



Terri Kondeff
Director

Legislative Services Office Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Senators LODGE, Guthrie, Stennett and,
Representatives CRANE, Armstrong, Gannon

FROM: Kristin Ford - Division Manager

DATE: August 04, 2021

SUBJECT: Temporary Rule

IDAPA 34.00.00 - Notice of Omnibus Rulemaking - Adoption of Temporary Rule \ Rescission of
Previous Temporary Rule - Docket No. 34-0000-2100

We are forwarding this temporary rule to you for your information only. No analysis was done by LSO. This rule is posted on our web site. If you have any questions, please call Kristin Ford at the Legislative Services Office at (208) 334-4845. Thank you.

Attachment: Temporary Rule

Kristin Ford, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

Statehouse, P.O. Box 83720
Boise, Idaho 83720-0054

Tel: 208-334-2475
www.legislature.idaho.gov

IDAPA 34 – SECRETARY OF STATE

DOCKET NO. 34-0000-2100

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF TEMPORARY RULE \ RESCISSION OF PREVIOUS TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rules being adopted through this omnibus rulemaking as listed in the descriptive summary of this notice is July 1, 2021. The rescission of previous temporary rule under docket 34-0701-2002 is effective July 1, 2021.

AUTHORITY: In compliance with Section 67-5226, Idaho Code, notice is hereby given this agency has adopted temporary rules and rescinded a previous temporary rule. The action is authorized pursuant to Sections 903(9) and 30-21-105, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting temporary rules and rescinding a previous temporary rule:

This temporary rulemaking adopts and republishes the following existing rule chapters previously submitted to and reviewed by the Idaho Legislature under IDAPA 34, rules of the Secretary of State:

IDAPA 34

- 34.02.02, *Rules Governing Complaint Process Under the Help America Vote Act;*
- 34.03.01, *Rules Implementing the Sunshine Law;*
- 34.04.02, *Rules Governing Business Entity Names;*
- 34.06.01, *Rules Governing the Electronic Recording of Real Property;* and
- 34.07.01, *Rules Governing Notarial Acts Performed for Remotely Located Individuals.*

Rescission of previous temporary rule aligns these chapters wholly with the administrative code effective 7-1-21.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(a), (b), and (c), Idaho Code, the Governor has found that temporary adoption of the rules is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These temporary rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules.

FEE SUMMARY: This rulemaking does not impose a fee or charge.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the adoption of temporary rules and rescission of temporary rule, contact Chad Houck (208) 334-2852.

DATED this 1st day of July, 2021.

Chad Houck, Deputy Secretary of State
Administrative Division
700 West Jefferson Street, Room E205
PO Box 83720
Boise, ID 83720-0080
(208) 334-2852

IDAPA 34 – SECRETARY OF STATE

34.02.02 – RULES GOVERNING COMPLAINT PROCESS UNDER THE HELP AMERICA VOTE ACT

000. LEGAL AUTHORITY.

This chapter is promulgated pursuant to Section 34-216, Idaho Code, and 42 U.S.C. Section 15512. Federal law requires the Secretary of State to establish an administrative complaint procedure to remedy grievances under the Help America Vote Act, 42 U.S.C. Section 15481, et seq. (7-1-21)T

001. SCOPE.

This chapter provides a uniform, nondiscriminatory procedure for the resolution of any complaint alleging a violation of any provision of Title III of the Help America Vote Act of 2002, 42 United States Code Sections 15481, et seq., including a violation that has occurred, is occurring, or is about to occur. The procedure set out in this chapter does not apply to an election recount under Sections 34-2301 et seq., Idaho Code, or to an election contest under Sections 34-2001 et seq., and 34-2101 et seq., Idaho Code. A Complainant who wishes to challenge the validity of any primary, general or special election, or to determine the validity of any ballot or vote must seek relief as otherwise provided by law. (7-1-21)T

002. -- 009. (RESERVED)

010. DEFINITIONS.

In this chapter, the following terms have the meanings indicated. (7-1-21)T

01. Complainant. Means the person who files a complaint with the Secretary of State under this rule; (7-1-21)T

02. Respondent. Means any State or County election official whose actions are asserted, in a complaint under this subtitle, to be in violation of Title III; (7-1-21)T

03. Title III. Means Title III of the Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 United States Code Sections 15481-15485. (7-1-21)T

011. WHO MAY FILE.

Any person who believes that there is a violation of any provision of Title III may file a complaint. (7-1-21)T

012. FORM OF COMPLAINT.

01. Writing and Notarization. A complaint shall be in writing and notarized, signed and sworn under oath by the Complainant. The complaint must identify the Complainant by name and mailing address. The complaint must identify the section of Title III for which a violation is alleged. The complaint must set out a clear and concise description of the claimed violation that is sufficiently detailed to apprise both the Respondent and the hearing officer or arbitrator of the claimed violation. The complaint procedure is limited to allegations of violations of Title III in a federal election. (7-1-21)T

02. Prescribed or Other Form. The Complainant may use: (7-1-21)T

a. The form prescribed by the Idaho Secretary of State, which is available from the Idaho Secretary of State Election Division, or which may be downloaded from the Idaho Secretary of State Election Division's website at <http://www.sos.idaho.gov/>; or (7-1-21)T

b. Any other form satisfying the requirements of Subsection 012.02.a. of this rule. (7-1-21)T

013. PLACE AND TIME FOR FILING, COPY FOR RESPONDENT.

01. Place for Filing. A complaint shall be filed with the Election Division, along with adequate proof of mailing or delivery of a copy of the complaint to each Respondent. (7-1-21)T

02. Time for Filing. A complaint may be filed no later than ninety (90) days after the final certification of the federal election and at issue. A complaint may be filed anytime prior to an election. (7-1-21)T

03. Copy for Respondent. The Complainant shall mail or deliver a copy of the complaint to each Respondent. (7-1-21)T

04. Rejection of Complaint. The Election Division shall examine each complaint, and may reject it for filing if: (7-1-21)T

- a. It is not signed and notarized under oath; (7-1-21)T
- b. It does not identify the Complainant or include an adequate mailing address; (7-1-21)T
- c. Does not, on its face, allege a violation of Title III with regard to a federal election; or (7-1-21)T
- d. More than ninety (90) days have elapsed since the final certification of the federal election at issue. (7-1-21)T

014. PROCESSING OF COMPLAINT.

01. Consolidation. The Secretary of State may consolidate complaints if they relate to the same actions or events, or if they raise common questions of law or fact. (7-1-21)T

