



Vermont Administrative Procedures Act

Filing Administrative Rules

An Overview by the Office of the Secretary of State

Introduction:

The Vermont Administrative Procedure Act, 3 V.S.A. Chapter 25 known as the APA, was enacted in 1968, as the process for adopting administrative rules.

The chapter sets forth the requirements for filing proposed and emergency rules.

Rules adopted under this process have the force and effect of law.



Who Adopts Rules?

Rulemaking authority is a special power granted by the Vermont Legislature to various:

- State Agencies;
- Boards; and
- Other Government Instrumentalities.



Why Adopt Rules?

The adoption of rules may result from:



- Legislative requirement.
- Petition.
- Due Process.



Note: When rulemaking is requested by petition, the agency has 30 days to initiate rulemaking or respond in writing with its reasons for denial (see [3 V.S.A. § 806](#) for details).

How Are Rules Adopted?

Administrative rules are adopted through a series of filings, hearings, and review by:

- The Interagency Committee on Administrative Rules.
- The Office of the Secretary of State.
- The Legislative Committee on Administrative Rules.





Interagency Committee on Administrative Rules (ICAR):

Members of this committee are appointed by the governor and serve at the governor's pleasure.

The committee assists agencies with the creation of a strategy for maximizing public input, and reviews rules for style, consistency with the law, and legislative intent. (see [3 V.S.A. § 820](#) for more about ICAR).

The Secretary of the Agency of Administration, or his/her designee serves as chair of the committee. (see [Executive Order 04-010](#) for details).

Note: For filing instructions and questions about pre-filing with ICAR, contact the Agency of Administration 802-828-3322 or visit:
<http://aoa.vermont.gov/icar>.



Office of the Secretary of State (SOS):

The Secretary of State is charged with specific duties in the Administrative Procedures Act; and has adopted a rule entitled “[Rule on Rulemaking](#)” to assist in discharging these duties, which include:

- Creation of filing forms.
- Review of rule filings for required elements.
- Publication of notices online and in newspapers.
- Publication of adopted rules in a bulletin ([The Code of Vermont Rules](#)).
- Providing a repository for rule filings.

Note: The SOS duties relating to APA are currently staffed out of the Middlesex facility for the Vermont State Archives & Records Administration (VSARA).

Legislative Committee on Administrative Rules (LCAR):

This committee consists of eight members of the General Assembly and reviews the content of final proposed rules, emergency rules, and existing rules (see [3 V.S.A. § 817](#) for details). Members may vote to:

- Approve the rule.
- Approve the rule with modifications.
- Take no action.
- Object to the rule.
- Certify their objection with the Secretary of State.
- Extend the eight-month adoption deadline.
- Request an agency amend existing rules.

Note: The committee's assistant is staffed from the Office of Legislative Counsel,
All filings for LCAR should be made with the assistant.



Adoption Process:

- Pre-filing with ICAR.
- Proposed Rule Filing with SOS.
- Publication of Notices.
- Hearing and Comment Period.
- Final Proposed Rule Filing with SOS and LCAR.
- LCAR Review.
- Adopted Filing with SOS and LCAR.

Filing Forms:

The SOS has created forms for filing rules throughout the APA Process, available at: <https://sos.vermont.gov/secretary-of-state-services/apa-rules/apa-forms/>.

The Standard APA Filing forms include:

- Proposed, Final Proposed, and Adopted Rule Coversheets
(Please remove nonessential forms prior to submitting the filing).
- Adopting Page.
- Economic Impact Analysis.
- Environmental Impact Analysis.
- Public Maximization Plan.
- Scientific Information Statement (remove if not applicable).
- Incorporation by Reference (remove if not applicable).



The Emergency APA Filing forms include the same forms only with a single Emergency Rule Coversheet.

Pre-filing:

- Except for emergency rules, all proposed rules must be pre-filed with ICAR fifteen days before filing the rule with SOS (see [3 V.S.A. § 837](#)).





Pre-filing (cont):

- After receiving copies of the proposed filing, ICAR will schedule the rule for review.
- The adopting agency will attend the hearing to answer questions and to collaborate with ICAR on a strategy for maximizing public input.
- Notice of posting for the minutes of the review meeting and ICAR's recommendations will be sent to the adopting agency, SOS, and LCAR.

Filing with SOS:

Filings with a conformed signature may be submitted by email to SOS.StatutoryFilings@vermont.gov. Filings with original signatures may be submitted in person or by mail to VSARA in Middlesex.

