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LEGISLATIVE RESEARCH COMMISSION
State Capitol 700 Capital Avenue Frankfort KY 40601

502-564-8100

Capitol Fax 502-564-2922
Annex Fax 502-564-6543
legislature.ky.gov

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MEMORANDUM

TO: Michael Wilson, Director of Business and Deputy General Counsel
Secretary of States Office

FROM: Emily Caudill, Regulations Compiler

RE: Amended After Comments – 30 KAR 8:005

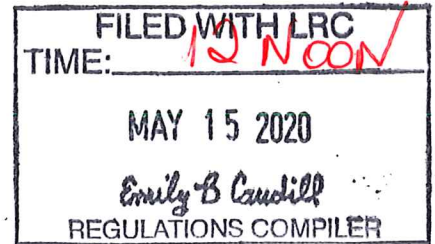
DATE: May 15, 2020

A copy of the Amended After Comments regulation listed above along with the required Statement of Consideration are enclosed for your files.

This administrative regulation will be reviewed by the Administrative Regulation Review Subcommittee at its **JUNE 2020** meeting. Please notify the proper person(s) of this meeting.

If you have questions, please contact us at RegsCompiler@LRC.ky.gov or (502) 564-8100.

Enclosure



1 SECRETARY OF STATE

2 (Amended After Comments)

3 30 KAR 8:005. **Notary public application; requirements for notarial acts performed**
4 **with respect to electronic records and for remotely located individuals; notary**
5 **public discipline** [~~Notary Public applications and electronic and online~~
6 ~~registrations~~].

7 RELATES TO: KRS Chapter 423

8 STATUTORY AUTHORITY: KRS 423.355, 423.390, 423.395, 423.415, 423.455

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 423.415, KRS 423.390, 423.415, and
10 423.455 authorize the Secretary of State to promulgate administrative regulations to
11 implement KRS 423.415 to 423.455. This emergency administrative regulation establishes
12 definitions, prescribes the process of granting, renewing, conditioning or denying a notary
13 commission, establishes standards for the performance of notarial acts with respect to
14 electronic records, establishes standards for the performance of online notarial acts,
15 establishes standards for the retention of records and by notaries public authorized to
16 perform notarial acts with respect to electronic records and notarial acts involving
17 remotely located individuals using communication technology, and prescribes the
18 manner of performing notarial acts for tangible records.

1 Section 1. Definitions. Words and terms defined in KRS 423.300 shall have the same
2 meaning in this chapter. For the purposes of this chapter, the following words and terms
3 shall have the following meanings unless the context clearly indicates otherwise.

4 (a) "Digital Certificate" means an electronic record, issued by a third party certificate
5 authority, which certifies the ownership of a public key, rendering an electronic document
6 as tamper-evident.

7 (b) **"Electronic record" means information contained in or on a medium that requires**
8 **electricity to be perceived.** [~~"Member of the notary public's immediate family" means~~
9 ~~a spouse, former spouse, a grandparent, a grandchild, a parent, a child, a stepchild~~
10 ~~or any other person living in the same household.~~]

11 (c) **"Online notary public" means a notary public who has registered to perform**
12 **electronic notarizations.** [~~"Online notarial act" means an electronic notarization~~
13 ~~performed for a remotely located individual facilitated by communication~~
14 ~~technology.~~]

15 (d) "Notary technology" means an electronic device or process that allows a notary
16 public to perform notarial acts with regard to electronic documents with or without the
17 use of communication technology.

18 (e) **"Tangible record" means information contained in or on a medium, whether**
19 **an original or duplicate, that can be perceived without the requirement of**
20 **electricity.**

1 Section 2. Notary Public Application, Approval or Denial of Application, Voluntary
2 Termination and Required Notice of Change of Information.

3 (a) Application. An application for a commission as a notary public shall be submitted
4 on a form provided for that purpose by the Office of the Secretary of State or submitted
5 on an electronic portal established by the Office of the Secretary of State for that purpose.
6 A person who executes an application for filing with the Secretary of State shall be
7 deemed to have declared under penalty of perjury that to the person's knowledge, the
8 contents of the application are true. Every application for a notarial commission must
9 include:

- 10 (1) The full legal name of the applicant;
- 11 (2) The email address of the applicant;
- 12 (3) A telephone number for the applicant;
- 13 (4) The signature of the applicant;
- 14 (5) The county for which the application is being made;
- 15 (6) The physical and mailing address within the county of application where the
16 applicant resides or is employed;
- 17 (7) A statement of whether the applicant has previously held a notary commission, the
18 name under which the applicant was previously commissioned and the date at which the
19 most recent commission expired;
- 20 (8) A statement that the applicant is at least eighteen years of age;

1 (9) A statement that the applicant is a citizen or permanent legal resident of the United
2 States;

3 (10) A statement that the applicant is able to read and write English;

4 (11) A statement identifying the surety provider from which the applicant intends to
5 obtain surety;

6 (12) A statement that the applicant is not disqualified from becoming a notary public
7 under the provision of KRS Chapter 423 or this chapter;

8 (13) A statement that the applicant is not disqualified for any reason under Section
9 2(2)(a) - (c); and

10 (14) Payment of the required fee.

11 (b) Approval or Denial of Application.

12 (1) Approval of Application. If the applicant has complied with the provisions of KRS
13 Chapter 423 and this chapter, the application shall be approved. A notary commission is
14 effective as of the date of entry of that commission in the database of notary publics on
15 the website of the Secretary of State.

16 (2) Disapproval of Application. The Secretary of State may disapprove the application
17 for the following reasons:

18 (i) The notary public's failure to comply with KRS Chapter 423 or the provisions of this
19 chapter or the existence of a pending inquiry regarding the notary public's failure to
20 comply with KRS Chapter 423 and this chapter;

1 (ii) Any information required under this administrative regulation is missing, inaccurate,
2 incomplete or cannot be independently verified;

3 (iii) A fraudulent, dishonest or deceitful misstatement or omission of fact in the
4 submitted application;

5 (iv) A finding against, or admission of liability by the applicant in any legal proceeding
6 or disciplinary action based on the applicant's fraud, dishonesty, or deceit;

7 (v) The denial, refusal to renew, revocation, or suspension of an applicant's notary
8 commission or registration in another state; or

9 (vi) Failure of the applicant to maintain an assurance.

10 (3) If the application or registration is disapproved, the Secretary of State will
11 state the reasons for the disapproval.

12 (c) Voluntary Termination of Notary Commission. A notary public may terminate a
13 notary commission by notifying the Office of the Secretary of State of that intent, in
14 writing at: Secretary of State, Division of Corporations, Notary Commissions, P.O. Box 821,
15 Frankfort, Kentucky 40602 or on any electronic portal created by the Office of the
16 Secretary of State for that purpose. Submission of a notification of termination of a notary
17 commission automatically terminates any notary registration.

18 (d) Change of Information. A notary public must notify the Office of the Secretary of
19 State, in writing at: Secretary of State, Division of Corporations, Notary Commissions, P.O.
20 Box 821, Frankfort, Kentucky 40602, of any change of the following information during

1 the period of the notary's commission, within ten days of the change, on a form
2 promulgated by the Office of the Secretary of State for that purpose or on any electronic
3 portal created by the Office of the Secretary of State for that purpose:

- 4 (i) A change in the mailing, physical or electronic mail address of the notary public;
- 5 (ii) A change in the county of residence of the notary public;
- 6 (iii) A change in the legal name of the notary public;
- 7 (iv) A change in the notary public's signature;
- 8 (v) A change in the notary public's electronic signature, if any; and
- 9 (vi) A change in the notary technology used by the notary public.

10 Section 3. Registration to Perform Notarial Acts with Respect to Electronic Records
11 and Electronic Notarizations; ~~Electronic and Online notarization~~].

12 (a) Authority to perform electronic and online notarial acts.