02. Preparing the Complaint for Determination. The Secretary of State shall take all necessary steps to prepare the complaint for determination under these rules. In the course of preparing the complaint for determination, the Secretary of State shall allow a party to proceed with the assistance of an English language interpreter if the Complainant is unable to proceed without assistance of an interpreter. It is the responsibility of the party who needs an interpreter to secure the services of the interpreter. The Secretary of State, in coordination with the parties, shall establish a schedule under which the Complainant and Respondent may file written submissions concerning the complaint, and under which the complaint shall be finally determined. (7-1-21)T

03. Record. (7-1-21)T

a. The Secretary of State shall compile and maintain an official record in connection with each complaint under this rule; (7-1-21)T

b. The official record shall contain: (7-1-21)T

i. A copy of the complaint including any amendments made with the permission of the Secretary of State; (7-1-21)T

ii. A copy of any written submission by the Complainant; (7-1-21)T

iii. A copy of any written response by any Respondent or other interested person; (7-1-21)T

iv. A written report of any investigation conducted by employees of the Secretary of State or Office of Attorney General who shall not be directly involved in the actions or events complained of, and shall not directly supervise or be directly supervised by any Respondent; (7-1-21)T

v. Copies of all notices and correspondence to or from the Secretary of State in connection with the complaint; (7-1-21)T

vi. Originals or copies of any tangible evidence produced at any hearing conducted under Section 015; (7-1-21)T

vii. The original tape recording produced at any hearing conducted under Subsection 015.07 of these rules, and a copy of any transcript obtained by any board or other party; and (7-1-21)T

viii. A copy of any final determination made under Sections 016 or 017. (7-1-21)T

015. HEARING.

01. Hearing on the Record. At the request of the Complainant, the Secretary of State shall conduct a hearing on the record. (7-1-21)T

02. Time Frame for Hearing. The hearing shall be conducted no sooner than ten (10) days and no later than thirty (30) days after the Secretary of State receives the complaint. The Secretary of State shall give at least ten (10) business days' advance notice of the date, time, and place of the hearing: (7-1-21)T

a. By mail, to the Complainant, each named Respondent, and any other interested person who has asked in writing to be advised of the hearing; (7-1-21)T

b. On the Election Division web site; and (7-1-21)T

c. By posting in a prominent place, available to the general public, at the offices of the Election Division; (7-1-21)T

03. Hearing Officer. The Secretary of State or his designee shall act as hearing officer. (7-1-21)T

04. Who May Appear. The Complainant, any Respondent, or any other interested member of the public may appear at the hearing and testify or present tangible evidence in connection with the complaint. Each witness shall be sworn. The hearing officer may limit the testimony, if necessary, to ensure that all interested participants are able to present their views. The hearing officer may recess the hearing and reconvene at a later date, time, and place announced publicly at the hearing. (7-1-21)T

05. Representation by an Attorney Not Necessary. A Complainant, Respondent, or other person who testifies or presents evidence at the hearing may, but need not be, represented by an attorney. (7-1-21)T

06. Written Presentation. If a person has already testified or presented evidence at the hearing and wishes to contradict testimony or evidence subsequently presented, that person is not entitled to be heard again, but may make a written presentation to the hearing officer. (7-1-21)T

07. Tape Recording of Proceedings. The proceedings shall be tape-recorded by and at the expense of the Election Division. The recording shall not be transcribed as a matter of course, but the Election Division, or any party may obtain a transcript at its own expense. If a party obtains a transcript, the party shall file a copy as part of the record, and any other interested person may examine the record copy. (7-1-21)T

08. Filing of Written Brief or Memorandum. Any party to the proceedings may file a written brief or memorandum within five (5) business days after the conclusion of the hearing. No responsive or reply memoranda will be accepted except with the specific authorization of the hearing officer. (7-1-21)T

016. FINAL DETERMINATION.

01. If No Hearing is Held. If there has been no hearing under Section 015, the Secretary of State or his designee shall review the record and determine whether, under a preponderance of the evidence standard, a violation of Title III has been established. (7-1-21)T

02. Determination of Violation. At the conclusion of any hearing under Section 015, the hearing officer shall determine, under a preponderance of the evidence standard, whether a violation of Title III has been established. (7-1-21)T

03. Form of Determination. (7-1-21)T

a. If the Secretary of State or his designee, whether acting as hearing officer or otherwise, determines that a violation has occurred, the Secretary of State shall provide the appropriate remedy. The remedy shall be directed to the improvement of processes or procedures governed by Title III. The remedy so provided may include an order to any Respondent, commanding the Respondent to take specified action, or prohibiting the Respondent

from taking specified action, with respect to a past or future election; however, the remedy may not include an award of money damages or attorney's fees. The remedy may not include the denial of certification or the invalidation of any primary, general or special election, or a determination of the validity of any ballot or vote. Remedies addressing the certification of an election, the validity of an election, or of any ballot or vote may be obtained only as otherwise provided by law; (7-1-21)T

b. If the complaint is not timely or not in proper form, or if the Secretary of State or his designee, whether acting as hearing officer or otherwise, determines that a violation has not occurred, or that there is not sufficient evidence to establish a violation, the Secretary of State shall dismiss the complaint; (7-1-21)T

04. Explanation in Written Decision. The Secretary of State or his designee shall explain in a written decision the reasons for the determination and for any remedy selected. (7-1-21)T

05. Issuance of Final Decision. Except as specified in Section 017, the final determination of the Secretary of State shall be issued within ninety (90) days after the complaint was filed, unless the Complainant consents in writing to an extension. The final determination shall be mailed to the Complainant, each Respondent, and any other interested person who has asked in writing to be advised of the final determination. It shall also be published on the Division's website and made available on request to any interested person. If the Secretary of State cannot make a final determination within ninety (90) days after the complaint was filed, or within any extension to which the Complainant consents, the complaint shall be referred for final resolution under Section 017. The record compiled under Section 014 of this rule shall be made available for use under Section 017. (7-1-21)T

017. ALTERNATE DISPUTE RESOLUTION.

If, for any reason, the Secretary of State or his designee does not render a final determination within ninety (90) days after the complaint was filed, or within any extension to which the Complainant consents, the complaint shall be resolved under this Section 017. (7-1-21)T

