric records. The definition of “personally identifiable information” is modeled after the definition of “personal information” in section 2 of the Breach of Personal Information Notification Act (73 P.S. § 2302).

Proposed §§ 167.33 and 167.34 (relating to format of journal maintained on a tangible medium; and format of journal maintained in an electronic format) specify the form and content of journals maintained on paper or electronically, respectively. Both sections implement the statutory requirement that the notary record in chronological order all notarial acts that the notary public performs. Both sections prevent the insertion or deletion of notarial acts in the journal. While the act requires the notary to “maintain a journal in which the notary public records in chronological order all notarial acts that the notary public performs,” the act also permits the notary to maintain a separate journal for tangible records and for electronic records. When a journal maintained in electronic format is delivered to the office of the recorder of deeds upon resignation, death or incompetency, it is necessary that the format will be portable document format or other industry-standard readable format acceptable to the receiving recorder of deeds.

Proposed § 167.35 (relating to custody and control of journal; notification of lost or stolen journal) makes clear that the journal is not the property of the notary’s employer, even if the employer paid for it. The notary is charged with having custody and control of the journal at all times and this proposed rulemaking explains how that is to occur. Proposed § 167.35 also details the process a notary shall follow in reporting the loss or theft of a

journal. The Department has determined that 15 days is the appropriate period for prompt notification of loss or theft, as required by 57 Pa.C.S. § 319(d). Loss or theft of the journal could lead to compromise of the journal or use by others. Prompt notification to the Department will be entered on the Department’s records. If a complaint is filed about the subsequent misuse of the journal, the notification may serve to protect the notary public. The Department has developed a form for reporting the loss or theft of both the stamping device and the journal, found on its web site at <https://dos.pa.gov/notaries>. Unlike proposed § 167.22(e), this section does not require delivery of the journal to the Department within 15 days of suspension or revocation. This situation is addressed in 57 Pa.C.S. § 319(e)(3), wherein the notary public is required to deliver the journal to the recorder of deeds within 30 days of termination of office. Termination of office includes nonrenewal, resignation or revocation of commission. A notary who is temporarily suspended retains the journal during the course of the suspension.

Proposed § 167.36 (relating to inspection and certified copies of journal) codifies existing policy relating to requests for a copy of a notary’s journal. Inherent in the right to certified copies of the journal is the right of inspection. “Any person” includes a former customer, a supervisor or employer, or an investigator in a civil, criminal or administrative matter, including Department staff.

Subchapter E. Scope of Practice

This proposed subchapter sets forth additional details on the performance of the essential duties and responsibilities of notary public practice.

Proposed § 167.41 (relating to authority of notary public to perform notarial act) clarifies the authority of the notary to perform acts in every county but only inside this Commonwealth, unless authorized by another jurisdiction to perform notarial acts.

Proposed § 167.42 (relating to personal appearance) clarifies that personal appearance before the notary public, as required under 57 Pa.C.S. § 306 (relating to personal appearance required), requires physical presence before the notary public. This is distinguished from the performance of notarial acts by means of audio-visual communication technology for a remotely located individual (known as remote notarization), which is permitted by 57 Pa.C.S. § 306.1. Proposed § 167.42(b)(2) is intended to clarify that personal appearance is not required for the notarial act of copy certification. Proposed § 167.42(b)(3) is intended to clarify that personal appearance is likewise not required for the notarial act of administering an oral oath or affirmation. However, the notary and the affiant must be able to hear and communicate with each other. This provision will be of particular use to court reporters, who routinely administer oral oaths and affirmations as part of criminal, civil or administrative proceedings in this Commonwealth, where the testifying witnesses are also known to the attorneys and judges in the matter. However, this provision is not designed to override applicable rules of court. The basis for these two exceptions to the personal appearance requirement is 57 Pa.C.S. § 306, which states that if a notarial act relates to a statement made in or a signature executed on a record, the individual making the statement or executing the signature is required to appear personally before the notarial officer. Neither a certified copy nor a purely oral oath or affirmation relates to a statement made in or a signature executed on a record. Proposed § 167.42(b)(3) does not apply to the notarial act

of administering an oath or affirmation, where the oath is in writing and signed by the oath taker. This would include the notary public oath of office, which taken by the notary, reduced to writing and signed on the bond form.

Proposed § 167.43 (relating to identification of individual appearing before notary public—satisfactory evidence) provides additional guidance on what specific documentation may be used as satisfactory evidence of identity. This term was also used in the prior notary public law, but 57 Pa.C.S. § 307(b) (relating to identification of individual) sets forth two categories of documents that may be used by a notary for satisfactory evidence of identity of an individual appearing before a notary. While the preferred identification credentials are a passport, driver's license or government-issued nondriver identification card that are current and unexpired, the law recognizes that some individuals may not have these credentials. The list in proposed § 167.43(a)(2) is not intended as an exclusive list. These forms of identification have been reviewed by the Department and found to be compliant with 57 Pa.C.S. § 307(b)(1)(ii). However, other forms of government identification may exist or come into existence which meet the requirements of 57 Pa.C.S. § 307(b)(1)(ii), that they are 1) current; 2) contain the signature or a photograph of the individual; and 3) are satisfactory to the notary public. Proposed § 167.43(b) explains the second (and much more rarely used) method of satisfactory evidence of identification, based on an oath or affirmation of a credible witness as to the identity of the individual, where that individual is not known to a notarial officer and does not have one of the identification credentials.

Proposed § 167.44 (relating to use of interpreter; language of record) describes the permissible use of an interpreter while providing notarial services and how the notary should handle documents in other languages.

Proposed § 167.45 (relating to notification of change in name or other information; effect of certain address changes) provides name change and other information change notification procedures. The Department has streamlined the requirements for notification where notaries public have changed their names and addresses. The act no longer requires that notaries notify the recorder of deeds of the county of original appointment of an address change or name change. As the agency responsible for appointment and commission of notaries public in this Commonwealth, under 57 Pa.C.S. § 321, the Department is the official repository for notary public commission information in the Commonwealth and it is expected that the Department's records are the primary source for verification of notary public credentials in the Commonwealth. Therefore, the Department has revised its forms and instructions for notaries who have a change of name or address. These forms are found on the Department's web site at <https://dos.pa.gov/notaries>. Notaries also may advise the Department of these changes online at www.notaries.pa.gov. Lastly, this section makes clear that notaries who neither live nor work in this Commonwealth will be deemed to have resigned from the office of notary public.

Subchapter F. Notarial Acts

Subchapter F (relating to notarial acts) proposes to augment and further explain the requirements for performing each of the six notarial acts defined by 57 Pa.C.S. § 302 (relating to definitions). These six powers of the notary public are acknowledgements, oaths and affirmations, verifications on oath or affirmation, witnessing or

attestation of signatures, certified or attested copies and depositions, and protests of negotiable instruments. In addition to the general procedures for notarization set forth in the act (such as personal appearance and identification of individual) and the more specific requirements for certain notarial acts set forth in 57 Pa.C.S. § 305 (relating to requirements for certain notarial acts) and 57 Pa.C.S. § 316 (relating to short form certificates) provides short form certificates for most notarial acts (see *infra* Subchapter G).

Proposed § 167.61 (relating to acknowledgments) makes clear that, while it is common practice for the individual giving an acknowledgment to sign the record in the presence of the notary, actually signing the record in the presence of the notary is not required as long as the individual acknowledges to the notary, when the customer appears before the notary, that the signature already on the record is that of the individual, in accordance with 57 Pa.C.S. § 305(a).

Proposed § 167.62 (relating to oaths and affirmations) addresses the long-established power of a notary public to give oaths or affirmations. While 57 Pa.C.S. § 302 includes oaths and affirmations as a notarial act, it does not define either term. The term oath includes an affirmation but is similarly not defined in 1 Pa.C.S. §§ 1501—1991 (relating to Statutory Construction Act of 1972) (c.f. 1 Pa.C.S. § 1991 (relating to definitions)). While both oaths and affirmations are notarial acts that compel a person to tell the truth or perform a duty or act faithfully, an oath is a solemn, spoken pledge to God or a Supreme Being, while an affirmation is a spoken pledge made on the speaker's personal honor with no reference to a higher power. Proposed § 167.62 provides clarification of the largely unwritten procedures for the two types of oaths—testimonial oath and oath of office. The act provides no directives for giving oaths of affirmations, as it does for the five other notarial acts in 57 Pa.C.S. § 305 or a short form certificate in 57 Pa.C.S. § 316. Like all notarial acts except for certifying copies or depositions, the individual taking a written oath or affirmation (and therefore making a statement and executing a signature on the record) shall appear personally before the notary public and the notary public shall have personal knowledge or satisfactory evidence of the identity of the individual taking the oath or affirmation. If the oath or affirmation is oral, the requirements of proposed § 167.42(b)(3) apply.

Proposed § 167.63 (relating to verifications on oath or affirmation) further clarifies 57 Pa.C.S. § 305(b). It makes clear that the individual making the verification on oath or affirmation must also declare that the statements in the record are true and that the record must be signed in the notary's presence. A verification on oath or affirmation is also referred to as an affidavit, as noted by 57 Pa.C.S. § 302. It is also synonymous with the term "jurat," which is used in many jurisdictions, but not in Pennsylvania law.

Proposed § 167.64 (relating to witnessing or attestation of signatures) sets forth more detail on what is a new notarial act in this Commonwealth. For a signature witnessing, the signer must always sign the document in the notary's presence, as required by 57 Pa.C.S. § 305(c)(1). After witnessing the document being signed, the notary completes the appropriate certificate wording for the signature witnessing. Witnessing or attesting a signature differs from taking an acknowledgment in that the record contains no declaration that it is signed for the purposes stated in the record and the party relying on the

record may know for certain that the record was signed on the same date that the notary public affixed the official stamp and signature to the record. Witnessing or attesting a signature differs from a verification on oath or affirmation (affidavit) in that the individual is merely signing the record, not swearing or affirming that the contents of the record are true. This notarial act is simply a witnessing of the signature of an identified individual, on the date and place specified in the notarial certificate.

Proposed § 167.65 (relating to certified or attested copies and depositions) further clarifies 57 Pa.C.S. § 305(d). Certifying or attesting a copy is usually done if it is necessary to produce a copy of a record when the original is in an archive or other collection of records and the archived record cannot be removed. In most cases, the custodian of the official archive or collection is empowered to issue an officially certified copy. When a copy officially certified by the custodian of the archive is available, it is official evidence of the state of the public archive or collection, and it may be better evidence of the original record than a copy certified by a notary. Additionally, if the record is intended to be sent overseas and will require an apostille or certification from the United States Department of State or from the Department under the 1961 Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, the record must be certified by the office where the original or official copy of the record is maintained or by the public official who issued the record. Examples include deeds, marriage records, court orders and corporate documents filed with a state office or state repository as the official record. Where there is no clear or proper custodian for a record and it does not appear to be filed in a state, Federal or foreign governmental jurisdiction, it is acceptable for a notary to certify a copy of the document or notarize someone else's affidavit that the document is a true and correct copy of the original. Examples of types of records that generally are not required to be filed in a governmental office include diplomas and transcripts, contracts, leases, corporate bylaws and corporate minutes. A copy certification should be completed with the proper notarial language as required by Subchapter G.

Proposed § 167.65(1) directs the notary public to compare a record or item with a copy of the record or item. Therefore, the record or item must be presented to the notary along with the copy so that the notary is able to make the comparison. The notary may also make the copy for a greater assurance that the copy is true and correct. Paragraphs (2) and (3) make clear that the notary's primary purpose is to ensure that the copy is an exact reproduction of the original and that the notarial act of certifying a copy does not impact the content or legality of the underlying record.