13 (1) Electronic notarial acts. A notary public [An individual] shall register [is
14 authorized] to perform notarial acts with respect to electronic records by:

15 ~~[(i) Being duly and currently commissioned as a notary public under KRS 423.390~~
16 ~~or KRS 423.010 and KAR 8:005 Section 2;~~

17 ~~—(ii) Registering with the Secretary of State under Section 2 of this administrative~~
18 ~~regulation to perform electronic notarial acts; and~~

19 ~~—(iii) Receiving written authorization to perform electronic notarial acts from the~~
20 ~~Secretary of State under Section 3 of this administrative regulation.~~

1 ~~—(2) Online notarial acts. An individual is authorized to perform online notarial acts~~

2 ~~by:~~

3 ~~—(i) Being duly and currently commissioned as a notary public under KRS 423.390~~

4 ~~or KRS 423.010;~~

5 ~~—(ii) Registering with the Secretary of State under Section 2 of this administrative~~
6 ~~regulation to perform online notarial acts; and~~

7 ~~—(iii) Receiving written authorization to perform online notarial acts from the~~
8 ~~Secretary of State under Section 3 of this administrative regulation.~~

9 ~~—(3) An individual who is authorized to perform online notarial acts under this~~
10 ~~section is also authorized to perform electronic notarial acts.~~

11 ~~—(b) Registration procedures.~~

12 ~~—(1) Registration format. Registration under this section shall be~~ by electronic
13 ~~registration] submitting the following information to the Secretary of State [pursuant~~
14 ~~to KRS 423.390 and shall include the following information]:~~

15 (i) The registrant's [individual's] full legal name;

16 (ii) The county in which the registrant [individual] resides or has his or her place of
17 employment or practice in this Commonwealth;

18 (iii) The registrant's date of birth;

19 (iv) The registrant's notary identification number and the expiration date of the
20 registrant's notary commission;

1 (v) The electronic mail address ~~[, physical]~~ and mailing address where the registrant
2 resides or is employed;

3 (vi) An indication of whether the **registrant [individual]** is registering to perform
4 **[electronic]** notarial acts with **respect to electronic records** or electronic notarizations
5 **[online notarial acts]**, or both;

6 (vii) A description of the notary technology that the **registrant [individual]** intends to
7 use to perform **[electronic]** notarial acts **with respect to electronic records or**
8 **electronic notarizations[and/or online notarial acts], or both,** including the
9 technologies or devices to maintain the journal required under KRS 423.380 and to render
10 electronic records tamper-evident after a notarial act is completed;

11 (viii) A copy of the applicant's electronic signature, the digital certificate required under
12 30 KAR 8:005 Section 4 the official stamp, if any, along with any necessary instructions or
13 techniques supplied by a vendor or notary that allows the signature and stamp to be read
14 and authenticated, in a portable document format (.pdf) file format ~~[acceptable to the~~
15 **Secretary of State]**;

16 (ix) The name, address, and Web site URL of any vendors or other persons that will
17 directly supply the **registrant [notary public]** with technology that **he or she [the notary**
18 **public]** intends to use;

19 (x) A statement of whether the notary technology provider has registered with the
20 Secretary of State;

1 (xi) A copy of any necessary instructions or techniques supplied by a vendor that allow
2 the **registrant [notary]** to conduct identity proofing and credential analysis;

3 (xii) An explanation of the methods or technology by which the **registrant [notary]**
4 will maintain and store the journal required by KRS 423.380;

5 (xiii) A statement that the technologies or devices named in the registration are
6 compliant with KRS Chapter 423 and with this chapter;

7 (xiv) **A copy of the registrant's [The county, book and page where the notary's]**
8 surety bond **in the amount of \$1,000[is recorded]**;

9 (xv) A disclosure of any convictions, professional license or commission revocations,
10 professional disciplinary actions or other disqualifying actions or proceedings taken under
11 the laws of any state against the **registrant [notary public]**.

12 (2) Submission of registration form. The registration must be submitted electronically
13 to Secretary of State as provided by information posted on the Secretary of State's Web
14 site at <https://sos.ky.gov/>.

15 (3) Use of additional vendors. If, during the term of a notary public's commission, the
16 notary public intends to use the technologies of another vendor or person than those
17 identified in Section (1)(i) of this section, then an additional notification identifying such
18 other vendors or other persons must be submitted to the Secretary of State as provided
19 in this section and in accordance with the manner established by the Secretary of State as
20 posted on the Secretary of State's Web site at <https://sos.ky.gov/>.

1 (c) Approval or disapproval by the Secretary of State.

2 (1) Approval of registration. If ~~[the provider of the technology identified by the~~
3 ~~notary public in the registration required under Section 2 of this administrative~~
4 ~~regulation has registered with the Secretary of State, and]~~ the registrant has complied
5 with the provisions of KRS Chapter 423 and this chapter, the registration to perform
6 notarial acts with respect to electronic records shall be approved within thirty (30) days
7 of its submission. A registration is effective as of the date of entry of that registration in
8 the database of the Secretary of State.

9 (2) Disapproval of registration. The Secretary of State may disapprove the registration
10 and reject the notary public's registration for the following reasons:

11 (i) The notary public's failure to comply with KRS Chapter 423 or the provisions of this
12 chapter or a pending inquiry regarding the notary public's failure to comply with KRS
13 Chapter 423 and this chapter;

14 (ii) Any information required under Section 2 of this administrative regulation is
15 missing, inaccurate, or incomplete;

16 (iii) A fraudulent, dishonest, or deceitful misstatement or omission in the submitted
17 registration;

18 (iv) A finding against, or admission of liability by, the registrant in any legal proceeding
19 or disciplinary action based on the registrant's fraud, dishonesty, or deceit;

20 (v) Denial, refusal to renew, revocation, or suspension of a notary commission or

1 registration in another state;

2 (vi) Failure of the notary to maintain a surety bond in the amount of \$1,000 [an
3 assurance; or

4 ~~(vii) The provider of the technology identified by the notary public has not~~
5 ~~registered with the Secretary of State].~~

6 (3) If the notary public's registration is disapproved, the Secretary of State will state the
7 reasons for the disapproval.

8 (d) Termination of electronic registration. A notary public may terminate an electronic
9 registration by notifying the Office of the Secretary of State of that intent, in writing at:
10 Secretary of State, Division of Corporations, Notary Commissions, P.O. Box 821, Frankfort,
11 Kentucky 40602 or on any electronic portal created by the Office of the Secretary of State
12 for that purpose. Termination of a notary public's electronic registration does not
13 terminate a notary public's commission.

14 (e) Renewal of commission. The renewal of the commission of a notary public who has
15 previously registered to perform notarial acts with regard to electronic records or online
16 notarizations under Section 1 of this administrative regulation constitutes renewal of the
17 notary public's registration without the necessity of submitting another registration under
18 this administrative regulation.

19 (f) Updated technology. Nothing herein shall be construed to prohibit a notary public
20 from receiving, installing, or using a hardware or software update to the technologies that

1 the notary public identified under Section 2 of this administrative regulation if the
2 hardware or software update does not result in technologies that are materially different
3 from the technologies that the notary public identified.

4 Section 4. Standards for **the Performance of Notarial Acts with Respect to**
5 **Electronic Records** [~~notarization of electronic documents~~].

6 (a) Tamper-evident technology requirements. A notary public must select one or more
7 tamper-evident technologies to perform notarizations with regard to electronic records.
8 No person may require a notary public to use a technology that the notary public has not
9 selected. The tamper-evident technology must consist of a digital certificate complying
10 with the X.509 standard adopted by the International Telecommunication Union or a
11 similar industry-standard technology. A notary public must attach or logically associate
12 the notary public's electronic signature and official stamp, if any, to an electronic record
13 that is the subject of a notarial act by use of the digital certificate. A notary public may
14 not perform an electronic notarization if the digital certificate:

15 (1) Has expired;

16 (2) Has been revoked or terminated by the issuing or registering authority;

17 (3) Is invalid; or

18 (4) Is incapable of authentication.

19 (b) Requirements of official stamp.

20 (1) A notary public is not required to use an official stamp when performing notarial

1 acts with respect to electronic records.

