



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

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

**September 11, 2014**

#### **I. Basis and Purpose**

This statement explains amendments to and recodification of the Colorado Secretary of State Notary Program Rules. The purpose of the changes is to ensure and improve the uniform and proper administration, implementation, and enforcement of the Colorado Notaries Public Act<sup>1</sup> and to answer questions arising under the Act. Specifically, the recodification is intended to:

- Recodify the rules to improve organization and readability.
- Revise the rules to be consistent with section 12-55-104(2), C.R.S., by:
  - Removing erroneous statutory citations and references to journals; and
  - Clarifying that the Secretary of State provides document authentication numbers to notaries for electronic notarizations.
- Amend the rules to require vendors to maintain and, upon request, provide students' names and certain information.
- Harmonize enforcement provisions concerning vendors and course providers.
- Edit to repeal obsolete rules and to remove language duplicative of statute.
- Non-substantive revisions to simplify or clarify words and phrases and other technical revisions as is necessary for consistency with Department rulemaking format and style.

On July 24, 2014, the Secretary issued a request for public comment to help our office develop preliminary draft rules. The comments we received in anticipation of rulemaking are available online at: [http://www.sos.state.co.us/pubs/rule\\_making/notaryRuleComments.html](http://www.sos.state.co.us/pubs/rule_making/notaryRuleComments.html) and are incorporated into the official rulemaking record.

The Secretary proposes the following rule revisions:

- Amendments to Current Rule 1 include amending existing provisions, amending and relocating definitions from Current Rule 7, repealing unnecessary definitions, and renumbering as follows:

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<sup>1</sup> Article 55, Title 12 of the Colorado Revised Statutes.

- Current Rules 7.1 A, B, and D are amended and recodified as New Rules 1.1, 1.2, and 1.3.
- Under Current Rule 1, subrules 1, 2, and 3 are amended and recodified as New Rules 1.4, 1.5, and 1.6.
- New Rule 1.3 [Current Rule 7.1.D] is amended to clarify the definition of a document authentication number by referencing applicable statutory requirements.
- New Rule 1.5 is amended to clarify that an electronic notarization must include both the notary's and the document signer's electronic signatures.
- Current Rule 1 subrule 4 is repealed as unnecessary because the Notaries Public Act defines the term "electronic signature."
- Current Rule 7.1.E is amended and recodified as New Rule 1.7.
- Amendments to Current Rule 2 include amending existing provision, amending and relocating provisions from Current Rule 7, repealing unnecessary provisions, and renumbering as follows:
  - New Rule 2.1 consolidates filing and training requirements for notaries.
  - New Rule 2.1.1 mandates that all notary filings must be submitted via the Secretary of State's online electronic filing system.
  - Current Rules 7.2.1.A and 7.2.1.C are amended and recodified as New Rules 2.1.2 and 2.1.3. The first sentence of Current Rule 7.2.1.C is amended and recodified as part of New Rule 2.1.3. The second sentence is repealed as unnecessary. The last sentence is repealed as erroneous.
  - Current Rule 7.4.A and part of Current Rule 7.4.B are amended and recodified as New Rule 2.1.4. The rule is amended to remove reference to a minimum number of notary exam questions.
  - Current Rule 2 is amended and recodified as New Rule 2.2, Electronic Notarization. Current Rule 2 subrules 1, 2, and 3 are amended and recodified as New Rule 2.2.1.
  - Current Rule 2, subrule 4(a)(1) is repealed because it is erroneous: while the Secretary of State may provide a set of document authentication numbers (DANs) to a notary for electronic notarizations, the Secretary does not provide an electronic log containing such numbers.
  - Current Rule 2, subrule 4(a)(2) is repealed as unnecessary.
  - Current Rule 2, subrule 4(b) is amended and recodified as New Rule 2.2.2. The Secretary has repealed several requirements for electronic notarizations as

redundant since they are currently already codified in section 12-55-106.5(1), C.R.S. And per the Secretary's statutory authority to establish electronic signature standards, procedures, and practices, the Secretary has added the requirement that a notary also include his or her notary identification number in an electronic notarization. The basis for this requirement is that, in some cases, notaries may share similar or identical names. This requirement will make it easier to identify a notary performing an electronic notarization using the Secretary's online Verify a Notary system. This amendment also harmonizes electronic notarization and non-electronic notarization content requirements.

