

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

220 CMR 2.00: RULES FOR ADOPTING, AMENDING, OR REPEALING REGULATIONS AND FOR ISSUING ADVISORY RULINGS

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2.01: Definition of Regulation

220 CMR 2.00 governs the procedures to be followed by the Department of Public Utilities (Department) when adopting, amending, or repealing regulations. The term regulation shall be as defined in M.G.L. c. 30A, § 1(5). Regulation does not, however, include advisory rulings, rules relating to the internal management of the Department and not directly related to the rights or procedures available to the public, decisions rendered in adjudicatory proceedings, or the filing of tariffs, rate schedules, terms, and, conditions, and regulations in connection therewith.

2.02: Initiation of Action

The Department may initiate an action on its own at any time to adopt, amend, or repeal any regulation. Any interested person or his attorney may at any time file with the Secretary of the Department a petition to adopt, amend, or repeal any regulation or to issue an advisory ruling with respect to the applicability to any person, property, or factual situation of any statute or regulation enforced or administered by the Department. Petitions may be filed and signed by electronic means pursuant to the Department's Electronic Filing Guidelines. A paper filed electronically in compliance with the Guidelines is a written paper or document for purposes of 220 CMR 2.00. Every petition shall contain the following information:

- (a) The name, address, and telephone number of the petitioner(s).
- (b) If the petitioner is represented by counsel, the name, address, and telephone number of the attorney.
- (c) The signature of the petitioner or counsel.
- (d) A clear and concise statement of the facts underlying the petition, the nature of the petitioner's interest, and the basis for the requested relief and, in the case of a request for an advisory ruling, an affidavit or attestation that all of the facts presented are true to the best of the petitioner's knowledge.
- (e) The complete text of the proposed regulation or, in the case of a request for an advisory ruling, a specific legal question.
- (f) A reference to any applicable statute or legal authority.
- (g) A prayer setting forth the relief sought.

2.03: Action on Petitions

Upon receipt of a petition, the Department may proceed in accordance with 220 CMR 2.04, 2.05, or 2.08 or take any other action the Department deems appropriate. The Department shall consider all relevant information presented to it before adopting, amending or repealing any regulation or issuing an advisory ruling. Any decision of the Department shall be in writing and shall be accompanied by a statement of reasons for the decision. A copy of the decision and such statement of reasons shall be served on all interested persons by personal delivery or first-class mail.

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2.04: Procedure for the Adoption, Amendment, or Repeal of Regulations Where No Public Hearing Is Required

(1) Notice.

(a) Notice of the proposed action to adopt, amend, or repeal regulations shall be given by the Department at least 21 days prior to its proposed action, unless some other time is specified by any applicable law. The Department shall publish the notice in at least one newspaper of general circulation, and where appropriate, in such trade, industry, or professional publications as the Department may select. The Department shall likewise notify in writing any person specified by any law and any person or group that has filed request for notice pursuant to 220 CMR 2.09.

(b) The notice shall contain the following:

1. The statutory authority under which the action is proposed.
2. The procedure for presenting written or oral comments.
3. The express terms or the substance of the proposed regulations.
4. Any additional matter as required by law.

220 CMR 2.04(1) notwithstanding, the Department shall also comply with any applicable statute that contains provisions for notice that differ from those contained in 220 CMR 2.04(1).

(2) Written or Oral Comments. An interested person may submit written comments to the Department in connection with the proposed regulation in accordance with any procedure set forth in the notice pursuant to 220 CMR 2.04(1). If the Department determines that oral presentations are necessary or practicable, the notice pursuant to 220 CMR 2.04(1) will set forth the manner, place, and time that interested persons may orally present data, views, or argument regarding the proposed regulation.