2 (2) A notary public who uses an official stamp must use the same unique official stamp
3 for all notarial acts with respect to electronic records that are performed for an individual
4 that is not remotely located. An official stamp under this section is an official seal of office
5 of the notary public for all purposes. An official stamp must conform to the following
6 requirements:

7 (i) Required information. An official stamp shall substantially conform to the following
8 design: a rectangular or circular seal with the notary public's name as it appears on the
9 commission, the words "Commonwealth of Kentucky" and "Notary Public", the notary
10 public's commission number, and the commission expiration date.

11 (ii) Format and size. When affixed to an electronic record, an official stamp must be
12 clear, legible, and photographically reproducible. An official stamp is not required to be
13 within a minimum or maximum size when photographically reproduced on an electronic
14 record.

15 (3) If a notary public elects not to use an official stamp when performing notarial acts
16 with respect to electronic records, the certificate of the notarial act on the electronic
17 record must:

18 (i) Contain the name of the notary public as it appears on the notary public's
19 commission;

20 (ii) Indicate the title "Notary Public" for any notarial act with respect to electronic

1 records; and

2 (iii) Indicate the notary public's commission number and the commission expiration
3 date.

4 (c) Use of electronic signature and stamping device. A notary public is responsible for
5 the security of the notary public's stamping device and may not allow another individual
6 to use the device to perform a notarial act. A notary public shall take reasonable steps to
7 maintain the security of the notary signature and stamping device and shall not disclose
8 any access information used to affix the notary public's electronic signature or official
9 stamp to electronic records, except:

10 (1) When requested by the Secretary of State or a law enforcement officer;

11 (2) When required by court order or subpoena; or

12 (3) Pursuant to an agreement to facilitate notarial acts with a vendor or other
13 technology provider identified in 30 KAR 8:005, Section 5(g).

14 (d) Protection against theft, alteration or misuse.

15 (1) A notary public may not allow any other individual to alter or use his or her
16 electronic signature, notary technology, official stamp or stamping device to perform a
17 notarial act.

18 (2) Upon resignation, revocation, or expiration of the notary's commission, the notary
19 public's notary technology and electronic stamping device (including any coding, disk,
20 digital certificate, card, software, or password that enables the notary public to attach or

1 logically associate the notary's electronic signature or official stamp to an electronic
2 record) must be destroyed or disabled to prohibit its use by any other person. A former
3 notary public whose commission terminated for a reason other than revocation or denial
4 of renewal is not required to destroy the notary public's notary technology or electronic
5 stamping device if the former notary public is recommissioned as a notary public within
6 thirty days after the termination of the notary public's former commission.

7 (3) A notary public shall promptly notify the Secretary of State on actual knowledge of
8 the theft or vandalism of the notary public's notary technology or electronic stamping
9 device. A notary public shall promptly notify the Secretary of State on actual knowledge
10 of the unauthorized use by another person of the notary public's electronic signature,
11 notary technology or electronic stamping device.

12 (e) Tangible copies of an electronic record. A notary public may certify that a tangible
13 copy of an electronic record is an accurate copy of the electronic record if the notary has
14 taken reasonable steps to confirm the accuracy of that certification.

15 Section 5. Standards for **Electronic Notarizations** ~~[online notarial acts]~~.

16 (a) Notarial acts with respect to electronic records. In performing **electronic**
17 **notarizations** ~~[online notarial acts with respect to electronic records]~~, an online
18 notary public must comply with the **registration** requirements ~~[for electronic~~
19 ~~notarization as provided in 30 KAR 8:005]~~ **of Section 3 and the standards for notarial**
20 **acts with respect to electronic records in Section 4 of this administrative regulation.**

1 (b) ~~[Requirements of official stamp.~~

2 ~~—(1) A notary public is not required to use an official stamp when performing~~
3 ~~online notarizations.~~

4 ~~—(2) A notary public who uses an official stamp must use the same unique official~~
5 ~~stamp for all notarizations involving online notarial acts. An official stamp under~~
6 ~~this section is an official seal of office of the notary public for all purposes. An~~
7 ~~official stamp must conform to the following requirements:~~

8 ~~—(i) Required information. An official stamp shall substantially conform to the~~
9 ~~following design: a rectangular or circular seal with the notary public's name as it~~
10 ~~appears on the commission, the words "Commonwealth of Kentucky" and "Notary~~
11 ~~Public", the notary public's commission number, and the commission expiration~~
12 ~~date.~~

13 ~~—(ii) Online notarial acts.] If used for electronic notarizations, an online notary public~~
14 ~~may use [~~uses an official stamp to perform online notarial acts,~~] an ~~[the]~~ official~~
15 ~~stamp that ~~[must]~~ contains the words "Online Notary Public" in lieu of the words "Notary~~
16 ~~Public." A stamp that contains the words "Online Notary Public" may only be used to~~
17 ~~perform notarizations with regard to remotely located individuals.~~

18 ~~[(iii) Format and size. When affixed to an electronic record, an official stamp must~~
19 ~~be clear, legible, and photographically reproducible. An official stamp is not~~
20 ~~required to be within a minimum or maximum size when photographically~~

1 reproduced on an electronic record.

2 ~~—(3) If a notary public elects not to use an official stamp when performing online~~
3 ~~notarial acts the certificate must:~~

4 ~~—(i) Contain the name of the notary public as it appears on the notary public's~~
5 ~~commission;~~

6 ~~—(ii) Indicate the title "Online Notary Public" for any notarial act with respect to a~~
7 ~~remotely located individual; and~~

8 ~~—(iii) Indicate the notary public's commission number and the commission~~
9 ~~expiration date.]~~

10 (c) Physical location. An online notary public shall be physically located in this
11 Commonwealth at the time of the performance of the online notarization.

12 (d) Identity proofing. An online notary public shall have satisfactory evidence of the
13 identity of a remotely located individual if the online notary public has personal knowledge
14 of the identity of the individual. If an online notary public does not have personal
15 knowledge [~~or satisfactory evidence~~] of the identity of a remotely located individual [~~as~~
16 ~~defined in Section 5~~], the online notary public must reasonably verify the individual's
17 identity through at least two different types of identity proofing processes or services.
18 Those processes shall include remote presentation of an appropriate government-issued
19 identification card that contains the signature and photograph of [by] the remotely
20 located individual, credential analysis of that government-issued identification card

1 **[credential]** by a service or process that analyzes the person's identity credential, binds
2 the individual's identity to the individual following a successful dynamic knowledge-based
3 authentication assessment, and permits the notary to visually compare the identity
4 credential and the individual. The analysis of the **government-issued identification card**
5 **[identity credential]** and the dynamic knowledge-based authentication assessment shall
6 conform to the following requirements:

7 (1) Credential analysis. The analysis **of a government-issued identification card** **[an**
8 **identity credential]** must use public or private data sources to confirm the validity of the
9 identity **[credential]** that is the subject of remote presentation by a remotely located
10 individual and shall, at a minimum:

11 (i) Use automated software processes to aid the online notary public in verifying the
12 identity of each remotely located individual;

13 (ii) Require that the identity credential passes an authenticity test, consistent with
14 sound commercial practices that use appropriate technologies to confirm the integrity of
15 visual, physical, or cryptographic security features and to confirm that the identity
16 credential is not fraudulent or inappropriately modified;

17 (iii) Use information held or published by the issuing source or an authoritative source,
18 as available and consistent with sound commercial practices, to confirm the validity of
19 personal details and identity credential details; and

20 (iv) Enable the online notary public to visually compare for consistency the information

1 and photograph on the identity credential and the remotely located individual as viewed
2 by the online notary public in real time through communication technology.

3 (2) Dynamic knowledge-based authentication. A dynamic knowledge-based
4 authentication assessment is successful if it meets the following requirements:

5 (i) The remotely located individual must answer a minimum of five questions related to
6 the individual's personal history or identity formulated from public or private data sources;

7 (ii) Each question must have a minimum of five possible answer choices;

8 (iii) At least 80% of the questions must be answered correctly;

9 (iv) All questions must be answered within two minutes;

10 (v) If the remotely located individual fails the first attempt, the individual may attempt
11 the authentication assessment one additional time within twenty-four (24) hours;

12 (vi) During the second authentication assessment, a minimum of forty (40) percent of
13 the prior questions must be replaced;

14 (vii) If the remotely located individual fails the second authentication assessment, the
15 individual is not allowed to attempt identity authentication with the same online notary
16 public within twenty-four (24) hours of the second failed authentication assessment; and

17 (viii) The online notary public must not be able to see or record the questions or
18 answers.

