

Report From Agency

PUBLIC SERVICE COMMISSION OF WISCONSIN

Revision of Wisconsin Administrative Code Chapter PSC 135 Gas Safety
to Adopt Updates to the Federal Gas Pipeline Safety Code

1-AC-255

Clearinghouse Rule No. 21-049

REPORT TO LEGISLATURE

I. Basis and Purpose of the Proposed Rule

Since 1968 the Commission has incorporated and adopted updates to the federal pipeline safety code in Wisconsin Admin. Code ch. PSC 135. This rulemaking revises Wisconsin Admin. Code ch. PSC 135 to incorporate updates to the federal pipeline safety code since the last revision to Wisconsin Admin. Code ch. PSC 135 took effect.

An existing agreement with the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety, authorizes the Commission to enforce federal natural gas pipeline safety requirements as set out in the Code of Federal Regulations, 49 CFR Parts 192, 193, and 199, for Wisconsin's natural gas pipeline operators, primarily public utilities. As part of this agreement, the Commission adopts the federal pipeline safety code in Wisconsin Admin. Code § PSC 135.019. Under this agreement, the Commission has the authority to make additions to the federal code that are more stringent than the federal standards. Wisconsin Admin. Code § PSC 135.019 currently adopts the federal code as it exists through October 1, 2017. Since that date, PHMSA updated the federal code with respect to plastic piping systems, onshore gas transmission pipelines, underground storage facilities, and gas pipeline regulatory reform necessary to enhance pipeline safety by adopting innovative technologies and best practices. These proposed revisions adopt the federal code through March 21, 2021.

II. Summary of Public Comments

The Commission issued a draft economic impact analysis (EIA) and received one set of joint comments. These joint comments did not include any specific concerns or issues. No changes to the draft EIA were necessary.

The Joint Committee for the Review of Administrative Rules (JCRAR) did not request that the Commission hold a preliminary hearing on the statement of scope.

On August 2, 2021, the Commission held a virtual public hearing to solicit public input on the draft rules. The Commission received one written comment from the Wisconsin Utilities Association, Inc (WUA). WUA's written comments recommended that the Commission revise the draft rule language to the newly created section PSC 135.019, which will require all gas public utilities and gas pipeline operators to maintain current copies of construction specifications or standards required under 49 CFR 192.303, welding procedures required under 49 CFR 192.225, and joining procedures under 49 CFR 192.273. This new administrative code provision also requires each change in the specifications, standards or procedures to be filed prior to the change taking effect. WUA comments that the "proposed requirement that each change to these specifications or standards must be filed with the PSC prior to taking effect conflicts with the requirements of PSC 135.019(4)" and recommended that the Commission use the following language, "shall be filed with the public service commission within 20 days of the changes taking effect." The Commission agrees with WUA that the language could be clearer and has incorporated WUA's suggested language to be consistent with PSC 135.019(4).

III. Modifications Made

As described in Section II., in response to public comments from the hearing, the Commission revised the new created section PSC 135.019 to clarify how and when gas public utilities and gas pipeline operators shall maintain a copy of certain construction specifications and standards, welding procedures, and joining procedures required under federal regulations and that each change to these documents shall be submitted to the Commission within 20 days after the change is made. Changes were also made to the final rule language and treatment of the rule sections based on feedback from Legislative Council. These changes are described in Section VI.

IV. Appearances at the Public Hearing

There were no appearances or oral comments at the public hearing.

V. Changes to Rule Analysis and Fiscal Estimate

No changes were made to the rule analysis or fiscal estimate.

VI. Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Rules Clearinghouse submitted comments on July 9, 2021. The comments pertained to: form, style, placement in administrative code and clarity, grammar, punctuation and use of plain language. Changes to the proposed rule were made to address recommendations by the Legislative Council Rules Clearinghouse. The Commission did not make one change recommended by Legislative Council. This change is described in Comment 5.f. below.