(3) Emergency Regulation. If the Department finds that the immediate adoption, amendment, or repeal of a regulation is necessary to preserve the public health, safety, or general welfare, and that observance of the requirements of notice and an opportunity for comments would be contrary to the public interest, the Department may dispense with such requirements and adopt, amend, or repeal the regulation as an emergency regulation. The Department's finding and a brief statement of the reasons for its finding shall be incorporated in the emergency regulation as filed with the Office of the Secretary of the Commonwealth in accordance with 220 CMR 2.07. An emergency regulation shall not remain in effect for longer than three months unless, during the time it is in effect, the Department gives notice and an opportunity for comments, and adopts it as a permanent regulation in accordance with 220 CMR 2.00.

2.05: Procedure for the Adoption, Amendment, or Repeal of Regulations Where a Public Hearing Is Required

(1) Notice.

(a) Notice of a public hearing shall be given at least 21 days prior to the date of the hearing, unless some other time is specified by any applicable law. The Department shall publish the notice in at least one newspaper of general circulation, and where appropriate, in such trade, industry, or professional publications as the Department may select. The Department shall likewise notify in writing any person specified by any law and any person or group which has filed written request for notice pursuant to 220 CMR 2.09.

(b) The notice shall contain the following:

1. The statutory authority under which the action is proposed.
2. The time and place of the public hearing.
3. The procedure for presenting written or oral comments.
4. The express terms or the substance of the proposed regulation.
5. Any additional matter required by any law.

220 CMR 2.05(1) notwithstanding, the Department shall also comply with any applicable statute that contains provisions for notice that differ from those contained in 220 CMR 2.05(1).

(2) Written or Oral Comments. An interested person may present written or oral comments to the Department in connection with the proposed regulation in accordance with any procedure set forth in the notice pursuant to 220 CMR 2.05(1). In its discretion the Department may limit the length of oral presentation.

2.05: continued

(3) Conduct of Hearing. The hearing shall be conducted by a presiding officer who shall be the Commission Chairman, a Commissioner designated by the Chairman, or a hearing officer designated by the Commission.

(4) Emergency Regulation. If the Department finds that the immediate adoption, amendment, or repeal of a regulation is necessary to preserve the public health, safety, or general welfare, and that observance of the requirements of notice and public hearing would be contrary to the public interest, the Department may dispense with such requirements and adopt, amend, or repeal the regulation as an emergency regulation. The Department's finding and a brief statement of the reasons for its finding shall be incorporated in the emergency regulation as filed with the Office of the Secretary of the Commonwealth in accordance with 220 CMR 2.07. An emergency regulation shall not remain in effect for longer than three months unless, during the time it is in effect, the Department gives notice and holds a public hearing, and adopts it as a permanent regulation in accordance with 220 CMR 2.00.

2.06: Availability of Regulation

The Secretary of the Department shall be responsible for keeping a book containing all the Department's regulations. All the regulations of the Department shall be available for inspection during normal business hours at the Department's offices. Copies of all regulations shall be available to any person on request.

2.07: Filing of Regulation

Upon the adoption of a regulation, an attested copy shall be filed with the Office of the Secretary of the Commonwealth in accordance with M.G.L. c. 30A, § 5. Pursuant to M.G.L. c. 30A, § 6, the regulation shall take effect upon publication unless a later date is required by any law or is specified by the Department.

2.08: Advisory Ruling

In response to a petition for an advisory ruling submitted under 220 CMR 2.02, the Department may give notice and an opportunity for written or oral comments and may issue an advisory ruling.

2.09: Request for Notice of Hearings

(1) Who May File. Any person or group may file a request in writing to receive notice of hearings or regulations that may affect such person or group.

(2) Form of Request. The request shall contain the following:

- (a) Name of person or group;
- (b) Address;
- (c) Subject matter of regulations that may affect the person or group.

(3) When Filed. The request shall be filed with the Secretary of the Department during the month of December and shall be in effect only during the subsequent calendar year.

REGULATORY AUTHORITY

220 CMR 2.00: M.G.L. c. 30A, §§ 1, 2, 3, 3A, 4, 5, 6, 6B and 8.