



# Vermont Administrative Procedures Act

## The Administrative Rulemaking Process

An Overview by the Office of the Secretary of State

# Introduction:

3 V.S.A. Chapter 25 is the “Vermont Administrative Procedure Act” or APA.

Originally adopted in 1968, this chapter sets forth the process for adopting administrative rules and the requirements for filing proposed and emergency rules.

Rules adopted under this process have the force and effect of law.





# Who Adopts Rules?

Rulemaking authority is a special power granted by the Vermont Legislature to various:

- State Agencies.
- Boards.
- Other Government Instrumentalities.

# Why Adopt Rules?

The adoption of rules may result from:



- Legislative requirement.
- Petition.
- Due Process.

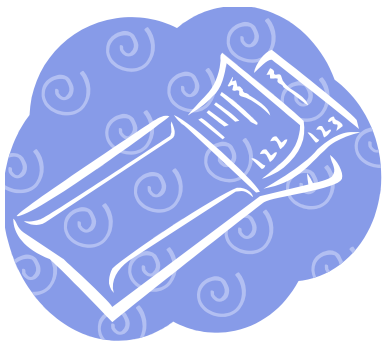


**Note:** When rulemaking is requested by petition, the agency has 30 days to initiate rulemaking or respond in writing with its reasons for denial (see [3 V.S.A. § 806](#) for details).

# How Are Rules Adopted?

Administrative rules are adopted through a series of filings, hearings, and review by:

- The Interagency Committee on Administrative Rules.
- The Office of the Secretary of State.
- The Legislative Committee on Administrative Rules.





## Interagency Committee on Administrative Rules (ICAR):

- Members are appointed by the governor and serve at the governor's pleasure.
- The committee assists agencies with the creation of a strategy for maximizing public input, and reviews rules for style, consistency with the law, and legislative intent. (3 V.S.A. § 820)
- The Secretary of the Agency of Administration, or his/her designee serves as chair of the committee. (Executive Order 04-010)
- Note: For specific filing instructions and questions about pre-filing with ICAR contact the Agency of Administration 802-828-3322.

# Office of the Secretary of State:

The Secretary of State is charged with specific duties in the Administrative Procedures Act. The Secretary of State has adopted a rule entitled “[Rule on Rulemaking](#)” to assist in discharging these duties, which include:

- Creation of filing forms.
- Review of rule filings for required elements.
- Publication of notices online and in the newspapers.
- Publication of adopted rules in [The Code of Vermont Rules](#).
- Providing a repository for rule filings.

**Note:** The APA Clerk works at the Middlesex Facility for The Vermont State Archives & Records Administration (VSARA) where rule filings with the Secretary of State must be made.

# Legislative Committee on Administrative Rules (LCAR)

Consisting of eight members of the General Assembly (see [3 V.S.A. § 817](#) for details). This committee reviews the content of final proposed, and emergency rules and votes to:

- Approve the rule.
- Approve the rule with modifications.
- Take no action.
- Object to the rule.
- Certify their objection with the Secretary of State.
- Extend the eight month adoption deadline.

**Note:** The committee is supported by Legislative Council staff located in the State House. LCAR filings must be delivered there.





# Adoption Process:

- Pre-filing with ICAR.
- Proposed Rule Filing with Secretary of State.
- Publication of Notices.
- Hearing and Comment Period.
- Final Proposed Rule Filing with Secretary of State.
- LCAR Review.
- Adopted Filing with Secretary of State.

# Filing Forms:

The Office of the Secretary of State has created forms for filing rules. These forms are available for download online at: <http://www.vermont-archives.org/aparules/forms.htm> and are used throughout the APA Process.

The forms include:

- Proposed Rule Coversheet.
- Final Proposed Coversheet.
- Adopted Rule Coversheet.
- Adopting Page.
- Economic Impact Statement.
- Public Maximization Statement.
- Scientific Information Statement.
- Incorporation by Reference Statement.
- Emergency Rule Coversheet.



Note: All Signature pages for filings made with the Office of the Secretary of State must bear original signatures of the *adopting authority*. Copies will not be accepted

# Pre-filing:

- Proposed rules must be pre-filed with the Interagency Committee on Administrative Rules (ICAR) at least 15 days before filing the proposed rule with the Office of the Secretary of State. (see [3 V.S.A. § 837](#))



# Pre-filing (cont):

- After receiving 12 copies of the proposed rule ICAR will schedule the rule for review.
- The adopting agency attends the hearing to answer any questions and to develop a strategy for maximizing public input.
- A memorandum regarding the review process and ICAR's recommendations for the rule is sent to the adopting agency, the Office of the Secretary of State, and to the Legislative Committee on Administrative Rules (LCAR).

