



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 07-008

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated January 2005.]

2. Form, Style and Placement in Administrative Code

a. The rule appears to be unnecessarily confusing in identifying which structures are subject to its provisions. As written, there are five separate provisions that must be consulted to determine whether a structure is subject to the rule: ss. Comm 67.02 (1) and (2) and 67.04 (7), (17), and (18). It would be preferable to place all of this material in the same provision and to incorporate the “exclusions” currently set forth in the definition of “rental unit” directly into the text of the rule.

b. The rule appears to be unnecessarily confusing in identifying which conveyances of property are subject to its provisions. Specifically, the term “transfer” is defined in two separate provisions: ss. Comm 67.03 (1) (b) and 67.04 (21). It would be preferable to place all of this material in the same provision. In addition, s. Comm 67.03 (1) (b), is unworkable in that it states that certain “transfers” are not “transfers.” If an occurrence is not a transfer, then the rule should not refer to it as a transfer. For example, the rule could, instead, refer to occurrences that are not to be included within the term “transfer” as “conveyances.”

c. Consistent terminology should be used throughout the rule. The rule confusingly uses all of the following terms to refer to the energy efficiency requirements set forth in ss. Comm 67.11 and 67.12: “energy efficiency requirements”; “performance standards”; “standards”; “code requirements”; “the provisions of this chapter”; “prescriptive energy efficiency provisions”; “minimum prescriptive energy efficiency provisions”; “performance provisions” and “performance energy efficiency requirements.”

d. The titles to s. Comm 67.06 (2) (a) and (b) would more accurately describe the contents of those paragraphs if they were to be changed to “Rental unit in compliance” and “Rental unit not in compliance.”

e. Throughout the rule, the terms “owner,” “new owner,” and “purchaser” are all used to refer to a person who buys a unit that does not comply with the requirements of the chapter. The rule should be revised so that only one term is used consistently.

f. Section Comm 67.11 (2) contains two pars. (b). The second one should be par. (c).

g. Section Comm 67.12 (1) should have a title since the other subsections in s. Comm 67.12 have titles.

3. Conflict With or Duplication of Existing Rules

Since ch. Comm 67 is being repealed and recreated and the numbering of provisions in that chapter is changing, external references to provisions of the chapter may need to be amended. For example, s. PSC 136.04 (5) refers to ss. Comm 67.04 (16) and 67.05. As another example, ss. RL 25.03 (3) (q) 9. and 25.035 (2) (f) 5. both refer to ss. Comm 67.03 and 67.08. If changes are needed, the department should notify the appropriate agencies.

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

a. In s. Comm 67.06 (2) (b) 1. a., the reference to “subd. b.” should be changed to “subd. 1. b.”. [See s. 1.07 (2), Manual.]

b. In s. Comm 67.06 (2) (d), the reference to “par. (4)” should be changed to “sub. (4).”

c. Section Comm 67.07 refers to “this code.” It should refer to “this chapter.”

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

a. The intended role of municipalities in the process of certifying rental units for energy efficiency is unclear. Proposed s. Comm 2.35 refers to “authorized municipalities” and states that they may purchase certification stamps from the department. The current rule, s. Comm 67.02 (3) (a), authorizes municipalities to issue certificates and sets forth the standards to be followed in determining whether a municipality should be so authorized. However it appears that the proposed rule does not contain similar provisions. Further, proposed s. Comm 67.04 (6) states that a “department agent” includes a governmental agency that has been granted permission from the department to validate waivers and stipulations “as specified in this chapter.” However, it does not appear that the proposed chapter actually contains any provisions pertaining to granting this permission. Finally, s. Comm 67.06 (2) (d) provides that a municipality may revoke a certificate of compliance under certain circumstances, which implies that a municipality may issue certificates of compliance.

b. It appears that the phrase “the property complies with one of the following:”, in s. Comm 67.03 (1) (a) (intro.), should be changed to “one of the following applies:”.

c. Should the list of compliance methods set forth in s. Comm 67.03 (1) (a) be expanded to include a situation in which a petition for variance has been granted?

d. In s. Comm 67.03 (3), “Any one-or-two-family condominium unit” should be changed to “Any unit within a one-family or two-family condominium.”

