PUBLIC SERVICE COMMISSION OF WISCONSIN

Adopting Updated Federal Gas Pipeline Safety Code 1-AC-248

Clearinghouse Rule No. 16-084

ORDER ADOPTING FINAL RULES

The Public Service Commission of Wisconsin adopts an order to amend PSC 135.019 (1) regarding the adoption of updated federal regulations regarding gas pipeline safety rules.

REPORT TO THE LEGISLATURE

The Report to the Legislature is included as Attachment A.

FISCAL ESTIMATE

This rule will result in no fiscal impact since pipeline operators are already required, under federal law, to follow the federal regulations. Any economic impact of those federal regulations has already occurred. This rulemaking updates the state's enforcement authority.

The Fiscal Estimate and Economic Impact Analysis for this rulemaking are included as Attachment A1.

FINAL REGULATORY FLEXIBILITY ANALYSIS

This rulemaking has no effect on small businesses. The s. 227.114 (1), Stats., definition of "small business" states that to be considered a small business, the business must not be dominant in its field. Since gas utilities are monopolies in their service territories, they are dominant in their field and, so, are not small businesses. Further, the contract between the federal department of transportation and the commission requires that treatment be uniform

across the state and across gas pipeline operators. As a result, the commission cannot make special provisions for small business.

EFFECTIVE DATE

These rules shall take effect on the first day of the month following publication in the *Wisconsin Administrative Register* as provided in s. 227.22 (2) (intro.), Stats.

CONTACT PEOPLE

Questions regarding this matter should be directed to docket coordinator Thomas Stemrich, at (608) 266-2800 or Tom.Stemrich@wisconsin.gov. Small business questions should be directed to Charlene Smith at (608) 266-1247 or Charlene.Clay@wisconsin.gov. Media questions should be directed to the Communications Director at (608) 266-9600.

The Commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs accommodations to participate in this matter or who needs to obtain this document in a different format should contact the docket coordinator listed above.

Dated at Madison, Wisconsin, this 1st day of September, 2017.

By the Commission:

Sandra J. Paske
Secretary to the Commission

DL: 01497032

REPORT TO THE LEGISLATURE

A. TEXT OF THE RULE

SECTION 1. PSC 135.019 (1) is amended to read:

PSC 135.019 (1) The federal department of transportation, office of pipeline safety, pipeline safety standards, as adopted through ~~January 1, 2013~~ the effective date of this subsection … [LRB to insert date]…, and incorporated in 49 CFR Parts 192, 193 and 199, including the appendices, are adopted as state pipeline safety standards and incorporated by reference into this chapter.

SECTION 2. Effective date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

B. PLAIN LANGUAGE ANALYSIS

1. Statutory Authority and Explanation of Authority

This rulemaking is authorized under ss. 196.02 (1) and (3), 196.745 (1) (a), and 227.11, Stats.

Section 227.11 authorizes agencies to promulgate administrative rules. Section 196.02 (1) authorizes the commission to do all things necessary and convenient to its jurisdiction. Section 196.02 (3) grants the commission specific authority to promulgate rules. Section 196.745 (1) (a) grants the commission specific authority to adopt rules requiring that the construction and operation of gas facilities be done in a reasonably adequate and safe manner.

Statutes Interpreted

This rule interprets s. 196.745, Stats., and, under a contract with the U.S. Department of Transportation, Office of Pipeline Safety, the federal pipeline safety regulations (49 CFR 190 to 199).

Related Statutes or Rules

The federal pipeline safety statutes may be found in 49 USC 60101 to 60133. The federal pipeline safety regulations may be found in 49 CFR 190 to 199. Under an agreement with the U.S. Department of Transportation, Office of Pipeline Safety, the commission enforces the federal pipeline safety regulations for Wisconsin's natural gas pipeline operators, primarily public utilities. Under this agreement, the commission has the authority to make additions to the federal code that are more stringent than the federal standards.

Chapter PSC 134 is the rule that deals with gas service standards. That rule also has some requirements concerning safe interactions between pipeline operators and their customers.

2. Brief Summary of Proposed Rules

Under an agreement with the U.S. Department of Transportation, Office of Pipeline Safety, the commission is authorized to enforce federal natural gas pipeline safety requirements as set out in the Code of Federal Regulations, 49 CFR. Parts 192, 193, and 199. As part of the agreement, the commission adopts the federal pipeline safety code in Wis. Admin. Code s. PSC 135.019. The commission's latest version of that rule adopts the federal code up to January 1, 2013. New gas pipeline safety code requirements are generally enacted in October of each year. As a result, the commission needs to amend its rule to include those federal regulation changes made since January 2013. Adoption of these amendments will keep the commission in compliance with its obligation to adopt all federal changes in the pipeline safety area.

