

Emergency Filing - Coversheet

Instructions:

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the “Rule on Rulemaking” (CVR 04-000-001) adopted by the Office of the Secretary of State, this emergency filing will be considered complete upon filing and acceptance of these forms with the Office of the Secretary of State, the Legislative Committee on Administrative Rules and a copy with the Chair of the Interagency Committee on Administrative Rules.

All forms shall be submitted to the Office of the Secretary of State, no later than 3:30 pm on the last scheduled day of the work week.

The data provided in text areas of these forms will be used to generate a notice of rulemaking in the portal of “Proposed Rule Postings” online, and the newspapers of record if the rule is marked for publication. Publication of notices will be charged back to the promulgating agency.

This emergency rule may remain in effect for a total of 180 days from the date it first takes effect.

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801(b)(11) for a definition), I believe there exists an imminent peril to public health, safety or welfare, requiring the adoption of this emergency rule.

The nature of the peril is as follows (*PLEASE USE ADDITIONAL SHEETS IF SPACE IS INSUFFICIENT*). OPR seeks to renew the emergency rules to ensure notaries can provide remote and electronic notary public services while the already drafted permanent rules go through rulemaking.

I approve the contents of this filing entitled:

Emergency Administrative Rules for Notaries Public and Electronic and Remote Notarization

_____/s/Sarah Copeland Hanzas_____, on 3/1/2024
(signature) (date)

Printed Name and Title:

RECEIVED BY: _____

- Coversheet
- Adopting Page
- Economic Impact Analysis
- Environmental Impact Analysis
- Strategy for Maximizing Public Input
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)

Sarah Copeland Hanzas, Secretary of State

1. TITLE OF RULE FILING:

Emergency Administrative Rules for Notaries Public and Electronic and Remote Notarization

2. ADOPTING AGENCY:

Secretary of State, Office of Professional Regulation

3. PRIMARY CONTACT PERSON:

(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).

Name: Lauren K. Layman

Agency: Office of Professional Regulation

Mailing Address: 89 Main St., 3rd Fl., Montpelier, VT 05602

Telephone: 802-828-2883 Fax:

E-Mail: lauren.layman@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

<https://sos.vermont.gov/notaries-public/statutes-rules-resources/>

4. SECONDARY CONTACT PERSON:

(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).

Name: Gina Hruban

Agency: Office of Professional Regulation

Mailing Address: 89 Main St., 3rd Fl., Montpelier, VT 05602

Telephone: 802-828-1505 Fax:

E-Mail: gina.hruban@vermont.gov

5. RECORDS EXEMPTION INCLUDED WITHIN RULE:

(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE EXEMPTING IT FROM INSPECTION AND COPYING?) No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

6. LEGAL AUTHORITY / ENABLING LEGISLATION:

(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).

3 V.S.A. § 801(b)(11) [SOS is the adopting authority for OPR]

26 V.S.A. § 5323 [OPR notary public rulemaking authority]

7. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:

The above statute authorizes the Secretary of State's Office of Professional Regulation to adopt administrative rules regulating the performance of notarial acts for remotely located individuals and notarial acts involving electronic records.

8. CONCISE SUMMARY (150 WORDS OR LESS):

These Emergency Rules allow an individual to satisfy the "personal appearance" requirement for the performance of notarial acts by appearing through communication technology using specific protocols and standards. They also allow notarization of electronic records by notaries public holding a special commission endorsement.

9. EXPLANATION OF WHY THE RULE IS NECESSARY:

The Office of Professional Regulation (OPR) seeks approval of Emergency Rules for Remote and Electronic Notarial Acts. These Emergency Rules include the previous Emergency Rules for Notaries Public and Remote Notarization. Unlike prior versions of these Emergency Rules, however, the Emergency Rules proposed herein create a process for notaries public to obtain a special endorsement to perform notarial acts on electronic records.

The first set of Emergency Rules were adopted in March 2020 to facilitate the performance of essential transactions requiring notarial acts when individuals and notaries public were unable to safely share a physical space. Since this time, remote notarial acts have become a valued tool for the performance of essential transactions, from real estate sales and wills to health care documents and adoptions.

Similarly, over the past 4 years, electronic records are of ever increasing importance to business and governance.

Recognizing this, the Vermont General Assembly adopted Act 171 in May 2022, which permits OPR to adopt rules allowing Vermont notaries public, who obtain a special endorsement from the Office, to perform notarial acts for remotely located individuals and on electronic records. Unfortunately, the rulemaking process for permanent rules enacting Act 171 has been repeatedly delayed due to flooding, staff shortages, litigation matters, urgent regulatory concerns in other professions, and sunrise and scope-expansion reports. OPR recognizes that there is a community need to have remote notarial acts continue and for Vermont notaries public to begin to perform notarial acts on electronic records. The agency also believes these activities can be accomplished in a manner that protects the public when performed consistently with these Emergency Rules. It is OPR's hope that the LCAR will adopt these Emergency Rules to allow remote notarial acts to continue and to allow notaries public begin to get the special endorsement to perform notarial acts on electronic records.

The two legislative committees of jurisdiction (Senate Government Operations and House Government Operations and Military Affairs) have previously expressed support for the extension of the emergency rule, though they have not been consulted since March 2023.

10. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY AS DEFINED IN 3 V.S.A. § 801(b)(13)(A):

The Rules are not arbitrary, as that term is defined in 8 V.S.A. § 801(b)(13)(A), because there is a factual basis for the decision to permit the performance of remote notarial acts and notarial acts on electronic records, the Emergency Rules are rationally connected to this factual basis, and the decision herein would make sense to the reasonable person. The Emergency Rules were initially the result of COVID-19 and the inability for people to meet in person to conduct

transactions. Since the initial adoption of the Emergency Rules, the General Assembly has adopted a law, Act 171, permitting Vermont notaries public to perform electronic and remote notarial acts, subject to the adoption of rules by OPR. OPR needs additional time to adopt the rules implementing Act 171. Should the Emergency Rules not be renewed, remote notarial acts and notarial acts on electronic records will not be permitted until OPR has concluded the rulemaking process for permanent Act 171 rules. This would create unnecessary delay and disruption of business and governance practices that have come to rely on remote notarial acts and need to move forward with performing notarial acts on electronic records. The Emergency Rules are rationally connected to addressing the problem of COVID-19 preventing in-person transactions because the Emergency Rules facilitate the performance of essential transactions by allowing notarial acts to be performed remotely using audio-visual communication technology. Renewal of the Emergency Rules is rationally connected to continuing to facilitate remote notarial acts, and to facilitating notarial acts on electronic records, while OPR adopts rules implementing the will of the General Assembly as reflected in Act 171. Finally, the Emergency Rules would make sense to a reasonable person because the Emergency Rules (a) are narrowly tailored to address problems created by the pandemic and by the increased reliance in business and government on electronic records, and (b) allow commercial and legal transactions to continue in the manner they occur in non-pandemic times and while OPR adopts rules to implement Act 171. In turn, the Emergency Rules are not arbitrary as that term is defined in Vermont's statutes.

**11. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES
AFFECTED BY THIS RULE:**

State agencies, the judiciary, Town Clerks, social service agencies, hospitals, nursing homes and other health care facilities, law enforcement, notaries public, real estate professionals, banks, mortgage companies, attorneys (including those in elder care, estate planning, and real estate), and the public.

12. BRIEF SUMMARY OF ECONOMIC IMPACT (150 WORDS OR LESS):

These Emergency Rules have allowed notarial acts to continue in the face of a public health crisis and have facilitated the continuance of essential transactions and commerce. Adopting these revised Emergency Rules will continue to facilitate and protect our economy and the public health and permit the needed modernization of notarial services in Vermont by allowing notaries public to begin providing notary services for electronic records.

13. A HEARING IS NOT SCHEDULED .

14. HEARING INFORMATION

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION NEEDED FOR THE NOTICE OF RULEMAKING.

Date:

Time: AM

Street Address:

Zip Code:

URL for Virtual:

Date:

Time: AM

Street Address:

Zip Code:

URL for Virtual:

15. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

16. EMERGENCY RULE EFFECTIVE: 03/04/2024

17. EMERGENCY RULE WILL REMAIN IN EFFECT UNTIL

(A DATE NO LATER THAN 180 DAYS FOLLOWING ADOPTION OF THIS EMERGENCY RULE):

08/30/2024

18. NOTICE OF THIS EMERGENCY RULE SHOULD NOT BE PUBLISHED IN THE WEEKLY NOTICES OF RULEMAKING IN THE NEWSPAPERS OF RECORD.

19. KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

Notary Public

Notary

Remote Notarization

Professional Regulation

Personal Appearance

Communication Technology

Notarial Act

Electronic Notarization

Electronic Record

Special Endorsement

Adopting Page

Instructions:

This form must accompany each filing made during the rulemaking process:

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. TITLE OF RULE FILING:

Emergency Administrative Rules for Notaries Public and Electronic and Remote Notarization

2. ADOPTING AGENCY:

Secretary of State, Office of Professional Regulation

3. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment as long as the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **A NEW RULE** .

4. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND EFFECTIVE DATE OF THE LAST ADOPTION FOR THE EXISTING RULE*):

20-E02, "Administrative Rules for Notaries Public and Remote Notarization", March 24, 2020

20-E18, "Emergency Administrative Rules for Notaries Public and Remote Notarization", September 21, 2021 (extension of 20-E02)

21-E02, "Emergency Administrative Rules for Notaries Public and Remote Notarization", March 19, 2021 (extension of 20-E02 and 20-E18)

21-E14, "Emergency Administrative Rules for Notaries Public and Remote Notarization", September 19, 2021 (extension of 20-E02, 20-E18, and 21-E02)

22-E02, "Emergency Administrative Rules for Notaries Public and Remote Notarization", March 14, 2022 (extension of 20-E02, 20-E18, 21-E02, and 21-E14)

22-E13, "Emergency Administrative Rules for Notaries Public and Remote Notarization", September 9, 2022 (extension of 20-E02, 20-E18, 21-E02, 21-E14, and 22-E02)

22-E02, "Emergency Administrative Rules for Notaries Public and Remote Notarization", March 9, 2023 (extension of 20-E02, 20-E18, 21-E02, 21-E14, and 22-E02, and 22-E13)

