



Notice of Proposed Rulemaking

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

Date of notice: October 15, 2020

Date and time of public hearing: November 16, 2020 at 9:00 a.m.

I. Hearing Notice

As required by the State Administrative Procedure Act,¹ the Secretary of State gives notice of proposed rulemaking. The hearing is scheduled for November 16, 2020 at 9:00 a.m. **This meeting will be conducted via webinar; no in-person option is available.** Details regarding how to join the webinar and testify during the hearing are outlined in section VI of this notice.

II. Subject

The Secretary is considering amendments to the Colorado Secretary of State Notary Program Rules² in order to ensure the uniform and proper administration, implementation, and enforcement of the Revised Uniform Law on Notarial Acts (RULONA)³ and legislation recently passed by the Colorado General Assembly; Senate Bill 20-096 concerning remote notarization. The Secretary may consider additional rule amendments including revisions necessary to eliminate obsolete provisions; remove references to repealed statutory provisions; simplify the language of existing rules; remove language that is duplicative of statute or constitutional provisions; and ensure consistency with Department rulemaking standards. The Secretary may consider additional rule amendments.

A detailed Statement of Basis, Purpose, and Specific Statutory Authority follows this notice and is incorporated by reference.

III. Statutory authority

The Secretary proposes the rule revisions and amendments in accordance with the following statutory provisions:

¹ Section 24-4-103(3)(a), C.R.S. (2020).

² 8 CCR 1505-11.

³ Article 21 of Title 24, Part 5, C.R.S. (2020).

- Section 24-21-527(1)(a), C.R.S., (2020), which authorizes the Secretary of State to “[p]rescribe the manner of performing notarial acts regarding tangible and electronic records[.]”
- Section 24-21-527(1)(c), C.R.S., (2020), which authorizes the Secretary of State to “[i]nclude provisions to ensure integrity in the creation, transmittal, storage, or authentication of electronic records or signatures[.]”
- Section 24-21-527(1)(e), C.R.S., (2020), which authorizes the Secretary of State to “[i]nclude provisions to prevent fraud or mistake in the performance of notarial acts[.]”
- Section 24-21-527(1)(g), C.R.S., (2020), which authorizes the Secretary of State to “[p]rescribe the manner of performing notarial acts using audio-video communication technology, including provisions to ensure the security, integrity, and accessibility of records relating to those acts[.]”
- Section 24-21-527(1)(h), C.R.S., (2020), which authorizes the Secretary of State to “[p]rescribe requirements for the approval and use of remote notarization systems and storage systems.”

IV. Copies of draft rules

A preliminary draft of the proposed rules is posted on the Secretary of State’s rules and notices of rulemaking website at:

www.sos.state.co.us/pubs/rule_making/hearings/2020/NotaryRulesHearing20201116.html.

You may also contact our office to request an editable electronic copy of the draft rules.

As required by the State Administrative Procedures Act,⁴ if changes are made before the hearing, revised proposed draft rules will be available to the public and posted on the website by November 11, 2020.

V. Opportunity to testify and submit written comments

The Secretary values your feedback in our rulemaking process and we would very much like to hear your thoughts on the proposed amendments. Please review and consider the attached proposed draft rules.

Everyone will have the opportunity to testify and provide written comment concerning the rule amendments. You may submit written comments to SoS.Rulemaking@sos.state.co.us any time before and during the hearing. Additional opportunity to comment in writing will be announced at the conclusion of the hearing. Information regarding how to testify during the webinar hearing is providing in section VI of this notice.

⁴ Section 24-4-103(3)(a), C.R.S. (2020). “Any 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.”

As soon as possible after receipt, written comments will be posted online at the Secretary of State website:

www.sos.state.co.us/pubs/rule_making/hearings/2020/NotaryRulesHearing20201116.html.

We will redact apparent personal contact information, including home address, email address, and telephone number(s), from submissions before posting the information online, unless otherwise directed by the contributor. All written comments will be added to the official rulemaking record.

VI. Webinar and audio recording of hearing

Register for the webinar hearing

To join and listen to the hearing, you must register for the webinar online: <https://attendee.gotowebinar.com/register/1572827603488500751>.

When you register, you must provide your full name and email address. Please provide additional contact information including your address and telephone number. You may also provide your job title and organization. Lastly, indicate whether you plan to testify during the hearing. When you submit your registration, you should receive a confirmation email including details about how to join the webinar.

Webinar hearing procedures

At the beginning of the webinar, we will mute all public participants. After the introduction and a brief summary of the rulemaking, we will open the hearing to testimony as follows:

- Referencing registration records, we will identify and individually unmute participants who indicated that they plan to testify during the hearing.
- When we exhaust the list, we will ask whether any additional attendees wish to testify. Attendees may raise/lower their hand by clicking the icon in their control panel.
- To ensure that the hearing is prompt and efficient, oral testimony may be time-limited.

Before the hearing concludes, we will announce an additional opportunity to submit written comments and the associated deadline.

Webinar audio requirements

Please be advised: we strongly encourage attendees to join the webinar through their computer even if they use their telephone to dial in for audio. To testify during the hearing, it is best to use your computer microphone and speakers or a headset. As outlined above, we will first receive testimony from attendees whose registration indicates that they plan to provide testimony and then we will offer attendees the option to raise their hand. If you access the webinar only by telephone, you may not appear in our webinar attendee list meaning we may not be able to unmute you. Moreover, the raise your hand feature is only available to attendees who access the webinar by computer.

Audio recording

After the hearing concludes, a recording will be available on our audio broadcasts page here: https://www.sos.state.co.us/pubs/info_center/audioBroadcasts.html.

VII. Office contact

If you have any questions or would like to submit written comments, please contact the Department Rulemaking Program Manager at SoS.Rulemaking@sos.state.co.us or (303) 894-2200 ext. 6329.

Dated this 15th Day of October, 2020.

