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**TEMPORARY ADMINISTRATIVE ORDER**  
INCLUDING STATEMENT OF NEED & JUSTIFICATION

**CORP 1-2020**

CHAPTER 160  
SECRETARY OF STATE  
CORPORATION DIVISION

**FILED**

07/01/2020 3:49 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE  
& LEGISLATIVE COUNSEL

FILING CAPTION: Temporary implementation of remote online notarization, per HB 4212A as pertains to ORS 194.

EFFECTIVE DATE: 07/01/2020 THROUGH 12/27/2020

AGENCY APPROVED DATE: 07/01/2020

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Filed By:  
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NEED FOR THE RULE(S):

Allows for immediate, temporary implementation of HB 4212A as pertains to ORS 194. Provides rules, guidance and standards to notary public regarding performance of notarial act for remotely located individuals, using communication technology.

JUSTIFICATION OF TEMPORARY FILING:

- (1) Failure to immediately adopt the rules would hinder or prevent Oregon notaries public from performing a remote online notarization.
- (2) These rules provide detailed standards about remote online notarization.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Oregon House Bill 4212A (2020)

RULES:

160-100-0000, 160-100-0110, 160-100-0125, 160-100-0140, 160-100-0145, 160-100-0400, 160-100-0800, 160-100-0850

AMEND: 160-100-0000

RULE TITLE: Definitions

RULE SUMMARY: Definitions for Chapter 160, Division 100

RULE TEXT:

As used in ORS 194.205 to 194.990, and OAR 160-100-0000 to 160-100-850:

- (1) "Public Records Address" shall mean postal or street address.
- (2) "Days" means calendar days.
- (3) "Electronic notarial signature" means an electronic signature, as defined in ORS 194.215, used by the notary to officially sign electronic records.

(4) "Notary," as used in these rules, means "notary public."

(5) "Oath of Office" in accordance with ORS 194.315(3), a notary public shall keep on file an Oath of Office with the Secretary of State, affirming the notary's intent to follow the laws and constitutions of the United States of America and the State of Oregon.

(6) "Official Misconduct" means the grounds to deny, revoke, suspend, or condition the commission of a notary public, as stated in ORS 194.340.

(7) "Official Stamp" or "Official Notary Stamp" means a physical image affixed to a tangible record that can be legibly reproduced by a photographic method, and that meets the description of OAR 160-100-0100; or information required under 160-100-0100(3) that is attached to or logically associated with an electronic record. An official stamp does not include a stamping device, as defined in ORS 194.215(17). The official stamp of a notary public is an official notarial seal for all purposes under the law of this state.

(8) "Practice" means conducting a course of repeated notarizations in Oregon beyond a 30 day period.

(9) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(10) "Remote online notarization" means a notarial act performed for a remotely located individual by means of communication technology.

(11) "Secretary of State" means the Corporation Division of the Secretary of State's office.

(12) "Tamper-evident" means in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic record evident.

(13) "Venue" shall include both the jurisdiction of the Oregon notary public and the county in which the notarial act was performed.

STATUTORY/OTHER AUTHORITY: ORS 194.360, HB 4212A (2020)

STATUTES/OTHER IMPLEMENTED: ORS 194.315

AMEND: 160-100-0110

RULE TITLE: Use of Official Stamp

RULE SUMMARY: Provides guidelines for use of the official stamp of a notary public.

RULE TEXT:

- (1) A notary public shall use the notary public's official stamp to perform a notarial act.
- (2) A notary public shall use the notary public's official stamp
  - (a) For a tangible record, by placing a legible imprint of the official stamp on a notarial certificate at the time of the performance of the notarial act.
  - (b) For an electronic record, by attaching or logically associating it with the electronic record.
- (3) A notary public shall not place an imprint of the notary public's official stamp over any signature in a record to be notarized or in a notarial certificate, or over any writing in a notarial certificate.
- (4) When a notarial certificate is on a separate piece of paper attached to the tangible record to be notarized, or when there are attachments to the tangible record to be notarized, a notary public may use one additional imprint of the notary public's official stamp to mark for identification the tangible record or attachment, if the imprint does not make any part of the record or attachment illegible. The additional stamp will be partially stamped on the notarial certificate, and partially on the record or attachment to the notarized record.
- (5) A notary public shall not use the notary public's official stamp for any purpose other than to perform a notarial act.
- (6) A notary public shall not permit any other person to use the notary public's official stamp for any purpose.
- (7) A notary public shall not use any other notary public's official stamp or any other object in lieu of the notary public's official stamp to perform a notarial act.

STATUTORY/OTHER AUTHORITY: HB 4212A (2020), ORS 194.360

STATUTES/OTHER IMPLEMENTED: ORS 194.280, ORS 194.360

AMEND: 160-100-0125

RULE TITLE: Certificate of Authorization

RULE SUMMARY: Provides rule for issuance of certificates by Secretary of State, use by notary public, and penalty for misuse.