Electronic filing submissions to the SOS will **only** be accepted if:

- They consist of directly saved PDF files (scanned filing forms will be rejected).
- They have a “conformed” signature as allowed under the Rule on Rulemaking*.
- The agency agrees to maintain the original signed filing in accordance with the Rule on Rulemaking*.

Instructions are also provided in the filing forms.

* Current rule online at: <https://sos.vermont.gov/media/fl1oxefe/21-023.pdf>.

Proposed Rule Filing:

The Proposed filing should be made with SOS and contain the following:

- Proposed Coversheet.
- Adopting Page.
- Economic Impact Analysis
- Environmental Impact Analysis
- Public Input Maximization Plan.
- Scientific Information Statement (if applicable).
- Incorporation by Reference (if applicable).
- Clean text of the rule.
- Annotated text showing the changes.



Note: An agency has 8 months from filing a proposed rule to file the rule in its adopted form, unless extended by LCAR (see [3 V.S.A. § 843\(c\)](#) for details).

Publication of Notices:

The notice and comment period begins with the filing of the proposed rule with the Office of the Secretary of State. During this period the notices are published, and agencies receive and consider public comments on the proposed rule.

The Office of the Secretary of State publishes notices of rulemaking:

- **Online*** – Posting will occur on the Wednesday of the week following receipt of the proposal (<https://secure.vermont.gov/SOS/rules/>).
- **Newspapers** – Published in the newspapers of record 8 days following the posting of the online notice.



* Subscription services, RSS feed and other web tools are available through the rules portal.



Hearing and Comment Period:

Agencies are not required to hold a hearing unless requested as described in [3 V.S.A. § 840](#). However, it is recommended.

Agencies shall:

- Schedule a hearing (if one is to be held) no less than 30 days following posting of the notice online.
- Afford reasonable opportunity for the submission of data, views or arguments, orally or in writing through the seventh day following the last public hearing.
- Consider all written and oral submissions concerning the proposed rule.
- Provide information to all individuals, who submitted written or oral comment, on the procedure for adoption of rules and how to obtain changes in the proposed rule.
- Record public hearings (see [1 V.S.A. § 312](#) for details).

Final Proposed Rule Filing:

The Final Proposed filing should be made with SOS and LCAR, and contain the following:

- Final Proposed Coversheet.
- Adopting Page.
- Economic Impact Analysis
- Environmental Impact Analysis
- Public Input Maximization Plan.
- Scientific Information Statement (if applicable).
- Incorporation by Reference (if applicable).
- Clean text of the rule.
- Annotated text showing the changes.
- Copy of ICAR memo/minutes.
- Responsiveness Summary and copies of any comments received.





LCAR REVIEW:

LCAR has 45 days to review all Final Proposed and Emergency Rule filings. During this time, the committee . . .

- Distributes a summary of the filings to the chairs of the appropriate standing committees and to other committee members if so requested.*
- Schedules a public hearing to review the rule and receive testimony from interested parties.
- May request an extension of the 45-day review period; or extend the 8-month adoption deadline.
- Votes on what action to take (approve, approve with modifications, object, or file certified objection).

* The chair of a standing committee which considered legislation delegating rulemaking authority may convene the committee for the purpose of considering a recommended course of action for LCAR.



LCAR Review

- Grounds for Objection:

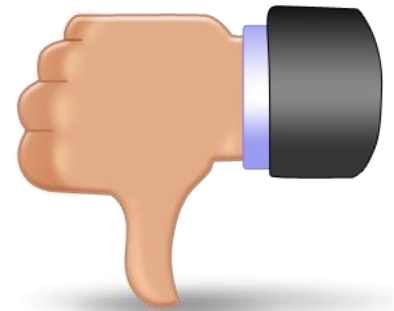
During the review period LCAR may vote to object to a rule if the:

- Rule is beyond the authority of the agency.
- Rule is contrary to the intent of the legislature.
- Rule is arbitrary.
- Agency did not adhere to the strategy for maximizing public input prescribed by ICAR.
- Proposed rule is not written in a satisfactory style.
- Economic or environmental impact analysis fails to recognize a substantial impact.
- Emergency Rule is not necessitated by an imminent peril to public health, safety or welfare sufficient to justify adoption of an emergency rule.

What Happens if LCAR Objects?

Agencies have 14 days to respond* to LCAR's Objection by sending a written response to LCAR and the Secretary of State. LCAR will consider the agency's response and may:

- Withdraw the objection.
- Approve the rule.
- Approve the rule with modifications.
- File its objection in certified form with the Secretary of State.
- Take no further action.



