

SECRETARY OF STATE[721]

Adopted and Filed

Rule making related to notarial acts

The Secretary of State hereby amends Chapter 43, “Notarial Acts,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 9B.27 and 9B.14A(8) as enacted in 2019 Iowa Acts, chapter 44, section 6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 9B.

Purpose and Summary

This rule making establishes procedures for electronic and remote notarial acts.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on March 25, 2020, as **ARC 4997C**. Comments were received by email asking for clarification or other minor points. Changes were made that allow for more flexibility by vendors.

Adoption of Rule Making

This rule making was adopted by the Secretary of State on April 29, 2020.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Secretary of State for a waiver of the discretionary provisions, if any, pursuant to 721—Chapter 10.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on July 1, 2020.

The following rule-making action is adopted:

Amend 721—Chapter 43 as follows:

CHAPTER 43
NOTARIAL ACTS

721—43.1(9B) Certificate of notarial acts. A notarial act shall be evidenced by a certificate signed and dated by a notarial officer, be executed contemporaneously with the performance of the notarial act for which the certificate applies, and not be completed until the notarial act has been performed. The certificate shall include all of the information required by Iowa Code section 9B.15(1). A certificate of a notarial act is sufficient if it meets the requirements set out in Iowa Code section 9B.15(3). A certificate of a notarial act performed under Iowa Code section 9B.14A as enacted by 2019 Iowa Acts, chapter 44, section 6, must also meet the requirements of Iowa Code section 9B.14A(4) as enacted by 2019 Iowa Acts, chapter 44, section 6.

721—43.2(9B) Short form certificates. Short form certificates of notarial acts may be used provided the certificates comply with the provisions of Iowa Code sections 9B.15 and 9B.16. For purposes of this rule, a “record” and an “instrument” have the same meaning and effect. A short form certificate of a notarial act performed under Iowa Code section 9B.14A as enacted by 2019 Iowa Acts, chapter 44, section 6, must meet the requirements of Iowa Code section 9B.14A(5) as enacted by 2019 Iowa Acts, chapter 44, section 6.

721—43.3(9B) Jurisdiction. For purposes of complying with the requirements of Iowa Code sections 9B.15 and 9B.16, the jurisdiction in which the notarial act is performed is determined by the location of the notary public in this state at the time the notarial act is performed.

721—43.3 721—43.4(9B) Conflict of interest. A notarial officer shall not perform a notarial act that creates a conflict of interest as prohibited in Iowa Code section 9B.4(2). For purposes of this rule, a direct financial benefit does not exist when the notarial officer is compensated on an individual loan commission basis or as provided in Iowa Code section 9B.26(2).

721—43.4 721—43.5(9B) Commission as notary public. An individual applying to the secretary of state for a commission as a notary public shall comply with the requirements and qualifications of Iowa Code section 9B.21.

43.5(1) Application. The applicant shall complete and file with the secretary of state an Application for Appointment as Notary Public. The affirmation section on an Application for Appointment as Notary Public shall constitute an executed oath of office as required by Iowa Code section 9B.21(3). An individual who wishes to perform notarial acts for remotely located individuals shall also complete and file with the secretary of state an additional application containing information indicating that the applicant meets the additional training and technology requirements of Iowa Code section 9B.14A as enacted by 2019 Iowa Acts, chapter 44, section 6, and this chapter, as well as any additional information the secretary of state may require.

43.5(2) Reapproval. A notary public’s approval to perform notarial acts for remotely located individuals shall expire on the same date as the individual’s notary public commission. Two months preceding the expiration of approval, the secretary of state shall notify the notary public of the expiration date and furnish an application for reapproval. The secretary of state may provide for combining its reappointment and reapproval forms.

