



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 01-109

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 September 1998.]

2. Form, Style and Placement in Administrative Code

- a. In s. Comm 69.1101 (1), the word “shall” is unnecessary and should be deleted.
- b. Section Comm 62.1103 (2) includes an unnumbered introduction that does not grammatically lead into the following subunits. Consequently, the first sentence should be numbered as par. (a) and the remaining paragraphs and internal cross-references should be renumbered accordingly. The entire rule should be reviewed for this recurring structural problem.
- c. Section Comm 62.1103 (2) “(1)” should be shown as s. Comm 62.1103 (2) “(L).”
- d. References to “Groups” and building “Types” are used throughout; the agency may wish to indicate in the analysis where these terms are defined.
- e. Throughout the rule, the titles of sections are used as part of the substance of the text, especially in sections dealing with exceptions to general rules. This aspect of the rule should be reviewed prior to promulgation. Additionally, when a title is used as part of the substance of the text, the rule often follows with an incomplete sentence. This problem should be remedied, unless the incomplete sentence is a grammatical conclusion of introductory material. [See, for example, ss. Comm 62.1107 (4) (b) 2. and 62.1109 (3) (b) 2.]

f. In s. Comm 62.1107 (5), and elsewhere in the rule, the draft provides that actions must be taken “in accordance with subs. 1. and 2.” when the term “in accordance with all of the following” would be a more direct reference. [See comment b., above.]

g. In s. Comm 62.1107 (5) (b) 2. b. and elsewhere in the rule, the phrase “may be reduced” should be used instead of “is permitted to be reduced.”

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

a. In s. Comm 62.1102 (7), unless the term “federal Fair Housing Act” is defined, a citation to the federal statutes should be included.

b. In s. Comm 62.1109 (2) (c), the notation “subd.” should be replaced by the notation “subpar.”

c. In s. Comm 62.1110 (1) (b), it appears that the correct cross-reference is “s. Trans 200.07.”

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

a. In s. Comm 62.1101 (2) (a), is the provision intended to apply to all buildings or only certain ones?

b. Use of the term “herein” in s. Comm 62.1102 (intro.) should be avoided. The introduction can be replaced with the following: “In ss. Comm 62.1101 to 62.1110:”.

c. Section Comm 62.1103 requires that, unless excepted in the rule, all buildings and structures “shall be accessible to people with disabilities.” However, “accessible” is defined in s. Comm 62.1102 (1) to mean a building that “complies with 62.1101 to 62.1110.” This is somewhat circular; the agency may wish to be more specific and descriptive in the definition of the term “accessible.”

d. The title to s. Comm 62.1103 (1) could be changed to “WHERE ACCESSIBILITY IS REQUIRED” for increased clarity. Also, it is not clear what “Scoping” in the title is intended to mean.

e. Section Comm 62.1103 (2) (b) should be drafted as an exception to be consistent with the other provisions in the subsection.

f. In s. Comm 62.1103 (2) (c), does “accessible route” refer to interior routes or also to exterior routes? The defined term “accessible route” in s. Comm 62.1102 (2) does not help to clarify the meaning of the term with regard to this issue. Further, the rule appears to use “accessible” in some cases where “accessible route” may be the intended requirement, such as in the provision related to dining areas in s. Comm 62.1108 (2) (e). This aspect of the rule should be carefully reviewed to assure it reflects the intent of the agency.

g. In s. Comm 62.1103 (2) (e) 1., what type of access is required to “paved work areas”? Does this requirement apply to buildings such as barns? As drafted, this requirement does not apply only to areas “open to the public,” it applies to all paved work areas. If this is not the intent, the provision should be clarified.

h. In s. Comm 62.1103 (2) (e) 2., it is not clear what type of “access” must be provided to the garages and carports.

i. In s. Comm 62.1104 (2) (b), a comma should be inserted after the word “them.”

j. The references to “rehabilitation facilities” and “outpatient physical therapy facilities” in s. Comm 62.1106 (3) could be problematic without specific definitions or description of such facilities. For example, do the parking requirements in the section apply only to single purpose facilities or to services provided in a multi-purpose facility? This should be reviewed.

k. The rule addresses the number and location of “accessible” parking places, but does not specify the design or configuration of such spaces. Is this addressed in other agency rules or codes? If so, could a reference be provided in a note following this section?