RULE TEXT:

- (1) Upon appointment as a notary public, the Secretary of State shall send to the person appointed a notarial commission certificate and a Certificate of Authorization with which the person appointed shall obtain an official stamp.
- (2) Only upon presentation by the notary public of the Certificate of Authorization is a vendor authorized to provide the notary with the official stamp described in 160-100-0120 or an electronic stamp in described in 160-100-0140.
- (3) Subject to the procedures set forth under ORS 194.980, any vendor of official stamps who furnishes an official stamp to any person in violation of section (2) of this rule may incur a civil penalty in the amount of \$500 per offense.

STATUTORY/OTHER AUTHORITY: HB 4212A (2020), ORS 194.360, ORS 194.980

STATUTES/OTHER IMPLEMENTED: ORS 194.360

AMEND: 160-100-0140

RULE TITLE: Notification of Secretary of State of the Use of Electronic Notarization

RULE SUMMARY: Requirements of notaries public wishing to perform notarial acts with respect to electronic records.

RULE TEXT:

(1) A notary public who wishes to perform notarial acts with respect to electronic records shall file the following information with the Secretary of State before such notarization:

(a) Commission name

(b) Commission number

(c) Public records address

(d) Email address

(e) Name of technology vendor

(f) Contact information for vendor

(g) Website for vendor

(h) A statement under penalty of perjury that the method of electronic notarization meets the July 13, 2011 National Electronic Notarization Standards adopted by the National Association of Secretaries of State. For the purposes of this statement, the notary may rely on a vendor's declaration that the technology does meet these standards.

(i) An exemplar of a notarized record that includes the notary's official stamp, the electronic notarial signature, and the electronic notarial certificate. The exemplar shall be a generic sample and not an actual notarized private record.

(2) The example provided in section 1 of this rule must be an electronic file submitted in a PDF format.

(3) In addition to any other technologies used in attaching the electronic notarial signature, the signature must include a graphic reproduction of the notary's handwritten signature on file with the Secretary of State.

(4) In addition to any other technologies and information the notary's official stamp, as evidenced by an official Certificate of Authorization issued by the Secretary of State, shall be logically associated with the notarial certificate and underlying record.

(5) The notice under this rule shall be emailed to the Secretary of State using the form provided to the notary public.

(6) Once information is received and approved by the Secretary of State, a confirmation will be sent to the notary to verify approval.

STATUTORY/OTHER AUTHORITY: ORS 194.305, ORS 194.360, HB 4212A (2020)

STATUTES/OTHER IMPLEMENTED: ORS 194.305

ADOPT: 160-100-0145

RULE TITLE: Notification of Secretary of State of the Use of Remote Notarization

RULE SUMMARY: Allows notary public to perform, and provides required actions of a notary public for being approved to perform, remote online notarization "RON".

RULE TEXT:

A commissioned Notary Public may apply to the Secretary of State to perform remote online notarizations using communication technology after completing the required Remote Online Notarization training and submitting acknowledgment to the Secretary of State.

(1) A notary public who wishes to perform notarial acts with respect to remote notarization shall file the following information using the prescribed form from the Secretary of State before such notarization:

- (a) Commission name;
- (b) Commission number;
- (c) Public records address;
- (d) Email address;
- (e) Name of remote online notarization vendor(s);
- (f) Contact information for remote online notarization vendor(s);
- (g) Website for remote online notarization vendor(s);
- (h) Attached copy of electronic stamp and signature;

(i) A statement under penalty of perjury that the technology and method of remote online notarization meets the system requirements in this chapter. For the purposes of this statement, the notary may rely on a vendor's declaration that the technology and method does meet these standards.

(2) Once information is received and approved by the Secretary of State, a confirmation will be sent to the notary to verify approval.

STATUTORY/OTHER AUTHORITY: HB 4212A (2020), ORS 194.360

STATUTES/OTHER IMPLEMENTED: ORS 194.360

AMEND: 160-100-0400

RULE TITLE: Maximum Amount of Notary Fees Permitted to be Charged

RULE SUMMARY: Provides fees a notary may charge. Modified to include addition of fees for remote online notarization as prescribed by HB4212.

RULE TEXT:

(1) Notwithstanding section 2 of this rule, a notary public shall not charge, attempt to charge, or receive a notary fee that is more than \$10 per notarial act.

(2) In accordance with ORS 194.400(2)(a)(b)(3), a notary may also charge a fee for traveling to perform a notarial act.

(3) A notary public performing a remote online notarization shall not charge, attempt to charge, or receive a notary fee that is more than \$25 per notarial act.

STATUTORY/OTHER AUTHORITY: ORS 194.360, HB 4212A (2020)

STATUTES/OTHER IMPLEMENTED: ORS 194.300, ORS 194.400

ADOPT: 160-100-0800

RULE TITLE: Credential Analysis and Authentication for Remote Online Notarization

RULE SUMMARY: Provides specific guidelines and information regarding credential analysis and authentication for remote online notarization.