43.5(3) Training.

a. Within the six-month period immediately preceding submission of an Application for Appointment as Notary Public, an applicant shall satisfactorily complete an initial training course approved by the secretary of state concerning the functions and duties of a notary public. The applicant shall submit with the application satisfactory proof to the secretary of state that the applicant has completed the course. An applicant who submits an Application for Appointment as Notary Public on or before July 1, 2020, shall not be subject to the requirements of this paragraph.

b. A notary public who wishes to begin performing notarial acts under Iowa Code section 9B.14A as enacted by 2019 Iowa Acts, chapter 44, section 6, shall, within the six-month period immediately preceding the first performance of such an act, satisfactorily complete a training course approved by the secretary of state concerning the requirements and methods for performing notarial acts for remotely located individuals and shall provide satisfactory proof to the secretary of state that the applicant has completed the course. This training is in addition to that required by paragraph 43.5(3)“a.”

c. An applicant for reappointment as a notary public who currently holds a notary public commission, who wishes to continue performing notarial acts under Iowa Code section 9B.14A as enacted by 2019 Iowa Acts, chapter 44, section 6, and who has satisfactorily completed the initial training course required by paragraph 43.5(3)“b” at least one time prior to the 12-month period immediately preceding application for reappointment shall, within the 6-month period immediately preceding the deadline for application for reappointment, satisfactorily complete an update course approved by the secretary of state concerning the requirements and methods for performing notarial acts for remotely located individuals and shall provide satisfactory proof to the secretary of state that the applicant has completed the course.

721—43.5 721—43.6(9B) Performance of notarial act on electronic record. A notarized document is deemed to be in compliance with the requirements for a notarial act on an electronic record under Iowa Code chapter 9B when ~~the document is submitted and accepted on the electronic document management system (EDMS) administered by the Iowa judicial branch.~~ either:

43.6(1) The notary public attaches an electronic notarial certificate that meets the requirements set out in Iowa Code section 9B.15(3); or

43.6(2) The document is submitted and accepted on the electronic document management system (EDMS) administered by the Iowa judicial branch.

This rule is intended to implement Iowa Code section 9B.27.

721—43.7(9B) Protection of recording and personally identifiable information. A notary public shall protect from unauthorized access the recording of a notarial act pursuant to Iowa Code section 9B.14A(3)“c” as enacted by 2019 Iowa Acts, chapter 44, section 6, and any “personally identifiable information” as defined in Iowa Code section 9B.14C(1) as enacted by 2019 Iowa Acts, chapter 44, section 8, disclosed during the performance of an electronic notarial act using audiovisual communications, except as permitted pursuant to Iowa Code sections 9B.14C(2) and 9B.14C(3) as enacted by 2019 Iowa Acts, chapter 44, section 8.

721—43.6 721—43.8(9B) Sanctions Notary public sanctions. The secretary of state may impose any of the sanctions set out in Iowa Code section 9B.23 including issuing a letter of reprimand as a condition on a commission as a notary public.

~~43.6(1)~~ **43.8(1) Complaint.** A person alleging misconduct by a notary public shall complete and file a Statement of Complaint with the secretary of state. The secretary of state may also initiate investigations without the filing of a complaint if information is provided to the secretary of state that a notary public has allegedly engaged in conduct prohibited in Iowa Code section 9B.23. A copy of the complaint or a notice of investigation shall be sent to the notary public.

~~43.6(2)~~ **43.8(2) Investigation.** The secretary of state shall conduct an investigation to determine if the conduct alleged occurred and if sanctions should be imposed. Upon completion of an investigation, the secretary of state shall dismiss the matter, issue a letter of reprimand as a condition on commission, or set the matter for hearing as a contested case proceeding. A dismissal or issuance of a letter of reprimand as a condition on commission is deemed final agency action for purposes of judicial review under Iowa Code section 17A.19.

~~43.6(3)~~ **43.8(3) Hearing.** If a hearing is set, it shall be conducted as a contested case proceeding in accordance with Iowa Code chapter 17A and ~~administrative rules in 721—Chapter 3.~~ A final decision by the secretary of state is subject to judicial review as provided in Iowa Code section 17A.19.

