

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:

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.