

Comments of the Independent Regulatory Review Commission



Department of State Regulation #16-59 (IRRC #3212)

Regulations Implementing the Revised Uniform Law on Notarial Acts

November 29, 2018

We submit for your consideration the following comments on the proposed rulemaking published in the September 1, 2018 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (RRA) (71 P.S. § 745.5b). Section 5.1(a) of the RRA (71 P.S. § 745.5a(a)) directs the Department of State (Department) to respond to all comments received from us or any other source.

1. Determining whether the regulation is in the public interest; Clarity and lack of ambiguity; Reasonableness of requirements, implementation procedures.

This proposed regulation implements Act 73 of 2013 (Act). 57 Pa.C.S.A. §§ 301–331. Throughout the proposed regulation, the Department is inconsistent in its implementation of the Act. We note that the Department includes some provisions of the Act, leaves other provisions out, and cross-references others. It appears that the Department primarily intended to supplement the Act in drafting the proposed regulation; however, the Act contains crucial information, such as definitions, which makes reading only the proposed regulation problematic when a cross-reference to the Act is not provided. Further, we note that the Department provides a great deal of information on its website, some of which appears to be regulatory in nature and, therefore, should be included in the final regulation. We provide examples below.

Example of partial provisions from the Act

- When looking at Section 167.21 (relating to official stamp) as compared to Section 317 of the Act (relating to official stamp) (57 Pa.C.S.A. § 317), we note that all or parts of the requirements in Paragraphs (1), (2) and (3) of the Act are not included in the proposed regulation. Specifically, Paragraph (1) includes a requirement that the seal must be made of rubber. Paragraph (2) states the seal must have a maximum height of one inch and width of three and one-half inches, with a plain border. Paragraph (3) states that the seal must be capable of being copied together with the record to which it is affixed or attached or with which it is logically associated. These requirements are not included in the proposed regulation so a person reading only the regulations would find some but not all of the requirements relating to a seal.

Examples of entirely missing provisions from the Act

- The Act contains many definitions which are crucial to understanding the proposed regulation, but the Department does not cross-reference the Act under Section 167.2 (relating to definitions).
- Subchapter J (relating to prohibited acts and sanctions) does not reference the authority of the Department in Section 323 of the Act (relating to sanctions) (57 Pa.C.S.A. § 323) to “deny, refuse to renew, revoke, suspend, reprimand or impose a condition on a commission as notary public” The Department simply begins the subchapter by listing offenses involving fraud, dishonesty or deceit in Section 167.111 (relating to offenses involving fraud, dishonesty or deceit). In the final-form regulation, the Department should clarify for the regulated community the purpose of this subchapter and state the Department’s authority related to prohibited acts and sanctions.

Example of missing information and website requirements

- Subsection 167.81(c) (relating to notification regarding use of electronic notarization) states that in order to obtain authorization as an electronic notary public, a notary public shall submit “the following information to the Department **in a manner prescribed by the Department . . .**” and then lists the required information which includes the electronic notarization solution provider. (Emphasis added.) This is the only information related to becoming an electronic notary found in the proposed regulation; the Department does not provide the “manner prescribed,” nor does the Department state where it can be found. We note that there is a document on the Department’s website titled *Eight Steps to Becoming an Electronic Notary in Pennsylvania*. Do these eight steps contain additional requirements that should be included in the final regulation? How do the requirements in Subsection 167.81(c) fit into the eight steps? It is unclear from the proposed regulation and the Department’s website how the electronic notary process will be implemented.

Inconsistencies make it difficult for the regulated community to know what is required since two documents and the Department’s website are needed in order to be completely informed about compliance requirements. This may lead to confusion for the regulated community. Additionally, if the steps listed on the Department’s website are requirements, they should be included in the final regulation. This applies to any other requirements that are only found on the website, as well.

Further, two national associations and several commenters recommend revisions that would simplify and clarify proposed requirements. We agree that certain provisions could be more concise in the final regulation such as Subsection 167.15(a) (relating to notary public examination) which states:

Under [S]ection 322(a) of the [A]ct (relating to examination, basic education and continuing education), an applicant for a commission as a notary public who does not hold a current commission in this Commonwealth shall pass an examination as a condition of appointment. An applicant who does not hold a current

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.

Another example is in Subsection 167.22(c) (relating to stamping device) which seems to be repetitive when it states in part, “When not in use, the stamping device must be kept in a secure location and accessible only to the notary public. A secure location includes in the notary public’s sole possession or in a locked location to which only the notary public has access.” Revisions to provisions such as these would improve clarity and prevent ambiguity. The Department should work with these commenters and the regulated community to ensure that the final regulation is clear and lacks ambiguity.

