



## Notice of Temporary & Permanent Adoption

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

December 1, 2020

#### I. Adopted Rule Amendments

As authorized by Colorado Revised Uniform Law on Notarial Acts (RULONA)<sup>1</sup> and the State Administrative Procedure Act<sup>2</sup>, the Colorado Secretary of State gives notice that the following amendments to the Notary Program Rules<sup>3</sup> are adopted on a temporary and permanent basis.

The Secretary of State considered the amendments at the November 16, 2020 rulemaking hearing in accordance with the State Administrative Procedure Act<sup>4</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 and publication notes

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

*[New Rule 2.1.1]*

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

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

*[New Rule 2.3]*

#### 2.3 COMMUNICATION

<sup>1</sup> Article 21 of Title 24, Part 5, C.R.S. (2020).

<sup>2</sup> Section 24-4-103(3)(a), C.R.S. (2020).

<sup>3</sup> 8 CCR 1505-11.

<sup>4</sup> Section 24-4-103(3)(a), C.R.S. (2020).

- 2.3.1 A NOTARY PUBLIC MUST BE ABLE TO COMMUNICATE DIRECTLY WITH, BE UNDERSTOOD BY, AND UNDERSTAND THE INDIVIDUAL FOR WHOM THE NOTARY PUBLIC IS PERFORMING A NOTARIAL ACT.
- 2.3.2 A NOTARY PUBLIC MAY NOT USE A TRANSLATOR OR TRANSLATOR SERVICES TO COMMUNICATE WITH THE INDIVIDUAL FOR WHOM THE NOTARY PUBLIC IS PERFORMING A NOTARIAL ACT. THIS PROHIBITION APPLIES TO ALL METHODS OF NOTARIZATION, INCLUDING ELECTRONIC AND REMOTE NOTARIZATION, AUTHORIZED BY THE REVISED UNIFORM LAW ON NOTARIAL ACTS (TITLE 24, ARTICLE 24, PART 5, C.R.S.).

*[Current Rule 3.3.2 is amended.]*

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

*[Current Rule 3.3.3 is amended.]*

- 3.3.3 The certificate of proof of successful completion of an approved course of instruction must contain:
- (a) The name of the vendor or course provider who provided the course;
  - (b) The name of the person who completed the course;
  - (c) The date of completion of the course;
  - (d) The statement, "This certificate of proof of completion is valid for a period of ~~six months~~ 90 DAYS from the date of issuance."; and
  - (e) For vendors, the seal of accreditation.

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

## **Rule 5. Remote Notarization**

### **5.1 Definitions**

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

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

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

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

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

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

~~5.1.3 “Real time” or “in real time” means, with respect to an interaction between individuals by means of audio-video communication, that the individuals can see and hear each other substantially simultaneously and without interruption or disconnection. Delays of a few seconds that are inherent in the method of communication do not prevent the interaction from being considered to have occurred in real time.~~

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

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

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

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

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

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

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

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

*[Permanently adopted definitions]*

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

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

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

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

~~5.2 Requirements to perform remote notarization~~

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

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

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

~~5.2.2—Exclusions~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) ~~The oath or affirmation of a credible witness who personally knows the remotely located individual, is personally known to the notary public or presents evidence of identity with government-issued identification as required by section 24-21-507, C.R.S., and is in the physical presence of the notary public or the remotely located individual;~~
- (2) ~~Remote presentation of a government-issued identification and the data contained on the identification of the remotely located individual as required by section 24-21-507, C.R.S.;~~

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

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

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

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

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

~~5.2.8 Requirements for audio-video recording~~

- (a) ~~A notary public must create an audio-video recording of a remote notarization and must:~~
  - (1) ~~first disclose to the remotely located individual the fact of the recording and the details of its intended storage, including where and for how long it will be stored;~~
  - (2) ~~Ensure that the remotely located individual explicitly consents to both the recording and the storage of the recording; and~~
  - (3) ~~Securely store the recording for a period of ten years in compliance with section 24-21-519, C.R.S.~~
- (b) ~~The notary must make a good faith effort to only include the information required in Rule 5.2.8(c).~~
- (c) ~~The audio-video recording must contain :~~
  - (1) ~~At the beginning of the recording, a recitation by the notary public sufficient to identify the notarial act including:~~
    - (A) ~~The name of the notary public;~~
    - (B) ~~The date and time of the notarial act;~~
    - (C) ~~A description of the document or documents to which the notarial act relates;~~

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

*[Temporary Rule 5.2.9 is repealed]*

5.2.9 — Transmittal of record to be notarized

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

~~and seal on to the original signed record, reflecting the date of the remote notarization.~~

- ~~(3) — A will of a remotely located testator is not acknowledged in accordance with section 15-11-502(1)(c)(II), C.R.S. unless it is notarized pursuant to all the requirements of 5.2.9(C).~~

*[Temporary Rule 5.3 is repealed because a journal requirement is codified in section 24-21-519(2)(b), C.R.S. Proposed permanent Rule 5.4 that appears later in this draft outlines additional clarification/requirements concerning Journal to record remote notarizations.]*

