

NEW MEXICO SECRETARY OF STATE  
NOTICE OF PROPOSED RULEMAKING HEARING  
THURSDAY, OCTOBER 28, 2021, 9:00 A.M.

STATE CAPITOL BUILDING  
ROOM 317  
490 OLD SANTA FE TRAIL  
SANTA FE, NEW MEXICO 87501

BEFORE: DYLAN K. LANGE, HEARING OFFICER

REPORTED BY: KIM KAY SHOLLENBARGER, RPR  
PAUL BACA PROFESSIONAL COURT REPORTING  
500 4TH STREET, NORTHWEST, SUITE 105  
ALBUQUERQUE, NEW MEXICO 87102

1 HEARING OFFICER LANGE: Good morning. It's nine  
2 o'clock, I'm going to start the hearing. Today is October  
3 28th, 2021. The time is nine a.m. We are assembled at the  
4 State Capitol Building in Room 317 in Santa Fe, New Mexico.  
5 My name is Dylan Lange, I am the General Counsel for the  
6 Secretary of State's office and the Hearing Officer for  
7 today's public comment rule hearing.

8 The purpose of this hearing is to obtain public  
9 input on the new rules relevant to the 2021 passage of the  
10 Revised Uniform Laws on Notarial Acts, which is effective  
11 beginning January 1, 2022. The new rules shall be codified  
12 as Part 12.9.3 NMAC Notarial Procedures; Part 12.9.4 NMAC  
13 Remote Online Notarization Standards and repeal of the  
14 current Performing Electronic Notarial Acts under 12.9.2.

15 The hearing is being conducted pursuant and in  
16 accordance with NMSA 1978 Section 14-14A-26, which authorizes  
17 the Secretary of State to adopt and promulgate rules to  
18 establish standards and guidelines and procedures, fees, and  
19 to define the duties and responsibilities of Notarial  
20 Officers under the Revised Uniform Law. In addition, this  
21 hearing procedure will comply with the State Rules Act and  
22 the Default Procedural Rule for rulemaking.

23 Public notice of this hearing was provided to the  
24 public and published in the New Mexico Register on September  
25 28th, 2021. Copies of the proposed rules have been available

1 at the Secretary of State's Office, posted on its website,  
2 and available on the Sunshine Portal since notice was  
3 published. Copies of the proposed rule are also available to  
4 the public attending the hearing, on the table located in the  
5 back near the door. The hearing is also being livestreamed  
6 today on the Secretary of State's website. I ask all members  
7 today to silence your cell phones, I'll do the same, and ask  
8 any extended conversations to be held outside of the room.

9 I think everyone has signed the attendance sheet,  
10 but the attendance sheet will be entered as an exhibit as  
11 part of today's hearing, and we will contact you as the  
12 procedure continues, so it's important to have contact  
13 information for you.

14 Let the record show that there is staff from the  
15 Secretary of State's office present here today. I am joined  
16 by Sharon Pino, the Deputy Secretary of State and Cristina  
17 Chavez, who is the Director of Business Services.

18 This is a formal proceeding and a court reporter has  
19 been designated to transcribe the testimony today. The  
20 transcript from this hearing will become part of the  
21 rulemaking record; therefore, I ask everyone, when you do  
22 want to speak, to come forward, recognize yourself and any  
23 relevant affiliation you have each time you speak. Speak  
24 loudly and clearly so the court reporter can pick up your  
25 comments.

1           We are required to wear masks today. If you do come  
2 forward and the court reporter can't hear you or we can't  
3 hear you, we may ask you to move your mask down, but that's  
4 only -- we're a small group, small room, please just try to  
5 enunciate and speak into the microphone so we can make sure  
6 that we get your comments. The hearing will be conducted in  
7 the following manner and in accordance with 1.24.25.13 NMAC.

8           First, the Secretary of State staff will present  
9 exhibits. I, Hearing Officer, will rule on the admissibility  
10 of those exhibits. The exhibits have been in the back the  
11 entire time if you wanted to see. Once the exhibits are  
12 admitted into evidence they are available to review.

13           All written comment that we have received on this  
14 rule is posted on our website currently. We are continuing  
15 to accept written comments at this time until the end of the  
16 hearing. We did just receive an email regarding testimony  
17 today, we will make sure that that is entered into the record  
18 once we're able to print it off.

19           We will proceed with general comments first on the  
20 Notarial Procedures Act, or I guess rule, and then on Remote  
21 Online Notarization Standards, and then on the repeal of the  
22 previous law.

