

Regulation of the
Department of Labor

Concerning
Unemployment Compensation Overpayments

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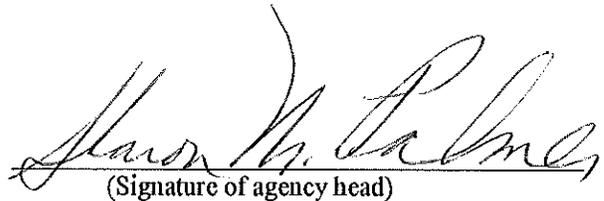
Submit the electronic copy and its certification statement to the Secretary of the State at regulations.sots@ct.gov concurrently with the paper copy of the original regulation, as required by CGS Section 4-172 as amended.

Electronic Copy Certification Statement

I, **Sharon M. Palmer, Commissioner**, of the **Connecticut Department of Labor**, in accordance with the provisions of Section 4-172 of the *General Statutes of the State of Connecticut*, do hereby certify:

That the electronic copy of a regulation concerning **Unemployment Compensation Overpayments**, which was approved by the Legislative Regulation Review Committee on **April 22, 2014**, and which shall be submitted electronically for filing to the Secretary of the State by **Anne Rugens** of this agency on **May 6, 2014**, is a true and accurate copy of the original regulation approved in accordance with Sections 4-169 and 4-170 of the *General Statutes of the State of Connecticut*.

In testimony whereof, I have hereunto set my hand on **May 6, 2014**.


(Signature of agency head)

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State of Connecticut
REGULATION
of

NAME OF AGENCY

CONNECTICUT DEPARTMENT OF LABOR

Concerning

SUBJECT MATTER OF REGULATION

UNEMPLOYMENT COMPENSATION OVERPAYMENTS

Section One. Section 31-273-2 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 31-273-2. Non-fraud overpayments: Notice, hearing and determination

(a) Where the Administrator determines that an individual has through error received any sum as benefits while any condition for the receipt of benefits imposed by Chapter 567 of the General Statutes was not fulfilled with respect to [his] the individual's claim, or that an individual has received a greater amount of benefits than was due [him] such individual, such individual shall be charged with an overpayment of a sum equal to the amount so overpaid. The Administrator shall take such action unless [he] the Administrator determines that repayment or recoupment would defeat the purpose of the benefits or be against equity and good conscience and should be waived pursuant to Section 31-273-4 of the Regulations of Connecticut State Agencies. The Administrator shall charge the individual with an overpayment only so long as such error has been discovered and brought to the individual's attention within one year of the date of receipt of such benefits, except as provided in subsection (i) of this section.

(b) Where the Administrator identifies a question of eligibility pursuant to Chapter 567 of the Connecticut General Statutes with respect to one or more weeks for which an individual was previously paid any sum of benefits, the Administrator shall give adequate notice to the individual that a hearing will be held by the Administrator for the purpose of determining whether the individual was eligible for benefits for such week or weeks. The notice to the individual shall include:

(1) the time and [place] date of such hearing;

(2) notification as to the telephone hearing process if scheduled to be conducted by telephone;

(3) information necessary for the claimant to submit evidence or testimony for use at the hearing, if applicable;

[(2)] (4) notification that such hearing will be conducted in accordance with the provisions of Section 31-273-8 of the Regulations of Connecticut State Agencies;

[(3)] (5) identification of the question or questions of eligibility to be addressed at such hearing;

[(4)] (6) notice that a determination of ineligibility or non-entitlement for any week or weeks or part of any week or weeks will result in the charging of an overpayment to the individual, and that if the individual's receipt of such sum of benefits was not due to fraud, wilful misrepresentation or wilful nondisclosure of a material fact by [himself] the individual or through the agency of another, [he] the individual shall also have the following issues considered at the same hearing:

(A) the exact amount of benefits overpaid to the individual;

(B) whether repayment or recoupment of such sum would defeat the purpose of the benefits or be against equity and good conscience and should be waived, pursuant to section 31-273-4; and

(C) if no waiver is made pursuant to subparagraph (B) of this subdivision, whether such overpaid benefits shall be recouped by offset from the individual's weekly unemployment benefits;

[(5)] (7) notice to the individual that if [he] the individual fails to appear at such hearing, the Administrator will proceed to adjudicate all issues identified in this section and make a determination with respect to those issues on the basis of the record available to the Administrator, by offset from the individual's weekly unemployment benefits, pursuant to subsection (c) of this section; and

[(6)] (8) notice that the Administrator's determination or any portion thereof may be appealed to the Employment Security Appeals Division.

The hearing held by the Administrator shall be conducted in accordance with the provisions of Section 31-273-8 of the Regulations of Connecticut State Agencies.

(c) Where the individual is determined to be ineligible for benefits as the result of a hearing conducted in accordance with the provisions of Section 31-273-8 of the Regulations of Connecticut State Agencies or upon review of the available record, the Administrator shall issue a determination which contains the following information:

(1) the reason the individual was ineligible for or not entitled to benefits;

(2) the week or weeks for which the individual was overpaid as the result of such ineligibility or non-entitlement;

(3) the total amount of the overpayment;

(4) whether such overpayment has been waived, pursuant to Section 31-273-4 of the Regulations of Connecticut State Agencies;

(5) if not waived, the manner in which such sum shall be recouped by offset from the individual's weekly unemployment benefits pursuant to Section 31-273-3 of the Regulations of Connecticut State Agencies; and

(6) the individual's statutory appeal rights.

However where, as the result of a hearing conducted pursuant to subsection (b) of this section, the Administrator determines that an individual has been overpaid benefits but that additional evidence is necessary to make a proper determination as to whether such overpayment should be waived, pursuant to Section 31-273-4 of the Regulations of Connecticut State Agencies, and that such evidence could be obtained by the individual within a reasonable period of time, the Administrator may issue a determination with respect to subdivisions (1), (2) and (3) of this subsection immediately, and issue a subsequent determination with respect to subdivisions (4) and (5) of this subsection after the individual has been afforded a reasonable opportunity to present any additional evidence to support [his] the individual's request for waiver of the overpayment. In each determination, the Administrator shall afford the individual statutory appeal rights.