01. Time Frames for Choosing an Arbitrator. On or before the fifth business day after a final determination by the Secretary of State was due, the Secretary of State shall designate in writing to the Complainant a list of names of arbitrators who may resolve the complaint. Within three (3) business days after the Complainant receives this designation, the Complainant and the Secretary of State shall arrange to choose an arbitrator from this list by striking names from the list until an arbitrator acceptable to both parties is chosen. Within three (3) business days after the parties strike names, the Secretary of State shall contact the arbitrator chosen and arrange for the hearing by the arbitrator. (7-1-21)T

02. Information the Arbitrator May Review. The arbitrator may review the record compiled in connection with the complaint, including the tape recording or any transcript of a hearing and any briefs or memoranda, but shall not receive additional testimony or evidence. In exceptional cases, the arbitrator may request that the parties present additional briefs or memoranda. (7-1-21)T

03. Resolution of Complaint. The arbitrator shall determine the appropriate resolution of the complaint as set out in these rules. (7-1-21)T

04. Issuance of Written Resolution. The arbitrator must issue a written resolution within sixty (60) days after the final determination of the Secretary of State was due under Section 016. This sixty (60) day period may not be extended. The final resolution of the arbitrator shall be transmitted to the Secretary of State and shall be the final resolution of the complaint. The final resolution shall be mailed to the Complainant, each Respondent, and any other interested person who has asked in writing to be advised of the final resolution. It shall be published on the Election Division website and made available on request to any interested person. (7-1-21)T

018. -- 999. (RESERVED)

34.03.01 – RULES IMPLEMENTING THE SUNSHINE LAW

000. LEGAL AUTHORITY.

This chapter is promulgated pursuant to Chapter 66, Title 67, Idaho Code, specifically Sections 67-6603, 67-6607, 67-6608, 67-6610, 67-6611, 67-6612, 67-6614A, 67-6619, 67-6623, Idaho Code. (7-1-21)T

001. TITLE AND SCOPE.

The rules in this Chapter are known as IDAPA 34.03.01, “Rules Implementing the Sunshine Law.” (7-1-21)T

002. -- 010. (RESERVED)

011. FORMS.

01. Form for Lobbyist Registration. Pursuant to the authority of Section 23 of the Sunshine Law the official form for lobbyist registration as required by Section 17 is hereby adopted for use in reporting to the Secretary of State. This form shall be designated as “L-1” and shall be available online. The “L-1” form shall be accompanied by payment of a registration fee of ten dollars (\$10). (7-1-21)T

02. Annual Report Form. The official form for the lobbyist annual report as required by Section 67-6619, Idaho Code is hereby adopted for use in reporting to the Secretary of State. This form shall be designated as “L-2” and shall be available online. (7-1-21)T

a. Expenditures to be reported are those made or incurred by such lobbyist or on behalf of such lobbyist by the lobbyist’s employer either directly or indirectly for lobbying purposes. The total expenditures shall be cumulative for the calendar year covered by the report. Expenditure categories shall include entertainment, food and refreshment, advertising, living accommodations, travel, telephone, and other expenses or services. (7-1-21)T

b. The annual report shall include the name and address of the lobbyist and the name and address of the lobbyist’s employer(s), and the subject matter or proposed legislation and the number of each senate or house bill, resolution, or other legislative activity which the lobbyist has been engaged in supporting or opposing during the reporting period; provided that in the case of appropriation bills the lobbyist shall enumerate the specific section or sections which he supported or opposed. (7-1-21)T

c. The annual report shall be certified as a true, complete, and correct statement by the lobbyist and the lobbyist’s employer(s). (7-1-21)T

03. Monthly Report Form. The official form for the lobbyist monthly report as required by Section 67-6619, Idaho Code is hereby adopted for use in reporting to the Secretary of State. This form shall be designated as “L-3” and shall be available online. (7-1-21)T

a. Expenditures to be reported are those made or incurred by such lobbyist or on behalf of such lobbyist by the lobbyist’s employer either directly or indirectly for lobbying purposes. The expenditure totals in such reports shall not be cumulative throughout the year but rather shall reflect the total expenditures during the calendar month covered by the report. Expenditure categories shall include entertainment, food and refreshment; advertising; living accommodations; travel; telephone; and other expenses or services. (7-1-21)T

b. The monthly periodic report shall include the name and address of the lobbyist and the name and address of the lobbyist’s employer; and the subject matter of proposed legislation and the number of each senate or house bill, resolution, or other legislative activity which the lobbyist has been engaged in supporting or opposing during the reporting period; provided that in the case of appropriation bills the lobbyist shall enumerate the specific section or sections which he supported or opposed. (7-1-21)T

c. The monthly report shall be certified as a true, complete, and correct statement by the lobbyist. (7-1-21)T

04. Form for the Appointment and Certification of Political Treasurer. The official form for the appointment and certification of a political treasurer as required by Section 67-6603, Idaho Code is hereby adopted for use in reporting to the Secretary of State. This form shall be numbered “C-1” designated as “Appointment and Certification of Political Treasurer for Candidates and Committees” and shall be available online. (7-1-21)T

05. Forms for the Disclosure of Campaign Finances by Candidates and Political Committees. The official forms for the statement required by Sections 67-6607, 67-6608, and 67-6612, Idaho Code are hereby adopted for use in reporting to the Secretary of State. The form numbered “C-2” shall be designated “Campaign Financial

Disclosure Report” and shall be available online. The form numbers “C-2A” shall be designated “Contributions Pledged But Not Yet Received” and shall be available online. The form numbered “C-2B” shall be designated “Expenditures Incurred (Debts and Obligations) and Payments Made on Debt” and shall be available online.

(7-1-21)T

06. Form for Report of Alleged Violation of Sunshine Law. Pursuant to the authority of Section 67-6623(f), Idaho Code of the Sunshine Law the official form to be used in filing a complaint that a person has violated the Sunshine Law is hereby adopted for use in reporting to the Secretary of State. This form shall be designated as “L-5” and shall be available online. Any person may file a complaint against anyone covered by the Sunshine Law. Such complainant must submit form “L-5” to properly file his complaint. No other method of filing a complaint will be recognized.

(7-1-21)T

012. DATE OF RECEIPT.

When any application, report, statement, notice or any other document required to be filed by the provisions of Title 67, Chapter 66, Idaho Code has been deposited post paid in the United States mail properly addressed, it shall be deemed to have been received on the date of mailing. It shall be presumed that the date shown by the post office cancellation mark on the envelope is the date of mailing.