Additionally, we ask the Department to carefully review and revise titles of sections and the order of the final regulation. For example:

- Section 167.14 is titled “Application for appointment” and Section 167.18 is titled “Reappointment.” It is unclear from these titles that Section 167.14 applies to both applications for appointment and reappointment.
- Section 167.115 is titled “Factors considered in disciplinary action,” but the section itself explicitly states that the listed factors are to be considered not only in taking disciplinary action but also when determining whether to deny an application.
- Logically, one would expect to find general application requirements before any exceptions. However, the proposed regulation addresses exceptions (Sections 167.11 (relating to eligibility for appointment and commission – applicants not residing in this Commonwealth) and 167.12 (relating to eligibility for appointment and commission – applicants holding state and Federal office)) before general application requirements (Section 167.14 (relating to application for appointment)).

We ask the Department to ensure that the final regulation, including the titles and order, is clear, lacks ambiguity, and contains cross-references to all of the provisions with which the regulated community must comply, including all relevant requirements from the Act and the Department’s website.

CHAPTER 161. FEES

2. Section 161.2. Notary public fee schedule. – Statutory authority; Economic or fiscal impacts; Clarity and lack of ambiguity.

The Preamble to the proposed regulation, under *Fees*, states the “existing **maximum permissible fees** which may be charged by notaries public are included in proposed [Section] 161.2.” (Emphasis added.) Subsection 329.1(a) of the Act mandates that “fees of notaries public shall be **fixed** by the [D]epartment by regulation.” 57 Pa.C.S.A. § 329.1(a). (Emphasis added.) Further, Section 161.2 states that “fees of notaries public as **fixed** by the Department . . . are” (Emphasis added.) We ask the Department to explain in the Preamble to the final-form regulation its authority to set a maximum fee and, if authorized, to revise Section 161.2 to clarify that the fees are a maximum rather than fixed.

A commenter noted that this section does not contain fees for electronic records and signatures. The Department should revise this section to specifically address electronic notarization or clarify that the fees apply to electronic notarization.

Also, commenters question if notaries public are permitted to collect clerical and administrative fees since they are not addressed in this section but are allowed under Subsection 167.32(d) (relating to journal entries) which provides that a notary public may charge “[c]lerical and administrative fees.” The Preamble to the final-form regulation should explain what services a notary public may consider to be clerical and administrative. Further, we ask the Department to revise this section to address clerical and administrative fees.

CHAPTER 167. NOTARIES PUBLIC

Subchapter A. GENERAL PROVISIONS

3. Section 167.2. Definitions. – Clarity and lack of ambiguity.

The Department defines “examination” as “described in [Section] 167.15 (relating to notary public examination).” The Department should move the substance of the definition of “examination” from the body of the regulation to the definitions section of the final regulation.

Commenters note that the Department uses the undefined term “document” throughout the proposed regulation rather than the term “record” which is defined in the Act. If these terms are interchangeable, we ask the Department to revise the final regulation to use the term “record” as defined in the Act. If they are not interchangeable, the Department should define the term “document.”

The term “logically associated” is used throughout the Act and Chapter 167 in relation to physical and electronic records. We ask the Department to define this term or explain in the Preamble to the final regulation how the Department will ensure that the meaning of this term is clear for the regulated community.

The Act defines “signature” whereas the proposed regulation does not. We note that the Department uses variations of this term such as “official signature” and “preferred signature” within the regulation. How do these terms differ from the term “signature”? We ask the Department to use the term “signature” as defined in the Act if appropriate, or to define these variations of the term “signature” in the final regulation.

A commenter states that not all counties in Pennsylvania have a recorder of deeds. When referencing a recorder of deeds in the final regulation, we ask the Department to cross-reference to the definition of “recorder of deeds” in the Act in order to clarify that the term also includes “an official with similar duties and responsibilities.”

Subchapter B. QUALIFICATIONS FOR APPOINTMENT AND COMMISSION

4. Section 167.11. Eligibility for appointment and commission—applicants not residing in this Commonwealth. – Clarity and lack of ambiguity.

In each of the subsections, the Department uses the term “practice.” We ask the Department to define this term in the final regulation.

Subsection (b) states that employment or practice shall be on an “ongoing basis;” however, this is non-regulatory language that does not set a binding norm. A regulation has the full force and effect of law and this term does not establish a standard that could be predicted by the regulated community. We ask the Department to define the standard for ongoing employment or practice in the final-form rulemaking.

5. Section 167.12. Eligibility for appointment and commission—applicants holding state and Federal office. – Need for the regulation.

This section states that the disqualifications of Section 1 of the act of May 15, 1874 (P.L. 186, No. 120) apply to individuals who are elected or appointed to any office under the legislative, executive or judiciary departments of the United States government. What is the need for including this in the regulation?

6. Section 167.14. Application for appointment. – Clarity and lack of ambiguity; Need for the regulation; Reasonableness of requirements, implementation procedures.

Subsection (a) addresses a “first-time applicant.” Does Subsection (a) apply to all applicants who are seeking an appointment and not just “first-time” applicants? It is unclear as written since a person may be applying for a second or third time if the person did not pass the exam within six months as referenced in Subsection 167.15(e) (relating to notary public examination) or if the person’s exam results are no longer valid as referenced in Subsection 167.15(c). We ask the Department to clarify this provision.