~~5.3 — A notary public must record all remote notarizations in his or her notary journal.~~

*[Temporary Rule 5.4 is repealed because requirements for a provider of a remote notarization system concerning the use and sale personal information are codified in section 24-21-514.5(11)(c), C.R.S. and replaced by New Rule 5.4 ]*

~~5.4 — Notaries performing remote notarization, mainstream videoconferencing technology companies and remote notarization vendors must not use, sell, or offer to sell to another person or transfer to another person any personal information, including related to the individual or the transaction, obtained under this Rule 5 that pertains to the remotely located individual, a witness to a remote notarization, or an individual named in a record presented for remote notarization, except:~~

~~5.4.1 — As necessary to facilitate performance of a notarial act;~~

~~5.4.2 — To effect, administer, enforce service, or process a record provided by or on behalf of the individual or the transaction of which the record is a part;~~

~~5.4.3 — In accordance with this Rule 5 or other applicable federal, state or local law;~~

~~5.4.4 — To comply with a lawful subpoena or court order; or~~

~~5.4.5 — In connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit of the provider if the personal information concerns only customers or the business or unit and the transferee agrees to comply with the restrictions set forth in this Rule 5.4.~~

*[New permanent Rules 5.2, 5.3, and 5.4:]*

## 5.2 REQUIREMENTS FOR REMOTE NOTARIES

### 5.2.1 APPLICATION

- (A) A NOTARY PUBLIC MUST SUBMIT A NOTICE OF INTENT ON THE APPROVED APPLICATION FORM AND RECEIVE APPROVAL FROM THE SECRETARY OF STATE BEFORE THE NOTARY CAN REMOTELY NOTARIZE A DOCUMENT. THE NOTARY MUST SUBMIT PROOF OF SUCCESSFUL COMPLETION OF REMOTE NOTARIZATION TRAINING AND EXAMINATION AND THE REQUIRED FEE.
- (B) A NOTARY PUBLIC MUST ALREADY BE COMMISSIONED AS A COLORADO NOTARY PUBLIC WITH ACTIVE STATUS TO BE APPROVED AS A REMOTE NOTARY.
- (C) AN INDIVIDUAL MAY FILE THE NOTICE OF INTENT WHEN INITIALLY APPLYING TO BECOME A COLORADO NOTARY PUBLIC BUT MAY ONLY REMOTELY NOTARIZE A DOCUMENT AFTER BEING COMMISSIONED AND APPROVED.

- (D) A REMOTE NOTARY PUBLIC MUST RENEW EVERY FOUR YEARS OR UNTIL HIS OR HER REGULAR NOTARY PUBLIC COMMISSION REQUIRES RENEWAL, WHICHEVER DATE COMES FIRST. NO MORE THAN 90 DAYS BEFORE RENEWING HIS OR HER REMOTE NOTARY STATUS, THE REMOTE NOTARY PUBLIC MUST SUCCESSFULLY COMPLETE THE RENEWAL TRAINING, PASS THE REQUIRED EXAM, AND PAY THE REQUIRED FEE.
- (E) IN APPLYING TO BECOME A REMOTE NOTARY PUBLIC OR UPON RENEWAL, THE INDIVIDUAL MUST SELECT AT LEAST ONE APPROVED REMOTE NOTARIZATION SYSTEM PROVIDER. AN APPLICANT MAY SELECT MULTIPLE APPROVED SYSTEM PROVIDERS.

#### 5.2.2 APPROVED COURSE OF INSTRUCTION/EXAMINATION

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

#### 5.2.3 REQUIREMENTS FOR REMOTE NOTARY PUBLIC SEAL AND ELECTRONIC SIGNATURE

##### (A) FORM OF REMOTE NOTARY PUBLIC SEAL AND ELECTRONIC SIGNATURE

- (1) A REMOTE NOTARY PUBLIC MUST AFFIX TO AN ELECTRONIC RECORD A SEAL THAT IN BOTH APPEARANCE AND CONTENT MATCHES THE MANUALLY APPLIED OFFICIAL STAMP REQUIRED BY SECTION 24-21-517, C.R.S.
- (2) THE ELECTRONIC SIGNATURE USED BY THE REMOTE NOTARY PUBLIC FOR REMOTE NOTARIZATIONS MUST MATCH IN APPEARANCE THE IMAGE OF THE SIGNATURE THAT THE REMOTE NOTARY PUBLIC SUBMITTED TO THE SECRETARY OF STATE FOR AND IS ON FILE AS THE NOTARY'S MOST RECENT UNDERLYING COMMISSION AS A COLORADO NOTARY PUBLIC. THIS IS THE SIGNATURE IDENTIFIED AS THE NOTARY PUBLIC'S "OFFICIAL SIGNATURE" ON THE NOTARY'S MOST RECENT AFFIRMATION FORM OR ON THE NOTARY'S MOST RECENT SIGNATURE CHANGE FORM, WHICHEVER WAS FILED LATER. A REMOTE NOTARY PUBLIC MAY NOT USE THE REMOTE NOTARIZATION APPLICATION OR ANY UPDATE FORM TO CHANGE THE NOTARY'S OFFICIAL SIGNATURE.