(7-1-21)T

013. EXPENDITURES OTHER THAN CONTRIBUTIONS.

01. Reporting Periods. Reporting periods for disclosing expenditures other than contributions. The reporting periods for the statements required by Section 67-6611, Idaho Code shall be as follows:

(7-1-21)T

a. The period covered by the Thirty (30) Day Post-Primary report shall be from the date of the first independent expenditure thru the twentieth (20th) day after the primary election.

(7-1-21)T

b. The period covered by the Thirty (30) Day Post-General report shall begin on the twenty-first day following the primary election and continue thru the twentieth (20th) day following the general election.

(7-1-21)T

014. SOURCE OF CASH ON HAND.

Newly certified committees must disclose source of cash on hand. Political committees and candidates which have cash on hand at the time of certification (which the committee or candidate anticipates using in an election) shall disclose on their first report the source(s) of these funds, including the information required by Section 67-6612, Idaho Code. Disclosure shall consist of reporting to the Secretary of State the name and address of each person who has contributed more than fifty dollars (\$50) to the committee in the current calendar year and the immediately preceding calendar year along with the aggregate amount contributed by each person.

(7-1-21)T

015. ADVERTISING REGULATION EXEMPTION.

Items exempt from advertising regulation. Campaign buttons, bumper strips, pins, pens and similar small items upon which a disclaimer cannot be conveniently printed are not deemed to be regulated by the provisions of Section 67-6614A, Idaho Code.

(7-1-21)T

016. COMMUNITY PROPERTY CONTRIBUTIONS.

01. Contributions of Community Property -- How Treated. A contribution of community property shall be deemed to be given one-half (1/2) by each spouse. To be treated as community property the contribution must be specifically identified as such. Moneys contributed from a joint account of husband and wife shall be deemed to be received one-half (1/2) from each spouse only if both spouses have signed the check. The following are examples of contributions:

(7-1-21)T

a. Husband contributes sixty dollars (\$60) by personal check to political treasurer X out of community funds. There is no specific designation that such sixty dollars (\$60) contribution is community property. X must treat the entire sixty dollars (\$60) contribution as coming from husband.

(7-1-21)T

b. Husband contributes by personal check sixty dollars (\$60) to a political treasurer X out of community funds. Accompanying such contribution is a statement certifying that such contribution is from the community funds of husband and wife. X must report husband and wife as each contributing thirty dollars (\$30).

(7-1-21)T

c. Wife contributes sixty dollars (\$60) to political treasurer X by personal check drawn on the joint account of husband and wife. Wife is the only spouse to sign the check. X must report the entire sixty dollars (\$60) as being contributed by wife. (7-1-21)T

d. Husband and wife contribute sixty dollars (\$60) to political treasurer X by a check drawn on their joint account both husband and wife have signed the check. X should report husband and wife as each contributing thirty dollars (\$30). (7-1-21)T

e. Assuming that after contributing as in the example in Subsection 016.01.d., husband contributes separately another twenty-five dollars (\$25) X should report husband aggregate total as fifty-five dollars (\$55) and pursuant to Section 67-6610 must list husband's name and address on the campaign financial disclosure report. (7-1-21)T

017. -- 999. (RESERVED)

34.04.02 – RULES GOVERNING BUSINESS ENTITY NAMES

000. LEGAL AUTHORITY.

In accordance with Section 67-903(9), Idaho Code, the Secretary of State has authority to promulgate administrative rules in order to execute the duties of the office. (7-1-21)T

001. SCOPE.

These rules apply to business entity name registration and business entity name reservation as provided for in Title 30, Chapters 21, 22, 23, 24, 25, 27, 29, and 30, Idaho Code. (7-1-21)T

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Arabic Numerals. 0, 1, 2, 3, 4, 5, 6, 7, 8, and 9. (7-1-21)T

02. Business Entity. A formally organized or registered entity created pursuant to state or federal law and usually designated through the use of a business entity identifier. (7-1-21)T

03. Business Entity Identifiers. Company, Corporation, Incorporated, Limited, Chartered, Professional Association, Professional Company, Limited Liability Company, Limited Liability Partnership, Professional Limited Liability Company, Limited Partnership, Limited Liability Limited Partnership, Registered Limited Liability Partnership, and the abbreviations, Co., Corp., Inc., Ltd., P.A., P.C., Chtd., L.L.C., L.L.P., P.L.L.C., L.P., R.L.L.P., and L.L.L.P. (7-1-21)T

04. English Alphabet. Letters A through Z. (7-1-21)T

05. Internet Prefix. Internet prefixes include “www” and any other Internet prefix used to identify a website. (7-1-21)T

06. Internet Suffix. Internet suffixes include .com, .org, .net, .gov, .edu, .coop, and any other Internet suffixes approved by the Internet Corporation for Assigned Names and Numbers (ICANN). (7-1-21)T

07. Key Word. Any word that is not an article, preposition, conjunction, or Business Entity Identifier. (7-1-21)T

08. Special Characters. Any special characters, such as ! “ \$ % () * @ ? +, and -, that are readily available on a standard English language keyboard. (7-1-21)T

011. -- 099. (RESERVED)

100. GENERAL INFORMATION.

01. Determination by Secretary of State. The Secretary of State shall determine whether a proposed business entity name is distinguishable on the records of the Secretary of State from the names of existing business entities by comparing the proposed business entity name to the names of existing business entity names. (7-1-21)T

02. Existing Business Entity Names Considered. The names of business entities in good standing or business entities which have been administratively dissolved for less than six (6) months will be considered in determining whether a proposed business entity name is distinguishable on the records of the Secretary of State from existing business entity names. (7-1-21)T

03. Alphabet Names. Where a name or a unit of a name consists of initials only or letters of the alphabet, the combination of initials will be considered as one (1) word for the purpose of determining if the business entity name is distinguishable.

EXAMPLE: The “words” AA – AAA – AAAA – A & B – AAB – AAC are different words and are distinguishable from one another. (7-1-21)T

04. Characters in Business Entity Names. Business entity names shall consist of letters of the English Alphabet, Arabic Numerals, or Special Characters. (7-1-21)T

05. Foreign Words. Although business entity names may include words in a foreign language, such words will not be translated for the purpose of determining if a business entity name is distinguishable. (7-1-21)T

06. Grossly Offensive Name. The business entity name may not be one that is deemed to be grossly offensive. (7-1-21)T

07. Internet Prefixes and Suffixes. Internet prefixes and suffixes shall not give any special weight or inference to the business entity name, nor shall they be interpreted for meaning or intent. (7-1-21)T

08. False Implication of Government Affiliation. The corporate name may not be one that might falsely imply governmental affiliation. (7-1-21)T

101. -- 199. (RESERVED)

200. NOT DISTINGUISHABLE ON THE RECORD.

The following do not make a name distinguishable on the record: (7-1-21)T

01. Abbreviations. The abbreviation of a word or Special Character is considered the equivalent of the complete word or Special Character.