(d) Where the Administrator detects that an individual has been overpaid benefits as a result of a clerical or computational error in the processing of any weekly claim for benefits, the Administrator shall notify the individual that [he] the individual has been charged with an overpayment of such benefits, the amount of the overpayment and that [he] the individual has a right to a hearing to be held by the Administrator to address:

(1) whether or not the individual was overpaid benefits and the reasons therefor;

(2) the exact amount of benefits overpaid to the individual;

(3) whether repayment or recoupment of such sum would defeat the purpose of the benefits or be against equity and good conscience and should be waived, pursuant to section 31-273-4 of the Regulations of Connecticut State Agencies; and

(4) if no waiver is made pursuant to subdivision (3) of this subsection, whether such overpaid benefits shall be recouped by offset from the individual's weekly unemployment benefits, pursuant to Section 31-273-3 of the Regulations of Connecticut State Agencies .

In addition, the Administrator shall notify the individual that if [he] the individual does not exercise [his] the individual's right to such hearing within fourteen days of the date such notification was mailed, or if [he] the individual waives in writing [his] the individual's right to such hearing the Administrator will issue a determination with respect to these issues on the basis of the record available to the Administrator, which may be appealed to the Employment Security Appeals Division. Where an individual exercises [his] such individual's right to such hearing, the Administrator shall issue a formal notice of hearing containing the provisions outlined in subsection (b) of this section. The hearing held by the Administrator shall be conducted in accordance with the provisions in Section 31-273-8 of the Regulations of Connecticut State Agencies. Where the Administrator concludes during the course of such hearing that an overpayment does not exist, those issues relating to overpayment in subdivisions (2), (3), and (4) of this subsection will not be addressed in the hearing.

(e) Where an overpayment is found to exist as a result of the hearing or review of the available record referred to in subsection (d) of this section, the Administrator shall issue a determination which contains the following information:

(1) the reason the individual was ineligible for or not entitled to benefits;

(2) the week or weeks for which the individual was overpaid as the result of such ineligibility or non-entitlement;

(3) the total amount of the overpayment;

(4) whether such overpayment has been waived, pursuant to Section 31-273-4 of the Regulations of Connecticut State Agencies ;

(5) if not waived, the manner in which such sum shall be recouped by offset from the individual's weekly unemployment benefits pursuant to Section 31-273-3 of the Regulations of Connecticut State Agencies ; and

(6) the individual's statutory appeal rights.

(f) Where the Administrator determines that an individual has been overpaid benefits as the result of a decision by an Appeals Referee, the Board of Review or any state or federal court which

reverses a prior decision and which has become final, or as the result of a redetermination of [his] the individual's weekly benefit amount which has become final, the Administrator shall notify the individual that [he] such individual has been charged with an overpayment of such benefits and that [he] the individual has the right to a hearing to be held by the Administrator which will consider the following issues only:

(1) determination of the exact amount of benefits overpaid to the individual as a result of such decision;

(2) whether repayment or recoupment of such sum would defeat the purpose of the benefits or be against equity and good conscience and should be waived, pursuant to Section 31-273-4 of the Regulations of Connecticut State Agencies ;

(3) if no waiver is made pursuant to subdivision (2) of this subsection, whether such overpaid benefits shall be recouped by offset from the individual's weekly unemployment benefits pursuant to Section 31-273-3 of the Regulations of Connecticut State Agencies. In addition, the Administrator shall notify the individual that if [he] such individual does not exercise [his] the individual's right to such hearing within fourteen days of the date such notification was mailed, or if [he] the individual waives in writing [his] such individual's right to such hearing, the Administrator will issue a determination with respect to the issues identified in subdivisions (1), (2), and (3) of this subsection on the basis of the record available to the Administrator, which may be appealed to the Employment Security Appeals Division.

(g) Where an individual exercises [his] such individual's right to a hearing, pursuant to subsection (f) of this section, the Administrator shall issue a formal notice of hearing which includes:

(1) the time and [place] date of such hearing[.];

(2) notification as to the telephone hearing process if scheduled to be conducted by telephone;

(3) information necessary for the claimant to submit evidence or testimony for use at the hearing, if applicable;

[(2)] (4) notification that such hearing will be conducted in accordance with the provisions of Section 31-273-8 of the Regulations of Connecticut State Agencies;

[(3)] (5) identification of the issues to be addressed at such hearing, as described in subsection (f) of this section; and

[(4)] (6) notice to the individual that if [he] the individual fails to appear at such hearing, the Administrator will proceed to adjudicate all issues identified in this section and make a

determination with respect to those issues on the basis of the record available to the Administrator.

The hearing held by the Administrator shall be conducted in accordance with the provisions of Section 31-273-8 of the Regulations of Connecticut State Agencies .

(h) Following any hearing or review of the available record by the Administrator pursuant to subsection (g) of this section, the Administrator shall issue a determination to the individual which contains the following information:

(1) the exact amount of benefits overpaid to the individual and the weeks for which the individual was overpaid;

(2) whether such overpayment has been waived, pursuant to Section 31-273-4 of the Regulations of Connecticut State Agencies;

(3) if not waived, the manner in which such sum shall be recouped by offset from the individual's weekly unemployment benefits pursuant to Section 31-273-3 of the Regulations of Connecticut State Agencies ; and

(4) where no waiver has been made, the individual's statutory appeal rights.

(i) The requirement that error be discovered and brought to the attention of the individual within one year of the date of receipt of benefits, imposed by subsection (a) of this section shall not apply to any overpayment resulting from a decision which was appealed and did not become final within such time limitations. In such cases, overpayment resulting from such error must be discovered and brought to the attention of the individual within one year from the date upon which the controlling decision became final.

Sec. 2. Section 31-273-3 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 31-273-3. Recovery of non-fraud overpayments

(a) Except as provided in subsections (b) and (c) of this section, where the Administrator determines that any sum of benefits which was overpaid to an individual for reasons other than fraud, wilful misrepresentation or wilful nondisclosure of a material fact by [himself] the individual or through the agency of another should not be waived pursuant to Section 31-273-4 of the Regulations of Connecticut State Agencies, and such decision has become final, such overpayment shall be recouped by offset from any unemployment benefits subsequently payable to the individual in an

amount equal to fifty percent of [his] the individual's weekly benefit entitlement, rounded to the next lower whole dollar where such amount is not a whole dollar.

