

Final Proposed Filing - 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 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 shall 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:

**Vermont Workers' Compensation and Occupational Disease
Rules 1-27**

/s/ Michael A. Harrington, Commissioner , on October 1, 2024
(signature) (date)

Printed Name and Title:

Michael A. Harrington, Commissioner, VT Dept of Labor

RECEIVED BY: _____

- Coversheet
- Adopting Page
- Economic Impact Analysis
- Environmental Impact Analysis
- Strategy for Maximizing Public Input
- 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 Minutes
- Copy of Comments
- Responsiveness Summary

1. TITLE OF RULE FILING:

**Vermont Workers' Compensation and Occupational Disease
Rules 1-27**

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

24P 022

3. ADOPTING AGENCY:

Vermont Department of Labor

4. PRIMARY CONTACT PERSON:

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

Name: Dirk Anderson, Director of Workers' Compensation

Agency: Vermont Department of Labor

Mailing Address: P.O. Box 488, Montpelier, VT 05601

Telephone: 802-828-4391 Fax: 802-828-4281

E-Mail: dirk.anderson@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

labor.vermont.gov/workers'-compensation/adjusters-
attorneys-insurers/statutes-rules-and-
decisions/rules-proposed-rules

5. 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: Beth DeBernardi

Agency: Vermont Department of Labor

Mailing Address: P.O. Box 488, Montpelier VT 05601

Telephone: 802-661-8136 Fax: 802-828-4281

E-Mail: beth.a.debernardi@vermont.gov

6. 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:

N/A

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

N/A

7. 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).

21 V.S.A. 602 (a)

8. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:

The proposed rules are for the purpose of carrying out the provisions of the Workers' Compensation Act and are consistent with the Act's processes and procedures.

9. THE FILING HAS CHANGED SINCE THE FILING OF THE PROPOSED RULE.

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

11. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.

12. THE AGENCY HAS INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.

13. THE AGENCY HAS INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.

14. CONCISE SUMMARY (150 WORDS OR LESS):

The Workers' Compensation Rules set procedures for handling workers' compensation claims. Proposed rules implement 2023 statutory amendments and minor technical corrections. Proposed rule 3.1300 clarifies 5 "business" days; proposed rule 3.2300 clarifies operation of payment without prejudice; proposed rule 3.3000 adopts the "day is a day" amendment to the Vermont Rules of Civil Procedure; proposed rule 7.1800 clarifies that a medical preauthorization expires if not acted on in 9 months; proposed rule 8.1200 changes the average weekly wage calculation to include paid leave; rule 8.1400 to be repealed because it contravenes the statute; proposed rules 11.1400 and 12.1730 update reference to the VT Health Dept's Rule Governing the Prescribing of Opioids; proposed rule 13.1500 codifies current practice for settlement approval; proposed rule 13.1650 requires highlighting certain settlement terms; proposed rule 17 adds formal

docket practice requirements; minor changes to rule 18 on mediation.

15. EXPLANATION OF WHY THE RULE IS NECESSARY:

Some changes are necessary to implement the statutory amendments made by the Legislature in 2023 and the Vermont Supreme Court's changes to the calculation of deadlines. Others are necessary to improve clarity, more accurately compute average weekly wage, and improve the operation of motions practice before the Department.

16. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:

The proposed rule amendments implement the statute and are within the same parameters as the long-standing duly adopted rules.

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

Injured workers; employers; workers' compensation insurance carriers and adjusters; attorneys who represent the injured workers, employers and insurance carriers; vocational rehabilitation counselors; and health care providers.

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

The vast majority of the proposed rule changes are not expected to have any measurable economic impact; this includes the rule changes that implement the statutory amendments that the Legislature has already enacted.

The proposed changes to Rule 8 are expected to have an impact on some injured workers who regularly work overtime hours and on volunteer firefighters who do not have separate paid employment, as set forth in more detail in the economic impact analysis statement.

19. A HEARING WAS HELD.

20. 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.

