



NOTICE OF PROPOSED RULEMAKING

Office of the Secretary of State Rules Concerning Notaries Public Training 8 CCR 1505-15

August 26, 2008

Pursuant to the requirements of Section 24-4-103(3)(a), C.R.S. (2008), notice of proposed rulemaking is hereby given by the Secretary of State. A rulemaking hearing will be held on **September 30, 11:30 a.m. until 12:30 p.m.** in the Blue Spruce Conference Room on the second floor of the Office of the Secretary of State at 1700 Broadway, Denver, Colorado 80290. All interested persons will be afforded an opportunity to be heard on the subject the Colorado Secretary of State "Rules Concerning Notaries Public Training" administered by the Office of the Secretary of State, Division of Licensing, 8 CCR 1505-15.

Subject of the Proposed Rulemaking

The Secretary of State will consider the Colorado Secretary of State's "Rules Concerning Notaries Public Training." The rules prescribe the circumstances under which a notary would be required to attend a notary training course and pass an examination administered by the Secretary of State. The rules also outline the procedures that must be followed by commercial vendors to obtain accreditation from the Secretary of State to teach an approved course of education.

Authority for Proposed Rulemaking

The "Rules Concerning Notaries Public Train" Office of the Secretary of State, Division of Licensing, 8 CCR 1505-15, are proposed pursuant to the Colorado Administrative Procedure Act, Section 24-4-103, C.R.S., "Rule-making procedure," and pursuant to the specific rule-making authority granted to the Secretary of State by the Notaries Public Act at Section 12-55-103.5, C.R.S.

Copies of the initial draft of the proposed rules may be obtained from the Office of the Secretary of State at 1700 Broadway, Suite 300, Denver, Colorado, 80290 or by calling (303) 894-2200 extension 6424. The proposed rules are also posted on the Secretary of State website at www.sos.state.co.us.


A final copy of the proposed rules for consideration at the public rule-making hearing will be posted on the Secretary of State website and made available to the public no later than September 10, 2009 in accordance with Section 12-55-103.5, C.R.S. (2009), which states that "[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."

The rule-making hearing on September 30, 2009 will be held in accordance with Section 24-4-103, C.R.S., (2008). Written and oral data, comments, and arguments will be received from all interested parties. Written submissions must be filed at or before the commencement of the hearing on September 30, 2009 at 11:30 a.m. in order to be considered. Oral testimony may be limited in order to allow the proceedings to go forward with reasonable promptness and efficiency. The hearing will be audio recorded and broadcast over the Internet. The broadcast may be accessed through the Secretary of State website at www.sos.state.co.us on the "Information Center" page under "Broadcast and Recorded Meetings."

For additional information, please contact Andrew Whitfield, Deputy Director, Licensing & Enforcement Division at andrew.whitfield@sos.state.co or (303) 894-2200 extension 6424.

Dated this 26th day of August, 2009



William A. Hobbs
Deputy Secretary of State

For

Bernie Buescher
Colorado Secretary of State



Proposed Statement of Basis, Purpose and Specific Statutory Authority

Office of the Secretary of State
Rules Concerning Notaries Public Training
8 CCR 1505-15

August 26, 2009

1. Basis and Purpose

Colorado Secretary of State "Rules Concerning Notaries Public Training" (8 CCR 1505-15) pertains to rules promulgated to administer specific provisions of the Notaries Public Act as amended by the recent passage of SB 09-111.

The Secretary of State therefore finds that the permanent adoption of the Colorado Secretary of State "Rules Concerning Notaries Public Training" is necessary in order to ensure the uniform and proper administration of the Act.

The adoption of Colorado Secretary of State "Rules Concerning Notaries Public Training" is necessary in order to:

- Outline the specific circumstances under which a notary public is required to take a training course and pass an exam administered by the Secretary of State.
- Detail the procedures that must be followed by commercial vendors seeking accreditation by the Office of the Secretary of State to train notaries in the State of Colorado.
- Provide guidance to commercial vendors on the baseline subject areas that must be included for a curriculum to be approved by the Secretary of State.

2. Statutory Authority

The "Rules Concerning Notaries Public Training" Office of the Secretary of State, Division of Licensing, 8 CCR 1505-15, are adopted pursuant to the following statutory provisions:

1. Rulemaking provisions of the Colorado Administrative Procedure Act, Section 24-4-103, C.R.S.
2. Section 12-55-103.5, C.R.S. (2009), of the Notaries Public Act which authorizes the Secretary of State to promulgate rules deemed necessary to "require notaries public to complete a training program."