Comments related to Form, Style and Placement in the Administrative Code

Comment 2a. - *In the enumeration of provisions treated by the proposed rule, “PSC” should be placed before the first code reference in each of the treatment styles (e.g., “amend PSC 135.019 (1), ...”).*

Response: Agree. The enumeration of provisions section has been revised to place “PSC” before the first code reference in each of the treatment styles.

Comment 2b. - *In SECTION 7 of the proposed rule, the cross-references in the proposed 192.321 (kw) (3) insertion should be modified. As written in the rule, the (kw) (3) insertion references “ss. PSC 135.321 and 192.321 (kw) (1)”. However, the “192.321 (kw) (1)” insertion is contained within s. PSC 135.321 and thus the cross-reference to both provisions appears superfluous. Given its placement, it appears more appropriate to refer to “par. (kw) (1)” or “192.321 (kw) (1)”.*

Response: Agree. The Commission has revised the cross-reference to state “192.321 (kw) (1)” and has removed the cross reference to PSC 135.321.

Comments related to Clarity, Grammar, Punctuation and Use of Plain Language

Comment 5.a. – *The rule proposes various changes to reconcile ch. PSC 135 with revisions to 49 CFR Part 192. Generally, while the rule largely preserves language currently within ch. PSC 135, various provisions could be further modified to provide clarity, improve style, and address errors.*

Response: The Commission made changes to the rule language to align with every Legislative Council recommendation relating to clarity, grammar, punctuation, and use of plain language except the recommendation in 5.f. An explanation is provided in the Comment 5.f. section.

Comment 5.b. – *Under SECTION 2 of the proposed rule, further clarity could be provided regarding the requirement for gas public utilities and gas pipeline operators to file certain documentation with the PSC. Notably, it is unclear whether the specified documentation must be filed prior to each*

pipeline construction project or if the documentation need only be filed once. Similarly, it is unclear what is meant by “each change... shall be filed ... prior to the changes taking effect”. Details could be provided to indicate what it means for a change in the specifications, standards, or procedures to “take effect”.

Response: Agree. The Commission revised the rule language to specify that the gas utilities and gas pipeline operators must have on file with Commission current copies of construction specifications or standards required under 49 CFR 192.303, welding procedures required under 49 CFR 192.225, and joining procedures under 49 CFR 192.273. The revised rule language also specifies that any changes to these construction specifications or standards, welding procedures and joining procedures must be filed with the Commission within 20 days of the change to these documents taking effect. This revision was based on a public comment at the hearing and also on feedback from Legislative Council.

Comment 5.c. – *Under SECTION 6 of the proposed rule, further amendment to s. PSC 135.206 could improve language currently within the Administrative Code, including: (1) In the introductory material, “... take the following precautions” could be omitted for brevity. - 2 - (2) Paragraph (c) refers to lightning “strokes” when it appears that it should refer to lightning “strikes”. This error is also present in the current Administrative Code. (3) In par. (c), “such protection” should be modified to read “the protection”. [See s. 1.08 (g), Manual.]*

Response: Agree. The Commission had made the recommended changes, removing “take the following precautions,” changing “strokes” to “strikes,” and changing “such protection” to “the protection.”

Comment 5.d. – *Under SECTION 7 of the proposed rule, various changes could be made to provide clarity, including: (1) The proposed 192.321 (kw) (1) insertion states, “Plastic pipe and tubing may be deflected to a radius not less than the minimum recommended by the manufacturer for the kind, type, grade, wall thickness and diameter of the particular plastic used”. However, “wall thickness” and “diameter” are properties of pipe or tubing, rather than of “plastic” itself. Consider amending the proposed language to refer to the “kind, type, grade, wall thickness, and diameter of the particular plastic pipe or tubing used”. (2) The proposed 192.321 (lw) insertion refers to “well tampered” earth. The provision should instead refer to “well tamped” earth. This error is also present in the current Administrative Code. Also, for clarity, this provision should be indicated as “(Lw)” as it could be confused with “(lw)”. [See SECTION 16 for contrast.]*

Response: Agree. The Commission has made the recommended changes. The Commission revised the language to state “particular plastic pipe or tubing used” and changed “well tampered” to “well tamped.” The Commission also changed “(lw)” to “(Lw)”.