Ian Rayder
Deputy Secretary of State

For

Jena Griswold
Colorado Secretary of State



Draft Statement of Basis, Purpose, and Specific Statutory Authority

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

October 15, 2020

I. Basis and Purpose

This statement explains amendments to the Colorado Secretary of State Notary Program Rules. The purpose of the changes is to ensure the uniform and proper administration, implementation, and enforcement of the Colorado Revised Uniform Law On Notarial Acts (RULONA)¹ and to answer questions arising under the Act. Specifically, the changes include:

- New Rule 2.1.1 clarifies that a notary commission applicant must provide their legal name on applications and renewals.
- Amendments to Rules 3.3.2 and 3.3.3 establish that a certificate of successful completion of an approved course of instruction expires 90 days from the date of issuance.
- Recodification and permanent adoption of New Rule 5 concerning remote notarization to implement Senate Bill 20-096.
 - Proposed New Rule 5.3.1 concerns Provider Protocols that are incorporated by reference. A working draft of the Provider Protocols is posted online at https://www.sos.state.co.us/pubs/rule_making/hearings/2020/NotaryRulesHearing20201116.html. We invite review and comment on the Provider Protocols in addition to the preliminary draft notary rules.

II. Rulemaking Authority

The statutory authority is as follows:

- Section 24-21-527(1)(a), C.R.S., (2020), which authorizes the Secretary of State to “[p]rescribe the manner of performing notarial acts regarding tangible and electronic records[.]”

¹ Article 21, Title 24 of the Colorado Revised Statutes.

- Section 24-21-527(1)(c), C.R.S., (2020), which authorizes the Secretary of State to “[i]nclude provisions to ensure integrity in the creation, transmittal, storage, or authentication of electronic records or signatures[.]”
- Section 24-21-527(1)(e), C.R.S., (2020), which authorizes the Secretary of State to “[i]nclude provisions to prevent fraud or mistake in the performance of notarial acts[.]”
- Section 24-21-527(1)(g), C.R.S., (2020), which authorizes the Secretary of State to “[p]rescribe the manner of performing notarial acts using audio-video communication technology, including provisions to ensure the security, integrity, and accessibility of records relating to those acts[.]”
- Section 24-21-527(1)(h), C.R.S., (2020), which authorizes the Secretary of State to “[p]rescribe requirements for the approval and use of remote notarization systems and storage systems.”

Preliminary Draft of Proposed Rules

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

October 15, 2020

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.¹

This is a preliminary draft of the proposed rules that may be revised before the November 16, 2020 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 November 11, 2020.²

Please note the following formatting key:

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

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

2 *[New Rule 2.1.1]*

3 2.1.1 AN APPLICANT MUST PUT HIS OR HER LEGAL NAME ON APPLICATIONS AND RENEWALS. THE FIRST
4 AND LAST NAME MUST MATCH THE NAME ON THE APPLICANT'S GOVERNMENT-ISSUED
5 IDENTIFICATION. IF THE LAST NAME ON THE IDENTIFICATION CONTAINS MORE THAN ONE NAME, THE
6 APPLICANT MUST INCLUDE ALL OF THOSE NAMES IN THE LAST NAME FIELD ON THE APPLICATION
7 AND NOT ABBREVIATE ANY PART.

8 *[Not shown: current Rules 2.1.1 through 2.1.6 are renumbered as Rules 2.1.2 through 2.1.7]*

9 *[New Rule 2.3]*

10 2.3 COMMUNICATION

11 2.3.1 A NOTARY PUBLIC MUST BE ABLE TO COMMUNICATE DIRECTLY WITH, BE UNDERSTOOD BY, AND
12 UNDERSTAND THE INDIVIDUAL FOR WHOM THE NOTARY PUBLIC IS PERFORMING A NOTARIAL ACT.

¹ Sections 24-4-103(2.5) and (3)(a), C.R.S. (2020). A draft must be submitted to the Department at the time that a notice of proposed rulemaking is filed with the Secretary of State.

² Section 24-4-103(4)(a), C.R.S. (2020). "[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 2.3.2 A NOTARY PUBLIC MAY NOT USE A TRANSLATOR OR TRANSLATOR SERVICES TO COMMUNICATE
2 WITH THE INDIVIDUAL FOR WHOM THE NOTARY PUBLIC IS PERFORMING A NOTARIAL ACT. THIS
3 PROHIBITION APPLIES TO ALL METHODS OF NOTARIZATION, INCLUDING ELECTRONIC AND REMOTE
4 NOTARIZATION, AUTHORIZED BY THE REVISED UNIFORM LAW ON NOTARIAL ACTS (TITLE 24,
5 ARTICLE 24, PART 5, C.R.S.).

6 *[Current Rule 3.3.2 is amended.]*

7 3.3.2 A certificate of successful completion of an approved course of instruction expires ~~six~~
8 ~~months~~ 90 DAYS from the date of issuance.

9 *[Current Rule 3.3.3 is amended.]*

10 3.3.3 The certificate of proof of successful completion of an approved course of instruction must
11 contain:

- 12 (a) The name of the vendor or course provider who provided the course;
- 13 (b) The name of the person who completed the course;
- 14 (c) The date of completion of the course;
- 15 (d) The statement, "This certificate of proof of completion is valid for a period of ~~six~~
16 ~~months~~ 90 DAYS from the date of issuance."; and
- 17 (e) For vendors, the seal of accreditation.

