

STATE OF FLORIDA

COMMISSIONERS:
ANDREW GILES FAY, CHAIRMAN
ART GRAHAM
GARY F. CLARK
MIKE LA ROSA
GABRIELLA PASSIDOMO



OFFICE OF THE GENERAL COUNSEL
KEITH C. HETRICK
GENERAL COUNSEL
(850) 413-6199

Public Service Commission

March 8, 2022

Mark Buckles, Director
Rules Ombudsman in
The Executive Office of the Governor
Reg.Reform@eog.myflorida.com

SENT VIA E-MAIL

Re: Docket No. 20210138-PU - Proposed adoption of Rule 25-18.020, F.A.C., Pole Safety, Inspection, Maintenance, and Vegetation Management

Dear Mr. Buckles:

The Florida Public Service Commission proposed the above-listed rules at their regular agenda conference on March 1, 2022. The Commission has determined that this rule may affect small businesses. Accordingly, pursuant to Section 120.54(3)(b)2.b.(I), Florida Statutes, enclosed is a copy of the Florida Administrative Register (FAR) notice of the proposed rule, which was published in the March 8, 2022 edition of the FAR. Pursuant to your instructions, we have filled out and included a copy of the OFARR rulemaking notification form.

If there are any questions with respect to these rules, please contact me at mduval@psc.state.fl.us or (850) 413-6076.

Sincerely,

/s/ Margo A. DuVal

Margo A. DuVal
Senior Attorney

Enclosures

cc: Office of the Commission Clerk

RECEIVED-FPSC
2022 MAR -8 AM 11:18
COMMISSION
CLERK

Notice of Proposed Rule

PUBLIC SERVICE COMMISSION

RULE NO.: RULE TITLE:

25-18.020 Pole Safety, Inspection, Maintenance, and Vegetation Management

PURPOSE AND EFFECT: To administer and implement Section 366.04(9), Florida Statutes, concerning the safety, vegetation management, repair, replacement, maintenance, relocation, emergency response, and storm restoration requirements for poles of communication services providers.

Docket No. 20210138-PU

SUMMARY: Rule 25-18.020 identifies the entities that must comply with the rule; establishes safety, inspection, and maintenance standards for poles; sets forth requirements for inspection, repair, replacement, and vegetation management of poles; sets forth requirements for the submission of emergency response and storm restoration procedures and protocols; establishes the filing date and requirements for an annual report; and establishes monetary penalties for a willful violation or refusal to comply with the rule.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION: The agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: A SERC was not prepared and ratification is not required pursuant to the exemption in Section 120.80(13)(g), FS

RULEMAKING AUTHORITY: 350.127(2), 366.04(9)(b) FS

LAW IMPLEMENTED: 366.04(9), 366.095 FS

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Margo A. DuVal, mduval@psc.state.fl.us, (850)413-6076, or Adria Harper, aharper@psc.state.fl.us, (850)413-6082, Office of General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850

THE FULL TEXT OF THE PROPOSED RULE IS:

25-18.020 Pole Safety, Inspection, Maintenance, and Vegetation Management.

(1) This rule applies to all communications services providers as defined in Section 366.02(5), F.S., that own poles as defined in Section 366.02(6), F.S. This rule does not apply to poles used solely to support wireless communications service facilities or poles with no public utility electrical overhead facilities attached. For the purposes of this rule, "overhead facilities" are defined as fixtures, conductors, wires, cables, and other devices owned by public utilities that are attached to poles owned by a communications services provider.

(2) Safety, Inspection, and Maintenance Standards. Each communications services provider must exercise due care to reduce hazards to which its employees, customers, and the public may be subjected by reason of its poles. Accordingly, all poles of communications services providers subject to the Commission's jurisdiction under Section 366.04(9), F.S., must be constructed, installed, maintained, relocated, and inspected in accordance with the National Electrical Safety Code (NESC), which is incorporated by reference in Rule 25-6.0345, F.A.C.

(3) Inspection, Repair, and Replacement of Poles. Each communications services provider must conduct inspections of its poles at least every eight (8) years to ensure adherence to the strength and clearance standards of the NESC. Inspections must include visual checks to determine compliance with the strength and clearance standards of the NESC. Poles not in compliance with NESC standards must be repaired or replaced to meet those standards.

(4) Vegetation Management of Poles. Each communications services provider must ensure that the vegetation management of its poles meets the standards set forth in Part 2 of the NESC.