(b) Notwithstanding the provisions of subsection (a) of this section, during any weeks in which the Administrator has established that an "extended benefit period," as defined in Section 31-232b (a)(1) of the Connecticut General Statutes exists, the Administrator shall offset any overpayment to an individual which is not due to fraud, wilful misrepresentation or wilful nondisclosure of a material fact by [himself] the individual or through the agency of another from any unemployment benefits subsequently payable to the individual in an amount equal to [twenty-five] fifty percent of [his] the individual's weekly benefit entitlement, rounded to the next lower whole dollar where such amount is not a whole dollar.

(c) Notwithstanding the provisions of subsection (a) of this section, during any week in which an individual's weekly benefit amount, prior to offset for any other purpose, is less than one hundred dollars, the Administrator shall offset any overpayment which is not due to fraud, wilful misrepresentation or wilful nondisclosure of a material fact by [himself] the individual or through the agency of another from any unemployment benefits subsequently payable to the individual in an amount equal to twenty-five percent of [his] the individual's weekly benefit entitlement, rounded to the next lower whole dollar where such amount is not a whole dollar.

(d) Any direct repayment by an individual of a portion of an overpayment under this section shall not preclude the Administrator from seeking the remaining portion of the overpayment as otherwise specified in this section.

(e) Whenever the Administrator determines that an individual has been overpaid benefits under this section because, as the result of a reduction in [his] the individual's weekly benefit rate pursuant to Section 31-231a or 31-227(g) of the Connecticut General Statutes, the individual has already received a sum equal to or in excess of [his] the individual's maximum limitation on total benefits, pursuant to Section 31-231b of the Connecticut General Statutes, the Administrator shall afford the individual the opportunity to:

(1) waive the offset provisions of subsection (a), or (b) or (c) of this section, if applicable; and

[(2) continue to file valid weekly claims for benefits for each subsequent week of unemployment within his benefit year or within a related period of extended benefits until the individual has filed for benefits for that number of weeks he would have filed if the initial determination of his weekly benefit rate had been correct; and]

[(3)] (2) [to] offset all benefits [claimed under subdivision (2) of this subsection] determined to be overpaid by [one hundred] fifty percent against [his] the individual's overpayment[.]; and

(3) Notwithstanding the provisions of subsection (a) of this section, during any week in which an individual's weekly benefit amount, prior to offset for any other purpose, is less than one hundred dollars, the Administrator shall offset any overpayment which is not due to fraud, wilful misrepresentation or wilful nondisclosure of a material fact by himself or through the agency of another from any unemployment benefits subsequently payable to the individual in an amount equal to twenty-five percent of the individual's weekly benefit entitlement, rounded to the next lower whole dollar where such amount is not a whole dollar.

Any portion of the individual's overpayment which is not offset in accordance with the provisions of this subsection shall be recouped by the Administrator from any unemployment benefits payable to the individual in any subsequent benefit year in accordance with the provisions of subsection (a), or (b) or (c) of this section, if applicable.

(f) Except as provided in subsection (e) of this section, whenever the Administrator determines that an individual has been overpaid benefits under this section because, as the result of an administrative determination or appellate decision reversing or modifying a prior award of benefits, the individual has already received a sum equal to or in excess of [his] the individual's maximum limitation on total benefits pursuant to Section 31-231b of the Connecticut General Statutes, the Administrator shall afford the individual the opportunity to:

(1) waive the offset provision of subsection (a), or (b) or (c) of this section, if applicable; [and]

[(2) continue to file valid weekly claims for benefits for each subsequent week of unemployment for which he is otherwise eligible until the individual has filed for a sum of benefits equivalent to the amount of benefits that was overpaid or until his benefit year or any related period of extended benefits has expired, whichever is earlier; and]

[(3)] (2) [to] offset all benefits [claimed under subdivision (2) of this subsection] determined to be overpaid by [one hundred] fifty percent against [his] the individual's overpayment[.]; and

(3) Notwithstanding the provisions of subsection (a) of this section, during any week in which an individual's weekly benefit amount, prior to offset for any other purpose, is less than one hundred dollars, the Administrator shall offset any overpayment which is not due to fraud, wilful misrepresentation or wilful nondisclosure of a material fact by the individual or through the agency of another from any unemployment benefits subsequently payable to the individual in an amount equal to twenty-five percent of the individual's weekly benefit entitlement, rounded to the next lower whole dollar where such amount is not a whole dollar.

Any portion of the individual's overpayment which is not offset in accordance with the

provisions of this subsection shall be recouped by the Administrator from any unemployment benefits payable to the individual in any subsequent benefit year in accordance with the provisions of subsection (a), or (b) or (c) of this section, if applicable.

(g) Where the offset of a determination of overpayment which was both made and became final on or after October 1, 1995 is insufficient to recoup the full amount of the overpayment, the Administrator shall establish a repayment schedule for the remaining amount. At the discretion of the [administrator] Administrator, the repayment schedule may be modified or suspended as conditions warrant.

(h) If the individual fails to repay according to the repayment schedule established pursuant to subsection (g) of this section, the [administrator] Administrator may make a finding of noncompliance. For purposes of this section, a "finding of noncompliance" means that, in the opinion of the [administrator] Administrator, the individual is failing to make reasonable and acceptable efforts to adhere to the repayment schedule. In making a finding of noncompliance, the [administrator] Administrator will specify the reasons for the determination and may consider any mitigating circumstances offered by the individual relating to [his] the individual's ability to pay.

(i) Where the [administrator] Administrator makes a finding of noncompliance as specified in subsection (h) of this section, the administrator may recover the overpayment through a wage execution against the individual's earnings and may request the Commissioner of Administrative Services to seek reimbursement for such amount pursuant to section 12-742 of the Connecticut General Statutes.

(j) Any finding of noncompliance made under this section may be enforced by a wage execution in the same manner as a judgment rendered in the superior court.

(k) Upon receipt of a repayment schedule established pursuant to subsection (g) of this section, or at any time during which an individual is subject to the terms of said repayment schedule, the individual may petition the [administrator] Administrator for a modification or suspension of the repayment schedule. Such petition may be made orally or in writing and shall state the mitigating circumstances relating to the individual's ability to pay upon which the modification or suspension is requested.

(l) The Administrator shall, eight years after the payment of any benefits described in this section, cancel any claim for such repayment or recoupment which, in [his] the Administrator's opinion, is uncollectible.

