

# Administrative Procedures – Proposed Coversheet

**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 proposed filing will be considered complete upon the submission and acceptance of the following components:

- Proposed Rule Coversheet
- Adopting Page
- Economic Impact Statement
- Public Input Statement
- 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)

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 the proposed coversheet form will be used to generate a notice of rulemaking in the newspapers of record. Publication of notices will be charged back to the promulgating agency based on the word count of the notices.

**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 Title:** Rule 45. Rules for Administrative Citations and Penalties, Stop Work Orders and Debarment.

Anne M. Noonan, on 10/20/16  
(signature) (date)

Printed Name and Title:  
Anne M. Noonan, Commissioner  
Vermont Department of Labor

RECEIVED BY: \_\_\_\_\_

- Proposed Rule Coversheet
- Adopting Page
- Economic Impact Statement
- Public Input Statement
- 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)
- ICAR Approval received by E-mail.

1. TITLE OF RULE FILING:

Rule 45. Rules for Administrative Citations and Penalties, Stop Work Orders and Debarment.

2. ADOPTING AGENCY:

Vermont Department of Labor  
Workers' Compensation and Safety Division

3. PRIMARY CONTACT PERSON:

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

Name: J. Stephen Monahan

Agency: Vermont Department of Labor  
Workers' Compensation and Safety Division

Mailing Address: P.O. Box 488, Montpelier Vermont 05601-0488

Telephone: 802 828 - 2138 Fax: 802 828 - 2195

E-Mail: stephen.monahan@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*: labor.vermont.gov

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: Mike Hoyt

Agency: Vermont Department of Labor  
Workers' Compensation and Safety Division

Mailing Address: P.O. Box 488, Montpelier Vermont 05601-0488

Telephone: 802 828 - 4204 Fax: 802 828 - 2195

E-Mail: Michael.Hoyt@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?)* Yes

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

21 VSA §710(c) and 2009 Act 142 (Adj. Sess.) §7 require the Department to keep the names of complaining parties confidential, and prohibit including in any publication or public report the name of complaining party.

**PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:**

The Legislature provided confidentiality protection to encourage persons to report false statements, misclassification and failure to carry insurance.

**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).*

These rules are adopted pursuant to 21 V.S.A. §§ 602, 603, 604, 663b, 688, 689, 690(b), 692, 702, 704, 705, and 708. 8 V.S.A. §§ 4793(c) and 4803. (Licensing requirements). 3VSA §§ 809-815.

**7. CONCISE SUMMARY (150 WORDS OR LESS):**

These rules update the Workers' Compensation program's administrative citation and penalty provisions to address the debarment penalties added to the statutes, and Supreme Court decisions on penalty assessment and calculation. The Rules also address recent changes to the Workers' Compensation fraud provisions.

**8. EXPLANATION OF WHY THE RULE IS NECESSARY:**

The Legislature passed additional penalty provisions, including debarment provisions which were not previously addressed in these rules. In addition the Vermont Supreme Court has ruled that rules guiding the exercise of the Commissioner's discretion when levying penalties are needed.

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

The rules impact employers, Workers' Compensation insurers, or individuals (including employers, injured workers, attorneys, adjusters, medical providers, and Vocational Rehabilitation counselors) who do not comply with the Workers' Compensation statutes and rules, or who make a material false statement in order to obtain a benefit under the act.