23-E09, "Emergency Administrative Rules for Notaries Public and Remote Notarization", September 5, 2023 (extension of 20-E02, 20-E18, 21-E02, 21-E14, and 22-E02, 22-E13, and 22-E02)

MEMORANDUM

TO: Sarah Copeland Hanzas, Secretary of State

CC: Legislative Committee on Administrative Rules:
Representative Trevor Squirrell, Chair
Charlene Dindo, Committee Assistant

FROM: Sean Brown, ICAR Chair Sean
DATE: March 12, 2024 Brown
RE: Emergency Rule Titled 'Emergency Administrative Rules for Notaries Public and Remote Notarization' by the Office of Professional Regulation

Digitally signed by
Sean Brown
Date: 2024.03.12
19:51:44 -04'00'

I have reviewed the proposed rule titled 'Emergency Administrative Rules for Notaries Public and Remote Notarization', provided by the Office of Professional Regulation, and do not agree that emergency rulemaking is necessary per the use of rulemaking procedures under the provisions of 3 V.S.A. §844.

As the state and federal COVID emergencies have ended, adequate time has passed since this emergency rule was previously supported by ICAR five times beginning in 2020 and the most recent being in September 2023, and since the flooding, I feel adequate time has been allowed for proper rulemaking to occur, and therefore do not feel there is an imminent peril to public health, safety, or welfare sufficient to justify adoption of this emergency rule.

###

Economic Impact Analysis

Instructions:

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose. If no impacts are anticipated, please specify “No impact anticipated” in the field.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn’t appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

1. TITLE OF RULE FILING:

Emergency Administrative Rules for Notaries Public and Electronic and Remote Notarization

2. ADOPTING AGENCY:

Secretary of State, Office of Professional Regulation

3. CATEGORY OF AFFECTED PARTIES:

LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:

State agencies, the judiciary, Town Clerks, social service agencies, hospitals, nursing homes and other health care facilities, notaries public, real estate professionals, law enforcement, banks, mortgage

companies, attorneys (including those in elder care, estate planning, and real estate), and the public.

4. **IMPACT ON SCHOOLS:**

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS CLEARLY STATING ANY ASSOCIATED COSTS:

None - other than the general health and safety of Vermonters.

5. **ALTERNATIVES: CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.**

The Rules do not impose costs on schools.

6. **IMPACT ON SMALL BUSINESSES:**

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):

These Emergency Rules have allowed small businesses to continue to conduct essential transactions during COVID-19. The General Assembly has since recognized the value of authorizing remote and electronic notarial acts by adopting Act 171. If the Emergency Rules are not renewed, small businesses will need to suspend proven and effective business practices while rules are adopted implementing Act 171. This unnecessary interruption will have a negative impact on small businesses. In addition, adopting rules authorizing electronic notarial acts will allow small businesses to rely more heavily on electronic records, potentially yielding savings in paper, printing, postage, and physical records storage.

7. **SMALL BUSINESS COMPLIANCE: EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.**

Businesses can take advantage of existing technologies to perform remote or electronic notarial acts and use the Emergency Rules to continue with important legal transactions. Small businesses can also choose to engage in in-person or on-paper notarial acts if the

costs or burdens of compliance with the Emergency Rules are too significant.

8. COMPARISON:

COMPARE THE IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:

The Emergency Rules represented the least burdensome approach the agency was able to identify for accommodating the economic and community need for the performance of notarial acts during the COVID-19 pandemic. Having no Emergency Rules would have imposed a barrier to conducting business and potentially have inflicted significant economic damage. Similarly, if the Emergency Rules expire, remote and electronic notarial acts will be suspended pending the adoption of rules for the implementation of Act 171. Given that remote notarial acts have become a regular part of conducting essential business, legal, and personal transactions, suspending this remote authority for even a short period will be costly and disruptive. Renewing the Emergency Rules for 180 days is the least burdensome option OPR has identified to ensure the continuation of remote notarial acts while OPR adopts the rules necessary to implement Act 171.

9. SUFFICIENCY: DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.

The analysis regarding the impact of the Emergency Rules was conducted based on consultation with stakeholders who performed remote notarial acts using the Emergency Rules. The impact and efficacy of these Emergency Rules over the past 2.5 years and the General Assembly's adoption of Act 171 was also considered. With regard to notarial acts on electronic records, OPR reviewed rules for performance of electronic notarial acts in other states, including New York, New Mexico, Indiana, and Maine, and standards for electronic notarial acts issued by the National Association of Secretaries of State. These Emergency Rules are based on those sources. OPR also sent these revised Emergency

Rules to stakeholders for their review before filing them.

Environmental Impact Analysis

Instructions:

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis. If no impacts are anticipated, please specify “No impact anticipated” in the field.

Examples of Environmental Impacts include but are not limited to:

- Impacts on the emission of greenhouse gases
- Impacts on the discharge of pollutants to water
- Impacts on the arability of land
- Impacts on the climate
- Impacts on the flow of water
- Impacts on recreation
- Or other environmental impacts

1. TITLE OF RULE FILING:

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2. ADOPTING AGENCY:

Secretary of State, Office of Professional Regulation

3. GREENHOUSE GAS: *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*

Not applicable.