23           We do not follow the Rules of Evidence; therefore,  
24 the Hearing Officer may, in the interests of efficiency,  
25 exclude or limit questions deemed irrelevant, redundant or

1 unduly repetitious. The decision as to whether such  
2 exhibits, testimony, commentary or other evidence is  
3 irrelevant, redundant or unduly repetitious is made by me,  
4 the Hearing Officer.

5           After a person has come forward to testify and offer  
6 comment, any member of the audience wishing to question that  
7 person may do so after being recognized by myself. Each  
8 person recognized to speak shall identify him or herself for  
9 the record. Questions will be limited only to clarifying  
10 questions of the person who offered oral testimony. In  
11 asking clarifying questions, please be aware that the hearing  
12 is scheduled for two hours and we need to be respectful of  
13 everyone's time. I think we won't have an issue with that  
14 today.

15           The public hearing is now open. Secretary of State  
16 Office, do you have the exhibits to introduce into evidence  
17 at this time?

18           DIRECTOR CHAVEZ: Cristina Chavez, Director of  
19 Business Services for the New Mexico Secretary of State  
20 Office. I have the following exhibits to enter into  
21 evidence: Exhibit 1, Notice of Rulemaking published in the  
22 New Mexico Register.

23           Exhibit 2, proposed rule to be codified as Part  
24 12.9.3 NMAC Notarial Procedures.

25           Exhibit 3, proposed rule to be codified as Part

1 12.9.4 NMAC Remote Online Notarization Standards.

2 Exhibit 4, old rule to be repealed as Part 12.9.2  
3 NMAC Performing Electronic Notarial Acts.

4 Exhibit 5, correspondence to the New Mexico  
5 Legislative Counsel regarding the Notice of Rulemaking.

6 Exhibit 6, written comment received on the proposed  
7 rules prior to today's hearing.

8 HEARING OFFICER LANGE: Thank you. I will admit  
9 those in evidence. This is the record so far that we have.

10 Again, any persons wishing to submit additional  
11 data, views, argument or testimony shall do so after being  
12 recognized by the Hearing Officer.

13 I will now open the floor to the audience for  
14 testimony and comments on each part of the rule. The  
15 audience may ask clarifying questions to each person  
16 providing testimony. I will go get the sign-in sheet, or  
17 someone could bring me the sign-in sheet, we will start by  
18 calling for testimony.

19 First person on the list wishing to testify is Kim  
20 Gaedeke. Please come forward, introduce yourself and your  
21 affiliation and then which part of the rules, if any, you are  
22 commenting on, please.

23 MS. GAEDEKE: Thank you so much.

24 SPEAKER: May I join her?

25 MS. GAEDEKE: We're together.

1 HEARING OFFICER LANGE: Sure. Are you Dale Hardy?

2 MR. HARDY: Yes, sir.

3 HEARING OFFICER LANGE: And I believe, as you're  
4 sitting down, Mr. Hardy, you forwarded your written comments  
5 to Kari Fresquez, our Director of Legislative and Executive  
6 Affairs and we will ensure to supplement the record with that  
7 written comment.

8 MR. HARDY: Thank you very much.

9 MS. GAEDEKE: Thank you. Again, my name is Kim  
10 Gaedeke and I am the AVP, Head of Government Affairs, for  
11 Notarized. This is week five for me for the company. I  
12 previously was with the Administrative Department of  
13 Licensing and Regulatory Affairs. With me I brought my  
14 colleague, Dale Hardy, he is our legal analyst and formerly,  
15 prior to joining Notarized, was a policy advisor for the  
16 judiciary committee in Kentucky.

17 We just greatly appreciate the opportunity to  
18 present our perspective on these proposed rules. It's a  
19 pleasure to be here in New Mexico and to be discussing Remote  
20 Online Notarization for implementation here in this state.

21 We would like to start by thanking Secretary  
22 Toulouse Oliver and her office for all of the hard work on  
23 these proposed rules and their overall leadership on RON. In  
24 fact, I will refer to Remote Online Notarization as RON.

25 A little bit about our company. Notarized is a

1 digital trust provider that integrates technology with live  
2 human interaction to transform, help people verify identities  
3 and conduct business online starting with notarizations. We  
4 are one of the first RON technology vendors to allow for any  
5 person or organization to get their documents legally  
6 notarized online 24/7. Our mission is to make it easier for  
7 people to execute the most important transactions of their  
8 lives and to make those transactions more accessible,  
9 convenient and secure.

