



State of Wisconsin \ Department of Commerce

RULES in FINAL DRAFT FORM

Rule No.: Chapter Comm 67

Relating to: Rental Unit Energy Efficiency

Clearinghouse Rule No.: 07-008

**ORDER OF THE
DEPARTMENT OF COMMERCE**

The Wisconsin Department of Commerce proposes an order to repeal and recreate s. Comm 2.35 and ch. Comm 67, including the Appendix, relating to rental unit energy efficiency requirements and affecting small businesses.

ANALYSIS OF PROPOSED RULES

1. Statutes Interpreted.

Statutes Interpreted: ss. 101.02 (1) and (15), 101.122 and 101.19 (1) (i), Stats.

2. Statutory Authority.

Statutory Authority: ss. 101.02 (1) and (15), 101.122 and 101.19 (1) (i), Stats.

3. Related Statute or Rule.

None

4. Explanation of Agency Authority.

Under sections 101.02 (1) and (15), Stats., the Department has authority to protect public health, safety, and welfare, at public buildings and places of employment, by promulgating and enforcing requirements for construction and maintenance of those facilities. Under section 101.122, Stats, the Department also has the responsibility to develop minimum energy efficiency requirements for rental units. The energy efficiency requirements must be met before the ownership of a rental unit may be transferred. Under section 101.122 (2) (e), the Department must review the administrative rules adopted under this section of the statutes every five years to determine whether new energy conservation technologies should be included under chapter Comm 67. Under s. 101.19 (1) (i), Stats., the Department may fix and collect fees for inspecting and certifying rental units as specified in s. 101.122, Stats. with fees set to equal the cost of providing the services.

5. Summary of Proposed Rules.

The last revision to chapter Comm 67 was in 1999 and included language in response to legislation. This current review and update includes a repeal and recreation of the requirements to improve clarity, revise the rules in accordance with the standard rule development format, reduce the number of department forms that are required to be submitted to show compliance with the code and reduce the fees, which will more closely equal the cost of providing the services.

The following are the major changes proposed in the revisions to chapters Comm 2 and Comm 67:

- Modify the fees under chapter Comm 67 by eliminating the fees for application for exemptions, stipulations and waivers and adjusting the fee for certification stamps. These fee changes more accurately reflect program costs. [Comm 2.35]
- In accordance with s. 101.122 (2) (c), Stats., the maximum fee for performing an inspection must be established by rule. The fees currently specified under s. Comm 2.35 (5) will be maintained and included under s. Comm 2.35 (3). [Comm 2.35 (3)]
- Reorganize all of the requirements under Comm 67 by grouping them into subchapters relating to application, definitions, administration and enforcement, and technical requirements.
- Eliminate the cost payback exemption because the minimum technical requirements are already based on achieving a 5-year cost payback and compliance with these requirements are now based on the life time of the building. Allowing an exemption from compliance with the code is not within the intent of the code. [Requirements formerly under s. Comm 67.06]
- Modify the definitions for consistent use under the chapter. [Comm 67.04]
- Clarify the definition of “owner-occupied” by stating the owner must occupy a dwelling unit exclusively as the primary or secondary residence within the first year immediately after the date of transfer of the dwelling unit. It also clarifies the owner may claim up to 2 residences. This change is being proposed to recognize owners, who may own another dwelling used as a summer or winter residence. [Comm 67.04 (16)]
- Clarify the administration and enforcement requirements relating to issuance of certificates, waivers, stipulations and satisfaction of compliance. [Comm 67.06]
- Clarify the 2-year time period granted for a waiver starts from the date the waiver is validated, and include a requirement that states a rental unit with an expired waiver may not be transferred. [Comm 67.06 (3) (b) 2.]
- Clarify that an owner of a rental unit must bring the unit into compliance with the energy requirements no later than one year after the stipulation was validated. [Comm 67.06 (4) (a) 1.]
- Clarify the stipulation requirements, and include an option that the owner may bring the rental unit into compliance using either the code in effect at the time the stipulation was issued or using the current code requirements. [Comm 67.06 (2) (b) 2. and 67.06 (4) (a) 3.]

- Reword the issuance requirements for certificates of compliance and stipulations to include the filing requirements previously covered under section Comm 67.08 (4) (g). [Comm 67.06 (2) and (4)]
- Clarify the rules relating to insulation of box sills to permit foam plastic insulation to be used without the required thermal barrier. [Comm 67.11 (1) (c) and Table 67.11-2]
- Clarify the rules relating to insulation of ducts and pipes to include vented attic spaces. Change the requirements relating to domestic hot water pipes to domestic water heater pipes, and require the insulation of only the supply pipes for noncirculating hot and cold water pipes in vented crawl spaces. [Comm 67.11 (1) (d) and Table 67.11-3]

6. Summary of, and Comparison with, Existing or Proposed Federal Regulations.

An Internet-based search for “energy efficiency standards for rental dwelling units” in the *Code of Federal Regulations* (CFR) did not identify any existing federal regulations establishing energy efficiency requirements for the transfer of dwelling units used as rental property. However, it did identify the following existing federal regulation that awards grants to provide a weatherization assistance program to increase the energy efficiency of dwellings owned or occupied by low-income persons, reduce their total residential expenditures, and improve their health and safety.