COLORADO SECRETARY OF STATE

Notary Program Rules

8 CCR 1505-15

DRAFT OF PROPOSED RULES

AUGUST 26, 2009

*This draft is for proposed rules to be considered at a public rulemaking hearing. Copies of the proposed rule changes will be available to the public **no later than September 10, 2009** and a copy will be posted on the Department of State's web site, in compliance with the requirement of section 24-4-103(4)(a), C.R.S., that "[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 **1.0 Introduction**

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3 **1.1 Authority**

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5 These rules are adopted pursuant to the authority in Section 12-55-101, et seq., C.R.S., (the
6 "Notaries Public Act") and are intended to be consistent with the requirements of the State
7 Administrative Procedure Act, Section 24-4-101, et seq. (the "APA").

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9 **1.2 Scope and Purpose**

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11 These rules are intended to clarify and carry out the provisions of the Notaries Public Act [
12 Section 12-55-101, C.R.S., et seq.].

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14 **1.3 Specific Authority**

15 Specific authority for rule-making is provided by Section 12-55-103.5 (2), C.R.S.

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18 **2.0 Definitions**

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20 **2.1 "New Applicant"** means a person who has never before been a commissioned notary in Colorado
21 or a formerly commissioned notary in Colorado whose commission has expired by thirty-one (31)
22 days or more.

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24 **2.2 "Renewing Applicant"** means a notary who is renewing his or her Colorado notary commission
25 before it has expired or no more than 30 days after the previous Colorado notary commission
26 has expired.

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28 **2.3 "Vendor"** means a partnership, corporation, company, commercial enterprise, association or
29 person that provides a course of instruction for Colorado notaries.

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31 **2.4 "Approved Vendor"** is a partnership, corporation, company, commercial enterprise, association
32 or person that achieves accreditation status.

2.5 **"Course Provider"** is a corporation, company, commercial enterprise, association, or educational institution that provides a course of education for its members by using a curriculum provided by the secretary of state.

3.0 Notary Public Training and Examination

3.1 Applicant Status

- A. **New Applicants.** Every new applicant for a notary commission shall take, within six (6) months preceding his application, a course of instruction of at least two hours approved by the secretary of state, and pass an examination administered by the secretary of state prior to submitting an application for appointment.
- B. **Renewing Applicants.** A person who holds a current appointment as a notary public is not required to successfully complete a course of instruction and pass an examination administered by the secretary of state provided that the person renewing his appointment as a notary public has not permitted his previous notary commission to expire by a period greater than thirty (30) days. Should the candidate for reappointment seek to renew his commission thirty-one (31) days after expiration, he shall be treated as a new applicant.
- C. **Notary Misconduct.** The secretary of state may require a notary public who is found by the commissioning authority upon a full investigation to have committed misconduct to successfully complete an educational course and pass an examination administered by the secretary of state as remediation for the disposition of the case. Misconduct within the meaning of these rules shall be considered actions on by the notary that necessitate a letter of admonition, commission suspension, or failure to comply with any provision of the Notaries Public Act, 12-55-101, C.R.S., et seq. while holding the office of notary public.
- D. **Right to Appeal.** A notary who is admonished or is required to complete an educational course and pass an examination administered by the secretary of state may appeal this determination as provided in article 4 of title 24, C.R.S.

3.2 Course of Instruction

- A. **Curriculum.** Content for any course of instruction must contain specific components of the Colorado Notaries Public Act and draw upon widely accepted best practices found in other jurisdictions.
- B. **Required Elements From the Notaries Public Act.** All training curricula shall include but are not limited to: physical presence requirement, duty not to notarize a document that is blank, duty to use a notarial certificate, disqualifying interest, application procedures, resignation requirements, duty to maintain a journal of notarial acts, revocation proceedings, liability, identification of signers, role of the notary, official misconduct, and notarizations for the elderly.
- C.. **Best Practices Instruction Required.** The curriculum provider shall provide instruction regarding widely accepted best practices. It shall be at the discretion of the curriculum provider to determine which best practices shall be included in its curriculum.