Sec. 3. Section 31-273-4 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 31-273-4. Waiver

(a) The Administrator shall determine that repayment or recoupment of any benefits found to be overpaid pursuant to Section 31-273-2 of the Regulations of Connecticut State Agencies would defeat the purpose of the benefits or would be against equity and good conscience and shall be waived only if the individual did not receive such benefits by reason of fraud, wilful misrepresentation or wilful nondisclosure by [himself] the individual or through the agency of another of a material fact, and one of the following conditions exists:

(1) it has been established by evidence or testimony, presented [in person] orally or in writing, that the individual's prospects for securing full-time employment are severely limited as a result of physical or mental disability, poor health or any other circumstances which would be detrimental to [his] the individual's employability; or

(2) the benefits were overpaid to the individual as a result of retrospective application of a legislative change; or

(3) the benefits were overpaid as a direct result of gross administrative error; or

(4) the benefits were overpaid as the result of a decision by an Appeals Referee, the Employment Security Board of Review or any court of law reversing a prior decision, and adequate notice was not given to the individual that [he] the individual would be required to repay benefits in the event of any reversal upon appeal; or

(5) it has been established by evidence or testimony, presented in person or in writing, that the individual substantially, detrimentally and irreversibly changed [his] such individual's position in reliance upon the receipt of unemployment compensation by foregoing receipt of any public welfare benefits for which [he] the individual would have been entitled but for the receipt of such unemployment compensation; or

(6) the individual--

(A) has been overpaid benefits in an amount equal to or greater than two times [his] the individual's weekly benefit amount at the time the overpayment was made; and

(B) the individual's annualized family income, as determined under subsection (c) of this section, does not exceed one hundred and fifty percent of the poverty level, most recently published in the Federal Register by the United States Department of Commerce, Census Bureau, which corresponds to the size of the individual's family unit; or

(7) the individual is deceased [.] or

(8) the benefits were overpaid as a direct result of an employer's failure to respond timely or adequately to a request of the Administrator for information relating to the individual's claim for unemployment compensation benefits in a manner prescribed by the Administrator.

(b) For the purposes of this section, "gross administrative error" may be found only where it is clear that a reasonable examiner, adjudicator or trier of fact in the same circumstances and presented with the same facts would not have made the same determination or taken the same action, or the Employment Security Division has failed to discharge its responsibilities so as to deprive the individual of substantial due process of law. Reversal or modification of any determination upon appeal shall not, by itself, constitute grounds for finding gross administrative error.

Gross administrative error by the Administrator may be found only where the individual was not aware and reasonably would not have been aware of such error, so that reliance could not justifiably have been placed upon a determination resulting from such error.

Gross administrative error by the Employment Security Appeals Division may be found only upon a specific finding by the Employment Security Board of Review that an individual was overpaid benefits as a direct result of a decision by the Appeals Division which constitutes gross administrative error within the meaning of this subsection. The Employment Security Board of Review may determine whether an overpayment directly resulted from gross administrative error by the Appeals Division either:

(1) upon appeal of the Referee's decision by any party to the Board of Review; or

(2) upon direct certification of the question of gross administrative error to the Board of Review by the Administrator, or an Appeals Referee in any subsequent proceeding.

(c) In order to determine an individual's "annualized family income" pursuant to subparagraph (B) of subdivision (6) of subsection (a) of this section, the Administrator shall:

(1) determine the total gross income of the individual and [his] the individual's spouse, including cash contributions of any other family member to the individual's household, during the six months prior to the hearing held under Section 31-273-2 to determine whether the individual's overpayment should be waived, excluding any unemployment compensation which has been determined to be overpaid; and

(2) multiply such total income by two; and

(3) deduct any extraordinary medical expenses for which the individual is responsible but which are not covered by a health insurance plan.

(d) In order to determine whether an overpayment of benefits shall be waived pursuant to subdivision (6) of subsection (a) of this section, the Administrator may require the individual to present any financial records, pay stubs, federal income tax returns, or other data deemed necessary for such determination. The Administrator may require the individual to provide [his] such individual's spouse's social security number for the purpose of verifying the spouse's income.

(e) The Administrator shall publish annually tables which set forth income levels equal to one hundred and fifty percent of the poverty level, most recently published by the United States Department of Commerce, Census Bureau, in relation to family size. Such tables shall be utilized in making all determinations pursuant to subdivision (6) of subsection (a) of this section. Copies of such tables may be obtained by any individual, upon request, at any office of the Connecticut Labor Department, Employment Security Division.

Sec. 4. Section 31-273-5 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 31-273-5. Fraud overpayments: Notice, hearing and determination

(a) Where the Administrator determines that any individual has, by reason of fraud, wilful misrepresentation or wilful nondisclosure of a material fact by [himself] the individual or through the agency of another, [of a material fact] received as benefits [fifty dollars or more] of any dollar amount while any condition imposed by Chapter 567 of the Connecticut General Statutes was not fulfilled, or has received [an] any amount [which is fifty dollars or] more than was due him, such individual shall be charged with an overpayment of a sum equal to the amount so overpaid to [him] the individual and shall be liable to repay to the Administrator such sum as well as any other penalties assessed by the [administrator] Administrator in accordance with the provisions of [Section] sections 31-273-6 and 31-273-6a of the Regulations of Connecticut State Agencies.

(b) If any individual charged by the Administrator with an overpayment, pursuant to subsection (a), does not make repayment in full of the sum overpaid, the Administrator shall recoup such sum as specified in Section 31-273-7 of the Regulations of Connecticut State Agencies.

(c) The Administrator shall, eight years after the payment of any benefits described in this section, cancel any claim for such repayment or recoupment which, in [his] the Administrator's opinion, is uncollectible.

(d) Where the Administrator identifies a question of eligibility pursuant to Chapter 567 of the Connecticut General Statutes with respect to one or more weeks for which an individual was previously paid any sum of benefits or detects that an individual received more benefits than that to which [he] such individual was entitled, and reasonably believes on the basis of available evidence that such receipt of benefits was due to fraud, wilful misrepresentation or wilful nondisclosure of a material fact by the individual [himself] or through the agency of another, the Administrator shall notify the individual in writing of the identification of such question and that [he] the individual has a right to a hearing to be held by the Administrator for the purpose of determining whether the individual was eligible for benefits for such week or weeks, and whether any benefits were received fraudulently. The notice shall inform the individual that if [he] such individual does not exercise such right by notifying the Administrator within fourteen days of the date the notice was mailed, a decision will be rendered on the basis of the record available to the Administrator which may be appealed to the Employment Security Appeals Division. In addition, such notice shall advise the individual that an adverse determination will result in the imposition of an administrative penalty pursuant to [Section] sections 31-273-6 and 31-273-6a of the Regulations of Connecticut State Agencies and may result in recoupment methods conducted pursuant to the provisions of Section 31-273-7 of the Regulations of Connecticut State Agencies.