10 CFR 440 – Weatherization Assistance for Low-income Persons

An Internet-based search for the referenced federal regulation of the 2003, 2004, 2005 and 2006 issues of the *Federal Register* did not identify any proposed changes to this regulation relating to the technical requirements for weatherization of dwellings owned by or occupied by low-income persons.

7. Comparison with Rules in Adjacent States.

An Internet-based search of adjacent states’ codes resulted in finding no similar code requirements for providing energy efficiency standards prior to the transfer of ownership of rental property. Minnesota, Michigan, and Iowa have energy conservation requirements for both commercial and residential buildings; however, these states do not require mandatory compliance with energy efficiency standards in existing rental units changing ownership.

Illinois does not have a statewide building code covering energy efficiency standards in rental units. In Illinois enactment of building codes is at the local municipal level.

8. Summary of Factual Data and Analytical Methodologies.

In accordance with s.101.122 (2) (e), Stats., the Department is required to review the rental unit energy efficiency rules every 5 years to determine whether there are any new energy conservation technologies that would impact these rules. In developing the proposed rules, the Department reviewed the current rental unit energy conservation requirements along with the energy requirements specified under chapter Comm 22, Energy Conservation of the Uniform Dwelling Code (UDC) and the latest requirements under the International Energy Conservation Code (IECC) and did not find any new technologies. The Department's review and assessment process involved the participation of an advisory council. The members of the Rental Unit Energy Efficiency Code Council represented home inspectors, realtor's association and apartment owners. (A listing of the Council members is provided at the end of this analysis.)

9. Analysis and Supporting Documents used to Determine Effect on Small Business or in Preparation of Economic Impact Report

The rental unit energy efficiency rules impact any small business providing inspection services for compliance and any small business owning rental property that is proposed to be sold or transferred to a new owner where the rules under this chapter have not been applied prior to the transfer.

The Department believes the proposed rules would have no additional economic impact on the identified affected small business because no new technologies were identified and the existing technical rules were only clarified to improve enforcement and application. The administrative rules were also clarified to improve application and no additional reporting or bookkeeping requirements were developed. The cost to provide the additional insulation for ducts and pipes will have a minimal effect on small businesses. The fees for a stipulation and a waiver have been eliminated and the fee for a certification authorization stamp has been increased, and it is believed this change will provide cost savings to small businesses affected by these rules. An economic impact report as specified under s. 227.137, Stats has not been prepared.

10. Effect on Small Business

The proposed rules should have a minimal effect on small business.

Council Members and Representation

The proposed rules were developed with the assistance from the Rental Unit Energy Efficiency Advisory Council. The members of that citizen advisory Council are as follows:

| <u>Name</u> | <u>Representing</u> |
|---------------|---|
| Rob Jens | Apartment Association of South-Central WI |
| Tom McKenna | WI Realtors Association |
| Kent Schwanke | WI Association of Home Inspectors |

SECTION 1. Comm 2.35 is repealed and recreated to read:

Comm 2.35 Rental unit energy efficiency program. (1) CERTIFICATION STAMPS. A fee of \$30.00 shall be remitted to the department for each certification transfer authorization stamp used to validate certificates of compliance. Only certified rental unit energy efficiency inspectors may purchase certification stamps from the department.

(2) SATISFACTION OF COMPLIANCE. A fee of \$50.00 shall be remitted to the department for each satisfaction of compliance issued as specified in s. Comm 67.06 (5).

(3) FEES FOR INSPECTION AND CERTIFICATION. (a) *Maximum fee.* The maximum fee for inspection and certification of rental units by the department or certified inspector shall be as follows:

1. Up to 2 rental units.....\$200.00
2. Three to 8 rental units.....\$200.00 plus \$50 for each additional rental unit over 2 rental units.
3. Over 8 rental units.....\$200.00 plus \$25 for each additional rental unit over 8 rental units.

(b) *Scope of fee.* 1. The inspection and certification fee shall cover the cost of performing an initial inspection, which includes issuing a field inspection report explaining items of noncompliance and a final inspection, which includes the cost of the certification stamp and preparation of the certificate. If additional inspections are required due to noncompliant items not being corrected, an additional fee, based upon an actual cost basis, including salary and actual travel expenses, may be charged to offset the cost of further inspections. If, after an initial inspection, a notice of noncompliance is issued and, upon reinspection, all of the required energy measures were installed, no additional charges may be made for any further inspections. Further inspections may be necessary to assure that the proper energy measures are installed in response to any additional points of noncompliance.

2. The evaluation and certification fee shall cover the cost of preparing necessary forms, the cost of the certification stamp and preparation of the certificate. If the building performance is determined by calculation from fuel use data, the fee shall cover the cost of collecting and verifying the fuel use and building size information and performing necessary calculations. The fee does not cover field measurement of the building performance.

(c) *Fees for requested inspections.* Inspection the department is required to perform will be charged the maximum fee.