This proposed rulemaking specifies certain records that, under existing law, may not be certified by a notary public. The records most commonly and inappropriately certified by notaries are birth certificates. Section 1.44 of 28 Pa. Code (relating to penalties for unauthorized duplication) states that ". . . no person may photograph, photostat, duplicate or issue what purports to be a certified copy, certification or certificate of birth, death or fetal death except for authorized employees of the Department of Health or its local registrars of vital statistics. . ." Furthermore, Pennsylvania birth and death certificates specify on their face that it is illegal to copy them. Yet many notaries do so, in violation of the Vital Statistics Law of 1953 (35 P.S. §§ 450.101—450.1003) and the Department of Health regulations.

Proposed § 167.66 (relating to protests of negotiable instruments) implements 57 Pa.C.S. § 305(e). This section is based on 13 Pa.C.S. § 3505(b) (relating to evidence of dishonor), which is a section of the Uniform Commercial Code (UCC) as enacted in this Commonwealth. Protest refers to a formal, written declaration stating that a negotiable instrument (for example, a check or money order) was presented at a certain time and place, and payment was denied. Under the UCC, formal protests are not necessary except on checks/drafts drawn or payable outside the United States. Although both the act and the UCC authorize notaries public to make protests, commercial protests are rarely performed by notaries. When they are, they are typically performed by notaries employed by banks or financial institutions.

Subchapter G. Notarial Certificates

While 57 Pa.C.S. § 315 (relating to certificate of notarial act) sets forth the general requirements for a certificate, 57 Pa.C.S. § 316 sets forth the language for short form certificates and 57 Pa.C.S. § 306.1(c) sets forth language required when notarial acts are performed by means of communication technology, proposed § 167.71 (relating to certificate of notarial act) further clarifies rules pertaining to certificates. The certificate is essential to the notarial act performed on a record, as it describes which notarial act is being performed. Despite the act's requirement that a notarial act must be evidenced by a certificate of notarial act and the provision of short form certificates, a shocking number of notaries affix only their seal and signature to a record being notarized, without including notarial language. The requirement for the certificate of notarial act to be worded and completed using the English language stems from numerous requests for authentication received by the Department for documents entirely in languages other than English. To confirm there has been a proper notarial act and certify to the seal and signature of the notary, the notarial certificate must be in English (which is also the language of the Department's authentication). This does not prohibit the simultaneous wording and completion of the notarial certificate in another language that is read, written and understood by the notary.

Subchapter H. Electronic and Remote Notarization

Subchapter H proposes to implement the longstanding ability of notaries public in this Commonwealth to perform notarial acts with respect to electronic records and the more recent authority to perform notarial acts facilitated by communication technology for remotely located individuals. These two concepts are referred to as electronic notarization and remote (online) notarization, respectively. Because both require notification to the Department and use of technology beyond the rubber stamp seal used in more traditional paper-based notarization, they are combined in one subchapter.

Revisions to the Notary Public Law, effective July 1, 2003, provided for electronic notarization by adding provisions for the execution of a notary's electronic signature, the use of electronic notary seals and the requirement that notary education programs preapproved by the Secretary have a core curriculum which included electronic notarization. The Department's electronic notarization program was established on January 30, 2006. Remote notarization came in phases, beginning temporarily for limited transactions on March 25, 2020 during the novel coronavirus (COVID-19) emergency and culminating with Act 97 of 2020, effective October 29, 2020. Act 97 of 2020 made remote online notarization a permanent part of Pennsylvania law. Three sections of the act authorize the

Department to promulgate regulations concerning electronic and remote notarization: 57 Pa.C.S. § 306.1, 57 Pa.C.S. § 320 (relating to notification regarding performance of notarial act on electronic record; selection of technology) and 57 Pa.C.S. § 327.

Electronic notarization involves documents that are notarized in electronic form. The notary and customer both sign with an electronic signature, and both the notarial certificate and the notary seal are attached to or logically associated with the electronic record. Rather than a tangible paper document and a rubber stamp notary seal, the notary digitally places his or her seal information into a document which exists as electronic data in a computer-readable form. But all other elements of a traditional paper notarization apply to electronic notarization, including the requirement for the customer to appear personally and physically before the notary. Section 320 of 57 Pa.C.S. sets forth the requirements for notarization of electronic records, including notification to the Department and use of approved tamper-evident technologies.

With remote notarization, the legal requirement that the signer personally and physically appear before the notary is met by the use of audio-visual electronic communication technology. The important role that the notary plays when a statement is made in or a signature executed on a record now occurs remotely over the internet, with a document that is in electronic form. Remote online notarization is also called remote notarization, webcam notarization, online notarization or virtual notarization. Section 306.1 of 57 Pa.C.S. sets forth the requirements notarial acts performed for remotely located individuals. These requirements include notification to the Department, use of approved communication technologies, retention of the audio-visual recording of the interactions between the notary public and the remotely located individual and additional language in the notarial certificate.

Proposed § 167.81 (relating to notification to Department) sets forth the process for a notary public to become authorized to act as an electronic notary or to become authorized to act as a remote notary, or both. Notification to the Department and identification of the technology the notary intends to use is required prior to the notary acting as an electronic notary or remote notary, under 57 Pa.C.S. §§ 306.1(f) and 320(b)(1). Notification is made by means of the Department's web portal at www.notaries.pa.gov. Upon notification, the Department confirms that the notary holds a current and unexpired commission. The notary then selects the technology and the Department is notified by the technology provider when the notary has completed the enrollment process for the technology (also through the web portal). Notaries may use more than one technology, whether they be electronic or remote technologies. The Department tracks which technologies are being used by which notaries—to date, over 1,800 notaries have selected at least one electronic or remote technology. Using this information and as required by 57 Pa.C.S. § 324 (relating to database of notaries public), the Department maintains a database of notaries public, through which the public may verify the appointment and commission of a notary public and whether the notary public is an electronic or remote notary public. Proposed § 167.81(3) makes clear that notification to the Department and identification of the technology must occur with each new commission and with the addition or deletion of technology.

Proposed § 167.82 (relating to use of technology) implements the authority of the Department under 57 Pa.C.S.

§§ 306.1(f)(2) and 320(b)(2) and to establish standards for approval of technology and to require that the technologies used by notaries conform to those standards.

Proposed §§ 167.83 and 167.84 (relating to electronic notarization technology provider application; and standards for approval of electronic notarization technology) implement 57 Pa.C.S. §§ 320 and 327, which together authorize the Department to establish standards for approval of electronic notarization technology. As required by 57 Pa.C.S. § 327(b), the Department considers: (1) the most recent standards regarding electronic records promulgated by national bodies, such as the National Association of Secretaries of State; (2) standards, practices and customs of other states which substantially enact the act; and (3) the views of governmental officials and entities and other interested persons. These sections adopt in large part the National Electronic Notarization Standards adopted by National Association of Secretaries of State (NASS) on July 12, 2006; reaffirmed on July 13, 2011 and July 17, 2016; amended and readopted on February 19, 2018. The NASS standards do not require the use of one specific technology, nor are they intended to privilege the use of one specific technology over another. The Department also incorporated standards and practices from the few states that have promulgated regulations on electronic notarization, including Arizona, Arkansas and North Carolina. Lastly, the Department has taken into account the views and comments of government officials, entities and other interested parties by seeking the review of the most prominent notary associations in this Commonwealth (Pennsylvania Association of Notaries, National Notary Association and American Society of Notaries), banking and mortgage or lending associations, and Recorders of Deeds.

Proposed §§ 167.85 and 167.86 (relating to remote notarization technology provider application; and standards for approval of remote notarization technology) implement 57 Pa.C.S. § 306.1(g), which requires the Department to promulgate regulations regarding the performance of notarial acts for remotely located individuals using communication technology. As required by 57 Pa.C.S. § 306.1(h), the Department considered: (1) The most recent standards regarding the performance of a notarial act with respect to remotely located individuals promulgated by a national standard-setting organization. This paragraph includes the National Association of Secretaries of State. (2) Standards, practices and customs of other jurisdictions that enact a statutory provision substantially similar to this section. (3) The views of governmental officials and entities and other interested persons. Following a resolution on July 10, 2017 to convene the appropriate parties to develop remote notarization standards, the NASS amended and readopted the National Electronic Notarization Standards on February 19, 2018, to include an addendum on remote electronic notarization standards. This proposed rulemaking adopts those standards. As with electronic notarization, the NASS standards for remote notarization do not require the use of one specific technology, nor are they intended to privilege the use of one specific technology over another. This proposed rulemaking recognizes that current technology (for identity proofing, for example) will change over time with industry best practices. The Department also incorporated standards and practices from the very few states that have promulgated regulations on remote notarization, including Arizona, Idaho, Ohio and Texas. Lastly, the Department has taken into account the views and comments government officials, entities and other interested parties by seeking the review of the most prominent

notary associations in this Commonwealth (Pennsylvania Association of Notaries, National Notary Association and American Society of Notaries), banking and mortgage or lending associations, Recordors of Deeds and remote notarization technology providers.

Proposed § 167.87 (relating to termination of approval of technology) makes clear that the Department may terminate the approval of electronic or remote notarization technologies if they no longer meet the standards set by the Department. This necessarily includes when a technology provider goes out of business and ceases to provide approved services.

Subchapter I. Notary Public Education

Subchapter I proposes to set forth the procedures the Department uses in approving notary education courses of study required under 57 Pa.C.S. § 322(b) and (c). This is essentially a codification of the approval process used under former law. Education providers must obtain approval, evidenced by a certificate of approval, from the Department for each course of study prior to offering the class to notaries public. The Department approves only basic and continuing education courses that will be used to qualify applicants to receive a commission. Course approvals are valid for a period of 3 years, to ensure periodic review by both providers and the Department. Between these approvals, providers must revise lesson plans as necessary to ensure that the information provided in an approved course of study reflects developments in the law and current notary practice. The Department will notify all approved providers when major changes in the law or regulations occur.

This subchapter also proposes to allow for providers to issue certificates of education to attendees and to maintain a list of attendees for 5 years. This subchapter also includes provisions governing situations in which a course is cancelled or delayed, a provider's certificate of approval is terminated or a provider cancels its certificate of approval. Approved providers must notify the Department of changes to provider information. This includes when a provider goes out of business or is no longer offering the course. The Department makes a list of approved education courses available on the Department's web site at <https://dos.pa.gov/notaries>. The list includes the name of the approved course and whether it is approved for basic or continuing education, as well as the name and contact information for the provider.

Proposed § 167.91 (relating to definitions) contains the definitions used in this subchapter. Proposed §§ 167.92 and 167.93 (relating to certificate of approval; and course of study) implement the requirement that basic and continuing education courses of study that qualify an applicant to receive a commission be approved by the Department. Proposed § 167.94 (relating to notification of changes) requires education providers to notify the Department of substantive changes to the approved course or to the provider (for example, it ceases offering the course). Proposed § 167.95 (relating to certificate of education) sets for the requirements for a certificate of education that is submitted with the application for appointment and commission, as proof of the education. Proposed § 167.96 (relating to record of attendees) requires notary education providers to maintain a list of attendees for 5 years, for Department auditing purposes. Proposed § 167.97 (relating to representatives of the Department attending approved course of study) requires providers to permit Department representatives to attend an approved course of study. Proposed § 167.98 (relating to termination of certificate of approval) sets forth the

grounds for terminating education course approval. The Department annually reviews and supplies educators with the combined examination pass rates of their students. While the Department approves each course of study to ensure that content is based on the act and regulations, each course has unique methodology and instructors. Failure to adequately prepare less than 60% of course attendees to pass the examination is grounds for additional review of course content and education methodology.

Subchapter J. Standards of Conduct

Subchapter J proposes to set forth the standards of conduct and practice for notaries public, most of which have been best practices recommended by the Department and notary associations for years.

