

Notary Public
Administrators



NASS eNotarization Implementation Guide (“*iGuide*”)

A PUBLICATION OF THE NOTARY PUBLIC ADMINISTRATORS
SECTION, NATIONAL ASSOCIATION OF SECRETARIES OF STATE

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FOREWORD

This *NASS eNotarization Implementation Guide* (“*iGuide*”) is offered to Notary Public commissioning authorities, and others involved in the eNotarization implementation process, as a tool for development of overall program objectives and related strategies. The *iGuide* is meant to facilitate decision-making affecting the implementation process, and contribute to more widespread enactment of electronic notarization.

The Policy Considerations, Practical Considerations and Resources offered in this *iGuide* should not be viewed as recommendations. They are considerations and resources that may be weighed as states craft the form of eNotarization, implementation process and ongoing program administration that best fits their unique circumstances.

This *iGuide* was developed by members of the Notary Public Administrators Section (NPA Section), a staff section of the National Association of Secretaries of State (NASS). The NPA Section is a national organization of persons in government and the private sector with professional interests and responsibilities in Notary law and the commissioning and administration of Notaries Public.

For more information on:

- NPA Section – Visit www.npa-section.com
- NASS – Visit www.nass.org
- NASS eNotarization Implementation Guide – Most recent version. Visit www.npa-section.com/electronicnotarization.html; browse to Implementation Guide.

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Frequently Used Terms and Abbreviations

Abbreviation	Full Term	Comment
API	Application Program Interface	Set of requirements that govern how one software application can talk to another, to enable application integration.
Apostille <i>(no abbreviation)</i>	Apostille	One of several terms (authentication, certification, Apostille) that refer to official verification of a Notary Public's signature and commission status on a given date.
Authentication <i>(no abbreviation)</i>	Authentication	One of several terms (authentication, certification, Apostille) that refer to official verification of a Notary Public's signature and commission status on a given date.
Certification <i>(no abbreviation)</i>	Certification	One of several terms (authentication, certification, Apostille) that refer to official verification of a Notary Public's signature and commission status on a given date.
CLE	Continuing Legal Education	Professional education for attorneys occurring after their admission to the bar.
eNotarization	Electronic Notarization	Notarization(s) performed on an electronic document, using the electronic equivalents of the traditional ink-pen signature and stamp.
eNotary, eNotaries	Electronic Notary, Electronic Notaries	A Notary Public who is capable of performing electronic notarial acts.
ESIGN	Electronic Signatures in Global and National Commerce Act	U.S. law addressing use of electronic signatures in national and global commerce.
IT	Information Technology	General reference to systems, computers, networks, software, etc.
MOU	Memorandum of Understanding	A formal agreement between two parties, but not legally binding.
NASS Standards	NASS National Electronic Notarization Standards	Standards for the performance of electronic notarial acts and the requisite technology.
NPA Section	Notary Public Administrators Section	A staff section of the National Association of Secretaries of State. Members include state Notary Public administrators and non-governmental stakeholders.
RULONA	Revised Uniform Law on Notarial Acts	Uniform law offered by the Uniform Law Commission; adopted by some states.
SDK	Software Development Kit	A programming package, enabling a programmer to develop applications for a particular platform. A typical SDK includes one or more APIs, programming tools and documentation.
UETA	Uniform Electronic Transactions Act	Uniform law offered by the Uniform Law Commission; adopted by most states.
URPERA	Uniform Real Property Electronic Recording Act	Uniform law offered by the Uniform Law Commission; adopted by some states.

Category 1A – Type of eNotarization Law or Rules to Enact **(States Lacking Specific eNotarization Law or Rules)**

Policy Considerations:

General policy points, business rules, office procedures, etc. that should be weighed when evaluating the type of eNotarization law or rules to enact.