# Proposed Rule Filing:

A proposed rule must be filed at the Vermont State Archives & Records Administration located in Middlesex.

The filing must contain the following:

- Proposed Coversheet.
- Adopting Page.
- Economic Impact Statement.
- Public Input Statement.
- Scientific Information Statement (if applicable).
- Incorporation by Reference Statement (if applicable).
- Clean text of the rule.
- Annotated text showing the changes.

Note: An agency has 8 months from filing a proposed rule to file the rule in its adopted form unless extended by LCAR (see [3 V.S.A. 843\(c\)](#) for details).

# Publication of Notices:

The notice and comment period begins with the filing of the proposed rule with the Office of the Secretary of State. During this period the notices are published and agencies receive and consider public comments on the proposed rule.

The Office of the Secretary of State publishes notices of rulemaking:

- **Online** – Posting will occur on the Wednesday of the week following receipt of the proposal (<https://secure.vermont.gov/SOS/rules/> ).
- **Newspapers** – Published 8 days following the posting of the online notice.



# Hearing and Comment Period:

Agencies are not required to hold a hearing unless requested as described in [3 V.S.A. § 840](#). However, it is recommended.



Agencies shall:

- Schedule a hearing (if required) no less than 30 days following posting of the notice online.
- Afford reasonable opportunity for the submission of data, views or arguments, orally or in writing through the seventh day following the last public hearing.
- Consider all written and oral comment on the proposed rule.
- Provide information to all individuals, who submitted written or oral comment, on the procedure for adoption of rules and how to obtain changes in the proposed rule.
- Record public hearings (see [1 V.S.A. § 312](#) for details).

# Final Proposed Rule Filing:

This filing should be made at the Vermont State Archives & Records Administration located in Middlesex and with the Legislative Committee on Administrative Rules located at the State House in Montpelier.

The deadline for filing with the Secretary of State is 3:30 pm on the last scheduled workday of the week. The filing should contain the following:

- Final Proposed Coversheet.
- Adopting Page.
- Economic Impact Statement.
- Public Input Statement.
- Scientific Information Statement (if applicable).
- Incorporation by Reference Statement (if applicable).
- Clean text of the rule.
- Annotated text showing the changes.
- Copy of ICAR memo.
- Responsiveness Summary and copies of any comments received.





# LCAR REVIEW:

LCAR has 45 days to review all Final Proposed and Emergency Rule Filings. During this time, the committee . . .

- Distributes a summary of the filings to the chairs of the appropriate standing committees and to other committee members if so requested.\*
- Schedules a public hearing to review the rule and receive testimony from interested parties.
- May request an extension of the 45 day review period; or extend the 8-month adoption deadline.
- Votes on what action to take (approve, approve with modifications, object, or file certified objection).

\* The chair of a standing committee which considered legislation delegating rulemaking authority may convene that standing committee for the purpose of considering a recommended course of action for LCAR.

# LCAR Review

## - Grounds for Objection:

During the review period the committee may vote to object to a rule if:

- the rule is beyond the authority of the agency.
- the rule is contrary to the intent of the legislature.
- the rule is arbitrary.
- the agency did not adhere to the strategy for maximizing public input prescribed by the interagency committee on administrative rules.
- an Emergency Rule is not necessitated by an imminent peril to public health, safety or welfare sufficient to justify adoption of an emergency rule. (*emergency rules only*).
- the proposed rule is not written in a satisfactory style.
- the economic impact statement fails to recognize a substantial economic impact.

*(The last two objections will not result in a certified objection.)*



# What Happens if LCAR Objects?

Agencies have 14 days to respond in writing to LCAR, which will reconvene to consider the agency's response and may:

- approve the rule.
- withdraw the objection.
- approve the rule with modifications.
- file its objection in certified form with the secretary of state.
- take no further action.

# Certified Objection:



After considering the agency's response to an objection LCAR may by majority vote certify their objection with the Office of the Secretary of State.

