



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 10-124

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 September 2008.]

2. Form, Style and Placement in Administrative Code

a. There are a number of errors in this rule’s treatment of section numbers in subch. I of ch. PSC 135, including the following:

- (1) SECTION 5 of the rule affects s. PSC 135.0010, while SECTION 6 creates a separate s. PSC 135.001. Those numbers are actually the same, and so a different number is needed for one or the other. Because of the decimal system used to number sections, section numbers should be read as having unprinted zeros after the printed digits. A zero is never printed at the end of a section number except in the case of a two-digit section number (e.g., s. PSC 135.10). Section 3.01 (1) of the LRB Bill Drafting Manual explains it this way:

...Note that the decimal 0.015 is greater than 0.01
and less than 0.02, so 0.015 is inserted between 0.01
and 0.02.

- (2) The rule, as drafted, results in a title for s. PSC 135.0004 (1), but no title for s. PSC 135.0004 (which is required) and no titles for s. PSC 135.0004 (2) and (3) (which is required if a title is given to sub. (1)).
- (3) It also appears that s. PSC 135.0002, as affected by this rule, lacks a title. If SECTION 1 of the rule was intended to create this title, it must be revised by

deleting “(1)” from both the treatment clause and the rule text and by changing the font of the title. Note, though, that this would result in subs. (2) and (3) having titles and sub. (1) having no title.

- (4) SECTION 11 should renumber s. PSC 135.013 (3) as s. PSC 135.0002 (3) (a). Also, SECTION 11 of the rule should amend the title of s. PSC 135.0002 (3), as renumbered, by striking the existing title and underscoring the new title.

b. Also with regard to the treatment of subch. I of ch. PSC 135 by this rule:

- (1) The extensive reordering and renumbering of the provisions makes the rule extremely difficult to follow, enough so that the repeal and recreation of the subchapter would be justified. In the alternative, the commission could provide a conversion table to aid readers in tracking the changes.
- (2) Considering that the subchapter, as affected by this rule, consists of only 13 sections and that subch. II starts with s. PSC 135.053, there is no reason to use four-digit section numbers in the subchapter. Also, given the number of available three-digit numbers between 135.001 and 135.053, it is suggested that only odd numbers be used for section numbers in the subchapter, to allow future insertions without further renumbering.

c. In the material numbered (dw) (1) and (2), inserted by SECTION 13 of this rule, the phrase “any and all” is redundant. Either word is sufficient by itself.

d. The rule makes a technical correction in the drafting of s. PSC 135.053 (2); this would be a good opportunity to also revise the language of that provision to use the active voice. This suggestion applies as well to most of ch. PSC 135. In sub. (1), “may only” should replace “shall only.”

e. SECTION 37 of the rule inserts provisions numbered with two-digit alphabetic numbering into a series that has at least three different numbering formats. As a result, assuming the numbering of the new provisions is correct, it is not obvious where they belong in that series. The treatment clause could clarify this, in a format such as: “PSC 135.195 (dw) and (ew), following s. PSC 135.195 (cw) are created to read:”, if that is what is intended.

f. When renumbering provisions, the notation “PSC” must be included in both the old and new numbering. See, e.g., SECTION 55.

g. The SECTION following SECTION 55 should be SECTION 55m.

h. Since s. PSC 135.204 (b) (2) and (3) are not affected by SECTION 47 of the rule, they should not be shown in that SECTION and the treatment clause should indicate that the SECTION amends s. PSC 135.204 (a), (b) (intro.) and (4), and (c). Other treatment clauses should be corrected (with corresponding corrections in the rule text, as necessary) as follows:

- (1) SECTION 49: PSC 135.246 (b) (intro.), (c), and (d) (intro.) and (3) are amended to read:

- (2) SECTION 55: PSC 135.321 (fw) is renumbered PSC 135.321 (1) (fw).
- (3) SECTIONS 56 to 59 (combined in a single section): PSC 135.321 (hw) is renumbered PSC 135.321 (2) (jw), and PSC 135.321 (2) (jw) (2), (3), and (4), as renumbered, are amended to read:
- (4) SECTION 83: PSC 135.613 (cw) (intro.) and (1) are amended to read:
- (5) SECTION 112: PSC 135.724 is amended to read: (Note: the inserted language is numbered PSC 135.724w, but the provision of the Wisconsin Administrative Code being amended is numbered s. PSC 135.724. See SECTION 95.)

i. In s. PSC 135.227, why is a portion of the language underscored? As this section is being created, it would appear that no underscoring should be used. See also s. PSC 135.722w (b) in SECTION 98.

j. Section PSC 135.506w lacks language indicating where in the Code of Federal Regulations (CFR) the language in that provision is to be inserted.

k. The language inserted in the CFR by s. PSC 135.615 is inconsistent in what it refers to as “paragraphs” of the CFR. Subdivisions of the CFR identified with lower-case letters in parentheses and those identified with a number or combination of number and lower-case letters in parentheses (e.g., (1) or (1a)) are both referred to as paragraphs. Is this accurate?

4. Adequacy of References to Related Statutes, Rules and Forms

The cross-references in s. PSC 135.379 (ew) are incomplete. It appears that the notation “49 CFR” should be inserted before each of them.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Presumably, the definition of “acceptable leak detection device” should refer to air concentrations of 100 ppm *or more*.

b. Section PSC 135.321 (2) (jw) (2), as renumbered and amended, requires that bends be “free of damage...or other evidence of damage.” Is this not redundant?

c. Section PSC 135.327 is vague. What is meant by “reasonable efforts”? Is the pipeline operator required to do anything, e.g., excavate and reinstall a pipeline that is too shallow, or add cover over such a pipeline? Also, why is s. PSC 135.361 (arw) worded differently?

d. In s. PSC 135.614 (fw) (2), “Alliance’s” should be “Alliance”.