

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*). Act 88 (2022) Sec. 3 requires the Department of Health to adopt an emergency rule for the purposes of implementing, administering, or enforcing the purposes of the Act prior to regular rulemaking.

I approve the contents of this filing entitled:

Vital Records Emergency Rule

/s/ Todd W. Daloz

(signature)

, on 5/13/2022

(date)

Printed Name and Title:

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)

Todd W. Daloz
Deputy Secretary, Agency of Human Services

1. TITLE OF RULE FILING:

Vital Records Emergency Rule

2. ADOPTING AGENCY:

Department of Health

3. PRIMARY CONTACT PERSON:

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

Name: Natalie Weill

Agency: Department of Health

Mailing Address: 108 Cherry Street, Burlington, VT 05402

Telephone: 802 863 - 7312 Fax: 802 951 - 1275

E-Mail: ahs.vdhrules@vermont.gov

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

<https://www.healthvermont.gov/about-us/laws-regulations/public-comment>

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: David Englander

Agency: Department of Health

Mailing Address: 108 Cherry Street, Burlington, VT 05402

Telephone: 802 863 - 7280 Fax: 802 951 - 1275

E-Mail: ahs.vdhrules@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).

Act 88 (2022) Sec. 3, 18 V.S.A. § 5112 (b), and 3 V.S.A § 801(b) (11).

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

Act 88 (2022) Sec. 3 states "Notwithstanding any provision of 3 V.S.A. § 844 to the contrary, the Department of Health shall have the authority to adopt emergency rules for the purposes of implementing, administering, or enforcing the purposes of this act."

18 V.S.A. § 5112 (b) states: "the Department shall adopt rules as necessary for the purposes of implementing, administering, or enforcing the requirements of this section."

8. CONCISE SUMMARY (150 WORDS OR LESS):

This rulemaking implements a process for individuals to amend the marker on their birth certificate to reflect the individual's gender identity. Specifically, it does the following:

- 1) Defines the term "non-binary" to describe the additional gender identities that may be reflected on a birth certificate.
- 2) Creates a process for registrants to file their Affidavit of Gender Identity with the Department.

9. EXPLANATION OF WHY THE RULE IS NECESSARY:

Act 88 (2022) Sec. 3 requires the Department to adopt emergency rules for the purposes of implementing, administering, or enforcing the process by which an individual may amend the marker on a birth certificate to reflect the individual's gender identity, including a third non-binary marker.

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

This rulemaking is not arbitrary because it brings the rule in compliance with law. The rulemaking is

rationaly connected to Act 88 (2022) Sec. 3, requiring the Department to adopt emergency rules for the purposes of implementing, administrating, or enforcing the process by which an individual may amend the marker on a birth certificate to reflect the individual's gender identity, including a third non-binary marker.

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

Persons born in Vermont who wish to amend their birth certificate; the Vermont Department of Health Vital Records Office.

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

There is no anticipated economic impact.

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: 7/1/2022

17. EMERGENCY RULE WILL REMAIN IN EFFECT UNTIL

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

12/28/2022

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).

Vital Records

Birth Certificates

Gender Identity

Registrants

Sex

Gender

280 State Drive - Center Building
Waterbury, VT 05671-1000



OFFICE OF THE SECRETARY
TEL: (802) 241-0440
FAX: (802) 241-0450


JENNEY SAMUELSON
SECRETARY

TODD W. DALOZ
DEPUTY SECRETARY

STATE OF VERMONT
AGENCY OF HUMAN SERVICES

MEMORANDUM

TO: Jim Condos, Secretary of State

FROM: Jenney Samuelson, Secretary, Agency of Human Services 

DATE: April 1, 2022

SUBJECT: Signatory Authority for Purposes of Authorizing Administrative Rules

I hereby designate Deputy Secretary of Human Services Todd W. Daloz as signatory to fulfill the duties of the Secretary of the Agency of Human Services as the adopting authority for administrative rules as required by Vermont's Administrative Procedure Act, 3 V.S.A. § 801 et seq.

Cc: Todd W. Daloz

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:

Vital Records Emergency Rule

2. ADOPTING AGENCY:

Department of Health

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 **AN AMENDMENT OF AN EXISTING RULE** .