Subsections (a) and (b) require submission of “evidence of successful completion” of an education course. What qualifies as evidence of successful completion? We note that Subchapter I (relating to notary public education) defines “certificate of education” as “. . . signifying that the person named therein has successfully completed the approved education program provided by the provider.” If this is the document intended to be submitted as evidence in Section 167.14, the Department should move the definition to Section 167.2 (relating to definitions) and clarify that a certificate of education is required in Subsections (a) and (b).

Subsection (d) requires an applicant’s signature on the application for appointment to be legible. If the applicant’s name cannot be discerned from the signature, the applicant is required to print his name adjacent to the signature. A commenter questions the necessity of this provision as the application will provide the applicant’s name printed or typed on the form. We ask the Department to explain the need for and reasonableness of this requirement in the Preamble to the final-form regulation.

The last sentence of Subsection (d) refers to the “notary public’s full name.” Since this section addresses the application for appointment and refers to “applicants,” should the final sentence be revised to the “applicant’s full name”?

7. Section 167.15. Notary public examination. – Clarity and lack of ambiguity; Reasonableness of requirements, implementation procedures.

Overall, it is unclear in the proposed regulation how the examination results are used in the process of going from an applicant to an appointee to being issued a commission. We ask the Department to explain the process of going from applicant to appointee to notary public in the Preamble to the final regulation, and to ensure that each of the steps is clearly set forth in the final-form regulation, including how examination results are provided to the applicant and the Department.

We also have several specific issues related to the individual subsections.

Subsection (b) states, “The examination will be administered by a professional testing organization under contract with the Department at times, places and costs established by the professional testing organization, **but in no case prior to submission of and approval by the Department of an application for appointment.**” (Emphasis added.) What does the last part of this provision mean and to whom does it apply? The Department should clarify who is submitting the application for appointment.

Also, we have concerns that Subsection (b) specifies a “written” examination that is “proctored” while the Department’s website states that the test is “computer-based.” We ask the Department to clarify requirements related to the examination in the final regulation.

In Subsection (d), what is a “scaled score”? Also, if the Department intends to pass applicants who attain a scaled score of **75 or higher**, the Department should clarify this provision in the final regulation.

Subsection (f) states that more information about the examination is available on the Department’s website. In the Preamble to the final regulation, the Department should explain what additional information is available on its website and explain why the additional language is not needed in the final regulation. Additionally, the Department should remove the specific web address from the final regulation so that the regulation will not need to be amended if the information is relocated in the future.

8. Section 167.16. Appointment and issuance of commission. – Clarity, feasibility and reasonableness of the regulation.

Paragraph (c)(2) states that the appointee shall obtain a bond “without delay.” This is non-regulatory language and does not set a binding norm. A regulation has the full force and effect of law, and this sentence does not establish a standard that could be predicted by the regulated community. We ask the Department to include a fixed timeline in the final-form regulation.

Subsection (e) states that after administering the oath of office, the recorder of deeds shall deliver the commission certificate to the notary public. A commenter suggests that the recorder of deeds should deliver the commission only after receiving proof that the appointee has signed the official register. We ask the Department to explain the reasonableness of not requiring the recorder of deeds to have proof that the appointee has signed the official register prior to delivering the commission.

9. Section 167.17. Appointment if bond, oath and commission not recorded within 45 days. – Clarity and lack of ambiguity.

Subsection (b) states that an appointee who fails to record the bond, oath and commission within 45 calendar days of appointment may apply for appointment or reappointment under Subsection (c). Should this provision also include a failure to register an official signature?

Paragraph (c)(1) requires that an appointee submit a new application for appointment or reappointment. Should Paragraph (c)(1) require the application to be in compliance with Subsections 167.14(c) and (d) (relating to application for appointment)?

Paragraph (c)(3) states that an appointee shall submit evidence of completion of education and that the “certificate of education” must be “valid” at the time of application. As a follow-up to Comment #6 where we ask that the term “certificate of education” be moved to Section 167.2 (relating to definitions), the definition should also state what makes a certificate valid.

10. Section 167.18. Reappointment. – Clarity and lack of ambiguity; Reasonableness of requirements.

While the title of this section is “Reappointment,” as noted in Comment #1, Section 167.14 (relating to application for appointment) also contains requirements for applications for reappointment. Since this section contains only one sentence, we recommend the Department revise the title of Section 167.14 and merge the two sections. If this section is retained in the final regulation, we ask the Department to explain the reasonableness of keeping this separate section.

Subchapter C. OFFICIAL STAMP, STAMPING DEVICE AND EMBOSSE

11. Section 167.22. Stamping device. – Clarity and lack of ambiguity; Need for the regulation; Reasonableness of requirements, implementation procedures and timetables for compliance.

Subsection (a) states, “A stamping device, as used in [S]ections 302 and 318 of the [A]ct (relating to definitions; and stamping device), does not include a noninking embosser or crimper.” We ask the Department to define “noninking embosser” and “crimper.”