10           At Notarized we pride ourselves on being a trusted  
11 resource to our government partners and with a rich history  
12 of partnering with all levels of government to create a  
13 regulatory framework that keeps consumers safe and maintains  
14 the integrity of the Notarial Act.

15           We really appreciate the work that you and your  
16 team have before you. As a former regulator, it's not always  
17 easy to balance the protection of consumers, as well as  
18 helping vendors maintain compliance, which is what our role  
19 is here today, to have regulatory framework in which we can  
20 maintain compliance.

21           With that, we have several comments specific to the  
22 proposed regulations and rules, so I am going to turn it over  
23 to my colleague, Dale Hardy, to go more specifically by each  
24 section. Thank you so much for this opportunity again.

25           MR. HARDY: Thank you very much for having us. As



1 my colleague said, my name is Dale Hardy, Legal Analyst for  
2 Public Affairs at Notarized. Our main concern surrounds  
3 proposed Rule 12.9.4.17 Standards for Remote Notarization  
4 System Providers. There are a few different things in there  
5 that I would like to discuss.

6 First is Subsection C(1) regarding data breach  
7 notification. As written this subsection would require  
8 provider becomes aware of a possible security breach  
9 involving its data, to give notice to both the Secretary of  
10 State and any New Mexico notaries using provider services  
11 within 30 days of the discovery of the possible breach.

12 As providers of a digital service built around  
13 security we wholeheartedly agree that maintaining data  
14 security is of paramount importance; however, this  
15 requirement is far stricter than New Mexico's existing data  
16 breach notification law, NMSA 57-12(C)-1. It's also  
17 impracticable for providers to implement and likely not very  
18 beneficial to the notaries that will be notified for the  
19 Secretary of State.

20 The reality situations involving a data breach is  
21 that 30 days is probably not enough time to conduct a  
22 thorough enough investigation to determine whether or not  
23 notice is required. We do believe that notice should be  
24 provided to individuals who are affected, but only after  
25 we've been able to definitively determine that a security

1 breach has occurred, and even then only those individuals  
2 whose personal identifying information has been compromised.

3 We recommend instead a change to this subsection,  
4 requiring providers specifically to comply with the Data  
5 Breach Notification Act of New Mexico and adding additional  
6 requirements to provide notice to the Secretary of State.  
7 This would solve several problems for providers, including  
8 providing an adequate period of time to conduct that internal  
9 investigation, as well as providing an established process  
10 and definitions for providers to follow under that Act and  
11 providing the appropriate notice to impacted parties.

12 Next, under the same proposed rule of Subsection  
13 C(2) regarding the approval of platform changes. As written  
14 Subsection C(2) would require a provider to request approval  
15 prior to making any platform changes from both the Secretary  
16 of State and all New Mexico notaries using the provider  
17 services at least 30 days prior to implementing those  
18 changes. This will be an extremely burdensome requirement  
19 for providers that will likely limit the technology  
20 provider's ability to operate here in the State of New  
21 Mexico.

22 Firstly, most vendors would be unable to fully  
23 detail changes being made that far in advance. The reality  
24 of operations of the software company is that changes often  
25 happen in realtime regardless of the size of that software

1 company. Meaning, that there are short deadlines and  
2 turnarounds, so this requirement may inadvertently decrease  
3 competition in the market by boxing out small and medium-size  
4 technology providers that would have difficulty meeting this  
5 requirement.

6 Secondly, the requirement that the provider obtain  
7 the approval of any New Mexico notaries prior to utilizing  
8 the services is unworkable for us. This creates a  
9 possibility that a single notary may be able to deny and  
10 update the platform that is needed for the platform's  
11 continued operation or even legal compliance.

12 We would be happy to provide any New Mexico notaries  
13 utilizing our services with the ability to opt out in the  
14 case of an update that they dislike or disapprove of, but we  
15 do not agree that a notary should have the ability to stop  
16 changes to the platform.

17 Overall we would, instead, suggest that providers  
18 are required to detail platform changes to the Secretary of  
19 State and notaries utilizing the services on an annual basis  
20 as part of a re-approval process. We are committed to  
21 maintaining compliance with the laws of New Mexico; however,  
22 the potential compliance pertinent to this case is  
23 impracticable.