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

- (1) THE REMOTE NOTARY'S SEAL AND ELECTRONIC SIGNATURE MUST:
  - (A) BE RETAINED UNDER THE REMOTE NOTARY PUBLIC'S SOLE CONTROL AND ACCESS THROUGH THE AUTHENTICATION REQUIRED BY RULE 5.3.3 (A)(4).
  - (B) APPEAR AS IMAGES ON ANY VISUAL OR PRINTED REPRESENTATION OF A REMOTE NOTARIAL CERTIFICATE REGARDLESS OF THE TECHNOLOGY BEING USED TO AFFIX THE IMAGES; AND
  - (C) BE ATTACHED OR LOGICALLY ASSOCIATED WITH BOTH THE ELECTRONIC RECORD BEING NOTARIZED AND THE CERTIFICATE OF NOTARIAL ACT BEING AFFIXED AND LINKED SUCH THAT ANY SUBSEQUENT ALTERATION TO EITHER ITEM IS OBSERVABLE THROUGH



VISUAL EXAMINATION, I.E., THE DOCUMENT MUST BE RENDERED TAMPER-EVIDENT.

- (2) A REMOTE NOTARY PUBLIC'S EMPLOYER, INCLUDING THE EMPLOYER'S EMPLOYEES AND AGENTS, MUST NOT USE OR PERMIT THE USE OF A REMOTE NOTARY'S SEAL OR ELECTRONIC SIGNATURE BY ANYONE EXCEPT THE REMOTE NOTARY PUBLIC.
- (3) ON RESIGNATION FROM OR THE REVOCATION OF THE NOTARY PUBLIC'S COMMISSION OR ON THE DEATH OR ADJUDICATION OF INCOMPETENCY OF THE NOTARY PUBLIC, THE NOTARY OR THAT NOTARY'S PERSONAL REPRESENTATIVE OR GUARDIAN MUST DELETE THE NOTARY'S SEAL AND ELECTRONIC SIGNATURE FROM THE REMOTE NOTARY SYSTEM PROVIDER'S SYSTEM.

#### 5.2.4 JOURNAL TO RECORD REMOTE NOTARIZATIONS

- (A) IN ADDITION TO THE JOURNAL INFORMATION REQUIRED BY SECTION 24-21-519(3), C.R.S., THE REMOTE NOTARY PUBLIC MUST RECORD THE NAME OF THE REMOTE NOTARIZATION SYSTEM PROVIDER USED FOR EACH REMOTE NOTARIZATION.
- (B) THE REMOTE NOTARY PUBLIC MUST RETAIN HIS OR HER ELECTRONIC JOURNAL UNDER THE REMOTE NOTARY PUBLIC'S SOLE CONTROL AND ACCESS AND ALL OTHER REQUIREMENTS OF SECTION 24-21-519, C.R.S. APPLY.
- (C) THE ELECTRONIC JOURNAL MUST BE SECURELY BACKED UP AND BE TAMPER-EVIDENT.
- (D) ON RESIGNATION FROM OR THE REVOCATION OF THE NOTARY PUBLIC'S COMMISSION OR ON THE DEATH OR ADJUDICATION OF INCOMPETENCY OF THE NOTARY PUBLIC, THE NOTARY OR THAT NOTARY'S PERSONAL REPRESENTATIVE OR GUARDIAN WITH KNOWLEDGE OF THE EXISTENCE OF OR KNOWINGLY IN POSSESSION OF THE REMOTE NOTARIZATION JOURNAL AND RECORDINGS MUST RETAIN OR DISPOSE OF THE JOURNAL AND THE AUDIO-VIDEO RECORDINGS IN ACCORDANCE WITH SECTIONS 24-21-514.5(9)(C) AND 24-21-519, C.R.S. ONLY REMOTE NOTARIZATION SYSTEM PROVIDERS AND REMOTE NOTARIZATION STORAGE PROVIDERS THAT HAVE BEEN APPROVED BY THE SECRETARY OF STATE MAY STORE AUDIO-VIDEO RECORDINGS.

#### 5.2.5 A REMOTE NOTARY PUBLIC MUST STOP AND RESTART THE REMOTE NOTARIZATION PROCESS FROM THE BEGINNING IF:

- (A) THE REMOTELY LOCATED INDIVIDUAL OR THE REMOTE NOTARY PUBLIC MUST EXIT THE REMOTE NOTARIZATION SYSTEM BEFORE COMPLETION OF THE NOTARIAL ACT;
- (B) THE AUDIO OR VISUAL FEED IS INTERRUPTED OR TERMINATED; OR
- (C) THE RESOLUTION OR QUALITY OF THE TRANSMISSION BECOMES SUCH THAT THE REMOTE NOTARY PUBLIC BELIEVES THE PROCESS HAS BEEN COMPROMISED AND CANNOT BE COMPLETED.

