

I. Background

The General Assembly, which is the branch of State government that enacts laws, occasionally finds it has neither the time nor the expertise to provide a sufficient level of detail in legislation.¹ As a result, the General Assembly delegates rulemaking authority to various State agencies.² For example, the Agency of Natural Resources has the authority to adopt air quality standards, the Department of Labor has the authority to adopt occupational safety and health standards, and the Board of Optometry has the authority to adopt rules relating to the licensure of optometrists.

Rules³ implement, interpret, and even prescribe law or policy and are binding on persons they affect. The General Assembly has established a process, known as the Vermont Administrative Procedure Act or APA, that State agencies must adhere to when adopting rules. Toward the end of this process, LCAR is required to review State agency rules.

Vermont is not unique in this approach. While not completely analogous—and well outside the scope of this memorandum to go into detail on federal rulemaking and recent decisions on federal rulemaking from the Supreme Court of the United States—it is helpful to draw some parallels to the “why” and “how” of the promulgation of federal regulations.

Congress delegates rulemaking authority to agencies for a number of reasons. Perhaps most importantly, agencies have a significant amount of expertise and can “fill in” technical details of programs that Congress created in statute. This can be useful for Congress, which is responsible for establishing policy in a wide range of issue areas and does not necessarily have the same depth of expertise that agencies may have. In addition, even after delegating rulemaking authority to agencies, Congress retains its general legislative power, which gives it the ability to conduct oversight, modify or repeal regulations, and amend agencies’ underlying statutory authority. As such, delegating authority to agencies can enable Congress to focus on “big picture” issues rather than spending its time and resources debating all the technical details required to fully implement a complex public policy. Finally, by creating the federal rulemaking process, Congress instituted a number of procedural controls on agencies, such as ensuring that the public would have an opportunity for

¹ See [Vt. Const.](#) Ch. I, Art. 15 (“The power of suspending laws, or the execution of laws, ought never to be exercised but by the Legislature, or by authority derived from it, to be exercised in such particular cases, as this constitution, or the Legislature shall provide for.”); Vt. Const. Ch. II, §§ 2 (the House and Senate, together, have the supreme legislative power), 6 (legislative powers), and 11 (Governor’s powers with respect to passed bills; veto power).

² The definition of “agencies” in [3 V.S.A. § 801\(b\)\(1\)](#) includes “a State board, commission, department, agency, or other entity or officer of State government, other than the Legislature, the courts, the Commander in Chief, and the Military Department, authorized by law to make rules or to determine contested cases.”

³ Defined in [3 V.S.A. § 801\(b\)\(9\)](#) as “each agency statement of general applicability that implements, interprets, or prescribes law or policy and that has been adopted in the manner provided by sections 836–844 of this title.”

participation through the public comment process required by the [federal] Administrative Procedure Act (APA).⁴

Further—and also outside the scope of this memorandum—states have their own rule- or regulation-making processes, typically called an administrative procedure act, with similarities in terms of requisite steps, transparency, public involvement, exceptions for emergencies, etc.⁵

II. Entities Involved in Vermont

A. Legislative Committee on Administrative Rules

LCAR is “composed of eight members of the General Assembly . . . appointed for two-year terms ending on February 1 of odd-numbered years[,]” which roughly coincides with the biennium, “as follows: four members of the House of Representatives, appointed by the Speaker of the House, not all from the same party, and four members of the Senate . . . appointed by the Senate Committee on Committees, not all from the same party.”⁶ LCAR elects a chair and a vice chair from among its members⁷ and “adopt[s] rules to govern its operation and organization.”⁸ LCAR reviews final proposed rules and may object.⁹ More on this role is discussed in Secs. IV.6 and VI of this memorandum.