SECTION 2. Chapter Comm 67 is repealed and recreated to read:

RENTAL UNIT ENERGY EFFICIENCY

Subchapter I – Purpose, Scope and Application

Comm 67.01 Purpose. Pursuant to s. 101.122, Stats., the purpose of this chapter is to establish minimum energy efficiency requirements for rental units that must be met before the ownership of the rental unit may be transferred.

Comm 67.02 Scope and application. (1) GENERAL. Except for the buildings and rental units identified in sub. (2), this chapter applies to all dwelling units that are not owner-occupied and all rental units.

(2) EXCLUSIONS. All of the following buildings and rental units are excluded from the requirements of this chapter:

- (a) Any building containing up to 4 dwelling units, one of which is owner-occupied.
- (b) Any building constructed after December 1, 1978, which contains up to 2 dwelling units.
- (c) Any building constructed after April 15, 1976, which contains more than 2 dwelling units.
- (d) Any dwelling unit not rented at any time from November 1 to March 31.
- (e) A building that is subject to a condominium declaration under ch. 703, Stats. and that contains 3 or more units, as defined in s. 703.02 (15), Stats.
- (f) Mobile homes and manufactured homes as specified under ch. Comm 27.
- (g) Buildings and facilities with dwelling units that are licensed by the department of health and family services.

Note: See chs. HFS 70, 75 and 82 relating to various types of group homes, ch. HFS 83 relating to community-based residential facilities, ch. HFS 89 relating to residential care apartments, ch. HFS 124 relating to hospitals, ch. HFS 132 relating to nursing homes, ch. HFS 195 relating to hotels, motels and tourist rooming houses, and ch. HFS 197 relating to bed and breakfast establishments.

(h) Qualified historic buildings as defined under s. 101.121, Stats. Department form SBD-7728, verification of historic status, shall be filed with the department showing the building complies with the historic building requirements. When the verification form is received a satisfaction of compliance as specified in s. Comm 67.06 (5) will be issued by the department.

Note: Copies of the rental weatherization program forms are available from: Department of Commerce, Safety and Buildings Division, Rental Weatherization Program, P.O. Box 7302, Madison, WI 53707, telephone (608) 266-2780, TTY (608) 264-8777 or at our web site at: www.commerce.wi.gov/SB.

Comm 67.03 Transfers. (1) GENERAL. (a) Except for the exclusions specified in par. (b), after January 1, 1985, no owner may transfer a rental unit unless one of the following applies:

1. A certificate of compliance has been issued by an inspector or the department as specified under s. Comm 67.06 (2).

2. A written waiver has been issued by the department or department agent as specified in s. Comm 67.06 (3).

3. A stipulation has been recorded as specified in s. Comm 67.06 (4).

4. A satisfaction of compliance has been issued by the department as specified in s. Comm 67.06 (5).

(b) The requirements under par. (a) do not apply to any of the following:

1. Conveyances that are exempt from the real estate transfer fee as specified under s. 77.25, (1), and (2r) to (21), Stats.

Note: Section 77.25, (1), and (2r) to (21) Stats. reads: “**Exemption from fee.** The fees imposed by this subchapter do not apply to a conveyance:

(1) Prior to October 1, 1969.

(2r) Under s. 236.29 (1) or (2) or 236.34 (1) (e) or for the purpose of a road, street or highway, to the United States or to this state or to any instrumentality, agency or subdivision of either.

(3) Which, executed for nominal, inadequate or no consideration, confirms, corrects or reforms a conveyance previously recorded.

(4) On sale for delinquent taxes or assessments.

(5) On partition.

(6) Pursuant to mergers of corporations.

(6d) Pursuant to partnerships registering as limited liability partnerships under s. 178.40.

(6m) Pursuant to the conversion of a business entity to another form of business entity under s. 179.76, 180.1161, 181.1161, or 183.1207, if, after the conversion, the ownership interests in the new entity are identical with the ownership interests in the original entity immediately preceding the conversion.

(7) By a subsidiary corporation to its parent for no consideration, nominal consideration or in sole consideration of cancellation, surrender or transfer of capital stock between parent and subsidiary corporation.

(8) Between parent and child, stepparent and stepchild, parent and son-in-law or parent and daughter-in-law for nominal or no consideration.

(8m) Between husband and wife.

(9) Between agent and principal or from a trustee to a beneficiary without actual consideration.

