

ATTORNEY GENERAL APPROVAL OF RULES

SECRETARY OF STATE

2020 MAR 19 PM 4:02

FILED

1. Agency Name: Office of the Secretary of State
2. Chapter Heading: Office of the Secretary of State
3. Code Citation for the Chapter: 2 A.A.C. 12
4. The Articles and the Sections involved in the rulemaking, listed in alphabetical and numerical order:

<u>Sections</u>	<u>Action</u>
R2-12-1301	New Section
R2-12-1302	New Section
R2-12-1303	New Section
R2-12-1304	New Section
R2-12-1305	New Section
R2-12-1306	New Section
R2-12-1307	New Section
R2-12-1308	New Section

The rules contained in this package are approved as final rules pursuant to the standards set forth in A.R.S. § 41-1044. The Attorney General's approval of the rule shall not be construed as an endorsement of policy issues relating to or resulting from the rulemaking. Policy decisions relating to the rulemaking are those of the Secretary of State and not the Office of the Attorney General. The rules are effective immediately upon filing with the Secretary of State.



Mark Brnovich
Attorney General

19 MAR 20

Date

**AGENCY RECEIPT
NOTICE OF FINAL RULEMAKING**

2020 MAR 19 PM 4: 03

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1. **Agency name:** Office of the Secretary of State

2. **The Subchapters, if applicable; the Articles; the Parts, if applicable; and the Sections involved in the rulemaking, listed in alphabetical and numerical order:**

<u>Subchapters, Articles, Parts, and Sections</u>	<u>Rulemaking Action</u>
R2-12-1301	New Section
R2-12-1302	New Section
R2-12-1303	New Section
R2-12-1304	New Section
R2-12-1305	New Section
R2-12-1306	New Section
R2-12-1307	New Section
R2-12-1308	New Section

NOTICE OF FINAL RULEMAKING

SECRETARY OF STATE

TITLE 2. ADMINISTRATION

2020 MAR 19 PM 4: 04

CHAPTER 12. OFFICE OF THE SECRETARY OF STATE

FILED

PREAMBLE

1. Article, Part, or Section Affected (as applicable): Rulemaking Action

R2-12-1301	New Section
R2-12-1302	New Section
R2-12-1303	New Section
R2-12-1304	New Section
R2-12-1305	New Section
R2-12-1306	New Section
R2-12-1307	New Section
R2-12-1308	New Section

2. Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. § 41-372(A)
Implementing statute: A.R.S. § 41-371 through 41-380

3. The effective date of the rule:

These rules shall become effective pursuant to A.R.S. § 41-1032. Once approved by the Attorney General, the *Arizona Administrative Register Editor* shall print the effective date under this item.

a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

Not applicable

b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

Not applicable

4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rule:

Notice of Rulemaking Docket Opening: 25 A.A.R. 1737, July 5, 2019
Notice of Proposed Rulemaking: 25 A.A.R. 3351, November 22, 2019

5. The agency’s contact person who can answer questions about the rulemaking:

Name: Patricia A. Viverto, Director
Address: Secretary of State, Business Services
1700 W. Washington St., 7th Floor
Phoenix, AZ 85007

Telephone: (602) 542-6187
Fax: (602) 542-4366
E-mail: pviverto@azsos.gov

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

SB1030 was signed into law by the Governor on April 10, 2019. The bill directs the Secretary of State to adopt rules to facilitate Remote Online Notarization (RON). RON occurs when a signer personally appears before the notary at the time of the notarization using audio-visual technology instead of being physically present in the same room with the notary. An individual who wishes to perform RON must be commissioned as a traditional notary public and meet the same requirements and qualifications needed to be appointed as a traditional notary public under A.R.S. §§ 41-311 through 41-380. The term of the commission to perform RON is four years and expires on the same date as the traditional notary public's commission. In order to perform RON, the notary must be physically located within the boundaries of Arizona at the time of the notarization. The notary must verify the remotely located signer by either personal knowledge of the signer, the signer's remote presentation of a credential that qualifies as satisfactory evidence of identity as defined in A.R.S. §41-311, by credential analysis and identity proofing of the signer, or by the use of a credible witness with personal knowledge of the signer. It is the responsibility of the notary to obtain the technologies and devices that the notary intends to use to perform RON and to ensure that they meet the requirements as set forth by the Secretary of State in this article.

7. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. A summary of the economic, small business, and consumer impact:

Not applicable

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

The following changes were made between the proposed rulemaking and the final rulemaking:

R2-12-1301. Definition for Multi-factor authentication was added.

