

WSR 21-02-067

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed January 5, 2021, 7:56 a.m.]

Continuance of WSR 20-19-131.

Preproposal statement of inquiry was filed as WSR 20-06-073.

Title of Rule and Other Identifying Information: Amending WAC 308-30-020 Definitions, 308-30-030 Application process for notary public commission, 308-30-040 Approval or denial of application, 308-30-050 Term of commission, 308-30-150 Completion of electronic notarial certificate, 308-30-200 Format of journals of notarial acts, 308-30-220 Fees for notarial acts, 308-30-270 Termination or suspension of commission or endorsement; and adding new WAC 308-30-290 Authorized remote notarial acts, 308-30-300 Standards for technology identity proofing, 308-30-310 Standards for communication technology, 308-30-320 Certificate of notarial act for remote notarial acts, and 308-30-330 Retention of audio-visual recordings and repositories.

Hearing Location(s): On February 9, 2021, at 1:30 p.m., virtual public hearing. Join virtually via Zoom at Meeting [https://dol-wa.zoom.us/j/94268156669?pwd=SnV2TWJWMXZGVm9wRHpvblhsMFdHdz09, Passcode: 910920, or iPhone one-tap: US: +12532158782,,94268156669#,,,,\*910920# or +14086380968,,94268156669#,,,,\*910920#], or telephone: US: +1 253 215 8782 or +1 408 638 0968 or +1 669 900 6833 or +1 346 248 7799 or +1 312 626 6799 or +1 646 876 9923 or +1 301 715 8592. Webinar ID: 942 6815 6669, Passcode: 910920. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the department of licensing (DOL) will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical space, will be held instead. Presenters and staff will participate remotely. The public may call-in or join the meeting using the Webinar ID and Passcode or the information provided for the telephonic conference.

Date of Intended Adoption: February 10, 2021.

Submit Written Comments to: Dee Sharp, DOL, Business and Professions Division, Notary Program, P.O. Box 3917, Seattle, WA 98124-3917, email notaries@dol.wa.gov, by February 8, 2021.

Assistance for Persons with Disabilities: Contact Dee Sharp, phone 360-664-1550, TTY 771 [711], email notaries@dol.wa.gov, by February 8, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule changes are necessary to update the WAC to incorporate changes required by SB 5641 to establish rules for remote notarization being performed by licensed Washington notaries. SB 5641 is effective October 1, 2020, as passed by the 2019 Washington legislature to allow licensed Washington notaries to perform remote notarizations.

Reasons Supporting Proposal: Rule modifications and adoptions are proposed to comply with the state legislature's intent to allow licensed Washington notaries to perform remote notarizations.

Statutory Authority for Adoption: RCW 42.45.250.

Statute Being Implemented: None.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DOL, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Dee Sharp, 2000 4th Avenue West, Olympia, WA 98507, 360-664-1550.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required under subsections (5)(b)(ii) and (v) of RCW 34.05.328 as these rules relate to business and professional licensing application processes and are dictated by statute.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

January 5, 2021  
Damon Monroe  
Rules Coordinator

## OTS-2172.2

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

**WAC 308-30-020 Definitions.** Words and terms used in these rules have the same meaning as in the Revised Uniform Law on Notarial Acts, RCW 42.45.010.

"Appear personally" means:

(a) Being in the same physical location as another individual and close enough to see, hear, communicate with, and exchange tangible identification credentials with that individual; or

(b) For remote notarial acts, being in a different physical location from another individual but able to see, hear, and communicate with that individual by means of communication technology.

"Commission" is equivalent to the term "license" as defined in RCW 18.235.010(6).

"Department" means the Washington state department of licensing.

"Director" means the director of the department of licensing or the director's designee.

"Electronic journal" means a chronological record of notarizations maintained by a notary public in an electronic format in compliance with these rules.

"Electronic notarial acts" means notarizations or notarial acts with respect to electronic records.

"Electronic notarial certificate" means the part of, or attachment to, an electronic record that is completed by the notary public, contains the information required under RCW 42.45.130 and the notary's official stamp, bears that notary's electronic signature, and states the facts attested to by the notary in a notarization performed on an electronic record.

"Enroll" and "enrollment" mean a process for registering a notary public with a technology provider to access and use a tamper-evident technology in order to perform electronic notarial acts.