If the individual exercises [his] such individual's right to a hearing, the Administrator shall give the individual adequate notice that a hearing will be held. The notice shall include:

(1) the time and [place] date of such hearing[.];

(2) notification as to the telephone hearing process if scheduled to be conducted by telephone;

(3) information necessary for the claimant to submit evidence or testimony for use at the hearing, if applicable;

[(2)] (4) notification that the hearing will be conducted in accordance with the provisions of Section 31-273-8 of the Regulations of Connecticut State Agencies.

[(3)] (5) identification of the question or questions of eligibility to be addressed at such hearing;

[(4)] (6) notice that a determination of ineligibility or non-entitlement for any week or weeks or part of any week or weeks will result in the charging of an overpayment to the individual;

[(5)] (7) notice that if, following consideration of any question of eligibility or entitlement, there exists the possibility that the individual was overpaid benefits and the individual's receipt of such sum of benefits was due to fraud, wilful misrepresentation or wilful nondisclosure of a material fact by [himself] such individual or through the agency of another [of a material fact], [he] the individual shall also have the following issues considered at the same hearing:

(A) the exact amount of benefits overpaid to the individual, and

(B) whether or not the individual's receipt of such sum was due to fraud, wilful misrepresentation or wilful nondisclosure of a material fact by [himself] such individual or through the agency of another for the purpose of obtaining benefits;

[(6)] (8) notice that a finding of fraud, wilful misrepresentation or wilful nondisclosure pursuant to subdivision [5(A)] (5)(A) of this subsection can result in the imposition of an additional administrative penalty [of not less than two nor more than thirty-nine forfeited weeks of benefits] in accordance with sections 31-273-6 and 31-273-6a of the Regulations of Connecticut State Agencies; and

[(7)] (9) notice to the individual that if [he] the individual fails to appear at such hearing and a determination of ineligibility or non-entitlement is made, the Administrator will proceed to adjudicate the issues identified in subdivision [(5)] (7) of this subsection and make a determination with respect to those issues on the basis of the record available to the Administrator. The hearing held by the Administrator shall be conducted in accordance with the provisions of Section 31-273-8 of the Regulations of Connecticut State Agencies.

(e) Where the individual is determined to be ineligible for benefits and overpaid as a result of fraud, wilful misrepresentation or wilful nondisclosure of a material fact by [himself] the individual or through the agency of another following a hearing described in subsection (d), the Administrator shall issue a determination which contains the following information:

(1) the reason the individual was ineligible for or not entitled to benefits;

(2) the week or weeks for which the individual was overpaid as the result of such ineligibility or non-entitlement;

(3) the total amount of the overpayment;

(4) an administrative determination that the individual was overpaid because [he] the individual, by [his] such individual's own act of commission or omission or through the agency of another knowingly committed fraud, misrepresented a material fact or failed to disclose a material fact for the purpose of obtaining benefits;

(5) notice that such overpaid sum shall be repaid in full directly to the Administrator, and that if such sum is not repaid in full, it shall be recouped pursuant to the provisions of Section 31-273-7 of the Regulations of Connecticut State Agencies;

(6) the administrative penalty to be imposed, pursuant to [Section] sections 31-273-6 and 31-273-6a of the Regulations of Connecticut State Agencies; and

(7) the individual's statutory appeal rights.

(f) Where an individual is determined to be ineligible for benefits but overpaid benefits for reasons other than fraud, wilful misrepresentation or wilful nondisclosure by [himself] such individual or through the agency of another as the result of a hearing described in subsection (d) of this section, the Administrator shall notify the individual that [he] the individual has the right to a hearing in accordance with the provisions of subsection (d) of Section 31-273-2 of the Regulations of Connecticut State Agencies, which may, at the individual's option, be conducted immediately or within five business days.

Sec. 5. Section 31-273-6 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 31-273-6. Administrative penalty for overpayments established prior to October 1, 2013

(a) Whenever the Administrator determines, prior to October 1, 2013, pursuant to Section 31-273-5(e) of the Regulations of Connecticut State Agencies, that any individual has himself or herself or through the agency of another made a claim for benefits and knowingly made a false statement or representation or knowingly failed to disclose a material fact in order to obtain benefits or to increase the amount of benefits to which [he] such individual may be entitled, such individual shall forfeit benefits for not less than [two] one nor more than thirty-nine compensable weeks following determination of such offense or offenses, during which weeks [he] the individual would otherwise have been eligible to receive benefits. For the purposes of Section 31-231b of the Connecticut General Statutes, such person shall be deemed to have received benefits for such forfeited weeks.

(b) Except as provided in subsections (d) and (e) of this section, the number of weeks of benefits to be forfeited shall be the lesser of:

(1) the number of weeks of benefits fraudulently claimed multiplied by [two] one, up to a maximum of thirty-nine; or

(2) that number of weeks which corresponds to the total dollar amount fraudulently claimed on the Administrative Penalty Table in subsection (c) of this section.