LCAR may also review existing rules and object to them in the same manner, and based upon the same standards, as those for final proposed rules¹⁰ and has the power to compel an agency to initiate rulemaking to adopt as a rule an existing practice or procedure, but LCAR does not have the power to compel adoption of a rule.¹¹

Upon LCAR’s written request to an agency, “a rule or part of a rule that has not been adopted, readopted or substantially amended during the preceding six years [will] expire one year from the date of the request.”¹² However, this “does not prevent the agency from adopting the same or a similar rule during that year,” provided that the APA is complied with.¹³

⁴ [Congressional Research Service, An Overview of Federal Regulations and the Rulemaking Process \(updated Mar. 19, 2021\)](#); *see also* [Congressional Research Service, The Federal Rulemaking Process: An Overview \(Jun. 17, 2013\)](#).

⁵ *See* [ChangeLab Solutions, Know the Rules, An Overview of State Agency Rulemaking \(2015\)](#); *see, e.g.*, [California Rulemaking Process, What is Rule Making in New York?](#), [Maine Guide to Rulemaking](#).

⁶ [3 V.S.A. § 817\(a\)](#).

⁷ *Id.* Historically, the Chair and Vice Chair are from different bodies and the body from which the Chair is from switches every two years, but that is not required under statute or LCAR Rules.

⁸ [3 V.S.A. § 817\(b\)](#). These are LCAR’s Procedural Rules (LCAR Rules).

⁹ [3 V.S.A. §§ 842 and 844\(e\) and \(g\)](#); *see also* [LCAR Rules § 4\(b\)](#).

¹⁰ [3 V.S.A. § 817\(d\)](#); [LCAR Rules § 4\(b\)\(4\)](#).

¹¹ [3 V.S.A. § 831\(c\) and \(f\)](#).

¹² [3 V.S.A. § 834\(a\)](#).

¹³ *Id.*

Somewhat separate from the rulemaking process, LCAR also always has the authority to hold hearings on “a proposed or previously adopted rule”¹⁴ or anything that a member of LCAR “believes is deserving of the attention of” LCAR, provided that “a majority of [LCAR] approves of further inquiry.”¹⁵ LCAR can also, and frequently does, “request that any standing committees of the General Assembly review the issues or questions presented therein which are outside the jurisdiction of the Committee but are within the jurisdiction of the standing committees.”¹⁶

B. Interagency Committee on Administrative Rules

The Interagency Committee on Administrative Rules (ICAR) was established to assist “in the review, evaluation and coordination of programs and activities of State agencies, the development of strategies for maximizing public input, and the promotion of consistent measures among agencies for involving the public in the rulemaking process . . .”¹⁷ Members of ICAR are appointed by the Governor from the Executive Branch.¹⁸ ICAR’s duties include:

- (a) reviewing existing and proposed rules for “style, consistency with the law, legislative intent, and the policies of the Governor”;
- (b) prescribing strategies for maximizing public input during the rulemaking process; and
- (c) making reports and recommendations concerning programs and activities of designated agencies.¹⁹

C. Secretary of State

The Secretary of State maintains a centralized rule system that must be made available to the public and contain all rules in effect or proposed as of July 1, 2019, and all rules proposed and adopted by agencies after July 1, 2019.²⁰ The Secretary of State also maintains a permanent register of rules adopted under the Administrative Procedure Act.²¹ The [Code of Vermont Rules](#) (a.k.a. Vermont Administrative Code), hosted by LexisNexis, contains adopted rules, and the [Proposed Rules Postings](#) contains rules that are in the process of being adopted.

¹⁴ [3 V.S.A. § 817\(c\)](#); *see also* [3 V.S.A. § 817\(d\)](#).

¹⁵ [LCAR Rules § 2\(a\) and \(c\)](#); *see, e.g.*, [Notice on Public Hearing on Emergency Housing Waiver and Variance of Rules, EH-700–EH-765, Oct. 11, 2021](#).

¹⁶ [3 V.S.A. § 817\(e\)](#); *see also* [LCAR Rules § 8](#).

¹⁷ [3 V.S.A. § 820\(a\)](#).

¹⁸ *Id.*

¹⁹ [3 V.S.A. § 820](#).