- (10) Solely in order to provide or release security for a debt or obligation.
 - (11) By will, descent or survivorship.
 - (12) Pursuant to or in lieu of condemnation.
 - (13) Of real estate having a value of \$100 or less.
 - (14) Under a foreclosure or a deed in lieu of a foreclosure to a person holding a mortgage or to a seller under a land contract.
 - (15) Between a corporation and its shareholders if all of the stock is owned by persons who are related to each other as spouses, as lineal ascendants, lineal descendants or siblings, whether by blood or by adoption, or as spouses of siblings, if the transfer is for no consideration except the assumption of debt or stock of the corporation and if the corporation owned the property for at least 3 years.
 - (15m) Between a partnership and one or more of its partners if all of the partners are related to each other as spouses, as lineal ascendants, lineal descendants or siblings, whether by blood or by adoption, or as spouses of siblings and if the transfer is for no consideration other than the assumption of debt or an interest in the partnership.
 - (15s) Between a limited liability company and one or more of its members if all of the members are related to each other as spouses, as lineal ascendants, lineal descendants or siblings, whether by blood or by adoption, or as spouses of siblings and if the transfer is for no consideration other than the assumption of debt or an interest in the limited liability company.
 - (16) To a trust if a transfer from the grantor to the beneficiary of the trust would be exempt under this section.
 - (17) Of a deed executed in fulfillment of a land contract if the proper fee was paid when the land contract or an instrument evidencing the land contract was recorded.
 - (18) To a local exposition district under subch. II of ch. 229.
 - (20) Made under s. 184.15.
 - (21) Of transmission facilities or land rights to the transmission company, as defined in s. 196.485 (1) (ge), under s. 196.485 (5) (b) or (c) or (6) (a) 1. in exchange for securities, as defined in s. 196.485 (1) (fe).”
2. Conveyances relating to probate as specified under chs. 851 to 879, Stats.
 3. Conveyances resulting from involuntary merger or liquidation of financial institutions.
 4. Conveyances pursuant to property division under ch. 767, Stats., relating to divorce.
 5. Conveyances to trustees in court-declared bankruptcies, provided that before subsequent transfer, the transferee presents a stipulation as described in this chapter, and that compliance shall be no later than one year after date of the subsequent transfer.
 6. Conveyances pursuant to condominium declaration under ch. 703, Stats.
 7. Conveyances in a court declared bankruptcy to a party with a previous interest in the property.

8. Conveyances to cooperative housing ownership.

(2) **MULTIPLE USE OCCUPANCY.** Any building, at the time of transfer, that contains a rental unit, which is not excluded under s. Comm 67.02 (2), and is located in a building with a different occupancy, shall comply with one of the following:

(a) If the rental unit comprises more than 50% of the total gross area of the building, the entire building shall be made to conform to the requirements of this chapter.

(b) If the rental unit comprises 50% or less of the total gross area of the building, only the rental unit portion of the building shall be made to conform to the requirements of this chapter.

(3) **RENTAL UNITS IN CONDOMINIUMS.** Any unit within a one-family or two-family condominium, as defined under s. 703.02 (15), Stats., which is a rental unit, shall, at the time of transfer, be brought into compliance with the requirements of subch. IV. The requirements of subch. IV shall apply to all building elements of the individual unit as defined in s. 703.02 (15), Stats., but not to the common elements which are defined in s. 703.02 (2), Stats., and contained in the condominium declaration as outlined in s. 703.09, Stats.

Note: The definitions of s. 703.02, Stats., which are referred to above, are as follows: “Common elements” means all of a condominium except its units; and “Unit” means a part of a condominium intended for any type of independent use, including one or more cubicles of air at one or more levels of space or one or more rooms or enclosed spaces located on one or more floors (or parts thereof) in a building. A unit may include 2 or more noncontiguous areas.

(4) **LOCAL ORDINANCES.** After the effective date of this chapter, no municipality may enforce a code or ordinance of minimum energy efficiency requirements for rental units in the municipality unless the energy efficiency requirements of the code or ordinance are at least as strict as the energy efficiency requirements specified in this chapter.

Subchapter II – Definitions

Comm 67.04 Definitions. In this chapter:

(1) “Accessible” means capable of being reached without removal or alteration of any part or parts of the permanent structure finish materials or paved sidewalk or driveway. Cavities under floors in unfinished attic areas are accessible.

(2) “Box sill” means that portion of the building envelope between the top of the foundation wall and the sub-floor immediately above, or the perimeter of the floor joists.

(3) “Condominium” means a multiple dwelling unit building in which there is separate ownership of individual dwelling units, as created by ch. 703, Stats.

(4) “Crawl space” means an unfinished space of less than full story height below the first or ground floor. Crawl spaces may be vented or unvented to the outside.

(5) “Department” means the department of commerce.

(6) “Dwelling unit” has the meaning given under s. 101.122 (1) (a), Stats.

Note: Under s.101.122 (1) (a), Stats., “dwelling unit” means a building or that part of a building which is used as a home or residence.

(7) “Energy conservation measure” has the meaning given under s. 101.122 (1) (e), Stats.

Note: Under s. 101.122 (1) (b), “energy conservation measure” means any measure which increases the energy efficiency of a rental unit, including, but not limited to, the installation of caulking, weatherstripping, insulation and storm windows.

(8) “Financial institution” means any state or nationally chartered bank, savings and loan association, credit union, mutual savings bank, trust company bank or other lending authority created or licensed under state or federal law.

(9) “Finish material” means drywall, plaster, siding or other material covering the structure, but does not include floors in unfinished spaces.

(10) “Gross area” means the occupied or usable floor area in a building but not including space occupied by columns, walls, partitions, mechanical shafts or ducts.

(11) “Gross floor area” means the sum of the floor areas of the spaces within the building including basements, mezzanine and intermediate-floored tiers, and penthouses of headroom height 7.5 feet or greater.

