

VERMONT ADMINISTRATIVE RULES

VERMONT STATE ARCHIVES & RECORDS ADMINISTRATION

**OFFICE OF THE SECRETARY
OF STATE
MONTPELIER, VT**

DECLARATION BY RECORDS CUSTODIAN

Government Agency: Vermont State Archives and Records Administration
Office of the Secretary of State

Record Series Title: Administrative Procedures Act: Proposed, Final
Proposed and Adopted Filings; circa 1940 - Present.

Record Series #: SE-134

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Signature of Records Custodian

9/24/2021

Date

Tanya Marshall

Typed Name

VT State Archivist

Title

ADMINISTRATIVE PROCEDURES ACT

ADOPTED FILING

2021

Adopted Rule Number: **21-023**

Proposed Rule Number: **21P017**

ENTITLED:

Rule on Rulemaking.

Document Name: 21-023.pdf

In accordance with 3 V.S.A. § 117(g) (6), these records have been digitally scanned for the purpose of preservation using *Imaging Guidelines for all Public Agencies 2008* or as amended, provided by the Vermont State Archives & Records Administration and Vermont Department of Information & Innovation.



State of Vermont
Office of the Secretary of State

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Montpelier, VT 05633-1101

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<https://sos.vermont.gov>

James C. Condos, Secretary of State
Christopher D. Winters, Deputy Secretary

September 23, 2021

Hon. Mark MacDonald, Chair
Legislative Committee on Administrative Rules
Vermont State House
Montpelier, Vermont 05602

RE: Modifications made to final proposed rule.

Dear Chairperson MacDonald and Members:

Modifications in response to comments from Anthea Dexter-Cooper regarding technical and grammatical inconsistencies within the filing have been corrected in the adopted filing as approved by the committee September 23, 2021. The changes include:

Section 1 ¶ 1: a second symbol character added to precede the range of sections of statute cited.

Section 3 ¶ 1: the word "be" was changed to "include" and a previous edit was removed from the first paragraph.

Section 3 ¶ 2: the word "statute" and bracketing around the citation was be removed for consistency with other statutory citations within the rule.

Section 4 ¶ 1: an inaccurate sentence was removed. The sentence indicated that notices would remain posted online until two weeks after adoption... this was inaccurate. The notices remain posted indefinitely and are searchable; they just are not visible from the "Recent" list.

Section 4 ¶ 3: the words "two full weeks" were changed to "14 calendar days" and the number is now a numeral as it is a number higher than ten. Also the days are now specified as calendar days and not business days.

The revision date was also changed to reflect the new effective date for the rule.

Sincerely,

Louise F. Corliss
Administrative Services / APA Coordinator
Office of the Secretary of State

Administrative Procedures – Adopted Rule Filing

Instructions:

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the “Rule on Rulemaking” adopted by the Office of the Secretary of State, this filing will be considered complete upon filing and acceptance of these forms with the Office of the Secretary of State, and the Legislative Committee on Administrative Rules.

All forms requiring a signature shall be original signatures of the appropriate adopting authority or authorized person, and all filings are to be submitted at 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.

**PLEASE REMOVE ANY COVERSHEET OR FORM NOT
REQUIRED WITH THE CURRENT FILING BEFORE DELIVERY!**

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

Rule on Rulemaking

_____/s/James C. Condos_____, on 9/24/2021
(signature) (date)

Printed Name and Title:

James C. Condos
Secretary of State



- Coversheet
- Adopting Page
- Clean text of the rule (Amended text without annotation)
- Letter regarding changes to the final proposed

RECEIVED BY: _____

J.C.

1. TITLE OF RULE FILING:

Rule on Rulemaking

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

21P-017

3. ADOPTING AGENCY:

Office of the Secretary of State

4. 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:

5. 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).

3 V.S.A. § 847(c)

6. THE FILING HAS CHANGED SINCE THE FILING OF THE FINAL PROPOSED RULE.

7. THE AGENCY HAS INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE, INCLUDING CHANGES IN ECONOMIC IMPACT.

8. THE LEGISLATIVE COMMITTEE ON ADMINISTRATIVE RULES DID NOT OBJECT TO THE FINAL PROPOSAL.

9. PROCEDURAL HISTORY OF ADOPTION:

ICAR Filing: 05/10/2021

Proposal Filed with Office of the Secretary of State: 06/02/2021

Notices Posted Online: 06/09/2021

Notices Published in the Newspapers of Record: 06/17/2021

Adopted Rule Coversheet

A Hearing WAS Held.