19 ~~[(e) Other methods of identity verification. An online notary public has~~
20 ~~satisfactory evidence of the identity of a remotely located individual if the online~~

1 ~~notary public has personal knowledge of the identity of the individual, or if the~~
2 ~~individual is identified by oath or affirmation of a credible witness, or if the online~~
3 ~~notary has reasonably verified the identity of the individual by use of a valid public~~
4 ~~key certificate, with the following requirements:~~

5 ~~—(1) Personal knowledge. An online notary public has personal knowledge of the~~
6 ~~identity of the individual appearing before the online notary public if the individual~~
7 ~~is personally known to the online notary public through dealings sufficient to~~
8 ~~provide reasonable certainty that the individual has the identity claimed.~~

9 ~~—(2) Credible witness. To be a credible witness, an individual must have personal~~
10 ~~knowledge of the remotely located individual who has made a statement in or~~
11 ~~executed a signature on the record that is the subject of the online notarization. If~~
12 ~~the credible witness is a remotely located individual, then the online notary public~~
13 ~~must reasonably verify the credible witness's identity under Section 3 of this~~
14 ~~administrative regulation or have personal knowledge of the credible witness under~~
15 ~~subsection 1 of this section. A credible witness may be a remotely located individual~~
16 ~~if the online notary public, credible witness, and individual whose statement or~~
17 ~~signature is the subject of the online notarization can communicate by using~~
18 ~~communication technology.]~~

19 (3) Public key certificate.

20 (i) The identity of the individual appearing before the online notary public may be

1 verified by use of a valid public key certificate that meets the requirements of a digital
2 certificate, as that term is defined in 30 KAR 8:005 Section 1; complies with the X.509
3 standard adopted by the International Telecommunication Union or a similar industry-
4 standard technology; and is issued by a technology provider or digital certificate service
5 registered with the Secretary of State pursuant to ~~[Section 7 of]~~ this regulation.

6 (ii) A public key certificate is not valid for identity verification if the public key certificate
7 has expired, has been revoked or terminated by the issuing or registering authority, is
8 invalid, or is incapable of authentication.

9 (f) Requirements for communication technology. The communication technology used
10 by an online notary public in the performance of online notarizations must conform to
11 the following requirements:

12 (1) Audio-video feeds. Communication technology must provide for synchronous
13 audio-video feeds of sufficient video resolution and audio clarity to enable the online
14 notary public and remotely located individual to see and speak with each other. The
15 process must provide a means for the online notary public reasonably to confirm that a
16 record before the online notary public is the same record in which the remotely located
17 individual made a statement or on which the remotely located individual executed a
18 signature.

19 (2) Security measures. Communication technology must provide reasonable security
20 measures to prevent unauthorized access to:

1 (i) The live transmission of the audio-visual feeds;

2 (ii) The methods used to perform the identify verification process under Sections 3 or
3 4 of this administrative regulation, as applicable; and

4 (iii) The record in which the remotely located individual made a statement or on which
5 the remotely located individual executed a signature.

6 (3) Work flow. If a remotely located individual must exit the workflow, the individual
7 must restart the identify verification process under Sections 3 or 4 of this administrative
8 regulation, as applicable, from the beginning.

9 (4) Recording. All notarial acts performed using communication technology must be
10 electronically recorded. The recording shall contain a recitation that the notary has
11 informed the individuals participating in the notarial act that it will be electronically
12 recorded.

13 (g) Notary technology provider registration.

14 (1) A provider of technology used in the process of electronic or online notarization
15 must register with Secretary of State in the manner directed by the Secretary of State and
16 provide the following information:

17 (i) The legal name of the technology provider;

18 (ii) The mailing address of the technology provider;

19 (iii) The physical address of the technology provider;

20 (iv) A designated contact person for that provider;

1 (v) The phone number, physical address, and email address of the contact person;

2 (vi) The name of the technology provided;

3 (vii) The name of the provider or providers of the knowledge-based authentication,
4 credential analysis, or digital certificate services, if different from the technology provider;

5 (viii) A description of the technology used and the manner in which it complies with
6 KRS Chapter 423 and this chapter;

7 (ix) The process by which the technology provider verifies the identity of the notary
8 public or digital certificate holder using the technology;

9 (x) A plan for the retention and disposition of records created, generated or retained
10 in conjunction with the use of the technology, including, but not limited to, any electronic
11 journal, recordings or records created or retained during an electronic or online
12 notarization, in the event the technology provider no longer engages in the business of
13 providing electronic or online notary technology; and

14 (xi) An authorized certification that the technology provided complies with KRS Chapter
15 423 and this chapter.

16 (2) A registration in compliance with this section is non-transferable and may not be
17 conveyed to any other notary technology provider.

18 (h) Complaint Against a Notary Technology Provider.

19 (1) A written complaint may be made against a notary technology provider registered
20 with the Office of the Secretary of State. A complaint that does not comply with the

1 requirements of this section will not be filed, responded to, or acted upon by the Secretary
2 of State.

3 (2) The Office of the Secretary of State may commence an investigation of a registered
4 notary technology provider as a result of a complaint or upon its own initiative.

5 (3) An investigation under this section may include:

6 (i) An initial request for information from the accused provider;

7 (ii) A copy of the complaint forwarded to the registration provider; and

8 (iii) A request for supporting documentation and other sources of information.

9 (4) A provider shall provide true, accurate, and complete copies of all information
10 requested by the Office of the Secretary of State.

11 (5) Failure of a provider to comply with an investigation directive may result in
12 revocation of the provider's registration.

13 (6) A finding that the provider has failed to comply with the provisions of KRS Chapter
14 423 or this chapter may result in revocation of the provider's registration.

15 (i) Duties of Notary Technology Provider. A notary technology provider must:

16 (1) Respond to a request for information from the Office of the Secretary of State within
17 the time directed. Any request for information will be sent to the addresses provided upon
18 registration;

19 (2) Take reasonable steps to ensure that a notary public or digital certificate holder is
20 able to use the technology provided in accordance with this chapter; and

1 (3) Suspend the use of any technology for any notary or digital certificate holder whose
2 commission, registration, or digital certificate has expired, been revoked or been
3 suspended.

4 Section 6. ~~[Electronic and Online]~~ Record Retention Requirements for Notarial Acts
5 with Respect to Electronic Records and Electronic Notarizations.

6 (a) Record retention.

7 (1) A notary public that is registered to perform notarial acts with respect to electronic
8 records or electronic notarizations ~~[notarial acts involving remotely located~~
9 ~~individuals using communication technology]~~ must maintain one or more journals in
10 a permanent, tamper-evident electronic format to chronicle those notarizations.

11 (2) A journal entry shall be made contemporaneously with the performance of the
12 notarial act and contain:

13 (i) The date and time of the notarial act;

14 (ii) A brief description of the record, if any and the type of notarial act;

15 (iii) The full name and address of each individual for whom a notarial act is performed;

16 (iv) A statement of how identification was established and a description of any
17 identification credential presented including the type of credential and dates of issuance
18 and expiration of the credential;

19 (v) The fee charged, if any; and

20 (vi) For a notarial act involving remotely located individuals using communication

1 technology, an audio-visual recording (or a link thereto) of the performance of the notarial
2 act that complies with KRS Chapter 423 and this chapter.

3 (3) A journal must be created and stored in a computer or other electronic storage
4 device or process that protects the electronic journal and any audio-visual recording
5 against unauthorized access by password or cryptographic process. A recording must be
6 created in an industry-standard audio-visual file format and must not include images of
7 any record in which a remotely located individual made a statement or on which the
8 remotely located individual executed a signature.

9 (4) An electronic journal must be retained for at least ten (10) years after the last notarial
10 act chronicled in the journal. An audio-visual recording must be retained for at least ten
11 (10) years after the recording is made.