²⁰ [3 V.S.A. § 818\(a\)](#). Other statutory requirements of the centralized rule system are delineated in [3 V.S.A. § 818\(b\)–\(d\)](#).

²¹ [3 V.S.A. § 847\(b\)](#). Adopting agencies are also required to make each adopted rule available to the public online and for physical inspection and copying. [3 V.S.A. § 847\(a\)](#).

The Secretary of State also publishes notices of rulemaking online, through the Proposed Rules Postings, and in newspapers (in consolidated form);²² provides the [forms that must be completed as part of the rulemaking process](#);²³ provides assistance to agencies in the process of adopting rules;²⁴ and is authorized to adopt rules for the effective administration of the Administrative Procedure Act,²⁵ which is just, thus far, the Rule on Rulemaking.

III. Overview of APA Rulemaking Process²⁶

1. [Agency prefiles the proposed rule with ICAR](#)

2. [Agency files the proposed rule with the Secretary of State](#)

3. [Secretary of State publishes notice of the proposed rule](#)

4. [Agency holds public hearings and receives public comment on the proposed rule](#)

5. [Agency files the final proposed rule with the Secretary of State and LCAR](#)

6. [LCAR reviews the final proposed rule](#)

7. [Agency responds to LCAR's objections or concerns \(if applicable\)](#)

8. [Agency files adopted rule with the Secretary of State and LCAR](#)

9. [Rule takes effect 15 days after adopted rule is filed unless a later date is specified](#)

IV. Details Regarding APA Rulemaking Process

The following paragraphs elaborate on the steps of the rulemaking process described in the previous section. The paragraph numbers correspond to each numbered step. Throughout the entire rulemaking process, the adopting agency is required to post on its website certain information related to the adoption of the rule. What must be posted is delineated in [3 V.S.A. § 836\(b\)](#).

²² [3 V.S.A. § 839\(a\) and \(b\)](#); see also [Rule on Rulemaking § 4](#); [Newspapers of Record](#).

²³ See [Rule on Rulemaking § 3](#).

²⁴ More information is available through the Secretary of State's website on [Filing Tools](#).

²⁵ [3 V.S.A. § 847\(c\)](#).

²⁶ [3 V.S.A. § 836](#) (except for emergency rules, which are adopted pursuant to [3 V.S.A. § 844](#) under the process discussed in [Sec. V](#) of this memorandum).

1. *Agency prefiles the proposed rule with ICAR*

Agencies must prefile their proposed rules, except for emergency rules, with ICAR at least 15 days before filing with the Secretary of State.²⁷ ICAR reviews the proposed rule for style,²⁸ consistency with the law, legislative intent, and policies of the Governor.²⁹ ICAR will also work with the agency to prescribe a strategy for maximizing public input and may prescribe a specific strategy and consequences for failing to adhere to the prescribed strategy.³⁰

2. *Agency files the proposed rule with the Secretary of State*³¹

Required content of filing is delineated in [3 V.S.A. § 838](#) and includes:

- (a) the name of the agency and the subject or title of the rule;
- (b) an analysis of economic impact (contents delineated in 3 V.S.A. § 838(b));
- (c) an analysis of environmental impact (contents delineated in 3 V.S.A. § 838(c));
- (d) an explanation of all material incorporated by reference, if any (addressed more fully in 3 V.S.A. § 838(d));
- (e) the text of the proposed rule and an annotated text showing changes from existing rules;
- (f) an explanation of the strategy for maximizing public input on the rule as prescribed by ICAR;
- (g) a brief summary of the scientific information upon which the rule is based, if applicable;
- (h) a concise, plain language summary explaining the rule and its effect;
- (i) the specific statutory authority for the rule or the general statutory authority, as applicable;
- (j) an explanation of why the rule is necessary;
- (k) an explanation of who is affected by the rule;
- (l) the contact information for the individual in the agency able to answer questions or receive comments on the rule;
- (m) a proposed schedule for completing the requirements of the APA, including any scheduled hearings (date, time, and place) and deadline for receiving comments;
- (n) information regarding any exemption from the Public Records Act set forth in the rule; and