Hearings Held (*PLEASE USE ADDITIONAL SHEETS TO PROVIDE THE DATE, TIME AND LOCATION OF ALL HEARINGS, IF THIS FORM IS INSUFFICIENT TO LIST ALL HEARINGS HELD*):

Date: 7/9/2021

Time: 02:00 PM

Street Address: Virtual Hearing via Zoom

Zip Code: See Attached for specifics.

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Deadline for Public Comment: 7/16/2021

Final Proposal —

Filed with Secretary of State: 07/29/2021

Filed with LCAR: 07/29/2021

Dates of LCAR Review: 09/09/2021, 09/23/2021, , ,

Adopted Rule —

Filed with Secretary of State: 09/24/2021

Filed with LCAR: 09/24/2021

10. EFFECTIVE DATE: 10/12/2021

(A RULE MAY TAKE EFFECT 15 DAYS AFTER ADOPTION IS COMPLETE OR AT A LATER TIME PROVIDED IN THE TEXT OF THE RULE SEE 3 V.S.A. §845(d) FOR DETAILS).

Administrative Procedures – 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:

Rule on Rulemaking

2. ADOPTING AGENCY:

Office of the Secretary of State

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 Log# 10-035 Rule on Rulemaking effective 10/15/2010

Emergency Rule 20-E05 Rule on Rulemaking effective 04/06/2020 expired 10/03/2020.

Adopting Page

Emergency Rule 20-E19 Rule on Rulemaking effective
10/02/2020 expired 03/31/2021.

Emergency Rule 21-E04 Rule on Rulemaking effective
04/01/2021 expires 09/28/2021

Emergency Rule 21-E15 Rule on Rulemaking effective
09/28/2021 expires 03/27/2022.

**RULE ON RULEMAKING
OFFICE OF THE SECRETARY OF STATE**

2021

Section 1. Introduction.

This rule is required by 3 V.S.A. § 847(e) for the effective administration of 3 V.S.A. Chapter 25. It applies to every agency of state government adopting rules under the Vermont Administrative Procedures Act (APA). For a fuller understanding of the rulemaking process, consult 3 V.S.A. §§ 801 - 849 and the rules of procedure of the Legislative Committee on Administrative Rules (LCAR). For the purpose of the Rule on Rulemaking, the filing of any new rule, amendment, or repeal of an existing rule shall be described as a rule.

Section 2. Filings.

The APA requires agencies to make filings of every new, amended, or repealed rule at least four times during the rule making process.

2.1 Prefiling

The first filing is the Prefiling with the Interagency Committee on Administrative Rules (ICAR). This begins the rulemaking process.

2.2 Proposed

The second filing is the Proposed Rule with the Office of the Secretary of State. This begins the notice and public comment period.

2.3 Final Proposed

The third filing is the Final Proposed Rule, which is filed with the Office of the Secretary of State and LCAR. This signals the end of the notice and public comment period.

2.4 Adopted Rule

After LCAR review, the fourth and last filing is the Adopted Rule (filed with both the Office of the Secretary of State and LCAR), which marks the beginning of the minimum 15-day period required by 3 V.S.A. § 845(d) for the effective date of the rule.

All filings with the Office of the Secretary of State shall arrive no later than 3:30 p.m. on the last day of the scheduled workweek.

Section 3. Forms

Agencies must use the forms published by the Office of the Secretary of State; altered forms will not be accepted. All forms requiring the signature of the adopting authority to be filed with the Office of the Secretary of State shall include an original signature or, if filed electronically with the Office of the Secretary of State, a conformed signature.

“Conformed signature” means a typed signature on a form provided by the Office of the Secretary of State that is submitted electronically to the Office of the Secretary of State for filing. The Secretary of State will accept forms electronically submitted for filing if all of the following conditions have been met:

1. Full name of person who signed the original form is typed in this format: /s/ Name of Person;
2. Form is submitted electronically in the file format and in the manner prescribed on the form; and
3. Form with the original signature of the adopting authority is retained by the adopting authority as required by 3 V.S.A. § 843(e).