Proposed § 167.111 (relating to conflict of interest) further explains the prohibition in 57 Pa.C.S. § 304(b) (relating to authority to perform notarial act) that a notary public may not perform a notarial act with respect to a record in which the notary public or the notary's spouse has a direct or pecuniary interest. It makes clear that under no circumstance may a notary public notarize the notary's own signature. Unlike the Revised Uniform Law on Notarial Acts as adopted by the Uniform Law Commission, the act as adopted in this Commonwealth contains no categorical prohibition on notarizing where a spouse is a party. The notary must review each record on a case-by-case basis to determine whether the notary or the spouse has a direct or pecuniary interest in the record. The prohibition does not, however, extend to situations in which the notary's or the spouse's interest is indirect and not the result of the operation of the record or transaction itself.

Proposed § 167.112 (relating to duty of candor) codifies a duty of candor to the Department. Proposed § 167.113 (relating to refusal to perform notarial acts) clarifies the general authority to refuse to perform notarial acts provided in 57 Pa.C.S. § 308(b) (relating to authority to refuse to perform notarial act) to make clear that notaries may not refuse to perform notarial acts on a discriminatory basis.

Subchapter K. Prohibited Acts and Sanctions

The Department has broad authority under 57 Pa.C.S. § 323 (relating to sanctions) to deny, refuse to renew, revoke, suspend, reprimand or impose a condition on a commission as notary public for an act or omission which demonstrates that the individual lacks the honesty, integrity, competence or reliability to act as a notary public. In addition to the list of acts or omissions found in 57 Pa.C.S. § 323(a), the Department specifies other frequent misconduct at proposed § 167.121 (relating to acts or omissions providing the basis for sanctions). Like 57 Pa.C.S. § 323(a), this list is meant to provide examples and not to be exhaustive.

Proposed § 167.122 (relating to offenses involving fraud, dishonesty or deceit) clarifies the specific crimes and offenses that are considered to involve fraud, dishonesty or deceit under 57 Pa.C.S. § 323. This section is patterned after 4 Pa. Code § 165.1 (relating to lesser offenses incompatible with the duties of a notary public—statement of policy), which the Department will rescind when this regulation is published as final. As under the prior law, it is important that applicants disclose all criminal history on the application for appointment and commission, regardless of when it occurred, unless the matter is expunged or sealed or is a summary offense. However, the act no longer mandates that all felonies and

certain misdemeanor convictions within the 5-year period preceding the date of the application have the effect of making applicants ineligible for appointment of commission as a notary public (former 57 P.S. § 151(b)(1)). The Department now has greater discretion to consider applicants with more recent criminal histories. Under proposed § 167.123 (relating to factors considered in sanctions), *infra*, an individual with potentially disqualifying convictions may rebut the presumption of ineligibility for appointment by providing evidence of rehabilitation. Evidence could include references; participation in civic, charitable and religious organizations; and the absence of further convictions.

Proposed § 167.123 codifies the Department's existing practices and sets forth the varied factors that the Department may consider when determining whether to deny an application or take disciplinary action on a commission. Each determination is based on the individual facts and circumstances of the application or disciplinary matter at hand. Both applicants and respondents are provided notice and ample opportunity to participate in the process, in accordance with 2 Pa.C.S. Chapter 5, Subchapter A (relating to Administrative Agency Law) and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

Proposed § 167.124 (relating to unauthorized practice of law) states the factors that the Department will rely upon in a determination that a notary public has engaged in the unauthorized practice of law, which is prohibited by 57 Pa.C.S. § 325 (relating to prohibited acts). In addition to Disciplinary Board opinions, the Pennsylvania Supreme Court has promulgated at 204 Pa. Code § 81.4, Rule 5.5 (relating to unauthorized practice of law; multijurisdictional practice of law) of the Rules of Professional Conduct, which applies to lawyers only. While there are criminal penalties for the unauthorized practice of law at 42 Pa.C.S. § 2524 (relating to penalty for unauthorized practice of law), this section does not define what it means to practice law. The most instructive guidance available to the Department is the work of the Pennsylvania Bar Association Unauthorized Practice of Law Committee.

Proposed § 167.125 (relating to reporting requirements) requires that notaries who are convicted of crimes, disciplined by another notary commissioning authority, found guilty of unauthorized practice of law, found guilty or admitted liability in any criminal, civil or administrative proceeding (based on the fraud, dishonesty or deceit of the notary public) or whose bonding company has paid out on a claim to their bond shall notify the Department within 30 days of the conclusion of that event. Because the Department is authorized to discipline notaries for these actions, it is imperative that the Department receive these reports in a timely manner and not only when notaries renew their commissions every 4 years. The Department anticipates this notice will be made by mail or by e-mail to the Bureau's resource account at ra-notaries@pa.gov.

Fiscal Impact and Paperwork Requirements

This proposed rulemaking will have minimal adverse fiscal impact on the Department. The Department will incur additional costs in implementing this proposed rulemaking, largely for enhancements and changes to the notary public database, staff and legal time in writing the regulations and altering all forms, materials and the web site. The Department will need to communicate the statutory and regulatory changes to notaries public, notary education providers and those who deal regularly

with notaries public, such as Recorders of Deeds. Additionally, due to the statutory changes, the 17 formerly approved notary education providers have been required to overhaul their notary education courses, develop and submit new courses of study, each of which must be approved by the Department prior to being offered to notaries. To date, 20 act-compliant basic education courses and two continuing education courses have been approved. To comply with the examination required under the act, the Department had to establish a psychometrically sound and legally defensible notary public examination.

This proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. There will not be additional paperwork requirements upon the Commonwealth or the counties, because the actual process of appointing and commissioning notaries public changes little under the act. County Recorders of Deeds remain instrumental in recording the bond, oath and commission of each notary, while the Prothonotary's and Recorder's offices are the sites where each notary registers an official signature.

This proposed rulemaking will have minimal adverse fiscal impact on currently commissioned notaries public, all of whom have already complied with education requirements. Since July 1, 2003, notaries in this Commonwealth have been required under law to complete 3 hours of education with each 4-year appointment. Those who had active commissions on July 1, 2003, were subsequently exempted from the education by a court decision. Those notaries who were "grandfathered" and excluded from notary education made up about 15%–25% of the current notary population. Since the remainder of the act went into effect on October 26, 2017, all notaries are required to complete 3 hours of notary education every 4 years, at an estimated cost of \$39–\$99 per course. The new examination requirement imposed by the act will predominantly affect the approximately 7,000 persons that are newly commissioned as notaries public each year. The cost of the exam, which is set by Pearson VUE, the professional testing organization under contract with the Department to develop and administer the test, is \$65. Notaries will bear an additional estimated cost of \$5 per year to increase the bond amount from \$10,000 to \$25,000. The transitional provisions regarding procurement of the official stamp will not require a currently commissioned notary to procure a new stamping device or journal until the next commission, so there is no additional expense added for these items. The average cost for a notary stamping device ranges from \$13 to \$24. Since 4 years has elapsed since the effective date of the act, all notaries should be using an act-compliant journal. The cost for a notary journal ranges from \$9 to \$25.95. This proposed rulemaking will not affect the cost of becoming an electronic or remote notary. There is no cost for the notary to notify the Department that the notary will be performing notarial acts electronically or remotely. The technology costs are set by the electronic and remote notarization providers and vary considerably, depending on the platform utilized by the notary. See <https://www.nationalnotary.org/notary-bulletin/blog/2022/03/a-guide-to-remote-notarization-providers-for-notaries>. The cost can range from below \$100 to \$299 annually, depending on the company. There is often, but not always, a sign-up fee and the cost of digital supplies, including electronic seal and digital certificate. Some technology providers charge per notarial act, while others do not.

Technologies require that a notary have compatible hardware (computer, webcam, microphone) and secure Internet access.

Sunset Date

The Secretary of the Commonwealth and the Department monitor the regulations of the Department on a continuing basis. Therefore, a sunset date has not been assigned.

Regulatory Review

Under section 5(f) of the Regulatory Review Act (71 P.S. § 745.5(f)), on December 5, 2024, the Department submitted a copy of the proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC). A copy of this material is available to the public upon request. On the same date, the Department submitted this proposed rulemaking to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. The Department will deliver a copy of this proposed rulemaking and required materials to the chairpersons of the State Government Committee of the Senate and the State Government Committee of the House, no later than the second Monday after the date by which both committee designations have been published in the *Pennsylvania Bulletin*.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regula-

tory Review Act specifies detailed procedures for review prior to final publication of the rulemaking by the Department, the General Assembly and the Governor.

Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Martha H. Brown, Assistant Counsel, Department of State, Office of Chief Counsel, 401 North Street, Room 306, Harrisburg, PA 17120, martbrown@pa.gov within 60 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16-61 (Revised Uniform Law on Notarial Acts) when submitting comments.

AL SCHMIDT,
Secretary

Fiscal Note: 16-61. Nominal fiscal impact. Any associated costs are covered by a fee; recommends adoption.

Annex A

TITLE 4. ADMINISTRATION

PART VIII. BUREAU OF [COMMISSIONS, ELECTIONS] NOTARIES, COMMISSIONS AND LEGISLATION

Subpart C. COMMISSIONS AND NOTARIES PUBLIC

CHAPTER 161. FEES

§ 161.1. Schedule of fees.

[The Bureau of Commissions fee schedule shall conform with the following table:

<i>Description</i>	<i>Fees (in dollars)</i>
COMMISSIONS	
Commissioner of Deeds	\$25
Railroad Police or Institutional Police Commission	\$5
Notice of Election of Sheriff (called Sheriff's Writ)	\$5
Treasures Commission	\$5
District Justices	\$3
Register of Wills Bond	\$2
Recorder of Deeds Bond	\$2
CERTIFICATES	
Great Seal Certificate	\$10
Certificate requiring Secretary's Seal	\$7
MISCELLANEOUS	
Writs including Great Seal	\$5
Filing Recognizance for any Public Office	\$2
Photocopies	\$1
Department of State may charge equivalent fees for any service not specified.	
NOTARY PUBLIC FEE SCHEDULE	
Executing affidavits (no matter how many signatures)	\$5
Executing acknowledgments	\$5
In executing acknowledgments each additional name	\$2
Executing certificates (per certified copy)	\$5
Administering oaths (per individual taking an oath)	\$5
Taking depositions, per page	\$3

<i>Description</i>	<i>Fees (in dollars)</i>
Executing verifications	\$5
Executing protests, per page	\$3]

(a) As used in this chapter, the term “Bureau” means the Bureau of Notaries, Commissions and Legislation or any successor bureau of the Department of State.

(b) The following fees are charged for services provided by the Bureau, relating to commissions, notaries public and the public acts and transactions of the Secretary of the Commonwealth and the Department of State:

<i>Description</i>	<i>Fee (in dollars)</i>
CERTIFICATES	
<u>For certifying copies of any public papers or records on file with the Bureau, the copy fee (if the Bureau furnished the copy), plus</u>	<u>\$15</u>
<u>For certifying matters of public record with the Bureau (including no record), the copy fee (if the Bureau furnished the copy), plus</u>	<u>\$15</u>
MISCELLANEOUS	
<u>Application for appointment and commission as a notary public</u>	<u>\$42</u>
<u>Application for renewal of appointment and commission as a notary public</u>	<u>\$42</u>
<u>Copies (per page)</u>	<u>\$1</u>
<u>Master list of notaries public</u>	<u>\$50</u>
<u>Other notary public-related lists and data requests</u>	<u>\$25</u>
<u>Approval of notary public education course</u>	<u>\$1,013</u>
<u>Renewal of approval of notary public education course</u>	<u>\$525</u>

The Bureau may charge equivalent fees for any service not specified.

CHAPTER 163. SPECIAL RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE

§ 163.1. Applicability of general rules.

Under 1 Pa. Code § 31.1 (relating to scope of part), 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) [are] is applicable to the activities of and proceedings before the [Commission Bureau] Department of State relating to commissions and notaries public.

CHAPTER 167. NOTARIES PUBLIC

Subchapter A. GENERAL PROVISIONS

(Editor’s Note: Chapter 167 is proposed to be added and is printed in regular type to enhance readability.)

- Sec.
 167.1. Scope.
 167.2. Definitions.
 167.3. Fees.