l. In s. Comm 62.1106 (6), the terms “licensed medical” and “long-term care” are used but not defined. Unless defined elsewhere, a definition or description of the terms would be helpful.

m. What level of “accessibility” is required under s. Comm 62.1107 (3)? Does it apply to all specified spaces?

n. In s. Comm 62.1107 (4) (a), the last phrase is ambiguous. Does the provision require connections from each accessible unit, *each* Type A unit and *each* Type B unit that is within the building or facility to the exterior and interior spaces and facilities that serve the individual units? Or, should the phrase “Type A unit and Type B unit” be replaced by the phrase “with Type A and Type B units”?

o. What is the intended meaning of the term “finished ground level” in s. Comm 62.1107 (4) (b)?

p. Under s. Comm 62.1107 (5) (b) 1., the application of the “50%, but not less than one” standard when applied to dwelling units and sleeping units is unclear. Does the provision require at least one, for example, or at least one of each? Does it require 50% of all units to be accessible, or 50% of each type? This should be clarified. The same problem exists elsewhere in the rule; for example, see s. Comm 62.1107 (5) (a) 1., (c) 1. and (e).

q. In s. Comm 62.1107 (7) (b), it appears that the second-to-last comma should be replaced by the word “and.” In sub. (7) (c), it appears that the word “be” should be inserted before the second occurrence of the word “occupied.”

r. As drafted, the exceptions listed in s. Comm 62.1107 (7), including “site impracticality,” are not available or applicable to other sections of the rule. Are the “variance procedures” referenced in s. Comm 62.1107 (7) (d) available for other accessibility determinations? If so, this could be noted in the analysis prepared by the agency or in the text of the rule.

s. Section Comm 62.1108 appears to be substantially more prescriptive than the earlier sections of the code. Are these provisions derived from a different source? If so, that could be noted in the analysis to aid in achieving compliance.

t. Does s. Comm 62.1108 (2) (d) apply only to “fixed seating areas” or to all “areas” with a capacity of 50 or more persons? As drafted, it is not clear.

u. In s. Comm 62.1108 (2) (e), the requirement that the “total floor area allotted” for seating and tables is not clear as to what is required. Further, is it intended that the requirements would change if the tables used were not “fixed” so that the exception in s. Comm 62.1108 (2) (e) 1. b. does not apply?

v. Under s. Comm 62.1109, it is not specified as in s. Comm 62.1108 that the requirements are “in addition” to those requirements specified in ss. Comm 62.1101 to 62.1110. Does that mean that those requirements do not apply, and for the facilities specified in s. Comm 62.1109, only the requirements in that section apply?

w. It is not clear why ss. Comm 62.1109 (10) and (11) are placed in this section and are not included in s. Comm 62.1108.

x. What is the intended standard for determination of “accessible” under s. Comm 62.1109 (12) (a) to (f)?

y. The term “recreational facilities” is not clearly defined or described in either s. Comm 62.1109 (14) or s. Comm 62.1107 (3) (b). Also, the standard for determination of “accessible” is not clear from the rule.

z. In s. Comm 62.1109 (14) (c), the phrase “falling within the purview of” should be replaced by the phrase “described in.”

aa. Under s. Comm 62.1110 (1), it is not clear whether the signs are required or permitted because of the reference to “at any of the following locations.” Should the rule provide that the signs be identified by the International Symbol of Accessibility at “all” the following locations?

ab. The directional signage requirements in s. Comm 62.1110 (2) could be fairly complex, particularly if the “nearest like accessible element” is not on premises owned by the same entity. This provision should be reviewed for clarity and to assure that compliance can be effectively monitored.

ac. In s. Comm 62.1110 (2) (e), the phrase “signage shall be provided” is unnecessary and should be deleted in order to maintain consistent structure with pars. (a) to (d).

ad. Does the term “areas of refuge” in s. Comm 62.1103 (3) (c) need to be defined to assure a clear understanding of the term?

ae. The context and applicability of s. Comm 62.3408 (5) is unclear. This should be more completely described in the final rule.

af. The agency may wish to include an “initial applicability” section in the rule to allow for a clear indication of which standards will apply to plans filed before the effective date of the rule.