

# Preliminary Draft of Proposed Rules

## Office of the Colorado Secretary of State Notary Program Rules 8 CCR 1505-11

November 29, 2021

### Disclaimer:

In accordance with the State Administrative Procedure Act, this draft is filed with the Secretary of State and submitted to the Department of Regulatory Agencies.<sup>1</sup>

This is a preliminary draft of the proposed rules that may be revised before the January 6, 2022 rulemaking hearing. If changes are made, a revised copy of the proposed rules will be available to the public and a copy will be posted on the Department of State's website no later than January 1, 2022.<sup>2</sup>

Please note the following formatting key:

Font effect	Meaning
Sentence case	Retained/modified current rule language
SMALL CAPS	New language
<del>Strikethrough</del>	Deletions
<i>[Italic blue font text]</i>	Annotations

1 *Current 8 CCR 1505-11 is amended as follows:*

2 *Amendments to Rule 3 concerning vendors and course providers:*

3 *[Current Rule 3.6.5 and 3.6.5(a) are amended. New Rule 3.6.5(b). Current Rule 3.6.5(b) is renumbered*  
4 *as New Rule 3.6.5(c).]*

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6           3.6.5   ~~Right to appeal termination of~~ RESPOND TO AND CURE NONCOMPLIANCE AND RIGHT TO  
7                   HEARING BEFORE TERMINATING, SUSPENDING, OR IMPOSING CONDITIONS ON accreditation or  
8                   approval. If the Secretary of State proposes to terminate an approved vendor's  
9                   accreditation status or approval of a course provider, the vendor or course provider has  
10                  the right to request a hearing as provided in the State Administrative Procedure Act,  
11                  (Article 4 of Title 24, C.R.S.)

12                   (a)       ~~If the approved vendor or the course provider does not request a hearing,~~  
13                           ~~termination will be effective 30 days after the mailing date of the termination notice.~~  
14                           EXCEPT IN CASES OF DELIBERATE AND WILLFUL VIOLATION OR OF SUBSTANTIAL DANGER  
15                           TO THE PUBLIC HEALTH AND SAFETY, THE SECRETARY OF STATE WILL PROVIDE A VENDOR  
16                           OR COURSE PROVIDER WITH WRITTEN NOTICE, AN OPPORTUNITY TO RESPOND IN  
17                           WRITING, AND A REASONABLE OPPORTUNITY TO COMPLY WITH ALL LAWFUL  
18                           REQUIREMENTS THAT MAY WARRANT AGENCY PROCEEDINGS TO TERMINATE, SUSPEND,

<sup>1</sup> Sections 24-4-103(2.5) and (3)(a), C.R.S. (2021). A draft must be submitted to the Department at the time that a notice of proposed rulemaking is filed with the Secretary of State.

<sup>2</sup> Section 24-4-103(4)(a), C.R.S. (2021). "[A]ny proposed rule or revised proposed rule by an agency which is to be considered at the public hearing...shall be made available to any person at least five days prior to said hearing."

1 OR IMPOSE CONDITIONS ON AN EXISTING ACCREDITATION OF A VENDOR OR APPROVAL OF  
2 A COURSE PROVIDER BEFORE INSTITUTING SUCH PROCEEDINGS IN ACCORDANCE WITH  
3 THE STATE ADMINISTRATIVE PROCEDURE ACT (ARTICLE 4 OF TITLE 24, C.R.S.).

4 (B) EXCEPT IN CASES OF DELIBERATE AND WILLFUL VIOLATION OR THAT THE PUBLIC HEALTH,  
5 SAFETY, OR WELFARE IMPERATIVELY REQUIRE EMERGENCY ACTION, THE SECRETARY OF  
6 STATE WILL NOT TERMINATE, SUSPEND, OR IMPOSE CONDITIONS ON AN EXISTING  
7 ACCREDITATION OF A VENDOR OR APPROVAL OF A COURSE PROVIDER UNTIL AFTER  
8 HOLDING A HEARING IN ACCORDANCE WITH THE STATE ADMINISTRATIVE PROCEDURE  
9 ACT (ARTICLE 4 OF TITLE 24, C.R.S.).

10 (b)(c) Termination does not bar the Secretary of State from beginning or continuing an  
11 investigation concerning the vendor or course provider.  
12  
13

14 *Amendments to Rule 5 concerning remote notarization system and storage providers:*

15 *[New Rule 5.3.5. Current Rules 5.3.5, 5.3.6, and 5.3.7 are renumbered as Rules 5.3.6, 5.3.7, and 5.3.8.]*

16 5.3.5 DEFICIENT PROVIDER APPLICATION. IF THE SECRETARY OF STATE DENIES APPROVAL OF AN  
17 APPLICANT, THE SECRETARY OF STATE WILL NOTIFY THE APPLICANT OF ANY APPLICATION  
18 DEFICIENCIES. A REJECTED APPLICANT MAY REQUEST A HEARING IN ACCORDANCE WITH THE  
19 STATE ADMINISTRATIVE PROCEDURE ACT (ARTICLE 4 OF TITLE 24, C.R.S.)

