

OFFICE OF THE NEW MEXICO SECRETARY OF STATE

IN REFERENCE:

RULEMAKING PROCEEDING FOR THE ADOPTION OF
12.9.3 NMAC – NOTARIAL PROCEDURES

CONCISE EXPLANATORY STATEMENT

The Office of the New Mexico Secretary of State (“SOS”) hereby adopts the Notarial Procedures rule; that is codified as 12.9.3 NMAC.

(1) Statutory Authority for Rule Promulgation:

This rule is authorized by Section 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 is to establish standards, guidelines, procedures, fees and responsibilities under the Revised Uniform Laws on Notarial Acts (RULONA). 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 the 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 in Subsection C, D, F, G, and I of Section 12.9.3.7 NMAC, were updated to better align with statutory language to avoid introducing unintended ambiguity into the regulations.

Section 12.9.3.8 NMAC was updated to allow notaries public 45 days instead of 30 days to submit a copy of the applicant’s signature and official stamp. The requirements of the surety bond were also simplified to ensure they weren’t overly burdensome and align with statute.

A section relating to expiration of a notary public’s commission (previously 12.9.3.4 NMAC) was deemed unnecessary and deleted from the rule. All remaining sections were re-numbered accordingly.

Sections 9, 10, and 13 of the rules contain minor grammatical changes to improve readability.

Section 12.9.3.11 was updated to clarify that any training vendor approved by the secretary of state may provide the training and examination required under RULONA.

Section 12.9.3.12 NMAC was updated for readability and to remove language duplicative of statutory provisions. Additionally, language was improved to ensure that an individual uses permanent ink in a photo-reproducible color when signing a record and a provision allowing for a notarial officer to make or supervise the creation of a copy of a record to certify or attest the copy of a record.

Section 12.9.3.14 was updated to follow industry best practice that an official stamp shall contain the words “Notary Public” and “State of New Mexico.”

Section 12.9.3.15 NMAC was updated to remove the allowance for a firm or employer to act as a record custodian for notary public journal to better align with Section 14-14A-18(G) that provides that a notary public may “transmit the journal to the secretary of state, state records officer, or a repository approved by the secretary of state.”

Section 12.9.3.16 NMAC was renamed from “non-commissioned notarial officers” to “RULONA transition” and includes updated provisions to clarify how existing notarial officers are impacted by the transition from the previous notarial laws to the new Revised Uniform Law on Notarial Acts effective on January 1, 2022.

(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.

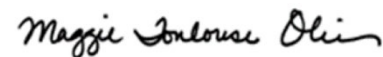
The SOS did not accept the argument that Section 12.9.3.8(A) NMAC should be updated to include the restriction that an applicant’s name must match the “most recently issued, unexpired” state issued identification as the rule already makes clear the process for a notary public to follow should the notary public have a name change.

The SOS did not accept the argument that a notarial officer is not required to produce information in accordance with IPRA pursuant to Section 14-14A-29 NMSA 1978. A plain reading of Section 14-14A-29 NMSA 1978 does not limit this provision to records maintained by public offices.

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