(5) Emergency Response and Storm Restoration Procedures and Protocols. Within six months of the effective date of this Rule, each communications services provider must provide a copy of its emergency response and storm restoration procedures and protocols to the Division of Engineering.

(a) The procedures and protocols must include the following:

1. A description of the communications services provider's procedures and protocols for communicating with federal, state, and local emergency operations officials;

2. A description of how the public can contact the communication services provider to report issues with its poles, such as broken poles, downed overhead facilities, or obstructive vegetation; and

3. A description of the communication services provider's procedures to repair and replace damaged poles and overhead facilities, including protocols for coordinating with public utilities, through emergency response and storm restoration efforts.

(b) If the communication services provider makes changes to its emergency response and storm restoration procedures and protocols, the communication services provider must file the updated emergency response and storm restoration procedures and protocols with the Division of Engineering within 30 days of the change.

(c) Every three calendar years after the initial submission, each communication services provider must notify the Division of Engineering in writing that it has reviewed its emergency response and storm restoration procedures and protocols.

(6) Reporting Requirements. By June 1 of each year, each communications services provider must file with the Commission Clerk an Annual Report.

(a) The Annual Report must include the following information for the prior calendar year:

1. The number of poles owned in whole or in part by the communications services provider at the beginning and at the end of the calendar year;

2. The number of poles that were scheduled for inspection;

3. The number of poles actually inspected;

4. The number of poles that failed inspection;

5. The number of poles strength tested and the methods used to ensure compliance with the NESC strength requirements;

6. The number of poles that failed strength testing;

7. The number of poles repaired and a summary of the repairs;

8. The number of poles replaced and reason for replacement; and

9. The total miles of vegetation management conducted.

(b) The Annual Report must include the following information for the upcoming calendar year:

1. The number of poles to be inspected; and

2. The total miles for which vegetation management will be conducted.

(7) Penalties. A willful violation or refusal to comply with this rule will result in monetary penalties as follows:

(a) \$500 for the first violation;

(b) \$1,000 for the second violation;

(c) \$1,500 for the third violation;

(d) \$2,000 for the fourth violation; and

(e) \$5,000 for the fifth and any subsequent violation.

Rulemaking Authority 350.127(2), 366.04(9)(b) FS. Law Implemented 366.04(9), 366.095 FS. History-
New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Penelope Buys

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Public Service Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 1, 2022

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: Volume 47, Number 182, September 20, 2021.

Office of Fiscal Accountability and Regulatory Reform
Rulemaking Notification

(Executive Order 11-211 requires agencies must submit all rulemaking notices to OFARR at least 1 week prior to publication)

To: Mark Buckles, Director

Submitted By: Name, Title:	Margo A. DuVal, Senior Attorney
Agency, Board:	Florida Public Service Commission
Phone Number:	850-413-6076

Re: Rulemaking Notification for:

Rule Number:	25-18.020	Rule Title:	Pole Safety, Inspection, Maintenance, and Vegetation Management
---------------------	-----------	--------------------	---

Rule Summary:	Rule 25-18.020 identifies the entities that must comply with the rule; establishes safety, inspection, and maintenance standards for poles; sets forth requirements for inspection, repair, replacement, and vegetation management of poles; sets forth requirements for the submission of emergency response and storm restoration procedures and protocols; establishes the filing date and requirements for an annual report; and establishes monetary penalties for a willful violation or refusal to comply with the rule.
----------------------	---

List EACH rule separately. Add tables as needed.

Date: [Date request sent to 3/8/2022 OFARR] Date of anticipated 3/8/2022 publication:

Does this rule qualify for Rules Ombudsman review in accordance with section 120.54(3)(b), F.S.? Yes No

Please complete this form when submitting rulemaking notification to the Office of Fiscal Accountability and Regulatory Reform (OFARR) pursuant to Executive Order 11-211 and Directive published on November 11, 2019. If any information or documents are missing, the notification will be returned without review. OFARR will indicate what is missing, and the completed notification must be resubmitted.

1. Proposed Rulemaking Activity:

- Notice of Development of Rulemaking – Attach the proposed Notice. If no text is available, give a detailed explanation of the rulemaking, including why it is necessary.
- Notice of Proposed Rule – Attach the proposed Notice, “Is a SERC Required” Checklist, and SERC (if required), all materials incorporated by reference, and all forms referenced or required by the rule.
- Notice of Emergency Rule – Attach the proposed Notice. Explain fully why emergency rulemaking is appropriate.
- Notice of Change – Attach the proposed Notice. Be sure the text is coded correctly according to Rule 1B-30.003(5)(f), F.A.C. Explain why a change is required. Attach any correspondence from JAPC or the public. If no documents exist, summarize any public comment the agency has received or public hearings/workshops the agency has held.
- Notice of Withdrawal – Attach the proposed Notice. Explain why it is necessary to withdraw the rulemaking. Include any JAPC correspondence.