"Principal" means:

(a) An individual whose electronic signature is notarized; or

(b) An individual, other than a witness required for an electronic notarial act, taking an oath or affirmation from the notary public.

"Remote notarial act" means a notarization that is performed using audio-video technology that meets the requirements in WAC 308-30-310 that allows for direct interaction between the notary and the individuals that are remotely located.

"Sole control" means at all times being in the direct physical custody of the notary public or safeguarded by the notary with a password or other secure means of authentication.

"Tamper-evident technology" means a set of applications, programs, hardware, software, or other technologies designed to enable a notary public to perform electronic notarial acts and to display evidence of any changes made to an electronic record.

"Technology provider" means an individual or entity that offers the services of a tamper-evident technology for electronic notarial acts.

"Venue" means the state and county where the notary public is physically located while performing a notarial act.

[Statutory Authority: RCW 42.45.250. WSR 18-12-028, § 308-30-020, filed 5/29/18, effective 7/1/18. Statutory Authority: RCW 42.44.190. WSR 06-20-061, § 308-30-020, filed 9/29/06, effective 11/1/06; WSR 93-05-009, § 308-30-020, filed 2/5/93, effective 3/8/93. Statutory Authority: 1985 c 156 §§ 5 and 20. WSR 85-24-025 (Order PL 571), § 308-30-020, filed 11/26/85, effective 1/1/86.]

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

**WAC 308-30-030 Application process for notary public commission.**

(1) To apply for a notary public commission, an applicant who meets the requirements of RCW 42.45.200(2) shall submit an application on forms provided by the department. The application shall include:

(a) Evidence of a ten thousand dollar surety bond, signed by the notary public, that conforms to RCW 42.45.200(4);

(b) Payment of the prescribed fee; and

(c) A signed and notarized oath of office.

(2) As part of a notary public commission application, an applicant shall provide both their legal name and their commission name. The applicant's commission name must contain their surname, and at least the initials of the applicant's first and middle name.

(3) To apply for an electronic records notary public endorsement, an applicant who meets the requirements of RCW 42.45.200(7) shall submit an electronic records notary public application on forms provided by the department and pay the prescribed fee.

(4) An applicant may only apply for an electronic records notary public endorsement if:

(a) They currently hold an active notary public commission; or

(b) They are applying for a notary public commission and an electronic records notary public endorsement simultaneously.

(5) An individual applying for an electronic records notary public endorsement must inform the department within thirty days of applying of the tamper-evident technology provider that they have enrolled with before they perform their first electronic notarial act.

(6) To apply for a remote notary endorsement, an electronic records notary public shall submit a remote notary endorsement application on forms provided by the department.

(7) An applicant may only apply for a remote notary endorsement if:

(a) They currently hold an active notary public commission with an electronic records notary public endorsement;

(b) They currently hold an active notary public commission, and are applying for an electronic records notary public endorsement and a remote notary endorsement simultaneously; or

(c) They are applying for a notary public commission, an electronic records notary public endorsement, and a remote notarial acts endorsement simultaneously.

(8) A notary public shall reapply with the department for each commission term before performing notarial acts.

~~((7))~~ (9) A notary public may elect not to apply for an electronic records notary public endorsement or a remote notary endorsement.

[Statutory Authority: RCW 42.45.250. WSR 18-12-028, § 308-30-030, filed 5/29/18, effective 7/1/18. Statutory Authority: RCW 42.44.190. WSR 93-05-009, § 308-30-030, filed 2/5/93, effective 3/8/93. Statutory Authority: 1985 c 156 §§ 5 and 20. WSR 85-24-025 (Order PL 571), § 308-30-030, filed 11/26/85, effective 1/1/86.]

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

**WAC 308-30-040 Approval or denial of application.**

(1) Upon ~~((the))~~ an applicant's fulfillment of the requirements for a notary public commission ~~((or))~~ and/or an electronic records notary public endorsement, and/or a remote notary endorsement, the department shall approve the application and issue the notary public commission ~~((or))~~ and/or any appropriate endorsements.

(2) If the department receives an incomplete or invalid application, the department shall hold the application for thirty calendar days to allow the applicant to cure any defects. After the thirty day period, the application shall be canceled and any application fees forfeited.