²⁷ [3 V.S.A. § 837](#); [Rule on Rulemaking § 2.1](#). Statute does not require ICAR to take up the rule—although it does require that ICAR “work with the agency and prescribe a strategy for maximizing public input on the proposed rule,” [3 V.S.A. § 820\(c\)](#)—or for the agency to wait for ICAR to take up the rule, but the [Secretary of State’s Final Proposed Filing – Coversheet](#) form requests that the ICAR minutes be included, and ICAR indicates that agencies “may use the cover page of the minutes, along with [their] prospective proposed rule recommendation page(s) from the minutes in the filing for the Secretary of State’s office. This will satisfy the documentation necessary to move the rule forward when filing with LCAR (i.e. the ‘ICAR Approval Letter or Memo’ required).” [Interagency Committee on Administrative Rules \(ICAR\) Website](#).

²⁸ [3 V.S.A. § 833](#) (requisite style is clear and coherent with respectful language).

²⁹ [3 V.S.A. § 820\(b\)](#).

³⁰ [3 V.S.A. § 820\(c\)](#).

³¹ [3 V.S.A. § 838](#); [Rule on Rulemaking § 2.2](#).

- (o) a signed³² and dated statement by the adopting authority³³ approving the contents of the proposed rule filing.

3. *Secretary of State publishes notice of the proposed rule*

The Secretary of State is required to give notice of the proposed rule within two weeks after filing by the agency, and detailed notices are published online with abbreviated notices in newspapers of record designated by the Secretary.³⁴ Required contents of the notices are delineated in statute and include (in the online posting) the details of scheduled public hearings and the deadline for receiving comments.³⁵

4. *Agency holds public hearings and receives public comment on the proposed rule*

An agency must afford all persons a reasonable opportunity to submit data, views, or arguments, orally or in writing;³⁶ and may schedule public hearings not sooner than 30 days after the first notice is given by the Secretary of State.³⁷ If no public hearings are scheduled, then the deadline for public comment shall be set for not less than 14 calendar days following publication of notice in the newspapers of record.³⁸ If one or more public hearings is scheduled, the deadline for public comment shall be set for not less than seven days following the last hearing date.³⁹ An agency must schedule one or more public hearings if requested by 25 persons, a State agency or governmental subdivision, ICAR, or an association with at least 25 members.⁴⁰ An agency must also adhere to the strategy for maximizing public input prescribed by ICAR (step 1).⁴¹

5. *Agency files the final proposed rule with the Secretary of State and LCAR*

After considering public comment on the rule, an agency files its final proposal with the Secretary of State and LCAR.⁴² The filing must include all the information required to be filed with the original proposal, amended accordingly, and statements that address how the proposed rule is within agency authority; why it is not arbitrary;⁴³ compliance with ICAR's prescribed

³² "Wet signatures" are no longer required on filings. See [Rule on Rulemaking § 3](#).

³³ "Adopting authority" is defined in [3 V.S.A. § 801\(b\)\(11\)](#) and varies depending on the agency.

³⁴ [3 V.S.A. § 839\(a\) and \(c\)](#).

³⁵ *Id.*

³⁶ [3 V.S.A. § 840\(c\)](#).

³⁷ [3 V.S.A. § 840\(a\)](#).

³⁸ [Rule on Rulemaking § 4](#).

³⁹ [3 V.S.A. § 840\(c\)](#).

⁴⁰ [3 V.S.A. § 840\(a\)](#).

⁴¹ See [3 V.S.A. § 842\(b\)\(4\)](#).

⁴² [3 V.S.A. § 841\(a\)](#); see also [LCAR Rules § 5](#), [Rule on Rulemaking § 2.3](#).