3. Comparison with Existing or Proposed Federal Regulations

As this is the adoption of the federal regulations, it is the same as the federal regulations.

4. Comparison with Similar Rules in Adjacent States

All states, including Michigan, Iowa, Illinois, and Minnesota, adopt the federal pipeline regulations.

5. Summary of Factual Data and Analytical Methodologies Used

This rulemaking is based on an agreement with the U.S. Department of Transportation, Office of Pipeline Safety.

6. Summary of Analysis and Supporting Documents used to Determine Effect on Small Business

This rule will not affect small businesses. The s. 227.114(1), Stats., definition of "small business" states that to be considered a small business, the business must not be dominant in its field. Because electric, gas, and water utilities are monopolies in their service territories, they are dominant in their fields and, so, are not small businesses.

7. Agency Contact People

Questions regarding this matter should be directed to docket coordinator Thomas Stemrich, at (608) 266-2800 or Tom.Stemrich@wisconsin.gov. Small business questions should be directed to Charlene Smith at (608) 266-1247 or Charlene.Clay@wisconsin.gov. Media questions should be directed to the Communications Director at (608) 266-9600.

8. Accommodation

The commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs to receive this document in a different format should contact the docket coordinator, as indicated in the preceding paragraph, as soon as possible.

C. FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS

This rule will result in no fiscal impact since pipeline operators are already required, under federal law, to follow the federal regulations. Any economic impact of those federal regulations has already occurred. This rulemaking just updates the state's enforcement authority.

The Fiscal Estimate and Economic Impact Analysis for this rulemaking is included as Attachment A1.

D. BASIS AND PURPOSE OF RULES

Under an agreement with the U.S. Department of Transportation, Office of Pipeline Safety, the commission is authorized to enforce federal natural gas pipeline safety requirements as set out in the Code of Federal Regulations, 49 CFR. Parts 192, 193, and 199. As part of the agreement, the commission adopts the federal pipeline safety code in Wis. Admin. Code s. PSC 135.019. The commission's latest version of that rule adopts the federal code up to January 1, 2013. New gas pipeline safety code requirements are generally enacted in October of each year. As a result, the commission needs to amend its rule to include those federal regulation changes made since January 2013. Adoption of these amendments will keep the commission in compliance with its obligation to adopt all federal changes in the pipeline safety area.

E. SUMMARY OF PUBLIC COMMENTS AND COMMISSION RESPONSES

No public comments received were received.

F. APPEARANCES AT PUBLIC HEARING

This rulemaking has been done without a hearing because, under s. 227.16 (2) (b), Stats., no hearing is required when an existing rule is being brought into conformity with a statute that has changed. However, written comments were solicited.

G. ANY CHANGES TO THE FISCAL ESTIMATE OR THE ANALYSIS UNDER s. 227.14(2), STATS.

None.

H. RESPONSE TO LEGISLATIVE COUNCIL COMMENTS

A copy of the Legislative Council report is included as Attachment A2. Responses to those comments follow:

2. Form, Style and Placement in Administrative Code

Agree. Changes made.

I. MISCELLANEOUS DETERMINATIONS

The commission's Wisconsin Environmental Policy Act coordinator examined whether the rules will have an environmental impact and concluded that they will not. Commission staff considered whether the rules will impact housing under s. 227.115, Stats., and concluded that they

will not. Commission staff also complied with s. 227.21, Stats., to incorporate by reference provisions of the federal regulations.

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA-2049 (R03/2012)

DIVISION OF EXECUTIVE BUDGET AND FINANCE
101 EAST WILSON STREET, 10TH FLOOR
P.O. BOX 7864
MADISON, WI 53707-7864
FAX: (608) 267-0372

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ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis
☒ Original ☐ Updated ☐ Corrected

2. Administrative Rule Chapter, Title and Number
PSC 135, Gas Safety

3. Subject
Adoption of updated federal gas pipeline regulations

4. Fund Sources Affected
☐ GPR ☒ FED ☒ PRO ☐ PRS ☐ SEG ☐ SEG-S

5. Chapter 20, Stats. Appropriations Affected

6. Fiscal Effect of Implementing the Rule
☒ No Fiscal Effect ☐ Increase Existing Revenues ☐ Increase Costs
☐ Indeterminate ☐ Decrease Existing Revenues ☐ Could Absorb Within Agency's Budget
☐ Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)
☐ State's Economy ☐ Specific Businesses/Sectors
☐ Local Government Units ☐ Public Utility Rate Payers
☐ Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than $20 million?
☐ Yes ☒ No