4. WATER: *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):*

Not applicable.

5. LAND: *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*

Not applicable.

6. RECREATION: *EXPLAIN HOW THE RULE IMPACTS RECREATION IN THE STATE:*

Not applicable.

7. **CLIMATE:** *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*
Not applicable.
8. **OTHER:** *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*
Not applicable.
9. **SUFFICIENCY:** *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*
The Emergency Rules have no known environmental impact.

Public Input Maximization Plan

Instructions:

Agencies are encouraged to hold hearings as part of their strategy to maximize the involvement of the public in the development of rules. Please complete the form below by describing the agency's strategy for maximizing public input (what it did do, or will do to maximize the involvement of the public).

This form must accompany each filing made during the rulemaking process:

1. **TITLE OF RULE FILING:**

Emergency Administrative Rules for Notaries Public and Electronic and Remote Notarization

2. **ADOPTING AGENCY:**

Secretary of State, Office of Professional Regulation

3. **PLEASE DESCRIBE THE AGENCY'S STRATEGY TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE, LISTING THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:**

OPR's strategy to maximize public involvement in the development of the initial Emergency Rules was to meet with stakeholders (businesses, attorneys, associations) who were going to have significant challenges completing essential transactions due to the initial COVID-19 pandemic requirement to stay at home. Since that time, OPR has spoken with notaries public and other members of the public who have benefited from these Emergency Rules and who wish to see them continue in force until a more permanent solution is implemented. OPR has also heard from numerous stakeholders seeking a special endorsement to perform notarial acts on electronic records. Finally, OPR has stayed informed about efforts in other states, at the national level, and by national associations to develop similar rules for remote and electronic notarial acts. This public input supports the need to maintain the rules for remote notarial acts and create a pathway for

notarial acts on electronic records while rules are being developed to implement Act 171.

4. **BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:**

Although the initial Emergency Rules were first developed with uncommon speed, their development was a model of teamwork under pressing circumstances and in the face of a global pandemic. Urgent email and telephone discussions happened quickly and frequently over a week in March 2020, with as much transparency and inclusiveness as possible through conversations with the Vermont Bar Association, legislators, the Judiciary, the Vermont Bankers' Association, and attorneys representing several areas of legal practice. There has been little negative feedback regarding the initial Emergency Rules, though there have been a couple of concerns voiced about the retention requirement for recordings of notarial acts and about allowing out-of-state notaries public to compete with Vermont notaries public. (The latter concern is unfounded as, under the Emergency Rules and Act 171, a notary public must hold a Vermont notary public commission to perform a notarial act for remotely located individuals or on electronic records for use in Vermont.)

These revised Emergency Rules were shared with stakeholders in advance of filing though with less opportunity for discussion. However, the proposed additions to facilitate notarial acts on electronic records are technical in nature (mainly related to adoption of tamper-evident technology to perform these notarial acts) and consistent with surrounding state and national standards for performing notarial acts on electronic records. The Vermont State Archives and Records Administration was also directly involved in the development of the additions authorizing electronic notarization. Adoption of these revised Emergency Rules will ensure the continuance of proven and effective policy while Act 171 is implemented and allow for

notaries public to begin performing notarial acts on electronic records.

Scientific Information Statement

THIS FORM IS ONLY REQUIRED IF THE RULE RELIES ON SCIENTIFIC INFORMATION FOR ITS VALIDITY.

PLEASE REMOVE THIS FORM PRIOR TO DELIVERY IF IT DOES NOT APPLY TO THIS RULE FILING:

Instructions:

In completing the Scientific Information Statement, an agency shall provide a summary of the scientific information including reference to any scientific studies upon which the proposed rule is based, for the purpose of validity.

1. **TITLE OF RULE FILING:**

Emergency Administrative Rules for Notaries Public and Electronic and Remote Notarization

2. **ADOPTING AGENCY:**

Secretary of State, Office of Professional Regulation

3. **BRIEF EXPLANATION OF SCIENTIFIC INFORMATION:**

Not applicable.

4. **CITATION OF SOURCE DOCUMENTATION OF SCIENTIFIC INFORMATION:**

Not applicable.

5. **INSTRUCTIONS ON HOW TO OBTAIN COPIES OF THE SOURCE DOCUMENTS OF THE SCIENTIFIC INFORMATION FROM THE AGENCY OR OTHER PUBLISHING ENTITY:**

Not applicable.

Incorporation by Reference

THIS FORM IS ONLY REQUIRED WHEN INCORPORATING MATERIALS BY REFERENCE. PLEASE REMOVE PRIOR TO DELIVERY IF IT DOES NOT APPLY TO THIS RULE FILING:

Instructions:

In completing the incorporation by reference statement, an agency describes any materials that are incorporated into the rule by reference and how to obtain copies.

This form is only required when a rule incorporates materials by referencing another source without reproducing the text within the rule itself (e.g. federal or national standards, or regulations).

Incorporated materials will be maintained and available for inspection by the Agency.

1. TITLE OF RULE FILING:

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2. ADOPTING AGENCY:

Secretary of State, Office of Professional Regulation

3. DESCRIPTION (*DESCRIBE THE MATERIALS INCORPORATED BY REFERENCE*):

Not applicable.

