

PROPOSED RULE: COVER SHEET

SOS# 04P004
(Do not complete)

Note: File this form and its attachments with the secretary of state. You must file an adopting page, an economic impact statement, a public input statement, text of the rule, and an annotated text showing changes from existing rules with this cover sheet. You must also file a scientific information statement and/or incorporation by reference statement if applicable.

Please complete the following.

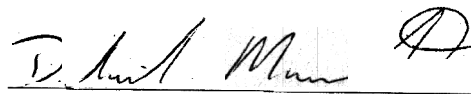
- 1 Title of proposed rule:
Vermont Elections - Administrative Complaint Procedure
2. Agency:
Office of the Secretary of State
- 3 Contact Person (Name, Address, & Phone)
William Dalton, 26 Terrace Street, Drawer 09, Montpelier, VT 05609-1101 802-828-2175
- 4 Statutory authority for this rule:
17 VSA section 2458 and 42 USC section 15515(a)
5. Concise summary explaining the effect of the rule. This summary will be used to provide published notice of the proposed rule. (150 words or less):
The rule provides both an informal and formal means for persons to complain to the Vermont chief elections official (Secretary of State) concerning allegations of a violation of certain sections of Vermont's election law and/or provisions of Title III of the federal Help America Vote Act of 2002. In general, these sections of election law deal with voting procedures that apply to state-wide and federal primary and general elections.
6. Explanation of why this rule is necessary: Both state and federal election laws require the adoption of this rule to ensure Vermont has procedures in place for persons to seek redress for certain violations of election law.
7. List of people, enterprises and government entities affected by this rule: State and local election officials, boards of civil authority, candidates for state and federal elective offices, registered voters and Vermont citizens.
8. Brief summary of economic impact of this rule (150 words or less): The rule will generate no added cost to the conduct of elections if no complaint is filed under the provisions of this rule. If complaints are filed, the primary costs will be born by the Office of the Secretary of State to process complaints, collect information (evidence), issue

determinations and establish arbitration panels. Complainants, at their own choosing, may bear costs related to the retention of legal counsel.

9. Date, time and place of scheduled hearing, if any (no sooner than 10 days following second publication):
None scheduled.

10. Deadline for public comments (no earlier than 7 days after scheduled hearing): 03/11/04

CERTIFICATION: AS THE ADOPTING AUTHORITY (see 3 V.S.A. § 801(b)(11) for a definition) OF THIS RULE, I APPROVE THE CONTENTS OF THIS FILING.


(Sign here)

Date_01/26/04


Deborah L Markowitz

(Type name here please)

Please Check off the following components that are enclosed with this rule (Please check only those that apply to this proposed rule).

- ☒ Proposed Cover sheet
- ☒ Adopting Page
- ☒ Economic Impact Statement
- ☐ Scientific Information
- ☒ Public Input Statement
- ☐ Incorporation by Reference
- ☒ Text of the Rule
- ☐ Annotated Text

This box for Secretary of State use only

<input checked="" type="checkbox"/> Proposed Cover Sheet <input checked="" type="checkbox"/> Adopting Page <input type="checkbox"/> Economic Impact Statement <input type="checkbox"/> Scientific Information <input checked="" type="checkbox"/> Public Input Statement <input type="checkbox"/> Incorporation by Reference <input checked="" type="checkbox"/> Text of the Rule <input type="checkbox"/> Annotated Text <input checked="" type="checkbox"/> ICAR Approval received.	<div style="border: 1px solid black; padding: 10px; text-align: center;"> <p>Secretary of State</p> <p>JAN 27 2004</p> <p>Elections and Administration</p> </div> <p><i>These components were filed with this rule. APA Clerk's Initials</i> </p>
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ADOPTING PAGE

Note: This form must be filed three times during the rulemaking process, viz., with the Proposed Rule Cover Sheet, Final Proposal Cover Sheet, and Adopted Rule Cover Sheet.

Please complete the following:

- 1 Title of rule:
Vermont Elections - Administrative Complaint Procedure
2. Agency:
Office of the Secretary of State
3. Agency's reference number, if any:
4. This is a(n)
 - ☐ Amendment- changes to an already existing rule.
 - ☒ New rule- adopts a rule that did not previously exist.
 - ☐ Repeal-repeals a rule that previously existed.