9. Policy Problem Addressed by the Rule
Under an agreement with the U.S. Department of Transportation, Office of Pipeline Safety, the commission is authorized to enforce federal natural gas pipeline safety requirements as set out in the Code of Federal Regulations, 49 C.F.R. Parts 192, 193, and 199. As part of the agreement, the commission adopts the federal pipeline safety code in Wis. Admin. Code s. PSC 135.019. The commission's latest version of that rule adopts the federal code up to May 1, 2015. New gas pipeline safety code requirements are generally enacted in October of each year. As a result, the commission needs to amend its rule to include those federal rule changes made since May 2015. Adoption of these amendments will keep the commission in compliance with its obligation to adopt all federal changes in the pipeline safety area.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.
All gas utilities, Wisconsin Utilities Association, Utility Workers' Association, and National Federation of Independent Businesses.

11. Identify the local governmental units that participated in the development of this EIA.
Not applicable.

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)
This rule will result in no economic impact since pipeline operators are already required, under federal law, to follow the federal regulations. Any economic impact of those federal regulations has already occurred. This rulemaking just updates the state's enforcement authority.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Adoption of these amendments will keep the commission in compliance with its obligation to adopt all federal changes in the pipeline safety area. Being in compliance increases the amount of federal money received by the state.

14. Long Range Implications of Implementing the Rule

The only long-range implication is that the state's enforcement authority will be updated.

15. Compare With Approaches Being Used by Federal Government

As this is the adoption of the federal regulations, it is the same approach as the federal government.

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

All states, including the neighboring states, adopt the federal pipeline regulations.

17. Contact Name	18. Contact Phone Number
Lisa Farrell	(608) 267-9086

This document can be made available in alternate formats to individuals with disabilities upon request.

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

N/A

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

N/A

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- ☐ **Less Stringent Compliance or Reporting Requirements**
- ☐ **Less Stringent Schedules or Deadlines for Compliance or Reporting**
- ☐ **Consolidation or Simplification of Reporting Requirements**
- ☐ **Establishment of performance standards in lieu of Design or Operational Standards**
- ☐ **Exemption of Small Businesses from some or all requirements**
- ☐ **Other, describe:**

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

N/A

5. Describe the Rule's Enforcement Provisions

N/A

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

☐ **Yes** ☒ **No**

LCRC FORM 2

WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Margit S. Kelley
Clearinghouse Assistant Director

Jessica Karls-Ruplinger
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE **16-084**

AN ORDER to amend PSC 135.019 (1), relating to the adoption of federal pipeline safety regulations.

Submitted by **PUBLIC SERVICE COMMISSION**

12-09-2016 RECEIVED BY LEGISLATIVE COUNCIL.

01-06-2017 REPORT SENT TO AGENCY.

MSK:IAK

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http://legis.wisconsin.gov/lc/

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

   Comment Attached YES ☐ NO ☒

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

   Comment Attached YES ☒ NO ☐

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

   Comment Attached YES ☐ NO ☒

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

   Comment Attached YES ☐ NO ☒

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

   Comment Attached YES ☐ NO ☒

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2)(g)]

   Comment Attached YES ☐ NO ☒

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

   Comment Attached YES ☐ NO ☒

WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

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Clearinghouse Assistant Director

CLEARINGHOUSE RULE 16-084

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]

2. ***Form, Style and Placement in Administrative Code***

a. In the introductory clause for the proposed rule, the reference to "Wis. Admin. Code §" could be removed. The citation to "PSC 135.019 (1)" includes the designation "PSC", which can only be found in the Wisconsin Administrative Code. [ss. 1.02 (1) (Example) and 1.07 (2), Manual.]

b. A heading and entry should be inserted in the rule analysis for the summary of factual data and analytical methodologies, and for the analysis and supporting documents used to determine the effect on small business. If there is no information, the text should state that there is no information. [s. 1.02 (2) (a) (intro.) and 8. and 9., Manual.]

c. In s. PSC 135.019 (1), the proposed rule revises the incorporation by reference of material that was previously incorporated by reference from the Code of Federal Regulations. In the rule analysis, the agency should comment on its compliance with s. 227.21 (2), Stats., and s. 2.08 (4), Manual. [See also s. 2.08 (5) (Note), Manual.]

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