**(An agency may still adopt the rule even if LCAR certifies the objection).**

- Upon receipt, the Secretary of State shall affix to each objection a certification of its filing and transmit a copy to the agency.
- Place a copy of the objection and the notification of the objection in the file with the rule.
- Include notice of the objection on all copies of the rule distributed to the public.

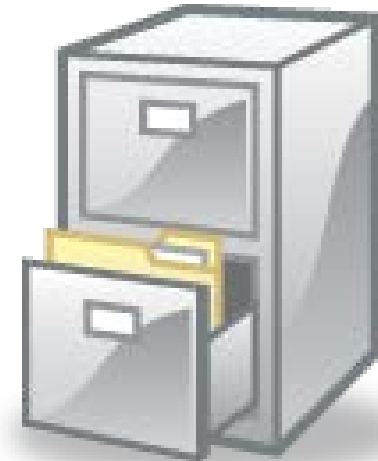
The certified objection has legal effect under [3 V.S.A. § 842\(b\)](#) such that to the extent that the objection covers a rule or portion of a rule, the burden of proof thereafter shall be on the agency in any action for judicial review or for enforcement of the rule . . .

# Adopted Rule Filing:

This filing should be made at the Vermont State Archives & Records Administration located in Middlesex and with the Legislative Committee on Administrative Rules located at the State House in Montpelier.

The deadline for filing with the Secretary of State is 3:30 pm on the last scheduled workday of the week. The filing should contain the following:

- Adopted Coversheet.
- Adopting Page.
- Clean Text of the Rule.
- Letter explaining any changes from the final proposed filing.



Rule goes into effect 15 days from the day it was adopted unless a later date is specified within the text of the rule.

# What if there's an Emergency?

In the event that an Agency believes an imminent peril to public health, safety or welfare exists it may initiate emergency rulemaking under [3 V.S.A. § 844](#).

In accordance with 3 V.S.A. § 844 the rule may be adopted:

- Without having been prefiled with ICAR.\*
- Without having been filed in proposed or final proposed form.
- After whatever notice and hearing that the agency finds practicable under the circumstances, however the agency shall make reasonable efforts to ensure that emergency rules are known to persons who may be affected by them.

Emergency rules shall:

- Be effective upon filing.
- Expire 120 days from its effective date.



Although prefiling is not required, Executive Order 04-010 requires that prior to adopting emergency rules agencies shall submit the emergency rules to the Chair of ICAR for a determination of appropriateness by the Chair.

# Emergency Rule Filing:

This filing should be made at the Vermont State Archives & Records Administration located in Middlesex and with the Legislative Committee on Administrative Rules located at the State House in Montpelier.

The deadline for filing with the Secretary of State is 3:30 pm on the last scheduled workday of the week. The filing should contain as much of the information required as is practicable under the circumstances:

- Emergency Rule Coversheet.
- Adopting Page.
- Economic Impact Statement.
- Public Input Statement.
- Scientific Information Statement (if applicable).
- Incorporation by Reference Statement (if applicable).
- Clean text of the rule.
- Annotated text showing the changes.



# Emergency Rule Filing (cont):

Upon filing, the emergency rule will be scheduled for LCAR review. The committee may object to the rule under the same criteria as it may with final proposed rules and under one additional criteria if the committee feels that imminent peril to public health, safety or welfare does NOT exist.



## Recent APA amendment (§ 844(e)(3)):

- If LCAR objects to an emergency rule, the agency may withdraw the rule.
- Prior to withdrawal, the agency shall give notice to LCAR of its intent to withdraw the rule.
- A rule shall be withdrawn upon the filing of a notice of withdrawal with the Secretary of State and LCAR.
- If the emergency rule amended an existing rule, upon withdrawal of the emergency rule, the existing rule shall revert to its original form, as though the emergency rule had never been adopted.



# Procedural Errors:

A rule shall not take effect if an agency:

- Fails to pre-file with ICAR.
- Fails to file with the Secretary of State.
- Fails to file with LCAR.
- Fails to respond to LCAR's objection.



# Where Can You Search Rules?

Once the rules have been adopted, all of the materials received for the adopted rule file are digitized and transmitted to the official publisher (Lexis Nexis) to be published in the Code of Vermont Rules.

The code is available in print volumes through the publisher by subscription; and free online at:

<http://www.lexisnexis.com/hottopics/codeofvtrules/>.