



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

D.P.U. 19-76
D.T.C. 19-4

July 11, 2019

Joint Investigation by the Department of Public Utilities and the Department of Telecommunications and Cable, on their own motions, instituting a rulemaking pursuant to Executive Order No. 562 to Reduce Unnecessary Regulatory Burden, G.L. c. 30A, § 2, 220 CMR 2.00, and 207 CMR 2.00, to amend 220 CMR 45.00.

NOTICE OF PUBLIC HEARING AND REQUEST FOR COMMENTS

On July 11, 2019, the Department of Public Utilities ("DPU") and the Department of Telecommunications and Cable ("DTC") issued an Order Instituting Joint Rulemaking ("Order"), pursuant to Executive Order No. 562 to Reduce Unnecessary Regulatory Burden, G.L. c. 30A, § 2, 220 CMR 2.00, and 207 CMR 2.00, to amend 220 CMR 45.00. The proposed amendments are intended to minimize confusion by rescinding language deemed invalid by the Supreme Judicial Court and to update applicable references. In addition, the DPU and DTC will consider other relevant corrections and changes to 220 CMR 45.00, as determined during the course of the proceeding.

A copy of the Order and proposed regulations may be viewed at the DPU's offices at the South Station address and at the DTC's Washington Street address, both listed below. The Departments have also posted a copy of the Order and proposed regulations on their respective websites. Documents on the DPU's website may be accessed by entering the docket number "19-76" in the docket database at <https://eeaonline.eea.state.ma.us/DPU/Fileroom/dockets/bynumber>. Documents on the DTC's website may be accessed by entering the docket number "19-4" in the docket database at <https://services.oca.state.ma.us/dtc/firmDocketList.aspx>. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), contact the DPU's ADA coordinator at DPUADACoordinator@mass.gov or 617-305-3500.

The DPU and DTC will conduct a joint public hearing to receive comments on the proposed regulations. The hearing will take place on Tuesday, September 10, 2019 at 10:00 a.m., at the DPU's South Station offices. Any person interested in commenting on this matter may appear at the public hearing. The D.P.U.'s office is wheelchair accessible. Any person seeking an accommodation to meaningfully participate at the public hearing should contact the Department's ADA coordinator at DPUADACoordinator@mass.gov or 617-305-3500 at least two days prior to the public hearing with requests for such accommodations. Include a description of the accommodation you will need, including as much detail as you can. Also include a way the DPU and DTC can contact you if we need more information. Please provide as much advance notice as possible. Last minute requests will be accepted but may not be able to be accommodated.

Additionally, both agencies seek initial written comments prior to the public hearing, but no later than **5:00 p.m. on Tuesday, August 20, 2019**. Following the public hearing, written reply comments must be filed no later than **5:00 p.m. on Tuesday, September 24, 2019**. Written comments should be limited in length to a maximum of ten (10) one-sided, double-spaced typewritten pages.

The DPU requires commenters to submit written comments and ancillary documents in both paper and electronic formats. The DTC requires commenters to submit written comments and ancillary documents in either paper or electronic format.

All written comments and ancillary documents in paper format should be filed with: Mark Marini, Secretary, Department of Public Utilities, One South Station, 5th Floor, Boston, Massachusetts 02110; and, Shonda D. Green, Secretary, Department of Telecommunications and Cable, 1000 Washington Street, Suite 820, Boston, Massachusetts 02118.

Written comments and ancillary documents in electronic format should be submitted, either by e-mail or on a CD-ROM or USB drive. To submit comments by e-mail, attach them to an e-mail to (i) dpu.efiling@mass.gov and the DPU's assigned Hearing Officer at tina.chin@mass.gov; and (ii) dte.efiling@mass.gov and the DTC's assigned Hearing Officer at rosalie.fazio@mass.gov. To submit comments on a CD-ROM or USB drive, deliver the media to Mark Marini, Secretary, Department of Public Utilities, One South Station, 5th Floor, Boston, Massachusetts 02110; and, Shonda D. Green, Secretary, Department of Telecommunications and Cable, 1000 Washington Street, Suite 820, Boston, Massachusetts 02118. The text of the e-mail or the label on the CD-ROM or USB drive must specify: (1) the docket numbers of the proceeding (D.P.U. 19-76/D.T.C. 19-4); (2) the name of the person or company submitting the filing; and (3) a brief descriptive title of the document. Any comments filed should also include the name, title, and telephone number of a person to contact in the event of questions about the filing. All documents filed will be posted to both agencies' websites. Please note that all filings submitted to DPU and/or DTC are subject to disclosure pursuant to G.L. c. 66, § 10, unless protected by statutory exemption.