4. FORMAL CITATION OF MATERIALS INCORPORATED BY REFERENCE:

Not applicable.

5. OBTAINING COPIES: *EXPLAIN WHERE THE PUBLIC MAY OBTAIN THE MATERIAL(S) IN WRITTEN OR ELECTRONIC FORM, AND AT WHAT COST*):

Not applicable.

6. MODIFICATIONS (*PLEASE EXPLAIN ANY MODIFICATION TO THE INCORPORATED MATERIALS E.G., WHETHER ONLY PART OF THE MATERIAL IS ADOPTED AND IF SO, WHICH PART(S) ARE MODIFIED*):

Not applicable.

Run Spell Check

DRAFT

Emergency Rules for Remote and Electronic Notarial Acts

Part 1: Scope

1-1 Personal Appearance.

- a. If a notarial act relates to a statement made in or a signature executed on a record, 26 V.S.A. § 5364(a) requires the individual making the statement or executing the signature to appear personally before the notary public performing the notarial act.
- b. Pursuant to these rules, the requirement for a personal appearance is satisfied if the notary public and the person executing the signature are in the same physical place or the person, if remotely located, is using communication technology, as defined in 26 V.S.A. § 5304(4), to appear before the notary public using the protocols and standards prescribed in this rule.

1-2 Temporary Waiver of Statute.

- a. The requirement in 26 V.S.A. § 5379(a) for a remotely located individual to appear before a notary public with a special endorsement from the Office to perform a notarial act for a remotely located individual is waived until the expiration of these emergency rules.
- b. The requirements in 26 V.S.A. §§ 5341(d) and (e) and 26 V.S.A. § 5379(b) that a notary public shall obtain a special endorsement from the Office to perform a notarial act for a remotely located individual is waived until the expiration of these emergency rules.
- c. These rules do not waive the requirement that a notary public hold a special endorsement to perform notarial acts on electronic records. The performance of notarial acts on an electronic record is prohibited unless the notary public holds a special endorsement issued by the Office in accordance with these Emergency Rules.
- d. All other provisions of the Vermont Uniform Act on Notarial Acts, as set forth in 26 V.S.A. Chapter 103 apply.

Part 2: Definitions

The definitions in 26 V.S.A. Chapter 103, Notaries Public, are incorporated into these rules.

“Act” means the Vermont Uniform Law on Notarial Acts, 26 V.S.A. Chapter 103.

“Communication technology” means an electronic device or process operating in accordance with 26 V.S.A. § 5380 and in compliance with Part 5 of these Rules.

“Digital Certificate” means the digital certificate obtained from a third party that verifies the identity of the notary public and, after being applied to an electronic record, makes any changes to the electronic record tamper-evident.

“Director” means the Director of the Vermont Office of Professional Regulation.

“Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

“Electronic notarial act” means a notarial act by a notary public, physically present in the state of Vermont, on or involving an electronic record.

“Electronic notarial certificate” means the portion of a notarized electronic record that is completed by a notary public evidencing the notarial act and that includes the information required under 26 V.S.A. §§ 5367 and 5379.

“Electronic signature” means an electronic symbol, sound, or process attached to or logically associated with a record and executed or adopted by an individual with the intent to sign the record.

“Electronic record” means information that is stored in an electronic form and is retrievable in perceivable form.

“Notarial Certificate” means the writing that evidences the completion of a notarial act and contains the information required in 26 V.S.A. §§ 5367 and 5380.

“Notary public” means a person holding a current notary public commission issued by the Office authorizing the performance of a notarial act.

“Office” means the Vermont Office of Professional Regulation.

“Remotely Located Individual” means an individual or individuals located in Vermont who are not in the physical presence of the notary public who perform(s) a notarial act.

“Remote Notarial Acts” means a notarial act performed at the request of a remotely located individual using communication technology, as defined in 26 V.S.A. § 5304(4), with respect to a tangible or electronic record that a notary public may perform under the law of this State. The term includes taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, attesting a signature, and noting a protest of a negotiable instrument.

“Signature” means a tangible symbol or an electronic signature that evidences the signing of a record.

“Signer” means the individual making the statement or executing the signature for which the notary public must perform the notarial act.

“Tamper-evident” means that any change to an electronic record after the performance of the notarial act is detectable.

Part 3. Administration

3-1 Applicable Law. Notaries public are regulated by the State of Vermont pursuant to 26 V.S.A. Chapter 103. These emergency rules are issued to clarify requirements for personal appearance before a notary, as set forth in 26 V.S.A. § 5364. This emergency rule is issued in accordance with 3 V.S.A § 844. Copies of these and other statutes are available online on the Office’s website. The Director regulates notaries public in conformity with these and other Vermont laws, to include the Administrative Procedures Act, 3 V.S.A. § 800 *et seq.*; the Public Records Act, 1 V.S.A. § 315 *et seq.*; and the Laws of Professional Regulation, 3 V.S.A. § 121 *et seq.*

3-2 Resources for Applicants and Registrants. The Office maintains a website with information and links relevant to all licensed professionals. Information specific to notaries public, including links to forms and online applications, is available.

Part 4: Remote Notarial Acts

4-1 Personal Appearance. Remote Notarial Acts performed in accordance with these rules fulfill the personal appearance requirements set forth in 26 V.S.A. § 5364.