e. Section Comm 67.03 (1) (a) 3. states that a rental unit may not be transferred unless a stipulation has been “issued as specified in s. Comm 67.06 (4).” It is unclear precisely what constitutes compliance with this requirement. Section Comm 67.06 (4) does not specify how a stipulation is “issued” before a transfer takes place, but rather specifies how a stipulation is to be recorded after sale of a noncompliant property. Therefore, it appears it would not be possible for a seller of property to comply with the requirements of s. Comm 67.06 (4) before a transfer takes place.

f. In s. Comm 67.03 (1) (b) 5., “as” should be deleted.

g. Should s. Comm 67.05 specify when an owner must request an energy efficiency inspection? Must this be done only if the owner plans on transferring the unit? If so, is there a certain time prior to the intended transfer that an inspection must be requested?

h. Should the rule specify that an owner may request inspection by the department if the owner is unable to secure an inspection by an inspector after reasonable effort, as is provided in current s. Comm 67.07 (1)?

i. Section Comm 67.06 (2) (a) 1. requires an inspector to “Include the specific results of the inspection.” This requirement is unclear. With what should the results be included?

j. In s. Comm 67.06 (2) (a) 3., “completion of” should be deleted.

k. In s. Comm 67.06 (2) (a) 4., “of compliance” should be inserted after “certificate.”

l. In s. Comm 67.06 (2) (b) 1. c., should “may” be changed to “shall”? If not, under what circumstances may an inspector refuse to issue a certificate of compliance when a rental unit complies with the required energy efficiency measures? Also, that provision should be written in the active, rather than passive voice, to indicate who must issue the certificate of compliance. Finally, “shows compliance” should be changed to “is in compliance.”

m. Should s. Comm 67.06 (2) (b) 2. specify that an owner may apply for a stipulation only when transferring a rental unit? Also, should the rule specify whether “owner” refers to the seller or the purchaser? Should this provision also state that an owner may apply for a waiver, variance, or satisfaction of compliance?

n. Section Comm 67.06 (2) (c) should be written in the active voice and should state that an owner shall bring a rental unit into compliance within one year after the date a stipulation is issued. As written, the rule implies that an inspector must issue a certificate of compliance within one year after the stipulation is issued, regardless of the condition of the rental unit. In any event, it appears that this provision is unnecessary because s. Comm 67.06 (4) (c) 3.

correctly sets forth the procedure to be followed by an inspector inspecting a unit for which a stipulation has been issued.

o. In s. Comm 67.06 (2) (d), “where” should be changed to “if” in two places.

p. Should s. Comm 67.06 (3) (c) allow a municipality to withdraw a certificate of occupancy if a unit is not demolished within two years after a waiver is issued, as is allowed in current s. Comm 67.08 (3) (e) 2.?

q. It appears that the phrase “or evaluation,” in s. Comm 67.06 (3) (c) 2., should be deleted, since s. Comm 67.05 does not provide for an “evaluation.”

r. Section Comm 67.06 (4) (a) 3. should be rewritten in the active voice, and should condition the issuance of a certificate of compliance on the unit being in compliance with either the requirements that were in effect at the time the stipulation was validated, or the requirements in place at the time of the inspection, at the option of the owner.

s. Should the rule contain language similar to that in current s. Comm 67.08 (4) (d) that allows a purchaser to receive a stipulation if the purchaser intends to occupy the unit upon termination of the current lease?

t. In s. Comm 67.06 (5) (intro.), should “may” be changed to “shall”? If not, under what circumstances may an inspector refuse to issue a satisfaction of compliance when an owner establishes that one of the listed exceptions applies? Also, this provision should be drafted in the active voice – “The department shall issue a satisfaction of compliance if the owner....”

u. Chapter Comm 67 contains references to forms in a number of provisions. Therefore, it is suggested that the second note following s. Comm 67.07 be moved to the beginning of the chapter. It could be placed between the chapter title and the title of subch. I.

v. In s. Comm 67.12, it is unclear whether an owner always has the option of showing compliance with the performance energy efficiency requirements in lieu of the energy efficiency requirements under s. Comm 67.11, or if this option is only available if the unit is first found to fail to meet the requirements under s. Comm 67.11.