Subsection (d) discusses actions taken by a notary public when a stamping device is lost or stolen. The parallel provision in Subsection 167.35(b) (relating to custody and control of

journal; notification of lost or stolen journal) defines “loss.” Should the same definition be added to this subsection?

Paragraph (d)(1) requires the notification of loss or theft of a stamping device to include a statement of whether the stamping device is lost or stolen. Paragraph (d)(4) then further requires the notification to include a statement that the notary public does not possess the stamping device and does not know who possesses it or where it is located. In essence, these seem to be the same requirement. We ask the Department to explain the need for including a statement of whether the stamping device is lost or stolen, and the need for and reasonableness of requiring both statements.

Paragraph (d)(2) requires the notification of loss or theft of a stamping device to include an explanation of how the stamping device became lost or stolen. We ask the Department to explain the need for and reasonableness of requiring this explanation.

Subsection (e) similarly asks for an explanation of how the stamping device was recovered if a notary public reacquires possession of a lost or stolen stamping device. Again, we ask the Department to explain the need for and reasonableness of requiring this explanation.

Finally, regarding lost or stolen stamping devices, neither this section nor the Act contemplates a replacement stamping device. May a notary public obtain a replacement stamping device when the original is lost or stolen? A commenter states that unless the new stamping device is noticeably different from the original stamp, it is difficult to see how these provisions heighten the security and integrity of notarial acts. What is the cause for concern if a notary public would have two identical devices if the original device is found? We ask the Department to address the question of replacement stamping devices and to explain the reasonableness of the requirements in the final-form regulation.

Subsection (f) requires an individual whose notary public commission has been suspended or revoked to deliver the stamping device to the Department. Why and how would a notary public commission be suspended or revoked? Subsection (f) should contain a cross-reference to the regulation providing for suspension or revocation of a notary public commission.

Also, neither Subsection (f) nor Section 167.35 indicates what should be done with the stamping device and journal if an individual does not apply for reappointment. We ask the Department to clarify these procedures in the final-form regulation.

Subchapter D. JOURNAL

12. Section 167.31. Identification of notary public in journal. – Clarity.

Paragraph (a)(4) refers to the notary public’s “office address of record with the Department.” A commenter notes that a notary public’s office of record may be a home address. The definition of “address” in Section 167.2 (relating to definitions) includes home and office. We ask the Department to clarify the provision by deleting the reference to “office” in this paragraph.

13. Section 167.32. Journal entries. – Clarity and lack of ambiguity; Need of the regulation; Reasonableness of requirements, implementation procedures.

Subsection (c), regarding prohibited entries, states that a journal may not contain any personal financial or identification information such as complete Social Security numbers, complete drivers' license numbers or complete account numbers. Subsection (f), regarding personal financial or identification information, identifies what "personal financial or identification information" means for the purpose of Subsection (c), including, again, a Social Security number, driver's license number and financial account number. We ask the Department to combine these two subsections to reduce repetition and improve clarity for the regulated community regarding what is prohibited in a journal entry.

Subsection (e), regarding address, requires an address be recorded as a part of a notarial act. What address is this: the location of the notarial act or the customer's home or work address? The Department should clarify this requirement in the final-form regulation.

Subsection (g), regarding transitional provision, permits a notary to use the current journal after the effective date of the regulation, but only until the expiration of the commission. Can a notary public who renews his commission continue to use the same journal? If not, we ask the Department to explain the need for and reasonableness of requiring a new journal.

A commenter suggests adding a provision preventing blank lines in a journal or to cross out blank lines so that additional entries may not be entered. We ask the Department to include provisions regarding blank lines in the final-form regulation.

14. Section 167.33. Form and content of journal maintained on a tangible medium. – Clarity and lack of ambiguity.

This section title refers to the content of a journal; however, journal content requirements are detailed in Section 167.32 (relating to journal entries). More specifically, Subsections 167.33(a) and 167.32(b) each contain requirements for journal entries from Section 319(c) of the Act (relating to journal) (57 Pa.C.S.A. § 319(c)). If content requirements are kept in both sections, the Department should include cross-references. If the content requirements are moved to one section, the title of the other section should be amended. We ask the Department to revise the titles and content of these sections so that the titles clearly indicate the requirements within the sections and the content requirements are clear and cross-referenced as needed.

Subsection (d) specifies the numbering of lines in a journal. A commenter asks if all pages must be numbered with the same sequence of line numbers. The Department should clarify the line numbering requirement in the final-form regulation.

15. Section 167.34. Form and content of an electronic notarial journal. – Clarity and lack of ambiguity; Need for the regulation; Reasonableness of requirements, implementation procedures.

