



Notice of Proposed Rulemaking

Colorado Department of State Notary Program Rules 8 CCR 1505-11

Date of Notice: May 15, 2023

Date and Time of Public Hearing: June 20, 2023, at 1:00 p.m.

I. Hearing Notice

As required by the State Administrative Procedure Act,¹ the Department of State gives notice of proposed rulemaking. The hearing is scheduled for **June 20, 2023, at 1:00 p.m.** in the Red Rocks Conference Room on the 5th floor of the Department of State's office at 1700 Broadway, Denver, CO 80290. **This meeting will be conducted in person and via webinar.** Details regarding how to join the webinar and testify during the hearing are outlined in section VI of this notice.

II. Subject

The Department is considering amendments to the Colorado Department of State Notary Program Rules² to ensure the uniform and proper administration, implementation, and enforcement of the Revised Uniform Law on Notarial Acts (RULONA)³. Specifically, the Department proposes permanent rule revisions necessary to implement Senate Bill 23-153 concerning the recommendations in the 2022 sunset report by the Department of Regulatory Agencies (DORA). The Department may consider additional rule amendments including revisions necessary to eliminate obsolete provisions; simplify the language of existing rules; remove language that is duplicative of statute or constitutional provisions; and ensure consistency with Department rulemaking standards.

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

III. Statutory Authority

¹ Section 24-4-103(3)(a), C.R.S. (2022).

² 8 CCR 1505-11.

³ Article 21 of Title 24, Part 5, C.R.S. (2022).

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

- Section 24-21-509(2), C.R.S., (2022), which permits a notary public to “use signals or electronic or mechanical means to take an acknowledgment from, administer an oath or affirmation to, or otherwise communicate with any individual in the presence of the notary public when it appears that the individual is unable to communicate verbally or in writing.”
- Section 24-21-527(1), C.R.S., (2022), 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)(a), C.R.S., (2022), 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)(e), C.R.S., (2022), which authorizes the Secretary of State to “[i]nclude provisions [in rules] to prevent fraud or mistake in the performance of notarial acts[.]”
- Section 24-21-527(1)(g), C.R.S., (2022), 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., (2022), which the 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 Colorado Department of State’s rules and notices of rulemaking website at:

https://coloradosos.gov/pubs/rule_making/hearings/2023/NotaryRulesHearing20230620.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 **June 15, 2023**.

V. Opportunity to Testify and Submit Written Comments

⁴ Section 24-4-103(3)(a), C.R.S. (2022). “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.”

The Department 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 comments concerning the rule amendments. You may submit written comments to SoS.Rulemaking@coloradosos.gov any time before and during the hearing. If you attend the hearing in person, you may submit written comments to the hearing panel as well. An additional opportunity to comment in writing will be announced at the conclusion of the hearing. Information regarding how to testify via webinar during the hybrid hearing is provided in section VI of this notice.

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

https://coloradosos.gov/pubs/rule_making/hearings/2023/NotaryRulesHearing20230620.html.

We will make every effort to 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 hybrid hearing

To join and listen to the hearing online, you must register for the webinar: <https://register.gotowebinar.com/register/2547390751710324312>.

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.

Hybrid hearing procedures

After the introduction and a brief summary of the rulemaking, we will open the hearing to testimony as follows:

- For the sake of efficiency, in-person attendees will be called upon first to provide their public comment. We will reference the sign-in sheet provided and individually call upon attendees who wish to provide their testimony. Once we have exhausted the in-person sign-in sheet, we will move forward with the testimony of online attendees.
- Referencing webinar registration records, we will identify and individually unmute online attendees who indicated their intent to testify during the hearing.
- Once we have exhausted that list, we will ask whether any additional attendees wish to testify. In-person attendees may raise their hands to indicate their intention to testify, and

online attendees may raise/lower their hand by clicking the “raise hand” 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 or GoToWebinar app, 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 or headphones. As outlined above, we will first receive online 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 hand” icon is only available to attendees who access the webinar by computer or by app.

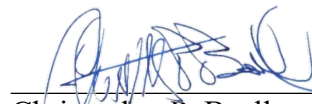
Audio recording

After the hearing concludes, a recording will be available on our audio broadcasts page here: https://www.coloradosos.gov/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 15th of May 2023,



Christopher P. Beall
Deputy Secretary of State

For

Jena Griswold
Colorado Secretary of State



Draft Statement of Basis, Purpose, and Specific Statutory Authority

Department of State Notary Program Rules 8 CCR 1505-11

May 15, 2023

I. Basis and Purpose

This statement explains amendments to the Colorado Department 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. Specifically, the changes include:

- Amendments to Rule 2.3 remove language that prohibits the use of verbal-language interpreters during a notarial act and language that is duplicative to statute, in accordance with SB23-153.
- Amendments to Rule 5.2.7 clarify that the fee a notary may charge for their electronic signature has increased from ten dollars to twenty-five dollars, in accordance with SB23-153.
- Amendments to Rule 5.3.1 update the Department of State's Notary Public webpage URL.
- Amendments to Rule 5.3.3, including New Rule 5.3.3(a)(6), clarify the requirement that remote notarization system providers must annually renew their registrations with the Secretary of State's Office to maintain continuing eligibility.

Other changes to rules not specifically listed are non-substantive and necessary for consistency with Department rulemaking format and style. Cross-references in rules are also corrected or updated.