(12) “Habitable room” means any room used for sleeping, living or dining purposes, excluding such enclosed places as kitchens, closets, pantries, bath or toilet rooms, hallways, laundries, storage spaces, utility rooms, and similar spaces.

(13) “Inspector” means a person certified in accordance with ch. Comm 5 to perform inspections for energy efficiency in rental units.

(14) “Municipality” means a city, village or town.

(15) “Owner” has the meaning given under s. 101.122 (1) (d), Stats.

Note: Under s. 101.122 (1) (d), Stats., “owner” means any person having a legal or equitable interest in a rental unit.

(16) “Owner-occupied” includes any dwelling unit that is used exclusively as the primary or secondary residence by the owner within the first year immediately after the date of transfer. An owner may claim not more than 2 dwelling units as owner-occupied.

(17) “Rental unit” has the meaning given under s. 101.122 (1) (e), Stats.

Note: Under Section 101.122 (1) (e), Stats., “Rental unit” means any rented dwelling units. “Rental unit” does not include:

1. Any building containing up to 4 dwelling units, one of which is owner-occupied.
2. Any building constructed after December 1, 1978, which contains up to 2 dwelling units.
3. Any building constructed after April 15, 1978, which contains more than 2 dwelling units.
4. Any dwelling unit not rented at any time from November 1 to March 31.
5. A building that is subject to a condominium declaration under ch. 703 and that contains 3 or more units, as defined in s. 703.02 (15).

(18) “R-value” means a measure of the ability of materials to retard the flow of heat. The R-value is the reciprocal of a heat transfer coefficient or thermal transmittance, expressed by U; $R = 1/U$.

(19) “Thermal envelope” means the collective assemblies of a building that enclose the heated, unvented spaces. The components that make up the thermal envelope form a continuous, unbroken surface.

Note: The higher the R-value of a material, the more difficult it is for heat to flow through the material.

(20) “Transfer” has meaning given under s. 101.122 (1) (f), Stats.

Note: Under s. 101.122 (1) (f), Stats., “transfer means a conveyance of an ownership interest in a rental unit by deed, land contract or judgment or conveyance of an interest in a lease in excess of one year. “Transfer” does not include a conveyance under chs. 851 to 879, Stats.

(21) “Vented” means provided with outside air by natural or mechanical means via permanent openings.

Subchapter III – Administration and Enforcement

Comm 67.05 Enforcement. (1) INSPECTIONS REQUESTS. An owner of a rental unit covered by this chapter shall request an energy efficiency inspection from an inspector for the purpose of determining whether the rental unit meets the energy efficiency requirements specified in this chapter. If an owner, after reasonable effort, is unable to procure an inspection from an inspector, a request for an inspection may be made to the department.

(2) DEPARTMENT AGENTS. (a) *General.* Upon receipt and review of a written request letter from a governmental agency, the department may authorize the agency in writing to validate waivers and stipulations as specified under s. Comm 67.06 as a department agent.

(b) *Revocation of department agent status.* The department may revoke the authority of a department agent to validate a waiver or a stipulation at any time the department determines the department agent is validating the waiver or stipulation without adequate information.

Comm 67.06 Issuance of certificate, waiver or stipulation. (1) GENERAL. (a) *Parcels per document.* No certificate of compliance, waiver or stipulation may be issued using more than one legal description or parcel per document.

(b) *Forms and processing materials.* Only the department or department agent may place transfer authorization stamps on waivers and stipulations.

Note: Department agents may obtain copies of transfer authorization stamps from: Department of Commerce, Safety and Buildings Division, Rental Weatherization Program, P.O. Box 7302, Madison, WI 53707, telephone (608) 266-2780, TTY (608) 264-8777 or at our web site at: www.commerce.wi.gov/SB.

(c) *Recordation.* Pursuant to s. 101.122 (6), Stats., a register of deeds shall not accept for recording, any deed or other document of transfer of real estate which includes a rental unit that is not excluded as specified in s. Comm 67.02 (2) unless the deed or document is accompanied by a certificate of compliance, a waiver, a stipulation, a satisfaction of compliance or evidence of a previously recorded document of these types. The register of deeds shall record the certificate of compliance, waiver, stipulation, or satisfaction of compliance.

(2) CERTIFICATE OF COMPLIANCE. (a) *Rental unit in compliance.* When an inspector determines the rental unit conforms to the energy efficiency requirements or the performance requirements specified in this chapter, the inspector shall do all of the following:

1. Review for completeness and validate the certificate of compliance. The certificate of compliance is valid for the life of the building.

2. Issue the certificate of compliance within 10 business days of the determination that the building conforms to the energy efficiency requirements.

3. File a copy of the certificate of compliance with the department within 15 business days of determination that the building conforms to the energy efficiency requirements.

Note: Certificate of compliance stamps, multi-part forms and informational brochures are available from: Department of Administration, Bureau of Document Services, Document Sales and Distribution, P.O. Box 7840, Madison, WI 53707-7840, telephone (608) 266-3358, fax (608) 261-8150 or web site at: www.doa.wi.gov.