18 *[Current temporary Rule 5 concerning remote notarization is re-codified as follows:]*

19 **Rule 5 – Remote Notarization**

20 5.1 Definitions

21 As used in ~~these Rules~~ THE REVISED UNIFORM LAW ON NOTARIAL ACTS (TITLE 24, ARTICLE 21, PART
22 5, C.R.S.) AND THIS RULE 5, unless otherwise stated:

23 *[Temporary Rule 5.1.1 is repealed because the definition of "Audio-video communication" is*
24 *codified in section 24-21-502(1.3), C.R.S.]*

25 ~~5.1.1 "Audio-video communication" means communication by which an individual is able to~~
26 ~~see, hear, and communicate with a remotely located individual in real time using~~
27 ~~electronic means.~~

28 *[Temporary Rule 5.1.2 is repealed because the definition of "Outside the United States" is*
29 *codified in section 24-21-514.5(1)(c), C.R.S.]*

30 ~~5.1.2 "Outside the United States" means a location outside the geographic boundaries of the~~
31 ~~United States, Puerto Rico, the United States Virgin Islands, and any territory or insular~~
32 ~~possession subject to the jurisdiction of the United States.~~

33 *[Temporary Rule 5.1.3 is repealed because the definition of "Real-time" or "in real time" is codified*
34 *in section 24-21-502(10.5), C.R.S.]*

35 ~~5.1.3 "Real time" or "in real time" means, with respect to an interaction between individuals by~~
36 ~~means of audio-video communication, that the individuals can see and hear each other~~

1 ~~substantially simultaneously and without interruption or disconnection. Delays of a few~~
2 ~~seconds that are inherent in the method of communication do not prevent the interaction~~
3 ~~from being considered to have occurred in real time.~~

4 *[Temporary Rule 5.1.4 is repealed because the definition of “Remotely located individual” is*
5 *codified in section 24-21-502(11.3), C.R.S.]*

6 5.1.4 ~~“Remotely located individual” means an individual who is not in the physical presence of~~
7 ~~the notary public who performs a notarial act under this Rule 5.~~

8 *[Temporary Rule 5.1.5 is repealed because the definition of “Remote notarization” is codified in*
9 *section 24-21-502(11.5), C.R.S.]*

10 5.1.5 ~~“Remote notarization” means an electronic notarial act performed with respect to a record~~
11 ~~by means of real-time audio-video communication in accordance with Rule 5.~~

12 *[Temporary Rule 5.1.6 is repealed because the definition of “Remote notarization system” is*
13 *codified in section 24-21-502(11.7), C.R.S.]*

14 5.1.6 ~~“Remote notarization system” means any electronic device or process that allows a~~
15 ~~notary public and a remotely located individual to communicate with each other~~
16 ~~simultaneously by sight and sound such as mainstream videoconferencing technologies,~~
17 ~~including those in phone application form, that will record the entire communication.~~

18 *[Temporary Rule 5.1.7 is repealed because the definition of “Remote presentation” is codified in*
19 *section 24-21-514.5(1)(e), C.R.S.]*

20 5.1.7 ~~“Remote presentation” means the transmission to the notary public through the devices~~
21 ~~or processes referenced in Rule 5.1.6 of an image of a government-issued identification~~
22 ~~that is sufficient quality to enable the notary public to identify the remotely located~~
23 ~~individual seeking the notary public’s services.~~

24 *[Proposed permanent definitions]*

25 5.1.1 “PERSONAL INFORMATION” MEANS ANY INFORMATION OR DATA THAT IS COLLECTED OR USED IN
26 ORDER TO COMPLETE THE TRANSACTION SUBJECT TO REMOTE NOTARIZATION OR IN THE REMOTE
27 NOTARIZATION ITSELF. THE TERM IS NOT LIMITED TO DATA INCLUDED IN THE ELECTRONIC
28 RECORD THAT IS BEING REMOTELY NOTARIZED.

29 5.1.2 “PROVIDER” REFERS COLLECTIVELY TO BOTH REMOTE NOTARIZATION SYSTEM PROVIDERS AND
30 REMOTE NOTARIZATION STORAGE PROVIDERS.

31 5.1.3 “REMOTE NOTARIZATION SYSTEM PROVIDER” MEANS A BUSINESS ENTITY THAT PROVIDES A
32 REMOTE NOTARIZATION SYSTEM, AS DEFINED IN SECTION 24-21-502(11.7), C.R.S., THAT
33 INCLUDES STORAGE OF BOTH THE NOTARIZED ELECTRONIC RECORDS AND THE AUDIO-VIDEO
34 RECORDINGS REQUIRED BY SECTION 24-21-514.5(9)(A), C.R.S.

35 5.1.4 “REMOTE NOTARIZATION STORAGE PROVIDER” MEANS A BUSINESS ENTITY THAT SOLELY PROVIDES
36 STORAGE OF NOTARIZED ELECTRONIC RECORDS AND THE AUDIO-VIDEO RECORDINGS REQUIRED
37 BY SECTION 24-21-514.5(9)(A), C.R.S.

38 5.2 ~~Requirements to perform remote notarization~~

39 *[Temporary Rule 5.2.1 is repealed because section 24-21-514.5(2)(a), C.R.S., outlines location*
40 *requirements for whom a notary public may perform a remote notarization.]*

1 ~~5.2.1 A notary public may perform a remote notarization only for a remotely located individual~~
2 ~~who is located in the state of Colorado.~~

3 *[Temporary Rule 5.2.2 repealed because exclusions are codified in section 24-21-514.5(2)(b),*
4 *C.R.S.]*

5 ~~5.2.2 Exclusions~~

6 ~~A notary public must not use a remote notarization system to notarize:~~

7 ~~(a) A record relating to the electoral process; or~~

8 ~~(b) A will as defined under section 15-10-201(59), C.R.S., except as required in~~
9 ~~accordance with 5.2.9(c).~~

10 *[Temporary Rule 5.2.3 is repealed because remote notary requirements are codified in section*
11 *24-21-514.5(3), C.R.S.]*

12 ~~5.2.3 A notary public who performs a notarial act for a remotely located individual by means of~~
13 ~~audio-video communication must be currently commissioned in the state of Colorado and~~
14 ~~located in the state of Colorado at the time the notarial act is performed.~~

15 *[Temporary Rule 5.2.4 is repealed because remote notarization system requirements are codified*
16 *in section 24-21-514.5(5), C.R.S.]*

17 ~~5.2.4 The remote notarization system used to perform remote notarizations must be sufficient~~
18 ~~to:~~

19 ~~(a) Enable the notary public to verify the identity of the remotely located individual and~~
20 ~~any required witness by means of personal knowledge or satisfactory evidence of~~
21 ~~identity;~~

22 ~~(b) Enable the notary public to verify that the notary public, the remotely located~~
23 ~~individual, and any required witness are viewing the same record and that all~~
24 ~~signatures, changes, and attachments to the record made by the remotely located~~
25 ~~individual and any required witness are made in real time; and~~