721—43.9(9B) Standards for communication technology and identity proofing for notarial acts performed for remotely located individuals.

43.9(1) A notary public may not perform a notarial act for a remotely located individual unless the technology identified by the notary public pursuant to Iowa Code section 9B.14A(7) as enacted by 2019 Iowa Acts, chapter 44, section 6, satisfies all of the following:

- a. Has been approved by the secretary of state in accordance with this chapter.
- b. Provides continuous, synchronous audiovisual feeds.
- c. Provides sufficient video resolution and audio clarity to enable the notary public and remotely located individual to see and speak with each other simultaneously through live, real-time transmission.
- d. Provides sufficient captured image resolution for identity proofing performed in accordance with Iowa Code section 9B.14A(3) as enacted by 2019 Iowa Acts, chapter 44, section 6.
- e. Provides a means of authentication that reasonably ensures only authorized parties have access to the audiovisual record of the performed notarial act.
- f. Provides for the recording of the electronic notarial act in compliance with this chapter and Iowa Code section 9B.14A as enacted by 2019 Iowa Acts, chapter 44, section 6, in sufficient quality to ensure the verification of the electronic notarial act.
- g. Ensures that any change to or tampering with an electronic record before or after the electronic notarial seal has been affixed and the electronic notarial act has been completed is evident.
- h. Provides confirmation that the electronic record presented is the same electronic record notarized.
- i. Provides a means of electronically affixing the notary's official stamp to the notarized document.
- j. Provides an electronic notary journal that complies with the provisions of this chapter to document the electronic notarial acts.
- k. Provides security measures the secretary of state deems reasonable to prevent unauthorized access to:

- (1) The live transmission of the audiovisual communication.
- (2) A recording of the audiovisual communication.
- (3) The verification methods and credentials used in the identity proofing procedure.
- (4) The electronic records presented for online notarization.
- (5) Any personally identifiable information used in the identity proofing or credential analysis.

43.9(2) Identity proofing and credential analysis must be performed by a third-party credential service provider whose methods and standards are substantially similar to those defined in the most recent edition of the National Institute of Standards and Technology's Digital Identity Guidelines, and that has provided evidence to the notary public of the ability to satisfy the following requirements:

a. Identity proofing is performed through dynamic knowledge-based authentication which meets the following requirements:

- (1) Principal must answer a quiz consisting of a minimum of five questions related to the principal's personal history or identity, formulated from public and proprietary data sources;
- (2) Each question must have a minimum of five possible answer choices;
- (3) At least 80 percent of the questions must be answered correctly;
- (4) All questions must be answered within two minutes;
- (5) If the principal fails the first attempt, the principal may retake the quiz one time within 24 hours;
- (6) During the retake, a minimum of 60 percent of the prior questions must be replaced;
- (7) A principal who fails the second attempt is not permitted to retry with the same notary public for 24 hours; and
- (8) A principal who fails the third attempt is not permitted to make any further attempts.

b. Credential analysis is performed utilizing public and proprietary data sources to verify the credential presented by the principal.

c. Credential analysis shall, at a minimum:

- (1) Use automated software processes to aid the notary public in verifying the identity of a principal or any credible witness;

(2) Ensure that the credential passes an authenticity test, substantially similar to those defined in the most recent edition of the National Institute of Standards and Technology’s Digital Identity Guidelines, that:

1. Uses appropriate technology to confirm the integrity of visual, physical, or cryptographic security features;

2. Uses appropriate technology to confirm that the credential is not fraudulent or inappropriately modified;

3. Uses information held or published by the issuing source or authoritative source(s), as available, to confirm the validity of personal details and credential details; and

4. Provides output of the authenticity test to the notary public.

(3) Enable the notary public to visually compare the following for consistency: the information and photo, if the credential presented contains a photo, presented on the credential itself and the principal as viewed by the notary public in real time through audiovisual transmission.

d. If the principal must exit the workflow, the principal must meet the criteria outlined in this rule and must restart the identity proofing and credential analysis from the beginning.