(3) An applicant may not perform any notarial acts on a tangible or electronic record before receiving a notary public commission and the appropriate endorsement from the department.

~~((A notary public may not perform any electronic notarial acts before receiving an electronic records notary public endorsement from the department.~~

~~((5))~~ The department may deny a commission or endorsement application if the applicant fails to comply with these rules or does not meet the requirements for licensure.

[Statutory Authority: RCW 42.45.250. WSR 18-12-028, § 308-30-040, filed 5/29/18, effective 7/1/18. Statutory Authority: RCW 42.44.190.]

WSR 93-05-009, § 308-30-040, filed 2/5/93, effective 3/8/93. Statutory Authority: 1985 c 156 §§ 5 and 20. WSR 85-24-025 (Order PL 571), § 308-30-040, filed 11/26/85, effective 1/1/86.]

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

**WAC 308-30-050 Term of commission.** (1) The term of a notary public commission shall expire on the expiration date of the notary public's surety bond, no more than four years after their commission date.

(2) Unless terminated pursuant to WAC 308-30-270, an electronic records notary public endorsement (~~(is)~~) and the remote notary endorsement are valid from the date the endorsement is issued by the department, and continues as long as the notary public's current commission remains valid.

[Statutory Authority: RCW 42.45.250. WSR 18-12-028, § 308-30-050, filed 5/29/18, effective 7/1/18. Statutory Authority: RCW 42.44.190. WSR 93-05-009, § 308-30-050, filed 2/5/93, effective 3/8/93. Statutory Authority: 1985 c 156 §§ 5 and 20. WSR 85-24-025 (Order PL 571), § 308-30-050, filed 11/26/85, effective 1/1/86.]

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

**WAC 308-30-150 Completion of electronic notarial certificate.**

(1) For every electronic notarial act and remote notarial act, a notary public shall complete an electronic notarial certificate that complies with the requirements of these rules, RCW 42.45.130 and 42.45.140.

(2) An electronic notarial certificate shall be completed at the time of notarization and in the (~~(physical)~~) presence of the principal.

[Statutory Authority: RCW 42.45.250. WSR 18-12-028, § 308-30-150, filed 5/29/18, effective 7/1/18. Statutory Authority: RCW 42.44.190. WSR 93-05-009, § 308-30-150, filed 2/5/93, effective 3/8/93.]

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

**WAC 308-30-200 Format of journals of notarial acts.** (1) A tangible notarial journal shall:

(a) Be a permanent, bound book with numbered pages; and

(b) Have the capacity to record for each notarial act:

(i) The information required by RCW 42.45.180(4);

(ii) A description of the notary public's method of identifying the principal; and

(iii) The principal's signature, or the signature of an authorized party in compliance with RCW 42.45.070, or a notation in the no-

tary journal that the notarial act was performed via remote notarization.

(2) If a notary public keeps an electronic journal pursuant to RCW 42.45.180(3), the electronic journal shall:

- (a) Be maintained only in addition to the tangible journal;
- (b) Have the capacity to record the information required for a tangible notarial journal;
- (c) Enable access by a password or other secure means of authentication;
- (d) Be tamper-evident;
- (e) Create a duplicate record of the journal as a backup; and
- (f) Be capable of providing tangible or electronic copies of any entry made in the journal.

(3) A notary public's journal is the exclusive property of the notary public, and shall not be surrendered to an employer upon demand or termination, whether the employer paid for the journal or the notary's bond or application fees.

(4) A notary performing remote notarization must maintain a tangible notary journal as required in RCW 42.45.180 and WAC 308-30-190, this section, and WAC 308-30-210. Notaries performing remote notarization are not required to collect and maintain the signatures of the signers when those notarizations were performed remotely. Notaries must note in their tangible notary log that a notarization was performed remotely.

[Statutory Authority: RCW 42.45.250. WSR 18-12-028, § 308-30-200, filed 5/29/18, effective 7/1/18.]

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

**WAC 308-30-220 Fees for notarial acts.** (1) The maximum fees a notary may charge for notarial acts are:

<b>Notarial Act</b>	<b>Fee</b>
Witnessing or attesting a signature	\$10.00
Taking an acknowledgment or a verification upon oath or affirmation	\$10.00
Certifying or attesting a copy	\$10.00
Administering an oath or affirmation	\$10.00
Certifying that an event has occurred or an act has been performed	\$10.00

(2) A notary public need not charge for notarial acts.