26 ~~(c) Record the interaction such that the verifications may be clearly viewed at a later~~
27 ~~date.~~

28 *[Temporary Rule 5.2.5 is repealed because requirements for ensuring satisfactory evidence of*
29 *identity are codified in section 24-21-514.5(6), C.R.S.]*

30 ~~5.2.5 Requirements for ensuring satisfactory evidence of identity~~

31 ~~(a) A notary must determine from personal knowledge or satisfactory evidence that~~
32 ~~the remotely located individual appearing before the notary public by means of~~
33 ~~audio-video communication is the individual that he or she claims to be.~~

34 ~~(b) A notary public has satisfactory evidence of identity if the notary public can~~
35 ~~identify the remotely located individual by means of audio-video communication~~
36 ~~by using at least one of the following methods:~~

37 ~~(1) The oath or affirmation of a credible witness who personally knows the~~
38 ~~remotely located individual, is personally known to the notary public or~~

1 presents evidence of identity with government-issued identification as
2 required by section 24-21-507, C.R.S., and is in the physical presence of
3 the notary public or the remotely located individual;

4 (2) — Remote presentation of a government-issued identification and the data
5 contained on the identification of the remotely located individual as
6 required by section 24-21-507, C.R.S..

7 *[Temporary Rule 5.2.6 is repealed because it duplicates section 24-21-514.5(7), C.R.S.]*

8 5.2.6 — Consistent with section 24-21-508, C.R.S., a notary public may refuse to perform a
9 notarial act under Rule 5 if the notary public is not satisfied that the requirements of this
10 Rule 5 are met.

11 *[Temporary Rule 5.2.7 is repealed because it duplicates section 24-21-514.5(8), C.R.S.]*

12 5.2.7 — The certificate of notarial act for a remote notarization must, in addition to complying with
13 the requirements of section 24-21-515, C.R.S., indicate that the notarial act was
14 performed using audio-video technology.

15 *[Temporary Rule 5.2.8 is repealed because requirements for audio-video recording are codified in*
16 *section 24-21-514.5(9), C.R.S.]*

17 5.2.8 — Requirements for audio-video recording

18 (a) — A notary public must create an audio-video recording of a remote notarization
19 and must:

20 (1) — first disclose to the remotely located individual the fact of the recording
21 and the details of its intended storage, including where and for how long
22 it will be stored;

23 (2) — Ensure that the remotely located individual explicitly consents to both the
24 recording and the storage of the recording; and

25 (3) — Securely store the recording for a period of ten years in compliance with
26 section 24-21-519, C.R.S..

27 (b) — The notary must make a good faith effort to only include the information required
28 in Rule 5.2.8(c).

29 (c) — The audio-video recording must contain :

30 (1) — At the beginning of the recording, a recitation by the notary public
31 sufficient to identify the notarial act including:

32 (A) — The name of the notary public;

33 (B) — The date and time of the notarial act;

34 (C) — A description of the document or documents to which the notarial
35 act relates;

36 (D) — The identity of the remotely located individual whose signature
37 will be the subject of the notarial act;

- 1 (E) — The identity of any person who will act as a credible witness, if
2 required, to identify the signer; and
- 3 (F) — The method or methods by which the remotely located individual
4 and any witness, if required, will be identified to the notary public.
- 5 (2) — A declaration by the remotely located individual that his or her actions
6 before the notary public are knowingly and voluntarily made;
- 7 (3) — If the remotely located individual for whom the notarial act is being
8 performed is identified by personal knowledge, an explanation by the
9 notary public as to how the notary public knows the remotely located
10 individual and for how long;
- 11 (4) — If the remotely located individual is identified by a credible witness:
- 12 (A) — A statement by the notary public as to how the notary public
13 knows the credible witness and for how long the notary public
14 has known the credible witness or evidence of identity using
15 government-issued identification as required by section 24-21-
16 507, C.R.S.; and
- 17 (B) — An explanation by the credible witness as to how the credible
18 witness knows the remotely located individual;
- 19 (5) — Any other statements, acts, and conduct necessary to perform the
20 requested notarial act.
- 21 (d) — The provisions of section 24-21-519, C.R.S., that relate to the security,
22 inspection, copying, retention, and disposition of a notary public's journal apply
23 equally to the security, inspection, copying, retention, and disposition of audio-
24 video recordings required by this section.

25 *[Temporary Rule 5.2.9 is repealed]*

26 5.2.9 — Transmittal of record to be notarized

- 27 (a) — After the notary public performs the notarial act, the remotely located individual
28 must transmit a legible copy of the record by fax, email, or other electronic
29 means directly to the notary on the same date that the act took place; and
- 30 (b) — The notary public must notarize the transmitted copy of the document as soon as
31 received and transmit the same back to the person.
- 32 (c) — If the record is a will, as defined under section 15-10-201(59) C.R.S.:
- 33 (1) — The original signed record must be presented to the notary public within
34 15 calendar days of the date of the remote notarization; and
- 35 (2) — Within three calendar days of receiving the signed record, the notary
36 public must confirm that such record is identical to the record remotely
37 notarized under Rule 5.2, and, if so, affix the notary public's signature
38 and seal on to the original signed record, reflecting the date of the
39 remote notarization.

1 FIRST. NO MORE THAN 90 DAYS BEFORE RENEWING HIS OR HER REMOTE NOTARY
2 STATUS, THE REMOTE NOTARY PUBLIC MUST SUCCESSFULLY COMPLETE THE RENEWAL
3 TRAINING, PASS THE REQUIRED EXAM, AND PAY THE REQUIRED FEE.

4 (E) IN APPLYING TO BECOME A REMOTE NOTARY PUBLIC OR UPON RENEWAL, THE INDIVIDUAL
5 MUST SELECT AN APPROVED REMOTE NOTARIZATION SYSTEM PROVIDER.

6 5.2.2 APPROVED COURSE OF INSTRUCTION/EXAMINATION

7 (A) THE SECRETARY WILL PROVIDE A REMOTE NOTARIZATION TRAINING COURSE AND
8 EXAMINATION.