#### 5.2.6 A REMOTE NOTARY PUBLIC HAS AN ONGOING DUTY TO VERIFY THAT EACH REMOTE NOTARY PROVIDER USED HAS ACTIVE STATUS WITH THE SECRETARY OF STATE'S OFFICE BEFORE USING THAT PROVIDER'S REMOTE NOTARIZATION SYSTEM TO PERFORM A REMOTE NOTARIZATION. THIS DUTY EXTENDS TO EACH REMOTE NOTARIZATION.

#### 5.2.7 IN ACCORDANCE WITH SECTION 24-21-529(2), C.R.S., A REMOTE NOTARY MAY CHARGE A FEE, NOT TO EXCEED TEN DOLLARS, FOR THE NOTARY'S ELECTRONIC SIGNATURE.

5.2.8 A REMOTE NOTARY PUBLIC MUST NOTIFY THE SECRETARY OF STATE IN WRITING THROUGH THE SECRETARY OF STATE'S ONLINE SYSTEM WITHIN 30 DAYS AFTER CHANGING A REMOTE NOTARIZATION SYSTEM PROVIDER OR REMOTE NOTARIZATION STORAGE PROVIDER.

5.2.9 EXPIRATION OF THE SECRETARY OF STATE'S APPROVAL TO PERFORM REMOTE NOTARIZATIONS:

(A) APPROVAL AUTOMATICALLY EXPIRES:

- (1) UPON REVOCATION, EXPIRATION, OR RESIGNATION OF THE NOTARY'S COMMISSION;
- (2) 30 DAYS AFTER THE NOTARY'S NAME CHANGES UNLESS THE NOTARY PREVIOUSLY SUBMITTED A NAME CHANGE.
- (3) UPON CONVICTION OF A FELONY;
- (4) UPON CONVICTION OF A MISDEMEANOR INVOLVING DISHONESTY;
- (5) IF THE NOTARY NO LONGER HAS A PLACE OF EMPLOYMENT OR PRACTICE OR A RESIDENTIAL ADDRESS IN THE STATE OF COLORADO; OR
- (6) UPON THE REVOCATION OF APPROVAL OF THE REMOTE NOTARIZATION SYSTEM PROVIDER OR THE REMOTE NOTARIZATION STORAGE PROVIDER USED BY THE REMOTE NOTARY PUBLIC UNLESS THE REMOTE NOTARY PUBLIC EITHER NOTIFIED THE SECRETARY OF STATE OF ANOTHER PROVIDER OR ALREADY HAS ALTERNATIVE PROVIDERS ON FILE WITH THE SECRETARY OF STATE AS AUTHORIZED BY RULE 5.2.1(E).

(B) IF APPROVAL EXPIRES, THE REMOTE NOTARY PUBLIC OR THE NOTARY'S AUTHORIZED REPRESENTATIVE MUST DELETE THE NOTARY'S SEAL AND ELECTRONIC SIGNATURE FROM THE REMOTE NOTARY PROVIDER'S SYSTEM AND DISPOSE OF THE JOURNAL AND THE AUDIO-VIDEO RECORDINGS IN ACCORDANCE WITH SECTIONS 24-21-514.5(9)(C) AND 24-21-519, C.R.S. UNLESS WITHIN 30 DAYS OF THE EXPIRATION, THE SECRETARY OF STATE REAPPROVES THE NOTARY.

5.3 REQUIREMENTS FOR PROVIDERS

5.3.1 PROVIDER PROTOCOLS

(A) THE COLORADO SECRETARY OF STATE'S PROVIDER PROTOCOLS (DECEMBER 1, 2020) ARE HEREBY INCORPORATED BY REFERENCE.

- (1) MATERIAL INCORPORATED BY REFERENCE IN THE NOTARY RULES DOES NOT INCLUDE LATER AMENDMENTS OR EDITIONS OF THE INCORPORATED MATERIAL.
- (2) COPIES OF THE MATERIAL INCORPORATED BY REFERENCE MAY BE OBTAINED BY CONTACTING THE COLORADO DEPARTMENT OF STATE, 1700 BROADWAY, SUITE 550, DENVER, CO 80290, (303) 894-2200. COPIES ARE ALSO AVAILABLE ONLINE AT [HTTPS://WWW.SOS.STATE.CO.US/PUBS/NOTARY/HOME.HTML](https://www.sos.state.co.us/pubs/notary/home.html)

(B) ALL PROVIDERS MUST MEET THE REQUIREMENTS OF THE PROVIDER PROTOCOLS.