The forms are available for download from the Office of the Secretary of State's website. Due to compatibility issues use the forms in the formats in which they are provided. The forms include:

1. Proposed Rule Filing provides information about the proposed rule for the required notice.
2. Final Proposal Filing delineates any changes from the proposed rule.
3. Adopted Rule Filing, lists the procedural history of the rule and indicates that the rule has been reviewed by LCAR, has been adopted by the agency, and assigned an effective date.
4. Adopting Page provides information about the type of filing submitted and whether it is a new rule, an amendment, or a repeal of an existing rule and if so, what those existing rules are.
5. Economic Impact Analysis explains the expected economic impact of the rule.
6. Environmental Impact Analysis explains the expected impact the rule will have on greenhouse gases if it is adopted.
7. Scientific Information form identifies the scientific information upon which the rule has been based and explains the procedure for obtaining such studies and underlying research data from the agency if the rule depends on scientific information for its validity.
8. Public Input form outlines the agency's plan to maximize public input.
9. Incorporation by Reference form explains the material to be incorporated, and where it can be obtained and at what cost.
10. Emergency Rule Filing replaces the Proposed Rule Filing for Emergency Rules.

If the Office of the Secretary of State finds that a filing meets statutory and regulatory requirements the rule will be accepted for filing. The Office of the Secretary of State will notify an agency of any defects in a filing within 3 business days from receipt.

In addition to the appropriate forms, an agency must also submit the text of the proposed or adopted rule and an annotated text showing changes from any existing rules. Submitting a paragraph or page of a larger rule is not sufficient and a complete annotation is required. A new proposed rule need not be accompanied by an annotated text.

Section 4. Public Notice.

Notices of completed filings of proposed rules received by 3:30 p.m. on the last day of the scheduled workweek will be posted online the following week. Links to the notices will be available on the Secretary of State's APA web pages and the notices will appear in the newspapers of record the week following the posting of the online notice.

When an agency needs to hold a new hearing, reschedule a hearing, or extend the public comment period, the agency must notify the Office of the Secretary of State and must notify by mail all individuals who have contacted the agency about the rule. The Office of the Secretary of State shall amend the notices to reflect the changes in hearing and deadline for public comment.

When a public hearing has not been scheduled, an agency shall set a deadline for public comment not less than 14 calendar days following the publication in the newspapers of record.

(802) 828-2863

MEMORANDUM

OFFICE OF THE SECRETARY OF STATE

Primary Contact: Chris Winters, Deputy Secretary of State, Office of the Secretary of State, 128 State Street, Montpelier VT 05633-1101 Tel: 802-828-2363 Fax: 802-828-2496
Email: sos.statutoryfilings@vermont.gov

Secondary Contact: Louise Corliss, Office of the Secretary of State, VSARA 1078 U.S. Rte. 2 Middlesex, Montpelier VT 05633-7701, Tel: 802-828-2863 Fax: 802-828-3710 Email: sos.statutoryfilings@vermont.gov.

URL: <http://sos.vermont.gov/secretary-of-state-services/apa-rules/>

From: APA Coordinator, VSARA

RE: Rule on Rulemaking.

Date 09/24/2021

We received Proposed Rule on 06/02/2021
Final Proposed Rule on 07/29/2021
Adopted Rule on 09/24/2021

We have assigned the following rule number(s):

Proposed Rule Number: 21P017

Adopted Rule Number: 21-023

(Final Proposals are not assigned a new number; they retain the Proposed Rule Number.)

The following problems were taken care of by phone/should be taken care of immediately:

We cannot accept this filing until the following problems are taken care of:

The notice for this proposed rule appeared/will appear online on: 6/9/2021 and in the newspapers of record on 6/17/2021.

This rule takes effect on 10/12/2021

Adoption Deadline: 02/02/2022

Please note:

If you have any questions, please call me at 828-2863. OR
E-Mail me at: sos.statutoryfilings@vermont.gov

cc: Charlene Dindo

C/O LEGISLATIVE COUNCIL
115 STATE STREET
MONTPELIER, VT 05633-5701

SEN. MARK A. MACDONALD, CHAIR
SEN. JOE BENNING
SEN. CHRISTOPHER BRAY
SEN. VIRGINIA "GINNY" LYONS



TEL: (802) 828-2231
FAX: (802) 828-2424

REP. TREVOR SQUIRRELL, VICE CHAIR
REP. SETH BONGARTZ
REP. MARK HIGLEY
REP. CAROL ODE

STATE OF VERMONT

Legislative Committee on Administrative Rules (LCAR)

MEMO TO: Chris Winters
Office of Secretary of State
128 State Street
Montpelier VT 05633

FROM: Charlene Dindo, Committee Assistant
Legislative Committee on Administrative Rules

DATE: October 28, 2021

SUBJECT: 21-23 - Office of Secretary of State/**Rule on Rulemaking**



This will acknowledge receipt of the above-mentioned rule in its adopted form on September 24, 2021.

The procedure for filing an adopted rule can be found in 3 V.S.A § 843.

cc: Louise Corliss, APA Clerk, Office of the Secretary of State