(c) The Administrator shall apply the following Administrative Penalty Table in determining the number of penalty weeks to be forfeited, pursuant to subsection (b) of this section:

| Dollars Overpaid | Number of Weeks Forfeited | Dollars Overpaid | Number of Weeks Forfeited |
|------------------|---------------------------|------------------|---------------------------|
| [50] 1 - 499 | 1 | 10,000 - 10,499 | 21 |
| 500 - 999 | 2 | 10,500 - 10,999 | 22 |
| 1,000 - 1,499 | 3 | 11,000 - 11,499 | 23 |
| 1,500 - 1,999 | 4 | 11,500 - 11,999 | 24 |
| 2,000 - 2,499 | 5 | 12,000 - 12,499 | 25 |
| 2,500 - 2,999 | 6 | 12,500 - 12,999 | 26 |
| 3,000 - 3,499 | 7 | 13,000 - 13,499 | 27 |
| 3,500 - 3,999 | 8 | 13,500 - 13,999 | 28 |
| 4,000 - 4,499 | 9 | 14,000 - 14,999 | 29 |
| 4,500 - 4,999 | 10 | 14,500 - 14,999 | 30 |
| 5,000 - 5,499 | 11 | 15,000 - 15,499 | 31 |
| 5,500 - 5,999 | 12 | 15,000 - 15,999 | 32 |
| 6,000 - 6,499 | 13 | 16,000 - 16,499 | 33 |
| 6,500 - 6,999 | 14 | 16,500 - 16,999 | 34 |
| 7,000 - 7,499 | 15 | 17,000 - 17,499 | 35 |
| 7,500 - 7,999 | 16 | 17,500 - 17,999 | 36 |
| 8,000 - 8,499 | 17 | 18,000 - 18,499 | 37 |
| 8,500 - 8,999 | 18 | 18,500 - 18,999 | 38 |
| 9,000 - 9,499 | 19 | 19,000 & over | 39 |
| 9,500 - 9,999 | 20 | | |

(d) Notwithstanding the provisions of subsection (b) of this section, where an individual increases or attempts to increase the dollar amount of a benefit check issued by the Administrator, the Administrator shall impose a penalty of two weeks of forfeited benefits for each check which the individual has increased or attempted to increase.

(e) Notwithstanding the provisions of subsection (b) of this section, where an individual's failure to report earnings for a week or weeks in which [he] the individual received benefits has resulted in an administrative determination pursuant to Section 31-273-5(e) of the Regulations of Connecticut State Agencies, and [he] the individual has also been overpaid for a subsequent week or weeks as a result of a retroactive denial of benefits because [his] such individual's separation from such unreported employment was for a disqualifying reason, the Administrator shall impose a penalty of two weeks of forfeited benefits in addition to any penalty imposed as a result of the earnings [he] the individual failed to report, provided the Administrator finds that the individual knowingly failed

to disclose such separation for the purpose of obtaining benefits.

(f) Where the Administrator has found that an individual has committed an offense, as defined in subsection (i) of this section, and

(1) that the individual committed one prior offense, the Administrator shall impose an extra penalty of five forfeited weeks of benefits in addition to any other penalty imposed pursuant to this section; or

(2) that the individual has committed two prior offenses, the Administrator shall impose an extra penalty of ten forfeited weeks of benefits, in addition to any other penalty imposed pursuant to this section; or

(3) that the individual has committed three prior offenses, the Administrator shall impose a maximum penalty of thirty-nine forfeited weeks of benefits.

(g) The Administrator shall not consider any restitution by the individual of benefits overpaid in determining the number of weeks of benefits to be forfeited pursuant to this section.

(h) Any penalty imposed pursuant to this section shall remain in full force and effect until such time as said penalty has been satisfied in full, as determined by the [administrator] Administrator.

(i) For the purposes of this section, an offense is a single week or a series of weeks within a given time period with respect to which the Administrator has established that an individual has made a claim for benefits and has, himself or herself or through the agency of another, made a false statement or representation or has knowingly failed to disclose a material fact for the purpose of obtaining benefits or increasing the amount of benefits to which [he] such individual may be entitled.

Sec. 6. The Regulations of Connecticut State Agencies are amended by adding section 31-273-6a as follows:

“(NEW)” 31-273-6a. Administrative penalty for overpayments established on or after October 1, 2013

(a) For any determination of an overpayment made on or after October 1, 2013, whenever the Administrator determines, pursuant to Section 31-273-5(e) of the Regulations of Connecticut State Agencies, that any individual has, himself or herself or through the agency of another, made a claim for benefits and knowingly made a false statement or representation or knowingly failed to disclose a material fact in order to obtain benefits or to increase the amount of benefits to which the individual may be entitled, such individual shall be subject to a penalty of fifty (50) percent of the amount of overpayment for the first offense and a penalty of one hundred (100) percent of the

amount of overpayment if any subsequent offense, regardless of whether the overpayment was established prior to October 1, 2013 or on or subsequent to October 1, 2013. This penalty shall be in addition to the liability to repay the full amount of overpayment and shall not be confined to a single benefit year. The penalty amounts computed in this subsection shall be rounded to the nearest dollar with fractions of a dollar of exactly fifty cents rounded upward.

(b) The Administrator shall not consider any restitution by the individual of benefits overpaid in determining the amount of the penalty to be imposed pursuant to this section.

(c) Any penalty imposed pursuant to this section shall remain in full force and effect until such time as said penalty has been satisfied in full, as determined by the Administrator.

(d) For the purposes of this section, an offense is a single week or a series of weeks within a given time period with respect to which the Administrator has established that an individual has made a claim for benefits and has, himself or herself or through the agency of another, made a false statement or representation or has knowingly failed to disclose a material fact for the purpose of obtaining benefits or increasing the amount of benefits to which such individual may be entitled.

Sec. 7. Section 31-273-7 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 31-273-7. Fraud overpayment recovery

(a) Where the Administrator determines that an individual has been overpaid as the result of fraud, wilful misrepresentation or wilful nondisclosure by himself or herself or through the agency of another of a material fact, pursuant to Section 31-273-5(e) of the Regulations of Connecticut State Agencies, any resultant determination that the individual is liable for repayment, recoupment by one hundred percent offset from benefits, or any administrative penalty imposed pursuant to [Section] sections 31-273-6 and 31-273-6a of the Regulations of Connecticut State Agencies shall be effective upon issuance.

(b) At any time where the [administrator] Administrator makes a determination of overpayment pursuant to subsection (a) of this section, the [administrator] Administrator may request the [commissioner] Commissioner of [administrative services] Administrative Services to intercept the individual's State Income Tax refund, if any, pursuant to section 12-742 of the Connecticut General Statutes.

(c) (1) Notwithstanding the provisions of subsections (a) and (b) of this section, where the offset of an overpayment made on or after October 1, 1995 is insufficient to recoup the full amount of the overpayment, the [administrator] Administrator shall establish a repayment schedule for the remaining amount. At the discretion of the [administrator] Administrator, the repayment schedule

may be modified or suspended as conditions warrant.

(2) For any determination of an overpayment made on or after July 1, 2005, the repayment schedule shall impose interest at a rate of one percent of the amount overpaid per month.