5.3.2 APPLICATION

- (A) A PROVIDER MUST SUBMIT THE APPROVED APPLICATION FORM AND RECEIVE APPROVAL FROM THE SECRETARY OF STATE BEFORE THE PROVIDER CAN PROVIDE SERVICES TO A COLORADO REMOTE NOTARY PUBLIC.
- (B) THE APPLICANT MUST PROVIDE TO THE SECRETARY OF STATE IN ITS APPLICATION:
  - (1) THE CERTIFICATION REQUIRED BY SECTION 24-21-514.5 (11)(A), C.R.S.
  - (2) THE FOLLOWING INFORMATION:
    - (A) THE NAMES OF ALL BUSINESS ENTITIES AND ANY OF THEIR AFFILIATES THAT WILL HAVE ACCESS TO EITHER PERSONALLY IDENTIFYING INFORMATION AND ANY NON-PERSONALLY IDENTIFYING DATA GATHERED DURING THE REMOTE NOTARIZATION PROCESS AND PROCEDURES; AND
    - (B) A COPY OF THE DATA PRIVACY POLICY PROVIDED TO USERS, WHICH CLEARLY SPECIFIES THE PERMISSIBLE USES FOR BOTH PERSONALLY IDENTIFYING AND NON-PERSONALLY IDENTIFYING DATA.
  - (3) ALL DATA AND TECHNOLOGY SPECIFICS REQUIRED IN THE APPLICATION AND SET FORTH IN THE PROVIDER PROTOCOLS UNDER RULE 5.3.1.
- (C) AT THE TIME OF APPLICATION, THE APPLICANT MUST BE IN GOOD STANDING STATUS AS A BUSINESS ENTITY REGISTERED TO DO BUSINESS IN COLORADO AND MUST CONTINUE TO MAINTAIN THAT STATUS WHILE PROVIDING REMOTE NOTARIZATION SERVICES TO COLORADO REMOTE NOTARIES PUBLIC.
- (D) THE SECRETARY OF STATE MAY REQUIRE AN APPLICANT TO SUPPLEMENT ITS APPLICATION WITH ADDITIONAL INFORMATION, INCLUDING AN IN-PERSON DEMONSTRATION OR ELECTRONIC DEMONSTRATION OF THE APPLICANT'S SYSTEM.
- (E) THE APPLICANT MUST PAY THE REQUIRED APPLICATION FEE.

5.3.3 CRITERIA AND STANDARDS FOR APPROVAL OF REMOTE NOTARIZATION SYSTEM PROVIDERS.

- (A) IN ORDER TO BE APPROVED AND MAINTAIN CONTINUING ELIGIBILITY, A REMOTE NOTARIZATION SYSTEM PROVIDER MUST:
  - (1) PROVIDE A REMOTE NOTARIZATION SYSTEM THAT COMPLIES WITH THE TECHNICAL SPECIFICATIONS OF THESE RULES AND THE STANDARDS, INCLUDING DATA SECURITY AND INTEGRITY REQUIREMENTS, SET FORTH IN THE SECRETARY OF STATE'S PROVIDER PROTOCOLS UNDER RULE 5.3.1;
  - (2) VERIFY THE AUTHORIZATION OF A COLORADO NOTARY PUBLIC TO PERFORM REMOTE NOTARIAL ACTS BEFORE EACH REMOTE NOTARIZATION;
  - (3) SUSPEND THE USE OF ITS REMOTE NOTARIZATION SYSTEM FOR ANY REMOTE NOTARY PUBLIC IF THE NOTARY'S UNDERLYING COMMISSION OR THE SECRETARY OF STATE'S APPROVAL OF THE NOTARY PUBLIC TO PERFORM REMOTE NOTARIZATIONS HAS BEEN DENIED, SUSPENDED, OR REVOKED BY THE SECRETARY OR WHEN THE NOTARY HAS RESIGNED; AND
  - (4) ENSURE THAT ACCESS TO A REMOTE NOTARY PUBLIC'S ELECTRONIC SIGNATURE AND SEAL IS LIMITED SOLELY TO THE REMOTE NOTARY PUBLIC AND PROTECTED BY THE USE OF A PASSWORD AUTHENTICATION, TOKEN

AUTHENTICATION, BIOMETRIC AUTHENTICATION, OR OTHER FORM OF AUTHENTICATION THAT IS DESCRIBED IN THE REMOTE NOTARIZATION SYSTEM PROVIDER'S APPLICATION.

