

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/ Sarah Copeland Hanzas

(signature)

, on 3/8/2023

(date)

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)

Printed Name and Title:

Sarah Copeland Hanzas, 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: 802-828-1505 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).

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.

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 before a notary public through a secure communication link using specific protocols and standards.

9. EXPLANATION OF WHY THE RULE IS NECESSARY:

The Office of Professional Regulation (OPR) seeks 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 sales 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 on electronic records.

Though Act 171 will eventually replace the need for the Emergency Rules, OPR must first adopt rules to implement Act 171. Despite anticipating that we would be able to do adopt the permanent rules implementing Act 171 by the time the Emergency Rules expire on March 9, 2023, OPR was not able to do so. Our Office has undergone a significant transition over the past five months which has resulted in changes in OPR staff and stretched resources. Our Director has been promoted to Deputy Secretary of State, our previous General Counsel left the office and I assumed the role, and both of our staff attorney positions supporting the General Counsel have been vacant. In turn, OPR needs additional time to adopt permanent rules for the issuance of the specialty licenses required under Act 171, as well as for the establishment of technology standards, record retention requirements, and methods for the performance of remote and electronic notarial acts.

The Emergency Rules were set to expire on March 9, 2023. To avoid the suspension of remote notarial acts and the disruption of essential transactions, OPR asks LCAR to extend these Emergency Rules for an additional 180 days until September 5, 2023.

A letter explaining the need for the extension of the Emergency Rules was sent to the two legislative committess of jurisdiction (Senate Government Operations and House Government Operations and Military Affairs). The Senate Government Operations express support for the extension, finding that the extension was consistent with the legislative intent of Act 171. The House Committee on Government Operations and Military Affairs has indicated that it will consider the issue during the week of March 13.

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, 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 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:

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: 03/09/2023

17. EMERGENCY RULE WILL REMAIN IN EFFECT UNTIL

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

9/5/2023

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

Communication Technology

Notarial Act



State of Vermont
Office of the Secretary of State

Office of Professional Regulation
89 Main Street, 3rd Floor
Montpelier, VT 05620-3402
sos.vermont.gov

Sarah Copeland Hanzas, Secretary of State
S. Lauren Hibbert, Deputy Secretary

March 8, 2023

Rep. Trevor Squirrell, Chair
Legislative Committee on Administrative Rules
c/o Charlene Dindo, Committee Assistant
Vermont State House
Montpelier, VT 05602

RE: Request to extend the Emergency Administrative Rules for Notaries Public and Remote Notarization

Dear Chair Squirrell and Members:

I am writing to ask the Legislative Committee on Administrative Rules (“LCAR”) to extend the Emergency Administrative Rules for Notaries Public and Remote Notarization (“Emergency Rules”). The Emergency Rules are due to expire on March 9, 2023. Facing this impending expiration date of the Emergency Rules and recognizing the importance of the rules to Vermonters, OPR would like to ask LCAR to renew the Emergency Rules for an additional 180 days.

As you may recall, these Emergency Rules were first adopted at the beginning of the COVID-19 state of emergency in March 2020 to facilitate the continued performance of essential transactions requiring notarial acts (e.g., real estate sales, wills, health care documents, adoptions) when individuals and notaries public were unable to safely share a physical space. , OPR has since sought and LCAR has approved renewal of the Emergency Rules five times to address the ongoing need for remote notarial acts during the COVID-19 state of emergency and while the General Assembly considered permanent statutory changes permitting remote notarial acts.

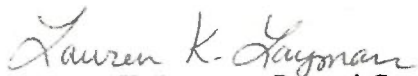
Since the initial adoption of the Emergency Rules, remote notarial acts have become a valued tool for Vermonters. Reflecting a recognition of the importance of allowing remote notarial acts, the Vermont General Assembly adopted Act 171 in May 2022, permitting, subject to rulemaking, Vermont notaries public to perform notarial acts for remotely located individuals and on electronic records. Before Act 171 replaces the Emergency Rules, however, OPR must first adopt permanent rules implementing Act 171. If the Emergency Rules expire without these permanent rules in place, Vermonters will not be able to perform remote notarial acts until the new permanent rules are adopted.

