



REGULATION ADOPTION PROCESS

By: Terrance Adams, Associate Analyst

ISSUE

Describe the process that agencies must follow when adopting “mandatory regulations.”

SUMMARY

The regulation-adoption process is governed by the Uniform Administrative Procedure Act (UAPA) and generally includes (1) notice by the agency of its intent to adopt regulations, (2) review of the proposed regulation by the attorney general for legal sufficiency, (3) submission by the agency of the proposed regulation to the Regulation Review Committee for approval, and (4) submission by the agency of the committee-approved regulation to the secretary of the state for posting on the eRegulations System. The UAPA establishes procedural requirements and deadlines (some of which the committee may extend) for each stage of the process. It also requires agencies to (1) analyze a proposed regulation’s impact on small businesses in Connecticut and (2) maintain an official regulation-making record (CGS §§ 4-166 to 4-176).

Several provisions in the UAPA require the posting of documents on the eRegulations System, which is an electronic compilation of the regulations of Connecticut state agencies. It is administered by the Office of the Secretary of the State (SOTS) and located on the SOTS website. However, some of these posting requirements do not take effect until the secretary certifies the system’s technological sufficiency (i.e., the “certification date”), which to date she has not done (see BACKGROUND). The requirements that are contingent upon the certification date are noted in the report.

This report addresses only those regulations that an agency is required by law to adopt (i.e., “mandatory regulations”) and does not address those that it is authorized to adopt (i.e., “discretionary regulations”). Mandatory and discretionary regulations have nearly identical adoption requirements, except that mandatory regulations have certain deadlines that do not apply to discretionary regulations.

The report also does not address emergency regulations, which (1) agencies adopt in response to certain threats to public health, safety, or welfare and (2) follow an expedited adoption process (CGS § 4-168(g)).

NOTICE OF INTENT TO ADOPT REGULATIONS

By law, agencies may be authorized or required to adopt regulations. In both cases, they must provide at least 30 days' notice of their intent to adopt proposed regulations (except for emergency regulations).

For mandatory regulations, the agency must provide the notice (1) within five months after the effective date of the act requiring adoption or (2) by the time specified in the act. Agencies may begin the regulation-making process before a public act requiring it to do so takes effect, but the regulation cannot take effect before the act's effective date. If the agency does not meet the deadline for posting the notice, it must submit a statement to the governor, Regulation Review Committee, and the legislative committee(s) with cognizance over the proposed regulation's subject matter and, on and after the certification date (see BACKGROUND), post the statement on the eRegulations System (CGS § 4-168(c)). The Regulation Review Committee may extend the deadline for posting the notice (see DEADLINE EXTENSIONS below).

Agencies must post the notice of intent to adopt regulations on the eRegulations System. The notice must include (1) a public comment period of at least 30 days; (2) a detailed description of the issues and subjects sufficient to apprise people likely to be affected; (3) a statement of purpose; (4) the statutory authority for the proposed regulation; (5) information on how to obtain the small business impact and regulatory flexibility analysis (see *Small Business Impacts* below); and (6) when, where, and how interested people can present their views on the proposed regulation (CGS § 4-168(a)).

The agency must also, at least 30 days before adopting a proposed regulation:

1. post a copy of the proposed regulation on the eRegulations System (on and after the certification date; see BACKGROUND);
2. provide electronic notice to the legislative committee(s) with cognizance over the proposed regulation's subject matter;
3. provide electronic or, if requested, paper notice to anyone who has requested advance notice of the agency's regulation-making proceedings;

4. provide a paper or electronic copy of the proposed regulation to anyone who requests it; and
5. prepare a fiscal note.

The fiscal note must estimate the proposed regulation's fiscal impact on the state, municipalities, and small businesses, including a regulatory flexibility analysis, if applicable (see *Small Business Impacts* below) (CGS § 4-168(a)).

The agency must hold a public hearing on the proposed regulation if one is requested by at least 15 people, an association with at least 15 members, or a governmental agency or subdivision. The request must be received by the agency no later than 14 days after it posts the notice of intent to adopt regulations (CGS § 4-168(b)).