(d) If the individual fails to repay according to the repayment schedule established pursuant to subsection (c) of this section and the overpayment has become final, the [administrator] Administrator may make a finding of noncompliance. For purposes of this section, "a finding of noncompliance" means that, in the opinion of the [administrator] Administrator, the claimant is failing to make reasonable and acceptable efforts to adhere to the repayment schedule. In making a finding of noncompliance, the [administrator] Administrator shall specify the reasons for the determination and may consider any mitigating circumstances offered by the individual relating to [his] such individual's ability to pay.

(e) Where the [administrator] Administrator makes a finding of noncompliance as specified in subsection (d) of this section, the [administrator] Administrator may recover (1) for any overpayment established prior to October 1, 2013, the overpayment, plus interest and, (2) for overpayments established on or after October 1, 2013, the overpayment, plus interest, and any administrative penalty assessed pursuant to section 31-273-6a of the Regulations of Connecticut State Agencies, through a wage execution against the individual's earnings, or an execution against the individual's assets, or through any other enforcement permitted by law, including the submission of the outstanding balance to the Internal Revenue Service for the purpose of offsetting the claimant's federal tax refund pursuant section 31-273 of the Connecticut General Statutes and applicable federal laws.

(f) Upon receipt of a repayment schedule established pursuant to subsection (c) of this section, or at any time during which an individual is subject to the terms of said repayment schedule, the individual may petition the [administrator] Administrator for a modification or suspension of the repayment schedule. Such petition may be made orally or in writing and shall state the mitigating circumstances relating to the individual's ability to pay upon which the modification or suspension is requested.

(g) The [administrator] Administrator shall, eight years after the payment of any benefits described in this section, cancel any claim for such repayment or recoupment which, in [his] the Administrator's opinion, is uncollectible.

(h) If the [administrator's] Administrator's finding that the overpayment resulted from fraud, wilful misrepresentation or wilful nondisclosure of a material fact by the individual or through the agency of another is reversed or modified upon appeal by an Appeals Referee, the Employment Security Board of Review or any court of law, the [administrator] Administrator shall, upon issuance of such

decision, relieve the individual of such liability or penalty to the extent provided by such decision. Such relief shall include refund of any benefits, plus interest, recouped in reliance upon the prior decision.

Sec. 8. Section 31-244-4a of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 31-244-4a. Timeliness of written response to notice of predetermination hearing or in response to Administrator's request for information on a claim

(a) In order to be considered timely for purposes of Section 31-241 of the Connecticut General Statutes, an employer's written response to the notice of a predetermination hearing must be actually received by mail, in person or by facsimile machine (FAX) in the office of the Administrator where such hearing is scheduled to be heard by the time the hearing is scheduled to commence on the scheduled hearing date. In cases where the employer elects to participate in the predetermination hearing process by telephone, such election must be communicated to the [administrator] Administrator no later than the close of business, two days prior to the date of said hearing along with the name, title and telephone number of the individual who will participate in the predetermination hearing on behalf of the employer. Nothing in this section precludes consideration of a late response received before an eligibility determination is made, or subsequent to such determination in the Administrator's exercise of continuous jurisdiction under Section 31-243 of the Connecticut General Statutes. However, such consideration shall not relieve the employer of any charges imposed pursuant to Section 31-241 of the Connecticut General Statutes as a consequence of untimely response.

(b) In order to be considered timely for purposes of 31-273(k) of the Connecticut General Statutes, an employer's written response to the Administrator's request for information on a claim for unemployment compensation benefits shall be actually received by mail, in person or by facsimile machine (FAX) within the time frame prescribed in the Administrator's request.

Sec. 9. Section 31-244-6a of the Regulations of Connecticut State Agencies is repealed.

Sec. 10. Section 31-244-7a of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 31-244-7a. Determination of adequacy of the employer's written response

(1) An employer's written response to notice of a predetermination hearing must contain adequate information to be considered a timely response within the meaning of Section 31-241 of the Connecticut General Statutes. To be considered adequate, an employer's written response must (a)

specify the reason for the separation, and (b) answer, in good faith, the questions corresponding to the appropriate separation issue, either by completing the appropriate areas of the questionnaire provided to the employer with the predetermination hearing notice or by submitting relevant alternate documentation, or both. The Administrator shall determine whether an employer's written response is adequate. So long as an employer substantially complies with [(a) and (b) above] subdivisions (1) and (2) of this subsection, the Administrator shall determine that an employer's written response is adequate[, regardless of the quality and content of such response].

(2) An employer's written response to a request by the Administrator for information with respect to a claim for unemployment compensation benefits, including, but not limited, to any requests for additional information, shall be considered an adequate response within the meaning of section 31-273(k) of the Connecticut General Statutes if the response is provided in writing, is timely and is intended in good faith to respond to the request for information in the manner prescribed in such request.

Sec. 11. Section 31-244-9a of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 31-244-9a. Employer's appeal of charges resulting from its nonparticipation in the predetermination hearing.

The issue of an employer's non-participation in a predetermination hearing may not be the subject of an appeal to an Employment Security Appeals Referee until the effect of such non-participation is reflected in [either] (1) a statement of quarterly charges (Form UC-54Q) in the case of a contributing employer, (2) [or] in the case of a reimbursing employer, a monthly billing statement, or (3) in the case of an out-of-state employer, first notification to the employer from the Administrator. The employer may appeal its assessment of charges resulting from its non-participation in the predetermination hearing upon receipt of the first statement of quarterly or monthly charges which includes charges resulting from the employer's non-participation at the predetermination hearing. Such statement of quarterly or monthly charges shall be the only determination of the Administrator through which the issue of nonparticipation may be appealed. A contributing employer's appeal from this determination must be made pursuant to the provisions of Section 31-225a(h)(3) of the Connecticut General Statutes. A reimbursing employer's appeal from this determination shall be made pursuant to the provisions of Section 31-225(g)(2)(D) of the Connecticut General Statutes.

Statement of Purpose

Pursuant to CGS Section 4-170(b)(3), "Each proposed regulation shall have a statement of its purpose following the final section of the regulation." Enter the statement here.

STATEMENT OF PURPOSE: To ensure conformity of Connecticut's law with federal Unemployment Compensation law – specifically sections 251 and 252 of Subtitle C of Public Law 112-40, The Trade Adjustment Assistance Extension Act of 2011 (TAAEA) - and to implement the provisions of Public Act 13-66.

