

Emergency Filing - Coversheet

Instructions:

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the “Rule on Rulemaking” (CVR 04-000-001) adopted by the Office of the Secretary of State, this emergency filing will be considered complete upon filing and acceptance of these forms with the Office of the Secretary of State, the Legislative Committee on Administrative Rules and a copy with the Chair of the Interagency Committee on Administrative Rules.

All forms shall be submitted to the Office of the Secretary of State, no later than 3:30 pm on the last scheduled day of the work week.

The data provided in text areas of these forms will be used to generate a notice of rulemaking in the portal of “Proposed Rule Postings” online, and the newspapers of record if the rule is marked for publication. Publication of notices will be charged back to the promulgating agency.

This emergency rule may remain in effect for a total of 180 days from the date it first takes effect.

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801(b)(11) for a definition), I believe there exists an imminent peril to public health, safety or welfare, requiring the adoption of this emergency rule.

The nature of the peril is as follows (*PLEASE USE ADDITIONAL SHEETS IF SPACE IS INSUFFICIENT*). Absent these Rules, an individual signing a record and a notary public must share the same physical space. This continues to be a threat to the public health due to COVID-19.

I approve the contents of this filing entitled:

Emergency Administrative Rules for Notaries Public and Remote Notarization

_____/s/ James C. Condos_____, on 3/11/2022
(signature) (date)

Printed Name and Title:

James C. Condos, Secretary of State

RECEIVED BY: _____

- Coversheet
- Adopting Page
- Economic Impact Analysis
- Environmental Impact Analysis
- Strategy for Maximizing Public Input
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)

1. **TITLE OF RULE FILING:**

Emergency Administrative Rules for Notaries Public and Remote Notarization

2. **ADOPTING AGENCY:**

Secretary of State, Office of Professional Regulation

3. **PRIMARY CONTACT PERSON:**

(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).

Name: Lauren K. Layman

Agency: Office of Professional Regulation

Mailing Address: 89 Main Street, 3rd Floor, Montpelier, VT
05620-3602

Telephone: 802 828 - 2883 Fax: 802 828 - 2465

E-Mail: lauren.layman@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

<https://sos.vermont.gov/notaries-public/statutes-rules-resources/>

4. **SECONDARY CONTACT PERSON:**

(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).

Name: Chris Winters

Agency: Secretary of State's Office

Mailing Address: 128 State Street; Montpelier, VT 05633-1101

Telephone: 802 828 - 2124 Fax: 802 828 - 2465

E-Mail: chris.winters@vermont.gov

5. **RECORDS EXEMPTION INCLUDED WITHIN RULE:**

(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE EXEMPTING IT FROM INSPECTION AND COPYING?) No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

6. LEGAL AUTHORITY / ENABLING LEGISLATION:

(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).

26 V.S.A. § 5364 (b) (2)

7. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:

The above statute allows the Secretary of State's Office of Professional Regulation to adopt administrative rules related to remote notarization through a secure communication link.

8. CONCISE SUMMARY (150 WORDS OR LESS):

These Emergency Rules define the "personal appearance" requirement for remote notarial acts conducted through a secure audio-visual communication link.

9. EXPLANATION OF WHY THE RULE IS NECESSARY:

The Vermont notary public statutes require that an individual seeking a notarial act "personally appear" before the notary public. "Personally appear" is defined in law as either sharing the same physical space, or conducting a notarial act remotely through a secure communication link. The latter form of "personal appearance" - remote notarization - is permitted only if the Secretary of State has adopted rules establishing protocols and standards for remote notarization. Prior to March 2020, the Secretary of State had not yet adopted rules for remote notarization and, thus, the only way to meet the "personal appearance" requirement for notarial acts was for the individual seeking the notarization and the notary public to share the same physical space.

When COVID-19 began to spread, in-person notarization posed significant health hazards and was, practically, no longer possible. On March 24, 2020, the Secretary of State adopted these Emergency Rules permitting remote notarization through a secure audio-visual link. The Emergency Rules protect the integrity of essential transactions, from real estate to wills to health care to adoptions, by setting clear and reliable standards for remote appearances and notarial acts. Absent these

Emergency Rules, the performance of these essential transactions would have been stalled and vulnerable individuals would have been prevented from obtaining crucial documents.

