

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*). If these Emergency Rules expire before rules are adopted to implement Act 171, Vermont notaries public will no longer be permitted to perform remote notarial acts, thus hampering the performance of crucial transactions.

I approve the contents of this filing entitled:

Emergency Administrative Rules for Notaries Public and Remote Notarization

/S/ James Condos

(signature)

, on 9-9-2022

(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)

Administrative Procedures
Emergency Filing – Coversheet

James C. Condos, Secretary of State

1. TITLE OF RULE FILING:

Emergency Administrative Rules for Notaries Public 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 Street, 3rd Floor, Montpelier, VT
05620-3602

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: Kelsi Alger

Agency: Office of Professional Regulation

Mailing Address: 89 Main Street; 3rd Floor; Montpelier, VT
05620-3602

Telephone: 802 828 - 2191 Fax: -

E-Mail: kelsi.alger@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).

26 V.S.A. § 5364 (b) (2)

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

The above statute allows the Secretary of State's Office of Professional Regulation to adopt administrative rules related to remote notarization through a secure communication link.

8. CONCISE SUMMARY (150 WORDS OR LESS):

These Emergency Rules define the "personal appearance" requirement for remote notarial acts conducted through a secure audio-visual communication link.

9. EXPLANATION OF WHY THE RULE IS NECESSARY:

The Office of Professional Regulation (OPR) seeks the renewal of the Emergency Administrative Rules for Notaries Public and Remote Notarization to allow Vermont notaries public to continue to perform remote notarial acts while OPR adopts rules to implement Act 171 (2022). The Emergency Rules were first adopted in March 2020 in an effort 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 transactions and wills to health care documents and adoptions. Recognizing this, the Vermont General Assembly adopted Act 171 in May 2022, which permits Vermont notaries public to perform notarial acts for remotely located individuals and electronically.

Though Act 171 will eventually replace the need for the Emergency Rules, OPR must first adopt rules to implement Act 171. OPR needs additional time to adopt rules for the issuance of the specialty licenses required under Act 171, and the establishment of technology standards, record retention requirements,

and methods for the performance of remote and electronic notarial acts.

The Emergency Rules expire on September 10, 2022. To avoid the suspension of remote notarial acts and the disruption of essential transactions, OPR seeks to renew the Emergency Rules for an additional 180 days during the Act 171 rulemaking process.

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 remote notarial acts and to continue to authorize the same, 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 will not be permitted until OPR has concluded the rulemaking process for Act 171 rules. 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 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 the problem created by the pandemic, 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, 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 Emergency Rules again will continue to facilitate and protect our economy and the public health while OPR adopts rules implementing Act 171.

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:

Date:

Time: AM

Street Address:

Zip Code:

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

16. EMERGENCY RULE EFFECTIVE: 09/11/2022

17. EMERGENCY RULE WILL REMAIN IN EFFECT UNTIL

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

03/09/2023

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

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 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)



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Kristin L. Clouser, Secretary

MEMORANDUM

TO: Jim Condos, Secretary of State
FROM: Douglas Farnham, ICAR Chair
DATE: September 9, 2022
RE: Emergency Rule Titled 'Emergency Administrative Rules for Notaries Public and Remote Notarization' by the Secretary of State, Office of Professional Regulation

Douglas Farnham
Digitally signed by Douglas Farnham
Date: 2022.09.09 16:19:37 -04'00'

The use of rulemaking procedures under the provisions of 3 V.S.A. §844 is appropriate for this rule. I have reviewed the proposed rule titled 'Administrative Rules for Notaries Public and Remote Notarization', provided by the Secretary of State, Office of Professional Regulation, and agree that emergency rulemaking is necessary.

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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 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, 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.*

Alternatives not applicable with respect to 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 for six months while rules are adopted implementing Act 171. This unnecessary interruption will have a negative impact on small businesses.

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 notarial acts and use the Emergency Rules to keep important legal transactions moving. Small businesses can also choose to engage in in-person 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 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 180 days 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 after consultation with stakeholders involved in performing notarial acts to facilitate essential commercial and legal transactions. 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.

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:

Emergency Administrative Rules for Notaries Public and Remote Notarization

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 IMPACT 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 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 these 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 stayed informed about efforts in other states, at the national level, and by national associations to develop similar short-term and long-term solutions to this challenge. Finally, OPR observed and reviewed the testimony provided to the General Assembly during its consideration of Act 171. This public input supports the need to maintain the efficacy of the Emergency

Rules 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 these Emergency Rules were initially 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 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 remote or electronic notarial act for remotely located individual seeking notarization of a record to be given effect in Vermont.) Renewal of the Emergency Rules once more will ensure the continuance of proven and effective policy while Act 171 is implemented.