9 (B) IF THE SECRETARY DETERMINES THAT THERE IS A NEED FOR ADDITIONAL INSTRUCTORS,
10 THE SECRETARY MAY DESIGNATE A THIRD-PARTY TRAINING COURSE OR APPOINT
11 CERTIFIED NOTARY PUBLIC INSTRUCTORS TO ADMINISTER THE REMOTE TRAINING
12 COURSE AND TESTING FOR APPLICANTS.

13 5.2.3 REQUIREMENTS FOR REMOTE NOTARY PUBLIC SEAL

14 (A) FORM OF REMOTE NOTARY PUBLIC SEAL AND SIGNATURE

15 (1) A REMOTE NOTARY PUBLIC MUST AFFIX TO AN ELECTRONIC RECORD A SEAL THAT
16 IN BOTH APPEARANCE AND CONTENT MATCHES THE MANUALLY APPLIED OFFICIAL
17 STAMP REQUIRED BY SECTION 24-21-517, C.R.S.

18 (2) THE SIGNATURE USED BY THE REMOTE NOTARY PUBLIC FOR REMOTE
19 NOTARIZATIONS MUST MATCH THE SIGNATURE THAT THE REMOTE NOTARY
20 PUBLIC SUBMITTED TO THE SECRETARY OF STATE FOR AND IS ON FILE AS THE
21 NOTARY'S MOST RECENT UNDERLYING COMMISSION AS A COLORADO NOTARY
22 PUBLIC. THIS IS THE SIGNATURE IDENTIFIED AS THE NOTARY PUBLIC'S "OFFICIAL
23 SIGNATURE" ON THE NOTARY'S MOST RECENT AFFIRMATION FORM OR ON THE
24 NOTARY'S MOST RECENT SIGNATURE CHANGE FORM, WHICHEVER WAS FILED
25 LATER. A REMOTE NOTARY PUBLIC MAY NOT USE THE REMOTE NOTARIZATION
26 APPLICATION OR ANY UPDATE FORM TO CHANGE THE NOTARY'S OFFICIAL
27 SIGNATURE.

28 (B) USE OF AND ACCESS TO REMOTE NOTARY PUBLIC'S SEAL AND SIGNATURE

29 (1) THE REMOTE NOTARY'S SEAL AND SIGNATURE MUST:

30 (A) BE RETAINED UNDER THE REMOTE NOTARY PUBLIC'S SOLE CONTROL
31 AND ACCESS THROUGH THE AUTHENTICATION REQUIRED BY RULE 5.3.3
32 (A)(4).

33 (B) APPEAR AS IMAGES ON ANY VISUAL OR PRINTED REPRESENTATION OF
34 A REMOTE NOTARIAL CERTIFICATE REGARDLESS OF THE TECHNOLOGY
35 BEING USED TO AFFIX THE IMAGES; AND

36 (C) BE ATTACHED OR LOGICALLY ASSOCIATED WITH BOTH THE ELECTRONIC
37 RECORD BEING NOTARIZED AND THE CERTIFICATE OF NOTARIAL ACT
38 BEING AFFIXED AND LINKED SUCH THAT ANY SUBSEQUENT ALTERATION
39 TO EITHER ITEM IS OBSERVABLE THROUGH VISUAL EXAMINATION, I.E.,
40 THE DOCUMENT MUST BE RENDERED TAMPER-EVIDENT.

- 1 (2) A REMOTE NOTARY PUBLIC'S EMPLOYER, INCLUDING THE EMPLOYER'S
2 EMPLOYEES AND AGENTS, MUST NOT USE OR PERMIT THE USE OF A REMOTE
3 NOTARY'S SEAL OR SIGNATURE BY ANYONE EXCEPT THE REMOTE NOTARY
4 PUBLIC.
- 5 (3) ON RESIGNATION FROM OR THE REVOCATION OF THE NOTARY PUBLIC'S
6 COMMISSION OR ON THE DEATH OR ADJUDICATION OF INCOMPETENCY OF THE
7 NOTARY PUBLIC, THE NOTARY OR THAT NOTARY'S PERSONAL REPRESENTATIVE
8 OR GUARDIAN MUST DELETE THE NOTARY'S SEAL AND SIGNATURE FROM THE
9 REMOTE NOTARY SYSTEM PROVIDER'S SYSTEM.
- 10 5.2.4 JOURNAL TO RECORD REMOTE NOTARIZATIONS
- 11 (A) IN ADDITION TO THE JOURNAL INFORMATION REQUIRED BY SECTION 24-21-519(3),
12 C.R.S., THE REMOTE NOTARY PUBLIC MUST RECORD THE NAME OF THE REMOTE
13 NOTARIZATION SYSTEM PROVIDER USED FOR EACH REMOTE NOTARIZATION.
- 14 (B) THE REMOTE NOTARY PUBLIC MUST RETAIN HIS OR HER ELECTRONIC JOURNAL UNDER
15 THE REMOTE NOTARY PUBLIC'S SOLE CONTROL AND ACCESS AND ALL OTHER
16 REQUIREMENTS OF SECTION 24-21-519, C.R.S. APPLY.
- 17 (C) THE ELECTRONIC JOURNAL MUST BE SECURELY BACKED UP AND BE TAMPER-EVIDENT.
- 18 (D) ON RESIGNATION FROM OR THE REVOCATION OF THE NOTARY PUBLIC'S COMMISSION OR
19 ON THE DEATH OR ADJUDICATION OF INCOMPETENCY OF THE NOTARY PUBLIC, THE
20 NOTARY OR THAT NOTARY'S PERSONAL REPRESENTATIVE OR GUARDIAN WITH
21 KNOWLEDGE OF THE EXISTENCE OF OR KNOWINGLY IN POSSESSION OF THE REMOTE
22 NOTARIZATION JOURNAL AND RECORDINGS MUST RETAIN OR DISPOSE OF THE JOURNAL
23 AND THE AUDIO-VIDEO RECORDINGS IN ACCORDANCE WITH SECTIONS 24-21-514.5(9)(C)
24 AND 24-21-519, C.R.S. ONLY REMOTE NOTARIZATION SYSTEM PROVIDERS AND REMOTE
25 NOTARIZATION STORAGE PROVIDERS THAT HAVE BEEN APPROVED BY THE SECRETARY
26 OF STATE MAY STORE AUDIO-VIDEO RECORDINGS.
- 27 5.2.5 A REMOTE NOTARY PUBLIC MUST STOP THE REMOTE NOTARIZATION PROCESS AND RESTART FROM
28 THE BEGINNING IF:
- 29 (A) THE REMOTELY LOCATED INDIVIDUAL OR THE REMOTE NOTARY PUBLIC MUST EXIT THE
30 REMOTE NOTARIZATION SYSTEM BEFORE COMPLETION OF THE NOTARIAL ACT;
- 31 (B) THE AUDIO OR VISUAL FEED IS INTERRUPTED OR TERMINATED; OR
- 32 (C) THE RESOLUTION OR QUALITY OF THE TRANSMISSION BECOMES SUCH THAT THE REMOTE
33 NOTARY PUBLIC BELIEVES THE PROCESS HAS BEEN COMPROMISED AND CANNOT BE
34 COMPLETED.
- 35 5.2.6 A REMOTE NOTARY PUBLIC HAS AN ONGOING DUTY TO VERIFY THAT EACH REMOTE NOTARY
36 PROVIDER USED HAS ACTIVE STATUS WITH THE SECRETARY OF STATE'S OFFICE AT THE TIME OF
37 A REMOTE NOTARIZATION.
- 38 5.2.7 IN ACCORDANCE WITH SECTION 24-21-529(2), C.R.S., A REMOTE NOTARY MAY CHARGE A FEE,
39 NOT TO EXCEED TEN DOLLARS, FOR THE NOTARY'S ELECTRONIC SIGNATURE.
- 40 5.2.8 A REMOTE NOTARY PUBLIC MUST NOTIFY THE SECRETARY OF STATE IN WRITING THROUGH THE
41 SECRETARY OF STATE'S ONLINE SYSTEM WITHIN 30 DAYS AFTER CHANGING A REMOTE
42 NOTARIZATION SYSTEM PROVIDER OR REMOTE NOTARIZATION STORAGE PROVIDER.