- 1) When weighing enactment by legislation or by rule (or both), which is the most realistic course of action for your state to take?
- 2) Decide what model (laws and/or rules) of eNotarization is desirable for your state.
 - i) Your state may want minimal eNotarization laws and rules, or very extensive ones.
Possibilities:
 - (a) Based solely on UETA
 - (b) Minimal eNotarization laws (not writing entire chapter, example – Texas, Florida)
 - (c) Substantial eNotarization laws and rules (example – Arizona, Nevada, North Carolina)
 - (d) RULONA – enact and promulgate rules
 - (e) Model Notary Act – enact
 - (f) Model Electronic Notarization Act – enact
 - ii) Your state may mandate minimal fiscal impact to your agency’s annual budget.
 - iii) Your state may—or may not—want to authorize the commissioning authority to promulgate rules.
 - iv) Your state may want more regulatory authority over Notaries performing electronic notarizations, than current law provides.
 - v) Determine what information will be needed to authenticate electronic notarial acts (authentication, certification, Apostille).
 - vi) Will your agency be the chief sponsor of the enacting legislation, or another party?
- 3) Consider other existing statutes that would impact an eNotarization law or rules (for example, federal E-SIGN preemption clause¹).
- 4) What is the driving force of this implementation?

Practical Considerations:

Policy-based considerations that should be weighed and if applicable, quantified, in order to positively influence successful enactment or implementation.

- 1) Identify the features of your desired eNotarization program.
 - i) Details to consider:
 - (a) Single Notary commission or separate eNotary commission?
 - (b) If separate commission, different application fee, if any?

¹ See 15 U.S. Code §7001(a), <https://www.law.cornell.edu/uscode/text/15/7001>

- (c) Term length of eNotary registration/commission (matches effective/expiration dates of paper Notary term?)
- (d) Require eNotary training?
- (e) Require eNotary surety bond?
- (f) Visible and technological requirements for the Notary's e-signature/seal? (Also see Categories 3 and 4)
- (g) Require registration of eNotary capability? What information will be required?
- (h) Require journaling of electronic notarial acts?
- (i) Allow an eNotary to charge higher fees?
- (j) Publish an eNotary database or list?
- (k) Adopt specific eNotary authentication (certification, Apostille) provision?
- (l) Implement a different fee for eNotary authentications (certification, Apostille)?
- (m) Seek rule-making authority? If yes, ensure bill language expresses desired scope.
- (n) Should the eNotarization solution to be state-developed, single vendor or multiple vendors?

- 2) Staffing considerations.
- 3) Working with the legislature.
- 4) What is the total fiscal impact of the desired policy and these related, practical considerations?

Related Actions:

- 1) Identify helpful resources to consult, such as existing statutes and rules, uniform laws and model acts, other state notary offices, and notary subject matter experts.
- 2) Identify whether your state has other laws that address a Notary's e-signature (UETA, URPERA), and whether they do so sufficiently.
- 3) Gather, organize and distribute resource information.
- 4) Evaluate existing database capability.
- 5) Evaluate current staffing and additional staffing needs.
- 6) Identify and evaluate funding sources for increased program expenses.
- 7) Craft agreement(s) for vendors and services needed to implement an eNotarization program.
- 8) Develop any forms necessary for program administration (e.g., eNotary application form, eNotary registration form, vendor-related forms; "form" and "forms" may also include a process to collect data or convey information).

9) Develop eNotary commission or appointment certificate and related administrative procedures.

10) Develop eNotary training.

QUESTIONS, COMMENTS, SUGGESTIONS:

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Category 1B – Type of eNotarization Rules to Enact **(States With a Specific eNotarization Law and Rulemaking Authority)**

Policy Considerations:

General policy points, business rules, office procedures, etc. that should be weighed when evaluating the type of eNotarization rules to enact.

- 1) Decide what model of eNotarization is desirable for your state's rules.
 - i) Your state may want minimal eNotarization rules, or very extensive ones.
Possibilities:
 - (a) Minimal eNotarization rules (example – Florida)
 - (b) Substantial eNotarization rules (example – Arizona, North Carolina)
 - (c) Model Notary Act
 - (d) Model Electronic Notarization Act
 - ii) Your state may mandate minimal fiscal impact to your agency's annual budget.
 - iii) Your state may want more regulatory authority over Notaries performing electronic notarizations, than current law provides.
 - iv) Determine what information will be needed to authenticate electronic notarial acts (authentication, certification, Apostille).

- 2) Consider existing law or rules that would impact eNotarization rules (for example, federal ESIGN preemption clause²).

Practical Considerations:

Policy-based considerations that should be weighed and if applicable, quantified, in order to positively influence successful enactment or implementation.