By Order of the Department,



Shonda D. Green
Department Secretary

By Order of the Department of Public
Utilities,



Mark D. Marini
Secretary



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

July 11, 2019

Small Business Impact Statement <i>(As required by M.G.L. c. 30A §§ 2, 3 & 5)</i>		
CMR No: 220 CMR 45.00: Pole Attachment, Duct, Conduit and Right-of-way Complaint and Enforcement Procedures		
Estimate of the Number of Small Businesses Impacted by the Regulation: None Select Yes or No and Briefly Explain		
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to create, file, or issue additional reports? 220 CMR 45.00 will not require small businesses to create, file or issue additional reports. The regulation is procedural, explaining the process for pole attachment complaint and enforcement procedures.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to implement additional recordkeeping procedures? 220 CMR 45.00 will not require small businesses to implement additional recordkeeping procedures. The regulation is procedural, explaining the process for pole attachment complaint and enforcement procedures.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to provide additional administrative oversight? 220 CMR 45.00 will not require small businesses to provide additional administrative oversight. The regulation is procedural, explaining the process for pole attachment complaint and enforcement procedures.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to hire additional employees in order to comply with the proposed regulation? 220 CMR 45.00 will not require small businesses to hire additional employees. The regulation is procedural, explaining the process for pole attachment complaint and enforcement procedures.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does compliance with the regulation require small businesses to hire other professionals (e.g. a lawyer, accountant, engineer, etc.)? The compliance with the regulation will not require small businesses to hire other professionals. The regulation is procedural, explaining the process for pole attachment complaint and enforcement procedures.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to purchase a product or make any other capital investments in order to comply with the regulation?

		220 CMR 45.00 does not require small businesses to purchase a product or make any other capital investments. The regulation is procedural, explaining the process for pole attachment complaint and enforcement procedures.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are performance standards more appropriate than design/operational standards to accomplish the regulatory objective? (Performance standards express requirements in terms of outcomes, giving the regulated party flexibility to achieve regulatory objectives and design/operational standards specify exactly what actions regulated parties must take.) No, the regulation is procedural, explaining the process for pole attachment complaint and enforcement procedures.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Do any other regulations duplicate or conflict with the proposed regulation? Federal pole attachments regulations, set forth at 47 C.F.R. §§ 1.1401 – 1.1424, apply only if a state does not assert jurisdiction and does not have regulations in place. See also 47 U.S.C. § 224(c).
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to cooperate with audits, inspections or other regulatory enforcement activities? No, the regulation is procedural, explaining the process for pole attachment complaint and enforcement procedures.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements? No, the regulation is procedural, explaining the process for pole attachment complaint and enforcement procedures.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the regulation likely to <i>deter</i> the formation of small businesses in Massachusetts? The regulation is procedural, explaining the process for pole attachment complaint and enforcement procedures and is not likely to deter the formation of small businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the regulation likely to <i>encourage</i> the formation of small businesses in Massachusetts? The regulation provides for pole attachment complaint and enforcement procedures and does not explicitly encourage the formation of small businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation provide for less stringent compliance or reporting requirements for small businesses? No, 220 CMR 45.00 provides for pole attachment complaint and enforcement procedures and does not provide explicit exemptions for small businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses? 220 CMR 45.00 provides pole attachment complaint and enforcement procedures for utilities and licensees and does not provide less stringent schedules or deadlines for compliance or reporting

		requirements for small businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Did the agency consolidate or simplify compliance or reporting requirements for small businesses?</p> <p>220 CMR 45.00 provides pole attachment complaint and enforcement procedures for utilities and licensees and does not consolidate or simplify compliance or reporting requirements for small businesses.</p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Can performance standards for small businesses replace design or operational standards without hindering delivery of the regulatory objective?</p> <p>No, the regulation is procedural, explaining the process for pole attachment complaint and enforcement procedures.</p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Are there alternative regulatory methods that would minimize the adverse impact on small businesses?</p> <p>Pursuant to 47 U.S.C. § 224(c), states asserting jurisdiction over pole attachments must have rules and regulations in place. <u>See also</u> 47 C.F.R. § 1.1414. There is no alternative regulatory method.</p>