Despite anticipating that we would be able to do adopt the permanent rules implementing Act 171 by the time the Emergency Rules expire on March 9, 2023, OPR was not able to do so. Our Office has undergone a significant transition over the past five months which has resulted in changes in OPR staff and stretched resources. Our Director has been deservedly promoted to Deputy Secretary of State, our previous General Counsel left the office and I assumed the role, and both of our staff attorney positions supporting the General Counsel have been vacant. In turn, OPR needs additional time to adopt permanent rules for the issuance of the specialty licenses required under Act 171, as well as for the establishment of technology standards, record retention requirements, and methods for the performance of remote and electronic notarial acts.

To avoid the suspension of remote notarial acts and the disruption of essential transactions, OPR would like to ask the LCAR to extend these Emergency Rules for an additional 180 days. Given that the General Assembly, with the support of this Committee, adopted Act 171 last session, OPR believes that extending the Emergency Rules while the Act 171 rulemaking process takes place would be consistent with this Committee's and the General Assembly's intent, as reflected in Act 171. However, OPR would like to confirm that this interpretation of the Committee's intent is accurate.

I have enclosed the filing cover sheets and the proposed Emergency Rules. I am happy to discuss this matter more with the Committee or to answer any questions you may have. Thank you for taking the time to consider the proposal.

Sincerely,



Lauren K. Layman, General Counsel
Office of Professional Regulation

Encl.

Coversheets

Emergency Administrative Rules for Notaries Public and Remote Notarization

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)

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)



State of Vermont
Agency of Administration
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 109 State Street, 5th Floor
 Montpelier, VT 05609-0201
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[phone] 802-828-3322
 [fax] 802-828-2428

Kristin L. Clouser, Secretary

MEMORANDUM

TO: Copeland Hanzas, Secretary of State
FROM: Sean Brown, ICAR Chair
DATE: March 9, 2023
RE: Emergency Rule Titled 'Emergency Administrative Rules for Notaries Public and Remote Notarization' by the Office of Professional Regulation

Sean Brown

Digitally signed by Sean Brown
 Date: 2023.03.09 10:33:19 -05'00'

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 'Emergency Administrative Rules for Notaries Public and Remote Notarization', provided by the Office of Professional Regulation, and agree that emergency rulemaking is necessary.

###



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, 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.

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 continue with important legal transactions. 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 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.

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.

Clean
Copy

Emergency Administrative Rules for Notaries Public and Remote Notarization

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 the emergency rule.
- 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 the emergency rule.
- 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.
- 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 and Clarification of Terms

The definitions in 26 V.S.A. Chapter 103, Notaries Public, are incorporated into these rules. As used in these Rules, the following terms have the following meanings:

2-1 “Act” means the Vermont Uniform Law on Notarial Acts, 26 V.S.A. Chapter 103.

2-2 “Director” means the Director of the Vermont Office of Professional Regulation.

2-3 “Office” means the Vermont Office of Professional Regulation.

2-4 “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 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.

- 2-5 “Remotely Located Individual” means an individual or individuals located in Vermont who is/are not in the physical presence of the notary public who perform(s) a notarial act.
- 2-6 “Signer” means the individual making the statement or executing the signature for which the notary public must perform the notarial act.

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 at www.legislature.vermont.gov/statutes. 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 at <https://sos.vermont.gov/opr/> with information and links relevant to all licensed professionals. Information specific to notaries public, including links to forms and online applications, is available from <https://sos.vermont.gov/notaries-public/>.

Part 4: Remote Notarial Acts

- 4-1 Remote Notarial Acts performed in accordance with these rules fulfill the personal appearance requirements set forth in 26 V.S.A. Chapter 103.
- 4-2 Notaries public holding a commission to perform notarial acts in Vermont may perform a Remote Notarial Act while physically located in Vermont and only under the following conditions:
- 4-2-1 The notarial officer: has personal knowledge of the identity of the individual; 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 has obtained satisfactory evidence of the identity of the remotely located individual by using at least two different types of identification.