R2-12-1304(A)(5). Changed the word "certification" to "statement certifying" for clarity.

R2-12-1304(D). The fee language was removed.

R2-12-1304(G). Section added for the appeal process.

R2-12-1306(C). Added language to this section for clarity.

Some minor punctuation and text changes were made as well.

11. An agency's summary of the public stakeholder comments made about the rulemaking and the agency response to the comments:

None

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

Not applicable

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

Not applicable

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Not applicable

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

Not applicable

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

None

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

Not applicable

15. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 12. OFFICE OF THE SECRETARY OF STATE

ARTICLE 13. REMOTE ONLINE NOTARIZATION

R2-12-1301. Definitions

The following definitions shall apply to this Article unless context otherwise requires:

1. **"Commission" means the same as defined in A.R.S. § 41-311(2).**
2. **"Communication technology" means the same as defined in A.R.S. § 41-371(1).**
3. **"Credential analysis" means the same as defined in A.R.S. § 41-371(2).**
4. **"Dynamic knowledge-based authentication assessment" means an identity assessment of an individual that is based on a set of questions formulated from public or private data sources for which the individual has not provided a prior answer.**
5. **"Electronic" means the same as defined in A.R.S. § 41-371(3).**
6. **"Electronic notarization" or "electronic notarial acts" means a notarial act performed with respect to an electronic record in accordance with Article 12.**
7. **"Electronic record" means the same as defined in A.R.S. § 41-371(4).**
8. **"Electronic seal" means the same as defined in A.R.S. § 41-371(5).**

9. "Identification credential" means an identification card or document that constitutes "satisfactory evidence of identity" as defined in A.R.S. § 41-311(11).
10. "Identity proofing" means the same as defined in A.R.S. § 41-371(8).
11. "Multi-factor authentication" means a security system that requires more than one method of authentication from independent categories of credentials to verify the user's identity for a login or other transaction.
12. "Notarial act" means the same as defined in A.R.S. § 41-371(9).
13. "Person" means the same as defined in A.R.S. § 41-371(11).
14. "Personal knowledge" means the same as defined in A.R.S. § 41-371(12).
15. "Remotely located individual" means the same as defined in A.R.S. § 41-371(13).
16. "Remote online notarization" or "remote online notarial act" means the same as defined in A.R.S. § 41-371(14).
17. "Remote presentation" means the same as defined in A.R.S. § 41-371(15).

R2-12-1302. Authority to Perform Remote Online Notarization

- A.** A notary public of this state may perform remote online notarizations during the term of the notary public's commission if:
 1. The notary public has received written authorization from the Secretary of State to perform remote online notarizations under this Article; and
 2. The Secretary of State has not terminated or revoked such authorization.
- B.** A notary public who is authorized to perform remote online notarizations under subsection (A) may also perform electronic notarizations under Article 12.

R2-12-1303. Use of Electronic Notarization

In performing a remote online notarization, a notary public must comply with the requirements for electronic notarization as provided in Article 12.

R2-12-1304. Registration

- A.** To receive authorization from the Secretary of State to perform remote online notarizations a notary public must submit an application in a format prescribed by the Secretary of State that provides the following information about the applicant:
 1. The applicant's full legal name and the name under which the applicant is commissioned as a notary public (if different);
 2. The applicant's email address;
 3. A description of the technologies or devices that the applicant intends to use to perform remote online notarizations;
 4. The name, address, and website URL of any vendors or other persons that will directly supply to the applicant the technologies that the applicant intends to use;
 5. A statement certifying that the technologies described in the application comply with the requirements of this Article;
and
 6. A disclosure of any professional license or commission revocations or other professional disciplinary actions taken under the laws of any state against the applicant.
- B.** The application must be submitted to the Secretary of State as provided by information posted on the Secretary of State's website at <https://azsos.gov/>.
- C.** If, during the term of a notary public's commission, the notary public intends to use the technologies of another vendor or person than those identified under subsection (A)(3) and (4), then an additional application or amendment identifying such other vendors or other persons must be submitted to the Secretary of State as provided in this section.