- (5) VERIFY THAT A COLORADO REMOTE NOTARY PUBLIC HAS ACTIVE STATUS WITH THE SECRETARY OF STATE'S OFFICE AT THE TIME OF EACH REMOTE NOTARIZATION.
- (B) COMMUNICATION TECHNOLOGY PROVIDED BY THE REMOTE NOTARIZATION SYSTEM PROVIDER MUST:
- (1) PROVIDE FOR CONTINUOUS, SYNCHRONOUS AUDIO-VISUAL FEEDS;
  - (2) PROVIDE SUFFICIENT VIDEO RESOLUTION AND AUDIO CLARITY TO ENABLE THE REMOTE NOTARY PUBLIC AND THE REMOTELY LOCATED INDIVIDUAL TO SEE AND SPEAK TO ONE ANOTHER SIMULTANEOUSLY THROUGH LIVE, REAL TIME TRANSMISSION;
  - (3) PROVIDE SUFFICIENT CAPTURED IMAGE RESOLUTION FOR CREDENTIAL ANALYSIS TO BE PERFORMED IN ACCORDANCE WITH SECTION 24-21-514.5(6)(B)(II), C.R.S., AND THIS RULE 5;
  - (4) INCLUDE A MEANS OF AUTHENTICATION THAT REASONABLY ENSURES ONLY THE PROPER PARTIES HAVE ACCESS TO THE AUDIO-VIDEO COMMUNICATION;
  - (5) BE CAPABLE OF SECURELY CREATING AND STORING OR TRANSMITTING SECURELY TO BE STORED AN ELECTRONIC RECORDING OF THE AUDIO-VIDEO COMMUNICATION, KEEPING CONFIDENTIAL THE QUESTIONS ASKED AS PART OF ANY IDENTITY PROOFING ASSESSMENT, AND THE MEANS AND METHODS USED TO GENERATE THE CREDENTIAL ANALYSIS OUTPUT; AND
  - (6) PROVIDE REASONABLE SECURITY MEASURES TO PREVENT UNAUTHORIZED ACCESS TO:
    - (A) THE LIVE TRANSMISSION OF THE AUDIO-VIDEO COMMUNICATION;
    - (B) A RECORDING OF THE AUDIO-VIDEO COMMUNICATION;
    - (C) THE VERIFICATION METHODS AND CREDENTIALS USED TO VERIFY THE IDENTITY OF THE PRINCIPAL; AND
    - (D) THE ELECTRONIC RECORDS PRESENTED FOR REMOTE NOTARIZATION.
- (C) CREDENTIAL ANALYSIS PROVIDED BY A REMOTE NOTARIZATION SYSTEM PROVIDER MUST SATISFY THE REQUIREMENTS OF THE SECRETARY OF STATE'S PROVIDER PROTOCOLS UNDER RULE 5.3.1.
- (D) DYNAMIC, KNOWLEDGE-BASED AUTHENTICATION ASSESSMENT, IF SELECTED BY A REMOTE NOTARIZATION SYSTEM PROVIDER AS THE METHOD OF VERIFYING THE IDENTITY OF THE REMOTELY LOCATED INDIVIDUAL PER SECTION 24-21-514.5(6)(B)(II)(A), C.R.S., MUST SATISFY THE REQUIREMENTS OF THE SECRETARY OF STATE'S PROVIDER PROTOCOLS UNDER RULE 5.3.1.
- (E) PUBLIC KEY CERTIFICATE OR AN IDENTITY VERIFICATION METHOD BY A TRUSTED THIRD PARTY. A REMOTE NOTARIZATION SYSTEM PROVIDER MAY SATISFY SECTION 24-21-514.5(6)(B)(II)(B) OR (C), C.R.S., BY PROVIDING A METHOD OF IDENTIFICATION OF THE

REMOTELY LOCATED INDIVIDUAL THAT SATISFIES THE REQUIREMENTS OF THE SECRETARY OF STATE'S PROVIDER PROTOCOLS UNDER RULE 5.3.1.

(F) DATA STORAGE AND SECURITY

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

5.3.4 CRITERIA AND STANDARDS FOR APPROVAL OF REMOTE NOTARIZATION STORAGE PROVIDERS

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

5.3.5 NOTIFICATIONS

(A) IF A REMOTE NOTARIZATION SYSTEM PROVIDER OR STORAGE PROVIDER BECOMES AWARE OF A POSSIBLE SECURITY BREACH INVOLVING ITS DATA, THE PROVIDER MUST GIVE NOTICE TO BOTH THE SECRETARY OF STATE AND EACH COLORADO REMOTE NOTARY PUBLIC USING ITS SERVICES NO LATER THAN 30 DAYS AFTER THE DATE OF DETERMINATION THAT A SECURITY BREACH OCCURRED. THE PROVIDER MUST COMPLY WITH ANY OTHER NOTIFICATION REQUIREMENTS OF COLORADO'S DATA PRIVACY LAWS.

(B) NO LATER THAN 30 DAYS BEFORE MAKING ANY CHANGES TO THE REMOTE NOTARIZATION SYSTEM OR STORAGE SYSTEM USED BY COLORADO REMOTE NOTARIES THAT WOULD IMPACT ANY PREVIOUSLY PROVIDED ANSWER IN ITS APPLICATION ABOUT ITS SYSTEM THAT WOULD AFFECT THE PROVIDER'S ELIGIBILITY FOR APPROVAL, A PROVIDER MUST BOTH REQUEST APPROVAL FROM THE SECRETARY OF STATE AND NOTIFY EACH COLORADO REMOTE NOTARY PUBLIC USING ITS SERVICES. CHANGES TO THE SYSTEM OR STORAGE MUST CONFORM TO STATUTORY AND RULE REQUIREMENTS.

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

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

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

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

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

- (C) IF THE PROVIDER SUSTAINS A DATA BREACH; AND
- (D) FAILURE TO TIMELY RESPOND TO THE SECRETARY OF STATE'S REQUEST FOR INFORMATION OR OTHERWISE COOPERATE WITH AN INVESTIGATION, INCLUDING PROVIDING REQUESTED INFORMATION.