- 1 (A) A PROVIDER MUST SUBMIT THE APPROVED APPLICATION FORM AND RECEIVE APPROVAL
2 FROM THE SECRETARY OF STATE BEFORE THE PROVIDER CAN PROVIDE SERVICES TO A
3 COLORADO REMOTE NOTARY PUBLIC.
- 4 (B) THE APPLICANT MUST PROVIDE TO THE SECRETARY OF STATE IN ITS APPLICATION:
- 5 (1) THE CERTIFICATION REQUIRED BY SECTION 24-21-514.5 (11)(A), C.R.S.
- 6 (2) THE FOLLOWING INFORMATION:
- 7 (A) THE NAMES OF ALL BUSINESS ENTITIES AND ANY OF THEIR AFFILIATES
8 THAT WILL HAVE ACCESS TO EITHER PERSONALLY IDENTIFYING
9 INFORMATION AND ANY NON-PERSONALLY IDENTIFYING DATA
10 GATHERED DURING THE REMOTE NOTARIZATION PROCESS AND
11 PROCEDURES; AND
- 12 (B) A COPY OF THE DATA PRIVACY POLICY PROVIDED TO USERS, WHICH
13 CLEARLY SPECIFIES THE PERMISSIBLE USES FOR BOTH PERSONALLY
14 IDENTIFYING AND NON-PERSONALLY IDENTIFYING DATA.
- 15 (3) ALL DATA AND TECHNOLOGY SPECIFICS REQUIRED IN THE APPLICATION AND
16 SET FORTH IN THE PROVIDER PROTOCOLS UNDER RULE 5.3.1.
- 17 (C) AT THE TIME OF APPLICATION, THE APPLICANT MUST BE IN GOOD STANDING STATUS AS A
18 BUSINESS ENTITY REGISTERED TO DO BUSINESS IN COLORADO AND MUST CONTINUE TO
19 MAINTAIN THAT STATUS WHILE PROVIDING REMOTE NOTARIZATION SERVICES TO
20 COLORADO REMOTE NOTARIES PUBLIC.
- 21 (D) THE SECRETARY OF STATE MAY REQUIRE AN APPLICANT TO SUPPLEMENT ITS
22 APPLICATION WITH ADDITIONAL INFORMATION, INCLUDING AN IN-PERSON
23 DEMONSTRATION OR ELECTRONIC DEMONSTRATION OF THE APPLICANT'S SYSTEM.
- 24 (E) THE APPLICANT MUST PAY THE REQUIRED APPLICATION FEE.
- 25 5.3.3 CRITERIA AND STANDARDS FOR APPROVAL OF REMOTE NOTARIZATION SYSTEM PROVIDERS.
- 26 (A) IN ORDER TO BE APPROVED AND MAINTAIN CONTINUING ELIGIBILITY, A REMOTE
27 NOTARIZATION SYSTEM PROVIDER MUST:
- 28 (1) PROVIDE A REMOTE NOTARIZATION SYSTEM THAT COMPLIES WITH THE
29 TECHNICAL SPECIFICATIONS OF THESE RULES AND THE STANDARDS, INCLUDING
30 DATA SECURITY AND INTEGRITY REQUIREMENTS, SET FORTH IN THE SECRETARY
31 OF STATE'S PROVIDER PROTOCOLS UNDER RULE 5.3.1;
- 32 (2) VERIFY THE AUTHORIZATION OF A COLORADO NOTARY PUBLIC TO PERFORM
33 REMOTE NOTARIAL ACTS BEFORE EACH REMOTE NOTARIZATION;
- 34 (3) SUSPEND THE USE OF ITS REMOTE NOTARIZATION SYSTEM FOR ANY REMOTE
35 NOTARY PUBLIC IF THE NOTARY'S UNDERLYING COMMISSION OR THE
36 SECRETARY OF STATE'S APPROVAL OF THE NOTARY PUBLIC TO PERFORM
37 REMOTE NOTARIZATIONS HAS BEEN DENIED, SUSPENDED, OR REVOKED BY THE
38 SECRETARY OR WHEN THE NOTARY HAS RESIGNED; AND
- 39 (4) ENSURE THAT ACCESS TO A REMOTE NOTARY PUBLIC'S SIGNATURE AND SEAL IS
40 LIMITED SOLELY TO THE REMOTE NOTARY PUBLIC AND PROTECTED BY THE USE