⁴³ "Arbitrary" is defined in [3 V.S.A. § 801\(b\)\(13\)](#).

strategy for maximizing public input; sufficiency of the economic and environmental impact analyses; and a description of why the agency decided not to revise the rule in response to comments it received, if applicable.⁴⁴ LCAR also requires “all written comments submitted to the agency on the proposed rule . . . [but i]f identical written comments are submitted to the agency, then the agency may provide one copy of the written comment with attribution to all of the persons who submitted the identical written comment.”⁴⁵

LCAR staff from the Office of Legislative Operations accepts filings of proposed final rules on behalf of LCAR and distributes them to members of LCAR and the chairs of the appropriate standing committees—including to the Chairs of the House and Senate Committees on Government Operations when the filing identifies a Public Records Act exemption in the rule.⁴⁶ In addition, upon request, each member of the appropriate standing committee will be notified by e-mail or in summary fashion that the final proposed rule has been filed and the date of filing and, upon request, will be provided with a copy of the filing.⁴⁷ One of the attorneys in the Office of Legislative Counsel who staffs the standing committee with jurisdiction over the subject matter of the rule will also review the rule.⁴⁸

6. *LCAR reviews the final proposed rule*

LCAR must act, if it so chooses,⁴⁹ on a final proposed rule within 45 days after it is filed, unless the agency consents to an extension of LCAR’s review period.⁵⁰ When reviewing a rule, LCAR may:

- (a) approve;⁵¹
- (b) approve with modifications agreed to or proposed by the agency;⁵²
- (c) take no action;⁵³ or

⁴⁴ [3 V.S.A. § 841\(b\)](#).

⁴⁵ [LCAR Rules § 5\(a\)](#).

⁴⁶ [3 V.S.A. § 841\(c\)](#); [LCAR Rules § 5\(b\)](#).

⁴⁷ [3 V.S.A. § 841\(c\)](#); [LCAR Rules § 5\(b\)](#).

⁴⁸ Legislative Counsel attorneys provide advice and guidance to members of the General Assembly on whether the statutory grounds for an LCAR objection may be met, *see* 3 V.S.A. §§ [842\(b\)](#) and [844\(e\)\(1\)](#), and look for technical and typographic errors and other potential issues with a rule. It is very common for Legislative Counsel attorneys to work with the agency and/or chairs of the standing committees to address these issues prior to LCAR approving a rule and for the agency to submit proposed modifications to Charlene for distribution to LCAR prior to the scheduled meeting. In these instances, if LCAR approves a rule, then it is typically with the proposed modifications from the agency. Under [LCAR Rules § 4\(i\)](#), unless otherwise specified, an approval vote “also authorizes modifications of a technical and typographical nature[.]” so an agency can correct technical and typographic errors after approval by LCAR and before a rule is adopted.

⁴⁹ LCAR takes action with motions, and motions do not need a second. *See* [LCAR Rules § 4\(a\)](#).

⁵⁰ [3 V.S.A. § 842\(a\)](#) (“Failure to give timely notice shall be deemed approval.”); [LCAR Rules § 7\(a\)](#).

⁵¹ [3 V.S.A. § 843\(a\)\(2\)](#).

⁵² [3 V.S.A. § 843\(b\)](#); *see also* note 48 *supra*.

- (d) object,⁵⁴ but only on the following grounds and with a majority vote of LCAR:
1. the proposed final rule is beyond the authority of the agency, contrary to the intent of the General Assembly, arbitrary, or not written in a satisfactory style;
 2. the agency did not adhere to ICAR's strategy for maximizing public input;
 3. the economic impact analysis fails to recognize a substantial economic impact; or
 4. the environmental impact analysis fails to recognize a substantial environmental impact.

LCAR may also, by a majority vote of LCAR, request that a standing committee review issues relating to a final proposed rule that it considers.⁵⁵ This can happen whether or not LCAR objects.