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

SOS# 19-069 entitled: Vital Records Rule; effective
01/01/2020

State of Vermont
Agency of Administration
Office of the Secretary
Pavilion Office Building
109 State Street, 5th Floor
Montpelier, VT 05609-0201
www.aoa.vermont.gov

[phone] 802-828-3322
[fax] 802-828-2428

Kristin L. Clouser, Secretary

MEMORANDUM

TO: Jim Condos, Secretary of State
FROM: Douglas Farnham, ICAR Chair
DATE: May 16, 2022
RE: Emergency Rule Titled 'Vital Records Emergency Rule' by the Agency of Human Services, Department of Health

Douglas Farnham

Digitally signed by
Douglas Farnham
Date: 2022.05.16
11:11:12 -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 'Vital Records Emergency Rule', provided by the Agency of Human Services, Department of Health, and agree that emergency rulemaking is necessary.

###

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:

Vital Records Emergency Rule

2. ADOPTING AGENCY:

Department of Health

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:

Persons born in Vermont who wish to amend their gender-markers on their birth certificates.

The Vermont Department of Health Vital Records Office:
Removing the lengthy process currently required to change a gender marker improves efficiency in State

government. There is a de minimis cost to the Department to establish the Affidavit of Gender Identity and to update the electronic Statewide Registration System to include a non-binary option on vital records. The Department will establish this into the normal workflow built into the duties of the Vital Records Office.

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:

No impact.

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.*

No impact.

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):

No impact.

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.*

Not applicable.

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:

This rulemaking is necessary to ensure compliance and consistency with statute. Therefore, there is no alternative to this rule.

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

The Department has provided the information that is available.

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

1. TITLE OF RULE FILING:

Vital Records Emergency Rule

2. ADOPTING AGENCY:

Department of Health

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.):*
No impact.

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.):*
No impact.

5. LAND: *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*
No impact.

6. RECREATION: *EXPLAIN HOW THE RULE IMPACT RECREATION IN THE STATE:*
No impact.

7. **CLIMATE:** *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*
No impact.
8. **OTHER:** *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*
No impact.
9. **SUFFICIENCY:** *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*
Because there is no impact, this analysis is sufficient.

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:**

Vital Records Emergency Rule

2. **ADOPTING AGENCY:**

Department of Health

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 Department worked with the LGBTQIA Alliance of VT to draft the rule. The Department plans to begin formal rulemaking in the coming months and will obtain public input.

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

LGBTQIA Alliance of VT, Outright Vermont, and the Pride Center of Vermont.

During the regular rulemaking, there will be public notice, a public comment period, and a public hearing.

Chapter 4– Health Surveillance

Subchapter 7 – Vital Records

Vital Records Rule

1.0 Authority

This rule is adopted pursuant to 18 V.S.A. § 5000 (e)(8) and (f) and Act 88 (2022).

2.0 Purpose

The purpose of this rule is to establish the specific requirements for obtaining, creating, amending, and storing birth and death certificates in Vermont.

3.0 Definitions

3.1 “Affidavit of Gender Identity” means the form published by the Department that is used to self-attest to an individual’s gender identity for the purpose of amending a birth certificate. The affidavit must be signed by the registrant and if applicable, the registrant’s parent or legal guardian.

3.13.2 “Affidavit of Homeless Status” means the form published by the Department that can be used to verify an individual’s status as a person experiencing homelessness for the purposes of obtaining a certified birth certificate. The affidavit must be signed by both the applicant and the homeless services provider. The affidavit is available on the Department’s website.

3.23.3 “Alternate means of identification” means two documents (exempting 3.34.12 and 3.34.13 when only one form of identification is needed) that between them shall contain a current address and a signature of the applicant. Alternate acceptable documents are:

3.2.13.3.1 Employment Identification Card with photo, accompanied by a pay stub or U.S. Internal Revenue W-2 form;

3.2.23.3.2 School, university, or college identification card with photo, accompanied by a report card or other proof of current school enrollment;

3.2.33.3.3 Federal or state identification issued by departments, bureaus, or agencies of corrections or prisons;

3.2.43.3.4 Social Security/Medicare Card that contains the bearer’s signature;

3.2.53.3.5 Pilot’s License;

3.2.63.3.6 Car registration or title with current address;

3.2.73.3.7 U.S. Selective Service Card;

3.2.83.3.8 Voter Registration Card;

3.2.93.3.9 Filed Federal tax form that contains current address and signatures;

3.2.103.3.10 Bank statement, property or utility bill (e.g. gas, water, electric, sewer, phone) with current address;

3.2.113.3.11 U.S. or state court documents with current address;