Except for new rules, please give the name of the existing rule and the date on which it was last amended or adopted:

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with the filings of proposed rules and final proposals. Filing a paragraph or page of a larger rule is not sufficient. Similarly, if the rules of the agency have been published as part of the Code of Vermont Rules, the agency shall file the annotated text, if possible, using the appropriate page or pages of the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

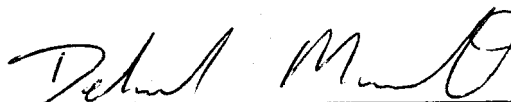
ECONOMIC IMPACT STATEMENT

Note: In completing the economic impact statement, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule. Rules affecting or regulating public education and public schools must include cost implications to local school districts and taxpayers in the impact statement (see 3 V.S.A. § 832 (b) for details). Where this form is insufficient for your purposes, please use additional sheets.

Please complete the following.

1. Title or subject of rule:
Vermont Elections - Administrative Complaint Procedure
2. Agency:
Office of the Secretary of State
3. Please list categories of people, enterprises and government entities potentially affected by this rule and estimate for each the costs and benefits anticipated. If applicable, include small businesses, and complete items 4 and 5 of this sheet as well. Please be as specific as possible, giving full information on your assumptions, data base, and attempts to gather other information on the nature of the costs and benefits involved. Costs and benefits can include any tangible or intangible entities or forces which will make an impact on life without this rule.
State and local election officials, boards of civil authority, candidates for State and federal elective offices and Vermont's registered voters. The rule will generate no added cost to the conduct of elections if no complaint is filed under the provisions of this rule. If complaints are filed, the primary costs will be born by the Office of the Secretary of State to process complaints, collect information (evidence), issue determinations and establish arbitration panels. Complainants, at their own choosing, may bear costs related to the retention of legal counsel.
4. Please compare the economic 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.
There is no alternative to the promulgation of this rule in this, or a substantially similar format, due to the prescriptive nature of the state and federal enabling legislation.
5. Flexibility statement: Please compare the burden imposed on small business by compliance with the rule to the burden which would be imposed by alternatives considered in 3 V.S.A. § 832a.
Not applicable.

CERTIFICATION: AS THE ADOPTING AUTHORITY (see 3 V.S.A. § 801(b)(11) for a definition) OF THIS RULE, I CONCLUDE THAT THIS RULE IS THE MOST APPROPRIATE METHOD OF ACHIEVING THE REGULATORY PURPOSE. IN SUPPORT OF THIS CONCLUSION, I HAVE ATTACHED ALL FINDINGS REQUIRED BY 3 V.S.A. § 832 (a) and § 832 (b)


(Sign here)

Date: 01/26/04

PUBLIC INPUT STATEMENT

In completing this public input statement, an agency shall describe what it did or will do to maximize the involvement of the public in the development of the rule. Where this form is insufficient for your purposes, please use additional sheets.

Please complete the following:

Title or subject of rule:

Vermont Elections - Administrative Complaint Procedure

2: Agency:

Office of the Secretary of State

3. Please list the steps that have been or will be taken to maximize public involvement in the development of the proposed rule:

At the time of filing the Proposed Rule with the Interagency Committee on Administrative Rules the Secretary of State has submitted a draft for review and comments to members of the HAVA (Help America Vote Act) Advisory Committee, and all 246 town and municipal clerks. Town clerks have been requested to bring the Proposed Rule to their boards of civil authority for review and comments.

Beyond general advertisements, please list the people and organizations that have been or will be involved in the development of the proposed rule.

HAVA Advisory Committee and municipal/local boards of civil authority.