- 1 OF A PASSWORD AUTHENTICATION, TOKEN AUTHENTICATION, BIOMETRIC
2 AUTHENTICATION, OR OTHER FORM OF AUTHENTICATION THAT IS DESCRIBED IN
3 THE REMOTE NOTARIZATION SYSTEM PROVIDER'S APPLICATION.
- 4 (5) VERIFY THAT A COLORADO REMOTE NOTARY PUBLIC HAS ACTIVE STATUS WITH
5 THE SECRETARY OF STATE'S OFFICE AT THE TIME OF EACH REMOTE
6 NOTARIZATION.
- 7 (B) COMMUNICATION TECHNOLOGY PROVIDED BY THE REMOTE NOTARIZATION SYSTEM
8 PROVIDER MUST:
- 9 (1) PROVIDE FOR CONTINUOUS, SYNCHRONOUS AUDIO-VISUAL FEEDS;
- 10 (2) PROVIDE SUFFICIENT VIDEO RESOLUTION AND AUDIO CLARITY TO ENABLE THE
11 REMOTE NOTARY PUBLIC AND THE REMOTELY LOCATED INDIVIDUAL TO SEE AND
12 SPEAK TO ONE ANOTHER SIMULTANEOUSLY THROUGH LIVE, REAL TIME
13 TRANSMISSION;
- 14 (3) PROVIDE SUFFICIENT CAPTURED IMAGE RESOLUTION FOR CREDENTIAL
15 ANALYSIS TO BE PERFORMED IN ACCORDANCE WITH SECTION 24-21-
16 514.5(6)(B)(II), C.R.S., AND THIS RULE 5;
- 17 (4) INCLUDE A MEANS OF AUTHENTICATION THAT REASONABLY ENSURES ONLY THE
18 PROPER PARTIES HAVE ACCESS TO THE AUDIO-VIDEO COMMUNICATION;
- 19 (5) BE CAPABLE OF SECURELY CREATING AND STORING OR TRANSMITTING
20 SECURELY TO BE STORED AN ELECTRONIC RECORDING OF THE AUDIO-VIDEO
21 COMMUNICATION, KEEPING CONFIDENTIAL THE QUESTIONS ASKED AS PART OF
22 ANY IDENTITY PROOFING ASSESSMENT, AND THE MEANS AND METHODS USED TO
23 GENERATE THE CREDENTIAL ANALYSIS OUTPUT; AND
- 24 (6) PROVIDE REASONABLE SECURITY MEASURES TO PREVENT UNAUTHORIZED
25 ACCESS TO:
- 26 (A) THE LIVE TRANSMISSION OF THE AUDIO-VIDEO COMMUNICATION;
- 27 (B) A RECORDING OF THE AUDIO-VIDEO COMMUNICATION;
- 28 (C) THE VERIFICATION METHODS AND CREDENTIALS USED TO VERIFY THE
29 IDENTITY OF THE PRINCIPAL; AND
- 30 (D) THE ELECTRONIC RECORDS PRESENTED FOR REMOTE NOTARIZATION.
- 31 (C) CREDENTIAL ANALYSIS PROVIDED BY A REMOTE NOTARIZATION SYSTEM PROVIDER MUST
32 SATISFY THE REQUIREMENTS OF THE SECRETARY OF STATE'S PROVIDER PROTOCOLS
33 UNDER RULE 5.3.1.
- 34 (D) DYNAMIC, KNOWLEDGE-BASED AUTHENTICATION ASSESSMENT, IF SELECTED BY A
35 REMOTE NOTARIZATION SYSTEM PROVIDER AS THE METHOD OF VERIFYING THE IDENTITY
36 OF THE REMOTELY LOCATED INDIVIDUAL PER SECTION 24-21-514.5(6)(B)(II)(A), C.R.S.,
37 MUST SATISFY THE REQUIREMENTS OF THE SECRETARY OF STATE'S PROVIDER
38 PROTOCOLS UNDER RULE 5.3.1.
- 39 (E) PUBLIC KEY CERTIFICATE OR AN IDENTITY VERIFICATION METHOD BY A TRUSTED THIRD
40 PARTY. A REMOTE NOTARIZATION SYSTEM PROVIDER MAY SATISFY SECTION 24-21-

1 514.5(6)(B)(II)(B) OR (C), C.R.S., BY PROVIDING A METHOD OF IDENTIFICATION OF THE
2 REMOTELY LOCATED INDIVIDUAL THAT SATISFIES THE REQUIREMENTS OF THE
3 SECRETARY OF STATE'S PROVIDER PROTOCOLS UNDER RULE 5.3.1.

4 (F) DATA STORAGE AND SECURITY

5 A REMOTE NOTARIZATION SYSTEM PROVIDER MUST PROVIDE A STORAGE SYSTEM THAT
6 COMPLIES WITH THE TECHNICAL SPECIFICATIONS OF THESE RULES AND THE STANDARDS,
7 INCLUDING DATA SECURITY AND INTEGRITY PROTOCOLS, SET FORTH IN THE SECRETARY
8 OF STATE'S PROVIDER PROTOCOLS UNDER RULE 5.3.1.

