

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 notary public services while the permanent rules go through the APA rulemaking process. More permanent rules to implement Act 171 are drafted.

I approve the contents of this filing entitled:

Emergency Administrative Rules for Notaries Public and Remote Notarization

/S/ S. Lauren Hibbert

(signature)

, on 9/5/2023

(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:

S. Lauren Hibbert, Deputy 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 the rules to implement Act 171 (2022) go through the rulemaking process. 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. OPR has drafted these rules and we are beginning the process of engaging with stakeholders to review them and provide feedback. Before filing these draft rules with ICAR and publishing the rule for public comment, OPR plans to share the draft rules with OPR's notary public advisors (serving in accordance with 3 V.S.A. Sec. 5322) and other parties who have participated in discussions about notary public regulation over the past five years. The floods this summer and onboarding new OPR staff has slightly delayed the stakeholder consultation process but the draft rules are ready for this review. OPR asks the LCAR to renew these emergency rules once more so that notaries public can continue to provide remote services while the draft rules are reviewed and undergo the rulemaking process.

The Emergency Rules are set to expire on September 5, 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 March 3, 2024. It is OPR's intention and hope to complete the rulemaking process in the next couple of months.

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 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: 09/01/2023

17. EMERGENCY RULE WILL REMAIN IN EFFECT UNTIL

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

03/03/2024

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



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
Kevin A. Rushing, Director

September 5, 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") to allow the Office of Professional Regulation (OPR) time to conduct the rulemaking process for draft permanent rules implementing Act 171 (2022). The Emergency Rules expire on September 5, 2023. OPR asks 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. The Legislature then adopted Act 171 in 2022, which authorized the adoption of rules permitting Vermont notaries public to perform notarial acts for remotely located individuals and on electronic records.

I am pleased to report that OPR has drafted administrative rules to implement Act 171! However, we have not yet had time to engage in the Administrative Procedures Act (APA) rulemaking process for the evaluation and review of the draft rules. We are asking LCAR to renew the Emergency Rules once more to allow OPR to consult with stakeholders on the draft rules and then to conduct the APA rulemaking process. We anticipate filing the rules with Interagency Committee on Administrative Rules in November and conducting public hearings in January.

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,



DocuSigned by:

Lauren Layman

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Lauren K. Layman, General Counsel
Office of Professional Regulation

Encl.



State of Vermont
Office of the Secretary of State
128 State Street
Montpelier, VT 05633-1101
(802) 828-2363

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

DATE: August 30, 2023

SUBJECT: Signatory Authority for Purposes of Authorizing Administrative Rules

I hereby designate S. Lauren Hibbert as signatory to fulfill the duties of Secretary of State as the adopting authority for administrative rules under the Vermont Administrative Procedure Act, Title 3, Chapter 25 of the Vermont Statutes Annotated during my absence.

DocuSigned by:

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Sarah L. Copeland Hanzas

Cc: S. Lauren Hibbert