12 (5) A journal entry shall not record an identification numbers assigned to an individual
13 by a governmental agency or any biometric identifier.

14 (6) A notary public must take reasonable steps to ensure that a backup of the journal
15 and audio-visual recording exists and is secure from unauthorized use.

16 (7) On the death or adjudication of incompetency of a current or former notary public
17 that is registered to perform notarial acts with respect to electronic records or notarial
18 acts involving remotely located individuals, the online notary public's personal
19 representative or guardian or any other person knowingly in possession of a journal or
20 audio-visual recording must:

1 (i) Comply with the retention requirements of this subsection;

2 (ii) Transmit the journal and recording to one or more repositories under Section 2 of
3 this administrative regulation; or

4 (iii) Transmit the journal and recording in an industry-standard readable data storage
5 device to his/her notary technology provider.

6 (b) Repositories. A notary public that is registered to perform notarial acts with respect
7 to electronic records or **electronic notarizations** [~~notarial acts involving remotely~~
8 ~~located individuals~~], a guardian, conservator, or agent of such a notary public, or a
9 personal representative of such a deceased online notary public may, by written contract,
10 engage a third person to act as a repository to provide the storage required by Section 1
11 of this administrative regulation. A third person under contract under this section shall be
12 deemed a repository or custodian under KRS 423.380(8) or KRS 423.455(5), as applicable.

13 The contract shall:

14 (1) Enable the registered notary public, the guardian, conservator, or agent of the
15 registered notary public, or the personal representative of the deceased registered notary
16 public to comply with the retention requirements of Section 1 of this administrative
17 regulation even if the contract is terminated; or

18 (2) Provide that the information will be transferred to the registered notary public, the
19 guardian, conservator, or agent of the registered notary public, or the personal
20 representative of the deceased registered notary public if the contract is terminated.

1 (c) Lost, Stolen or Improperly Accessed Journal.

2 (1) A notary public is responsible for the security of the notary public's journal and may
3 not allow another individual to use the journal to perform a notarial act. A notary public
4 shall take reasonable steps to maintain the security of the journal and shall not allow
5 access to the notary public's journal, except:

6 (i) When requested by the Secretary of State or a law enforcement officer;

7 (ii) When required by court order or subpoena; or

8 (iii) Pursuant to an agreement to facilitate notarial acts with a vendor or other
9 technology provider identified in 30 KAR 8:005, Section 5.

10 (2) A notary public shall promptly notify the Secretary of State of a lost or stolen journal
11 upon discovering the journal is lost or stolen.

12 (d) Disposition of Notarial Records upon Termination of Commission or Registration.

13 Upon the revocation, resignation, termination or suspension of the commission of the
14 notary public or the revocation, resignation, termination or suspension of the registration
15 of the notary public to perform notarial acts with respect to electronic records and notarial
16 acts involving remotely located individuals using communication technology, the notary
17 public shall retain the journal in accordance with the provisions of Section 1 of this
18 regulation.

19 Section 7. **Prior Notice to the Secretary of State and Standards for the Use of**
20 **Communication Technology in the Performance of Notarial Acts with Respect to**

1 Tangible Records. (1) A notary public shall, prior to the initial use of communication
2 technology in the performance of notarial acts with respect to tangible records,
3 notify the Office of the Secretary of State in writing by email or regular U.S. mail.
4 The notice shall identify the communication technology the notary public has
5 selected that is capable of creating an audio-visual recording of the performance of
6 the notarial act. The Office of the Secretary of State shall make an entry of the
7 information provided in the notice.

8 (2) In using communication technology in the performance of notarial acts with
9 respect to tangible records, a notary public shall have satisfactory evidence of the
10 identity of a remotely located individual if:

11 (a) the notary public has personal knowledge of the identity of the remotely
12 located individual,

13 (b) the remotely located individual is identified by oath or affirmation of a
14 credible witness appearing in person or by means of communication technology
15 before the notary public, or

16 (c) if the notary public is reasonably able to identify the remotely located
17 individual by at least two (2) different types of identity-proofing processes or
18 services as provided in Section 5(d) of this administrative regulation.

19 (3) A notary public who performs notarial act with respect to tangible records
20 shall create and maintain for a period of not less than ten (10) years, an audio-visual

1 recording of the performance of the notarial act.

2 (4) A certificate executed by a notary public for the performance of a notarial act
3 using communication technology with respect to tangible records shall contain the
4 statement, "This notarial act involved the use of communication technology."

5 [Notary Discipline.

6 ~~—(a) Prohibited Conduct. Failure to comply with a provision of KRS 423.395 may~~
7 ~~result in the denial, refusal to renew, revocation, suspension or conditioning of a~~
8 ~~notary commission and may result in disciplinary action.~~

9 ~~—(b) Conviction, Finding or Admission. Denial, refusal to renew, revocation,~~
10 ~~suspension or conditioning of a notary commission shall result upon notification to~~
11 ~~the Secretary of State of:~~

12 ~~—(1) A conviction of felony or crime involving fraud, dishonesty or deceit;~~

13 ~~—(2) A finding against, or admission of liability by, the notary public in any legal~~
14 ~~proceeding or disciplinary action alleging fraud, dishonesty or deceit by the notary;~~

15 ~~or~~

16 ~~—(3) A judicial determination of liability in a suit for fraud, misrepresentation or~~
17 ~~for failure to discharge the duties of a notary public.~~

18 ~~—(c) A notary public shall promptly notify the Secretary of State, in writing, of a~~
19 ~~conviction, finding, admission of liability, or judicial determination of liability as~~
20 ~~defined in this section.~~

1 ~~— (d) Complaint Against a Notary Public. A person that knows of a violation of~~
2 ~~Section 1 or 2 may file a complaint against a notary public with the Secretary of~~
3 ~~State. A complaint shall be in writing, dated, and signed by the person making the~~
4 ~~complaint. A complaint that does not comply with the requirements of this section~~
5 ~~will not be filed, responded to or acted upon by the Secretary of State.~~

6 ~~— (e) Any condition, restriction, suspension or revocation of a notary commission~~
7 ~~will automatically have the same effect on the electronic or online registration the~~
8 ~~notary public holds.~~

9 Section 8. Notary Discipline. (1) Failure to comply with the provisions of KRS
10 423.395 or this administrative regulation may result in the denial, refusal to renew,
11 revocation, suspension, or conditioning of a notary public commission but shall not
12 invalidate a notarial act performed by a notary public.

13 (2) Denial, refusal to renew, revocation, suspension, or conditioning of a notary
14 commission shall result upon notification to the Secretary of State of:

15 (a) A conviction of a felony or a crime involving fraud, dishonesty, or deceit;

16 (b) A finding against, or admission of liability by, the notary public in any legal
17 proceeding or disciplinary action alleging fraud, dishonesty, or deceit by the notary;

18 or

19 (c) judicial determination of liability in a suit for fraud, misrepresentation, or
20 failure to discharge the duties of a notary public.

1 (3) A notary public shall promptly notify the Secretary of State, in writing, of a
2 conviction, finding, admission of liability, or judicial determination of liability as
3 established in this Section.

4 (4) A person who knows of a violation of may file a complaint against a notary
5 public with the Secretary of State.

6 (5) A complaint shall be in writing, dated, and signed by the person making the
7 complaint. A complaint that does not comply with the requirements of this
8 subsection shall not be filed, responded to, or acted upon by the Secretary of State.

9 (6) Any condition, restriction, suspension, or revocation of a notary commission
10 shall have the same effect on the electronic or online registration the notary public
11 holds.