The section title refers to the content of an electronic journal; however, journal content requirements are detailed in Section 167.32 (relating to journal entries). More specifically, Subsections 167.34(a) and 167.32(b) each contain requirements for journal entries from Subsection 319(c) of the Act (relating to journal) (57 Pa.C.S.A. § 319(c)). Do the content requirements in Section 167.33 (relating to form and content of journal maintained on a tangible medium) also apply to electronic journals? We ask the Department to clarify which provisions apply to tangible journals and which apply to electronic journals by including cross-references as necessary. As noted in Comment #1, the Department should also review all section titles for clarity.

Paragraph (e)(2) states that a signature must be linked to the data in a manner so that any subsequent alterations to the electronic journal entry “are detectable and may invalidate the electronic notarial journal entry.” A commenter states that tamper-evident technology does not invalidate an electronic journal entry; rather, it is an individual who determines if change that is detectable by a tamper-evident technology is permissible or not. We ask the Department to clarify for the regulated community that it is not the manner in which the data is linked that invalidates the signature.

Subsection (f) addresses and cross-references the requirement in Subsection 319(e) of the Act (57 Pa.C.S.A. § 319(e)) regarding delivery of a journal to the office of the recorder of deeds when an individual is no longer commissioned as a notary public. Since Subsection 319(g) of the Act (57 Pa.C.S.A. § 319(g)) requires delivery of the journal to the same office when a notary public dies or is adjudicated as incompetent, should this provision include a cross-reference to that statutory provisions as well? We ask the Department to clarify this provision by including this cross-reference or to explain why not including it is reasonable.

16. Section 167.35. Custody and control of journal; notification of lost or stolen journal. – Clarity and lack of ambiguity; Reasonableness of requirements, implementation procedures and timetables for compliance.

While the titles differ significantly, this section generally contains provisions that parallel those in Section 167.22 (relating to stamping device). However, we note several discrepancies between the two sections and ask the Department to either include the following provisions in the final regulation or to explain why these provisions do not apply to journals.

- Section 167.22(d) requires notification of loss or theft of a stamping device to the **Department**. This clarification is missing from Subsection (b).
- Section 167.22(c) states that the stamping device is the exclusive property of the notary public.
- Section 167.22(f) addresses a notary public whose commission has been suspended or revoked.

Paragraph (b)(1) requires the notification of loss or theft of a stamping device to include a statement of whether the stamping device is lost or stolen. Paragraph (b)(4) then further requires the notification to include a statement that the notary public does not possess the stamping device and does not know who possesses it or where it is located. In essence, these seem to be the same requirement. We ask the Department to explain the need for including a statement of whether the stamping device is lost or stolen, and the need for and reasonableness of requiring both statements.

Paragraph (b)(2) requires the notification of loss or theft of a journal to include an explanation of how the journal became lost or stolen. We ask the Department to explain the need for and reasonableness of requiring this explanation.

Subsection (c) similarly asks for an explanation of how the stamping device was recovered if a notary public reacquires possession of a lost or stolen stamping device. Again, we ask the Department to explain the need for and reasonableness of requiring this explanation.

Finally, this section does not specify what should be done with the journal if an individual does not apply for reappointment. We ask the Department to clarify this procedure in the final-form regulation.

17. Section 167.36. Inspection and certified copies of journal; response to subpoena and investigative requests. – Statutory authority; Need for the regulation.

Subsection (a) states that the notary public shall permit inspection of the journal to any person requesting to view the journal. Since the notary public is to maintain custody at all times according to Section 167.35 (relating to custody and control of journal; notification of lost or stolen journal), this provision should clarify that the inspection must be in the presence of the notary public.

Subsection (b) states that the request for certified copies of the journal “must be **reasonable in scope . . .**” (Emphasis added.) However, Subsection 319(g.1) of the Act (relating to journal) states that “a notary public shall give a certified copy of the journal to a person that applies for it.” 57 Pa.C.S.A. § 319(g.1). We have several concerns related to this subsection. Since the Act does not put any limits on a request for a certified copy, what is the Department’s authority for doing so? If the Department has authority, stating that the request must be “reasonable” in scope is non-regulatory language that does not set a binding norm.

Further, the sentence in Subsection (b) that states “a request may, but is not required to be, in writing” is non-regulatory and does not set a binding norm for the regulated community. This sentence is not needed. Likewise, the last sentence of Subsection (b) states, “If the scope of the request is not clear, the notary public may offer to have the requester inspect the journal at the notary public’s office to identify the specific pages or dates that the requester is seeking.” This sentence does not set a binding norm and is not needed.

Finally, Subsection (c), regarding subpoenas and investigative requests, states that a request for inspection or certified copies of a journal made through an investigative request by law

enforcement or by the Department or in a subpoena in the course of criminal or civil litigation shall be complied with in the manner specified in the request or subpoena. What is the need for this subsection since a subpoena requires a person to present the requested information, and Subsections (a) and (b) require a notary public to permit inspection of the journal and to provide certified copies of the journal to anyone who requests to do so?