7. Agency responds to LCAR's objections or concerns (if applicable)

If LCAR objects, which must be done by a majority vote of LCAR, the agency has 14 days to respond.⁵⁶ If the agency's response is satisfactory to LCAR, then LCAR may withdraw its objection.⁵⁷ If the agency's response is not satisfactory to LCAR, then LCAR may, based on a majority vote of LCAR, file its objection in certified form with the Secretary of State.⁵⁸ An agency's failure to respond to LCAR's objection will prevent a rule from taking effect.⁵⁹

If an LCAR objection is filed in certified form with the Secretary of State, then the portion of the rule objected to will no longer be presumed valid by a court.⁶⁰ If the rule is challenged in court, the agency will bear the burden of proving that the portion of the rule objected to is within the authority delegated to the agency, consistent with the intent of the General Assembly, not arbitrary, and written in accordance with the style requirements; the agency adhered to ICAR's strategy for maximizing public input; and its economic and environmental impact analyses did not fail to recognize a substantial economic or environmental impact.⁶¹ Notice of the objection must also be included on all copies of the rule distributed to the public.⁶²

⁵³ [3 V.S.A. § 843\(a\)\(1\)](#). "The failure of [LCAR] to object to a rule is not an implied legislative authorization of its substantive or procedural lawfulness." [3 V.S.A. § 842\(c\)\(3\)](#).

⁵⁴ [3 V.S.A. § 842\(b\)](#); [LCAR Rules § 4\(b\)\(1\)](#).

⁵⁵ [3 V.S.A. § 817\(e\)](#); [LCAR Rules § 8](#).

⁵⁶ [3 V.S.A. § 842\(a\)](#).

⁵⁷ [3 V.S.A. § 842\(a\)\(3\)](#).

⁵⁸ [3 V.S.A. § 842\(c\)\(1\)](#).

⁵⁹ [3 V.S.A. § 846\(a\)\(4\)](#).

⁶⁰ See [3 V.S.A. § 842\(c\)\(2\) and \(3\)](#).

⁶¹ [3 V.S.A. § 842\(c\)\(2\)](#).

⁶² [3 V.S.A. § 842\(d\)](#).

8. Agency files adopted rule with the Secretary of State and LCAR

The final step an agency must take in the rulemaking process is filing the adopted rule, which can be done 45 days after filing a final proposed rule, provided the agency has not received notice of objection from LCAR; after receiving notice of approval from LCAR; or after responding to an objection from LCAR.⁶³ An agency must adopt a rule within eight months after the initial filing of the proposed rule with the Secretary of State, unless this deadline is extended by LCAR,⁶⁴ and an agency is required to correct an adopted rule within 30 days after discovering that the text of the rule deviates from the text of the rule as approved by LCAR.⁶⁵ The required contents of this final filing is delineated in [3 V.S.A. § 843\(d\)](#).⁶⁶

9. Rule takes effect 15 days after adopted rule is filed unless rule specifies a later date⁶⁷

By taking effect, a rule is valid and binding on persons it affects and has the force of law unless amended or revised or unless a court of competent jurisdiction determines otherwise.⁶⁸ It is not unusual for the effective date included in a proposed final rule itself to be left blank and for LCAR to approve of the rule with the knowledge that the effective date will be filled in once the rule is adopted and the effective date known.

V. Emergency Rules

When an agency “believes that there exists an imminent peril to public health, safety, or welfare, it may adopt an emergency rule.”⁶⁹ The General Assembly may also authorize emergency rulemaking.⁷⁰ The rule may be adopted without having been prefiled with ICAR or filed in proposed or final proposed form and may be adopted after whatever notice and hearing that the agency finds to be practicable under the circumstances.⁷¹ “The agency shall make reasonable

⁶³ [3 V.S.A. § 843\(a\)](#).

⁶⁴ [3 V.S.A. § 843\(c\)](#); [LCAR Rules § 7\(b\)](#) (vote requires a majority of those members of LCAR who are present).

⁶⁵ [3 V.S.A. § 843\(c\)](#).

⁶⁶ [Rule on Rulemaking § 2.4](#).

⁶⁷ [3 V.S.A. § 845\(d\)](#).

⁶⁸ [3 V.S.A. § 845\(a\)](#).

⁶⁹ [3 V.S.A. § 844\(a\)](#).