As the pandemic continued, the Secretary of State sought renewal of the Emergency Rules in September 2020, March 2021, and September 2022, for an additional 180 days each time, to continue to facilitate safe transactions. The Emergency Rules expiration date is again approaching on March 14, 2021. The public health threat of COVID-19, though lessened, is still present and in-person notarization continues to pose a risk to some people's health. The Secretary of State seeks to have these Emergency Rules adopted again so people concerned about this health risk can continue to participate in essential transactions and commerce.

The Secretary of State is also pursuing more permanent statutory changes in the General Assembly that would facilitate notarial acts by remote means. However, the proposed changes are still being considered by the General Assembly and, if adopted, may not be effective until July 2022 at the earliest. The Secretary of State's Office is seeking an extension of these Emergency Rules to allow for ongoing remote notarial acts while the legislation is pending.

10. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY AS DEFINED IN 3 V.S.A. § 801(b)(13(A):

The Rules are not arbitrary, as that term is defined in 8 V.S.A. § 801(b)(13)(A), because there is a factual basis for the decision to permit remote notarial acts using audio-visual communication technology, the Emergency Rules are rationally connected to this factual basis, and the decision herein would make sense to the reasonable person. The Emergency Rules are the result of COVID-19 and the inability for people to meet in person to conduct transactions. The Emergency Rules are rationally connected to addressing the problem of COVID-19 preventing in-person transactions because the Emergency Rules facilitate the performance of essential transactions by allowing notarial acts to be performed remotely using audio-visual communication technology.

Finally, the Emergency Rules would make sense to a reasonable person because the Emergency Rule are narrowly tailored to address the problem created by the pandemic and allow commercial and legal transactions to continue in the manner they occur in non-pandemic times. In turn, the Emergency Rules are not arbitrary as that term is defined in Vermont's statutes.

11. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:

Department of Health, Judiciary, Town Clerks, social service agencies, hospitals, nursing homes, and other health care facilities, real estate professionals, banks, mortgage companies, attorneys (including those in elder care, estate planning, and real estate), and the public, particularly individuals who are at a higher risk of contracting or experiencing complications from COVID-19.

12. BRIEF SUMMARY OF ECONOMIC IMPACT (150 WORDS OR LESS):

These Emergency Rules have allowed notarial acts to continue in the face of a public health crisis and have facilitated the continuance of essential transactions and commerce. Adopting these Rules again will continue to facilitate and protect our economy and the public health while a permanent legal change is being considered by the General Assembly.

13. A HEARING IS NOT SCHEDULED .

14. HEARING INFORMATION

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION NEEDED FOR THE NOTICE OF RULEMAKING.

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

15. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

16. EMERGENCY RULE EFFECTIVE: 03/14/2022

17. EMERGENCY RULE WILL REMAIN IN EFFECT UNTIL

(A DATE NO LATER THAN 180 DAYS FOLLOWING ADOPTION OF THIS EMERGENCY RULE):

09/12/2022

18. NOTICE OF THIS EMERGENCY RULE SHOULD NOT BE PUBLISHED IN THE WEEKLY NOTICES OF RULEMAKING IN THE NEWSPAPERS OF RECORD.

19. KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

Notary Public

Notary

Remote Notarization

Professional Regulation

Personal Appearance

Adopting Page

Instructions:

This form must accompany each filing made during the rulemaking process:

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. TITLE OF RULE FILING:

Emergency Administrative Rules for Notaries Public and Remote Notarization

2. ADOPTING AGENCY:

Secretary of State, Office of Professional Regulation

3. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment as long as the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **A NEW RULE** .

4. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND EFFECTIVE DATE OF THE LAST ADOPTION FOR THE EXISTING RULE*):

20-E02, "Administrative Rules for Notaries Public and Remote Notarization", March 24, 2020

20-E18, "Emergency Administrative Rules for Notaries Public and Remote Notarization", September 21, 2021 (extension of 20-E02)

21-E02, "Emergency Administrative Rules for Notaries Public and Remote Notarization", March 19, 2021 (extension of 20-E02 and 20-E18)

21-E14, "Emergency Administrative Rules for Notaries Public and Remote Notarization", September 19, 2021 (extension of 20-E02, 20-E18, and 21-E02)



State of Vermont
 Agency of Administration
 Office of the Secretary
 Pavilion Office Building
 109 State Street
 Montpelier, VT 05609-0201
www.aoa.vermont.gov

[phone] 802-828-3322
 [fax] 802-828-3320

Susanne R. Young, Secretary

MEMORANDUM

TO: Jim Condos, Secretary of State
FROM: Douglas Farnham, ICAR Chair
DATE: March 14, 2022
RE: Emergency Rule Titled 'Emergency Administrative Rules for Notaries Public and Remote Notarization' by the Secretary of State, Office of Professional Regulation

Douglas Farnham
 Digitally signed by Douglas Farnham
 Date: 2022.03.14 11:20:17 -04'00'

The use of rulemaking procedures under the provisions of 3 V.S.A. §844 is appropriate for this rule. I have reviewed the proposed rule titled 'Emergency Administrative Rules for Notaries Public and Remote Notarization', provided by the Secretary of State, Office of Professional Regulation, and agree that emergency rulemaking is necessary.

