



Notice of Proposed Rulemaking

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

Date of Notice: November 29, 2021

Date and Time of Public Hearing: January 6, 2022 at 1:00 p.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 January 6, 2022 at 1:00 p.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. 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additional rule amendments including revisions necessary to eliminate obsolete provisions; remove references to repealed statutory provisions; simplify the language of existing rules; remove language that is duplicative of statute or constitutional provisions; and ensure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. (2021).

² 8 CCR 1505-11.

³ Article 21 of Title 24, Part 5, C.R.S. (2021).

- Section 24-21-527(1), C.R.S., (2021), which authorizes the Secretary of State to “adopt rules to implement this part 5 [the Revised Uniform Law on Notarial Acts] in accordance with article 4 of this title 24 [the State Administrative Procedure Act].”
- Section 24-21-527(1)(h), C.R.S., (2021), 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:

https://coloradosos.gov/pubs/rule_making/hearings/2022/NotaryRulesHearing20220106.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 January 1, 2022.

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@coloradosos.gov 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 provided in section VI of this notice.

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

https://coloradosos.gov/pubs/rule_making/hearings/2022/NotaryRulesHearing20220106.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

⁴ Section 24-4-103(3)(a), C.R.S. (2021). “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.”

Register for the webinar hearing

To join and listen to the hearing, you must register for the webinar online: <https://attendee.gotowebinar.com/register/6210479698245127179>.

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.

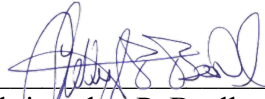
Audio recording

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 Assistant at SoS.Rulemaking@coloradosos.gov.

Dated this 29th Day of November, 2021,

A handwritten signature in blue ink, appearing to read "Chris Beall", written over a horizontal line.

Christopher P. Beall
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

November 29, 2021

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:

- Amendments to Rule 3.6.5 and 3.6.5(a) clarify that, unless an exception applies, the Secretary of State will provide a vendor or course provider with written notice, an opportunity to respond in writing, and a reasonable opportunity to comply with all lawful requirements that may warrant agency proceedings to terminate, suspend, or impose conditions on an existing accreditation of a vendor or approval of a provider before instituting such proceedings in accordance with the State Administrative Procedure Act (Article 4 of Title 24, C.R.S.).
- Amendments to Rule 3.6.5 and New Rule 3.6.5(b) clarify that, unless an exception applies, the Secretary of State will not terminate, suspend, or impose conditions on an existing accreditation of a vendor or approval of a course provider until after holding a hearing in accordance with the State Administrative Procedure Act (Article 4 of Title 24, C.R.S.).
- Current Rule 3.6.5(b) is renumbered as Rule 3.6.5(c).
- New Rule 5.3.5 clarifies that if the Secretary of State denies approval of the application of a provider (defined in Rule 5.1.2 as a remote notarization system provider or a remote notarization storage provider), the rejected applicant has the right to request a hearing in accordance with the State Administrative Procedure Act (Article 4 of Title 24, C.R.S.).
- Current Rules 5.3.5 and 5.3.6 are renumbered as Rules 5.3.6 and 5.3.7.

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

- Current Rule 5.3.7 is renumbered as Rule 5.3.8 and a typographical error is corrected in subsection (a).
- Current Rule 5.3.8 is renumbered as Rule 5.3.9. Rule 5.3.9(a) is amended to clarify that, unless an exception applies, the Secretary of State will provide a remote notarization system or storage provider with written notice, an opportunity to respond in writing, and a reasonable opportunity to comply with all lawful requirements that may warrant agency proceedings to terminate, suspend, or impose condition on an existing approval before instituting such proceedings in accordance with the State Administrative Procedure Act (Article 4 of Title 24, C.R.S.).
- New Rule 5.3.9(b) clarifies that, unless an exception applies, the Secretary of State will not terminate, suspend, or impose conditions on an existing approval of a remote notarization system or storage provider until after holding a hearing in accordance with the State Administrative Procedure Act (Article 4 of Title 24, C.R.S.).
- Current Rule 5.3.9(b) is renumbered as Rule 5.3.9(c).

II. Rulemaking Authority

The statutory authority is as follows:

- Section 24-21-527(1), C.R.S., (2021), which authorizes the Secretary of State to “adopt rules to implement this part 5 [the Revised Uniform Law on Notarial Acts] in accordance with article 4 of this title 24 [the State Administrative Procedure Act].”
- Section 24-21-527(1)(h), C.R.S., (2021), 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

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.¹

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, 2022.²

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 *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).]*

5

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,

¹ 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.

² 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 ~~5.3.8~~ 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.