R-39 Rev. 03/2012
(Certification page—see Instructions on back)

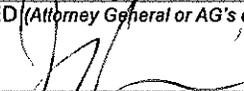
CERTIFICATION

This certification statement must be completed in full, including items 3 and 4, if they are applicable.

- 1) I hereby certify that the above (check one) Regulations Emergency Regulations
- 2) are (check all that apply) adopted amended repealed by this agency pursuant to the following authority(ies): (complete all that apply)
 - a. Connecticut General Statutes section(s) 31-250.
 - b. Public Act Number(s) 13-66.
(Provide public act number(s) if the act has not yet been codified in the Connecticut General Statutes.)
- 3) And I further certify that notice of intent to adopt, amend or repeal said regulations was published in the **Connecticut Law Journal** on 11/6/13;
(Insert date of notice publication if publication was required by CGS Section 4-168.)
- 4) And that a public hearing regarding the proposed regulations was held on 12/12/13;
(Insert date(s) of public hearing(s) held pursuant to CGS Section 4-168(a)(7), if any, or pursuant to other applicable statute.)
- 5) And that said regulations are EFFECTIVE (check one, and complete as applicable)
 - When filed with the Secretary of the State
 - OR on (insert date) _____

| | | |
|---------------|--|---------------------------------|
| DATE | SIGNED (Head of Board, Agency or Commission) | OFFICIAL TITLE, DULY AUTHORIZED |
| <u>2/4/14</u> |  | |

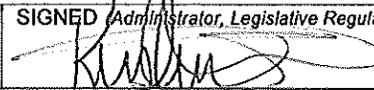
APPROVED by the Attorney General (as to legal sufficiency in accordance with CGS Section 4-169, as amended

| | | |
|----------------|--|---------------------------------|
| DATE | SIGNED (Attorney General or AG's designated representative) | OFFICIAL TITLE, DULY AUTHORIZED |
| <u>2/24/14</u> |  Joseph Rubin | Assoc. A. G. |

Proposed regulations are **DEEMED APPROVED** by the Attorney General in accordance with CGS Section 4-169, as amended, if the attorney General fails to give notice to the agency of any legal insufficiency within thirty (30) days of the receipt of the proposed regulation.

(For Regulation Review Committee Use ONLY)

- Approved Rejected without prejudice
- Approved with technical corrections Disapproved in part, (Indicate Section Numbers disapproved only)
- Deemed approved pursuant to CGS Section 4-170(c)

| | | |
|---|----------------|--|
| By the Legislative Regulation Review Committee in accordance with CGS Section 4-170, as amended | DATE | SIGNED (Administrator, Legislative Regulation Review Committee) |
| | <u>4-22-14</u> |  |

Two certified copies received and filed and one such copy forwarded to the Commission on Official Legal Publications in accordance with CGS Section 4-172, as amended.

| | | |
|------|---------------------------------|----|
| DATE | SIGNED (Secretary of the State) | BY |
| | | |

(For Secretary of the State Use ONLY)

GENERAL INSTRUCTIONS

1. All regulations proposed for adoption, amendment or repeal, *except* emergency regulations, must be presented to the Attorney General for his/her determination of legal sufficiency. (See CGS Section 4-169.)
2. After approval by the Attorney General, the original and one electronic copy (in Word format) of all regulations proposed for adoption, amendment or repeal must be presented to the Legislative Regulation Review Committee for its action. (See CGS Sections 4-168 and 4-170 as amended by Public Act 11-150, Sections 18 and 19.)
3. Each proposed regulation section must include the appropriate regulation section number and a section heading. (See CGS Section 4-172.)
4. New language added to an existing regulation must be in underlining or CAPITAL LETTERS, as determined by the Regulation Review Committee. (See CGS 4-170(b).)
5. Existing language to be deleted must be enclosed in brackets []. (See CGS 4-170(b).)
6. A completely new regulation or a new section of an existing regulation must be preceded by the word "(NEW)" in capital letters. (See CGS Section 4-170(b).)
7. The proposed regulation must have a statement of its purpose following the final section of the regulation. (See CGS Section 4-170(b).)
8. The Certification Statement portion of the form must be completed, including all applicable information regarding *Connecticut Law Journal* notice publication date(s) and public hearing(s). (See more specific instructions below.)
9. Additional information regarding rules and procedures of the Legislative Regulation Review Committee can be found on the Committee's web site: <http://www.cga.ct.gov/rr/>.
10. A copy of the Legislative Commissioners' Regulations Drafting Manual is located on the LCO website at http://www.cga.ct.gov/lco/pdfs/Regulations_Drafting_Manual.pdf.

CERTIFICATION STATEMENT INSTRUCTIONS

(Numbers below correspond to the numbered sections of the statement)

1. Indicate whether the regulation is a regular or an emergency regulation adopted under the provisions of CGS Section 4-168(f).
2.
 - a) Indicate whether the regulations contains newly adopted sections, amendments to existing sections, and/or repeals existing sections. Check all cases that apply.
 - b) Indicate the specific legal authority that authorizes or requires adoption, amendment or repeal of the regulation. If the relevant public act has been codified in the most current biennial edition of the *Connecticut General Statutes*, indicate the relevant statute number(s) instead of the public act number. If the public act has not yet been codified, indicate the relevant public act number.
3. Except for emergency regulations adopted under CGS 4-168(f), and technical amendments to an existing regulation adopted under CGS 4-168(g), an agency must publish notice of its intent to adopt a regulation in the *Connecticut Law Journal*. Enter the date of notice publication.
4. CGS Section 4-168(a)(7) prescribes requirements for the holding of an agency public hearing regarding proposed regulations. Enter the date(s) of the hearing(s) held under that section, if any; also enter the date(s) of any hearing(s) the agency was required to hold under the provisions of any other law.
5. As applicable, enter the effective date of the regulation here, or indicate that it is effective upon filing with the Secretary of the State. Please note the information below.

Regulations are effective upon filing with the Secretary of the State or at a later specified date. See CGS Section 4-172(b) which provides that each regulation is effective upon filing, or, if a later date is required by statute or specified in the regulation, the later date is the effective date. An effective date may not precede the effective date of the public act requiring or permitting the regulation. Emergency regulations are effective immediately upon filing with the Secretary of the State, or at a stated date less than twenty days thereafter.