Subchapter B. QUALIFICATIONS FOR APPOINTMENT AND COMMISSION

- 167.11. Eligibility and application requirements for initial appointment and commission.
 167.12. Eligibility and application requirements for renewal of appointment and commission where there has been no lapse in commission.
 167.13. Eligibility and application requirements for renewal of appointment and commission where there has been a lapse in commission.
 167.14. Name of notary public on application for appointment and commission.

- 167.15. Notary public examination.
 167.16. Notary public bond.
 167.17. Appointment and issuance of commission.
 167.18. Effect of failure to record bond, oath and commission and register official signature within 45 days.

Subchapter C. OFFICIAL STAMP AND STAMPING DEVICE

- 167.21. Official stamp.
 167.22. Stamping device.

Subchapter D. JOURNAL

- 167.31. Identification of notary public in journal.
 167.32. Journal entries.
 167.33. Format of journal maintained on a tangible medium.
 167.34. Format of journal maintained in an electronic format.
 167.35. Custody and control of journal; notification of lost or stolen journal.
 167.36. Inspection and certified copies of journal.

Subchapter E. SCOPE OF PRACTICE

- 167.41. Authority of notary public to perform notarial act.
 167.42. Personal appearance.
 167.43. Identification of individual appearing before notary public—satisfactory evidence.
 167.44. Use of interpreter; language of record.
 167.45. Notification of change in name or other information; effect of certain address changes.

Subchapter F. NOTARIAL ACTS

- 167.61. Acknowledgements.
 167.62. Oaths and affirmations.
 167.63. Verifications on oath or affirmation.
 167.64. Witnessing or attestation of signatures.
 167.65. Certified or attested copies and depositions.
 167.66. Protests of negotiable instruments.

Subchapter G. NOTARIAL CERTIFICATES

167.71. Certificate of notarial act.

Subchapter H. ELECTRONIC AND REMOTE NOTARIZATION

- 167.81. Notification to Department.
 167.82. Use of technology.
 167.83. Electronic notarization technology provider application.
 167.84. Standards for approval of electronic notarization technology.
 167.85. Remote notarization technology provider application.
 167.86. Standards for approval of remote notarization technology.
 167.87. Termination of approval of technology.

Subchapter I. NOTARY PUBLIC EDUCATION

- 167.91. Definitions.
 167.92. Certificate of approval.
 167.93. Course of study.
 167.94. Notification of changes.
 167.95. Certificate of education.
 167.96. Record of attendees.
 167.97. Representatives of the Department attending approved course of study.
 167.98. Termination of certificate of approval.

Subchapter J. STANDARDS OF CONDUCT

- 167.111. Conflict of interest.
 167.112. Duty of candor.
 167.113. Refusal to perform notarial acts.

Subchapter K. PROHIBITED ACTS AND SANCTIONS

- 167.121. Acts or omissions providing the basis for sanctions.
 167.122. Offenses involving fraud, dishonesty or deceit.
 167.123. Factors considered in sanctions.
 167.124. Unauthorized practice of law.
 167.125. Reporting requirements.

Subchapter A. GENERAL PROVISIONS**§ 167.1. Scope.**

(a) This chapter implements and supplements 57 Pa.C.S. Chapter 3 (relating to Revised Uniform Law on Notarial Acts) (act) and is to be read together with the applicable provisions of the act.

(b) This chapter governs the qualification, commissioning, notarial acts, conduct and discipline of notaries public in this Commonwealth.

§ 167.2. Definitions.

(a) The definitions in 57 Pa.C.S. § 302 (relating to definitions) are incorporated by reference and have the same meaning when used in this chapter.

(b) The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Applicant—An individual who seeks appointment or renewal of appointment to the office of notary public.

Appoint or Appointment—The naming of an individual to the office of notary public after determination that the individual has complied with 57 Pa.C.S. § 321(a) and (b) (relating to appointment and commission as notary public; qualifications; no immunity or benefit) and Subchapter B (relating to qualifications for appointment and commission), but prior to the individual complying with 57 Pa.C.S. § 321(c), (d), (d.1) and (d.2). The term includes initial appointment, as well as renewal of appointment and commission.

Appointee—An individual who has been appointed or reappointed to the office of notary public but who has not yet recorded the bond, oath of office and commission in compliance with 57 Pa.C.S. § 321(d.2)(1) or (2).

Certificate of education—A certificate issued by an education provider under § 167.95 (relating to certificate of education) signifying that the person named therein

has successfully completed the approved education program provided by the provider.

Department—The Department of State of the Commonwealth.

Direct or pecuniary interest—An interest in the transaction or record that results in actual or potential gain or advantage, financial or otherwise, other than receiving a regular salary, hourly wage or notarial fee. A regular salary or hourly wage includes bonuses, provided the bonus is not related to or contingent upon the completion of the notarized transaction.

Electronic notarization—The performance of notarial acts with respect to electronic records using tamper-evident technologies.

Electronic notarization technology provider—A provider of tamper-evident technology for performing notarial acts with respect to electronic records, which has been approved by the Department in accordance with § 167.84 (relating to standards for approval of electronic notarization technology).

Electronic notary public—A notary public who has notified the Department that the notary is performing notarial acts with respect to electronic records and who has notified the Department of each technology the notary intends to use to perform notarial acts electronically.

Examination—A proctored computer-based examination required by 57 Pa.C.S. § 322(a) (relating to examination, basic education and continuing education) and described in § 167.15 (relating to notary public examination) to determine the fitness of an applicant to exercise the functions of the office of notary public and administered by a professional testing organization under contract with the Department at times, places and costs established by the professional testing organization.

Home address—The residence address of an applicant or notary public, which must include street and number.

Non-inking embosser—A device that, when pressed into paper, creates a raised impression. Also referred to as a crimping embosser.

Office—The place of employment or practice in this Commonwealth of an applicant or notary public.

Office address—An applicant or notary public's address of place of employment or practice in this Commonwealth, which must include street and number.

Remote notarization—The performance of notarial acts facilitated by communication technology for a remotely located individual.

Remote notarization technology provider—A provider of communication technology and identity proofing for performing notarial acts with respect to remotely located individuals, which has been approved by the Department in accordance with § 167.86 (relating to standards for approval of remote notarization technology).

Remote notary public—A notary public who has notified the Department that the notary is performing notarial acts for a remotely located individual using communication technology and who has notified the Department of each technology the notary intends to use to perform notarial acts remotely.

Renewal of appointment and commission—The process by which an individual who holds an active commission as a notary public in this Commonwealth is reappointed

and obtains another 4-year commission to the office of notary public, in compliance with 57 Pa.C.S. § 321(a)–(e).

Spouse—An individual holding a marriage license issued or recognized under 23 Pa.C.S. Chapter 13 (relating to marriage license) who is married to a notary public.

Tangible—Perceptible by touch when used in conjunction with “record,” “medium” or “symbol.”

§ 167.3. Fees.

(a) The maximum fees of notaries public may not exceed:

Taking acknowledgment	
(per name of first individual making acknowledgment in certificate)	\$5
(per each additional name in same certificate)	\$2
Administering oath or affirmation (per individual taking oath or affirmation)	\$5
Taking verification on oath or affirmation (per individual making declaration)	\$5
Witnessing or attesting a signature (per signature)	\$5
Certifying or attesting a copy or deposition (per certified copy)	\$5
Noting a protest of a negotiable instrument (per page)	\$3

(b) In addition to the fees authorized in subsection (a), electronic notaries public and remote notaries public may charge a fee in an amount not to exceed \$20 per notarial act performed with respect to electronic records or using communication technology.

(c) A notary public shall provide an itemized receipt for all fees charged by the notary.

(d) A notary public may not charge any fee under subsection (a) for notarizing the supporting affidavit required in an Emergency Absentee Ballot or the affidavit of a person needing assistance to vote using an absentee ballot.

(e) A notary public may not charge a fee under subsection (a) when other applicable law dictates that no fee may be charged. For example, see 51 Pa.C.S. § 9101 (relating to acknowledgments and administering oaths without charge).

Subchapter B. QUALIFICATIONS FOR APPOINTMENT AND COMMISSION

§ 167.11. Eligibility and application requirements for initial appointment and commission.

(a) *Eligibility.* The requirements for eligibility are set forth in 57 Pa.C.S. §§ 321, 322 and 323(a) (relating to appointment and commission as notary public; qualifications; no immunity or benefit; examination, basic education and continuing education; and sanctions).

(b) *Application requirements.* An applicant for appointment and commission as a notary public who has never held a notary commission in this Commonwealth must:

- (1) Be 18 years of age or older.
- (2) Be a citizen or permanent legal resident of the United States.
- (3) Be a resident of or have a place of employment or practice in this Commonwealth.

(4) Be able to read and write English.

(5) Not be disqualified to receive a commission under 57 Pa.C.S. § 323(a).

(6) Have completed a basic education course of at least 3 hours approved by the Department within the 6-month period immediately preceding submission of the application, as required by 57 Pa.C.S. § 322(b). The applicant shall submit a certificate of education evidencing successful completion of the basic education course.

(7) Have passed the examination required by 57 Pa.C.S. § 322(a) within the 6-month period immediately following the Department’s authorization to take the examination as specified in § 167.15(c)(1) (relating to notary public examination).

(8) Submit the application on a form prescribed by the Department.

(9) Pay the required fee as specified in § 161.1 (relating to schedule of fees).

(c) *Applicant not residing in this Commonwealth.* If an applicant is not a resident of this Commonwealth, the applicant must have an office in this Commonwealth. The office must be maintained on an ongoing basis and at an established location in this Commonwealth. The applicant must be able to receive mail at the office address.

(d) *Signature.* The applicant’s signature on the application must match the applicant’s name as provided on the application.

§ 167.12. Eligibility and application requirements for renewal of appointment and commission where there has been no lapse in commission.

(a) *Eligibility.* The requirements for eligibility are set forth in 57 Pa.C.S. §§ 321, 322 and 323(a) (relating to appointment and commission as notary public; qualifications; no immunity or benefit; examination, basic education and continuing education; and sanctions).

(b) *Application requirements.* An applicant for appointment and commission as a notary public who holds a notary commission in this Commonwealth at the time the application for renewal is received by the Department must:

- (1) Be 18 years of age or older.
- (2) Be a citizen or permanent legal resident of the United States.
- (3) Be a resident of or have a place of employment or practice in this Commonwealth.
- (4) Be able to read and write English.
- (5) Not be disqualified to receive a commission under 57 Pa.C.S. § 323(a).
- (6) Have completed at least 3 hours of Department-approved continuing education within the 6-month period immediately preceding submission of the application, as required by 57 Pa.C.S. § 322(c). The applicant shall submit a certificate of education evidencing successful completion of the continuing education course.
- (7) Submit the application on a form prescribed by the Department.
- (8) Pay the required fee as specified in § 161.1 (relating to schedule of fees).

(c) *Timing of application.* A notary public must submit an application for renewal prior to the expiration of the commission under which the notary public is acting. A notary public may submit an application for renewal up to 90 days prior to the expiration of the commission under which the notary public is acting.

(d) *Applicant not residing in this Commonwealth.* If an applicant is not a resident of this Commonwealth, the applicant must have an office in this Commonwealth. The office must be maintained on an ongoing basis and at an established location in this Commonwealth. The applicant must be able to receive mail at the office address.

(e) *Signature.* The applicant's signature on the application must match the applicant's name as provided on the application.

§ 167.13. Eligibility and application requirements for renewal of appointment and commission where there has been a lapse in commission.

(a) The requirements for eligibility are set forth in 57 Pa.C.S. §§ 321, 322 and 323(a) (relating to appointment and commission as notary public; qualifications; no immunity or benefit; examination, basic education and continuing education; and sanctions).

(b) An applicant for appointment and commission as a notary public who previously held a notary commission in this Commonwealth, but the commission has expired at the time the application for renewal is received by the Department, must comply with § 167.11 (relating to eligibility and application requirements for initial appointment and commission).