- 4-2-2 The notarial officer is able reasonably to confirm that a record before the notarial officer is the same record in which the remotely located individual made a statement or on which the remotely located individual executed a signature;
 - 4-2-3 The notarial act is performed on a tangible record submitted to the notary public in its original paper format by the remotely located individual; or 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.
 - 4-2-4 The document presented to or signed before the notary public meets the definition of “original” in the Vermont Rules of Evidence.
 - 4-2-5 The notarial officer, or a person acting on behalf of the notarial officer, creates an audio-visual recording of the performance of the notarial act, to be retained for at least 7 years;
 - 4-2-6 The Remote Notarial Act complies with all other requirements for notarial acts set forth in the Act.
 - 4-2-7 The executed document including the notarial act contains the certificate language set forth in these Rules.
- 4-3 Certificate – Remote Notarial Acts shall be evidenced by a certificate, which shall be hand-written, imprinted by a stamp or embosser, or both, containing the following information:
- 4-3-1 the signature of the notary public executed in the same manner as on file with the Office;
 - 4-3-2 the legibly printed name of the notary public;
 - 4-3-3 the commission number of the notary public;
 - 4-3-4 the date of expiration of the notary public’s commission;

- 4-3-5 the title of the notary public, which shall be “Notary Public”;
- 4-3-6 the date the document is signed by the notary public;
- 4-3-7 the date the document is signed by the Signer;
- 4-3-8 the jurisdiction, including the county and state, in which the notarial act is performed;
- 4-3-9 a statement that the notarial act was performed remotely.

4-4 The following sample certificates shall be sufficient for the purposes of performing a Remote Notarial Act:

4-4-1 For an acknowledgement

State of Vermont, County of _____
 This record was remotely acknowledged before me on _____ [date] by _____ [Name of Signer] _____
 Executed by _____ [Name of Signer] on _____ [date Signer signed]. This notarial act involved the use of communication technology.
 Signature of notary public _____
 Printed name of notary public _____
 Commission number _____
 Commission expiration date _____
 Title of office is Notary Public

4-4-2 For an acknowledgement in a representative capacity

State of Vermont, County of _____
 This record was remotely acknowledged before me on _____ [date] by _____ [Name of Signer] as the _____ [type of authority, such as officer, trustee, power of attorney] of _____ [name of party on behalf of whom the document was executed]. This notarial act involved the use of communication technology.
 Executed by _____ [Name of Signer] on _____ [date Signer signed].
 Signature of notary public _____
 Printed name of notary public _____
 Commission number _____
 Commission expiration date _____
 Title of office is Notary Public

4-4-3 For verification of an oath or affirmation

State of Vermont, County of _____

Sign or sworn remotely before me on
____ [date] ____ by ____ [Name of Signer] ____
Executed by ____ [Name of Signer] ____ on ____ [date Signer signed] ____
This notarial act involved the use of communication technology._
Signature of notary public _____
Printed name of notary public _____
Commission number _____
Commission expiration date _____
Title of office is Notary Public

4-4-4 For attesting a signature

State of Vermont, County of _____
Signed or attested remotely before me on
____ [date] ____ by ____ [Name of Signer] ____
Executed by ____ [Name of Signer] ____ on ____ [date Signer signed] ____
This notarial act involved the use of communication technology.
Signature of notary public _____
Printed name of notary public _____
Commission number _____
Commission expiration date _____
Title of office is Notary Public

Part 5: Effective Dates; Expiration

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.

The Vermont Statutes Online

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 , 2006 VT 65, and , 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.)

The Vermont Statutes Online

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:	23-E02
Title:	Emergency Administrative Rules for Notaries Public 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 before a notary public through a secure communication link using specific protocols and standards.
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 Emergency Rules again will continue to facilitate and protect our economy and the public health while OPR adopts rules implementing Act 171.

Posting date:

Mar 09,2023

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.

Level: Primary

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[SEND A COMMENT](#)

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

Address: [VIEW WEBSITE](#)

Information for Secondary Contact

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.

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Keyword Information

Keywords:

Notary Public
Notary
Remote Notarization
Professional Regulation
Personal Appearance
Communication Technology
Notarial Act

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