(3) A notary public may not charge fees for receiving or noting a protest of a negotiable instrument.

(4) A notary public may additionally charge the actual costs of copying any instrument or record.

(5) A notary public may charge a travel fee when traveling to perform a notarial act if:

(a) The notary public and the individual requesting the notarial act agree upon the travel fee in advance of the travel; and

(b) The notary public explains to the individual requesting the notarial act that the travel fee is in addition to the notarial fee in subsection (1) of this section and is not required by law.

(6) Notwithstanding the maximum fees set forth in subsection (1) of this section and the prohibition set forth in subsection (3) of this section, a notary public may charge a maximum fee of twenty-five dollars to perform a remote notarial act.

[Statutory Authority: RCW 42.45.250. WSR 18-12-028, § 308-30-220, filed 5/29/18, effective 7/1/18.]

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

**WAC 308-30-270 Termination or suspension of commission or endorsement.** (1) The department may take action against the commission and/or endorsement of a notary public who fails to comply with these rules as provided in RCW 42.45.210, 42.45.270, and chapter 18.235 RCW. Any restriction, suspension, or revocation of a notary public's commission will automatically have the same effect on any endorsement the notary public holds.

(2) A notary public may terminate their notary public commission and/or electronic records endorsement or remote notary endorsement by notifying the department of this intent in writing and disposing of all or any part of a tamper-evident technology in the notary's control whose purpose was to perform electronic notarizations.

(3) A notary public may terminate the electronic records notary public endorsement or the remote notary endorsement and maintain the underlying notary public commission.

(4) A notary public whose commission is terminated or expired, either by the notary or the department, shall disable their official stamp by destroying, defacing, damaging, or securing the device against use. The notary shall maintain their notarial journals for ten years as required by RCW 42.45.180 and WAC 308-30-210.

[Statutory Authority: RCW 42.45.250. WSR 18-12-028, § 308-30-270, filed 5/29/18, effective 7/1/18.]

NEW SECTION

**WAC 308-30-290 Authorized remote notarial acts.** (1) A notary public who has received both an electronic records notary public endorsement and a remote notarial acts endorsement from the department may perform the following remote notarial acts:

- (a) Taking an acknowledgment;
- (b) Taking a verification on oath or affirmation;
- (c) Witnessing or attesting a signature;
- (d) Certifying or attesting a copy;
- (e) Certifying that an event has occurred or an act has been performed; and
- (f) Noting a protest of a negotiable instrument, if the notary public is:
  - (i) Acting under the authority of an attorney who is licensed to practice law in this state or another state; or
  - (ii) Acting under the authority of a financial institution regulated by this state, another state, or the federal government.

(2) In performing remote notarial acts, a notary public shall comply with all requirements for electronic notarial acts under this chapter.

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NEW SECTION

**WAC 308-30-300 Standards for identity proofing.** (1) In performing remote notarial acts, if a notary public does not have satisfactory evidence of the identity of a remotely located individual under subsection (4) of this section, the notary public must reasonably verify the individual's identity through two different types of identity proofing consisting of a credential analysis procedure and a dynamic knowledge-based authentication assessment as provided in subsections (2) and (3) of this section.

(2) Credential analysis must use public or private data sources to confirm the validity of the identification credential presented by a remotely located individual and shall, at a minimum:

(a) Use automated software processes to aid the notary public in verifying the identity of each remotely located individual;

(b) 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;

(c) 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

(d) Enable the notary public visually to 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.

(3) A dynamic knowledge-based authentication assessment is successful if it meets the following requirements:

(a) 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;

(b) Each question must have a minimum of five possible answer choices;

(c) At least eighty percent of the questions must be answered correctly;

(d) All questions must be answered within two minutes;

(e) If the remotely located individual fails the first attempt, the individual may retake the quiz one time within twenty-four hours;

(f) During a retake of the quiz, a minimum of forty percent of the prior questions must be replaced;

(g) If the remotely located individual fails the second attempt, the individual is not allowed to retry with the same online notary public within twenty-four hours of the second failed attempt; and

(h) The notary public must not be able to see or record the questions or answers.