Comment 5.e. – *In SECTION 11 of the proposed rule, s. PSC 135.621 (title) should read “Maximum allowable operating pressure: high-pressure distribution ~~system~~ systems additions” for consistency with the title of 49 CFR s. 192.621. This error is not present within the current Administrative Code.*

Response: Agree. The Commission inadvertently typed “system” instead of “systems” when transposing the rule language. The current code provision reads “systems.” Therefore, in the final rule language, the Commission has corrected this error.

Comment 5.f. – *In SECTION 14 of the proposed rule, additional clarity could be provided, including: (1) The proposed 192.723 (cw) (1) insertion provides that, under certain circumstances, a second leakage survey must be conducted each calendar year, but not within 4 ½ months of the survey required under 49 CFR 192.723 (b) (1). Given the differing lengths of months, the duration of 4 ½ months is unclear. Consider replacing “4 ½ months” with a specified number of weeks (e.g., 20 weeks). (2) The proposed 192.723 (cw) (7) insertion provides, under certain circumstances, that a search “shall be carried to conclusion until the leak is found”. It*

is unclear what “carried to conclusion” means in this context, particularly given the requirement that a search must be conducted until the leak is found. It appears that the agency’s intent could be captured by amending the provision to read “...a search shall be conducted until the leak is found”.

5.f.(1). Response: Disagree. The Commission uses “4 ½ months” instead of specified number of weeks because this aligns with how the federal pipeline safety regulations prescribe certain timeframes. For example, 49 CFR § 192.706 (a) and (b) use “4 ½ months” and “7 ½ months” for leakage survey intervals of transmission pipelines. 49 CFR § 192.721(b) uses “4 ½ months” and “7 ½ months” for distribution main patrolling and required inspection intervals. 49 CFR § 192.465 (b) and (c) use “2 ½ months” for external corrosion control monitoring and required inspection intervals. The 4 ½ month interval for leakage survey is understood in the industry, and the intent is to minimize time that leaks go undetected by ensuring inspections are completed at appropriately spaced intervals.

5.f.(2). Response: Agree. The Commission has made the recommended changes and revised the language to “a search shall be conducted until the link is found” for clarity.

Comment 5.g. – In SECTION 15, the term “such service lines” should be modified to read “the service lines.” [See s. 1.08 (g), Manual.]

Response: Agree. The Commission had made the recommended language change.

Comment 5.h. – In SECTION 16 of the proposed rule, “such records” should be modified to read “the records”. [See s. 1.08 (g), Manual.]

Response: Agree. The Commission has made the recommended language change.

VII. Final Regulatory Flexibility Analysis

The proposed rule changes are not expected result in significant economic impact on small businesses. The definition of “small business” in Wisconsin Stat. § 227.114 (1) 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 fields and are not small businesses. The Commission’s fiscal estimate and economic impact analysis also determined that the proposed rules will not have an economic impact on small businesses. The Commission sought input from all gas utilities, Wisconsin Utilities Association, Utility Workers’ Coalition, and National Federation of Independent Businesses.

VIII. Response to Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not prepare a report on this rule proposal.

IX. Wisconsin Environmental Policy Act and Housing Analysis

The Commission evaluated whether the rules would have an environmental impact and concluded that the rules do not result in any possible significant, adverse environmental or social impacts. Therefore, preparation of an environmental assessment or environmental impact statement under Wisconsin Stat. § 1.11 was not necessary. The Commission completed an evaluation of the potential impact on housing under Wisconsin Stat. § 227.115 and concluded the rules do not impact housing.