

Figure 3

Proposed Revisions to Delineation in Roles/Responsibilities for SBE & AOE in Rulemaking Process

Key Tasks in Rulemaking Process	Roles & Responsibilities			Considerations
	Application	AOE	SBE	
Initiation	Revisions to Existing Rules	AOE is responsible for initiating rulemaking (in response to legislation, petition, or due process) and developing a plan for revising the rule(s), including soliciting and incorporating expert opinions and stakeholder/public input pre-filing with ICAR & LCAR, where appropriate.	<p>SBE will review and approve (by vote) the rulemaking <i>process</i> proposed by AOE.</p> <p>Where appropriate, AOE and SBE may agree upon a role for SBE to play in the rulemaking process, particularly with respect to supporting and ensuring stakeholder/public input.</p>	<p>Proposed revisions will:</p> <ol style="list-style-type: none"> 1. Require AOE to notify SBE of its intent to make new or revise existing rules. Accompanying this notification will be a description of the process AOE will use to develop a rule, including public engagement pre- and post-filing with ICAR. 2. The SBE may play a role in the process of developing a rule (e.g., constituting work groups, public engagement activities). The extent and nature of these activities will be rule-dependent and specified in the rulemaking process proposed by AOE. 3. Clarify that AOE may promulgate rules with/or only after approval of a rule making process approved by the SBE. ICAR will expect SBE approval prior to proceeding with its work. 4. SBE could disapprove AOE’s request to proceed with rulemaking/proposed process with vote that exceeds a super majority of SBE’s voting membership. 5. If the rulemaking process proposed by AOE (and approved by SBE) includes one or more stakeholder working groups as a mechanism to provide public/stakeholder input into the process, such groups will be advisory to the AOE and SBE – but, will not have “approval” authority over a revised or new rule.
	New Rules	AOE is responsible for initiating the process for drafting new rules as provided by statute, <i>unless</i> statute stipulates otherwise (e.g., delegates the rulemaking process to SBE).	<p>SBE will review and approve (by vote) the rulemaking process proposed by AOE.</p> <p>Where appropriate, AOE and SBE may agree upon a role for SBE to play in the rulemaking process, particularly with respect to supporting and ensuring stakeholder/public input.</p> <p>If statute stipulates that SBE is responsible for establishing a new rule, the SBE will work with AOE to collaboratively develop a rulemaking process that involves both AOE and SBE in key activities.</p>	

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Drafting/Pre-Filing	Rule drafting or revision	AOE is responsible for overseeing and administering the rulemaking <i>process</i> that has been approved by SBE, including public/stakeholder engagement and drafting new or revising existing rules.	<p>SBE will monitor the rulemaking process executed by AOE to ensure compliance with the process that was approved by the SBE.</p> <p>Monitoring activities may take the form of periodic updates or direct observation of rulemaking activities. If SBE finds that AOE is not following the agreed upon process, the SBE has the authority to stop the rulemaking process and compel the AOE resolve issues prior to restarting rulemaking activities.</p> <p>At the conclusion of the rulemaking process, but pre-filing with ICAR, the SBE will conduct a comprehensive review/assessment of the rulemaking process, against what was initially approved by the SBE.</p>	<ol style="list-style-type: none"> 1. AOE will shoulder a large share of the responsibility for drafting new and revising existing rules. AOE is expected to follow the rulemaking process that is pre-approved by the SBE. If AOE finds it necessary to deviate from the preapproved process, it will seek prior approval from the SBE for an amended process. 2. The SBE’s role will consist of overseeing this process, according to the process approved by the Board. In some instances, SBE may take an active role in the rulemaking process – e.g., public engagement. The SBE role will be prespecified and specific to a particular rulemaking process. 3. SBE retains the authority to stop AOE’s work on a rule <u>if</u> there is evidence that the Agency is substantially deviating from the pre-approved process, without prior and explicit permission from the Board. SBE’s ability to exercise this option will be limited to specific criteria (defined in statute) that describe the circumstances under which SBE may stop AOE’s work on a rule until resolution can be reached regarding the rulemaking process going forward.
	Public Assurance	As a part of the rulemaking plan submitted to and approved by the SBE, AOE will provide regular updates to SBE on the plan’s implementation, particularly with respect to public/community engagement.	SBE will oversee the engagement plan proposed by AOE to ensure that the proposed process was followed.	

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	Final review of process	Prior to filing, AOE will submit the rulemaking process and resulting rule to the SBE for review.	<p>SBE will conduct final review of rulemaking process prior to filing with ICAR, and with this provide formal assurance to LCAR that AOE provided sufficient opportunities for community engagement in the rulemaking process.</p> <p>The SBE will issue an opinion of the Board regarding the rule (e.g., certification). This opinion will consist of two parts: (1) A determination as to whether AOE followed the pre-approved rulemaking process; and (2) comment on whether the AOE followed the agreed upon process for integrating public comment on the rule. AOE will have the ability to respond to SBE concerns in writing. The SBE opinion, and when appropriate the AOE response, will be filed with the proposed rule.</p>	<ol style="list-style-type: none"> 1. The SBE will not have the authority to “veto” the content of a rule developed by AOE according to the approved process. 2. Prior to filing, SBE will certify that the approved rulemaking process was followed by AOE. This certification, including any concerns on the part of the SBE (with respect to process), will accompany the rule at the time it is filed with ICAR/LCAR. 3. As part of its certification, SBE will indicate whether it approves of the plan for seeking public comment once the rule has been filed with ICAR. If the SBE does not approve, in whole or in part, it will describe what revisions it sought with AOE prior to filing with the recommendation that ICAR require revisions in its review. 4. SBE will provide comment on whether it finds that AOE followed the agreed upon process for integrating public comment on the rule. This comment will accompany the rule at the time it is filed with ICAR/LCAR. 5. SBE action on a rule prior to filing will be time bound (e.g., within two meetings after receiving materials from AOE).

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Post filing		<p>AOE oversees the rulemaking process as articulated by Chapter 25, including ICAR’s requirements for public hearings and comment.</p> <p>At the conclusion of the public comment period, AOE will update the rule as appropriate and provide a written summary of changes to the rule to SBE. Where it opts not to make changes, AOE will provide written justification for why changes were not made.</p> <p>AOE is responsible for responding to comments made by LCAR.</p>	<p>The SBE is considered a “governmental subdivision” under 3 V.S.A. § 840. Accordingly, the SBE can compel public hearings once notice is published by SOS, but prior to LCAR.</p> <p>At the conclusion of the public comment period, SBE will the steps taken by AOE to integrate public comment. SBE will comment on whether the AOE followed the agreed upon process for integrating public comment on the rule. This comment will accompany the rule for review by LCAR.</p>	<ol style="list-style-type: none"> 1. AOE is largely responsible for managing the rulemaking process after filing with ICAR. 2. The SBE will retain its authority to monitor the process followed by AOE, particularly with respect to integrating public comment into the proposed rule. 3. Prior to filing with LCAR, the SBE <u>may</u> the process used by AOE to respond to public comment and provide comment on whether it finds that the AOE’s process is sufficient for integrating public comment into the rule. This comment will accompany the rule.