(4) A notary public has satisfactory evidence of the identity of a remotely located individual if:



(a) The notary public has personal knowledge of the identity of the individual; or

(b) The individual is identified by oath or affirmation of a credible witness in accordance with the following requirements:

(i) To be a credible witness, the witness must have personal knowledge of the remotely located individual;

(ii) The notary public must have personal knowledge of the credible witness or verify the identity of the credible witness by two different types of identity proofing in accordance with subsections (1), (2), and (3) of this section; and

(iii) 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.

[ ]

#### NEW SECTION

**WAC 308-30-310 Standards for communication technology.** (1) Communication technology for remote notarial acts must provide for synchronous audio-visual feeds of sufficient audio clarity and video resolution 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.

(2) Communication technology must provide reasonable security measures to prevent unauthorized access to:

(a) The live transmission of the audio-visual feeds;

(b) The methods used to perform identify verification; and

(c) The electronic record that is the subject of the remote notarial act.

(3) If a remotely located individual must exit the workflow, the individual must restart the identify verification process required under WAC 308-30-300 from the beginning.

[ ]

#### NEW SECTION

**WAC 308-30-320 Certificate of notarial act for remote notarial acts.** (1) A form of notarial certificate for a remote notarial act satisfies the requirement of RCW 42.45.280(4) and 42.45.130 (1)(g) if it is in the form provided by applicable law and contains a statement substantially as follows: "This notarial act involved the use of communication technology."

(2) A short form of acknowledgment prescribed in RCW 42.45.140 satisfies the requirement of RCW 42.45.280(4) and 42.45.130 (1)(g) if it is in substantially one of the following forms for the purposes indicated:

(a) For an acknowledgment in an individual capacity:

State of Washington  
County of .....

This record was acknowledged before me by means of communication technology on (date) by (name(s) of individuals).

.....  
(Signature of notary public)

Notary Public

(Electronic official stamp)

(My commission expires: .... )

(b) For an acknowledgment in a representative capacity:

State of Washington  
County of .....

This record was acknowledged before me by means of communication technology on (date) by (name(s) of individuals) 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 official stamp)

(My commission expires: .... )

(c) For verification on oath or affirmation:

State of Washington  
County of .....

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

.....  
(Signature of notary public)

Notary Public

(Electronic official stamp)

(My commission expires: .... )

(d) For witnessing or attesting a signature:

State of Washington  
County of .....

Signed or attested before me by means of communication technology on (date) by (name(s) of individuals).

.....  
(Signature of notary public)

Notary Public

(Electronic official stamp)

(My commission expires: .... )

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NEW SECTION

**WAC 308-30-330 Retention of audio-visual recordings and repositories.** (1) A notary public must retain any audio-visual recording created under RCW 42.45.280 (3) (c) in a computer or other electronic storage device that protects the recording against unauthorized access by password or other secure means of authentication. 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 notarial act.

(2) An audio-visual recording must be retained for at least ten years after the recording is made.

(3) A notary public must take reasonable steps to ensure that a backup of the audio-visual recording exists and is secure from unauthorized use.

(4) The fact that the notary public's employer, contractor, or repository keeps or stores any audio-visual recordings shall not relieve the notary of the duties required by these rules.

(5) The personal representative or guardian of a notary public shall follow RCW 42.45.280(6) related to the disposition of the notary public's audio-visual recordings upon the death or adjudication of incompetency of the notary public.

(6) The notary public, or the notary's personal representative or guardian, shall provide access instructions to the department for any audio-visual recordings maintained or stored by the notary, upon commission resignation, revocation, or expiration without renewal, or upon the death of adjudication of incompetency of the notary.

(7) A notary public, or the notary's personal representative or guardian, may by written contract engage a third party to act as a repository to provide the storage required by this section. A third party under contract under this section shall be deemed a repository under RCW 42.45.280(6).

(8) Any contract under subsection (7) of this section must:

(a) Enable the notary public, or the notary's personal representative or guardian, to comply with the retention requirements of this section even if the contract is terminated; or

(b) Provide that the information will be transferred to the notary public, or to the notary's personal representative or guardian, if the contract is terminated.

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