20 5.3.55.3.6 Notifications

21 (a) If a remote notarization system provider or storage provider becomes aware of a  
22 possible security breach involving its data, the provider must give notice to both  
23 the Secretary of State and each Colorado remote notary public using its services  
24 no later than 30 days after the date of determination that a security breach  
25 occurred. The provider must comply with any other notification requirements of  
26 Colorado's data privacy laws.

27 (b) No later than 30 days before making any changes to the remote notarization  
28 system or storage system used by Colorado remote notaries that would impact  
29 any previously provided answer in its application about its system that would affect  
30 the provider's eligibility for approval, a provider must both request approval from  
31 the Secretary of State and notify each Colorado remote notary public using its  
32 services. Changes to the system or storage must conform to statutory and rule  
33 requirements.

34 (c) For non-system or storage-related changes to the provider's information on file  
35 with the Secretary of State, the provider must notify and update information  
36 provided to the Secretary of State no later than 30 days after changes to the  
37 provider's previously supplied information. This requirement includes changes to  
38 the disclosures required by Rule 5.3.2(b)(2).

39 5.3.65.3.7 Complaints. A person may file a complaint with the Secretary of State against an  
40 approved provider. The complaint must allege a specific violation of Colorado's  
41 Revised Uniform Law on Notarial Acts or these rules. The person must submit the  
42 signed and dated complaint on the Secretary of State's standard form.

43 5.3.75.3.8 Grounds for termination of approval. The Secretary of State may terminate  
44 approval of a provider for any of the following reasons:

- 1 (a) Violation of any provision of Colorado's Revised Uniform Law on Notarial Acts or
- 2 these rules;
- 3 (b) Making representations that the Secretary of State endorses, recommends, or
- 4 mandates use of any of the provider's products, goods, or services;
- 5 (c) If the provider sustains a data breach; and
- 6 (d) Failure to timely respond to the Secretary of State's request for information or
- 7 otherwise cooperate with an investigation, including providing requested
- 8 information.

9 *[Current Rule 5.3.8 is renumbered as Rule 5.3.9. Current Rule 5.3.9(a) is amended. New Rule 5.3.9(b).*  
 10 *Current Rule 5.3.9(b) is renumbered as Rule 5.3.9(c).*

11 ~~5.3.85.3.9~~ **5.3.9** ~~Right to appeal denial or termination of~~ RESPOND TO AND CURE NONCOMPLIANCE AND  
 12 RIGHT TO HEARING BEFORE TERMINATING, SUSPENDING, OR IMPOSING CONDITIONS ON  
 13 approval. ~~If the Secretary of State denies or proposes to terminate an approved~~  
 14 ~~provider's status, the provider has the right to request a hearing as provided in the~~  
 15 ~~State Administrative Procedure Act, (Article 4 of Title 24, C.R.S.)~~

16 (a) ~~If the provider does not request a hearing, termination of approval will be effective~~  
 17 ~~30 days after the mailing date of the termination notice.~~ EXCEPT IN CASES OF  
 18 DELIBERATE AND WILLFUL VIOLATION OR OF SUBSTANTIAL DANGER TO THE PUBLIC  
 19 HEALTH AND SAFETY, THE SECRETARY OF STATE WILL PROVIDE A REMOTE NOTARIZATION  
 20 SYSTEM OR STORAGE PROVIDER WITH WRITTEN NOTICE, AN OPPORTUNITY TO RESPOND  
 21 IN WRITING, AND A REASONABLE OPPORTUNITY TO COMPLY WITH ALL LAWFUL  
 22 REQUIREMENTS THAT MAY WARRANT AGENCY PROCEEDINGS TO TERMINATE, SUSPEND,  
 23 OR IMPOSE CONDITIONS ON AN EXISTING APPROVAL BEFORE INSTITUTING SUCH  
 24 PROCEEDINGS IN ACCORDANCE WITH THE STATE ADMINISTRATIVE PROCEDURE ACT  
 25 (ARTICLE 4 OF TITLE 24, C.R.S.).

26 (b) EXCEPT IN CASES OF DELIBERATE AND WILLFUL VIOLATION OR THAT THE PUBLIC HEALTH,  
 27 SAFETY, OR WELFARE IMPERATIVELY REQUIRE EMERGENCY ACTION, THE SECRETARY OF  
 28 STATE WILL NOT TERMINATE, SUSPEND, OR IMPOSE CONDITIONS ON AN EXISTING  
 29 APPROVAL OF A REMOTE NOTARIZATION SYSTEM OR STORAGE PROVIDER UNTIL AFTER  
 30 HOLDING A HEARING IN ACCORDANCE WITH THE STATE ADMINISTRATIVE PROCEDURE  
 31 ACT (ARTICLE 4 OF TITLE 24, C.R.S.).

32 (b)(c) Termination does not bar the Secretary of State from beginning or continuing an  
 33 investigation concerning the provider.