§ 167.14. Name of notary public on application for appointment and commission.

(a) The name of a notary public on an application for appointment and commission shall consist of any one of the following:

(1) A first personal name (first name), additional name or initial (middle name or initial) and surname (family or last name).

(2) A first name and last name, omitting the middle name or middle initial.

(3) A first initial, middle name and last name.

(b) The name of a notary public may not consist of initials alone or nicknames.

(c) The name of a notary public may include generational suffixes such as Junior, Senior, II, III, IV or any abbreviations thereof. The name of a notary public may not include prefixes or suffixes that denote a professional or occupational title such as "Doctor," "Reverend," "Esquire" or any abbreviations thereof.

(d) Upon request of the Department, the name of the notary public as used in an application for appointment and commission must be proven by submission of satisfactory evidence including, a passport, driver's license or government-issued nondriver identification card, which is current and unexpired, or other equivalent evidence as determined by the Department.

§ 167.15. Notary public examination.

(a) *Applicant who does not hold a commission as a notary public.* The requirements for the examination are set forth in 57 Pa.C.S. § 322(a) (relating to examination, basic education and continuing education). The following apply:

(1) An applicant for appointment and commission as a notary public who does not hold a commission in this Commonwealth must pass an examination administered by the Department or a professional testing organization under contract with the Department.

(2) An applicant who does not hold a commission as a notary public includes an applicant who never held a commission as a notary public and an applicant who previously held a commission as a notary public but whose commission has since expired.

(b) *Administration of examination.* An applicant may not take the examination prior to submission of and approval by the Department of an application for appointment.

(c) *Timing of examination.*

(1) Upon approval by the Department of an application for appointment, an applicant will be authorized to take the examination for a period of 6 months.

(2) An applicant may retake the examination within the 6-month period, but no more than one time per 24-hour period.

(d) *Examination results.*

(1) An applicant shall attain a scaled score of 75 or higher to pass the examination.

(2) Examination results are valid for a period of 1 year from the date of the examination.

§ 167.16. Notary public bond.

(a) *Requirements.* The requirements for the notary public bond are set forth in 57 Pa.C.S. § 321(d) (relating to appointment and commission as notary public; qualifications; no immunity or benefit).

(b) *Bond amount.* An applicant shall obtain a surety bond in the amount of \$25,000.

(c) *Transitional provision.* A notary public who holds a commission on _____ may continue to use the notary public's bond until the expiration of that commission.

(Editor's Note: The blank space in subsection (c) refers to the date of publication of the final-form rulemaking in the Pennsylvania Bulletin.)

§ 167.17. Appointment and issuance of commission.

(a) The requirements for the oath of office, bond, official signature, recording and filing are set forth in 57 Pa.C.S. § 321 (relating to appointment and commission as notary public; qualifications; no immunity or benefit).

(b) Upon determination that an applicant has complied with the requirements for appointment under 57 Pa.C.S. Chapter 3 (relating to the Revised Uniform Law on Notarial Acts) and this subchapter, the Department will appoint the applicant to the office of notary public and provide the commission certificate to the recorder of deeds of the county where the appointee maintains an office.

(c) Within 45 days after appointment and prior to entering into the duties of a notary public, the appointee shall:

(1) Obtain a bond in accordance with 57 Pa.C.S. § 321(d) and as set forth in § 167.16 (relating to notary public bond).

(2) Take the oath of office in accordance with 57 Pa.C.S. § 321(c).

(3) Appear before the recorder of deeds in the proper county and record the bond, oath and commission in the office of the recorder of deeds in accordance with 57 Pa.C.S. § 321(d.2).

(4) Register the appointee’s official signature in the proper county office in accordance with 57 Pa.C.S. § 321(d.1).

(d) After recording the bond, oath and commission, the recorder of deeds shall deliver the commission certificate to the notary public.

§ 167.18. Effect of failure to record bond, oath and commission and register official signature within 45 days.

(a) In accordance with 57 Pa.C.S. § 321(f) (relating to appointment and commission as notary public; qualifications; no immunity or benefit), the commission of a notary public who fails to record the bond, oath and commission or register the notary’s official signature within 45 days of appointment shall be null and void.

(b) An appointee whose commission becomes null and void under subsection (a) may apply for appointment and commission as set forth in § 167.13 (relating to eligibility and application requirements for renewal of appointment and commission where there has been a lapse in commission).

Subchapter C. OFFICIAL STAMP AND STAMPING DEVICE

§ 167.21. Official stamp.

(a) *Requirements.* The requirements for the official stamp are set forth in 57 Pa.C.S. § 317 (relating to official stamp).

(b) *Appearance of official stamp.* The official stamp of a notary public must be rectangular in shape and show clearly all of the following information in the following order:

- (1) The words “Commonwealth of Pennsylvania—Notary Seal.”
- (2) The name of the notary public as it appears on the commission and the words “Notary Public.”
- (3) The name of the county in which the notary public maintains an office.
- (4) The date the notary public’s current commission expires.
- (5) The seven-digit commission identification number assigned by the Department.

Example of stamp:

Commonwealth of Pennsylvania—Notary Seal Jane Q. Doe, Notary Public Dauphin County My commission expires May 19, 2026 Commission number 1234567

(c) A word or term on the official stamp may not be abbreviated, except for name suffixes as specified in § 167.14(c) (relating to name of notary public on application for appointment and commission).

(d) *Transitional provision.* A notary public who holds a commission on _____ may continue to use the notary public’s official stamp until the expiration of that commission.

(Editor’s Note: The blank space in subsection (d) refers to the date of publication of the final-form rulemaking in the Pennsylvania Bulletin.)

§ 167.22. Stamping device.

(a) The requirements for the stamping device are set forth in 57 Pa.C.S. § 318 (relating to stamping device).

(b) A stamping device may not be a non-inking embosser.

(c) The stamping device is the exclusive property of the notary public. The notary public shall maintain sole custody and control of the stamping device at all times during the duration of the notary public’s commission. The notary public shall keep the physical stamping device in a secure location and accessible only to the notary public. The notary public shall secure an electronic stamping device by a password or other means of personal authentication.

(d) Notification of loss or theft of the stamping device under 57 Pa.C.S. § 318(b) shall be made in writing or by e-mail to the Department within 15 days after the date the notary public or personal representative or guardian discovers that the stamping device was lost or stolen. For the purpose of this section, the terms “loss” or “lost” include stamping devices that are misplaced, destroyed or otherwise made unavailable. The terms “loss” or “lost” do not include the destruction of the stamping device on resignation, death or incompetency under 57 Pa.C.S. § 318(a)(2) and (3). For the purpose of this section, the terms “theft” and “stolen” include compromised security and unauthorized access to a stamping device. The notification must include all of the following:

(1) A statement that the notary public does not possess the stamping device, stamping device security was compromised or the stamping device was accessed by an unauthorized person.

(2) The date the notary public discovered that the stamping device was lost or stolen.

(e) In accordance with 57 Pa.C.S. § 318(a)(2.1), an individual whose notary public commission has been suspended or revoked shall deliver the stamping device to the Department within 15 days after notice of the suspension or revocation from the Department.

Subchapter D. JOURNAL

§ 167.31. Identification of notary public in journal.

(a) Each journal of a notary public, whether maintained on a tangible medium or in an electronic format, must contain all of the following information in any order:

- (1) The notary public’s:
 - (i) Name as it appears on the commission.
 - (ii) Commission number.
 - (iii) Commission expiration date.
 - (iv) Office address.
 - (v) Signature.

(2) A statement that, in the event of the death or incompetency of the notary public, the journal shall be delivered within 30 days to the office of the recorder of deeds in the county where the notary public last maintained an office.

(3) The meaning of any not commonly abbreviated word or symbol used in recording a notarial act in the journal.

(b) If a notary public's name, commission expiration date or office address changes before the notary public ceases to use the journal, the notary public shall add the new information after the old information and the date which the information changed.

§ 167.32. Journal entries.

(a) *Journal entry requirements.* The requirements for journal entries are set forth in 57 Pa.C.S. § 319(c) (relating to journal).

(b) *Separate entries.* Each notarial act must be indicated as a separate entry in the journal. Blank lines between journal entries must be stricken.

(c) *Blanks spaces within entries.* Each entry in a journal shall be completed fully, with no blank spaces or boxes.

(d) *Prohibited entries.* A journal may not contain any personally identifiable information about any individual appearing before the notary public. As used in this subsection, personally identifiable information includes any of the following:

(i) Information about an individual that can be used to distinguish or trace an individual's identity, such as full Social Security number, full driver's license number or government-issued nondriver identification card number, date and place of birth, mother's maiden name or biometric records.

(ii) Other information that is linked or linkable to an individual, such as medical, educational, financial and employment information.

(e) *Optional entries.* A journal may contain any of the following:

(1) The signature of the individual for whom the notarial act is performed and any additional information about a specific transaction that might assist the notary public to recall the transaction, including the date of the record.

(2) Terminal numbers, including the last four digits of a driver's license, passport or Social Security number.

(f) *Fees.* When documenting notarial fees in the journal, each fee charged must correspond to the notarial act performed. If a notary public waives the right to charge a fee, the notary shall indicate this fact in the journal entry using notations such as "n/c" (no charge), "0" (zero) or "—" (dash).

§ 167.33. Format of journal maintained on a tangible medium.

In addition to the format requirements set forth in 57 Pa.C.S. § 319(b) (relating to journal), journals maintained in a tangible medium must comply with all of the following:

(1) The cover and pages inside the cover must be bound together by any binding method that is designed to prevent the insertion, removal or substitution of the cover or a page. This includes Smyth sewing or stitching, glue, staples, grommets or another permanent binding, but does not include the use of tape, paperclips or binder clips.

(2) Each page must be consecutively numbered from the beginning to the end of the journal. A page number must be preprinted.

§ 167.34. Format of journal maintained in an electronic format.

(a) In addition to the format requirements set forth in 57 Pa.C.S. § 319(b) (relating to journal), a journal main-

tained in an electronic format must be tamper evident. The notary public must ensure all of the following:

(1) A journal maintained in electronic format is designed to prevent the insertion between existing entries, removal of an entry or substitution of an entry.

(2) A journal maintained in electronic format is securely stored and recoverable in the event of a hardware or software malfunction.

(3) The journal is available in a portable document format (PDF) upon request.

(4) If a signature is contained in an electronic journal entry, the signature must be all of the following:

(i) Attached to or logically associated with the electronic notarial journal entry.

(ii) Linked to the data in a manner so that any subsequent alterations to the electronic journal entry are detectable.

(b) A journal maintained in electronic format which is delivered to the office of the recorder of deeds in compliance with 57 Pa.C.S. § 319(e) and (g) must be delivered in PDF or other industry-standard readable format prescribed by the receiving recorder of deeds.

§ 167.35. Custody and control of journal; notification of lost or stolen journal.

(a) In addition to the requirements set forth in 57 Pa.C.S. § 319(h) (relating to journal), a notary public shall maintain custody and control of the journal at all times during the duration of the notary public's commission. The journal is the exclusive property of the notary public. The notary public shall keep the journal in a secure location and accessible only to the notary. The notary public shall secure an electronic journal by a password or other means of personal authentication.

(b) Notification of loss or theft of the journal under 57 Pa.C.S. § 319(d) shall be made in writing or by e-mail to the Department within 15 days after the date the notary public or personal representative or guardian discovers that the journal was lost or stolen. For the purpose of this section, the terms "loss" or "lost" include journals that are misplaced, destroyed or otherwise made unavailable. The terms "loss" or "lost" do not include the delivery of the journal to the office of the recorder of deeds under 57 Pa.C.S. § 319(e) and (g). For the purpose of this section, the terms "theft" and "stolen" include compromised security and unauthorized access to a journal. The notification must include all of the following:

(1) A statement that the notary public does not possess the journal, journal security was compromised or the journal was accessed by an unauthorized person.

(2) The date the notary public discovered that the journal was lost or stolen.