12 (7) The Secretary of State shall cause a review of any complaint filed against a notary
13 public to determine whether the allegations in the complaint would establish a
14 violation by a notary public, and any appropriate disciplinary action, which shall be
15 informed by the following factors:

16 (a) Nature and severity of the act, violation, or crime committed;

17 (b) Number and variety of current violations;

18 (c) Evidence pertaining to the requisite honesty, credibility, truthfulness, and
19 integrity of the notary public;

20 (d) Actual or potential harm to the general public, group, individual or customer;

1 **(e) History of complaints:**

2 **(f) Prior disciplinary record or warning:**

3 **(8) The Secretary of State shall inform the notary public of any disciplinary action**
4 **by mailing a notice of disciplinary action to the home address of the notary public**
5 **on file. The notice shall inform the notary public of the basis for the disciplinary**
6 **action and the right to a hearing. Administrative proceedings under this section**
7 **shall be governed by the provisions of KRS Chapter 13B.**

8 **(9) The Secretary of State shall certify any disciplinary action to the clerk of the**
9 **county in which the notary public received his or her commission.**

Michael G. Adams May 15, 2020
Michael G. Adams, Secretary of State Date

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Wilson, Director of Business & Deputy General Counsel, 30 KAR 8:005, telephone: (502)782-7442 email: michael.wilson@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the conditions under which notary public officers may be approved by the Office of the Secretary of State. Additionally, it establishes procedures for electronic and online notary applications.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures for approving notary public officers and electronic and online notary publics.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the Office of the Secretary of State to fulfill its duties under KRS 423, this administrative regulation is necessary to establish the procedures for approving notary public applications and registrations for electronic and online notaries public.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for approving notary public applications and registrations for electronic and online notaries public.

(2) N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects individual notaries public and those who voluntarily apply to be electronic and online notaries public.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals identified in question (3) will have to familiarize themselves with this administrative regulation.

(b) In complying with this administrative regulation, how much will it cost each of the entities identified in question (3): Individuals identified in question (3) will incur minimal costs in order to submit an application and/or registration.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals identified in question (3) will obtain the rights of a notary public and/or electronic and online notary public.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The application for notary public costs \$10; registration for electronic or

online costs \$10.

(b) On a continuing basis: There is no cost to implement this administrative regulation at this time.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no source funding at this time since there is no cost to implement this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: A fee for registration as an electronic and/or remote (online) notary is established at \$10; additional funding will not be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees for notary public applications is unchanged; fees for registration for electronic or online notary public is \$10.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Michael Wilson, Director of Business & Deputy General Counsel, 30 KAR 8:005, telephone: (502)782-7442 email: michael.wilson@ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Office of the Secretary of State and county clerks offices.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS Chapter 423.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate additional fees for the Office of Secretary of State of \$10 per electronic notary registration.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate additional fees for the Office of Secretary of State of \$10 per electronic notary registration.

(c) How much will it cost to administer this program for the first year? There will be no additional cost to implement this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer this program for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF CONSIDERATION
Relating to 30 KAR 8:005

Secretary of State
(Amended after Comments)

I. The public hearing on 30 KAR 8:005, scheduled for March 30, 2020, was canceled; however, written comments were received during the public comment period.

II. The following people submitted written comments:

<u>Name and Title</u>	<u>Agency/Organization/Other</u>
Johnna Ballinger, Notary Program Coordinator	Secretary of State
Mike Nickles, Staff Assistant	Secretary of State
Michael R. Wilson, Director of Business	Secretary of State

III. The following people from the promulgating administrative body responded to the written comments:

<u>Name and Title</u>	<u>Agency/Organization/Other</u>
Johnna Ballinger, Notary Program Coordinator	Secretary of State
Mike Nickles, Staff Assistant	Secretary of State
Michael R. Wilson, Director of Business	Secretary of State

IV. Summary of Comments and Responses:

(1) Subject Matter: Notarial Acts performed by means of Communication Technology with Respect to Tangible Records versus Notarial Acts with Respect to Electronic Records and Electronic Notarizations

- (a) Comment: KRS Chapter 423 lacks definitions for the terms “tangible record” and “electronic record” creating confusion for the application of standards in KRS 423.455 and 423.355, including registration requirements under KRS 423.380 and 423.390(10) and (11).
 - (b) Response: 30 KAR 8:005 Section 1 now includes definitions for these terms to provide clarification consistent with the legislative intent that electronic records should remain in an electronic format in order to authenticate the digital certificate of a notary public; whereas tangible records include both originals and duplicates consistent with both the Federal and Kentucky Rules of Evidence.
- (2) Subject Matter: Registration to Perform Electronic Notarizations and Notarial Acts with Respect to Electronic Records
- (a) Comment: The regulation uses the terms “online notarial act”, “online notarization”, and “electronic notarial acts”, which terms are redundant to terms that already appear in KRS Chapter 423.
 - (b) Response: We have amended 30 KAR 8:005 to substitute the statutory terms “electronic notarization” (as defined by KRS 423.300(8)) and “notarial acts with respect to electronic records” as those terms are both used in KRS 423.385(1)(a) and (b) for the terms “online notarial act” and “online notarization”; and “electronic notarial acts,” respectively.
- (3) Subject Matter: Online Notary Public
- (a) Comment: the term “online notary public” is not defined.
 - (b) Response: We have included a definition for the term “online notary public,” which reflects the status of a notary public who has successfully registered with the Secretary of State to perform electronic notarizations pursuant to KRS 423.355(1)(c) and 423.390(10) and (11)(d)2.
- (4) Subject Matter: Language of Registration Requirements in Section 3
- (a) Comment: Much of the language in Section 3(1) is redundant and unnecessary since KRS 423.385 only contemplates registration by a notary public to perform notarial acts with respect to electronic records and electronic notarizations. Suggest removing the language describing the process for obtaining a commission as a notary public; specify that a “notary public” may register; substitute the term “individual” with “registrant”; and remove the reference to “authorized” or “authority” to perform notarial acts with respect to electronic records and electronic notarizations because KRS 423.310 and 423.410 makes clear that an individual may perform notarial acts if authorized as a notarial officer. KRS 423.385 merely specifies that a notary public must register to perform notarial acts with respect to electronic records where the individual will appear before the notary in the notary’s physical presence or as an online notary public to perform electronic notarizations by

means of communication technology; however, the failure to register would not invalidate these notarial acts. The failure of a notary public could instead subject to the notary public to civil liability to a person who has been aggrieved by the failure to perform a duty under KRS 423 or discipline as authorized by KRS 423.390(14) and 423.395, however.

- (b) Response: We have amended Section 3(1) to remove redundant language and the reference to obtaining a notary public commission and substituted the word "individual" with "notary public." The words "authorized" or "authority" have also been removed.

- (5) Subject Matter: Samples of electronic signature, official stamp, and digital certificate for registration to perform notarial acts with respect to electronic records and electronic notarizations in Section 3
 - (a) Comment: Consider specifying file type for submitting samples of electronic signature, official stamp, and digital certificate for registration
 - (b) We have specified that the file type shall be a portable document format (.pdf) file.

- (6) Subject Matter: Proof of Assurance in the Form of \$1,000 Surety Bond required to register to perform notarial acts with respect to electronic records and electronic notarizations in Section 3.
 - (a) Comment: Section 3 now requires the book and page number where the notary's \$1,000 surety bond is recorded at the notary's county clerk's office but requires no proof of the bond itself.
 - (b) Response: We have amended this paragraph to require an image of the surety bond recorded at the county clerk's office.

- (7) Subject Matter: Time in Which Registration Shall be Approved in Section 3.
 - (a) Comment: The regulation does not provide a time in which the registration will be approved.
 - (b) Response: We have specified that a registration will be approved within 30 days of submission consistent with KRS 423.390(13).

- (8) Subject Matter: Unapproved Technology Providers
 - (a) Comment: Some notaries may choose to select technology providers that have not registered.
 - (b) Response: We have removed the requirement that a notary select an approved technology provider to register.