II. Rulemaking Authority

The statutory authority is as follows:

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

- Section 24-21-509(2), C.R.S., (2022), which permits a notary public to “use signals or electronic or mechanical means to take an acknowledgment from, administer an oath or affirmation to, or otherwise communicate with any individual in the presence of the notary public when it appears that the individual is unable to communicate verbally or in writing.”
- Section 24-21-527(1), C.R.S., (2022), 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)(a), C.R.S., (2022), 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)(e), C.R.S., (2022), which authorizes the Secretary of State to “[i]nclude provisions [in rules] to prevent fraud or mistake in the performance of notarial acts[.]”
- Section 24-21-527(1)(g), C.R.S., (2022), 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., (2022), which the 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

Colorado Department of State Notary Program Rules 8 CCR 1505-11

May 15, 2023

Disclaimer:

In accordance with the State Administrative Procedure Act, this draft is filed with the Colorado Department 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 **June 20, 2023**, 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 **June 15, 2023**.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 2.3, removing language that prohibits the use of a verbal-language interpreter during*
3 *a notarial act and language that is duplicative to statute:*

4 2.3 Communication

5 2.3.1 A notary public must be able to communicate ~~directly~~ with, be understood by, and
6 understand the individual for whom the notary public is performing a notarial act.

7 ~~2.3.2 With the exception of use of an interpreter for deaf, hard of hearing, or deafblind individuals,~~
8 ~~a notary public may not use an interpreter, a translator, or related services to communicate~~
9 ~~with the individual for whom the notary public is performing a notarial act. This prohibition~~
10 ~~applies to all methods of notarization, including electronic and remote notarization,~~
11 ~~authorized by the Revised Uniform Law on Notarial Acts (Title 24, Article 24, Part 5,~~
12 ~~C.R.S.).~~

13 ~~2.3.3.2~~ 2.3.2 In accordance with section 6-1-707(1)(e)(I), C.R.S., an interpreter for deaf, hard of
14 hearing, or deafblind individuals must hold either:

15 (a) A valid certification issued by the Registry of Interpreters for the Deaf, Inc. or a
16 successor entity; or

¹ Sections 24-4-103(2.5) and (3)(a), C.R.S. (2022). 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. (2022). “[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 (b) A valid certification for sign language interpretation approved by the Colorado
2 Commission for the Deaf, Hard of Hearing, and DeafBlind.

3 2.3.4 ~~The interpreter must not have a disqualifying interest. For the purposes of this Rule 2.3.4,~~
4 ~~an interpreter has a disqualifying interest in a record if:~~

5 ~~(a) The interpreter or the interpreter's spouse, partner in a civil union, ancestor,~~
6 ~~descendent, or sibling is a party to or is named in the record that is to be notarized;~~
7 ~~or~~

8 ~~(b) The interpreter or the interpreter's spouse or partner in a civil union may receive~~
9 ~~directly, and as a proximate result of the notarization, any advantage, right, title,~~
10 ~~interest, cash, or property exceeding in value the sum of any fee for interpreter~~
11 ~~services.~~

12 *Amendments to Rule 5.2.7, regarding the fee a remote notary may charge for their electronic signature:*

13 5.2.7 In accordance with section 24-21-529(2), C.R.S., a remote notary may charge a fee, not
14 to exceed ~~ten~~ TWENTY-FIVE dollars, for the notary's electronic signature.

15 *Amendments to Rule 5.3.1(a)(2), updating the URL to the Secretary of State's office Notary Public*
16 *webpage:*

17 5.3.1 Provider Protocols

18 (a) The Colorado Secretary of State's Provider Protocols (December 1, 2020) are
19 hereby incorporated by reference.

20 (1) Material incorporated by reference in the Notary Rules does not include
21 later amendments or editions of the incorporated material.

22 (2) Copies of the material incorporated by reference may be obtained by
23 contacting the Colorado Department of State, 1700 Broadway, Suite 550,
24 Denver, CO 80290, (303) 894-2200. Copies are also available online at
25 ~~<https://www.sos.state.co.us/pubs/notary/home.html>~~
26 <HTTPS://WWW.COLORADOSOS.GOV/PUBS/NOTARY/HOME.HTML>.

27 *Amendments to Rule 5.3.3, including New Rule 5.3.3(a)(6), establishing that a remote notarization*
28 *system provider must annually renew with the Secretary of State's office to maintain continuing eligibility:*

29 5.3.3 Criteria and standards for approval of remote notarization system providers.

30 (a) In order to be approved and maintain continuing eligibility, a remote notarization
31 system provider must:

32 (1) Provide a remote notarization system that complies with the technical
33 specifications of these rules and the standards, including data security
34 and integrity requirements, set forth in the Secretary of State's Provider
35 Protocols under Rule 5.3.1;

36 (2) Verify the authorization of a Colorado notary public to perform remote
37 notarial acts before each remote notarization;

38 (3) Suspend the use of its remote notarization system for any remote notary
39 public if the notary's underlying commission or the Secretary of State's

1 approval of the notary public to perform remote notarizations has been
2 denied, suspended, or revoked by the Secretary or when the notary has
3 resigned;~~and~~

4 (4) Ensure that access to a remote notary public's electronic signature and
5 seal is limited solely to the remote notary public and protected by the use
6 of a password authentication, token authentication, biometric
7 authentication, or other form of authentication that is described in the
8 remote notarization system provider's application;

9 (5) Verify that a Colorado remote notary public has Active status with the
10 Secretary of State's office at the time of each remote notarization; AND

11 (6) ANNUALLY RENEW ITS REGISTRATION WITH THE SECRETARY OF STATE'S
12 OFFICE AND PAY THE REQUIRED FEE.

13 *[No changes to subsections (b)-(e).]*

14 *Amendments to Rule 5.3.3(f), concerning a grammatical change:*

15 (f) Data Storage and security.

16 A remote notarization system provider must provide a storage system that
17 complies with the technical specifications of these rules and the standards,
18 including data security and integrity protocols, set forth in the ~~secretary of state's~~
19 SECRETARY OF STATE'S Provider Protocols under Rule 5.3.1.