Office of Fiscal Accountability and Regulatory Reform
Rulemaking Notification

(Executive Order 11-211 requires agencies must submit all rulemaking notices to OFARR at least 1 week prior to publication)

Other – Attach the proposed Notice. Include detailed information about the rulemaking.

2. Is this rulemaking included in the agency’s Annual Regulatory Plan (ARP)? Yes No

3a. Does each amendment or new rule:

Rule Number: Rule Title:

Increase Fees? Yes No N/A

Increase Regulation? (I.E., Additional Licensure, Continuing Education Requirements, etc.) Yes No N/A

List EACH rule separately. Add tables as needed.

3b. For each new rule, the following information is required:

Rule Number: Rule Title:

Statute Authorizing Rulemaking: Statutory language authorizing rulemaking authority:

Statute Mandating Rulemaking: Statutory language requiring rulemaking:

New rule is due to a Legislative change occurring within the past 24 months: Yes No Provide chapter law and effective date:

List each rule separately. Add tables as needed.

4. Has the agency received any public comment about this rulemaking since the last rulemaking notification?

Yes No

If yes, please summarize the comment and the agency’s position regarding the comment (i.e. has made or intends to make changes based on the comment, disagrees with the comment, etc.) and attach any documents.

5. Has the agency received any comment from JAPC since the last rulemaking notification?

Office of Fiscal Accountability and Regulatory Reform
Rulemaking Notification

(Executive Order 11-211 requires agencies must submit all rulemaking notices to OFARR at least 1 week prior to publication)

Yes No

If yes, please summarize the comment and attach any documents.

For Notice of Proposed Rules Only

6. Describe the public need for the proposed rule and an explanation of how the proposed rule will address that need.

Section 366.04(9)(b), Florida Statutes, requires the Florida Public Service Commission (“Commission”) to adopt rule(s) no later than April 1, 2022, to administer and implement Section 366.04(9), Florida Statutes, concerning the safety, vegetation management, repair, replacement, maintenance, relocation, emergency response, and storm restoration requirements for poles owned by communications services providers. The proposed rule does so by identifying the entities that must comply with the rule; establishing safety, inspection, and maintenance standards for poles; setting forth requirements for inspection, repair, replacement, and vegetation management of poles; setting forth requirements for the submission of emergency response and storm restoration procedures and protocols; establishing the filing date and requirements for an annual report; and establishing monetary penalties for a willful violation or refusal to comply with the rule.

7. Has the agency received, been made aware of, or contemplated/reviewed any lower cost regulatory alternatives (LCRA)?

Yes No

If yes, describe in detail what action the agency took in response to the LCRA. If no, please explain.

8. Summarize qualitative and quantitative *benefits* of the proposed rule. Benefits may include but are not limited to: productivity, efficiency, employment and accessibility, enhancement of health and safety, and protection of the environment.

Office of Fiscal Accountability and Regulatory Reform
Rulemaking Notification

(Executive Order 11-211 requires agencies must submit all rulemaking notices to OFARR at least 1 week prior to publication)

Pursuant to Section 366.04(9)(b), Florida Statutes, the Commission is required to propose this rule to administer and implement Section 366.04(9), Florida Statutes. Pursuant to Section 120.80(13)(g), Florida Statutes, the Commission is not subject to Section 120.541, Florida Statutes, in proposing this rule.

9. Summarize qualitative and quantitative costs of the proposed rule. Costs may include but are not limited to: cost to government in administering the regulation, costs to businesses and professionals in complying with the regulation, adverse effects on the economy, private markets, health, safety and the environment.

Pursuant to Section 366.04(9)(b), Florida Statutes, the Commission is required to propose this rule to administer and implement Section 366.04(9), Florida Statutes. Pursuant to Section 120.80(13)(g), Florida Statutes, the Commission is not subject to Section 120.541, Florida Statutes, in proposing this rule.

10. Does the proposed rule include a sunset provision (not to exceed five years)?

Yes No

If no, please detail why and attach any supplemental documentation.

This rule is required by Section 366.04(9)(b), Florida Statutes, in order to administer and implement Section 366.04(9), Florida Statutes, and the statute does not include a sunset provision.