EXAMPLE: DOE BROTHERS, LLC is not distinguishable from DOE BROS., LLC. (7-1-21)T

02. Business Entity Identifiers. The addition, removal, or alteration of Business Entity Identifiers and their applicable abbreviations.

EXAMPLE: DOE BROTHERS CORPORATION is not distinguishable from DOE BROTHERS, INC. (7-1-21)T

03. Numbers. The use of a word or Roman numeral for a number instead of the Arabic Numeral.
EXAMPLE: FOUR TURTLES, LLC is not distinguishable from 4 TURTLES, LLC, nor is it distinguishable from IV TURTLES, LLC. (7-1-21)T

04. Other Words. The presence or absence of an article, preposition, conjunction, or pronoun.
EXAMPLE: THE DOE BROTHERS, LLC is not distinguishable from DOE BROTHERS, LLC. (7-1-21)T

05. Punctuation. Differences in punctuation.
EXAMPLE: U.S.A. STEEL, LLC is not distinguishable from USA STEEL, LLC.
EXAMPLE: PROWIDGETS.COM is not distinguishable from PRO.WIDGETS.COM. (7-1-21)T

06. Spaces. Spaces, or the absence of spaces.
EXAMPLE: USA STEEL, LLC is not distinguishable from USASTEEL, LLC. (7-1-21)T

07. Special Characters. Differences created by use of Special Characters.
EXAMPLE: AMERICAN PISTOLS, LLC is not distinguishable from AMER!CAN P!\$TOL\$, LLC. (7-1-21)T

08. The Letter "S". The addition or removal of the letter "s" to make a word singular, plural, or possessive.
EXAMPLE: GOLDEN APPLE, LLC is not distinguishable from GOLDEN APPLES, LLC. (7-1-21)T

09. Typeface, Font, or Case. The use of a different typeface, font, or case.
EXAMPLE: SISTERS' DINER is not distinguishable from Sisters' Diner. (7-1-21)T

201. -- 299. (RESERVED)

300. DISTINGUISHABLE ON THE RECORD.

01. Key Word Difference. If one (1) of the Key Words is different, the name is distinguishable.
EXAMPLE: WIDGET WONDER, LLC is distinguishable from WIDGET ELITE, LLC. (7-1-21)T

02. Key Word Order. If the Key Words are in a different order, the name is distinguishable.
EXAMPLE: WIDGET WONDER, LLC is distinguishable from WONDER WIDGET, LLC. (7-1-21)T

03. Key Word Addition or Deletion. The addition or deletion of one (1) or more Key Words shall make a name distinguishable.

EXAMPLE: AMAZING WONDER WIDGET, INC. is distinguishable from WONDER WIDGET, INC. (7-1-21)T

04. Difference in Meaning. If the Key Words are significantly different in meaning, and the Key Words are not identical, the name may be distinguishable.

EXAMPLE: CAPITAL WIDGET, LLC is distinguishable from CAPITOL WIDGET, LLC. (7-1-21)T

05. Internet Prefix and Suffix Addition or Deletion. The addition or deletion of an Internet prefix or suffix shall make a name distinguishable.

EXAMPLE: PRECISE WIDGETS, LLC is distinguishable from PRECISEWIDGETS.COM, LLC which is distinguishable from PRECISEWIDGETS.NET.

EXAMPLE: WWW.PROWIDGETS.COM is distinguishable from PRO.WIDGETS.COM. (7-1-21)T

301. -- 399. (RESERVED)

400. MATTERS NOT CONSIDERED.

When determining whether a business entity name is distinguishable on the records of the Secretary of State from another business entity name, the following are among the matters not considered: (7-1-21)T

01. Purpose. Whether the purpose of the proposed business entity is the same as or similar to the purpose of an existing business entity. (7-1-21)T

02. Location. Whether the business entities will be carrying out activities in the same or nearby locations. (7-1-21)T

03. Prior Actions. Whether an analogous situation has previously been acted on by the Secretary of State. (7-1-21)T

04. Activity. Whether an existing business entity is actively engaged in business, or has a telephone listing, or a location of a place of business. (7-1-21)T

05. Intent. Whether an existing business entity is about to change its name or be dissolved or merged out of existence. (7-1-21)T

06. Reliance. Whether the applicant has ordered stationery, opened a bank account, signed a contract, or otherwise altered his position in the expectation, hope or belief that the proposed name would be available. (7-1-21)T

07. Influence. Whether the applicant is more or less important, extensive, widely known, or influential than an existing business entity. (7-1-21)T

08. Common Law. Whether infringement or unfair trade practice has occurred or might occur. (7-1-21)T

401. CORPORATE RESERVATION RENEWAL TERMS.

A corporate name reservation may be renewed at or after the expiration of any four (4) month reservation period by filing a new name reservation in writing, along with the required fee; provided that at the end of any such reservation period there is not on file in the office of the Secretary of State a competing name reservation which is to take effect at the expiration of the existing reservation. Competing reservations will have priority in order of receipt. (7-1-21)T

402. -- 999. (RESERVED)

34.06.01 – RULES GOVERNING THE ELECTRONIC RECORDING OF REAL PROPERTY

000. LEGAL AUTHORITY.

In accordance with Section 67-903(9), Idaho Code, the Secretary of State has authority to promulgate administrative rules in order to execute the Uniform Real Property Electronic Recording Act enacted as Title 31, Chapter 29, Idaho Code. (7-1-21)T

001. SCOPE.

These rules govern the filing, acceptance, indexing and searching of real property records in the county recording offices under Title 31, Chapter 29, Idaho Code. (7-1-21)T

002. INCORPORATION BY REFERENCE.

Data and document formats necessary for electronic recording are incorporated by reference. (7-1-21)T

01. PRIA Standards. Electronic recording of real property documents shall meet technical standards for document formatting and document data fields and follow implementation guidelines as prescribed by the Property Records Industry Association (PRIA) which are hereby incorporated by reference, made a part of this rule, and listed below: (7-1-21)T