Subchapter E. STANDARDS OF PRACTICE

18. Section 167.41. Name of notary public. – Clarity, feasibility and reasonableness of regulation.

Subsection (a) appears to define “name of a notary public” for the chapter and the Act as “the legal name of the notary public as it appears on the notary public’s current commission and oath of office.” We ask the Department to define this term in Section 167.2 (relating to definitions) and delete this subsection.

Subsection (c) states that “neither initials alone nor nicknames will be accepted on the application” This requirement relates to the application for commission as a notary public and should be moved to Section 167.14 (relating to application for appointment). Regarding the prohibition of initials alone on the application, what if the legal name of a person seeking to be a notary public is two capital letters or initials? We ask the Department to explain in the Preamble to the final regulation the reasonableness of this requirement and how the provision will be implemented.

19. Section 167.42. Notification of change in information. – Clarity, feasibility and reasonableness of regulation.

Subsection (a) states that a notary public shall notify the Department within 30 calendar days of a name change. Subsection (d) states that a notary public shall also file a notice of name change with the county recorder of deeds. How will this work if a person is required to sign a new signature card for the county at the time of notification but desires to continue using the commissioned name until the effective date? We ask the Department to clarify these requirements and explain the reasonableness of multiple notifications.

We note that a notary public may voluntarily resign under Paragraph (a)(5), but we find no other mention of this process in the proposed regulation. Would the notary public need to turn in the stamp and journal? We ask the Department to ensure that the final regulation makes clear the process for a voluntary resignation.

20. Section 167.43. Change of name. – Clarity and lack of ambiguity.

Subsection (b) states that the Department “will mark the public records relating to the notary public name change.” What does this mean?

21. Section 167.47. Personal appearance. – Clarity and lack of ambiguity.

Subsection (c) states that “the notary public and the individual for whom a notarial act is being performed shall be able to see, hear, communicate with and give identification documents to each other without the use of electronic devices” How will this rule affect persons with speech, hearing or vision disabilities? A commenter has concerns that this provision is unclear as to whether it prohibits the use of electronic devices to mitigate disabilities. We ask the Department to clarify this provision in the final-form regulation.

22. Section 167.49. Identification of individual appearing before notary public – satisfactory evidence. – Clarity, feasibility and lack of ambiguity.

Subparagraph (a)(3)(v) states that a Medicare card may be used as a form of government identification under Subparagraph 307(b)(1)(ii) of the Act (relating to identification of individual) (57 Pa.C.S.A. § 307(b)(1)(ii)), which requires identification showing the signature or photograph of the individual appearing before a notary public. A commenter indicates that a Medicare card does not include a photograph or signature. The Department should ensure that each of the items listed under Paragraph (3) in the final regulation meets the statutory requirement for satisfactory evidence.

Paragraph (b)(2) requires that a credible witness may not have a direct or pecuniary interest with respect to the record being notarized. Should a statement to this effect be included under the verification on oath or affirmation under Paragraph (b)(3)?

23. Section 167.50. Language and use of interpreter. – Reasonableness of requirements, implementation procedures and timetables for compliance.

If communication occurs through use of an interpreter, Subsection (a) requires the interpreter to be in the physical presence of the notary and the person with whom the notary is communicating. A commenter asserts that this may make it difficult to obtain translation services. We ask the Department to explain the reasonableness of this requirement.

Subchapter F. NOTARIAL ACTS

24. Section 167.61. Acknowledgments. – Clarity, feasibility and reasonableness of regulation; Need for the regulation.

Subsection (e) requires the notary public to compare the signature on the record to the signature of the individual on the identification presented. What is the purpose of comparison since the customer has already been positively identified? Does the Department expect the signatures to be identical, and what happens if they are slightly or significantly different? We ask the Department to explain the reasonableness of and need for this provision.

This comment applies to Sections 167.63 (relating to verifications on oath or affirmation) and 167.64 (relating to witnessing or attestation of signatures).

25. Section 167.62. Oaths and affirmations. – Clarity.

Subsection (c) provides for a written oath or affirmation to be signed in the presence of the notary public. This section does not require the notary public to compare the signature as required under the parallel provisions in Sections 167.61 (relating to acknowledgments), 167.63 (relating to verifications on oath or affirmation) and 167.64 (relating to witnessing or attestation of signatures). If the requirement to compare signatures is retained in Sections 167.61, 167.63 and 167.64 of the final regulation, we ask the Department to add the requirement to this subsection.

26. Section 167.64. Witnessing or attestation of signatures. – Clarity and lack of ambiguity; Reasonableness of requirements, implementation procedures and timetables for compliance.

Subsection (c) requires that the document containing the signature being attested “shall be signed in the notary public’s presence.” Does this provision make it impossible to attest to the validity of a signature on a previously signed document? We ask the Department to clarify this provision in the final regulation or to explain the reasonableness of this requirement.

27. Section 167.65. Certified or attested copies and depositions. – Clarity and lack of ambiguity.

Subsection (c), regarding electronic records, requires a notary public to compare an original record to a copy. A commenter explains that “original” has clear meaning when applied to a paper record, but not an electronic record. What is an original electronic document? We ask the Department to explain in the Preamble to the final-form regulation the process for comparing electronic records and to clarify this provision as necessary in the final-form regulation.