§ 167.36. Inspection and certified copies of journal.

(a) *Inspection.* A notary public shall permit inspection of the journal to any person requesting to view the journal. The request for inspection may be oral or in writing. The inspection shall occur in the presence of the notary public.

(b) *Certified copies.* Requests for certified copies of the journal made in accordance with 57 Pa.C.S. § 319(g.1) (relating to journal) may be oral or in writing and shall specify the particular entry or time period sought. The notary public shall provide the certified copy within 15 days of receipt of the request.

Subchapter E. SCOPE OF PRACTICE**§ 167.41. Authority of notary public to perform notarial act.**

(a) A notary public may perform the notarial acts authorized under 57 Pa.C.S. Chapter 3 (relating to Revised Uniform Law on Notarial Acts) in any county in this Commonwealth.

(b) Notaries public may not perform the notarial acts authorized under 57 Pa.C.S. Chapter 3 outside the geographical borders of this Commonwealth or in other states or jurisdictions, unless authorized by the other state or jurisdiction to perform the acts.

§ 167.42. Personal appearance.

(a) To appear personally before a notary public under 57 Pa.C.S. § 306 (relating to personal appearance required) means that the individual making the statement or executing the signature and the notary public are all of the following:

(1) Physically present before each other when the notarial act is executed.

(2) Able to observe and interact with each other.

(3) Able to see, hear, communicate with and give identification credentials to each other without the use of electronic devices such as telephones, computers, video cameras or facsimile machines. This does not preclude the use of adaptive technology which enables reasonable accommodations for an individual with a vision, hearing or speech impairment in accordance with law.

(b) *Personal appearance:*

(1) Does not include appearance by audio, video or computer technology, unless the notary public is performing notarial acts facilitated by communication technology for a remotely located individual under 57 Pa.C.S. § 306.1 (relating to notarial act performed for remotely located individual).

(2) Is not required when a notary public is certifying or attesting a copy or deposition.

(3) Is not required when a notary public is administering an oral oath or affirmation in a criminal, civil or administrative proceeding in this Commonwealth, as long as the notary and the individual taking the oath or affirmation are able to hear and communicate with each other by means of electronic devices such as telephones, computers or video cameras.

§ 167.43. Identification of individual appearing before notary public—satisfactory evidence.

(a) *General.*

(1) For purposes of 57 Pa.C.S. § 307(b)(1)(i) (relating to identification of individual), a passport, driver's license or government-issued nondriver identification card include any of the following:

(i) A passport or passport card or electronic equivalent issued by the United States Department of State which is current and unexpired.

(ii) A passport or electronic equivalent issued by a foreign government, which is current and unexpired, provided it uses letters, characters and a language that are read, written and understood by the notary public.

(iii) A driver's license or nondriver identification card or electronic equivalent issued by a state of the United States, which is current and unexpired.

(iv) A driver's license or nondriver identification card or electronic equivalent issued by a foreign government, which is current and unexpired, provided it uses letters, characters and a language that are read, written and understood by the notary public.

(2) For the purposes of 57 Pa.C.S. § 307(b)(1)(ii), other forms of government identification may include any of the following:

(i) An identification card issued by any branch of the United States armed forces.

(ii) An inmate identification card issued by the Department of Corrections for an inmate who is currently in the custody of the Department of Corrections.

(iii) An identification card issued by the United States Department of Homeland Security.

(iv) A Social Security card.

(v) A Pennsylvania State university identification card or State-related university identification card.

(vi) A Pennsylvania medical marijuana identification card.

(vii) A consular identification document issued by a consulate from the individual's country of citizenship.

(b) *Credible Witness.*

(1) For purposes of 57 Pa.C.S. § 307(b)(2), the credible witness must do all of the following:

(i) Appear before the notary public contemporaneously with the individual appearing before the notary public.

(ii) Be personally known to the notary public.

(iii) Personally know the individual appearing before the notary public.

(iv) Not have a direct or pecuniary interest with respect to the record being notarized.

(2) The credible witness shall make a verification on oath or affirmation that all of the following are true:

(i) The individual appearing before the notary public is the person named in the record.

(ii) The credible witness personally knows the individual appearing before the notary public through dealings sufficient to provide the credible witness with reasonable certainty that the individual has the identity claimed.

(iii) The credible witness has no direct or pecuniary interest with respect to the record being notarized.

(3) The verification on oath or affirmation of a credible witness shall comply with § 167.63 (relating to verifications on oath or affirmation).

§ 167.44. Use of interpreter; language of record.

(a) A notary public shall be able to communicate directly with the individual for whom a notarial act is being performed in a language they both understand or indirectly through an interpreter. The interpreter must be able to communicate directly with the individual for whom the notarial act is being performed and with the notary public at the time of the notarization.

(b) A notary public may perform a notarial act on a record that is a translation of a record that is in a language that the notary public does not understand only if the person performing the translation makes a verification on oath or affirmation stating that the translation is accurate and complete. The translation and notarized

verification must be attached to the record for which the notarial act is being performed.

§ 167.45. Notification of change in name or other information; effect of certain address changes.

(a) *Requirements.* A notary public shall notify the Department within 30 days of any change in the information on file with the Department, including all the following information related to the notary public:

- (1) Name.
- (2) Office address and phone number.
- (3) Home address and phone number.
- (4) E-mail address.
- (5) Selected electronic notarization technology provider, if applicable, and as required by § 167.81 (relating to notification to Department).
- (6) Selected remote notarization technology provider, if applicable, and as required by § 167.81.

(7) Resignation from the office of notary public.

(b) *Method of notice.* The notice shall be made in writing, electronically or by e-mail and must state the effective date of the change.

(c) *Name change.*

(1) Notice of a change in name under subsection (a)(1) must be on a form prescribed by the Department and accompanied by evidence of the name change, such as a marriage certificate, court order or divorce decree.

(2) When the name of a notary public is changed, the notary public may continue to perform notarial acts in the name in which the notary was commissioned until the expiration of the notary public's term.

(3) Application for renewal of appointment of the notary public shall be made in the new name.

(d) *Effect of certain address changes.* A notary public who has neither a home address nor office address in this Commonwealth will be deemed to have resigned from the office of notary public as of the date the residency ceases or employment or practice within this Commonwealth terminates.

Subchapter F. NOTARIAL ACTS

§ 167.61. Acknowledgments.

In addition to the requirements for acknowledgements in 57 Pa.C.S. § 305(a) (relating to requirements for certain notarial acts), all of the following requirements apply:

(1) A record must be signed by the individual making the acknowledgment in the notary public's presence or prior to the acknowledgment. A record may not be signed subsequent to an acknowledgment.

(2) If the record is signed prior to appearance before the notary public, the individual making the acknowledgment shall acknowledge that the signature on the record is the individual's own when appearing before the notary.

§ 167.62. Oaths and affirmations.

(a) An oath or affirmation may be oral or in writing. If in writing, the individual making the oath or affirmation shall personally appear before the notary public when executing the individual's signature.

(b) In administering a testimonial oath or affirmation, the notary public shall require the individual taking the

oath or affirmation to voluntarily swear or affirm that the statements the individual is giving are true and correct.

(c) In administering an oath of office, the notary public shall require the individual taking the oath or affirmation to voluntarily swear or affirm that the individual will perform the duties and acts of the office faithfully.

§ 167.63. Verifications on oath or affirmation.

In addition to the requirements for verifications on oaths and affirmations in 57 Pa.C.S. § 305(b) (relating to requirements for certain notarial acts), all of the following requirements apply:

(1) A record containing a statement that is being verified on oath or affirmation must be signed in the notary public's presence.

(2) A record containing a statement that is being verified may not be signed subsequent to the verification on oath or affirmation.

(3) In taking a verification on oath or affirmation, the notary public shall administer an oath or affirmation to the individual making the statement by requiring that the individual swear or affirm that the statements contained in the record are true.

§ 167.64. Witnessing or attestation of signatures.

In addition to the requirements for witnessing or attestation of signatures in 57 Pa.C.S. § 305(c) (relating to requirements for certain notarial acts), all of the following requirements apply:

(1) A record containing a signature that is being witnessed or attested must be signed in the notary public's presence.

(2) A record containing a signature that is being witnessed or attested may not be signed prior to or subsequent to the witnessing or attestation of the signature.

§ 167.65. Certified or attested copies and depositions.

In addition to the requirements for certifying or attesting a copy or deposition in 57 Pa.C.S. § 305(d) (relating to requirements for certain notarial acts), all of the following requirements apply:

(1) The notary public shall compare the record to a copy of the record made by the requester or the notary public to determine that the copy is a complete and accurate transcription or reproduction of the record.

(2) The notary public shall examine the record for alteration or tampering.

(3) In issuing a certified or attested copy, the notary public does not guarantee the authenticity of the record, its contents or its effects.

(4) Records for which a notary public may not issue a certified copy include all of the following:

(i) Vital records (birth and death certificates).

(ii) United States Naturalization Certificates.

(iii) A government-issued record that on its face states "do not copy," "illegal to copy" or words of similar meaning.

(iv) A record that is prohibited by law to copy or certify.

(5) Records for which a notary public may issue a certified copy include all of the following:

(i) Public records.

(ii) Passports.

- (iii) Driver's licenses.
- (iv) Transcripts.
- (v) Diplomas.
- (vi) Contracts.
- (vii) Leases.
- (viii) Bills of sale.
- (ix) Medical records, consents or waivers.
- (x) Powers of attorney.

§ 167.66. Protests of negotiable instruments.

(a) As set forth in 57 Pa.C.S. § 305(e) (relating to requirements for certain notarial acts), a notary public who makes or notes a protest of a negotiable instrument shall determine the matters set forth in 13 Pa.C.S. § 3505(b) (relating to evidence of dishonor).

(b) For purposes of this section, a protest is a certificate of dishonor made by a United States consul or vice consul or a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs.

(c) A protest may be made upon information satisfactory to the notary public and shall fulfill all of the following:

- (1) Identify the negotiable instrument.
- (2) Certify either that presentment has been made or, if not made, the reason it was not made.
- (3) State that the instrument has been dishonored by nonacceptance or nonpayment.
- (d) The protest may also certify that notice of dishonor has been given to some or all parties.
- (e) The individual requesting the protest shall be identified in the protest as the holder of the dishonored negotiable instrument.

Subchapter G. NOTARIAL CERTIFICATES

§ 167.71. Certificate of notarial act.

In addition to the requirements for certificates of notarial acts under 57 Pa.C.S. §§ 306.1(c), 315 and 316 (relating to notarial act performed for remotely located individual, certificate of notarial act; and short form certificates), the following requirements apply:

(1) The certificate of notarial act must be worded and completed using the English language. The certificate may be simultaneously worded and completed in another language that is read, written and understood by the notary public. The foreign language certificate must be immediately adjacent to the English-language certificate and the English-language certificate shall prevail in the event of any conflict between the translations.

(2) "Commonwealth of Pennsylvania" may be used instead of "State of Pennsylvania" on certificates of notarial acts.

(3) For the purposes of 57 Pa.C.S. § 315(f)(1), "securely attached" means stapled, grommeted or otherwise bound to the tangible record. The term "securely attached" does not include the use of tape, paperclips or binder clips.

(4) The notary public's signature on a tangible or electronic certificate must match the notary's name on the commission.

Subchapter H. ELECTRONIC AND REMOTE NOTARIZATION

§ 167.81. Notification to Department.

In addition to the requirements set forth in 57 Pa.C.S. §§ 306.1 and 320 (relating to notarial act performed for remotely located individual; and notification regarding performance of notarial act on electronic record; selection of technology), all of the following requirements apply:

(1) Prior to acting as an electronic notary public, a notary public shall notify the Department electronically at www.notaries.pa.gov that the notary will be performing notarial acts with respect to electronic records and shall identify each technology the notary intends to use.

(2) Prior to acting as a remote notary public, a notary public shall notify the Department electronically at www.notaries.pa.gov that the notary will be performing notarial acts for a remotely located individual using communication technology and shall identify each technology the notary intends to use.