24 The third part under this rule is Subsection E as  
25 far as termination of active status. This subsection

1 provides the Secretary of State the ability to terminate  
2 provider's active status for a number of reasons, this  
3 includes a violation of what was Senate Bill 12, or RULONA,  
4 for these proposed rules regardless of the impact or  
5 materiality of violation. Additionally, sustaining a data  
6 breach for failing to comply with the request for information  
7 from the Secretary of State are possible grounds for  
8 termination. Our general concern with these provisions are  
9 the threat and lack of detail. We would suggest a few  
10 changes.

11           Firstly, providing a process for a hearing to appeal  
12 a decision to terminate a provider's active status. Second,  
13 a limitation that the violation of RULONA, or these rules, be  
14 material or impact the ability of the provider to offer a  
15 compliant service in New Mexico. Third, referencing the New  
16 Mexico Data Breach Notification Act for a definition of what  
17 a data breach is. And finally, providing a timeframe and  
18 exception as may be required by law as far as responding to  
19 requests for information.

20           As previously stated, we strive to offer compliant  
21 RON solutions in all states where we are engaged, New Mexico  
22 would be no different; however, we are seeking clarity to  
23 understand the full scope of the requirements and potential  
24 challenges of doing so here.

25           With that I would like to move to proposed Rule

1 12.9.4.8 regarding hardware and software updates and  
2 application information. Subsection E of that section states  
3 that a notarial officer may employ hardware or software that  
4 has been updated from their application so long as the update  
5 does not render the hardware or software be materially  
6 different.

7 We do not believe that a notary would know or should  
8 be required to know whether or not an update to their  
9 services, to the services they employ, renders those services  
10 be materially different from what was on the application. We  
11 would, instead, suggest that the requirement notify the  
12 Secretary of State of any material updates be incorporated  
13 into our earlier suggestion and require providers, instead,  
14 to outline any material updates as part of the re-approval  
15 process that happens on an annual or regular basis.

16 Under that same Section 12.9.4.8 we are seeking  
17 clarification on the number of providers that the notary of  
18 New Mexico may utilize. Subsection A(1) states that a notary  
19 must provider the Secretary of State with the name of the  
20 remote online system provider they intend to use, but  
21 Subsection F states that the notary must notify the Secretary  
22 of State any time they adopt a new or additional provider.

23 It is our belief that a notary should be able to  
24 utilize the services of as many providers that are compliant,  
25 as they wish. So we would ask for clarification in A(1),

1 that the notary may identify multiple providers at the time  
2 of application.

3 This brings me to the suggestion under Rule 12.9.4.7  
4 regarding the definition of identity proofing. The  
5 definition of identity proofing in these rules states in  
6 part, it is a process or service through which a third party  
7 affirms the identity of an individual. Our concern is that  
8 this definition misunderstands the role identity proofing  
9 plays in the verification process.

10 The identity proofing methods used in RON do not  
11 guarantee that the individual has the identity claimed.  
12 Instead, they are tools used by the notary to assist them in  
13 determining that the individual has the identity claimed.  
14 Neither credential analysis nor knowledge-based  
15 authentication, or KBA, can definitively determine identity  
16 nor should they. RON's strength is the combination of all  
17 factors involved. Two forms of identity proofing,  
18 verification by the notary and reporting that is retained and  
19 the use of tamper-evident electronic documents.

20 Our suggestion here would be amending this  
21 definition to match what was in Senate Bill 12, that identity  
22 proofing means a process or service by which a third person  
23 providers a notary public with the means to verify the  
24 identify of remotely located individuals by a view of  
25 personal information from public or private data sources.

1 This definition requests the reality that identity proofing  
2 methods are tools in helping the notary, not tools meant to  
3 replace the role that the notary plays in this process.

4 Next I'd like to turn to Rule 12.9.4.11 regarding  
5 knowledge-based authentication. This is related to identity  
6 proofing, but we are seeking clarification because -- in  
7 Subsection B, Number 5 states to give the individual three  
8 total attempts to pass KBA with a single notary. However,  
9 Number 7 says, if the individual fails after two attempts  
10 they may not retry with that same notary within 24 hours.  
11 Our request is clarification on whether this is meant to be  
12 two or three total attempts in that time period.

13 Additionally, we would suggest the possibility of  
14 changing the language in 7 to further prohibit an individual  
15 from retrying KBA on the same platform within 24 hours  
16 instead of the same notary. Otherwise, they may be able to  
17 continue switching notaries on a single platform until they  
18 get lucky and get knowledge-based authentications correctly.