(b) *Rental unit not in compliance.* 1. 'Inspector's responsibilities.' a. Except as specified in subd. 1. b., when an inspector determines that a rental unit does not conform to the energy efficiency requirements specified in this chapter, the inspector shall notify the owner in writing of the energy conservation measures required to make the rental unit comply with the requirements specified in this chapter. The inspector shall notify the owner with the energy conservation measures required for compliance within 10 business days of the completion of the inspection.

b. If the effective date of any rule in this chapter occurs after the inspection report was issued, only the energy conservation measures specified in the inspection report shall be corrected for compliance. If the code requirements in effect at the time of initial inspection are changed and the current code requirements are less restrictive, the current code may be applied for compliance.

c. A certificate of compliance shall be issued by the inspector or department when the rental unit is in compliance with the energy conservation measures identified by the initial inspection or the current code if less restrictive.

2. 'Owner's responsibilities.' If a rental unit does not comply with the energy efficiency requirements specified in this chapter, the owner may record a stipulation as specified under sub. (4).

(c) *Revocation of certificate.* The department may revoke any certificate of compliance if the certificate of compliance was obtained through fraud or deceit or if the owner has willfully refused to comply with a stipulation issued under sub. (4).

(3) **WAIVER.** (a) *Request for waiver.* 1. The owner of a rental unit may request a waiver from the energy efficiency requirements by submitting to the department or a department agent department form SBD-7116, waiver request form, if the owner verifies the rental unit is scheduled for demolition within 2 years.

2. The owner shall notify the department in writing the date that the building was demolished.

(b) *Waiver issuance.* 1. The department or a department agent shall review for completeness and validate a waiver. When a department agent issues a waiver, a copy of the waiver shall be filed with the department within 15 business days.

2. The waiver shall be conditioned on the demolition of the rental unit within 2 years of the date the waiver is validated. After a waiver expires, the rental unit may not be transferred to a new owner.

(c) *Failure to demolish.* If demolition does not occur within 2 years of issuance of the waiver, the department may do one of the following:

1. Order demolition of the rental unit no later than 90 days after the order. The owner shall notify the department in writing of the date the building was demolished.

2. Order the owner to bring the rental unit into compliance with the energy efficiency requirements specified in this chapter no later than 90 days after the order is issued. The owner shall notify the department when the energy efficiency measures have been installed, and apply for an inspection as specified under s. Comm 67.05.

(4) STIPULATION. (a) *Stipulation requirements.* 1. The owner of a rental unit shall present to the register of deeds for recording department stipulation form, SBD-7115, which is signed by the owner and the department. The stipulation shall state that the owner of the rental unit is required to bring the rental unit into compliance with the energy conservation requirements no later than one year after the date the stipulation is validated by the department or department agent.

2. Where a stipulation is issued by a department agent, a copy shall be filed with the department no later than 15 business days of the validation of the stipulation.

3. An inspector or the department shall issue a certificate of compliance to the owner for a rental unit that complies with either the code requirements in effect at the time the stipulation was validated or with the requirements in place at the time of inspection, at the option of the owner.

(b) *Transfer of stipulation with property.* An owner of a rental unit, who has agreed to a stipulation, may transfer both the property and the stipulation to another person within the initial one-year period. The owner shall sign the original stipulation or a certified copy of the original stipulation and send a copy of this stipulation to the department. The transferred stipulation may not be extended beyond the original one-year agreement.

(c) *Stipulation inspection.* 1. When the energy conservation measures have been installed, the owner shall request an inspection from an inspector as specified in s. Comm 67.05 (2).

2. When an inspector determines that a rental unit complies with the prescriptive energy efficiency requirements or the performance requirements specified in the code in effect when the stipulation was validated or with the current requirements in this chapter, the inspector shall issue the certificate of compliance in accordance with sub. (2).

3. If upon inspection or evaluation, it is determined that the rental unit does not conform to the conditions specified in the stipulation or with the current requirements of this chapter, the inspector shall notify the owner in writing, specifying the energy conservation measures necessary for compliance. A certificate of compliance as specified in sub. (2) shall be issued after reinspection and all the required energy conservation measures have been installed.

(d) *Owner occupancy at termination of existing lease.* A stipulation shall be validated by the department or department agents to owners who wish to occupy the rental unit on the termination of an existing lease.

(5) SATISFACTION OF COMPLIANCE. The department shall issue a satisfaction of compliance, if the owner can establish one of the following exceptions from compliance with the energy efficiency requirements:

(a) The building or facility does not fall under the scope of this chapter as specified under s. Comm 67.02.

(b) A transfer exclusion applies as specified in s. Comm 67.04 (21).

(c) Verification of an existing certificate of compliance is provided and a fee is submitted in accordance with s. Comm 2.35 (2).

(d) Other exceptions approved by the department.

Comm 67.07 Petition for variance. The department shall consider and may grant a variance to a requirement of this chapter in accordance with ch. Comm 3.

Note: Chapter Comm 3 requires the submittal of a petition for variance form, SBD-9890, and a fee, and that an equivalency is established in the petition for variance which meets the intent of the rule being petitioned. Chapter Comm 3 also requires the department to process regular petitions within 30 business days and priority petitions within 10 business days.