5.3.8 RIGHT TO APPEAL DENIAL OR TERMINATION OF APPROVAL. IF THE SECRETARY OF STATE DENIES OR PROPOSES TO TERMINATE AN APPROVED PROVIDER'S STATUS, THE PROVIDER HAS THE RIGHT TO REQUEST A HEARING AS PROVIDED IN THE STATE ADMINISTRATIVE PROCEDURE ACT, (ARTICLE 4 OF TITLE 24, C.R.S.)

- (A) IF THE PROVIDER DOES NOT REQUEST A HEARING, TERMINATION OF APPROVAL WILL BE EFFECTIVE 30 DAYS AFTER THE MAILING DATE OF THE TERMINATION NOTICE.
- (B) TERMINATION DOES NOT BAR THE SECRETARY OF STATE FROM BEGINNING OR CONTINUING AN INVESTIGATION CONCERNING THE PROVIDER.

#### 5.4 USE OF PERSONAL INFORMATION

5.4.1 THE LIMITED EXCEPTIONS IN SECTION 24-21-514.5(11)(C)(I) THROUGH (IV), C.R.S., DO NOT INCLUDE OR AUTHORIZE THE USE OF PERSONAL INFORMATION FOR THE PURPOSE OF GENERATING ADDITIONAL BUSINESS OR MARKETING OPPORTUNITIES BY OR FOR:

- (A) THE REMOTE NOTARY;
- (B) THE REMOTE NOTARY'S EMPLOYER OR ANY BUSINESS FOR WHOM THE REMOTE NOTARY MAY BE PROVIDING CONTRACTED SERVICES; OR
- (C) THE PROVIDER OR ANY OF ITS AFFILIATES.

5.4.2 SUCH USE IS PROHIBITED AND CANNOT BE WAIVED BY THE EXPLICIT CONSENT REQUIRED SECTION 24-21-514.5(9)(A)(II), C.R.S., OR OTHERWISE.

**II. Basis, Purpose, and Specific Statutory Authority**

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

**III. Statement of Justification and Reasons for Adoption of Temporary Rules**

A statement of the Secretary of State’s findings to justify the immediate adoption of the amended rules on a temporary basis follows this notice and is incorporated by reference.<sup>5</sup>

**III. Effective Date of Adopted Rules**

These new and amended rules will become temporarily effective on **December 31, 2020**. The rules will become permanently effective twenty days after publication in the Colorado Register.<sup>6</sup>

Dated this 1st day of December, 2020,

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Ian Rayder  
Deputy Secretary of State

For

Jena Griswold  
Colorado Secretary of State

<sup>5</sup> Section 24-4-103(6), C.R.S. (2020).

<sup>6</sup> Section 24-4-103(5), C.R.S. (2020).



## **Statement of Basis, Purpose, and Specific Statutory Authority**

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

**December 1, 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)<sup>1</sup> 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.
- New Rule 2.3, including 2.3.1 and 2.3.2, clarifies the Secretary of State’s position on the use of translators during a notarization. A notary assesses whether an individual understands what the individual is executing, i.e., whether that individual “is competent or has the capacity to execute the record” and “whether that individual’s signature is knowingly and voluntarily made.” Section 24-21-508, C.R.S. Accordingly, a notary public must be able to communicate directly in the same language with the individual and not communicate through or depend on a translator. This requirement is consistent with the practices of other jurisdictions.
- 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.
- New Rule 5.1 concerns definitions used in the Revised Uniform Law on Notarial Act and New Rule 5 regarding remote notarization.
  - New Rule 5.1.1 defines “personal information.”
  - New Rule 5.1.2, 5.1.3, and 5.1.4 provide definitions for the two types of providers authorized by Senate Bill 20-096: system providers and storage providers. The

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<sup>1</sup> Article 21, Title 24 of the Colorado Revised Statutes.



bill provides that the remote notarization system used for remote notarizations will secure and store the electronic record which is the subject of the remote notarization. Section 24-21-514.5(12), C.R.S.

