

OFFICE OF THE NEW MEXICO SECRETARY OF STATE

IN REFERENCE:

RULEMAKING PROCEEDING FOR THE ADOPTION OF
12.9.4 NMAC – REMOTE ONLINE NOTARIZATION STANDARDS

CONCISE EXPLANATORY STATEMENT

The Office of the New Mexico Secretary of State (“SOS”) hereby adopts the Remote Online Notarization Standards rule; that is codified as 12.9.4 NMAC.

(1) Statutory Authority for Rule Promulgation:

This rule is authorized by Subsection H of Sections 14-14A-5 and 14-14A-26 NMSA 1978.

(2) Effective Date of Rule:

January 1, 2022

(3) Date of Adoption of Rule:

November 10, 2021

(4) Reasons for Adopting Rule:

The purpose of this rule is to establish uniform standards of performance and governance of notarial acts for remotely located individuals by use of communication technology. These rules must be adopted based on the new legislation passed in Senate Bill 12 (2021).

(5) Reasons for changes from Published Rule:

The changes made to published rules are based on written and oral public comment received.

The term ‘document’ was replaced with ‘record’ throughout the rule to align with statutory language.

Definitions for “communication technology” and “identity proofing” were removed from Section 12.9.4.7 NMAC as these terms are already defined in statute. A definition for “remote online notarization system” was added to improve uniformity and clarity regarding the use of this term in the rule.

Section 12.9.4.8 NMAC was updated to clarify and streamline the application requirements for applying to conduct remote online notarizations. Additionally, the SOS added a provision to require re-training in the event that laws change since the last time a notary receives training.

Section 12.9.4.9 NMAC was updated to clarify that any training vendor approved by the secretary of state may provide the training and examination required under RULONA.

Section 12.9.4.10 NMAC contains grammatical changes to improve readability and also changes “shall” to “may” regarding the requirement for a notarial officer to determine coercion or duress of an individual.

Sections 11, 12, 13, 18, and 19 of the rules contain changes to improve readability and ensure alignment with statutory provisions.

Section 12.9.4.14 NMAC was updated for readability and adds a provision such that a third-party repository shall have as an option that the notarial officer may keep all audiovisual recordings under the sole control of the notarial officer and provide copies to any requesting person.

Section 12.9.4.16 NMAC includes simplified language that more clearly aligns with statute regarding the certificate of a remote notarial act.

Section 12.9.4.17 NMAC includes simplified language that more clearly defines the requirements of remote online notarization system providers, clarifies grounds for termination of the active status of a remote online notarization system provider which also aligns with the Data Breach Notification Act.

(6) Reasons for Not Accepting Substantive Arguments from Public Comment:

The SOS did not accept arguments that the rule should repeat language already in statute. Rule drafting guidelines indicate that administrative rules should supplement and clarify statute but not repeat language already contained in statute.

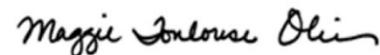
The SOS did not accept the argument that remote online notarization system providers should only have to provide notice on an annual basis regarding system changes in lieu of the currently stated 30 days prior approval process. Allowing a system to remain active for an entire year that may no longer meet technical and security requirements is an unacceptably long timeframe.

The SOS did not accept the argument that the remote online notarization system provider shall be provided a hearing process to appeal a decision to terminate active status. The grounds for termination were sufficiently clarified, based upon feedback, so that providers should have unambiguous guidelines for maintaining an active status and a hearing is not required under statute.

The proposed rule is hereby adopted as of the date of this Concise Explanatory Statement.

IT IS SO ORDERED.

ON BEHALF OF THE OFFICE OF THE
NEW MEXICO SECRETARY OF STATE



11/10/2021

DATE

Maggie Toulouse Oliver
Secretary of State