Comm 67.08 Penalties. Penalties shall be assessed in accordance with s. 101.122 (7), Stats.

Note: Section 101.122 (7) reads as follows: “PENALTY. (a) *Inspectors.* Any inspector falsifying a certificate issued under sub. (4) shall have his or her certification revoked and may be required to forfeit not more than \$500 per dwelling unit in the rental unit for which the certificate is issued.

(b) *New owners.* Any person who offers documents evidencing transfer of ownership for recordation and who, with intent to evade the requirements of this section, falsely states on the form under s. 77.22 (1) that the real property involved does not include a rental unit may be required to forfeit not more than \$500 per dwelling unit in the rental unit being transferred.

(c) *Waiver.* Any person who fails to comply with the requirements of a waiver issued under sub. (4) (b) may be required to forfeit not more than \$500 per dwelling unit in the rental unit for which the waive is issued.

(d) *Stipulation.* Any person who fails to comply with the requirements of a stipulation under sub. (4) (c) may be required to forfeit not more than \$500 per dwelling unit.

(e) *Citation.* If a person fails to comply with the requirements of a stipulation under sub. (4) (c) by the date specified in the stipulation, the department or the city, village or town that entered into the stipulation with the person may, anytime after the first day of the first month beginning after the date specified in the stipulation, proceed under s. 778.25 to recover a forfeiture under par. (d). A person may be charged with multiple violations under par. (d) if each violation covers a period of at least 90 consecutive days of continued failure to comply, if there is no overlap between periods and if each period begins after the date by which a rental unit was to have been brought into compliance.”

Subchapter IV – Rental Unit Energy Efficiency Requirements

Comm 67.10 Application. Any rental unit covered by this chapter shall meet either the minimum prescriptive energy efficiency requirements specified in s. Comm 67.11 or the performance requirements specified in s. Comm 67.12.

Comm 67.11 Energy efficiency requirements. (1) INSULATION. (a) *R-value.* For the purpose of this section, the R-value applies only to the amount of insulation. The R-value does not refer to the total overall R-values of all components of an assembly such as framework, finish materials or air films.

(b) *Insulation of attic areas and access panels or doors.* Insulation shall be provided in all accessible areas as specified in Table 67.11-1.

| TABLE 67.11-1 INSULATION OF ATTICS AND ACCESS PANELS OR DOORS | | | | |
|--|---|---|--|---|
| | If insulation of an R-Value less than or equal to R-5 is present | If insulation of an R-Value greater than R-5, but less than or equal to R-10 is present | If insulation of an R-Value greater than R-10, but less than R-19 is present | If insulation of an R-Value of R-19 or greater is present |
| Attics (a) (b) (c) | Insulation shall be added to bring the total insulation level to R-38 | Insulation shall be added to bring the total insulation level to R-38 | R-19 insulation shall be added to the existing insulation | No additional insulation is required |
| Horizontal Access Panels or Doors to Attics or Other Vented Spaces | Insulation shall be added to bring the total insulation level to R-19 | Insulation shall be added to bring the total insulation level to R-19 | Insulation shall be added to bring the total insulation level to R-19 | No additional insulation is required |
| Vertical Access Panels or Doors to Attics or Other Vented Spaces | Insulation shall be added to bring the total insulation level to R-5 | No additional insulation is required | No additional insulation is required | No additional insulation is required |
| (a) Wall and ceiling cavities open to the attic area shall be insulated. (b) If knob and tube wiring is present, insulation shall be installed in such a way as not to cause a hazard. The owner may wish to consult the municipal inspector or an insulation contractor for the correct insulation procedure. (c) If floor boards are present, insulation shall be installed over the floor boards to the required R-value or the cavities below the floor boards shall be completely filled with insulation. | | | | |

(c) *Insulation of box sills.* Insulation shall be provided in all accessible areas that form a portion of the thermal envelope as specified in Table 67.11-2.

| TABLE 67.11-2 INSULATION OF BOX SILLS | | | |
|--|---|---|--|
| | If insulation of an R-Value less than or equal to R-2.5 is present | If insulation of an R-Value greater than R-2.5, but less than or equal to R-10 is present | If Insulation of an R-Value greater than R-10 is present |
| Box Sills ^(a) ^(b) | Insulation shall be added to bring the total insulation level to R-19 | R-11 insulation shall be added to the existing insulation | No additional insulation is required |
| ^(a) Box sills that separate the rental unit from a garage which is unvented or is vented with outside air shall be insulated, if accessible ^(b) Foam plastic insulation may be used in the box sill of the basement or ground floor, above the bottom of the floor joists without the required thermal barrier. | | | |

(d) *Insulation of ducts and pipes.* Insulation shall be provided in all accessible vented crawl spaces and attic spaces as specified in Table 67.11-3.

| TABLE 67.11-3 INSULATION OF DUCTS AND PIPES | |
|--|-------------------------------------|
| BUILDING ELEMENT | TOTAL AMOUNT OF INSULATION REQUIRED |
| Heating supply and return ducts located in vented crawl spaces and attic spaces | R-5 |
| Steam heating supply and return pipes located in vented crawl spaces and attic spaces | R-4 |
| Hydronic heating supply and return pipes located in vented crawl spaces and attic spaces | R-2 |
| Domestic water heater pipes: Circulating, along entire accessible length in vented crawl spaces | R-2 |

(2) WINDOWS AND DOORS. (a) *General*. Except as specified in sub. (3), windows and doors shall comply with this subsection.