(3) The notification required under paragraphs (1) and (2) must occur with the addition or deletion of each electronic or remote notarization technology provider during the course of a notary public's commission and at the beginning of each new commission.

§ 167.82. Use of technology.

An electronic notary public shall use an electronic notarization technology provider approved by the Department. A remote notary public shall use a remote notarization technology provider approved by the Department. The list of approved electronic or remote technology providers can be found at <https://www.dos.pa.gov/OtherServices/Notaries>.

§ 167.83. Electronic notarization technology provider application.

(a) A person offering a tamper-evident technology that enables electronic notaries public to perform notarial acts with respect to electronic records shall be approved by the Department as an electronic notarization technology provider before offering the technology to electronic notaries commissioned in this Commonwealth.

(b) A person applying to the Department for approval as an electronic notarization technology provider must submit an application to the Department on a form prescribed by the Department. The application shall include a description of the technology, including all of the following:

(1) Hardware and software specifications and requirements for the provider's electronic notarization technology.

(2) A description of the types of technology used in the provider's electronic notarization technology.

(3) A demonstration of how the technology is used to perform notarial acts with respect to electronic records.

(c) Upon a determination that the technology conforms to § 167.84 (relating to standards for approval of electronic notarization technology), the Department shall approve the person offering the technology as an electronic notarization technology provider.

§ 167.84. Standards for approval of electronic notarization technology.

In addition to the requirements set forth in 57 Pa.C.S. § 320 (relating to notification regarding performance of notarial act on electronic record; selection of technology),

a tamper-evident technology used to perform notarial acts with respect to electronic records must meet all of the following:

(1) Comply with Federal and State law, including 57 Pa.C.S. Chapter 3 (relating to Revised Uniform Law on Notarial Acts) and this chapter.

(2) Allow a person inspecting an electronic record to determine whether there has been any tampering with the integrity of a certificate of notarial act logically associated with a record or with the attachment or association of the notarial act with that electronic record.

(3) Include all of the electronic notary public's identifying and commissioning information as a part of, or a secure attachment to, the underlying notarized electronic record.

(4) Verify the authorization of the electronic notary public to perform notarial acts with respect to electronic records by verifying the name, commission number and commission expiration date with the Department prior to offering the electronic notarization technology.

(5) Suspend the use of any electronic notarization technology for any electronic notary public whose commission has expired or has been revoked or suspended by the Department.

§ 167.85. Remote notarization technology provider application.

(a) A person offering a communication technology that enables remote notaries public to perform notarial acts for remotely located individuals shall be approved by the Department as a remote notarization technology provider before offering the technology to remote notaries commissioned in this Commonwealth.

(b) A person applying to the Department for approval as a remote notarization technology provider must submit an application to the Department on a form prescribed by the Department. The application shall include a description of the technology, including all of the following:

(1) Hardware and software specifications and requirements for the provider's remote notarization technology.

(2) A description of the types of technology used in the provider's remote notarization technology.

(3) A demonstration of how the technology is used to perform notarial acts with respect to remotely located individuals.

(c) Upon a determination that the technology conforms to § 167.86 (relating to standards for approval of remote notarization technology), the Department shall approve the person offering the technology as a remote notarization technology provider.

§ 167.86. Standards for approval of remote notarization technology.

In addition to the requirements set forth in 57 Pa.C.S. § 306.1 (relating to notarial act performed for remotely located individual), a communication technology used to perform notarial acts for remotely located individuals must meet all of the following:

(1) Comply with Federal and State law, including 57 Pa.C.S. Chapter 3 (relating to Revised Uniform Law on Notarial Acts) and this chapter.

(2) Allow the notary public to communicate with the remotely located individual simultaneously by sight and sound.

(3) Make reasonable accommodations for an individual with a vision, hearing or speech impairment in accordance with law.

(4) Include two types of processes or services by which a third person provides a remote notary public with a means to verify the identity of the remotely located individual by a review of personal information from public or private data sources. Identity proofing methods may include the use of credential analysis, dynamic knowledge-based authentication, biometrics or other means of identification.

(5) Create an audio-visual recording of all interactions between the remote notary public and the remotely located individual during the performance of the notarial act.

(6) Retain the audio-visual recording for a period of 10 years as designated by the remote notary public or enable the remote notary public to download and retain the audio-visual recording.

(7) Allow a person inspecting an electronic record to determine whether there has been any tampering with the integrity of a certificate of notarial act logically associated with a record or with the attachment or association of the notarial act with that electronic record.

(8) Include all of the remote notary public's identifying and commissioning information as a part of, or a secure attachment to, the underlying notarized electronic record.

(9) Verify the authorization of the remote notary public to perform notarial acts facilitated by communication technology by verifying the name, commission number and commission expiration date with the Department prior to offering the remote notarization technology.

(10) Suspend the use of any remote notarization technology for any remote notary public whose commission has expired or has been revoked or suspended by the Department.

§ 167.87. Termination of approval of technology.

The Department may terminate the approval of an electronic notarization technology provider upon a finding that the provider no longer meets the standards set forth in § 167.84 (relating to standards for approval of electronic notarization technology). The Department may terminate the approval of a remote notarization technology provider upon a finding that the provider no longer meets the standards set forth in § 167.86 (relating to standards for approval of remote notarization technology).

Subchapter I. NOTARY PUBLIC EDUCATION

§ 167.91. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Certificate of approval—A certificate issued by the Department under § 167.92 (relating to certificate of approval) indicating that the education provider named therein offers an education program course of study approved by the Department.

Course of study—Basic or continuing education under 57 Pa.C.S. § 322(b) and (c) (relating to examination, basic education and continuing education), offered by means of live classroom instruction or interactive education.

Interactive education—An education process based on the geographical separation of the learner and instructor, which provides synchronous interaction between the learner and instructor, or which does not provide direct

learner and instructor interaction but requires a learner to be actively and reciprocally engaged with the course content. Examples include live online webinars and asynchronous interactive online courses.

Pennsylvania business registration number—The number assigned by the Department's Bureau of Corporations and Charitable Organizations to a business entity or fictitious name registrant that is authorized to conduct business in this Commonwealth.

Provider—An individual or business entity that offers, supplies or provides an approved course of study.

§ 167.92. Certificate of approval.

(a) In accordance with 57 Pa.C.S. § 322(d) (relating to examination, basic education and continuing education), a provider shall obtain a certificate of approval from the Department for each course of study offered.

(b) To apply for a certificate of approval, a provider shall submit all of the following to the Department:

(1) A completed "Notary Public Education Provider Application or Amendment" form.

(2) The fee required by § 161.1(b) (relating to schedule of fees).

(3) A course of study satisfying the requirements of § 167.93 (relating to course of study).

(c) A provider is responsible for all employees, agents, instructors, contractors and subcontractors providing or involved in providing an approved course of study on behalf of the provider and the acts of the employees, agents, instructors, contractors and subcontractors will be deemed the acts of the provider.

(d) The certificate of approval will expire 3 years from the date of issuance. A provider may apply for renewal of approval of a course of study up to 90 days before the expiration of the certificate of approval.

(e) A certificate of approval is non-transferable to another provider or course of study.

§ 167.93. Course of study.

(a) A course of study must meet all of the following requirements:

(1) Include instruction on the required topics as set forth in 57 Pa.C.S. § 322(b)(1) or (c)(1) (relating to examination, basic education and continuing education).

(2) Contain a table of contents, and the pages must be consecutively numbered.

(3) Contain procedures to establish the identity of a person physically attending a classroom course of study or virtually attending a course of study to whom proof of completion shall be issued in accordance with § 167.95 (relating to certificate of education).

(4) Contain procedures to ensure that a person physically attending a classroom course of study or virtually attending a course of study by interactive means is present for the required time.

(5) Include a schedule of the time allotted for all of the following:

(A) Break periods, if any.

(B) Each major subject area.

(C) Each student participation activity, if any.

(D) Completion, correction and discussion of any practice tests used, if any.

(6) If any video is used for instruction, include a brief synopsis of the information presented therein. In addition, the provider shall include the video in the materials presented to the Department for review.

(7) Copies of any handout materials, workbooks, visual aids, description of student participation exercises and practice tests used during the course of study.

(b) If the course of study provides for an instructor or course evaluation by the students, time to complete the evaluation may not be included as part of the course of study.

(c) A provider shall revise an approved course of study as necessary to ensure that the information provided in an approved course of study reflects developments in the law and current notary practice.

§ 167.94. Notification of changes.

Within 30 days of any change in the approved course of study or any information contained in the most recent application approved by the Department, a provider must submit to the Department a "Notary Public Education Provider Application or Amendment" form identifying the changes.

§ 167.95. Certificate of education.

(a) A provider shall issue a certificate of education to a notary public applicant upon successful completion of an approved course of study.

(b) The certificate of education must consist of a certificate signed by a provider or an employee, agent, instructor, contractor or subcontractor of a provider, which contains all of the following information:

(1) The name of the education provider as it appears on the certificate of approval issued by the Department for the approved course of study.

(2) The name of the approved course of study and whether it is basic education or continuing education.

(3) The name of the notary public applicant who completed the approved course of study.

(4) The date the notary public applicant completed the approved course of study.

(5) The statement that the certificate of education is valid for a period of 6 months from the date of issuance.

§ 167.96. Record of attendees.

A provider shall maintain documentation of the persons who attend each session of an approved course of study for a period of 5 years.

§ 167.97. Representatives of the Department attending approved course of study.

A provider shall permit representatives of the Department to attend any approved course of study, without prior notice and at no charge, for the purpose of observation, monitoring, auditing and investigating the instruction given.

§ 167.98. Termination of certificate of approval.

The Department may terminate a certificate of approval upon any of the following grounds:

(1) Violation of any of the provisions of 57 Pa.C.S. Chapter 3 (relating to Revised Uniform Law on Notarial Acts) or this chapter.

(2) Misrepresentation of the laws of the Commonwealth concerning the duties and functions of a notary public.

(3) Deviation from the course of study approved by the Department.

(4) Failure to respond to a request for information from the Department.

(5) Representations by the provider that any other product, goods or services provided by the provider are endorsed or recommended by the Department.

(6) Failure to prepare course attendees to pass the notary public examination that an annual combined scaled score of all attendees of 60% or more is not maintained.

Subchapter J. STANDARDS OF CONDUCT

§ 167.111. Conflict of interest.

(a) In accordance with 57 Pa.C.S. § 304(b) (relating to authority to perform notarial act), a notary public may not perform a notarial act with respect to a record in which the notary public or the notary public's spouse has a direct or pecuniary interest.

(b) A notary public may not notarize a notary public's own signature.

(c) A notary public may perform a notarial act with respect to a record that the notary public's spouse is signing, only if the notary public and the notary public's spouse have no direct or pecuniary interest in the record.

§ 167.112. Duty of candor.

A notary public or an applicant for appointment and commission as a notary public shall comply with all requests of the Department for information related to an application for appointment, commissioning, required notifications to the Department, investigations and the performance of notarial acts.

§ 167.113. Refusal to perform notarial acts.

For the purposes of 57 Pa.C.S. § 308 (relating to authority to refuse to perform notarial act), a notary public may not refuse to provide notarial services on the basis of a customer's race, color, national origin, religion, sexual orientation, sex, gender, pregnancy, gender identity, gender expression, disability or marital status.

Subchapter K. PROHIBITED ACTS AND SANCTIONS

§ 167.121. Acts or omissions providing the basis for sanctions.

(a) As set forth in 57 Pa.C.S. § 323(a) (relating to sanctions), the Department may deny, refuse to renew, revoke, suspend, reprimand or impose a condition on a commission as a notary public for an act or omission that demonstrates that the individual lacks the honesty, integrity, competence or reliability to act as a notary public. These acts or omissions include all of the following:

(1) Notarizing the individual's own signature or statement.

