



Notice of Proposed Rulemaking

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

Date of Notice: November 15, 2023

Date and Time of Public Hearing: December 19, 2023, at 11:00 a.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 **December 19, 2023, at 11:00 a.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 require a notary public to both: (1) inform a customer, before performing a notarial act, of any service that is an additional charge to the notarial act and (2) provide an itemized invoice of each specific charge. Failing to do so will lead to the presumption that the amount charged is solely for the notarial act. If that charge exceeds the statutory limit, it is presumptive evidence of a violation of RULONA.

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

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

¹ Section 24-4-103(3)(a), C.R.S. (2023).

² 8 CCR 1505-11.

³ Article 21 of Title 24, Part 5, C.R.S. (2023).

- Section 24-21-527(1), C.R.S., (2023), 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., (2023), 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)(d), C.R.S., (2023), which authorizes the Secretary of State to “[p]rescribe the process of granting, renewing, conditioning, denying, suspending, or revoking a notary public commission and assuring the trustworthiness of an individual holding a commission as notary public...”
- Section 24-21-527(1)(e), C.R.S., (2023), which authorizes the Secretary of State to “[i]nclude provisions [in rules] to prevent fraud or mistake in the performance of notarial acts[.]”

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/NotaryRulesHearing20231219.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 **December 14, 2023**.

V. Opportunity to Testify and Submit Written Comments

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/NotaryRulesHearing20231219.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.

⁴ Section 24-4-103(3)(a), C.R.S. (2023). “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.”

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/8385757916939918936>.

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.

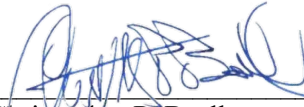
Audio recording

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 November 2023,



Christopher P. Beall
Deputy Secretary of State

For

Jena Griswold
Colorado Secretary of State



Draft Statement of Basis, Purpose, and Specific Statutory Authority

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

Filed: November 15, 2023
Revised: November 22, 2023

I. Basis and Purpose

This statement explains proposed amendments to the Colorado Department of State Notary Program Rules. The purpose of the changes is to address a legislative change increasing the statutory maximum for notary fees, as well as to address issues raised in complaints to the Department concerning billing practices by notaries public, and 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:

- New Rule 2.4 requires a notary public to both (1) inform a customer, before performing a notarial act, of any service that is an additional charge to the notarial act and (2) provide an itemized invoice of each specific charge. If a notary public fails to itemize these specific charges, the amount charged is presumed to solely cover the notarial act. If that amount charged exceeds the statutory fee limit in section 24-21-529, C.R.S., the invoice is presumptive evidence of a violation of the RULONA.

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:

- Section 24-21-527(1), C.R.S., (2023), 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., (2023), 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)(d), C.R.S., (2023), which authorizes the Secretary of State to “[p]rescribe the process of granting, renewing, conditioning, denying, suspending, or revoking a notary public

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

commission and assuring the trustworthiness of an individual holding a commission as notary public...”

- Section 24-21-527(1)(e), C.R.S., (2023), which authorizes the Secretary of State to “[i]nclude provisions [in rules] to prevent fraud or mistake in the performance of notarial acts[.]”

Preliminary Draft of Proposed Rules

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

November 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 **December 19, 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 **December 14, 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 *New Rule 2.4 requires a notary public to inform their customer, prior to performing a notarial act, of any*
3 *service that is an additional charge to the notarial act and to provide an itemized invoice of each specific*
4 *charge and informs of the consequences of failing to abide by the new requirements:*

5 2.4 ITEMIZATION OF CHARGES

6 2.4.1 IF A NOTARY PUBLIC CHARGES FOR ANY SERVICE IN ADDITION TO THE NOTARIAL ACT, THE
7 NOTARY PUBLIC MUST:

8 (A) INFORM THE CUSTOMER OF THE CHARGES BEFORE PERFORMING THE NOTARIAL
9 ACT; AND

10 (B) PROVIDE AN ITEMIZED INVOICE THAT LISTS EACH SPECIFIC CHARGE.

11 2.4.2 IF A NOTARY PUBLIC FAILS TO ITEMIZE SPECIFIC CHARGES, THE AMOUNT CHARGED IS PRESUMED
12 TO SOLELY COVER THE NOTARIAL ACT. IF THAT AMOUNT EXCEEDS THE STATUTORY FEE LIMIT IN
13 SECTION 24-21-529, C.R.S., THE INVOICE IS PRESUMPTIVE EVIDENCE OF A VIOLATION OF THE
14 REVISED UNIFORM LAW ON NOTARIAL ACTS.

¹ Sections 24-4-103(2.5) and (3)(a), C.R.S. (2023). 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. (2023). “[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.”