19 Next, under 12.9.4.12 regarding accessibility. One  
20 of the features of which we are most proud is the  
21 accessibility of RON and its ability to help bridge the  
22 digital divide by providing digital services to underserved  
23 communities. We are committed to making our platform easier  
24 to use for individuals with disabilities, as well as offering  
25 Spanish language functions and notaries, with plans to offer

1 additional languages in the future. However, the wording of  
2 the accessibility requirement in Subsection A(3) is not  
3 specific, making it difficult for a provider to anticipate  
4 the disability and accessibility requirements that would be  
5 needed on a platform in order to operate in the state.

6 Our goal is to allow anyone to access the platform  
7 on RON. We would suggest either one of two things. First,  
8 that these rules reference Senate Bill 12 and instead require  
9 communication technology to, when necessary, consistent with  
10 other applicable law, facilitate communication technology  
11 with a remotely located individual who has a vision, hearing  
12 or speech impairment, or to provide a specific and more  
13 detailed list of accessibility features a platform must  
14 provide in order to be in compliance.

15 I would like to say, that overall we strongly  
16 support these proposed rules. There are many specific  
17 provisions that we are particularly encouraged to see,  
18 specifically the requirement that a notary obtain an  
19 X509-compliant digital certificate, eliminating the  
20 possibility of using paper documents in this process. The  
21 language and requirements around KBA and conventional  
22 analysis. Allowing the notary to use a repository for  
23 storing a required journal and AB recordings, and the  
24 requirement that providers obtain Secretary of State  
25 approval, are all items we support.



1           In fact, we are generally supportive of the  
2 provisions we have discussed as well. It is our opinion that  
3 with a few small changes in verifications, these rules will  
4 strike that delicate balance between security and  
5 operability.

6           MS. GAEDEKE: Thank you. And just in closing, we  
7 would like to make ourselves available for further discussion  
8 or conversations your office may wish to have here today at  
9 the hearing surrounding these proposed rules. Just thank you  
10 and Secretary of State for this opportunity to meet with all  
11 of you today. Thank you again.

12           HEARING OFFICER LANGE: Thank you for those  
13 comments, and your written testimony we will supplement. I  
14 do appreciate it. Is there any member of the audience that  
15 has any questions for the team at Notarized? Seeing none,  
16 thank you very much.

17           MR. HARDY: Thank you.

18           MS. GAEDEKE: Thank you.

19           HEARING OFFICER LANGE: The next person on the list  
20 is Mr. Chris Cullen, would you like to give -- it doesn't say  
21 here that you want to make a comment. No? Okay. The next  
22 person on here -- I'm sorry, that's all I have of who wanted  
23 to make a comment. Is there someone in the audience who  
24 wishes to make a comment on the proposed rule changes, either  
25 the Notarial Procedures or the Remote Online Notarization

1 Standards at this time? Seeing none. Is there anyone in the  
2 audience who would like to give a comment on the repeal of  
3 the old notarial law, Part 12.9.2? Seeing none.

4 We've given an opportunity for everyone present here  
5 today to give testimony and we've heard the testimony  
6 provided. So at this particular time I believe that everyone  
7 has signed in. I will mark this as Exhibit 7 and this will  
8 be entered into the record, the sign-in sheet.

9 The hearing is now closed. That's all we have. We  
10 will be accepting written comments until, I believe, eleven  
11 o'clock today. If there is someone online wishing to still  
12 submit their testimony on the arguments and testimony  
13 submitted during this rule hearing and also through written  
14 comment, will be duly considered by the Secretary of State  
15 Office.

16 It is important to note that upon completion of the  
17 rule hearing all exhibits and public comments will be  
18 incorporated into the final ruling of record in accordance  
19 with the State Rules Act. Any rules adopted by the SOS will  
20 be filed with the State Records and Archives Center in  
21 accordance with the State Rules Act and New Mexico registered  
22 public deadlines. Any rules or amendments not adopted may be  
23 postponed for future discussion in the future.

24 I would like to thank all the members of the public  
25 present for their participation and attendance today. Let

1 the record reflect that this hearing is adjourned at 9:27  
2 a.m. on October 28, 2021. Thank you.

3 (Hearing Adjourned at 9:27 a.m.)

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REPORTER'S CERTIFICATE

I, Kim Kay Shollenbarger, Registered Professional Reporter, do hereby certify that I reported the foregoing proceedings in stenographic shorthand and that the foregoing pages are a transcript of those proceedings that were reduced to printed form by me to the best of my ability.

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Kim Kay Shollenbarger, RPR