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Economic Impact Analysis

Instructions:

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose. If no impacts are anticipated, please specify “No impact anticipated” in the field.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn't appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

1. TITLE OF RULE FILING:

Emergency Administrative Rules for Notaries Public and Remote Notarization

2. ADOPTING AGENCY:

Secretary of State, Office of Professional Regulation

3. CATEGORY OF AFFECTED PARTIES:

LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:

State agencies, courts, social service agencies, health care facilities, elder Vermonters, Vermonters quarantining, Department of Health, Town Clerks, real estate professionals, banks, mortgage companies, and

attorneys, including those in elder care, estate planning, and real estate.

4. IMPACT ON SCHOOLS:

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS CLEARLY STATING ANY ASSOCIATED COSTS:

None - other than the general health and safety of Vermonters.

5. ALTERNATIVES: CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.

Alternatives not applicable with respect to schools.

6. IMPACT ON SMALL BUSINESSES:

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):

These Emergency Rules have allowed small businesses to continue to conduct essential transactions that require notarial acts without putting individuals' or the public's health at risk. The Emergency Rules need to be adopted again so small businesses do not face the choice of exposure to COVID-19 or obtaining a notarial act to facilitate ongoing transactions and commerce.

7. SMALL BUSINESS COMPLIANCE: EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.

Businesses can take advantage of existing technologies to perform remote notarizations and use the Emergency Rules to keep important legal transactions moving while taking steps to protect individuals' and the public's health. Small businesses can also choose to engage in in-person notarial acts if the costs or burdens of compliance with the Emergency Rules are too significant.

8. COMPARISON:

COMPARE THE IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:

These Emergency Rules represent the least burdensome approach the agency has been able to identify for accommodating the ongoing economic need for the performance of notarial acts during the COVID-19 pandemic. Having no Emergency Rules would impose a barrier to conducting business and potentially inflict significant economic damage. The Secretary of State recognizes the need for a more permanent solution to this concern and is working with the General Assembly to adopt legislation permitting remote notarial acts. If these Emergency Rules are not adopted again and remote notarization is not permitted until (or if) the General Assembly makes permanent legal changes, essential transactions and commerce would be interrupted which could have a significantly negative economic impact.

9. SUFFICIENCY: *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*

This analysis was conducted after consultation with stakeholders involved in performing notarial acts to facilitate essential commercial and legal transactions. The impact and efficacy of these Emergency Rules over the past 2 years was also considered, as well as pending legislation and the potential for a more permanent solution to the concern about in-person notarial act requirements.

Environmental Impact Analysis

Instructions:

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis. If no impacts are anticipated, please specify “No impact anticipated” in the field.

Examples of Environmental Impacts include but are not limited to:

- Impacts on the emission of greenhouse gases
- Impacts on the discharge of pollutants to water
- Impacts on the arability of land
- Impacts on the climate
- Impacts on the flow of water
- Impacts on recreation
- Or other environmental impacts

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1. **TITLE OF RULE FILING:**

Emergency Administrative Rules for Notaries Public and Remote Notarization

2. **ADOPTING AGENCY:**

Secretary of State, Office of Professional Regulation

3. **GREENHOUSE GAS: EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):**

Not applicable

4. **WATER: EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):**

Not applicable

5. **LAND: EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):**

Not applicable

6. **RECREATION: EXPLAIN HOW THE RULE IMPACT RECREATION IN THE STATE:**

Not applicable

7. **CLIMATE:** *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*
Not applicable
8. **OTHER:** *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*
Not applicable
9. **SUFFICIENCY:** *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*
The Emergency Rules have no known environmental impact.

Public Input Maximization Plan

Instructions:

Agencies are encouraged to hold hearings as part of their strategy to maximize the involvement of the public in the development of rules. Please complete the form below by describing the agency's strategy for maximizing public input (what it did do, or will do to maximize the involvement of the public).