- D. If the technology identified in the application under subsection (A) conforms to the standards adopted under this Article and the applicant satisfies the requirements of this section, the Secretary of State shall approve the use of the technology and issue to the notary public written authorization to perform electronic notarizations.
- E. The Secretary of State may reject the application, or terminate or revoke a prior authorization given under this section, for the following reasons:
1. The applicant's failure to comply with A.R.S. §§ 41-311 through 41-380 or this Article;
 2. Any information required under subsection (A) is missing, inaccurate, or incomplete; or
 3. The technology identified in the application does not conform to the standards adopted under this Article.
- F. The Secretary of State shall notify the notary public of approval or rejection of the application within forty-five (45) days after receipt. If the application is rejected, the Secretary of State shall state the reasons for the rejection.
- G. Rejection of an application, or termination or revocation of a prior authorization to perform electronic notarizations may be appealed pursuant to A.R.S. §§ 41-1092.03 and 41-1092.06.
- H. The term of the commission to perform remote online notarization shall be the same as the term of the notary's existing notary commission.
- I. The renewal of the commission of a notary public who has previously received authorization to perform remote online notarizations does not constitute renewal of such authorization. Applicant shall submit another application as provided under subsection (A) and must receive authorization from the Secretary of State in order to continue to perform remote online notarizations.
- J. Nothing herein shall be construed to prohibit a notary public from receiving, installing, or using hardware and/or software updates to the technologies that the notary public identified under subsection (A) if the hardware and/or software update does not result in technologies that are materially different from the technologies that the notary public identified previously.

R2-12-1305. Standards for Identity Verification

- A. If a notary public does not have satisfactory evidence of the identity of a remotely located individual under subsection (D), the notary public must reasonably verify the individual's identity through a multi-factor authentication procedure as provided in this section and in subsections (B) and (C). The procedure must analyze the individual's identification credential that is the subject of remote presentation against trusted third-person data sources, bind the individual's identity to the individual following successful dynamic knowledge-based authentication assessment, and permit the notary public to visually compare the identification credential and the individual. Credential analysis and identity proofing must be performed by a reputable third party who has provided evidence to the notary public of the ability to satisfy the requirements of this Article.
- B. Credential analysis must use public or private data sources to confirm the validity of the identification credential that is the subject of remote presentation by a remotely located individual and shall, at a minimum:
1. Use automated software processes to aid the notary public in verifying the identity of each remotely located individual;
 2. Require the identification credential to pass an authenticity test, consistent with sound commercial practices, that uses appropriate technologies to confirm the integrity of visual, physical, or cryptographic security features and to confirm that the identification credential is not fraudulent or inappropriately modified;
 3. Use information held or published by the issuing source or an authoritative source, as available and consistent with sound commercial practices, to confirm the validity of personal details and identification credential details; and

4. Enable the notary public to visually compare for consistency the information and photograph on the identification credential and the remotely located individual as viewed by the notary public in real time through communication technology.

C. Identity proofing must be performed by means of a dynamic knowledge-based authentication assessment. The assessment is successful if it meets the following requirements:

1. The remotely located individual must answer a quiz consisting of a minimum of five questions related to the individual's personal history or identity formulated from public or private data sources;
2. Each question must have a minimum of five possible answer choices;
3. At least 80% of the questions must be answered correctly;
4. All questions must be answered within two minutes;
5. If the remotely located individual fails the first attempt, the individual may retake the quiz one time within 24 hours;
6. During a retake of the quiz, a minimum of 40% of the prior questions must be replaced;
7. If the remotely located individual fails the second attempt, the individual is not allowed to retry with the same online notary public within 24 hours of the second failed attempt; and
8. The notary public must not be able to see or record the questions or answers.

D. A notary public has satisfactory evidence of the identity of a remotely located individual if:

1. The notary public has personal knowledge of the identity of the individual; or
2. The individual is identified by oath or affirmation of a credible witness in accordance with the following requirements:
 - a. To be a credible witness, the witness must have personal knowledge of the remotely located individual.
 - b. The notary public must have personal knowledge of the credible witness or verify the identity of the credible witness by multi-factor authentication in accordance with subsections (A), (B) and (C).
 - c. A credible witness may be outside the physical presence of the notary public or remotely located individual if the notary public, credible witness, and remotely located individual can communicate by using communication technology.

R2-12-1306. Standards for Communication Technology

A. Communication technology must provide for synchronous audio-video feeds of sufficient video resolution and audio clarity to enable the notary public and remotely located individual to see and speak with each other. The process must provide a means for the notary public reasonably to confirm that an electronic record before the notary public is the same record in which the remotely located individual made a statement or on which the remotely located individual executed a signature.

B. Communication technology must provide reasonable security measures to prevent unauthorized access to:

1. The live transmission of the audio-visual feeds;
2. The methods used to perform identify verification; and
3. The electronic record that is the subject of the remote online notarization.

C. If a remotely located individual must exit the workflow prior to completion of the identity verification process, the individual must restart the identity verification process from the beginning.

