

# The Commonwealth of Massachusetts

## DEPARTMENT OF PUBLIC UTILITIES

### NOTICE OF PUBLIC HEARING AND REQUEST FOR COMMENTS

D.P.U. 19-43

July 18, 2019

Investigation of the Department of Public Utilities, on its own motion, instituting a rulemaking pursuant to G.L. c. 30A, § 2, and 220 CMR 2.00, to amend 220 CMR 99.00, Procedures for the Determination and Enforcement of Violations of M.G.L. c. 82, §§ 40 through 40E ("Dig Safe").

On July 18, 2019, the Department of Public Utilities ("Department"), issued an Order instituting an emergency rulemaking proceeding, pursuant to G.L. c. 30A, § 2, and 220 CMR 2.00. This rulemaking adopts emergency revisions to 220 CMR 99.00, "Procedures for the Determination and Enforcement of Violations of M.G.L. c. 82, §§ 40 through 40E ("Dig Safe")." The Department hereby adopts these revisions as Emergency Regulations because their immediate implementation is necessary to ensure public safety. These revisions are designed primarily to implement the federal minimum safety requirements for damage prevention, pursuant to 49 C.F.R. Parts 192 and 196. The Department also adopts changes to 220 CMR 99.00 for the following reasons: (a) to clarify the obligations of both excavators and utility companies; (b) to establish more efficient procedures for the enforcement of violations; and (c) to correct minor errors and delete outdated, duplicative, or unnecessary information (such as deleting definitions that are identical to those in the Dig Safe law, G.L. c. 82, §§ 40-40E).

A copy of the Department's Order and Emergency Regulations may be viewed at the Department's offices at the South Station address listed below. The Department also has posted a copy of the Order and Emergency Regulations on its website, <https://eeaonline.eea.state.ma.us/DPU/Fileroom> (enter "19-43"). To request materials in accessible formats (braille, large print, electronic files, audio format); contact the Department's ADA coordinator at [DPUADACoordinator@mass.gov](mailto:DPUADACoordinator@mass.gov) or 617-305-3500.

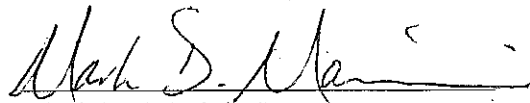
To provide further opportunity for comment, and pursuant to G.L. c. 30A, §§ 2 and 4, and 220 CMR 2.05, the Department will hold a public hearing on **Monday, August 26, 2019**, at 10:00 a.m. at the Department's offices, One South Station, Fifth Floor, Boston, Massachusetts. The Department's office is wheelchair accessible. Any person seeking an accommodation to meaningfully participate at the public hearing should contact

Laurie Ellen Weisman, Pipeline Safety Division Counsel, at (617) 305-3500 or [laurie.e.weisman@mass.gov](mailto:laurie.e.weisman@mass.gov) at least two days prior to the public hearing with requests for such accommodations.

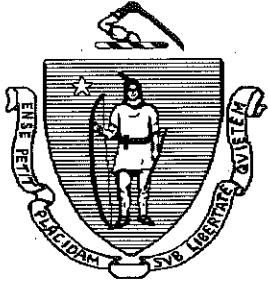
Any person interested in commenting on this matter may appear at the public hearing or submit written comments to the Department no later than 5:00 p.m. on **Monday, August 26, 2019**. Written reply comments must be filed no later than 5:00 p.m. on **Tuesday, September 3, 2019**. Written comments shall be limited to a maximum of ten one-sided, double-spaced typewritten pages.

Any person who desires to file written comments shall file an original and one copy of such written comments with Mark D. Marini, Secretary, Department of Public Utilities, One South Station, Fifth Floor, Boston, Massachusetts, 02110. All documents should also be submitted to the Department in electronic format using one of the following methods: (1) by e-mail attachment to [dpu.efiling@mass.gov](mailto:dpu.efiling@mass.gov) and the hearing officer, [laurie.e.weisman@mass.gov](mailto:laurie.e.weisman@mass.gov); or (2) on a CD-ROM or USB drive. The text of the e-mail, CD-ROM, or USB drive must specify: (1) the docket number of the proceeding (D.P.U. 19-43); (2) the name of the person or company submitting the filing; and (3) a brief descriptive title of the document. The electronic filing should also include the name, title, and telephone number of a person to contact in the event of questions about the filing. The electronic file name should identify the document, but should not exceed 50 characters in length. Documents filed with the Department will be available for public inspection at its offices during business hours and will be posted on the Department's website.