* When LCAR objects to an emergency rule, the agency may choose to withdraw the rule or make a germane change to the rule

Certified Objection:

After considering the agency's response to an objection, LCAR may by majority vote certify their objection with the Secretary of State.

(An agency may still adopt the rule even if LCAR certifies the objection).

- Upon receipt, SOS staff shall affix to each objection a certification of its filing and transmit a copy to the agency.
- Place a copy of the objection and the notification of the objection in the file with the rule.
- Include notice of the objection on all copies of the rule distributed to the public.

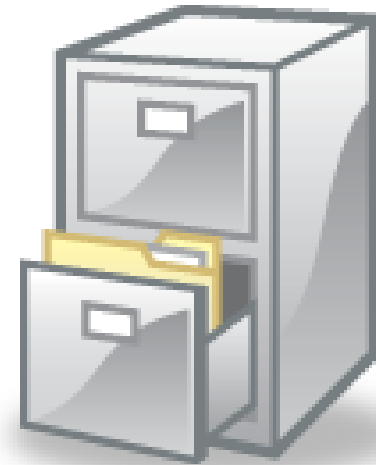
The certified objection has the legal effect of placing the burden of proof on the agency in any action for judicial review or enforcement of the rule. [3 V.S.A. § 842\(c\)](#).

(see statute for the specifics related to the impact of a certified objection.)

Adopted Rule Filing:

The Adopted filing should be made with SOS and LCAR, and contain the following:

- Adopted Coversheet.
- Adopting Page.
- Clean Text of the Rule.
- Letter explaining any changes from the final proposed filing.



Rules may go into effect 15 days from the date adopted, or a later date specified within the filing forms or text of the rule.

What if there's an Emergency?

When an Agency believes an imminent peril to public health, safety or welfare exists emergency rulemaking may be initiated under [3 V.S.A. § 844](#).

Statute allows the Emergency Rule to be adopted:

- Without having been prefiled with ICAR.*
- Without having been filed in proposed or final proposed form.
- After whatever notice and hearing the agency finds practicable under the circumstances, the agency shall make reasonable efforts to ensure that emergency rules are known to persons who may be affected by them.

Emergency rules shall:

- Be effective upon filing unless a later date is specified in the filing.
- Expire 180 days from the effective date.

* Executive Order 04-010 requires that prior to adopting emergency rules agencies submit the emergency rules to the Chair of ICAR for a determination of appropriateness.

Emergency Rule Filing:

Emergency Rule filings should be made with SOS and LCAR, and a copy sent to ICAR. The filing should contain as much of the following as is practicable* under the circumstances:

- Emergency Rule Coversheet.
- Adopting Page.
- Economic Impact Analysis.
- Environmental Impact Analysis.
- Public Input Maximization Plan.
- Scientific Information Statement (if applicable).
- Incorporation by Reference Statement (if applicable).
- Clean text of the rule.
- Annotated text showing the changes.

* Forms not present at the time of filing may be requested for completion of the file following adoption.

Emergency Rule Filing (cont):

Upon filing, the emergency rule will be scheduled for LCAR review. The committee may object to the rule under the same criteria as with final proposed rules and under one additional criteria if the committee feels that imminent peril to public health, safety, or welfare does NOT exist.





Procedural Errors:

A rule shall not take effect if an agency:

- Fails to pre-file with ICAR.
- Fails to file with the Secretary of State.
- Fails to file with LCAR.
- Fails to respond to LCAR's objection.



Where Can You Search Rules?

Once rules have been adopted, all materials received for the adopted rule file are transmitted to the official publisher (Lexis Nexis) to be published in the Code of Vermont Rules.

The code is available in print* volumes through the publisher by subscription and free online at:
<http://www.lexisnexis.com/hottopics/codeofvtrules/>.

* A paper version of the Code of Vermont Rules is also maintained in the library at the Vermont State Archives and Records Administration in Middlesex.



Where To Find Help:

Office of Secretary of State for information about the administrative rulemaking process and useful tools:

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

SOS staff are always happy to answer questions you may have during the process. Contact us at 802-828-3700 or SOS.StatutoryFilings@vermont.gov.

Interagency Committee on Administrative Rules:

<https://aoa.Vermont.gov/ICAR>

Legislative Committee on Administrative Rules:

<https://legislature.Vermont.gov/committee/detail/2022/39>.