Subchapter G. NOTARIAL CERTIFICATES

28. Section 167.71. Certificate of notarial act. – Clarity and lack of ambiguity.

Subsections (c) and (d) address attaching a notarial certificate and signing a paper certificate, respectively. Do parallel provisions apply to electronic records? We ask the Department to explain in the Preamble to the final-form regulation why these provisions do not apply to electronic certificates, or to amend the final regulation to include parallel provisions as appropriate.

Subsection (d) requires a notary public to “legibly print his name immediately adjacent to his preferred signature” if it “is not legible and recognizable.” Commenters note that the notary public’s name is in the official stamp, thereby identifying the name of the notary public. We ask the Department to explain in the Preamble to the final-form regulation why the notary public’s name on the official stamp is not sufficient, or to amend the final regulation.

Subchapter H. USE OF ELECTRONIC NOTARIZATION

29. Section 167.81. Notification regarding use of electronic notarization. – Clarity and lack of ambiguity; Reasonableness of requirements, implementation procedures.

As noted elsewhere, the title of this section, “Notification regarding use of electronic notarization,” is ambiguous, especially considering that we do not see any reference to notification within this subsection. We ask the Department to clarify the title of this section.

Subsection (a) refers to a notary public with an “unrestricted commission.” We find that the Department also uses this term in the instructions for electronic notarization on its website; however, this term is not defined. We ask the Department to define this term or amend the final regulation and any other references to this term to clarify the provision for the regulated community.

Subsection (c) provides a list of information required to be submitted to the Department for a notary public to obtain authorization as an electronic notary public. As noted in Comment #1, the full process for obtaining this authorization is unclear. Is a notary public required to reapply when the commission expires? Is this authorization noted on the commission? In the Preamble to the final-form regulation, we ask the Department to explain the process for this authorization for the regulated community, and to expand Subchapter H (relating to use of electronic notarization) as necessary to ensure all of the requirements necessary for authorization are included.

Paragraphs (c)(5)-(7) relate to obtaining authorization as an electronic notary public and reference an “electronic notarization solution provider” and a “solution provider,” which is assumed to be a shortened version. We note that Subsection 167.82(a) (relating to electronic notarization requirements) states that a notary public performing electronic notarization shall use an “electronic notarization solution” approved by the Department. We ask the Department to define the terms “electronic notarization solution provider” and “electronic notarization solution” in the final-form regulation, to use them consistently, and to include in the final-form regulation where the list of approved electronic notarization solution providers can be found.

30. Section 167.82. Electronic notarization requirements. – Clarity and lack of ambiguity.

Subsection (a) states, “Before performing any electronic notarization, the notary public shall take reasonable steps to ensure that the solution used is valid and has not expired, been revoked or been terminated by the solution provider.” What is the need for this requirement? Why would the Department approve an electronic notarization solution provider if the solution offered by that provider isn’t valid and has expired, been revoked or terminated by the solution provider?

As a follow-up to the final paragraph under Comment #28, the Department uses the term “solution,” which is assumed to be a shortened version of “electronic notarization solution.” The Department should ensure that it uses consistent terminology in the final regulation.

Subchapter I. NOTARY PUBLIC EDUCATION

31. Section 167.91. Definitions. – Statutory authority.

The Department defines “course of study” as “basic or continuing education, offered by live classroom instruction, **correspondence course** or interactive distance education means” (Emphasis added.) The Act states in Section 322 (relating to examination, basic education and continuing education) that both basic education courses and continuing education courses “must either be interactive or classroom instruction.” 57 Pa.C.S.A. § 322. We ask the Department to explain its authority to include correspondence course in its definition of course of study.

32. Section 167.92. Provider certificate of approval. – Clarity and lack of ambiguity.

Subsection (h) states that “a provider may **reapply** for reapproval” (Emphasis added.) The Department should revise the final regulation to clarify that a provider “**applies** for reapproval” (Emphasis added.)

33. Section 167.93. Lesson plan. – Clarity and lack of ambiguity.

Paragraph (a)(5) requires a lesson plan to contain procedures to ensure that the information contained in the certificate of education under Section 167.97 (relating to certificate of education) cannot be viewed by any other than the approved vendor issuing the certificate, an employee, agent, instructor, contractor or subcontractor of the approved vendor issuing the certificate, or the notary public applicant or notary public named in the certificate. What is the need for such extensive security when the information contained in Section 167.97 is the name of the provider and course of study, the name of the applicant, date the course was completed and a statement that the certificate is valid for six months? Further, is the Department excluded from viewing the certificate? Also, if retained, we ask the Department to evaluate whether this section is the appropriate placement.

Paragraph (a)(6) does not address the possibility that a provider may offer correspondence courses (which are permitted in Section 167.91 (relating to definitions)). If correspondence courses are permitted, the final-form regulations regarding lesson plan should be revised to address correspondence courses. Likewise, Paragraph (a)(7) addressing a schedule of time should be revised in the final regulation to address correspondence courses.