(b) *Windows*. 1. Except as provided in subd. 2., windows shall be double-glazed or shall be provided with exterior or interior storm windows. The glazed or glass areas of storm windows shall be caulked or sealed to minimize air leakage.

2. a. Storefront windows are not required to be double-glazed.

b. When an exterior storm window is installed over an openable window required for natural ventilation, a portion of the storm window shall be openable from the inside.

c. Windows located in boiler or furnace rooms do not need to be double-glazed or equipped with storm windows.

d. Windows located in basement areas that are not habitable rooms may be permanently sealed and insulated in lieu of double-glazing or installing exterior or interior storm windows.

(b) *Doors*. Patio doors shall be insulated, double-glazed or equipped with storm doors. Where no vestibule exists, inward swinging exterior doors shall be insulated, double-glazed or equipped with storm doors. Door lites need not be double-glazed if they are within the door leaf. All storm doors shall be equipped with self-closing devices. All accessible joints and cracks in storm doors shall be caulked or otherwise sealed.

(3) BLOWER DOOR TEST. (a) Except as specified in par. (b), storm windows and doors are not required when blower door testing shows that the natural air change rate of the thermal envelope is 1.0 air change per hour or less.

Note: Blower door testing may be conducted in accordance with ASTM E 779, "Standard Practice for Measuring Air Leakage by the Fan Pressurization Method."

(b) Testing done on any date prior to certification shall be acceptable, provided no change has occurred to the building that would impact the test results in a negative or indeterminate way.

(4) MOISTURE CONTROL. (a) *Ceilings*. Ventilation shall be provided above any ceiling or attic insulation. The free area of ventilation shall be at least 1/300 of the horizontal area. Where overhangs with soffits are provided, one-half of the free-area shall be at the eaves and one-half in the upper one-third of the roof or gable. Where it is impractical to install gravity venting, power vent systems may be used to provide equivalent ventilation. Power vents shall be connected to a humidistat.

(b) *Crawl spaces.* Ventilation shall be provided in the crawl space. The area of ventilation shall be at least 1/300 of the floor space. The area of ventilation shall be distributed equally to at least 2 openings in the foundation wall. The openings shall be located to provide cross ventilation. Where accessible, a vapor barrier shall be applied to cover the exposed earth.

(5) **EQUIPMENT.** (a) *Combustion air.* Combustion air openings shall be unobstructed.

(b) *Flow restricters.* All showers heads shall be equipped with flow restricters rated at three gallons per minute or less.

Comm 67.12 Performance energy efficiency requirements. (1) GENERAL. The performance energy efficiency requirements specified in subs. (2) to (4) may be applied as alternative requirements to s. Comm 67.11.

(2) **SPACE HEATING ENERGY USE.** Buildings shall have an annual space heating energy use, in BTUs per square foot, per heating degree-day, which is no greater than the value shown in Table 67.12. The annual heating energy use shall be determined in accordance with sub. (3) or (4).

| TABLE 67.12 MAXIMUM ANNUAL SPACE HEATING ENERGY USE Units (BTUs per square foot, per heating degree day) | | |
|---|---|--|
| Number of Dwelling Units | Certificate of Compliance Issued Prior to Sale¹ | Certificate of Compliance Issued after Sale¹ |
| 8 or Fewer Dwelling Units | 9.0 | 7.0 |
| 9 or More Dwelling Units | 7.0 | 5.0 |

¹Refers to property transfers after March 1, 1999.

(3) **CALCULATION FROM FUEL USE DATA.** The annual space heating energy use may be calculated from one year of representative fuel use data using department form, SBD-10647 or an equivalent method approved by the department prior to its use. The building area used in the calculation shall be the total gross floor area. The gross floor area is measured from the exterior faces of exterior walls or from the centerline of walls separating buildings, excluding covered walkways, open roofed-over areas, porches and similar spaces, pipe trenches, exterior terraces or steps, chimneys, roof overhangs, and similar features. The determination of annual space heating energy use per square foot shall be performed by or verified by an inspector.

(4) MEASUREMENT OF BUILDING PERFORMANCE. The annual space heating energy use may be determined in accordance with field measurement methods approved by the department prior to use. At a minimum, the method must be nationally recognized, meet a national standard, or be demonstrated to have equivalent accuracy.

Note: The department approves use of the Wisconsin Energy Bureau Home Energy Rating System for buildings of four dwelling units or less provided a blower door test is used to estimate the building infiltration. Information demonstrating the accuracy of other field measurement methods may be submitted to the department for review.

EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro.), Stats., these rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register.

File ref: Comm 67 adoption draft