- 1) Clearly articulate the form of eNotarization that is statutorily enacted in your state.

- 2) Assess the scope of rule-making authority (avoid weighing issues that are outside rule-making authority).

- 3) Rule provisions - details to consider (subject to scope of authority):
 - i) Single Notary commission or separate eNotary commission?
 - ii) If separate commission, different application fee, if any?
 - iii) Term length of eNotary registration/commission (matches effective/expiration dates of paper Notary term?)
 - iv) Require eNotary training?
 - v) Require eNotary surety bond?
 - vi) Visible and technological requirements for the Notary's e-signature/seal? (Also see Categories 3 and 4)
 - vii) Require registration of eNotary capability? What information will be required?
 - viii) Require journaling of electronic notarial acts?
 - ix) Allow an eNotary to charge higher fees?

² See 15 U.S. Code §7001(a), <https://www.law.cornell.edu/uscode/text/15/7001>

- x) Publish an eNotary database or list?
 - xi) Adopt specific eNotary authentication (certification, Apostille) provision?
 - xii) Implement a different fee for eNotary authentications (certifications, Apostilles)?
 - xiii) Should the eNotarization solution be state-developed, single vendor or multiple vendors?
- 4) Staffing considerations.
- 5) What is the total fiscal impact of the desired policy and these related, practical considerations?

Related Actions:

- 1) Identify whether your state has other laws that address a Notary's e-signature (UETA, URPERA).
- 2) Identify helpful resources to consult, such as existing statutes and rules, uniform laws and model acts, other state notary offices, and notary subject matter experts.
- 3) Gather, organize and distribute resource information.
- 4) Evaluate existing database capability.
- 5) Evaluate current staffing and additional staffing needs.
- 6) Identify and evaluate funding sources for increased program expenses.
- 7) Craft agreement(s) for vendors and services needed to implement an eNotarization program.
- 8) Develop any forms necessary for program administration (e.g., eNotary application form, eNotary registration form, vendor-related forms; "form" and "forms" may also include a process to collect data or convey information).
- 9) Develop eNotary commission or appointment certificate and related administrative procedures.
- 10) Develop eNotary training.

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Category 2 – Administrative and Fiscal Matters

Policy Considerations:

General policy points, business rules, office procedures, agency funding, etc. that should be weighed when evaluating eNotarization implementation policies and processes that would impact your budget and administrative operation of your office.

- 1) eNotarization program implementation and ongoing maintenance may involve multiple agency divisions (for example, Notary Division; Information Technology; Legal), as well as private industry providers. Know the full list of involved parties and engagement protocols.
- 2) Implementation of an eNotarization program may affect your agency's staffing or funding needs. Consider the impact of your division's annual budget on overall agency funding.
- 3) Understand the constraints under which your agency/division modifies or adds staff positions; what is the approval process?
- 4) You may wish to design the most "bare bones" program your agency can implement from a fiscal standpoint, and the most extensive program.
 - i) Implement as many administrative and program features as possible now (up-front); or
 - ii) Phase-in some administrative and program features over time.
- 5) Will the fee revenue generated by an eNotarization program be retained by your agency/division instead of the general revenue fund?

Practical Considerations:

Policy-based considerations that should be weighed and if applicable, quantified, in order to positively influence successful enactment or implementation.

- 1) Will or must your state pursue a funded or unfunded mandate?
- 2) Is there an existing policy dictating how agency/division program fees must be handled? Could policy be amended to allow eNotarization program fees to be retained by the agency/division?
- 3) Does your agency/division have the ability to adjust various fees to fund the needs of an eNotarization program?
- 4) How is your agency/division's annual budget vetted and approved? Who wields ultimate budgetary and fiscal control?
- 5) Will database or server maintenance costs be impacted by eNotarization program implementation?