- a. PRIA Request Version 2.4.2, August 2007; (7-1-21)T
- b. PRIA Response Version 2.4.2, August 2007; (7-1-21)T
- c. Document Version 2.4.1, October 2007; (7-1-21)T
- d. Notary Version 2.4.1, October 2007; (7-1-21)T
- e. eRecording XML Implementation Guide for Version 2.4.1, Revision 2, March 2007; (7-1-21)T
- f. URPERA Enactment and eRecording Standards Implementation Guide, December 2005. (7-1-21)T

02. Standards Availability. These standards are available from the Property Records Industry Association, 2501 Aerial Center Parkway, Ste. 103, Morrisville, NC 27560, and at <http://www.pria.us/>. (7-1-21)T

003. -- 009. (RESERVED)

010. DEFINITIONS.

01. Delivery Agent. A party who has entered into an agreement with a Participating Recorder to deliver an Electronic Document from a Submitter to a Participating Recorder and to return the recorded Electronic Document to the Submitter. (7-1-21)T

02. Document. The meaning shall be the same as provided in Section 31-2902, Idaho Code. (7-1-21)T

03. Electronic Document. The meaning shall be the same as provided in Section 31-2902, Idaho Code. (7-1-21)T

04. Electronic Document Delivery System. An automated system for the secure transmission of an Electronic Document between a Submitter and a Participating Recorder through the use of a Delivery Agent. (7-1-21)T

05. Electronic Recording. The delivery and return of an Electronic Document, using an Electronic Document Delivery System, for the purpose of recording that document with the county records. (7-1-21)T

06. Electronic Signature. The meaning shall be the same as provided in Section 31-2902, Idaho Code. (7-1-21)T

07. Participating Recorder. A county recorder who has elected to accept Electronic Documents for recording. (7-1-21)T

08. PDF (Portable Document Format). The file format originally created by Adobe Systems for document exchange allowing documents to be viewed as they were intended to appear. PDFs are a common format for image exchange or World Wide Web presentation. (7-1-21)T

09. Submitter. A party who requests that an Electronic Document be recorded. (7-1-21)T

10. TIFF (Tagged Image File Format). The variable-resolution bitmapped image format originally developed by the Aldus Corporation (now part of Adobe Systems) and published as ISO 12639:2004, Graphic technology-Prepress digital data exchange-Tag image file format for image technology (TIFF/IT). TIFF is a common format for high-quality black and white, gray-scaled, or color graphics of any resolution and is made up of individual dots or pixels. (7-1-21)T

11. XML (Extensible Markup Language). An extensible document language for specifying document content. XML is not a predefined markup language but a metalanguage (a language for describing other languages) allowing the user to specify a document type definition (DTD) and design customized markup languages for different classes of documents. (7-1-21)T

011. -- 100. (RESERVED)

101. ELECTRONIC RECORDING MODELS.

Electronic Documents shall conform to one of the following models: (7-1-21)T

01. Model 1. Model 1, which utilizes scanned ink-signed Documents, transmitted without XML indexing data; (7-1-21)T

02. Model 2. Model 2, which utilizes scanned ink-signed Documents or Documents that have been created and signed electronically, transmitted with XML indexing data; or (7-1-21)T

03. Model 3. Model 3, which utilizes Documents that have been created and signed electronically, transmitted with embedded XML indexing data. (7-1-21)T

102. TRANSMITTED FILES.

01. Technical Standards for Transmitted Files. The technical standards for document formatting and data fields for Electronic Recording are those in effect at the time of the Electronic Recording as prescribed by the Property Records Industry Association (PRIA) in the PRIA eRecording XML Standard Version 2.4, which includes PRIA Request Version 2.4.2 (August 2007); PRIA Response Version 2.4.2 (August 2007); Document Version 2.4.1 (October 2007); and Notary Version 2.4.1 (October 2007). (7-1-21)T

02. Guide to Be Consulted for Reference. The PRIA eRecording XML Implementation Guide for Version 2.4.1, Revision 2 (March 2007) should be consulted for reference. (7-1-21)T

03. Storage Formats. Electronic Documents shall be transmitted and stored as either TIFF or PDF files, in accordance with the TIFF 6.0 specification, published by the International Organization for Standardization as ISO 12639:2004, Graphic technology - Prepress digital data exchange - Tag image file format for image technology (TIFF/IT), or the PDF 1.7 specification, published by the International Organization for Standardization as ISO 32000-1:2008, Document management - Portable document format - Part 1: PDF 1.7. (7-1-21)T

103. DATA FORMATS.

The data format for Electronic Recordings shall meet technical standards and data fields set forth by the Property Records Industry Association (PRIA) in the PRIA eRecording XML Standard Version 2.4, which includes PRIA Request Version 2.4.2 (August 2007); PRIA Response Version 2.4.2 (August 2007); Document Version 2.4.1 (October 2007); and Notary Version 2.4.1 (October 2007). The PRIA eRecording XML Implementation Guide for Version 2.4.1, Revision 2 (March 2007) should be consulted for reference. (7-1-21)T

104. PARTICIPATING RECORDER.

01. Documents Accepted. A Participating Recorder is only required to accept Electronic Documents containing Electronic Signatures or notarizations that the Participating Recorder has the technology to support. (7-1-21)T

02. Authentication. A Participating Recorder has no responsibility to authenticate Electronic Signatures or notarizations. (7-1-21)T

105. ELECTRONIC RECORDING PROCESSING REQUIREMENTS.

01. Notice Requirements. A Participating Recorder shall provide appropriate notification to the Delivery Agent of the confirmation or rejection of an Electronic Recording through the Electronic Document Delivery System. (7-1-21)T

a. A notice of confirmation shall identify and include recording information for the recorded Electronic Document. (7-1-21)T

b. A notice of rejection shall identify the rejected Electronic Document and include a brief explanation of the reason for rejection. (7-1-21)T

c. The Delivery Agent shall notify the Submitter of the confirmation or rejection of the Electronic Document. (7-1-21)T

d. The failure of a Submitter to receive actual notice of confirmation or rejection of a recording shall not affect the validity of the confirmation or rejection. (7-1-21)T

02. Contact Information. A Participating Recorder may contact a Submitter regarding an Electronic Document submitted for recording prior to sending a notice of confirmation or rejection. The Delivery Agent shall ensure that the Submitter includes telephone or email contact information with each Electronic Document submission. (7-1-21)T

03. Time of Receipt. A Participating Recorder shall enter the time of receipt of Electronic Documents in accordance with Section 31-2410, Idaho Code. (7-1-21)T