- New Rule 2.2.3 clarifies that for purposes of section 12-55-106.5(1), C.R.S., which details electronic signature requirements, a notary's name specifically means the notary's printed legal name. This amendment harmonizes electronic notarization and non-electronic notarization content requirements.
- Current Rule 2, subrules 4(c) and (d) are amended and recodified as New Rules 2.2.4 (a) and (b).
- Current Rule 5, concerning lost or stolen DANs, is amended and recodified as New Rule 2.2.4(c).
- Current Rule 2, subrule 5 is repealed as unnecessary.
- Current Rule 4 is amended and recodified as New Rule 2.2.5.
- Current Rule 3 is amended and recodified as New Rule 2.2.6. The Secretary has repealed as unnecessary the reference to a notary's death as grounds for automatic expiration of the Secretary's approval of a notary to notarize electronically.
- Current Rule 3, subrules 2 and 3, are amended and recodified as New Rule 2.2.6(b).
- Amendments to Current Rule 3 include the following:
  - As indicated above, Current Rule 3 is amended and recodified as New Rule 2.2.6. Current Rule 3, subrules 2 and 3, are amended and recodified as New Rule 2.2.6(b).
  - Current Rule 7.2.2 is amended and renumbered as New Rule 3.2.1. Information from Current Rule 7.3.A is also integrated into New Rule 3.2.1.
  - The first sentence of Current Rule 7.2.3.A is amended and recodified as part of New Rule 3.2. The second sentence of Current Rule 7.2.3.A is repealed as unnecessary.
  - Current Rule 7.2.4.B is amended and recodified as New Rules 3.1 and 3.1.1. Information from Current Rule 7.3.B is integrated into New Rule 3.1.1. New Rule 3.1 consolidates notary trainer requirements. New Rule 3.1.1 specifies

requirements for course providers. New Rule 3.1.2 lists specifies requirements for vendors.

- Current Rule 7.2.4.H.2 is amended and recodified as New Rule 3.1.1(a)(4).
- Current Rules 7.2.4.B.1 and 7.2.4.C are amended and recodified as New Rules 3.1.2(e) and (f).
- Current Rule 7.2.4.D is amended and recodified as New Rule 3.1.3.
- Current Rule 7.2.4.E is amended and recodified as New Rule 3.2.2.
- Current Rule 7.3.C is amended and recodified as New Rule 3.1.1(b).
- Information from Current Rule 7.3.E is integrated into New Rule 3.3.
  - Current Rules 7.2.4.H and 7.2.4.H.1 are amended and recodified as New Rules 3.3 and 3.3.1.
  - Current Rule 7.2.4.H.3 is amended and recodified as New Rule 3.3.2 except the last sentence is repealed as unnecessary.
  - Current Rule 7.2.4.H.4 is amended and recodified as New Rule 3.3.3.
- Current Rule 7.2.4.I is amended and recodified as New Rule 3.2.3. The Secretary has amended the rule to require vendors to maintain and, upon request, provide a list of attendees and certain information to the Secretary of State. The automatic reporting requirement is repealed.
- Current Rules 7.2.4.F and 7.2.4.G are amended and recodified as New Rules 3.4 and 3.5. Current Rule 7.2.3.D is amended and recodified as New Rule 3.4.1.
- New Rule 3.6 consolidates amended provisions of Current Rule 7 concerning rule enforcement as follows:
  - Current Rule 7.2.3.C is amended and recodified as New Rule 3.6.1. The amendment clarifies that vendors and course providers must respond to the Secretary of State's written request within 20 business days of receiving the request.
  - Current Rule 7.2.4.J is amended and recodified as New Rule 3.6.2. The amendment clarifies that both approved vendors and course providers must permit onsite inspections by the Secretary of State.
  - Current Rule 7.2.3.B.1 is amended and recodified as New Rule 3.6.3. The amendment clarifies that both approved vendors and course providers are subject to complaints alleging a violation of the Rules.

- Current Rule 7.2.4.K is amended and recodified as New Rule 3.6.4 which consolidates the grounds for termination of an approved vendor’s accreditation or approval of a course provider.
  - Current Rule 7.2.4.L is amended and recodified as New Rule 3.6.5. The amendment clarifies that both approved vendors and course providers have appeal rights.
- Current Rule 4 is amended and recodified as New Rule 2.2.5, as detailed above.
- Part of Current Rule 5 is amended and recodified in part as New Rule 2.2.4(c) as detailed above.
- Current Rule 6 is repealed as unnecessary.
- As detailed above, Current Rule 7 and its subrules are amended and recodified as New Rules 1.1, 1.2, 1.3, 1.7, 2.1.2, 2.1.3, 2.1.4, 3.1, 3.2, 3.3, 3.4, 3.5, and 3.6, as detailed above. Current Rules 7.2.3.B.2 and 7.2.4.A are repealed as unnecessary. Current Rules 7.1.C, 7.1.F, 7.2.1.B, 7.2.1.C’s second and last sentences, 7.2.3.A’s last sentence, 7.2.3.B.2, and 7.2.4.A are repealed.
- Other changes to rules not specifically listed are entirely non-substantive. Some words and phrases are changed to simplify or clarify, but the meaning is not intended to be altered unless as described above. Cross-references in rules are also corrected or updated. Renumbering the rules is necessary for consistency with Department rulemaking format/style.

## **II. Rulemaking Authority**

The statutory authority is as follows:

- Section 12-55-103.5(2), C.R.S., (2014), which authorizes the Secretary of State to “promulgate rules to require notaries public to complete a training program.”
- Section 12-55-104(5), C.R.S., (2014), which authorizes the Secretary of State to “promulgate rules for use of the electronic filing system in accordance with article 4 of title 24, C.R.S.”
- Section 12-55-106.5(1), C.R.S., (2014), which requires that “[a] notary’s signature shall conform to any standards promulgated by the secretary of state.”
- Section 12-55-106.5(2), C.R.S., (2014), which authorizes the Secretary of State to “promulgate rules necessary to establish standards, procedures, practices, forms, and records relating to a notary's electronic signature.”