This form must accompany each filing made during the rulemaking process:

1. **TITLE OF RULE FILING:**

Emergency Administrative Rules for Notaries Public and Remote Notarization

2. **ADOPTING AGENCY:**

Secretary of State, Office of Professional Regulation

3. **PLEASE DESCRIBE THE AGENCY'S STRATEGY TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE, LISTING THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:**

The Secretary of State's strategy to maximize public input into the development of these Emergency Rules was to meet with stakeholders (businesses, attorneys, associations) who were going to have significant challenges completing essential transactions due to the initial COVID-19 pandemic requirement to stay at home. Since that time, the Secretary of State has spoken with notaries public and other members of the public who have benefited from these Emergency Rules and who wish to see them continue in force until a more permanent solution is developed. The Secretary of State has also stayed informed about efforts in other states, at the national level, and by national associations to develop similar short-term and long-term solutions to this challenge. This effort has helped ensure that the Emergency Rules are as effective as possible under the circumstances and to develop best practices for the

more permanent solutions that are currently being considered in the General Assembly.

4. **BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:**

Although these Emergency Rules were initially developed with uncommon speed, their development was a model of teamwork under pressing circumstances and in the face of a global pandemic. Urgent email and telephone discussions happened quickly and frequently over a week in March 2020, with as much transparency and inclusiveness as possible through conversations with the Vermont Bar Association, multiple legislators, the Judiciary, the Vermont Bankers' Association, and attorneys representing several areas of legal practice. After initial pushback from a couple of stakeholders about the Emergency Rule requirement that remote notarizations be recorded and the recording retained, there has been little negative feedback regarding the Rules. The Emergency Rules have now been in effect for almost two years with little opposition. Many stakeholders have asked for the renewal of the Emergency Rules once more, as COVID-19 continues make performing in-person notarial acts challenging and risky for many.

Scientific Information Statement

THIS FORM IS ONLY REQUIRED IF THE RULE RELIES ON SCIENTIFIC INFORMATION FOR ITS VALIDITY.

PLEASE REMOVE THIS FORM PRIOR TO DELIVERY IF IT DOES NOT APPLY TO THIS RULE FILING:

Instructions:

In completing the Scientific Information Statement, an agency shall provide a summary of the scientific information including reference to any scientific studies upon which the proposed rule is based, for the purpose of validity.

1. **TITLE OF RULE FILING:**

Emergency Administrative Rules for Notaries Public and Remote Notarization

2. **ADOPTING AGENCY:**

Secretary of State, Office of Professional Regulation

3. **BRIEF EXPLANATION OF SCIENTIFIC INFORMATION:**

Not applicable

4. **CITATION OF SOURCE DOCUMENTATION OF SCIENTIFIC INFORMATION:**

Not applicable

5. **INSTRUCTIONS ON HOW TO OBTAIN COPIES OF THE SOURCE DOCUMENTS OF THE SCIENTIFIC INFORMATION FROM THE AGENCY OR OTHER PUBLISHING ENTITY:**

Not applicable

Incorporation by Reference

THIS FORM IS ONLY REQUIRED WHEN INCORPORATING MATERIALS BY REFERENCE. PLEASE REMOVE PRIOR TO DELIVERY IF IT DOES NOT APPLY TO THIS RULE FILING:

Instructions:

In completing the incorporation by reference statement, an agency describes any materials that are incorporated into the rule by reference and how to obtain copies.

This form is only required when a rule incorporates materials by referencing another source without reproducing the text within the rule itself (e.g. federal or national standards, or regulations).

Incorporated materials will be maintained and available for inspection by the Agency.

1. TITLE OF RULE FILING:

Emergency Administrative Rules for Notaries Public and Remote Notarization

2. ADOPTING AGENCY:

Secretary of State, Office of Professional Regulation

3. DESCRIPTION (*DESCRIBE THE MATERIALS INCORPORATED BY REFERENCE*):

Not applicable

4. FORMAL CITATION OF MATERIALS INCORPORATED BY REFERENCE:

Not applicable

5. OBTAINING COPIES: *EXPLAIN WHERE THE PUBLIC MAY OBTAIN THE MATERIAL(S) IN WRITTEN OR ELECTRONIC FORM, AND AT WHAT COST*):

Not applicable

6. MODIFICATIONS (*PLEASE EXPLAIN ANY MODIFICATION TO THE INCORPORATED MATERIALS E.G., WHETHER ONLY PART OF THE MATERIAL IS ADOPTED AND IF SO, WHICH PART(S) ARE MODIFIED*):

Not applicable

Run Spell Check