4-2 Performance of Remote Notarial Acts. Notaries public holding a commission in Vermont may perform a Remote Notarial Act only while physically located in Vermont and only if

(a) The notary public:

- a. has personal knowledge of the identity of the individual;
- b. has satisfactory evidence of the identity of the remotely located individual by oath or affirmation from a credible witness appearing before the notarial officer; or
- c. has obtained satisfactory evidence of the identity of the remotely located individual by using at least two different types of identification.

(b) The notary public is able reasonably to confirm that the tangible or electronic record before the notary public is the same record in which the remotely located individual made a statement or on which the remotely located individual executed a signature;

(c) The notarial act is performed

- a. on a tangible record submitted to the notary public in its original paper format by the remotely located individual;
- b. on a record transmitted electronically to the notary public by the remotely located individual and printed by the notary public prior to the notarial act being evidenced by a certificate; or
- c. on an electronic record in accordance with Part 6 of these rules.

(d) The document presented to or signed before the notary public meets the definition of “original” in the Vermont Rules of Evidence.

- (e) The notary public or their designee creates an audio-visual recording of the performance of the notarial act, to be retained for at least 7 years;
- (f) The Remote Notarial Act complies with all other requirements for notarial acts set forth in the Act and these rules.
- (g) A notarial certificate or an electronic notarial certificate is affixed to or logically associated with the tangible or electronic record, and includes the certificate language required under 26 V.S.A. §§ 5367 and 5380 and these Rules.

4-3 Notarial Certificates and Electronic Notarial Certificates. Remote Notarial Acts shall be evidenced by a notarial certificate or an electronic notarial certificate. The notarial certificate and electronic notarial certificates shall

- (a) contain the information required under 26 V.S.A. §§ 5367 and 5380 and these Rules;
- (b) a statement that the notarial act was performed remotely; and
- (c) a statement that the notarial act involved the use of communication technology.

Part 5. Electronic Notary Special Endorsement

5-1 Endorsement required. A notary public must obtain an electronic notary special endorsement in order to perform notarial acts on electronic records, whether in the presence of the individual or for a remotely located individual.

5-2 Eligibility. To be eligible for the electronic-records special endorsement, a notary public shall:

- (a) hold a current notary public commission in good standing;
- (b) attest to selecting and using communication and tamper-evident technology that complies with requirements herein; and
- (c) pay all required application fees.

5-3 Renewal. A notary public shall renew the electronic notary special endorsement commission every two years at the same time the notary public renews their notary public commission.

Part 6. Performing Notarial Acts on Electronic Records

6-1 Performance of Notarial Acts on Electronic Records

- (a) A notary public performing a notarial act on an electronic record shall be physically located in the State of Vermont at the time the notarial act is performed.
- (b) **Tamper-Evident Technology.** A notary public shall select one or more tamper-evident technologies that conform with the requirements of Part 6-2, herein, to perform electronic notarial acts.
- (c) **Personal Appearance.**
 - a. A notary public holding an electronic notary special endorsement may perform authorized notarial acts relating to electronic records only if the individual personally appears before the notary public at the time of the notarial act in accordance with 26 V.S.A. § 5364 or, if performing a notarial act for a remotely located individual, in accordance with Part 4 of these Rules.
- (d) **Identification of Individual.**
 - a. A notary public authorized to perform notarial acts on an electronic record shall verify the identity of the individual prior to performing a notarial act in accordance with 26 V.S.A. § 5365 and, if performing the notarial act for a remotely located individual, in accordance with Part 4, herein.
 - b. A notary public shall not base identification of an individual solely on familiarity with an individual's signature or an electronic verification process that authenticates the individual's electronic signature.
- (e) **Electronic Notarial Certificate.** The notarial act shall be evidenced by an electronic notarial certificate which
 - a. Shall be affixed to or logically associated with the electronic record; and

- b. Shall contain the information required under 26 V.S.A. §§ 5367 and 5380.

(f) **Electronic Signature.**

- a. A notary public performing a notarial act on an electronic record shall affix to or logically associate with the electronic notarial certificate the notary public's electronic signature and electronic official stamp, if using, by use of a digital certificate.

6-2 Tamper-Evident Technology.

- (a) A notary public shall select one or more tamper-evident technologies to perform notarial acts on electronic records. A person may not require a notary public to use a technology that the notarial officer has not selected.

(b) The tamper-evident technology must be capable of

- a. Affixing or attaching the notary public's electronic signature to the electronic record in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic record evident; and
- b. Utilizing a valid digital certificate issued by a third-party provider. A notary public shall not perform a notarial act with respect to an electronic record if the digital certificate:
 - i. has expired;
 - ii. has been revoked or terminated by the issuing or registering authority;
 - iii. is invalid; or
 - iv. is incapable of authentication.

6-3 Reliability and Confidentiality.

- (a) A notary public authorized to perform electronic notarial acts shall use the same electronic signature and electronic official stamp, if using, for all electronic notarial acts.