- 6) What ripple effect will the scope of your desired eNotarization program have on agency/division operations and personnel?
- 7) Of the parties that will aid eNotarization program implementation and ongoing maintenance, are all within your agency, or multiple agencies? Any private industry participants? How are their roles coordinated?
- 8) Consider staffing and resource needs based on desired program details which may include:
 - i) Specialized staffing such as an eNotarization project manager or team
 - ii) Single vendor or multi-vendor system
 - iii) Agency approval of eNotary vendors
 - iv) Single Notary commission or separate eNotary commission? Matches paper and eNotary commission term?
 - v) eNotary surety bond required?
 - vi) eNotary training or testing required?
 - vii) Registration of eNotary capability? What information will be required?
 - viii) Publish an eNotary database or list?
 - ix) Additional resources needed for authentication of eNotary acts?
 - x) Storage of graphic images of the Notary's e-seal and signature
 - xi) New eNotary web registration portal, information page or online training
 - xii) Phased-in administrative and program details

**Also review possible program details under Category 1A, Practical Considerations 1(i)(a-n)*

- 9) If prescribing, obtaining and storing graphic image of the Notary's electronic seal and/or electronic signature, examine appropriate related statutes governing the electronic Notary seal and signature.
- 10) Legal consultation may be necessary; determine access to legal assistance and fiscal impact.
- 11) State/vendor agreements – what are state policies and procedures for creating agreements?
- 12) What changes or additions will this cause to departmental forms? (“Forms” may also include a process to collect data or convey information.)
- 13) What is the projected overall fiscal impact?

Related Actions:

- 1) Identify helpful resources to consult.
- 2) Implement drafting of vendor agreement pursuant to state policies.
- 3) Develop eNotary application form or web portal, if applicable.

- 4) Develop eNotary registration form or web portal, if applicable.
- 5) Develop eNotary certificate.
- 6) Write budget.

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Category 3 – Information Technology and IT Vendor Matters

Policy Considerations:

General policy points, business rules, office procedures, etc. that should be weighed when evaluating information technology needs related to eNotarization implementation and ongoing program maintenance. “Vendor” in this Category applies to database designers, payment processors, and other vendors of technology needed to implement and maintain an eNotarization program.

- 1) Your state may have statewide IT policies, statutes or rules that will affect your eNotarization program implementation and maintenance objectives.
- 2) Your state may have an “information technology council” or similar technology gatekeeper organization (or person) that approves IT projects and/or prioritizes them.
- 3) Your agency may or may not have the ability to unilaterally schedule and/or prioritize IT projects.
- 4) Your state may consider engaging state IT resources, private industry resources or both.
- 5) Your state may have policies that constrain your access to IT resources outside of your own agency or other state agencies.
- 6) You may or may not be locked into your current administrative programming and/or database configuration.

Practical Considerations:

Policy-based considerations that should be weighed and if applicable, quantified, in order to positively influence successful enactment or implementation.

- 1) Identify the IT processes needed for eNotarization program administration (for example, database enhancement, online training module, online payment processing).
- 2) Identify the coordinator in charge and the logical team members to develop and implement the eNotarization program.
- 3) Identify IT resources that are available to your agency (agency, state or private resources).
- 4) Determine IT cost impacts based on desired type of program.
- 5) Know the administrative process for obtaining the necessary IT support for program implementation and maintenance.
- 6) Determine how IT project funding is approved for your agency.
- 7) Determine whether IT project funding is prioritized (intra- and inter-agency) and what factors affect prioritization.

- 8) Determine how IT project scheduling is prioritized (intra- and inter-agency).
- 9) Identify current, short- and long-term IT initiatives that may impact your access to IT resources (IT resource scheduling).
- 10) Coordinate timing of IT resource availability with budget and funding cycles and effective dates.
- 11) Assess program application's ability to integrate with other software or platforms.
- 12) Consider use of APIs versus custom coding—what is your agency's or state's existing practice? Look at other agency practices.
- 13) Evaluate current state of database (version, last revision, foreseeable shelf-life, etc.).
- 14) Determine the database configuration necessary to capture, store, archive and retrieve desired data points. Is revision to current database necessary?
- 15) Evaluate potential future maintenance costs of your database or server.
- 16) Determine impact on database of filing, registration, or administrative fees to be charged for eNotarization program.
- 17) Consider online registration of eNotarization capability.
- 18) Identify another state or states³ using an administration platform or software that reflects your desired program features. (Vendor or vendors may have already constructed such a platform or software for another state.)
- 19) Consider the need for written IT integration standards and/or an IT integration guide for vendors.
- 20) Consider the need for a written Software Development Kit (SDK).
- 21) Consider a new eNotary information page or online training—what IT support is necessary for creation and maintenance?
- 22) Assess project design and the ability of vendors to accommodate any mandated deadlines, timetables or other constraints.
- 23) Consider need for memorandums of understanding (MOUs) and/or contractual agreements.