Date: 7/24/2024

Time: 10:00 AM

Street Address: Vt Dept of Labor, 5 Green Mountain Dr,
Montpelier VT

Zip Code: 05601

URL for Virtual: https://teams.microsoft.com/l/meetup-join/19%3ameeting_ODQ1MjBlZDEtZmUyZS00ODgyLTgxMDYtYzNlZTZlNGY0YmUy%40thread.v2/0?context=%7b%22Tid%22%3a%2220b4933b-baad-433c-9c02-70edcc7559c6%22%2c%220id%22%3a%22623f5dbb-e778-4b65-9013-31f038ff3cf9%22%7d

Date:

Time: AM

Street Address:

Zip Code:

URL for Virtual:

Date:

Time: AM

Street Address:

Zip Code:

URL for Virtual:

Date:

Time: AM

Street Address:

Zip Code:

URL for Virtual:

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

8/21/2024

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

workers' compensation

workers' compensation proposed rules

Vermont Department of Labor proposed rules

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:

**Vermont Workers' Compensation and Occupational Disease
Rules 1-27**

2. ADOPTING AGENCY:

Vermont Department of Labor

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 if 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 # 16-042, Workers' Compensation and
Occupational Disease Rules, effective November 1, 2016

Economic Impact Analysis

Instructions:

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose. If no impacts are anticipated, please specify “No impact anticipated” in the field.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn’t appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

1. TITLE OF RULE FILING:

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2. ADOPTING AGENCY:

Vermont Department of Labor

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:

Injured workers; employers; workers' compensation insurance carriers and adjusters; attorneys representing injured workers, employers and carriers; workers' compensation vocational rehabilitation counselors.

By providing increased clarity and consistency, the proposed amendments will benefit injured workers, employers, insurance adjusters and carriers, attorneys and vocational rehabilitation counselors who engage in the workers' compensation process.

Changes to 1.1100, 3.1300, 3.2300, 3.3000, 4.1400, 7.1800, 8.1630, 8.1700, 8.1820, 9.1110, 9.1700-710, 11.1400, 12.1730, 13.1500, 13.1650, 17.2200, 17.2500, 17.2460, 18.1740, 18.1920, 20.1400, 20.1600, 20.2100, 27.1400 are not expected to have any measurable economic impact; this includes rules that simply implement statutory changes that are already in effect. Rule 8.1210 is to improve accuracy of the average weekly wage calculation; for most injured workers, this will likely not impact their average weekly wage and compensation rate to any significant extent; injured workers who regularly work overtime may realize a modest decrease in their average weekly wage and compensation rate if paid sick, vacation and holiday hours are included in the calculation. Proposed deletion of Rule 8.1400 will have an impact of loss of indemnity benefits to volunteer firefighters who don't have separate paid employment; however, the statute does not authorize such benefits, and the current rule inadvertently exceeded the scope of the statute.

4. IMPACT ON SCHOOLS:

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

No impact on schools is anticipated.

5. ALTERNATIVES: *CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.*

There are no alternatives to the proposed rule changes because the proposed rules are not anticipated to have any impact on education or schools.

6. IMPACT ON SMALL BUSINESSES:

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):

The rules are required by statute, 21 VSA sections 601-711. The statute applies equally to all employers in Vermont, and thus does not require or permit separate requirements for small businesses.

7. **SMALL BUSINESS COMPLIANCE:** *EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.*

Small businesses don't need to do anything differently under the proposed rule amendments; they already are required to follow the statute and the existing rules. The proposed amendments don't impose any additional requirements that would be more burdensome.

8. **COMPARISON:**

COMPARE THE 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:

Rules that establish procedures for handling workers' compensation claims are already in place and apply equally to all employers and employees. Some of the proposed rule changes are to carry out statutory amendments that are already in effect since 7/1/23; others are minor modifications to existing rules to improve clarify and accuracy, as to which no economic impact is expected. A potential minor reduction in the benefits compensation rate for certain employees who receive paid leave is expected, as that will more accurately reflect their wage history; also, the elimination of indemnity benefits for certain injured volunteer firefighters who do not hold separate paid employment is anticipated (to comply with the statute, which does not provide for such benefits).

9. **SUFFICIENCY:** *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*

The Department compared the existing Workers' Compensation Rules to the proposed rule changes to determine that the modifications were either minor or were required to implement the statutory amendments already enacted by the legislature.

Environmental Impact Analysis

Instructions:

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis. If no impacts are anticipated, please specify “No impact anticipated” in the field.

Examples of Environmental Impacts include but are not limited to:

- Impacts on the emission of greenhouse gases
- Impacts on the discharge of pollutants to water
- Impacts on the arability of land
- Impacts on the climate
- Impacts on the flow of water
- Impacts on recreation
- Or other environmental impacts

1. TITLE OF RULE FILING:

Vermont Workers' Compensation and Occupational Disease Rules 1-27

2. ADOPTING AGENCY:

Vermont Department of Labor

3. GREENHOUSE GAS: *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*

The proposed rules have no impact on greenhouse gases.