- (9) Subject Matter: Standards Common to both Notarial Acts with Respect to Electronic Records and Electronic Notarizations in Sections 4 and 5

- (a) Comment: Section 4 should provide basic standards for the performance of notarial acts with respect to electronic records, whether in-person or via communication technology.
 - (b) Response: Section 4 now provides basic standards for the performance of notarial acts with respect to electronic records both in-person and via communication technology as an electronic notarization in Section 5. Section 5 has been amended to remove redundant standards that have been incorporated by reference to Section 3 and 4.
- (10) Subject Matter: Use of an Official Stamp in the performance of electronic notarizations in Section 5.
- (a) Comment: Notaries may prefer to have only one (1) official stamp if performing notarial acts with respect to both electronic records in-person and for remotely-located individuals.
 - (b) Response: We have made the use of the title "Online Notary Public" appearing in a stamp permissive. Whatever benefit this designation provides, the requirement to reference the use of "communication technology" in the notary certificate is already required by KRS 423.355(4), anyway.
- (11) Subject Matter: Identity Verification for Electronic Notarizations in Section 5.
- (a) Comment: The standards for identity verification in Section 5 do not comport with KRS 423.325(3).
 - (b) Response: We have amended the sections of the regulation that provide standards for identity verification and harmonized them with KRS 423.325(3).
- (12) Subject Matter: Record Retention for the performance of notarial acts with respect to electronic records and electronic notarizations in Section 6.
- (a) Comment: This regulation would require notaries to maintain a journal in the performance of notarial acts for remotely located individuals regardless of whether the notarial act would be performed with respect to a tangible record or an electronic record.
 - (b) Response: We have amended Section 6, including the requirement to maintain a journal, to be applicable only for notarial acts with respect to electronic record and electronic notarizations.
- (13) Subject Matter: Retaining an image of a record that is the subject of an Electronic Notarization.
- (a) Comment: The prohibition on retaining a copy of an image of the record that is the subject of a notarial act performed for a remotely located individual would be counterproductive to the requirement in KRS 423.455(2)(b) that the notary be able to visually identify the record as the same record before the notary while the notary is also recording the individual.

- (b) Response: We have removed this prohibition and made it a requirement to retain a copy of the image of a record that is the subject of a notarial act.

- (14) Subject Matter: Use of communication technology in the performance of notarial acts with respect to tangible records
 - (a) Comment: The regulation does not provide standards for the use of communication technology in the performance of notarial acts with respect to tangible records.
 - (b) Response: We have created a new Section 7 to acknowledge the validity of, and to provide standards for, the use of communication technology in the performance of notarial acts with respect to tangible records under KRS 423.455. Like Section 14A of the Revised Uniform Law on Notarial Act (2018) ("RULONA") from which it is derived, this section provides unobtrusive standards when communication technology is provided for a "remotely located individual" as a substitute for "personal appearance" before a notary public. These standards include giving prior notice to the Secretary of State, standards for identity verification, retention of an audio-visual recording, and an appropriate reference to the use of communication technology in the notary certificate. This section may therefore be considered a less technical alternative to an electronic notarization in the sense that a document, whether an original or duplicate, may be notarized through the use of traditional manual signatures, video-conferencing, copiers, scanners, photographic images, email, regular mail, or courier. See RULONA Section 14A, Comment to Subsection (c)(2); Compare KRS 423.355, 423.380, 423.385, and 423.390(10).

- (15) Subject Matter: Notary discipline
 - (a) Comment: The regulation implements the authority to discipline a notary public, including the authority to "revoke" a commission of a notary public pursuant to KRS 423.395 but does not provide a procedure to implement this disciplinary authority.
 - (b) Response: We have amended the regulation to incorporate the administrative hearing procedure of KRS Chapter 13B by reference.

V. Summary of Statement of Consideration and Action Taken by Promulgating Agency:

The public hearing on this administrative regulation was cancelled; however, written comments were received. The Secretary of State responded to the comments and amends the administrative agency as follows:

Page 1
Title

Line 3

Insert: **"Notary public application; requirements for notarial acts performed with respect to electronic records and for remotely located individuals; notary public discipline"**

Delete the remainder of the title.

Page 2

Section 1

Line 1

Insert: **"Electronic record" means information contained in or on a medium that requires electricity to be perceived.**

Delete:

"(b)"Member of the notary public's immediate family" means a spouse, former spouse, a grandparent, a grandchild, a parent, a child, a stepchild or any other person living in the same household.

Page 2

Section 1

Line 4

Insert: **"Online notary public" means a notary public who has registered to perform electronic notarizations.**

Delete: "Online notarial act" means an electronic notarization performed for a remotely located individual facilitated by communication technology.

Page 2

Section 1

Line 9

Insert: **"Tangible record" means information contained in or on a medium, whether an original or duplicate, that can be perceived without the requirement of electricity.**

Page 5

Section 3

Line 10

After "Registration",

Insert "to Perform Notarial Acts with Respect to Electronic Records and Electronic Notarizations" delete "; Electronic and Online Notarization."

Page 5
Section 3
Line 11

Delete: (a) Authority to perform electronic and online notarial acts. (1) Electronic notarial acts.

Insert: "A notary public"

Delete: "An individual"

Insert: "shall register"

Delete: "is authorized"

Page 5
Section 3
Line 14

After "by:" delete the following:

"(i) Being duly and currently commissioned as a notary public under KRS 423.390 or KRS 423.010 and KAR 8:005 Section 2;

(ii) Registering with the Secretary of State under Section 2 of this administrative regulation to perform electronic notarial acts; and

(iii) Receiving written authorization to perform electronic notarial acts from the Secretary of State under Section 3 of this administrative regulation.

(2) Online notarial acts. An individual is authorized to perform online notarial acts by:

(i) Being duly and currently commissioned as a notary public under KRS 423.390 or KRS 423.010;

(ii) Registering with the Secretary of State under Section 2 of this administrative regulation to perform online notarial acts; and

(iii) Receiving written authorization to perform online notarial acts from the Secretary of State under Section 3 of this administrative regulation.

(3) An individual who is authorized to perform online notarial acts under this section is also authorized to perform electronic notarial acts.

(b) Registration procedures.

(1) Registration format. Registration under this section shall be by electronic registration"

Page 6
Section 3
Line 8

After "electronic registration", insert: **submitting the following information**

Delete: "pursuant to KRS 423.390 and shall include the following information"

Page 6
Section 3
Line 10

Insert: "**registrant's**"

Delete: "individual's"

Page 6
Section 3
Line 11

After which the, insert "**registrant**"

Delete "individual"

Page 6
Section 3
Line 18

After electronic mail address delete ", physical".

Page 6
Section 3
Line 18

Insert "**registrant**"

Delete "individual".

Page 6
Section 3
Line 18

After "to perform", delete "electronic"

Page 6
Section 3
Line 19

Insert: "**with respect to electronic records**"

Delete: "online notarial acts"

Insert: "**electronic notarizations**"

Page 6

Section 3

Line 21

After "to perform", delete "electronic"

Insert: "**with respect to electronic records or electronic records**"

Delete: and "and/or online notarial acts"

Insert: "**or both**"

Page 7

Section 3

Line 4

Insert: "**portable document format (.pdf)**" before file format

Delete: "acceptable to the secretary of state"

Page 7

Section 3

Line 6

Insert: "**registrant**"

Delete: "notary public"

Insert: "**he or she**"

Delete: "the notary public"

Page 7

Section 3

Line 10

Insert: "**registrant**"

Delete: "notary"

Page 7

Section 3

Line 11

Insert: "**registrant**"
Delete "notary"

Page 7
Section 3
Line 15

Insert: "**A copy of the registrant's**"
Delete: "The county, book, and page where"

Page 7
Section 3
Line 15

Insert: "**in the amount of \$1,000**"
Delete: "is recorded."

Page 7
Section 3
Line 18

Insert: "**registrant**"
Delete: "notary public"

Page 8
Section 3
Line 6

After "If", delete: "the provider of the technology identified by the notary public in the registration required under Section 2 of this administrative regulation has registered with the Secretary of State, and"

Page 8
Section 3
Line 10

Insert: After "approved", insert "**within thirty (30) days of its submission**"

Page 9
Section 3
Line 3

After "maintain", insert "**a surety bond in the amount of \$1,000**"

Delete: "an assurance; or

(vii) The provider of the technology identified by the notary public has not registered with the Secretary of State"

Page 10

Section 4

Line 1

After "Standards for", insert "**the Performance of Notarial Acts with Respect to Electronic Records**"

Delete: "notarization of electronic records"

Page 12

Section 5

Line 20

After "Standards for", insert "**Electronic Notarizations**"

Delete: "online notarial acts"

Page 12

Section 5

Line 21

After "In performing", insert "**electronic notarizations**"

Delete "online notarial acts with respect to electronic records"

Page 12

Section 5

Line 22

After "must comply with", insert "**registration**"

Delete "for electronic notarization as provided in 30 KAR 8:005"

Insert "**of**" and after "Section 3, insert "**and the standards for notarial acts with respect to electronic records in Section 4 of this administrative regulation**"

Page 13

Section 5

Line 1

Delete: "Requirements of official stamp.

