

COMMISSION ON ENHANCING AGENCY OUTCOMES SUMMARY SHEET

State Agency Regulations Online

Background

State statutes often require or authorize state agencies to adopt regulations to provide further detail about how the pertinent statutory program or policy is to be actually implemented. Once approved in accordance with Connecticut's Uniform Administrative Procedures Act (UAPA), state agency regulations have the force of law, like statutes. Connecticut state statutes have been available on line at no cost to the public on the state legislature website for several years. However, the state agency regulations that interpret and flesh out these statutes are not publicly available on line.

Per the UAPA, the Secretary of the State (SOS) is the official repository of state agency regulations—the office is to keep a “permanent register” of the regulations open to public inspection. An agency with approved regulations¹ must submit two certified copies of the regulations to the Secretary of the State's office, in the form intended for publication. The Secretary of the State's Office is not responsible for publishing, printing, or distributing the regulations, though. By statute, after receiving the approved regulations, the SOS sends one copy for publication and distribution to the Commission on Official Legal Publications (COLP), which is within the Judicial Branch.

The vast majority of what COLP produces is court-related documents (e.g., court decisions and court rules of practice). In addition, COLP is required to publish a number of different items related to state agency regulations, as submitted to it from both state agencies and the SOS.

- **Notices of intent:** COLP publishes the notices of intent to promulgate regulations that agencies are required to submit directly to it, in order to give the public and other interested parties a chance to comment. These are published in the Connecticut Law Journal (CLJ), which is a statutorily mandated official journal of notice and record issued weekly (that also prints state court decisions, among other items).
- **Text of approved regulations:** COLP is also required to publish in the CLJ at least monthly the text of the approved regulations submitted to it by the Secretary of the State during the preceding month.
- **Compilation of all state agency regulations:** COLP publishes and distributes a compilation of all effective state agency regulations—this publication may be a supplement to or a revision of the most current compilation, at least semi-annually. Official state agency regulations are contained in 18 binders, arranged by the order of the statutes.

Judicial Branch information indicates that these regulation publication functions cost \$34,112 in FY 2010 (see table below). COLP charges for copies of the final regulations. A

¹ Proposed agency regulations must be submitted to the Attorney General's Office for a legal sufficiency review and the Connecticut General Assembly's Regulations Review Committee for approval.

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complete set of regulations in 18 binders currently costs \$714.00, and an annual subscription to keep the binders up to date is \$87.00.

Connecticut State Regulation Availability: Accessibility and Transparency Problem

The concern about the lack of public availability of state agency regulations online is not based on cost-savings, but rather on government accessibility and transparency. Relatively speaking, Connecticut state government is not spending a lot of money publishing its regulations, as indicated by the table below. (The cost of the process prior to publication, both direct and indirect, is a different matter for exploration). Most other states have their regulations publicly available on line, either in PDF or HTML. A major impediment in Connecticut is that COLP uses a typesetting system that is apparently not easily convertible to language need to put the regulations on line with search capabilities. It should be noted that some people can currently access Connecticut state regulations online, if they subscribe to a commercial legal database. (A commercial publisher can now purchase very basic electronic regulation files from COLP, which a publisher may use to create a searchable, online database that is packaged with numerous other legal databases.)

Attempts have been made to establish a publicly available online regulation database or at minimum require agencies to publish their regulations on their websites. Most recently, in 2008, proposed legislation called for the Department of Information Technology, in consultation with COLP, to develop a computer program that would enable each state agency to post regulations on its website. Envisioning this would involve creating an on-line searchable database of state agency regulations, the fiscal note estimated a one-time cost of between \$100,000 and \$250,000, with an ongoing annual cost to DOIT of \$50,000. These proposals failed.

In some states, publicly accessible online regulations are provided without cost by a commercial publisher that is otherwise producing some other legal publications for the states. Since 2005 in New Jersey, for example, a commercial publisher, LexisNexis, puts the state agency regulations online in a publicly accessible way at no cost as part of its contract with New Jersey to publish the official state agency code for which LexisNexis charges. The contract between LexisNexis and New Jersey requires LexisNexis to pay for licensing and royalty fees to the state. (From 1976 to 1995, the New Jersey Office of Administrative Law published the state regulations and register in house.)

The lack of easily accessible state agency regulations in Connecticut may be symptomatic of a larger issue of how the state regulation-making process works in general and who is or should be responsible for the process, questions that would require more review. For example, although the UAPA requires agencies to submit approved regulations to the SOS “in the form intended for publication”, more than one person connected to the process commented that many “final” regulations needed more work to get them prepared for publication. Also, much of the regulation review process still involves paper copies. Finally, all regulations are not alike in terms of complexity, and development and drafting many regulations is not an easy task. Some agencies may struggle more with regulation drafting than others.

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Recommendation

1. *Transfer the responsibility of publishing state agency regulations from COLP to the Secretary of the State's Office (notice of intent and final approved). The Connecticut Law Journal may still be used for notices of intent through an agreement between SOS and the Judicial Branch.*

2. *Seek RFPs from commercial publishers to handle the publication of regulations for subscription sales and include requirement that a searchable online data base be made available.*

3. *Conduct further review of the state agency regulation development and approval process.*

In FY10, the Judicial Branch spent \$34, 122.19: 1) to publish proposed and final regulations for mandatory notice purposes in the CT Law Journal, and 2) to produce and distribute final supplements for the regulation binder sets.		
Law Journal Costs (for 720 pages) (5.21 % of all Law Journal Pages (13, 812))		
Element	Cost	Detail
Typesetting	\$5,141.76*	(208 hours per year)
Editorial	\$8,827.00*	(260 hours per year)
Other Production	\$4,788.60	Supplies (ink, plates, sheets) Labor
TOTAL	\$18,757.36	
Supplements for Regulation Cumulative Costs (avg. 1100 pages per years)		
Element	Cost	Detail
Typesetting	\$3,955.20*	(160 hours per year)
Editorial	\$7,265.60*	(160 hours per year)
Other Production		
For Supp. #84	\$689.01	Supplies (ink, plates, sheets) Labor
For supp. #85	\$1,466.02	Supplies (ink, plates, sheets) Labor
Subscription Mailing	\$1,989	188 subscriptions at \$11.00 each
TOTAL	15,364.83	
GRAND TOTAL	\$34,122.19	
* average		
Source of Date: Judicial Branch		