9 5.3.4 CRITERIA AND STANDARDS FOR APPROVAL OF REMOTE NOTARIZATION STORAGE PROVIDERS

10 IN ORDER TO BE APPROVED AND MAINTAIN CONTINUING ELIGIBILITY, A REMOTE NOTARIZATION
11 STORAGE PROVIDER MUST PROVIDE A STORAGE SYSTEM THAT COMPLIES WITH THE TECHNICAL
12 SPECIFICATIONS OF THESE RULES AND THE STANDARDS, INCLUDING DATA SECURITY AND
13 INTEGRITY PROTOCOLS, SET FORTH IN THE SECRETARY OF STATE'S PROVIDER PROTOCOLS
14 UNDER RULE 5.3.1.

15 5.3.5 NOTIFICATIONS

16 (A) IF A REMOTE NOTARIZATION SYSTEM PROVIDER OR STORAGE PROVIDER BECOMES
17 AWARE OF A POSSIBLE SECURITY BREACH INVOLVING ITS DATA, THE PROVIDER MUST GIVE
18 NOTICE TO BOTH THE SECRETARY OF STATE AND EACH COLORADO REMOTE NOTARY
19 PUBLIC USING ITS SERVICES NO LATER THAN THIRTY DAYS AFTER THE DATE OF
20 DETERMINATION THAT A SECURITY BREACH OCCURRED. THE PROVIDER MUST COMPLY
21 WITH ANY OTHER NOTIFICATION REQUIREMENTS OF COLORADO'S DATA PRIVACY LAWS.

22 (B) NO LATER THAN 30 DAYS BEFORE MAKING CHANGES TO THE REMOTE NOTARIZATION
23 SYSTEM OR STORAGE SYSTEM USED BY COLORADO REMOTE NOTARIES, A PROVIDER
24 MUST BOTH REQUEST APPROVAL FROM THE SECRETARY OF STATE AND NOTIFY EACH
25 COLORADO REMOTE NOTARY PUBLIC USING ITS SERVICES. CHANGES TO THE SYSTEM OR
26 STORAGE MUST CONFORM TO STATUTORY AND RULE REQUIREMENTS.

27 (C) FOR NON-SYSTEM OR STORAGE-RELATED CHANGES TO THE PROVIDER'S INFORMATION
28 ON FILE WITH THE SECRETARY OF STATE, THE PROVIDER MUST NOTIFY AND UPDATE
29 INFORMATION PROVIDED TO THE SECRETARY OF STATE NO LATER THAN 30 DAYS AFTER
30 CHANGES TO THE PROVIDER'S PREVIOUSLY SUPPLIED INFORMATION. THIS REQUIREMENT
31 INCLUDES CHANGES TO THE DISCLOSURES REQUIRED BY RULE 5.3.2(B)(2).

32 5.3.6 COMPLAINTS. A PERSON MAY FILE A COMPLAINT WITH THE SECRETARY OF STATE AGAINST AN
33 APPROVED PROVIDER. THE COMPLAINT MUST ALLEGE A SPECIFIC VIOLATION OF COLORADO'S
34 REVISED UNIFORM LAW ON NOTARIAL ACTS OR THESE RULES. THE PERSON MUST SUBMIT THE
35 SIGNED AND DATED COMPLAINT ON THE SECRETARY OF STATE'S STANDARD FORM.

36 5.3.7 GROUNDS FOR TERMINATION OF APPROVAL. THE SECRETARY OF STATE MAY TERMINATE
37 APPROVAL OF A PROVIDER FOR ANY OF THE FOLLOWING REASONS:

38 (A) VIOLATION OF ANY PROVISION OF COLORADO'S REVISED UNIFORM LAW ON NOTARIAL
39 ACT OR THESE RULES;

40 (B) MAKING REPRESENTATIONS THAT THE SECRETARY OF STATE ENDORSES, RECOMMENDS,
41 OR MANDATES USE OF ANY OF THE PROVIDER'S PRODUCTS, GOODS, OR SERVICES;

42 (C) IF THE PROVIDER SUSTAINS A DATA BREACH; AND

- 1 (D) FAILURE TO TIMELY RESPOND TO THE SECRETARY OF STATE'S REQUEST FOR
2 INFORMATION OR OTHERWISE COOPERATE WITH AN INVESTIGATION, INCLUDING
3 PROVIDING REQUESTED INFORMATION.
- 4 5.3.8 RIGHT TO APPEAL DENIAL OR TERMINATION OF APPROVAL. IF THE SECRETARY OF STATE DENIES
5 OR PROPOSES TO TERMINATE AN APPROVED PROVIDER'S STATUS, THE PROVIDER HAS THE RIGHT
6 TO REQUEST A HEARING AS PROVIDED IN THE STATE ADMINISTRATIVE PROCEDURE ACT, (ARTICLE
7 4 OF TITLE 24, C.R.S.)
- 8 (A) IF THE PROVIDER DOES NOT REQUEST A HEARING, TERMINATION OF APPROVAL WILL BE
9 EFFECTIVE 30 DAYS AFTER THE MAILING DATE OF THE TERMINATION NOTICE.
- 10 (B) TERMINATION DOES NOT BAR THE SECRETARY OF STATE FROM BEGINNING OR
11 CONTINUING AN INVESTIGATION CONCERNING THE PROVIDER.
- 12 5.4 USE OF PERSONAL INFORMATION
- 13 5.4.1 THE LIMITED EXCEPTIONS IN SECTION 24-21-514.5(11)(C)(I) THROUGH (IV), C.R.S., DO NOT
14 INCLUDE OR AUTHORIZE THE USE OF PERSONAL INFORMATION FOR THE PURPOSE OF
15 GENERATING ADDITIONAL BUSINESS OR MARKETING OPPORTUNITIES BY OR FOR:
- 16 (A) THE REMOTE NOTARY;
- 17 (B) THE REMOTE NOTARY'S EMPLOYER OR ANY BUSINESS FOR WHOM THE REMOTE NOTARY
18 MAY BE PROVIDING CONTRACTED SERVICES; OR
- 19 (C) THE PROVIDER OR ANY OF ITS AFFILIATES.
- 20 5.4.2 SUCH USE IS PROHIBITED AND CANNOT BE WAIVED BY THE EXPLICIT CONSENT REQUIRED
21 SECTION 24-21-514.5(9)(A)(II), C.R.S., OR OTHERWISE.