³ See this table (*publication pending*) on the NPA Section web site to compare state eNotarization program features and links to enacting states' statutes and rules.

- 24) Determine whether storing an image of the eNotary's signature and/or seal in the Notary's administrative database profile requires a data-sharing agreement with the eNotary solution vendor.

- 25) Determine whether vendor access to the state's backend system requires an integration agreement.

Related Actions:

(Intentionally left blank.)

QUESTIONS, COMMENTS, SUGGESTIONS:

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Category 4 – eNotarization Vendor Relations

Policy Considerations:

General policy points, business rules, office procedures, etc. that should be weighed when evaluating eNotarization vendor relations. Applicable to states that will rely on eNotarization system vendors instead of a state-designed solution.

- 1) Your state may wish to adopt an established standard for your eNotarization technology, or you may wish to adopt unique requirements and standards for your vendors.
- 2) Your state may choose not to establish specific requirements or standards for eNotarization technology.
- 3) Your state may wish to implement uniform vendor solution requirements to facilitate broader adoption of eNotarization (vendors can offer already-developed technology in more states, more readily).
- 4) Your state may or may not wish to require vendor certification or approval.

Practical Considerations:

Policy-based considerations that should be weighed and if applicable, quantified, in order to positively influence successful enactment or implementation.

- 1) Identify any state policies, statutes or regulations that will influence vendor/agency engagement and interactions.
- 2) Identify any state policies, statutes or regulations that will influence requirements you might impose on vendors.
- 3) Determine minimum eNotarization solution features that must be present, based on statute and rule requirements. These might include:
 - i) Creation/storage/retrieval of journal record
 - ii) Creation/storage/retrieval of audio-video recording (remote notarizations)
 - iii) Ability to verify Notary's status each and every time a Notary performs an eNotarization
 - iv) Ability to capture signer thumbprint (currently only California)
- 4) How adaptable is vendor technology to future (enhanced or amended) eNotarization solution requirements imposed by the commissioning authority?
- 5) Determine desired vendor application process, if certification or approval is implemented.
- 6) Determine resources needed for the vendor certification or approval process.
- 7) Identify vendors and determine relationships.

- 8) Determine administrative procedures to employ when vendors or Notaries fail to comply with established program requirements (for example, vendor makes non-compliant revisions to approved technology, or a Notary uses a non-approved solution).
- 9) Decide whether to endorse/not endorse vendors.
- 10) Consider need for memorandums of understanding (MOUs) and/or contractual agreements.
- 11) Consider need for data-sharing agreements to address, for example, providing images of the Notary's e-seal and e-signature.
- 12) Determine whether vendor access to the state's backend system requires an integration agreement.
- 13) Evaluate vendor ability to integrate appropriately with the state's system, to accomplish desired functions.
- 14) Consider periodic vendor review/recertification process.
- 15) Determine how Notary status changes (for example, name change, suspension, revocation) are processed and evidenced in the system.
- 16) Determine the level of system security desired to protect sensitive data and assets such as the Notary's e-signature and e-seal.

Related Actions:

- 1) Develop memorandum of intent to distribute to potential vendors.
- 2) Develop vendor application.
- 3) Design vendor review and approval process.
- 4) Create boilerplate vendor letter of approval.
- 5) Create boilerplate vendor rejection letter.
- 6) Create new vendor announcement/notification message.

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Category 5 – Stakeholder Education/Training and Outreach

Policy Considerations:

General policy points, business rules, office procedures, etc. that should be weighed when evaluating how to advance and improve your eNotarization program by engaging stakeholders through education, training and outreach. “Stakeholders” include (but are not limited to) these communities: legal; mortgage industry; registers of deeds/recorders/clerks; courts; Notaries Public; Notary associations; business and industry sectors that rely heavily on Notaries.