Post-Public Comment Period Activities

After the public comment period closes, the agency must (1) post on the eRegulations System a notice describing whether it will move forward with the proposed regulation and (2) send (a) electronic notice to anyone who submitted oral or written comments on the proposed regulation and (b) a paper copy to anyone who submitted comments in non-electronic form. The agency must also post on the eRegulations System (1) the proposed regulation's final wording, (2) supporting reasons for the agency's intended action, and (3) opposing arguments and why they were rejected (CGS § 4-168(e)).

ATTORNEY GENERAL REVIEW

Proposed regulations must be approved by the attorney general for legal sufficiency before being submitted to the Regulation Review Committee for approval. The attorney general must complete his review within 30 days after receiving the proposed regulation from the agency. If he or his designated representative does not notify the agency of any legal insufficiency within this time period, the proposed regulation is deemed approved. Agencies must also obtain the attorney general's approval if they are resubmitting a regulation that the committee previously rejected.

By law, legal sufficiency means (1) an absence of conflict with state and federal constitutions, laws, and regulations and (2) compliance with the UAPA's notice and hearing requirements (CGS § 4-169).

SUBMISSION TO REGULATION REVIEW COMMITTEE

An agency must submit mandatory regulations to the Regulation Review Committee within 180 days after posting its notice of intent to adopt regulations. If the agency does not do this, it must submit to the committee an electronic statement explaining why (CGS § 4-168(c)). The committee may extend the agency's deadline (see DEADLINE EXTENSIONS below).

By law, the submission date is the first Tuesday of each month. Regulations received after the first Tuesday of a month are deemed to be submitted on the first Tuesday of the next month (CGS § 4-170(b)).

The agency's submittal to the committee must include electronic copies of the proposed regulation, attorney general's approval, regulatory flexibility analysis (see below), and fiscal note. The agency must also electronically submit the proposed regulation and fiscal note to (1) the legislature's Office of Fiscal Analysis (OFA) and (2) each legislative committee with cognizance over the regulation's subject matter. OFA must submit to the Regulation Review Committee an analysis of the fiscal note within seven days of receiving it (CGS § 4-170(b)).

The committee may approve, disapprove, or reject a proposed regulation, in whole or in part. If it does not act within 65 days, the regulation is deemed approved (CGS § 4-170(c)).

If the committee disapproves a regulation, the agency cannot issue any regulation or directive or take any action to implement the disapproved regulation unless the legislature reverses the committee's decision. However, the agency may adopt a substantively new regulation in accordance with the UAPA (CGS § 4-170(d)).

Resubmittals

If the committee rejects a mandatory regulation without prejudice, the agency must submit a revised version to the committee by the first Tuesday of the second month following the rejection. The agency must (1) obtain the attorney general's approval for a resubmittal, as indicated above, and (2) include a summary of the revisions, identified by paragraph. The committee has 35 days to act on a resubmittal; if it does not take action, the resubmittal is deemed approved (CGS § 4-170(e)).

If the agency does not meet the resubmittal deadline, the agency head must submit to the committee a written explanation of the reasons for noncompliance (CGS § 4-170(f)). The committee may extend the agency's resubmittal deadline (see DEADLINE EXTENSIONS below).

DEADLINE EXTENSIONS

The UAPA requires agencies to provide an explanation to the Regulation Review Committee, among others, if they miss deadlines for (1) posting a notice of intent to adopt regulations, (2) submitting proposed regulations to the Regulation Review Committee, or (3) resubmitting a regulation that the committee rejected without prejudice.

The UAPA allows the committee, by a two-thirds vote of its members, to extend each of these submission deadlines. If the committee does not grant an extension, the agency head must appear before the committee to explain the noncompliance. After this appearance, the committee may, upon a two-thirds vote of its members, report the noncompliance to the governor, who must report within 14 days the action he has taken to ensure compliance (CGS § 4-170(f)).

POST-APPROVAL REQUIREMENTS

Once the Regulation Review Committee approves a regulation, the agency must submit a certified electronic copy to the secretary of the state within 14 days after the approval, in the form prescribed by the secretary. The copy must include a statement from the agency head or a duly authorized deputy department head certifying that the electronic copy is a true and accurate copy of the approved regulation. On and after the certification date (see BACKGROUND), the secretary must post the regulation on the eRegulations System within 10 calendar days of submission by the agency (CGS § 4-172).