106. SECURITY REQUIREMENTS.

Procedures shall be implemented and maintained to ensure the security of the Electronic Document Delivery System, including the authenticity and integrity of the Electronic Documents maintained by the Participating Recorder. (7-1-21)T

01. Secure Method. A Participating Recorder shall provide a secure method for accepting Documents through the Electronic Document Delivery System and for recording and maintaining Electronic Documents within the Participating Recorder's records. (7-1-21)T

02. Security Procedures. A Delivery Agent shall implement and maintain security procedures for all electronic transmissions and shall be responsible for maintaining the security of the systems within their offices. (7-1-21)T

03. System and Security Failures. Electronic Document Delivery Systems shall protect against system and security failures and, in addition, shall provide backup, disaster recovery and audit trail mechanisms. Delivery Agents shall provide audit trail information to Participating Recorders on request. (7-1-21)T

04. Unauthorized Party. Electronic Document Delivery Systems shall not permit any unauthorized party to modify, manipulate, insert or delete information, without detection, in Electronic Documents or in the public record maintained by the Participating Recorder. (7-1-21)T

05. Notification of Breach. If a breach in security is detected by the Participating Recorder, Delivery Agent or Submitter, the party discovering the breach shall notify the other parties immediately. All parties shall work cooperatively to take remedial action and to resolve any issues related to a breach. (7-1-21)T

107. AGREEMENT AND PROCEDURES.

01. Participation Agreement. The Delivery Agent and the Participating Recorder shall enter into an

agreement specifying the requirements for Electronic Document recording with the county. At a minimum, the agreement shall address the following items: (7-1-21)T

- a. Accepted Electronic Recording models; (7-1-21)T
- b. Accepted Electronic Document types; (7-1-21)T
- c. Defined technical specifications for data formats, document formats, electronic transmissions and security; (7-1-21)T
- d. If used by the Participating Recorder, indexing fields required for each Electronic Document; (7-1-21)T
- e. Electronic Signature and notarization requirements; (7-1-21)T
- f. Payment options for recording fees and applicable taxes; (7-1-21)T
- g. Hours during which Electronic Documents will be accepted and processing schedules that affect order of acceptance; (7-1-21)T
- h. Electronic Document acceptance and rejection requirements and procedures; (7-1-21)T
- i. Responsibility of the Delivery Agent to review the qualifications of each potential Submitter and to approve the potential Submitter prior to granting access to the Electronic Document Delivery System; and (7-1-21)T
- j. Responsibility of the Delivery Agent to enter into an agreement with each approved Submitter, in which the Submitter agrees to submit Electronic Documents for recording in accordance with all applicable state statutes and rules and to maintain the security of the systems within the Submitter's offices. (7-1-21)T

02. Other Procedures and Requirements. A Participating Recorder may include in the agreement other procedures and requirements needed in order to implement fully an Electronic Recording program. (7-1-21)T

03. Establishment and Posting of Procedures. A Participating Recorder shall establish procedures for Electronic Recording in the municipality and shall post the procedures in the recorder's office, on the municipality's Internet website, if available, and through the Electronic Document Delivery System, and shall make a copy of the procedures available on request. The procedures shall cover, at a minimum, the items listed above in this subsection. (7-1-21)T

108. -- 999. (RESERVED)

34.07.01 – RULES GOVERNING NOTARIAL ACTS PERFORMED FOR REMOTELY LOCATED INDIVIDUALS

000. LEGAL AUTHORITY.

In accordance with Sections 51-127 and 51-114A, Idaho Code, the Secretary of State has authority to promulgate administrative rules in order for notaries public to perform notarial acts for remotely located individuals by use of communication technology not inconsistent with the Revised Uniform Law on Notarial Acts (2018) enacted as Title 51, Chapter 1, Idaho Code. (7-1-21)T

001. SCOPE.

These rules will govern the performance of notarial acts for remotely located individuals by use of communication technology under Title 51, Chapter 1, Idaho Code. Only notaries public who have been authorized to perform notarial acts with respect to electronic records and by the Secretary of State under this chapter for remotely located individuals are governed by this chapter. Additional specifications for the use of tamper-evident technologies are required for notarial acts performed with respect to electronic records as described in Title 51, Chapter 1, Idaho Code. (7-1-21)T

002. -- 009. (RESERVED)

010. DEFINITIONS.

For all terms used here but not otherwise defined, the meaning will be the same as in Sections 51-102 and 51-114A, Idaho Code.

01. Knowledge-Based Authentication. An identity assessment used by a notary public to identify an individual that is based on a set of questions formulated from public or private data sources that does not contain a question for which the individual provided a prior answer to the person doing the assessment. (7-1-21)T

011. REQUIRED NOTIFICATION TO SECRETARY OF STATE.

01. Qualification Requirements. An individual qualifies to perform notarial acts for remotely located individuals by: (7-1-21)T

- a. Being duly commissioned as a notary public under Section 51-121, Idaho Code; (7-1-21)T
- b. Being authorized by the Secretary of State to perform electronic notarizations; and (7-1-21)T
- c. Providing notice by application to the Secretary of State that the notary public will be performing notarial acts facilitated by communication technology that meets the requirements of this chapter. (7-1-21)T

02. Notification Form. The notification required under this section must be on a form as prescribed by the Secretary of State. (7-1-21)T

03. Submission of Notification. The notification must be submitted to the Secretary of State in writing or as otherwise provided by information posted on the Secretary of State's website. (7-1-21)T

04. Renewal of Commission. The renewal of the commission of a notary public who has previously qualified to perform notarial acts for remotely located individuals under this section constitutes renewal of the notary public's qualification without the necessity of submission of another notification under this section. (7-1-21)T

05. Updated Technology. This section does not prohibit a notary public from receiving, installing, or using a hardware or software update to the technologies that the notary public identified under Subsection 011.02 of this chapter if the hardware or software update does not result in technologies that are materially different from the technologies that the notary public identified. (7-1-21)T

012. USE OF ELECTRONIC RECORDS.

01. Tamper-Evident Technology Required. A notary shall select one or more tamper-evident technologies to perform notarial acts with respect to electronic records. A person may not require a notary public to use a technology that the notary public has not selected. (7-1-21)T

02. Digital Certificate. Tamper-evident technology shall consist of a digital certificate complying with the X.509 standard adopted by the International Telecommunication Union or a similar industry-standard technology. A notary public shall attach or logically associate the notary public's electronic signature and official stamp to an

electronic record that is the subject of a notarial act by use of a digital certificate. A notary public may not perform a notarial act with respect to an electronic record if the digital certificate: (7-1-21)T