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

The rule has no economic impact on persons or entities that comply with the Workers' Compensation law and rules. The rule, however, is intended to financially impact those who

fail to comply, in order to deter non-compliance.  
Effective enforcement should be economically beneficial to those businesses already in compliance

11. A HEARING IS SCHEDULED .

12. 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: 12/6/2016

Time: 11:00 AM

Street Address: 118 Prospect Street, Hartford

Zip Code: 05001

Date: 12/7/2016

Time: 10:00 AM

Street Address: 5 Green Mountain Drive, Montpelier

Zip Code: 05602

Date: 12/5/2016

Time: 01:30 PM

Street Address: 200 Asa Bloomer Building, Rutland

Zip Code: 05701

Date: 12/7/2016

Time: 01:00 PM

Street Address: 63 Pearl Street, Burlington

Zip Code: 05401

13. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

12/14/2016

14. KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

Workers' Compensation

Administrative penalties

debarment

stop work orders

compliance with the Workers' Compensation statute

fraud

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# Administrative Procedures – Adopting Page

## Instructions:

This form must be completed for each filing made during the rulemaking process:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

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 45. Rules for Administrative Citations and Penalties, Stop Work Orders and Debarment.

2. ADOPTING AGENCY:

Vermont Department of Labor  
Workers' Compensation and Safety Division

3. AGENCY REFERENCE NUMBER, IF ANY:

Rule 45

4. 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** .

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

May 5, 2001. Rule 45.0000-Rules For Administrative Citations and Penalties. Secretary of State Log# 01-30.

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# Administrative Procedures – Economic Impact Statement

## Instructions:

In completing the economic impact statement, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule. This form must be completed for the following filings made during the rulemaking process:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

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. § 832b for details).

The economic impact statement also contains a section relating to the impact of the rule on greenhouse gases. Agencies are required to explain how the rule has been crafted to reduce the extent to which greenhouse gases are emitted (see 3 V.S.A. § 838(c)(4) for details).

All forms requiring a signature shall be original signatures of the appropriate adopting authority or authorized person.

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**Certification Statement:** As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), 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. §§ 832a, 832b, and 838(c) for the filing of the rule entitled:

**Rule Title:** Rule 45. Rules for Administrative Citations and Penalties, Stop Work Orders and Debarment.

Anne M. Noonan, on 10/20/16  
(signature) (date)

Printed Name and Title:  
Anne M. Noonan, Commissioner  
Vermont Department of Labor

*BE AS SPECIFIC AS POSSIBLE IN THE COMPLETION OF THIS FORM, GIVING FULL INFORMATION ON YOUR ASSUMPTIONS, DATABASES, 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.*

1. TITLE OF RULE FILING:

Rule 45. Rules for Administrative Citations and Penalties, Stop Work Orders and Debarment.

2. ADOPTING AGENCY:

Vermont Department of Labor  
Workers' Compensation and Safety Division

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:*

This rule will impact employers who fail to comply with Workers' Compensation insurance, and classification requirements, Workers' Compensation insurers and others who fail to comply with the Workers' Compensation statutes and rules, injured workers and other persons who make material misrepresentation to receive some Workers' Compensation benefit, including lower premiums, and persons adjusting claims or providing Vocational Rehabilitation services, attorneys and medical providers who violate Workers' Compensation statutes or rules.

4. IMPACT ON SCHOOLS:

*INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS:*

The rule addresses non-compliance with the Vermont Workers' Compensation statutes, rules, or orders of the Commissioner and is not expected to have any impact on public education, public schools, local school districts and/or taxpayers, unless a school does not comply with the Workers' Compensation statute, rules, or orders issued by the Commissioner.

5. COMPARISON:

*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:*

The legislature has directed that the Department vigorously enforce the requirements of the Workers' Compensation statute

and rules. Persons subject to enforcement have specific procedural rights which these rules provide. The alternative would be enforcement through civil litigation which would be more expensive, more time consuming and less efficient

## 6. FLEXIBILITY STATEMENT:

*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:*

All employers, regardless of size, must comply with the Workers' Compensation laws. The size of an employer, in addition to other factors, is considered when assessing a penalty for violations.