3.3 Vendors

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- A. **Vendors.** A course provider or vendor shall be approved by the secretary of state before offering a course of instruction for which the secretary of state will give credit for successful completion. The office of the secretary of state shall permit approved vendors to conduct notary training courses so long as they comply with the provisions set forth in these rules.
- B. **Approved Vendor Responsibilities.** For the purposes of these rules, an approved vendor is responsible for all employees, agents, instructors, contractors, and subcontractors providing or involved in providing an approved course of study on behalf of the approved vendor and the acts of the employees, agents, instructors, contractors, and subcontractors will be deemed the acts of the approved vendor.
- C. **Complaints Against an Approved Vendor**
 - 1. A person may file a complaint against an approved vendor with the secretary of state. A complaint shall be submitted on a standard form provided by the secretary of state, signed and dated by the person filing the complaint.
 - 2. Whenever the secretary of state or the secretary of state’s designee believes that a violation of these rules has been committed by an approved vendor, the secretary of state or the secretary of state’s designee may investigate any such violation.
 - 3. Failure of an approved vendor to cooperate with a secretary of state investigation shall result in revocation of the vendor’s accreditation status, subject to the provisions as provided in article 4 of title 24, C.R.S.
- D. **Duty of Approved Vendor to Respond to a Written Request from Secretary of State.** It shall be the duty of a vendor to respond in writing within twenty (20) business days of receiving a written request from the secretary of state for any information relating to a course of study offered by the vendor. The secretary of state shall send a written request to the address or email address listed on the most current Notary Public Education Vendor Application.
- E. **Duty of Vendor to Keep Address Current.** Every approved vendor shall send or have delivered notice to the secretary of state within thirty (30) days after such vendor changes the physical address or email address on the Notary Public Education Vendor Application.

3.4 Vendors and Accreditation

- A. **Requirements for Curriculum Accreditation.** All curricula intended to provide instruction to new or renewing applicants must conform to the requirements of 3.2.A and shall be approved by the secretary of state.
- B. **Application.** A vendor shall submit to the secretary of state for approval a completed Notary Public Education Vendor Application. The curricula submitted for approval by the secretary of state shall include:
 - 1. A description of the curriculum in sufficient detail to enable the secretary of state to evaluate whether the curriculum satisfies the requirements in Section 3.2 of these rules.

2. Procedures to establish the identity of a person attending a live course and ensure that the person is present for the required time.
 3. Procedures to ensure that the person to whom a certificate of completion is issued for completing the course of instruction is the same person who took the course.
 4. Copies of any handout materials, workbooks, or tests used during the course of study shall be submitted for approval as part of the curriculum.
- C. **Reviewing Fee.** The secretary of state shall charge a fee to review curricula not to exceed \$250.
- D. **Deficient Application or Lesson Plan.** If the secretary of state determines that a Notary Public Education Vendor Application is incomplete or a curriculum does not satisfy the requirements set forth in these rules, the secretary of state will issue a deficiency notice containing an itemized description of the deficiencies identified. The deficiency notice will be sent by the secretary of state to the vendor by first class mail or email to the physical address or email address listed on the Notary Public Education Vendor Application.
- 1.. **Ability to Cure Deficiencies.** A vendor shall have thirty (30) business days from the date on which the deficiency notice was mailed by the secretary of state to submit documentation to the secretary of state curing the deficiencies identified in the deficiency notice. If the deficiencies are not cured with thirty (30) days, the curriculum shall be deemed rejected by the secretary of state.
 2. **Right to Hearing for Rejected Curriculum.** If a curriculum is rejected, the affected vendor shall have the right to a hearing on the matter and the proceeding shall be conducted as provided in article 4 of title 24, C.R.S.
- E. **Seal of Accreditation.** The secretary of state shall provide a seal of accreditation for vendors that meet the curriculum criteria within sixty (60) business days of receipt of an application and lesson plan.
1. **Seal Display.** The seal of accreditation shall be displayed prominently and conspicuously on any materials provided by the vendor to the new or renewing applicant. The seal shall contain:
 - a. **Designation Number.** Each seal of accreditation shall contain a designation number unique to the vendor as assigned by the secretary of state.
 - b. **Expiration Date.** Seals of accreditation shall expire four years after a Seal of Accreditation is granted. The expiration date shall appear of the seal of accreditation.
 - c. **Non-assignment.** A seal of accreditation is non-assignable and shall not be assigned or transferred to another vendor or curriculum without the approval of the secretary of state.

d. **The Seal of Accreditation shall not imply endorsement** of any products or services offered by the provider.

F. **Notification of Changes to Approved Curriculum.** Within thirty (30) business days of substantial changes in the information contained in the curriculum approved by the secretary of state, an approved vendor shall submit to the secretary of state on vendor letterhead a description of the changes made to the curriculum's content except in the event that there is a modification necessary to reflect current Colorado law concerning the duties and functions of a notary public.