- a. Has expired; (7-1-21)T
- b. Has been revoked or terminated by the issuing or registering authority; (7-1-21)T
- c. Is invalid; or (7-1-21)T
- d. Is incapable of authentication. (7-1-21)T

013. IDENTITY PROOFING.

If a notary public does not have satisfactory evidence of the identity of a remotely located individual under Section 014 of this chapter, the notary public must reasonably verify the individual's identity through two (2) different types of identity proofing consisting of a multi-factor authentication procedure as provided in this section. The procedure shall analyze the individual's identity credential against trusted third-person data sources, bind the individual's identity to the individual following successful knowledge-based authentication, and permit the notary public visually to compare the identity credential and the individual. The analysis of the identity credential and the knowledge-based authentication shall conform to the following requirements: (7-1-21)T

01. Credential Analysis. The analysis of an identity credential must use public or private data sources to confirm the validity of the identity credential presented by a remotely located individual and, at a minimum: (7-1-21)T

- a. Use automated software processes to aid the notary public in verifying the identity of each remotely located individual; (7-1-21)T
- b. Require that the identity credential passes an authenticity test, consistent with sound commercial practices that use appropriate technologies to confirm the integrity of visual, physical, or cryptographic security features and to confirm that the identity credential is not fraudulent or inappropriately modified; (7-1-21)T
- 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 identity credential details; and (7-1-21)T
- d. Enable the notary public visually to compare for consistency the information and photograph on the identity credential and the remotely located individual as viewed by the notary public in real time through communication technology. (7-1-21)T

02. Knowledge-Based Authentication. A knowledge-based authentication is successful if it meets the following requirements: (7-1-21)T

- 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; (7-1-21)T
- b. Each question must have a minimum of five (5) possible answer choices; (7-1-21)T
- c. At least eighty percent (80%) of the questions must be answered correctly; (7-1-21)T
- d. All questions must be answered within two (2) minutes; (7-1-21)T
- e. If the remotely located individual fails the first attempt, the individual may retake the quiz one (1) time within twenty-four (24) hours; (7-1-21)T
- f. During a retake of the quiz, a minimum of forty percent (40%) of the prior questions must be replaced; (7-1-21)T

g. If the remotely located individual fails the second attempt, the individual is not allowed to retry with the same notary public within twenty-four (24) hours of the second failed attempt; and (7-1-21)T

h. The notary public must not be able to see or record the questions or answers. (7-1-21)T

014. OTHER METHODS OF IDENTITY PROOFING.

A notary public has satisfactory evidence of the identity of a remotely located individual if the notary public has personal knowledge of the identity of the individual or if the notary public has satisfactory evidence of the identity of the individual by oath or affirmation of a credible witness appearing before the notary as provided in Section 51-107, Idaho Code. A credible witness may be a remotely located individual if the notary public, credible witness, and individual whose statement or signature is the subject of the notarial act can communicate by using communication technology. A remotely located credible witness must meet the same requirements for identity proofing found in Section 013 of this chapter, or the notary public must have personal knowledge of the identity of the remotely located credible witness. (7-1-21)T

015. COMMUNICATION TECHNOLOGY.

01. Audio-Video Feeds. Communication technology shall: (7-1-21)T

a. 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; and (7-1-21)T

b. Provide a means for the notary public reasonably to confirm that a 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. (7-1-21)T

02. Security Measures. Communication technology shall provide reasonable security measures to prevent unauthorized access to the live transmission of the audio-visual feeds, the methods used to perform the identity proofing process under Sections 013 or 014 of this chapter, and the electronic record that is the subject of the notarial act. (7-1-21)T

03. Workflow. If a remotely located individual must exit the workflow, the remotely located individual must restart the identity proofing process under Sections 013 or 014 of this chapter from the beginning. (7-1-21)T

016. RECORD RETENTION AND REPOSITORIES.

01. Optional Journal. A notary public may maintain one or more journals in which the notary public chronicles all notarial acts that the notary public performs with respect to remotely located individuals. A journal may be created on a tangible medium or in an electronic format using an industry-standard data file format. If the journal is maintained on a tangible medium, it must be a permanent, bound register with numbered pages. An entry in a journal must be made contemporaneously with the performance of the notarial act. (7-1-21)T

02. Retention Requirements. A notary public shall retain an audio-visual recording required under Section 51-114A, Idaho Code, in a computer or other electronic storage device that protects the audio-visual recording against unauthorized access by password or cryptographic process. The recording must be created in an industry-standard audio-visual file format and not include images of any record in which a remotely located individual made a statement or on which the remotely located individual executed a signature. The recording must be retained for at least ten (10) years after the recording is made. 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 a recording shall: (7-1-21)T

a. Comply with the retention requirements of this subsection; (7-1-21)T

b. Transmit the recording to one or more repositories under Subsection 016.03 of this chapter; or (7-1-21)T

c. Transmit the recording in an industry-standard readable data storage device to the Secretary of

State. (7-1-21)T

03. Repositories. A notary public, a 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 repository to provide the storage required by Subsection 016.02 of this chapter. A third person under contract under this Subsection shall be deemed a repository under Section 51-114A, Idaho Code. The contract shall: (7-1-21)T

a. Enable the notary public, the guardian, conservator, or agent of the notary public, or the personal representative of the deceased notary public to comply with the retention requirements of Subsection 016.02 of this chapter even if the contract is terminated; or (7-1-21)T

b. Provide that the information will be transferred to the notary public, the guardian, conservator, or agent of the notary public, or the personal representative of the deceased notary public if the contract is terminated. (7-1-21)T

017. FEES AND EXPENSES.

Third-Person Expenses: Section 51-133, Idaho Code, shall not be construed to prevent a third person who provides technologies or storage capabilities to aid the notary public in the performance of a notarial act or in the fulfillment of duties under this chapter from separately charging and collecting any additional fee for the services provided.

(7-1-21)T

018. CERTIFICATE OF NOTARIAL ACT.

Additional Language for Use of Communication Technology: As per Section 51-114A, Idaho Code, a certificate for a notarial act for a remotely located individual, whether in standard or short form, will include additional language to indicate that the notarial act was performed using communication technology and will be sufficient if it is substantially as follows: “This notarial act involved the use of communication technology.” (7-1-21)T

019. -- 999. (RESERVED)