RULE TEXT:

- (1) The requirement for at least two different types of identity proofing under ORS 194.240 is satisfied if the notary public identifies a remotely located individual in accordance with the requirements of this section.
- (2) Credential analysis must be provided by a reputable third-party vendor or software tool that can demonstrate proven credential analysis processes and shall employ technology that provides the following:
  - (a) The signer's identity must be linked to the signer following successful knowledge-based authentication, or biometric data; and
  - (b) Remote online notarization shall provide for human visual comparison between the signer and the signer's identification presented to the notary.
- (3) Remote online notarization providers shall use an automated software process to aid the notary in verifying each signer's identity.
  - (a) The identification shall pass an authenticity test that:
    - (A) Uses appropriate technologies to confirm the integrity of visual, physical or cryptographic security features;
    - (B) Uses appropriate technologies to confirm that the identification is not fraudulent or inappropriately modified;
    - (C) Uses information held or published by the issuing source or authoritative source, as available, to confirm the validity of the identification details; and,
    - (D) Provides the result of the authenticity test to the notary.
  - (b) The identification analysis procedure shall enable the notary to visually compare the following for consistency:
    - (A) The information and photo on the identification image presented; and
    - (B) The signer as viewed by the notary in real time through the audio/video system.
  - (c) If the notary public is unable to validate the identification of the signer, or to match the signer's physical features with the credential, the notary public shall not complete the notarial act. No further attempt may be made by the notary or the Solution Provider to complete the notarial act using audio-video communication using that credential.
- (4) The identification shall meet the requirements of ORS 194.240
- (5) The identification image shall be captured and shall confirm that:
  - (a) The signer is in possession of the identification at the time of the notarial act;
  - (b) The identification images submitted for credential analysis have not been manipulated; and
  - (c) The identification images match the identification in the signer's possession.
- (d) The following general principles shall be considered in the context of image resolution:
  - (A) Captured image resolution shall be sufficient for the issuing source or authoritative source to perform Credential Analysis per the requirements above;
  - (B) Image resolution shall be sufficient to enable visual inspection by the notary, including legible text and clarity of photographs, barcodes, and other identification features; and
  - (C) All images necessary to perform visual inspection and Credential Analysis shall be captured.
- (6) Knowledge-based authentication procedure must meet the following requirements:
  - (a) Each signer must answer questions and achieve a passing score. The procedure must include:
    - (A) Five multiple choice questions, drawn from public or private data sources.
    - (B) A minimum of five possible answer choices per question.
    - (C) Require that 80% of the questions are correctly answered within two minutes by the signer.
  - (b) Each signer is to be provided a reasonable number of attempts per signing session.
    - (A) If a signer fails their first quiz, they may attempt up to two additional quizzes within 48 hours from the first failure.
    - (B) During any quiz retake, a minimum of 40% (2) of the prior questions shall be replaced.



(c) If biometric sensing technologies are used for remote online notarization in the areas of authentication, credential analysis, and identity proofing verification may include facial, voice, and fingerprint recognition.

(7) If a signer exits the notarial act during the notarial act, they shall restart the credential analysis and authentication workflow from the beginning.

STATUTORY/OTHER AUTHORITY: ORS 194.360, HB 4212A (2020), ORS 194.235, ORS 194.240

STATUTES/OTHER IMPLEMENTED: ORS 194.360

ADOPT: 160-100-0850

RULE TITLE: General Technology Requirements for Remote Notarization

RULE SUMMARY: Provides general technology and audio and visual quality requirements for remote notarization.

RULE TEXT:

- (1) Actions completed as part of a remote online notarization act may be recorded in an electronic notary journal provided by the vendor.
- (2) Each entry in this electronic journal shall meet the requirements under ORS 194.300.
- (3) Each document completed as part of a remote notarization shall be electronically signed and rendered tamper-evident.
- (4) The method of remote online notarization shall ensure privacy and data security.
- (5) The method of remote online notarization shall ensure all applicable consumer data, privacy and information security laws are satisfied through their information security programs.
- (6) Records of a remote online notarization must be retained in a safe and secure manner for ten years following the date of the notarization. Records must be available to the Secretary of State upon request.
- (7) Audio and Video Quality Requirements for Remote Online Notarization. A remote online notarization operating model should:
  - (a) Consist of reliable, continuous, synchronous audio and video feeds with clarity such that all participants can be clearly seen and understood.
  - (b) Ensure the audio and video are adequate for communication and ability to terminate the session if adequate conditions are not met.
- (8) The audio/video recording shall:
  - (a) Include the person-to person interaction required as part of the notarial act;
  - (b) Be logically associated to the electronic notary journal;
  - (c) Be capable of being viewed and heard using broadly available audio/video players.
- (9) The transaction documents executed in the remote online notarization act shall not be recorded as part of the video recording.
- (10) Notarizations in compliance with the Audio and Video quality requirements for remote online notarization in this section will satisfy the personal appearance requirements under ORS 194.235.

STATUTORY/OTHER AUTHORITY: HB 4212A (2020), ORS 194.360

STATUTES/OTHER IMPLEMENTED: ORS 194.360