By Order of the Department,



Mark D. Marini, Secretary

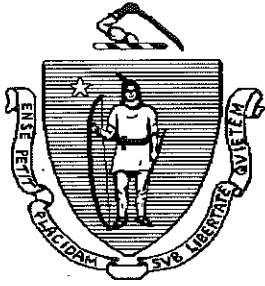


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## DEPARTMENT OF PUBLIC UTILITIES

July 18, 2019

| <b>Small Business Impact Statement</b><br><i>(As required by M.G.L. c. 30A §§ 2, 3 &amp; 5)</i>  |   |   |
|--|---|---|
| <b>CMR No: 220 CMR 99.00: Procedures for the Determination and Enforcement of Violations of Safety Codes Pertaining to Damage Prevention</b>   |   |   |
| <b>Estimate of the Number of Small Businesses Impacted by the Regulation: There are 20 small business utility companies impacted by the regulation. Small business excavators are also impacted by the regulation.</b> |   |   |
| <b>Select Yes or No and Briefly Explain</b>  |   |   |
| Yes<br><input type="checkbox"/>  | No<br><input checked="" type="checkbox"/> | Will small businesses have to create, file, or issue additional reports?<br>The amendments to 220 CMR 99.00 do not require small businesses to create, file, or issue additional reports.   |
| Yes<br><input type="checkbox"/>  | No<br><input checked="" type="checkbox"/> | Will small businesses have to implement additional recordkeeping procedures?<br>It is possible that small businesses may want to implement additional recordkeeping procedures to comply with the amendments to 220 CMR 99.00, such as developing records regarding additional 911 calling requirements or quarry blasting.                                   |
| Yes<br><input type="checkbox"/>  | No<br><input checked="" type="checkbox"/> | Will small businesses have to provide additional administrative oversight?<br>Most likely small businesses will not have to provide additional administrative oversight to comply with the amendments to 220 CMR 99.00.   |
| Yes<br><input type="checkbox"/>  | No<br><input checked="" type="checkbox"/> | Will small businesses have to hire additional employees in order to comply with the proposed regulation?<br>Most likely small businesses will not have to hire additional employees to comply with the amendments to 220 CMR 99.00.   |
| Yes<br><input type="checkbox"/>  | No<br><input checked="" type="checkbox"/> | Does compliance with the regulation require small businesses to hire other professionals (e.g. a lawyer, accountant, engineer, etc.)?<br>Most likely small businesses will not have to hire other professionals to comply with the amendments to 220 CMR 99.00.   |
| Yes<br><input type="checkbox"/>  | No<br><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?<br>Small businesses will not have to purchase a product or make any other capital investments to comply with the amendments to the regulation.   |
| Yes<br><input type="checkbox"/>  | No<br><input checked="" type="checkbox"/> | Are performance standards more appropriate than design/operational standards to accomplish the regulatory objective?<br>(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.) |



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|  |   |   |
|--|---|---|
| Yes<br><input type="checkbox"/>            | No<br><input checked="" type="checkbox"/> | Do any other regulations duplicate or conflict with the proposed regulation?  |
| Yes<br><input checked="" type="checkbox"/> | No<br><input type="checkbox"/>            | Does the regulation require small businesses to cooperate with audits, inspections or other regulatory enforcement activities?<br>Yes, small businesses must comply with the regulatory enforcements procedures of 220 CMR 99.00.   |
| Yes<br><input type="checkbox"/>            | No<br><input checked="" type="checkbox"/> | Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements?<br>The amendments to 220 CMR 99.00 do not require small businesses to provide educational services to keep up to date with regulatory requirements.                   |
| Yes<br><input type="checkbox"/>            | No<br><input checked="" type="checkbox"/> | Is the regulation likely to <i>deter</i> the formation of small businesses in Massachusetts?  |
| Yes<br><input type="checkbox"/>            | No<br><input checked="" type="checkbox"/> | Is the regulation likely to <i>encourage</i> the formation of small businesses in Massachusetts?  |
| Yes<br><input type="checkbox"/>            | No<br><input checked="" type="checkbox"/> | Does the regulation provide for less stringent compliance or reporting requirements for small businesses?<br>The amendments to 220 CMR 99.00 do not provide for less stringent compliance or reporting requirements for small businesses.   |
| Yes<br><input type="checkbox"/>            | No<br><input checked="" type="checkbox"/> | Does the regulation establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses?<br>The amendments to 220 CMR 99.00 do not establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses.         |
| Yes<br><input type="checkbox"/>            | No<br><input checked="" type="checkbox"/> | Did the agency consolidate or simplify compliance or reporting requirements for small businesses?<br>The DPU did not consolidate or simplify compliance or reporting requirement for small businesses in updating 220 CMR 99.00.  |
| Yes<br><input type="checkbox"/>            | No<br><input checked="" type="checkbox"/> | Can performance standards for small businesses replace design or operational standards without hindering delivery of the regulatory objective?<br>Performance standards for small businesses cannot replace design or operational standards without hindering delivery of the regulatory objective. |
| Yes<br><input type="checkbox"/>            | No<br><input checked="" type="checkbox"/> | Are there alternative regulatory methods that would minimize the adverse impact on small businesses?<br>There are no alternative regulatory methods that would minimize the adverse impact on small businesses.   |