- New Rule 5.2 outlines remote notary requirements.
  - New Rule 5.2.1 prescribes the information that an applicant must provide in an application to become a remote notary. Rule 5.2.1(e) clarifies that an applicant must select at least one approved remote notarization system provider and may select multiple approved system providers.
  - New Rule 5.2.2 concerns approved remote notary training and examination.
  - New Rule 5.2.3 prescribes requirements for the remote notary's electronic signature used for remote notarizations. Rule 5.2.3(a)(2) requires this signature to match in appearance the image of the signature previously submitted to the Secretary of State's office for the notary's underlying commission.
  - New Rule 5.2.4 provides remote notarization journal requirements.
  - New Rule 5.2.5 clarifies when a remote notary public must stop and restart a remote notarization process.
  - New Rule 5.2.6 clarifies a remote notary public's duty to verify that each remote notary provider used has Active status with the Secretary of State's office.
  - New Rule 5.2.7 provides that in accordance with section 24-21-529(2), C.R.S., a remote notary may charge a fee not to exceed ten dollars. The basis for this rule is RULONA which sets a statutory cap on the fee amount a notary public may charge depending on the type of notarization.
    - In a standard notarization in which a notary public customarily manually signs the notary's official signature to the document, section 24-21-529(1), C.R.S., mandates that "the fees of a notary public may be, but must not exceed, five dollars for each document attested by a person before a notary, except as otherwise provided by law."
    - Section 24-21-529(2), C.R.S., provides that "[in] lieu of the fee authorized in subsection (1) of this section, a notary public may charge a fee, not to exceed ten dollars, for the notary's electronic signature."
    - In a remote notarization, the remote notary will be applying an electronic signature (albeit one that matches in appearance the image of the official signature on file) to an electronic record. Accordingly, a remote notary may charge up to and including \$10.00 for the notary's electronic signature per section 24-21-529(2), C.R.S.

- New Rule 5.2.8 establishes that a remote notary must notify the Secretary of State within 30 days after changing a remote notarization system or storage provider.
- New Rule 5.2.9 prescribes the proper procedure for treatment of the remote notary's electronic signature, journal, and audio-video recordings upon expiration of the Secretary of State's approval to perform remote notarization. Expiration would occur under various circumstances including but not limited to revocation or expiration of the remote notary's underlying commission.
  - New Rule 5.2.9(a) requires the deletion of the remote notary's seal and signature from the provider's remote notarization system and the disposition of the notary's journal and audio-video recordings in accordance with sections 24-21-514.5(9)(c) and 24-21-519, C.R.S.

During this rulemaking session, the Secretary of State received public comment that requested exclusion of the audio-video recordings from these requirements. However, section 24-21-514.5(9)(c), C.R.S. expressly mandates that an audiovideo recording must be treated like a notary journal under section 24-21-519, C.R.S. In turn, section 24-21-519, C.R.S., provides that if a notary resigns or the notary's commission is revoked or expires, the notary can either keep the journal for ten years, transmit it to the Colorado State Archives, or leave the journal with the notary's firm or employer in the regular course of business. These same requirements would apply to disposition of the audiovideo recordings.

- New Rule 5.3 outlines provider requirements.
  - New Rule 5.3.1 concerns Provider Protocols that are incorporated by reference.
  - New Rule 5.3.2 concerning provider application.
  - New Rule 5.3.3 provides criteria and standards for approval of remote notarization system providers.
    - Addressing questions received during the rulemaking session about New Rule 5.3.3(a)(3): this rule requires remote notarization system providers to suspend use of a system for remote notaries whose underlying notary commission or approval to perform remote notarizations has been denied, suspended, or revoked or if the notary has resigned. This rule helps ensure that only authorized individuals perform remote notarizations. The Secretary of State's office will publish an easily accessible list of authorized Colorado notaries public on its website and update that list on a daily basis.
  - New Rule 5.3.4 concerns criteria and standards for approval of remote notarization storage providers.
  - New Rule 5.3.5 outlines notification requirements.

- New Rule 5.3.6 concerns complaints against an approved provider.
- New Rule 5.3.7 outlines grounds for termination of provider approval.
- New Rule 5.3.8 concerns right to appeal denial or termination of approval.
- New Rule 5.4 concerns use of personal information.

## **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[.]”
- 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.”



## **Statement of Justification and Reasons for Adoption of Temporary Rules**

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

**December 1, 2020**

New Rules: 2.1.1, 2.3, and 5 (replaces 10/15/2020 emergency rule)

Amended Rules: 3.3.2 and 3.3.3

Renumbered Rules: Rules 2.1.1 through 2.1.6 are renumbered as Rules 2.1.2 through 2.1.7

The Secretary of State finds that certain amendments to the existing notary program rules must be adopted and effective December 31, 2020, to ensure the uniform and proper administration, implementation, and enforcement of the Colorado Revised Uniform Law on Notarial Acts (RULONA)<sup>1</sup>.

On October 15, 2020, the Secretary issued a notice of permanent rulemaking. Simultaneously, the Secretary readopted temporary Rule 5 as necessary to extend authorization and minimum standards for remote notarizations until permanent rules may be established. Today, December 1, 2020, the Secretary of State temporarily and permanently adopted New Rule 5 and other rule amendments. Temporary adoption, with a December 31, 2020 effective date, is necessary to implement Senate Bill 20-096. (For reference: the rules are permanently adopted under CCR Tracking # 2020-00819.)

For these reasons, and in accordance with the State Administrative Procedure Act, the Secretary of State finds that temporary adoption of the amendments to existing notary program rules is imperatively necessary to comply with state and federal law and to promote public interests.<sup>2</sup>

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<sup>1</sup> Article 24, Title 21 of the Colorado Revised Statutes.

<sup>2</sup> Section 24-4-103(3) (6), C.R.S. (2020).