(2) Notarizing a spouse's signature or statement, when the notary public or the spouse has a direct or pecuniary interest in the record.

(3) Affixing to or logically associating the notary's official stamp or signature with a record or notarial certificate before the notarial act has been performed.

(4) Post-dating or pre-dating notarial acts.

(5) Altering a record after it has been notarized. This includes altering the notarial certificate for a purpose other than to correct a ministerial error.

(6) Altering, inserting or deleting journal entries other than to correct a ministerial error.

(7) Retaining a customer's record or identification credential or retaining a copy of a customer's record or identification credential, unless permitted by law.

(8) Issuing to the order of the Commonwealth, the Department of State, a recorder of deed or a prothonotary a personal check without sufficient funds on deposit in payment of any application, recording or registration required by the act.

(9) Performing a notarial act within this Commonwealth when the person was not commissioned as a notary public or was otherwise not authorized to perform a notarial act.

(10) Performing a notarial act in another state under the authority of the notary public's commission in this Commonwealth.

(11) Making a representation that the notary public has powers, qualifications, rights or privileges that the notary public does not have.

(12) Use of the terms "notario," "notario publico," "notario publica" or any non-English equivalent term in a manner which misrepresents the authority of the notary public.

(13) Engaging in the unauthorized practice of any regulated profession, including the practice of law.

(14) Using the notary public's title or official stamp for a purpose other than to perform a notarial act.

(15) Failure to require the personal appearance through physical presence of an individual making a statement in or executing a signature on a tangible record or with respect to an electronic record.

(16) Failure to require the personal appearance of a remotely located individual when using communication technology to perform notarial acts.

(17) Failure to have personal knowledge or satisfactory evidence of the identity of an individual appearing before the notary public.

(18) Executing a notarial certificate that contains a statement known to the notary public to be false.

(19) Placing the official stamp over any signature in the record to be notarized or over any writing in a notarial certificate.

(20) Permitting any other person to use the notary public's official stamp or stamping device to perform a notarial act or for any other purpose.

(21) Using another notary public's stamping device or embosser to perform a notarial act.

(22) Violating a disciplinary order of the Department.

(23) Issuance of a certificate of dishonor of a negotiable instrument, also known as a protest of commercial paper as defined in 13 Pa.C.S. § 3505(b) (relating to evidence of dishonor), that was owned or held for collection by a financial institution, trust company or investment company when the notary public was a party to the commercial paper in an individual capacity.

(24) Issuance of a certificate of dishonor of a negotiable instrument, also known as a protest of commercial paper as defined in 13 Pa.C.S. § 3505(b), of a noncommercial or other record that does not fit the definition of negotiable instrument as defined in 13 Pa.C.S. § 3104 (relating to negotiable instrument).

(25) Issuance of a certificate of dishonor of a negotiable instrument, also known as a protest of commercial paper as defined in 13 Pa.C.S. § 3505(b), in a manner not in accordance with 13 Pa.C.S. § 3505.

(26) Submission of any of the following types of records to the Department or Secretary of the Commonwealth in reply to correspondence from the Department or other government agency or initiating proceedings:

(i) Conditional acceptance, or a similar record purporting to conditionally accept presentment of an official record, and demanding proof of a list of claims to fully accept the official record.

(ii) Affidavit in support of conditional acceptance, or a similar record purporting to attest to the facts of a record and signed by the same notary public who is attesting.

(iii) Notice of dishonor, or a similar record purporting to give notice that a conditional acceptance has not been accepted by the government agency to which it was sent and thereby was dishonored.

(iv) Accepted for value, or similar stamp or certificate purporting to accept for a disclosed or undisclosed value an official record sent to the notary public by the Department, the Secretary of the Commonwealth or other governmental agency. The certificate claims to establish an amount of money payable or accrued to the signor of the certificate.

(v) Notice of protest, or a similar record purporting to be a protest of commercial paper that has been dishonored, when the commercial paper is not, in fact, a negotiable instrument under 13 Pa.C.S. Division 3 (relating to negotiable instruments) and subject to the laws stated therein regarding dishonor and protest.

(vi) Other records attempting to apply 13 Pa.C.S. Division 3 to non-negotiable instruments or other records not included in the scope of Division 3.

(vii) Other record types purporting to follow the Uniform Commercial Code and not related to a filing under 13 Pa.C.S. Division 9 (relating to secured transactions).

(b) For the purposes of 57 Pa.C.S. § 323(a) and this subchapter, an act or omission includes an act or omission occurring within or outside this Commonwealth.

§ 167.122. Offenses involving fraud, dishonesty or deceit.

(a) As set forth in 57 Pa.C.S. § 323(a)(3) (relating to sanctions), the Department may deny, refuse to renew, revoke, suspend, reprimand or impose a condition on a commission as a notary public for conviction of or acceptance of accelerated rehabilitative disposition by the applicant or notary public of an offense involving fraud, dishonesty or deceit. An offense involving fraud, dishonesty or deceit includes any of the following:

(1) The following offenses defined in 18 Pa.C.S. Chapter 39 Subchapter B (relating to definition of offenses):

§ 3921. Theft by unlawful taking or disposition.

§ 3922. Theft by deception.

§ 3922.1. Financial exploitation of an older adult or care-dependent person.

§ 3923. Theft by extortion.

§ 3924. Theft of property lost, mislaid, or delivered by mistake.

§ 3925. Receiving stolen property.

§ 3926. Theft of services.

§ 3927. Theft by failure to make required disposition of funds received.

§ 3929. Retail theft.

§ 3929.1. Library theft.

§ 3929.3. Organized retail theft.

§ 3930. Theft of trade secrets.

§ 3931. Theft of unpublished dramas and musical compositions.

§ 3932. Theft of leased property.

§ 3934. Theft from a motor vehicle.

§ 3935.1. Theft of secondary metal.

§ 3936. Theft of mail.

(2) The following offenses defined in 18 Pa.C.S. Chapter 41 (relating to forgery and fraudulent practices):

§ 4101. Forgery.

§ 4102. Simulating objects of antiquity, rarity, etc.

§ 4103. Fraudulent destruction, removal or concealment of recordable instruments.

§ 4104. Tampering with records or identification.

§ 4105. Bad checks.

§ 4106. Access device fraud.

§ 4106.1. Unlawful device-making equipment.

§ 4107. Deceptive or fraudulent business practices.

§ 4107.1. Deception relating to kosher food products.

§ 4107.2. Deception relating to certification of minority business enterprise or women's business enterprise.

§ 4108. Commercial bribery and breach of duty to act disinterestedly.

§ 4109. Rigging publicly exhibited contest.

§ 4110. Defrauding secured creditors.

§ 4111. Fraud in insolvency.

§ 4112. Receiving deposits in a failing financial institution.

§ 4113. Misapplication of entrusted property and property of government or financial institutions.

§ 4114. Securing execution of documents by deception.

§ 4115. Falsely impersonating persons privately employed.

§ 4117. Insurance fraud.

§ 4118. Washing vehicle titles.

§ 4119. Trademark counterfeiting.

§ 4120. Identity theft.

§ 4121. Possession and use of unlawful devices.

(3) The following offenses defined in 18 Pa.C.S. Chapter 47 (relating to bribery and corrupt influence):

§ 4701. Bribery in official and political matters.

§ 4702. Threats and other improper influence in official and political matters.

§ 4703. Retaliation for past official action.

(4) The following offenses defined in 18 Pa.C.S. Chapter 49 (relating to falsification and intimidation):

§ 4902. Perjury.

§ 4903. False swearing.

- § 4904. Unsworn falsification to authorities.
- § 4905. False alarms to agencies of public safety.
- § 4906. False reports to law enforcement authorities.
- § 4906.1. False reports of child abuse.
- § 4909. Witness or informant taking bribe.
- § 4910. Tampering with or fabricating physical evidence.
- § 4911. Tampering with public records or information.
- § 4912. Impersonating a public servant.
- § 4913. Impersonating a notary public or a holder of a professional or occupational license.
- § 4914. False identification to law enforcement authorities.
- § 4915.1. Failure to comply with registration requirements.
- § 4915.2. Failure to comply with 42 Pa.C.S. Ch. 97 Subch. I registration requirements.
- § 4952. Intimidation of witnesses or victims.
- § 4958. Intimidation, retaliation or obstruction in child abuse cases.

(5) The following offenses defined in 18 Pa.C.S. Chapter 51 Subchapter A (relating to definition of offenses generally):

- § 5101. Obstructing administration of law or other governmental function.
- § 5105. Hindering apprehension or prosecution.
- § 5107. Aiding consummation of crime.
- § 5108. Compounding.
- § 5111. Dealing in proceeds of unlawful activities.

(6) The following offenses defined in 18 Pa.C.S. Chapter 53 (relating to abuse of office):

- § 5301. Official oppression.
- § 5302. Speculating or wagering on official action or information.
- (7) Criminal attempt if the underlying crime involves fraud, dishonesty or deceit. See 18 Pa.C.S. § 901 (relating to criminal attempt).

(8) Criminal solicitation if the underlying crime involves fraud, dishonesty or deceit. See 18 Pa.C.S. § 902 (relating to criminal solicitation).

(9) Criminal conspiracy if the underlying crime involves fraud, dishonesty or deceit. See 18 Pa.C.S. § 903 (relating to criminal conspiracy).

(b) For the purposes of 57 Pa.C.S. § 323(a)(3) and this chapter, “conviction of or acceptance of Accelerated Rehabilitative Disposition” includes conviction or acceptance of Accelerated Rehabilitative Disposition or other similar diversionary program in any other state or jurisdiction.

§ 167.123. Factors considered in sanctions.

When imposing any action authorized under 57 Pa.C.S. § 323 (relating to sanctions), including denial of application, the Department may consider a variety of factors including:

(1) The nature, number and severity of any acts, offenses, official misconduct or crimes under consideration.

(2) Evidence pertaining to the honesty, credibility, truthfulness and integrity of the applicant or notary public.

(3) Actual or potential monetary or other harm to the general public, group, individual or customer.

(4) The history of complaints received by the Department.

(5) Prior disciplinary record or warning from the Department.

(6) Evidence in mitigation.

(7) Evidence in aggravation.

(8) Other occupational, vocational or professional license disciplinary record.

(9) Evidence of rehabilitation, such as reference letters and proof of class attendance.

(10) A criminal record.

(11) Reports from law enforcement agencies.

(12) Willfulness.

(13) Negligence.

§ 167.124. Unauthorized practice of law.

In determining whether a notary public has assisted a person in drafting legal records, gave legal advice or is otherwise practicing law in violation of 57 Pa.C.S. § 325 (relating to prohibited acts), the Department will take into consideration the factors in the Pennsylvania Bar Association Unauthorized Practice of Law Committee Formal Opinion 2006-01 or any successor opinion.

§ 167.125. Reporting requirements.

A notary public shall notify the Department of any of the following:

(1) Conviction of or acceptance of Accelerated Rehabilitative Disposition in resolution of a felony or an offense involving fraud, dishonesty or deceit within 30 days of the disposition or on the next application for renewal of appointment and commission, whichever is sooner.

(2) Disciplinary action taken against the notary public’s commission by the commissioning authority of another state or jurisdiction within 30 days of receiving notice of the disciplinary action or on the next application for renewal of appointment and commission, whichever is sooner.

(3) Finding against, or admission of liability by, the notary public in any criminal, civil or administrative proceeding, based on the fraud, dishonesty or deceit of the notary public, within 30 days of conclusion of the legal proceeding or on the next application for renewal of appointment and commission, whichever is sooner.

(4) Finding by the Pennsylvania Bar Association or the courts of the Commonwealth or the bar or courts of any other state or jurisdiction finding that the notary public has engaged in the unauthorized practice of law within 30 days of conclusion of the proceeding or on the next application for renewal of appointment and commission, whichever is sooner.

(5) Payment to a claimant under the notary’s bond within 30 days of the surety making the payment or on the next application for renewal of appointment and commission, whichever is sooner.

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