43.9(3) Upon change of any of the technology identified by the notary public pursuant to Iowa Code section 9B.14A(7) as enacted by 2019 Iowa Acts, chapter 44, section 6, which affects compliance with the requirements of Iowa Code chapter 9B or this chapter, the provider of the technology shall immediately notify the secretary of state and all Iowa notaries public using its technology of the change. Information that qualifies as trade secret under Iowa law shall be kept confidential in accordance with Iowa Code section 22.7(3). It is the responsibility of the provider to specify to the secretary of state the information it believes falls within the definition of “trade secret” under Iowa Code section 550.2(4) and other applicable law.

721—43.10(9B) Providers of communication technology.

43.10(1) Provider requirements. A notary public authorized to perform notarial acts for remotely located individuals may only use a provider of communication technology for the audiovisual recording of electronic notarial acts subject to the provisions of this chapter and Iowa Code sections 9B.14A as enacted by 2019 Iowa Acts, chapter 44, section 6, and 9B.14B as enacted by 2019 Iowa Acts, chapter 44, section 7, if the provider:

a. Has registered with and been approved by the secretary of state in accordance with this chapter;

b. Allows the remote notary public sole control of the recording of the electronic notarial act using audiovisual communication, subject to the authorized access granted by the notary; and

c. Provides the notary with access to the recording of the electronic notarial act using audiovisual communication pursuant to this chapter.

43.10(2) Backup strategy requirement—release of records to secretary of state.

a. The secretary of state may not approve a provider of communication technology as defined in Iowa Code section 9B.14A(1) “a” as enacted by 2019 Iowa Acts, chapter 44, section 6, unless the provider uses a backup strategy that is acceptable to the secretary of state for use as a record keeper for any record that is related to a remote notarial act.

b. If the provider of communication technology and the owner of the backup strategy described in paragraph 43.10(2) “a” are the same entity, in the event that the provider ceases business operations, the provider shall notify the secretary of state in advance of such cessation of business operations and, at the secretary of state’s request, shall release to the secretary of state any record described in paragraph 43.10(2) “a.”

c. If the provider of communication technology and the owner of the backup strategy described in paragraph 43.10(2) “a” are separate entities, the provider shall sign an agreement with the owner of the backup strategy that, in the event that the provider or the owner ceases business operations, the entity ceasing business operations shall notify the other entity and the secretary of state in advance of such

cessation of business operations, and, at the secretary of state's request, the owner of the backup strategy shall release to the secretary of state any record described in paragraph 43.10(2) "a."

43.10(3) Protection of recording and personally identifiable information. A provider of communication technology shall protect from unauthorized access the recording of a notarial act pursuant to Iowa Code section 9B.14A(3) "c" as enacted by 2019 Iowa Acts, chapter 44, section 6, and any "personally identifiable information" as defined in Iowa Code section 9B.14C(1) as enacted by 2019 Iowa Acts, chapter 44, section 8, disclosed during the performance of an electronic notarial act using audiovisual communications.

721—43.11(9B) Registration of provider of communication technology and approval of communication technology.

43.11(1) Registration.

a. A provider of communication technology that wishes to apply for approval by the secretary of state for use of its technology by Iowa notaries public to perform notarial acts under Iowa Code section 9B.14A as enacted by 2019 Iowa Acts, chapter 44, section 6, shall submit a registration electronically to the secretary of state, which shall include:

- (1) Legal name of the provider of communication technology;
- (2) How the business is organized;
- (3) Mailing address of the provider of communication technology;
- (4) Physical address of the provider of communication technology;
- (5) Name and title of contact person at the provider of communication technology;
- (6) Phone number of contact person named in subparagraph 43.11(1) "a"(5);
- (7) Name of communication technology provided;
- (8) Description of the technology used to ensure compliance with the provisions of Iowa Code chapter 9B and this chapter;
- (9) Name of the provider or providers of the knowledge-based authentication, credential analysis, and digital certificate services;
- (10) Plan for the retention and storage of data including, but not limited to, records, journals, and recordings in the event the provider of communication technology no longer provides the technology for use by Iowa notaries public for any reason; and
- (11) Declaration that the communication technology complies with all Iowa laws.

b. Information provided to the secretary of state in compliance with subparagraph 43.11(1) "a"(8) that qualifies as trade secret under Iowa law shall be kept confidential in accordance with Iowa Code section 22.7(3). It is the responsibility of the provider to specify to the secretary of state the information it believes falls within the definition of "trade secret" under Iowa Code section 550.2(4).

43.11(2) Approval prior to use. If, after submission of the application required by subrule 43.11(1), the secretary of state determines that the provider of communication technology and the technology provided satisfy all of the requirements of the Iowa Code and the Iowa Administrative Code, the secretary of state shall approve the use of the technology.

43.11(3) Denial of approval. If the secretary of state determines that the provider of communication technology or the technology provided does not satisfy all of the requirements of the Iowa Code and the Iowa Administrative Code, the secretary of state shall deny the use of the technology and shall notify the provider of such denial, specifying the reasons for the denial.

43.11(4) Application for reconsideration. Following notification of denial of use of technology, a provider of communication technology may correct the specified deficiencies and apply for reconsideration. If the provider of communication technology and the technology provided then satisfy all of the requirements of the Iowa Code and the Iowa Administrative Code, the secretary of state shall approve the use of the technology.

43.11(5) Grounds for rescinding approval. Approval may be rescinded if it is found that:

- a. The technology no longer permits notaries public to meet the requirements of Iowa Code chapter 9B or this chapter;
- b. The technology no longer complies with the requirements of Iowa law;

c. Material changes have been made to the technology and the provider has not provided notification as required by subrule 43.9(3);

d. The provider ceases to provide the technology which has been approved for use;

e. The provider has failed to protect from unauthorized access any information it is required to protect under the Iowa Code or this chapter; or

f. Any other grounds that may materially affect the ability of notaries public to meet the requirements of Iowa law.

43.11(6) Procedure for rescinding approval. The secretary of state may rescind approval on any ground listed above.

a. Complaint. A person alleging violation on a ground listed in subrule 43.11(5) by a provider of communication technology or of the technology itself and who is a remote notary in or was a principal in a remote notarization interaction, regardless of whether such interaction resulted in completion of a remote notarial act, shall complete and file a Statement of Complaint with the secretary of state. The secretary of state may also initiate investigations without the filing of a complaint.

b. Investigation. The secretary of state shall investigate each complaint to determine if the alleged violation has occurred and if such violation warrants rescission of approval of the use of the communication technology. Upon determination that the alleged violation occurred, the secretary of state shall:

(1) Communicate grounds for possible rescission of approval to the provider, whereupon the provider shall have 30 days in which to correct the specified deficiencies and submit proof of such corrections to the secretary of state for review. If the secretary of state determines the deficiencies have been corrected, the secretary of state may dismiss the matter; if the secretary of state determines that deficiencies still exist, the secretary of state may either renew the communication and correction process as provided in this paragraph or finally rescind approval of use of the technology. If the secretary of state rescinds approval of the use of the technology, the secretary of state shall notify all Iowa notaries public using the technology that the technology is no longer approved for use and shall notify the provider of rescission of approval, specifying the reasons for rescission;

(2) Rescind approval, whereupon the secretary shall notify all Iowa notaries public using the technology that the technology is no longer approved for use and shall notify the provider of rescission of approval, specifying the reasons for rescission; or

(3) Dismiss the matter.

These rules are intended to implement Iowa Code chapter 9B.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/20/20.