VERMONT ELECTIONS

ADMINISTRATIVE COMPLAINT PROCEDURE

- I. **Authority:** In accordance with the provisions of 42 USC §15512(a) and 17 VSA §2458 this rule provides for a uniform, nondiscriminatory procedure for the resolution of a complaint alleging a violation of provisions of Title 17 of the Vermont Statutes or Title III of the Help America Vote Act of 2002 (HAVA). It is not intended to over-ride any specific provisions of Title 17 that provide for dispute resolution for specific aspects of Vermont elections (e.g. complaint in superior court for recounts).
- II. **Definitions:**
 - A. "Complaint" means an allegation in writing that there is a violation of provisions of Title 17 of the Vermont Statutes or Title III of the HAVA that has occurred, is occurring or is about to occur in an election.
 - B. "Complainant" means any person filing a complaint in accordance with the provisions of paragraph III, below.
 - C. "Election" means a primary or general election in which a federal office appears on the ballot.
 - D. "Respondent" means any state or local elections official whose actions are alleged to be in violation of Title 17 or Title III.
 - E. "Secretary" means the Vermont Secretary of State or his or her designee.
 - F. "Title 17" means 17 V.S.A. sections 2451 - 2602.
 - G. "Title III" means Title III of the Help America Vote Act of 2002; 42 United States Code §§15281-15485.
- III. **Complaints:** Any person who believes that a violation of provisions of Title 17 or Title III by any state or local election official has occurred, is occurring or is about to occur may file a complaint with the Secretary.
 - A. Complaints must be in writing, sworn under oath under penalty of perjury, signed by the complainant and notarized
 - B. Complaints must include the full name, telephone number and mailing address of the complainant.
 - C. Complaints must include a description of the alleged violation sufficient to make the Secretary and respondent aware of the nature and specifics of the complaint.
 - D. If a hearing on the record is requested, the complaint must so state.
 - E. The notarized complaint must be filed with the Secretary at 26 Terrace Street, Drawer 9, Montpelier, VT 05609-1101.
 - F. The complainant must also send a copy of the complaint to each respondent by first class U.S. mail.

IV. Procedures: The Secretary may process complaints in any of the following ways:

- A. Dismiss the complaint and issue a final determination if the complaint does not comply with the requirements of paragraph III, above; or if the complaint does not, on its face, allege a violation of Title 17 or Title III with regard to an election.
- B. Dismiss the complaint and issue a final determination if the complaint is not filed within sixty (60) days of the final certification of the federal election at which the alleged violation took place.
- C. Resolve the complaint informally, and issue a final determination without a formal proceeding unless the complaint requests a hearing on the record.
- D. Designate a hearing officer and schedule a date, time and place for a hearing on the record.
- E. Consolidate multiple complaints into a single proceeding if the complaints relate to the same actions or events giving rise to the complaints, or the complaints raise common questions of law or fact.

V. Hearing Procedures: If requested in the complaint, and if no other summary action has occurred, the Secretary shall schedule a hearing as follows:

- A. Written notice of the hearing shall be given to all parties setting out the date, time and place of the hearing. Notice shall be sent to the mailing addresses set out in the complaint. Notice must be sent by first class US mail at least seven (7) days prior to the date of the hearing.
- B. The hearing shall be recorded. The audio recording shall constitute the official record of the hearing.
- C. An extension of time for a hearing may be granted for good cause.
- D. At the hearing all parties shall have the opportunity to be heard and to present evidence relevant to the determination of the complaint. Witnesses shall be sworn.
- E. Any party may be represented by legal counsel.
- F. If a complainant fails to appear at the hearing then the complaint shall be dismissed with prejudice.

VI. Determination:

- A. A written determination on the complaint shall be made within ninety (90) days of the filing of the complaint.
- B. A written determination shall be issued within ten (10) days of the conclusion of any hearing.
- C. The determination shall be final. The determination may be appealed to the superior court in the county where an appellant resides.

VII. Alternative Dispute Resolution: If, for any reason, the Secretary does not make a final determination within ninety (90) days after the complaint was filed, or within any extension of time to which the complainant consents, the complaint shall be resolved under this section:

- A. The Secretary shall immediately designate a three-member arbitration panel which shall consider the complaint and any record previously created and reach a final determination by majority vote of the panel. If no record has been created, or the record is incomplete, the panel may receive evidence in accordance with the provisions contained in paragraph V, above.
- B. The panel shall issue a written, final determination within thirty (30) days of its designation.
- C. The final determination of the panel may be appealed to the superior court in the county in which an appellant resides.