⁷⁰ See, e.g., [2020 Acts and Resolves No. 159, Sec. 10](#) (“Until July 1, 2021, and notwithstanding any provision of 3 V.S.A. § 844 to the contrary, the Department of Financial Regulation shall consider adopting, and shall have the authority to adopt, emergency rules to address the following through June 30, 2021 . . .”); [2022 Acts and Resolves No. 86, Sec. 11](#) (“Emergency rules identical to the proposed final rules entitled ‘Rule 3: Medical Cannabis’ and ‘Rule 4: Compliance and Enforcement’ that were filed with the Legislative Committee on Administrative Rules on March 9, 2022 shall be deemed to meet the standard for the adoption of emergency rules pursuant to 3 V.S.A. § 844(a) if adopted as emergency rules prior to the permanent rules entitled ‘Rule 3: Medical Cannabis’ and ‘Rule 4: Compliance and Enforcement’ becoming effective.”).

⁷¹ 3 V.S.A. §§ [837](#) and [844\(a\)](#).

efforts to ensure that emergency rules are known to persons who may be affected by them.”⁷² Emergency rules shall not remain in effect for more than 180 days.⁷³ An agency may propose a permanent rule on the same subject at the same time that it adopts an emergency rule.⁷⁴ Emergency rules must be filed with the Secretary of State and LCAR, and the required contents of this filing are delineated in statute.⁷⁵

An emergency rule is adopted and is typically effective when filed.⁷⁶ As a result, LCAR normally reviews emergency rules even though they are already in effect. An agency may make a germane change to an emergency rule in response to LCAR’s expressed concern, but such a change does not extend the period during which the emergency rule remains in effect.⁷⁷ Moreover, an agency may withdraw an emergency rule if LCAR objects.⁷⁸

LCAR may object, based on a majority vote of LCAR, to an emergency rule if the rule is beyond the authority of the agency; contrary to the intent of the General Assembly; arbitrary; or “not necessitated by an imminent peril to public health, safety, or welfare sufficient to justify adoption of an emergency rule.”⁷⁹ This objection, if filed in certified form based on a majority vote of LCAR, will shift the burden to the agency of proving in court that the emergency rule is within the authority delegated to the agency; consistent with legislative intent; not arbitrary; and justified by an imminent peril to the public health, safety, or welfare.⁸⁰

An agency may also make emergency amendments to existing rules that implement a program controlled by federal law or a multistate entity, due to time-sensitive changes required for that program.⁸¹ Statute provides grounds for LCAR objection, based on a majority vote of LCAR, that are specifically tailored to these types of emergency amendments to existing rules.⁸²

VI. Effect of LCAR’s Objection

If LCAR files an objection to a rule in certified form and the validity of the rule is thereafter challenged, the burden of proof shifts to the State agency to prove the validity of a rule. In other words, LCAR’s objection effectively removes the “presumption of validity” of the rule. The

⁷² [3 V.S.A. § 844\(a\)](#).

⁷³ [3 V.S.A. § 844\(b\)](#).

⁷⁴ *Id.*

⁷⁵ [3 V.S.A. § 844\(c\) and \(d\)](#).

⁷⁶ [3 V.S.A. § 845\(d\)](#).

⁷⁷ [3 V.S.A. § 844\(f\)](#).

⁷⁸ [3 V.S.A. § 844\(e\)\(3\)](#).

⁷⁹ [3 V.S.A. § 844\(e\)\(1\)](#); [LCAR Rules § 4\(b\)\(2\)](#).

⁸⁰ [3 V.S.A. § 844\(e\)\(1\) and \(2\)](#).

⁸¹ [3 V.S.A. § 844\(g\)](#).

⁸² *Id.*; [LCAR Rules § 4\(b\)\(3\)](#).

agency would then have to prove that it does have the authority to adopt the rule, that the rule is not contrary to legislative intent, that the rule is not arbitrary, or that the rule meets the other criteria set forth in [3 V.S.A. § 842\(c\)\(2\)](#) for permanent rules or in [3 V.S.A. § 844\(e\)\(2\)](#) for emergency rules.