R2-12-1307. Certificate of Notarial Act for Remote Online Notarization

A. A form of notarial certificate for a remote online notarization satisfies the requirement of A.R.S. § 41-376(F) if it is in the form provided by applicable law and contains a statement substantially as follows: "This remote online notarization involved the use of communication technology."

B. A short form of acknowledgment prescribed in A.R.S. § 33-506 or other form of notarial certificate required by law satisfies the requirement of A.R.S. § 41-376(F) if it is in substantially one of the following forms for the purposes indicated:

1. For an acknowledgment in an individual capacity:

State of Arizona
County of _____

The foregoing instrument was acknowledged before me by means of communication technology on (date) by (name(s) of individual(s)).

(Signature of notary public)
Notary Public
(Electronic seal)
(My commission expires: _____)

2. For an acknowledgment in a representative capacity:

State of Arizona
County of _____

The foregoing instrument was acknowledged before me by means of communication technology on (date) by (name(s) of individual(s)) as (type of authority, such as officer or trustee) of (name of party on behalf of whom the instrument was executed).

(Signature of notary public)
Notary Public
(Electronic seal)
(My commission expires: _____)

3. For a verification on oath or affirmation:

State of Arizona
County of _____

Signed and sworn to (or affirmed) before me by means of communication technology on (date) by (name(s) of individual(s) making statement).

(Signature of notary public)
Notary Public
(Electronic seal)
(My commission expires: _____)

4. Certificate of acknowledgement for a corporation:

State of Arizona
County of _____

The foregoing instrument was acknowledged before me by means of communication technology this (date) by (name of officer or agent, title of officer or agent) of (name of corporation acknowledging), a (state or place of incorporation) corporation, on behalf of the corporation.

(Signature of notary public)
Notary Public
(Electronic seal)
(My commission expires: _____)

5. Certificate of acknowledgement for a partnership:

State of Arizona

County of _____

The foregoing instrument was acknowledged before me by means of communication technology this (date) by (name of acknowledging partner or agent), partner (or agent) on behalf of (name of partnership), a partnership.

(Signature of notary public)
Notary Public
(Electronic seal)
(My commission expires: _____)

6. Certificate of acknowledgement for an individual acting as principal by an attorney in fact:

State of Arizona
County of _____

The foregoing instrument was acknowledged before me by means of communication technology this (date) by (name of attorney in fact) as attorney in fact on behalf of (name of principal).

(Signature of notary public)
Notary Public
(Electronic seal)
(My commission expires: _____)

7. Certificate of acknowledgement by any public officer, trustee, or personal representative:

State of Arizona
County of _____

The foregoing instrument was acknowledged before me by means of communication technology this (date) by (name and title of position).

(Signature of notary public)
Notary Public
(Electronic seal)
(My commission expires: _____)

R2-12-1308. Record Retention and Depositories

- A. A notary public must retain the electronic journal required and any audio-visual recording created under A.R.S. § 41-374 in a computer or other electronic storage device that protects the journal and recording against unauthorized access by password or cryptographic process. The recording must be created in an industry-standard, audio-visual file format and must not include images of any electronic record that was the subject of the remote online notarization.
- B. An electronic journal must be retained for at least five (5) years after the last remote online notarial act chronicled in the journal. An audio-visual recording must be retained for at least five (5) years after the recording is made.
- C. A notary public must take reasonable steps to ensure that a backup of the electronic journal and audio-visual recording exists and is secure from unauthorized use.
- D. On the death or adjudication of incompetency of a current or former notary public, the notary public's personal representative or guardian or any other person knowingly in possession of an electronic journal or audio-visual recording must:
 - 1. Comply with the retention requirements of this section;
 - 2. Transmit the journal and recording to one or more depositories under subsection (E); or
 - 3. Transmit the journal and recording in an industry-standard readable data storage device to the Secretary of State at: Secretary of State, Attn: Notary Department, 1700 W. Washington Street, Floor 7, Phoenix, AZ 85007-2808.

E. A notary public, guardian, conservator, or agent of a notary public, or a personal representative of a deceased notary public may, by written contract, engage a third person to act as a depository to provide the storage required by this section. A third person under contract under this section shall be deemed a depository under A.R.S. § 41-375. The contract must:

1. Enable the notary public, guardian, conservator, or agent of the notary public, or the personal representative of the deceased notary public to comply with the retention requirements of this section even if the contract is terminated; or
2. Provide that the information will be transferred to the notary public, guardian, conservator, or agent of the notary public, or the personal representative of the deceased notary public if the contract is terminated.