G. **Duty of Vendor to Revise Training.** An approved vendor shall revise their curriculum as necessary to ensure that the information provided in an approved course of study reflects current Colorado law concerning the duties and functions of a notary public.

H. **Certificate of Successful Completion of Notary Course of Instruction.** Accredited notary course of instruction providers shall furnish graduates of their program with a certificate of successful completion. The certificate shall contain the designation number unique to the vendor, the date of successful completion, and the name of the applicant.

1. **Vendor Assures Actual Completion of Course.** An approved vendor shall ensure that only a person who has completed an approved course of study receives a certificate of successful completion. If a notary public applicant or notary public fails to be present during any substantive portion of an approved course of study, the approved vendor shall not issue a certificate of successful completion to the notary public applicant or notary public, and the notary public applicant or notary public shall not receive credit for the time in which he or she was present.

2. **Certificate of Successful Completion Attached to Notary Application.** A certificate of successful completion shall be attached to the paper component of an application when submitted to the secretary of state.

3. **Certificate of Successful Completion Valid for Six Months.** A certificate of completion of an approved course of study shall be valid for a period of six (6) months from the date of issuance. If proof of completion is submitted to the secretary of state more than six (6) months after the proof of completion was issued, the secretary of state shall notify the notary public applicant that the proof of completion is not valid and instruct the notary public applicant to complete an approved course of study and submit a valid, current certificate of successful completion to the secretary of state.

4. **Certificate of Successful Completion Contents.** The certificate of proof of completion shall contain:

- a. The name of the vendor of the course.
- b. The name of the person who completed the educational course.
- c. The date of completion of the educational course.
- d. The statement, "This certificate of proof of completion shall be valid for a period of six months from the date of issuance."

I. **List of Attendees.** An approved vendor shall maintain and provide the secretary of state with a list of persons who attend each session of an approved course of study and provide such list to the secretary of state no later than ten (10) business days after

completion of the course on a form provided by the secretary of state. Online providers shall provide a list of online course attendees for the previous month which shall be delivered by electronic transmission or US Postal Service postmarked to the secretary of state on the first Monday of every month on a form provided by the secretary of state. The form shall include the following:

1. The name of the approved vendor as listed in the certificate of approval for the approved course of study;
2. The vendor identification number issued by the secretary of state;
3. The name of the instructor or instructors who taught the approved course of study;
4. The date, time, and location of the approved course of study;
5. The names of all the attendees in alphabetical order by the last name of the attendee and whether or not proof of completion was issued to each attendee;
6. The type of photograph identification, identification number, expiration date, and state or country of issuance of the documentation establishing the identity of the notary public applicant or notary public who attended and completed the approved course of study; and
7. The date of birth of the applicant.
8. **Social Security Numbers.** An approved vendor shall not collect the social security numbers of any attendees.

J. **Onsite Inspections.** An approved vendor shall permit the secretary of state or his designee to attend any course of study without prior notice at no charge for the purpose of observation, monitoring, auditing, or investigating.

K. **Grounds for Termination of Accreditation.** The secretary of state may terminate a vendor's accreditation for any of the following reasons:

1. Violation of any provision of these rules.
2. Misrepresentation of the laws of Colorado concerning the duties and functions of a notary public.
3. Deviation from the lesson plan for a course of study approved by the secretary of state.
4. Representations made by the vendor that any product, goods, or services provided by the vendor are endorsed, recommended or required by the secretary of state.
5. Failure to respond to a request for communication from the secretary of state.

L. **Right to Appeal Termination of Accreditation.** If the secretary of state proposes to terminate the accreditation status of a vendor, an opportunity for hearing shall be accorded as provided in article 4 of title 24, C.R.S.

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1. If the provider does not request a hearing, termination shall be effective thirty (30) days after the termination notice.
2. The cancellation of the provider’s accreditation status does not bar the secretary of state from instituting or continuing an investigation or disciplinary proceedings against the vendor.

3.5 **Examination**

- A. **Form.** The examination will test competency of the Notaries Public Act. The examination shall be comprised of no less than 25 questions and shall be administered by the secretary of state.
- B. **Content.** The examination shall be an open-book examination of the laws and duties of a notary contained in title 12, article 55 and title 38, article 30 of the Colorado Revised Statutes and the official notary handbook published by the secretary of state.