- a. The notary public shall submit to the Office a copy of the notary public's electronic signature and electronic official stamp, if using.
 - b. The notary public's electronic signature and electronic official stamp, if using, shall be unique to the notary public.
- (b) A notary public's electronic signature and electronic official stamp, if using, shall be retained under the notary public's sole control and access. A notary public shall not allow any other individual to use the notary public's electronic signature or electronic official stamp, if using.
- a. A notary public's employer must not permit the use of a notary public's electronic signature or electronic official stamp, if using, by anyone except the notary public.
- (c) A notary public shall not disclose any access information used to affix the notary public's electronic signature or the electronic image of the notary public's official stamp, if using, except when requested by the Office or a designee, a judicial subpoena, and, with precautions, electronic document preparation and transmission vendors.
- a. Control of security aspects, such as, but not limited to, passwords, token devices, biometrics, PINS, phrases, software on protected hardware shall remain under the sole control of the notary public.
- (d) Upon resignation, revocation, or expiration of the notary public's commission or the notary public's electronic notary specialty endorsement, the notary public shall destroy and disable their electronic signature and electronic official stamp, if using, including any coding, disk, digital certificate, card, software or password that enables the notary public to attach or logically associate the electronic signature or electronic official stamp, if using, to the electronic record, so as to prohibit the use of the electronic signature or electronic official stamp by any other person.
- (e) A notary public shall immediately notify the Office of the theft of the notary public's electronic signature, electronic official stamp, if using, or digital certificate.

All parts of these Emergency Rules shall take effect when filed with the Secretary of State in accordance with the Administrative Procedures Act, 3 V.S.A. § 800 *et seq* and shall remain in effect for 180 days thereafter, except for Part 4 of these Rules which shall take effect on March 23 and remain in effect for 180 days thereafter.

VERMONT **GENERAL ASSEMBLY**

The Vermont Statutes Online

The Vermont Statutes Online have been updated to include the actions of the 2023 session of the General Assembly.

NOTE: The Vermont Statutes Online is an unofficial copy of the Vermont Statutes Annotated that is provided as a convenience.

Title 3 : Executive

Chapter 025 : Administrative Procedure

Subchapter 001 : General Provisions

(Cite as: **3 V.S.A. § 801**)

§ 801. Short title and definitions

(a) This chapter may be cited as the “Vermont Administrative Procedure Act.”

(b) As used in this chapter:

(1) “Agency” means a State board, commission, department, agency, or other entity or officer of State government, other than the Legislature, the courts, the Commander in Chief, and the Military Department, authorized by law to make rules or to determine contested cases.

(2) “Contested case” means a proceeding, including but not restricted to rate-making and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing.

(3) “License” includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law.

(4) “Licensing” includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(5) “Party” means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.

(6) “Person” means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

(7) “Practice” means a substantive or procedural requirement of an agency, affecting one or more persons who are not employees of the agency, that is used by the

agency in the discharge of its powers and duties. The term includes all such requirements, regardless of whether they are stated in writing.

(8) "Procedure" means a practice that has been adopted in writing, either at the election of the agency or as the result of a request under subsection 831(b) of this title. The term includes any practice of any agency that has been adopted in writing, whether or not labeled as a procedure, except for each of the following:

(A) a rule adopted under sections 836-844 of this title;

(B) a written document issued in a contested case that imposes substantive or procedural requirements on the parties to the case;

(C) a statement that concerns only:

(i) the internal management of an agency and does not affect private rights or procedures available to the public;

(ii) the internal management of facilities that are secured for the safety of the public and the individuals residing within them; or

(iii) guidance regarding the safety or security of the staff of an agency or its designated service providers or of individuals being provided services by the agency or such a provider;

(D) an intergovernmental or interagency memorandum, directive, or communication that does not affect private rights or procedures available to the public;

(E) an opinion of the Attorney General; or

(F) a statement that establishes criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections, in settling commercial disputes or negotiating commercial arrangements, or in the defense, prosecution, or settlement of cases, if disclosure of the criteria or guidelines would compromise an investigation or the health and safety of an employee or member of the public, enable law violators to avoid detection, facilitate disregard of requirements imposed by law, or give a clearly improper advantage to persons that are in an adverse position to the State.

(9) "Rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy and that has been adopted in the manner provided by sections 836-844 of this title.

(10) "Incorporation by reference" means the use of language in the text of a regulation that expressly refers to a document other than the regulation itself.

(11) "Adopting authority" means, for agencies that are attached to the Agencies of Administration, of Commerce and Community Development, of Natural Resources, of Human Services, and of Transportation, or any of their components, the secretaries of those agencies; for agencies attached to other departments or any of their components,

the commissioners of those departments; and for other agencies, the chief officer of the agency. However, for the procedural rules of boards with quasi-judicial powers, for the Transportation Board, for the Vermont Veterans' Memorial Cemetery Advisory Board, and for the Fish and Wildlife Board, the chair or executive secretary of the board shall be the adopting authority. The Secretary of State shall be the adopting authority for the Office of Professional Regulation.

(12) "Small business" means a business employing no more than 20 full-time employees.

(13)(A) "Arbitrary," when applied to an agency rule or action, means that one or more of the following apply:

(i) There is no factual basis for the decision made by the agency.

(ii) The decision made by the agency is not rationally connected to the factual basis asserted for the decision.

(iii) The decision made by the agency would not make sense to a reasonable person.