If the agency does not submit an approved regulation to the secretary within 14 days after the committee's approval, the agency must notify the committee of the reasons for the failure within five days after the end of the 14-day period (CGS § 4-170(f)).

OTHER REQUIREMENTS

Small Business Impacts

Under the UAPA, agencies must prepare a fiscal note at least 30 days before adopting a proposed regulation. The note must, among other things, estimate the regulation's cost or revenue impact on small businesses in Connecticut. This includes (1) estimating the number of small businesses subject to the proposed regulation and (2) the projected compliance costs, including reporting, recordkeeping, and administrative costs. The agency must also, if applicable, include a regulatory flexibility analysis.

Regulatory Flexibility Analysis. Generally, before adopting a proposed regulation, each agency must prepare a regulatory flexibility analysis in which the agency must, to the appropriate extent, use several methods to reduce the proposed regulation's impact on small businesses. These include, for compliance or reporting requirements, (1) making them less stringent, (2) making their schedules or deadlines less stringent, and (3) consolidating or simplifying them. The agency must also consider (1) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation and (2) exempting small businesses from all or part of the proposed regulation's requirements.

Before adopting a proposed regulation that may have an adverse impact on small businesses, the agency must notify the Department of Economic and Community Development and the legislature's Commerce Committee. The department and the committee must advise and assist agencies with complying with the above requirements.

The regulatory flexibility analysis requirements do not apply to (1) emergency regulations and (2) regulations (a) that do not affect small businesses directly, (b) concerning costs and standards for service businesses, and (c) implementing the provisions of the state's set-aside program for small- and minority-owned businesses.

Under the UAPA, a small business is a business entity that (1) is independently owned and operated and (2) employs fewer than 75 full-time employees or has gross annual sales of less than \$5 million. The agency may define "small business" to include a greater number of full-time employees, up to the applicable federal standard or 500, whichever is less (CGS § 4-168a).

Regulation-Making Record

The UAPA requires agencies to create an official regulation-making record that includes any documents they created, received, or considered during the regulation-adoption process. The record includes, among other things:

1. the notice of intent to adopt regulations;
2. written analyses on which the regulation is based (e.g., the regulatory flexibility analysis);
3. submissions and comments the agency received;

4. the official transcript, if any, of any proceedings upon which the regulation is based;
5. any audio recording or stenographic record of the proceeding(s), if there is no transcript;
6. official documents related to the regulation, including the final regulation as submitted to SOTS, arguments opposing the regulation, reasons for rejecting them, and the fiscal note;
7. any petition for the regulation; and
8. all comments and communications between the agency and Regulation Review Committee.

On and after the certification date (see BACKGROUND), agencies must post the regulation-making record on the eRegulations System. If an agency determines that it is impractical or inappropriate to display any part of the record on the eRegulations System, it must post a description of the omitted part and maintain a copy of it readily available for public inspection at its principal office.

Additionally, an agency cannot post audio recordings of hearings on the system unless the secretary of the state confirms that posting them would not violate any state or federal law regarding accessibility for people with disabilities. Agencies must maintain audio recordings that are not posted on the eRegulations System and make them available to the public upon request (CGS § 4-168b).

BACKGROUND

eRegulations System Certification

The eRegulations System is an electronic compilation of the regulations of Connecticut state agencies. By law, the eRegulations System is an unofficial version of state agency regulations until the time that the secretary of the state certifies, in writing, that the system is technologically sufficient to be the official version (i.e., the "certification date"). The secretary must also certify that the system is technologically sufficient to be the electronic repository for agencies' regulation-making records (CGS § 4-173b). To date, she has not made these certifications.

Until the certification date, she must send the final version of an approved regulation to the Commission on Official Legal Publications for publication in the Connecticut Law Journal (CGS § 4-173b).

Additionally, until the certification date, agencies must post proposed regulations and the regulation-making record on their own websites, rather than the eRegulations System. The secretary must post a link to these documents on the SOTS website (CGS § 4-168c).

TA:jk