- 1) Your state may wish to engage some, or all, eNotarization stakeholders through education, training and/or outreach programs in hopes of promoting and sustaining adoption of eNotarization.
- 2) Your state might have policies, statutes or rules that affect the methods you use to accomplish stakeholder education, training and/or outreach.

Practical Considerations:

Policy-based considerations that should be weighed and if applicable, quantified, in order to positively influence successful enactment or implementation.

- 1) Research state guidelines and restrictions on engaging stakeholders through education/training/outreach.
- 2) Research state guidelines and restrictions on partnerships for delivery of education/training/outreach.
- 3) Identify potential education/training/outreach partners (state-based and/or private?).
- 4) Identify internal and external resources, if any, for stakeholder education/training/outreach; determine those best suited for your purpose.
- 5) Assess fiscal impact of any education/training/outreach initiative.
- 6) Weigh fiscal impact of each possible method of stakeholder education/training/outreach against their perceived benefits.
- 7) Assess impact on staff resources.
- 8) Assess and determine desired program features and objectives, for example:
 - i) Internal training:
 - (a) Customer service FAQs
 - (b) Training staff on internal program impacts such as learning new laws, and data fields used with the system, as appropriate
 - (c) Informing other agency and state departments about this program
 - ii) Outreach education and training for Notaries:

- (a) Mandate training? How frequently?
- (b) What will be the required course content?
- (c) Live or online training, or both?
- (d) Test for comprehension (mandatory or optional)?
- (e) Provide eNotary manual or guidebook in addition to the law?

iii) External e-business initiative:

- (a) Work with trade organizations
- (b) Identify all possible presentation/outreach opportunities with stakeholders
- (c) Identify and leverage available electronic communications methods
- (d) Frame eNotarization issues in the context of broader e-signature and e-recording matters
- (e) Generate brochures and other materials for dissemination
- (f) Conduct proof of concept pilot programs with industry organizations for which notarization is a vital part of their process (financial sector, real estate, etc.)

9) Evaluate working with the state and/or local Bar Association.

10) Explore placing the topic of eNotarization before the legal community as CLE.

Related Actions:

- 1) Identify all eNotarization stakeholders.
- 2) Determine and prioritize education and outreach methods based on prioritization of stakeholders (which methods work best for which stakeholders?).

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RESOURCES

Web Site of the Notary Public Administrators Section, Electronic Notarization Page

White Papers • Alignment with NASS eNotarization Standards • Where eNotarization is Authorized • Legal Framework • eNotarization Solution Vendors • Demonstration Link • RULONA and eNotarization • Reference Table

<http://www.npa-section.com/electronicnotarization.html>

NASS National Electronic Notarization Standards

Most recent version available. Standards were reaffirmed in 2016 with non-technical text amendments.

<http://www.nass.org/about-nass/nass-resolutions/>

(See "NASS Resolution Reaffirming Support for the National Electronic Notarization Standards 07/17/16.")

Revised Uniform Law on Notarial Acts

RULONA was amended in July 2016 to include an additional, bracketed Section 14A dealing with communications technology-assisted ("remote") notarization for individuals abroad.

2010 Act: http://www.uniformlaws.org/shared/docs/notarial_acts/rulona_final_10.pdf

2016 Amendment:

http://www.uniformlaws.org/shared/docs/notarial_acts/2016_ARULONA_Final%20Act.pdf

Model Notary Act of 2010, National Notary Association

<https://www.nationalnotary.org/knowledge-center/reference-library/model-notary-act>

Model Electronic Notarization Act of 2017, National Notary Association

<https://www.nationalnotary.org/knowledge-center/reference-library/model-notary-act/model-electronic-notarization-act>

Uniform Electronic Transactions Act

(Scroll to Section 11, Notarization and Acknowledgment)

http://www.uniformlaws.org/shared/docs/electronic%20transactions/ueta_final_99.pdf

Uniform Real Property Electronic Recording Act

(Scroll to Section 3, Validity of Electronic Documents, Subsection [c])

http://www.uniformlaws.org/shared/docs/real%20property%20electronic%20recording/urpera_final_apr05.pdf

Electronic Signatures in Global and National Commerce Act

<https://www.gpo.gov/fdsys/pkg/USCODE-2011-title15/pdf/USCODE-2011-title15-chap96-subchapl-sec7001.pdf>