(B) The General Assembly intends that this definition be applied in accordance with the Vermont Supreme Court's application of "arbitrary" in *Beyers v. Water Resources Board*, 2006 VT 65, and *In re Town of Sherburne*, 154 Vt. 596 (1990).

(14) "Guidance document" means a written record that has not been adopted in accordance with sections 836-844 of this title and that is issued by an agency to assist the public by providing an agency's current approach to or interpretation of law or describing how and when an agency will exercise discretionary functions. The term does not include the documents described in subdivisions (8)(A) through (F) of this section.

(15) "Index" means a searchable list of entries that contains subjects and titles with page numbers, hyperlinks, or other connections that link each entry to the text or document to which it refers. (Added 1967, No. 360 (Adj. Sess.), § 1, eff. July 1, 1969; amended 1981, No. 82, § 1; 1983, No. 158 (Adj. Sess.), eff. April 13, 1984; 1985, No. 56, § 1; 1985, No. 269 (Adj. Sess.), § 4; 1987, No. 76, § 18; 1989, No. 69, § 2, eff. May 27, 1989; 1989, No. 250 (Adj. Sess.), § 88; 2001, No. 149 (Adj. Sess.), § 46, eff. June 27, 2002; 2017, No. 113 (Adj. Sess.), § 3; 2017, No. 156 (Adj. Sess.), § 2.)

VERMONT **GENERAL ASSEMBLY**

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Title 26 : Professions and Occupations

Chapter 103 : Notaries Public

Subchapter 002 : Administration

(Cite as: **26 V.S.A. § 5323**)

§ 5323. Rules

(a) The Office, with the advice of the advisor appointees, may adopt rules to implement this chapter. The rules may:

(1) prescribe the manner of performing notarial acts regarding tangible and electronic records;

(2) include provisions to ensure that any change to or tampering with a record bearing a certificate of a notarial act is self-evident;

(3) include provisions to ensure integrity in the creation, transmittal, storage, or authentication of electronic records or signatures;

(4) prescribe the process of granting, renewing, conditioning, denying, suspending, or revoking the commission or special commission endorsement of or otherwise disciplining a notary public and ensuring the trustworthiness of an individual holding a commission or special commission endorsement as notary public;

(5) include provisions to prevent fraud or mistake in the performance of notarial acts;

(6) prescribe the means of performing a notarial act involving a remotely located individual using communication technology;

(7) establish standards for communication technology and identity proofing;

(8) establish standards and a period for the retention of an audiovisual recording created under section 5379 of this chapter; and

(9) prescribe methods for a notary public to confirm, under subsections 5379(c) and

(d) of this chapter, the identity of a tangible record.

(b) Rules adopted regarding the performance of notarial acts with respect to electronic records and remote online notarization may not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification. In adopting, amending, or repealing rules regarding notarial acts with respect to electronic records and remote online notarization, the Office shall consider, as far as is consistent with this chapter:

(1) the most recent standards regarding electronic records promulgated by national bodies, such as the National Association of Secretaries of State;

(2) standards, practices, and customs of other jurisdictions that have laws substantially similar to this chapter; and

(3) the views of governmental officials and entities and other interested persons.

(c) [Repealed.] (Added 2017, No. 160 (Adj. Sess.), § 1, eff. July 1, 2019; amended 2021, No. 171 (Adj. Sess.), § 5, eff. July 1, 2022.)



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Deadline For Public Comment

Deadline: Unavailable.

The deadline for public comment is unavailable for this rule. Contact the agency or primary contact person listed below for assistance.

Rule Details

Rule Number:	24-E03
Title:	Emergency Administrative Rules for Notaries Public and Electronic and Remote Notarization.
Type:	Emergency
Status:	Adopted
Agency:	Office of Professional Regulation, Office of the Secretary of State
Legal Authority:	3 V.S.A. § 801(b)(11); and 26 V.S.A. § 5323.
Summary:	These Emergency Rules allow an individual to satisfy the "personal appearance" requirement for the performance of notarial acts by appearing through communication technology using specific protocols

and standards. They also allow notarization of electronic records by notaries public holding a special commission endorsement.

Persons Affected:

State agencies, the judiciary, Town Clerks, social service agencies, hospitals, nursing homes and other health care facilities, law enforcement, notaries public, real estate professionals, banks, mortgage companies, attorneys (including those in elder care, estate planning, and real estate), and the public.

Economic Impact:

These Emergency Rules have allowed notarial acts to continue in the face of a public health crisis and have facilitated the continuance of essential transactions and commerce. Adopting these revised Emergency Rules will continue to facilitate and protect our economy and the public health and permit the needed modernization of notarial services in Vermont by allowing notaries public to begin providing notary services for electronic records.

Posting date:

Mar 04,2024

Hearing Information

There are not Hearings scheduled for this Rule

Contact Information

Information for Primary Contact

PRIMARY CONTACT PERSON - A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE.

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Website <https://sos.vermont.gov/notaries-public/statutes-rules-resources/>
Address: 

Keyword Information

Keywords:

Notary Public
Notary
Remote Notarization
Professional Regulation
Personal Appearance
Communication Technology
Notarial Act
Electronic Notarization
Electronic Record
Special Endorsement



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