## 7. GREENHOUSE GAS IMPACT: EXPLAIN HOW THE RULE WAS CRAFTED TO REDUCE THE EXTENT TO WHICH GREENHOUSE GASES ARE EMITTED, EITHER DIRECTLY OR INDIRECTLY, FROM THE FOLLOWING SECTORS OF ACTIVITIES:

### A. TRANSPORTATION —

*IMPACTS BASED ON THE TRANSPORTATION OF PEOPLE OR PRODUCTS (e.g., "THE RULE HAS PROVISIONS FOR CONFERENCE CALLS INSTEAD OF TRAVEL TO MEETINGS" OR "LOCAL PRODUCTS ARE PREFERENTIALLY PURCHASED TO REDUCE SHIPPING DISTANCE."):*

Although enforcement hearings are normally "in-person" before a neutral hearing officer, prior to a hearing telephone conferences, email and USPS mail exchanges are used for communication.

### B. LAND USE AND DEVELOPMENT —

*IMPACTS BASED ON LAND USE AND DEVELOPMENT, FORESTRY, AGRICULTURE ETC. (e.g., "THE RULE WILL RESULT IN ENHANCED, HIGHER DENSITY DOWNTOWN DEVELOPMENT." OR "THE RULE MAINTAINS OPEN SPACE, FORESTED LAND AND/OR AGRICULTURAL LAND."):*

The rule has no impact on land use or development.

### C. BUILDING INFRASTRUCTURE —

*IMPACTS BASED ON THE HEATING, COOLING AND ELECTRICITY CONSUMPTION NEEDS (e.g., "THE RULE PROMOTES WEATHERIZATION TO REDUCE BUILDING HEATING AND COOLING DEMANDS." OR "THE PURCHASE AND USE OF EFFICIENT ENERGY STAR APPLIANCES IS REQUIRED TO REDUCE ELECTRICITY CONSUMPTION."):*

The rule has no impact on building infrastructure; existing buildings and hearing spaces will be used.

### D. WASTE GENERATION / REDUCTION —

*IMPACTS BASED ON THE GENERATION OF WASTE OR THE REDUCTION,*

*REUSE, AND RECYCLING OPPORTUNITIES AVAILABLE (e.g., "THE RULE WILL RESULT IN REUSE OF PACKING MATERIALS." OR "AS A RESULT OF THE RULE, FOOD AND OTHER ORGANIC WASTE WILL BE COMPOSTED OR DIVERTED TO A 'METHANE TO ENERGY PROJECT'."):*

The rule has no impact on waste generation

E. OTHER —

*IMPACTS BASED ON OTHER CRITERIA NOT PREVIOUSLY LISTED:*

None.

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# Administrative Procedures – Public Input Statement

## Instructions:

In completing the public input statement, an agency describes what it did do, or will do to maximize the involvement of the public in the development of the rule. This form must be completed for the following filings made during the rulemaking process:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

### 1. TITLE OF RULE FILING:

Rule 45. Rules for Administrative Citations and Penalties, Stop Work Orders and Debarment.

### 2. ADOPTING AGENCY:

Vermont Department of Labor  
Workers' Compensation and Safety Division

### 3. PLEASE LIST THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE:

In addition to advertisement in newspapers of general circulation, the proposed rule will be available on the Department's website, [labor.vermont.gov](http://labor.vermont.gov), and a link to the rule will be distributed to all of the Workers' Compensation & Safety Division listservs, business organizations such as the Chamber of Commerce, Associated Industries of Vermont, Associated General Contractors, and Home Builders, and organizations representing working Vermonters including the State Labor Council, VSEA, Vermont NEA, and the Workers' Rights Center. Links will also be provided to our state partners, the Department of Buildings and General Services, the Agency of Transportation, and the Department of Financial Regulation.

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

Business organizations such as the Chamber of Commerce, Associated Industries of Vermont, Associated General Contractors, and Home Builders, and organizations representing working Vermonters including the State Labor Council, VSEA, Vermont NEA, and the Workers' Rights Center. Links will also be provided to our state partners, the Department of Building and General Services, the Agency of Transportation, and the Department of Financial Regulation.

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