(1) A notary public is not required to use an official stamp when

performing online notarizations.

(2) A notary public who uses an official stamp must use the same unique official stamp for all notarizations involving online notarial acts. An official stamp under this section is an official seal of office of the notary public for all purposes. An official stamp must conform to the following requirements:

(i) Required information. An official stamp shall substantially conform to the following design: a rectangular or circular seal with the notary public's name as it appears on the commission, the words "Commonwealth of Kentucky" and "Notary Public", the notary public's commission number, and the commission expiration date.

(ii) Online notarial acts."

Page 13
Section 5
Line 12

After "If", insert "**used for electronic notarizations,**"

Page 13
Section 5
Line 12

After "public", insert "**may use**"

Delete: "uses an official stamp to perform online notarial acts,"

Page 13
Section 5
Line 13

After "an", delete "the", insert "**that**", delete "must"

Page 13
Section 5
Line 16

Delete: "(iii) Format and size. When affixed to an electronic record, an official stamp must be clear, legible, and photographically reproducible. An official stamp is not required to be within a minimum or maximum size when photographically reproduced on an electronic record.

(3) If a notary public elects not to use an official stamp when performing online notarial acts the certificate must:

(i) Contain the name of the notary public as it appears on the notary public's commission;

(ii) Indicate the title "Online Notary Public" for any notarial act with respect to a remotely located individual; and

(iii) Indicate the notary public's commission number and the commission expiration date."

Page 14
Section 5
Line 4

Insert "**An online notary public shall have satisfactory evidence of the identity of a remotely located individual if the online notary public has personal knowledge of the identity of the individual.**"

Delete: "or satisfactory evidence".

Page 14
Section 5
Line 5

Delete: "As defined in Section 5".

Page 14
Section 5
Line 8

After "appropriate", insert "**government-issued**"

After "identification", insert "**card that contains the signature and photograph of**"

Delete: "by"

Page 14
Section 5
Line 9

After "that", insert "**government-issued identification card**"

Delete: "credential"

Page 14

Section 5
Line 12

After "analysis of the", insert "**government-issued identification card**"

Delete: "identity credential"

Page 14
Section 5
Line 14

After "analysis", insert "**of a government-issued identification card**"

Delete: "an identity credential"

Page 14
Section 5
Line 15

After "of the", insert "**government-issued identification card**"

Delete: "identity credential"

Page 15
Section 5
Line 22

Delete: "(e) Other methods of identity verification. An online notary public has satisfactory evidence of the identity of a remotely located individual if the online notary public has personal knowledge of the identity of the individual, or if the individual is identified by oath or affirmation of a credible witness, or if the online notary has reasonably verified the identity of the individual by use of a valid public key certificate, with the following requirements:

(1) Personal knowledge. An online notary public has personal knowledge of the identity of the individual appearing before the online notary public if the individual is personally known to the online notary public through dealings sufficient to provide reasonable certainty that the individual has the identity claimed.

(2) Credible witness. To be a credible witness, an individual must have personal knowledge of the remotely located individual who has made a statement in or executed a signature on the record that is the subject of the

online notarization. If the credible witness is a remotely located individual, then the online notary public must reasonably verify the credible witness's identity under Section 3 of this administrative regulation or have personal knowledge of the credible witness under subsection 1 of this section. A credible witness may be a remotely located individual if the online notary public, credible witness, and individual whose statement or signature is the subject of the online notarization can communicate by using communication technology."

Page 16
Section 5
Line 23

Delete "Section 7 of"

Page 20
Section 6
Line 10

Delete "Electronic and Online",
After "Requirements", insert "**for Notarial Acts with Respect to Electronic Records and Electronic Notarizations.**"

Page 20
Section 6
Line 12

Insert: "**or electronic notarizations**"
Delete: "notarial acts involving remotely located individuals using communication technology"

Page 22
Section 6
Line 5

After "or", insert "**electronic notarization**"
Delete: "notarial acts involving remotely located individuals"

Page 23
Section 7

Line 13

After "Section 7.", insert Prior Notice to the Secretary of State and Standards for the Use of Communication Technology in the Performance of Notarial Acts with Respect to Tangible Records. (1) A notary public shall, prior to the initial use of communication technology in the performance of notarial acts with respect to tangible records, notify the Office of the Secretary of State in writing by email or regular U.S. mail. The notice shall identify the communication technology the notary public has selected that is capable of creating an audio-visual recording of the performance of the notarial act. The Office of the Secretary of State shall make an entry of the information provided in the notice.

(2) In using communication technology in the performance of notarial acts with respect to tangible records, a notary public shall have satisfactory evidence of the identity of a remotely located individual if:

(a) the notary public has personal knowledge of the identity of the remotely located individual,

(b) the remotely located individual is identified by oath or affirmation of a credible witness appearing in person or by means of communication technology before the notary public, or

(c) if the notary public is reasonably able to identify the remotely located individual by at least two (2) different types of identity-proofing processes or services as provided in Section 5(d) of this administrative regulation.

(3) A notary public who performs notarial act with respect to tangible records shall create and maintain for a period of not less than ten (10) years, an audio-visual recording of the performance of the notarial act.

(4) A certificate executed by a notary public for the performance of a notarial act using communication technology with respect to tangible records shall contain the statement, "This notarial act involved the use of communication technology."

Delete: the remainder of this section.

Page 24
Section 7
Line 11

Insert: Section 8. Notary Discipline. (1) Failure to comply with the provisions of KRS 423.395 or this administrative regulation may result in the denial, refusal to renew, revocation, suspension, or conditioning of a notary public commission but shall not invalidate a notarial act performed by a notary public.

(2) Denial, refusal to renew, revocation, suspension, or conditioning of a notary commission shall result upon notification to the Secretary of State of:

(a) A conviction of a felony or a crime involving fraud, dishonesty, or deceit;

(b) A finding against, or admission of liability by, the notary public in any legal proceeding or disciplinary action alleging fraud, dishonesty, or deceit by the notary; or

(c) judicial determination of liability in a suit for fraud, misrepresentation, or failure to discharge the duties of a notary public.

(3) A notary public shall promptly notify the Secretary of State, in writing, of a conviction, finding, admission of liability, or judicial determination of liability as established in this Section.

(4) A person who knows of a violation of may file a complaint against a notary public with the Secretary of State.

(5) A complaint shall be in writing, dated, and signed by the person making the complaint. A complaint that does not comply with the requirements of this subsection shall not be filed, responded to, or acted upon by the Secretary of State.

(6) Any condition, restriction, suspension, or revocation of a notary commission shall have the same effect on the electronic or online registration the notary public holds.

(7) The Secretary of State shall cause a review of any complaint filed against a notary public to determine whether the allegations in the complaint would establish a violation by a notary public, and any appropriate disciplinary action, which shall be informed by the following factors:

(a) Nature and severity of the act, violation, or crime committed;

(b) Number and variety of current violations;

(c) Evidence pertaining to the requisite honesty, credibility, truthfulness, and integrity of the notary public;

(d) Actual or potential harm to the general public, group, individual or customer;

(e) History of complaints;

(f) Prior disciplinary record or warning;

(8) The Secretary of State shall inform the notary public of any disciplinary action by mailing a notice of disciplinary action to the home address of the notary public on file. The notice shall inform the notary public of the basis for the disciplinary action and the right to a hearing. Administrative proceedings under this section shall be governed by the provisions of KRS Chapter 13B.

(9) The Secretary of State shall certify any disciplinary action to the clerk of the county in which the notary public received his or her commission.