34. Section 167.95. Notification of changes of provider information. – Clarity and lack of ambiguity; Need for the regulation.

The final sentence in this section states, “A provider may confirm receipt by the Department by phone or e-mail.” Since this sentence is not a requirement of the regulated community, what is the need for it in the regulation?

A similar sentence is included in Subsection 167.104(a) (relating to cancellation of certificate of approval).

35. Section 167.97. Certificate of education. – Need for the regulation; Reasonableness of requirements, implementation procedures.

Subsection (a) states that a provider shall issue a certificate of education to a notary public applicant upon completion of an approved course of study. Subsection (b) states the certificate of education shall be issued by the provider to a notary public applicant only after the person has successfully completed the approved course of study. How are these requirements different? We ask the Department to delete one of these provisions or to explain the need for and reasonableness of keeping both provisions.

Subsection (d) requires a provider to submit revisions to the content or appearance of the certificate of education to the Department for approval at least 30 calendar days prior to issuing the revised certificate to a notary public. Where in the regulation does the Department initially approve the certificate? Since the certificate must contain the items in Subsection (c)(1)-(5), any other content is optional. Assuming the Department has approved a certificate of education, what is the need for requiring a provider to submit revisions to optional content or a certificate's appearance?

Finally, should this section contain a timeframe for issuing the certificate of education since Paragraph (c)(5) states that the certificate of education is valid for a period of six months?

36. Section 167.103. Termination of certificate of approval. – Clarity and lack of ambiguity; Implementation procedures.

Paragraph (a)(6) states that the Department may terminate a certificate of approval for “failure to prepare course attendees to pass the notary public examination so that an **adequate pass rate** is not maintained.” (Emphasis added.) This is non-regulatory language which does not establish a binding norm for the regulated community. The Department should revise this provision in the final regulation to provide clarity for compliance.

Subchapter J. PROHIBITED ACTS AND SANCTIONS

37. Section 167.111. Offenses involving fraud, dishonesty or deceit. – Clarity and lack of ambiguity.

The Department provides the regulated community no context for this section, or for Subchapter J (relating to prohibited acts and sanctions) which contains sections related to offenses, reporting, disciplinary action, unauthorized practice of law and advertising. The Department should cross-reference Section 323 of the Act (relating to sanctions) (57 Pa.C.S.A. § 323) and clearly state that the Department has the authority to issue sanctions.

38. Section 167.112. Rebuttable presumption against appointment. – Clarity and lack of ambiguity.

Subsection (a) states that a person convicted under Section 167.111 (relating to offenses involving fraud, dishonesty or deceit) within five years preceding the date of application for

appointment is presumed ineligible for appointment as a notary public. Other than this reference and one found in Section 167.115 (relating to factors considered in disciplinary action) which refers to denying an application, we do not see that Subchapter J (relating to prohibited acts and sanctions) addresses the requirements for a person who seeks appointment after being convicted or subject to disciplinary action. We ask the Department to ensure that the final regulation makes clear the process for becoming a notary public following disciplinary action or conviction. Additionally, we note that the language in Subsection (a) which states “. . . for any felony offense or any misdemeanor offense involving . . .” differs from that of Subsection (c) which states “. . . for a felony or offense involving . . .” The Department should ensure that the language of the final regulation is consistent and lacks ambiguity.

The Department should clarify in Subsection (d) that the five-year period is the five-year period preceding the date of application.

Finally, should all references to appointment be changed to reappointment since this section refers to a notary public? This comment applies to Sections 167.113 (relating to reporting of crimes, disciplinary action and other matters) and 167.115 (relating to factors considered in disciplinary action).

39. Section 167.114. Conduct providing the basis for disciplinary action. – Clarity and lack of ambiguity.

In the Preamble, the Department states that the list in this section is meant to “provide examples and not to be exhaustive.” As proposed, this provision is a finite list. If the Department intends to include additional acts or omissions, the Department should revise and clarify this provision in the final regulation.

40. Section 167.115. Factors considered in disciplinary action. – Clarity and lack of ambiguity.

As noted in Comment #1, while titled “Factors considered in disciplinary action,” the section states that the listed factors are also to be considered when determining whether to deny an application. We ask the Department to clarify the title of this section.

41. Regulatory Analysis Form (RAF).

The Department cites 57 Pa. C.S.A. § 327(a) in response to Question #8 which asks for statutory authority for the regulation. We note that the Department includes additional citations for its statutory authority in the Preamble to the proposed regulation, and ask the Department to ensure that the citations included in the Preamble to the final regulation and RAF are consistent.

In response to Question #17 which asks the Department to identify the economic impact of the regulation and Question #19 which asks for the specific estimate of the costs to the regulated community, the Department does not include the cost of new applicant basic education. We ask the Department to amend the final form RAF and address this additional cost and its impact.