4. WATER: *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):*

The proposed rules have no impact on water.

5. LAND: *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*

The proposed rules have no impact on land.

6. **RECREATION:** *EXPLAIN HOW THE RULE IMPACTS RECREATION IN THE STATE:*

The proposed rules have no impact on recreation.

7. **CLIMATE:** *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*

The proposed rules have no impact on climate.

8. **OTHER:** *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*

The proposed rules have no other environmental impact.

9. **SUFFICIENCY:** *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*

The analysis was conducted by internally comparing the current rules and the nature of the proposed changes, which do not have any physical impact on anything.

Public Input Maximization Plan

Instructions:

Agencies are encouraged to hold hearings as part of their strategy to maximize the involvement of the public in the development of rules. Please complete the form below by describing the agency's strategy for maximizing public input (what it did do, or will do to maximize the involvement of the public).

This form must accompany each filing made during the rulemaking process:

1. TITLE OF RULE FILING:

**Vermont Workers' Compensation and Occupational Disease
Rules 1-27**

2. ADOPTING AGENCY:

Vermont Department of Labor

3. PLEASE DESCRIBE THE AGENCY'S STRATEGY TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE, LISTING THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:

When the proposed rules are filed with the Secretary of State, the Department will post them on its website. It will also send an email notification to solicit input from all participants on the Department's workers' compensation listserve, who are the attorneys, insurance adjusters, medical providers and vocational rehabilitation counselors involved in workers' compensation in Vermont. Also, the Department will convene a public hearing in Montpelier with a virtual attendance component to take comments from all interested persons.

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

The proposed rules were developed in the Department of Labor's workers' compensation and safety division. In addition, input will be sought from attorneys, insurance adjusters, and the other persons and groups

Public Input

identified in the previous section through the public hearing and comment process.

Incorporation by Reference

THIS FORM IS ONLY REQUIRED WHEN INCORPORATING MATERIALS BY REFERENCE. PLEASE REMOVE PRIOR TO DELIVERY IF IT DOES NOT APPLY TO THIS RULE FILING:

Instructions:

In completing the incorporation by reference statement, an agency describes any materials that are incorporated into the rule by reference and how to obtain copies.

This form is only required when a rule incorporates materials by referencing another source without reproducing the text within the rule itself (e.g., federal or national standards, or regulations).

Incorporated materials will be maintained and available for inspection by the Agency.

1. TITLE OF RULE FILING:

Vermont Workers' Compensation and Occupational Disease Rules 1-27

2. ADOPTING AGENCY:

Vermont Department of Labor

3. DESCRIPTION (*DESCRIBE THE MATERIALS INCORPORATED BY REFERENCE*):

We incorporate the Vermont Department of Health's Rule Governing the Prescribing of Opioids for Pain. This rule sets forth mandatory steps for medical providers to follow when they prescribe opioid medications for pain to patients in Vermont. Our (VT Dept of Labor's) Rules create a rebuttable presumption that opioid treatment is not reasonable medical treatment for chronic pain if the provider did not follow the Health Department's Rule.

4. FORMAL CITATION OF MATERIALS INCORPORATED BY REFERENCE:

4A Code of Vermont Rules (CVR) 13-140-076)

5. OBTAINING COPIES: (*EXPLAIN WHERE THE PUBLIC MAY OBTAIN THE MATERIAL(S) IN WRITTEN OR ELECTRONIC FORM, AND AT WHAT COST*):

The incorporated rule is posted on the Vermont Department of Health website and on the Vermont Department of Labor website, and may be downloaded or accessed at either site at no charge. In addition, a paper copy can be requested by calling the Vermont Department of Labor at (802) 828-2287.

6. MODIFICATIONS (*PLEASE EXPLAIN ANY MODIFICATION TO THE INCORPORATED MATERIALS E.G., WHETHER ONLY PART OF THE MATERIAL IS ADOPTED AND IF SO, WHICH PART(S) ARE MODIFIED*):

We are incorporating the most recently amended version of the Vermont Department of Health's Rule Governing the Prescribing of Opioids for Pain, posted on the Department of Health website at https://www.healthvermont.gov/sites/default/files/document/Opioid%20Prescribing%20Rule.clean_.finaladopted.draft_.pdf

Run Spell Check