

Clearinghouse Rule 07-005

SECTION 1. Chapter Comm 200 is created to read:

Chapter Comm 200

SMALL BUSINESS ENFORCEMENT DISCRETION

Comm 200.01 Purpose. The purpose of this chapter is to set forth the extent of discretion the department will exercise in enforcement actions undertaken to obtain compliance with department rules and guidelines, by a small business.

Note: This chapter does not supercede the department's general statutory authority to exercise discretion in enforcement of rules in order to gain compliance by any business.

Comm 200.02 Policy. The department acknowledges the objectives under s. 895.59, Stats., as an obligation to evaluate and consider the potential impacts on small businesses with regard to the department's enforcement actions. This obligation is shared by all divisions of the department.

Comm 200.03 Definitions. In this chapter:

(1) "Department" means the department of commerce.

(2) "Small business" has the meaning given in s. 895.59 (1) (b), Stats.

Note: Section 895.59(1) (b), Stats., reads as follows: " 'Small business' has the meaning given in s. 227.114 (1), but does not include an entity, as defined in s. 48.685 (1) (b) or 50.065 (1) (c)."

Note: Section 227.114 (1), Stats., reads in part, as follows: " 'Small business' means a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs 25 or fewer full-time employees or which has gross annual sales of less than \$5,000,000."

Note: Section 48.685 (1) (b), Stats., reads as follows: " 'Entity' means a child welfare agency that is licensed under s. 48.60 to provide care and maintenance for children, to place children for adoption or to license foster homes or treatment foster homes; a foster home or treatment foster home that is licensed under s. 48.62; a group home that is licensed under s. 48.625; a shelter care facility that is licensed under s. 938.22; a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13 (14); a day care provider that is certified under s. 48.651; or a temporary employment agency that provides caregivers to another entity."

Note: Section 50.065 (1) (c), Stats., reads as follows: " 'Entity' means a facility, organization or service that is licensed or certified by or registered with the department [of health and family services] to provide direct care or treatment services to clients. 'Entity' includes a hospital, a personal care worker agency, a supportive home care service agency, a temporary employment agency that provides caregivers to another entity and the board on aging and long-term care. 'Entity' does not include any of the following:

1. Licensed or certified child care under ch. 48.
2. Kinship care under s. 48.57 (3m) or long-term kinship care under s. 48.57 (3n).
3. A person certified as a medical assistance provider, as defined in s. 49.43 (10), who is not otherwise approved under s. 50.065 (1) (cm), licensed or certified by or registered with the department [of health and family services].
4. An entity, as defined in s. 48.685 (1)(b).
6. A public health dispensary established under s. 252.10."

Comm 200.10 Enforcement of rules. (1) Except as provided in sub. (2), the department shall exercise the following discretion in the enforcement of rules and guidelines with respect to an entity that identifies itself as a small business:

(a) The department shall provide for a reduction or waiver of penalties, upon voluntary disclosure by the small business, of actual or potential violations of rules or guidelines, when the penalties are under the direct control of the department.

(b) The department may consider the violator's ability to pay when determining the amount of any monetary penalty, when the monetary penalty is under the control of the department.

Note: Most monetary penalties are determined and imposed by the judicial system. The department may only determine the amount of a monetary penalty that is imposed by citation or administrative forfeiture under specific statutory authority.

Note: Under s. 101.02 (6), Stats., the department may grant an extension of time to any entity, regardless of size, as may be reasonably necessary to achieve compliance with a rule or guideline.

(2) The department will not exercise discretion in the enforcement of a rule or guideline with respect to a small business in any of the following situations:

(a) The department discovers the violation before the small business discloses the violation.

(b) The violation is disclosed after a department audit or inspection of the small business has been scheduled.

(c) The violation was identified as part of the monitoring or sampling requirements that are consistent with the requirements under an existing permit.

(d) The violation results in a substantial economic advantage for the small business.

(e) The small business has repeatedly violated the same rule or guideline.

(f) The violation may result in an endangerment to the environment, or to public health or safety.

(3) The department's responsibility for exercising the discretion under this chapter shall begin after the corresponding small business entity informs the department that the entity meets the definition of small business under s. Comm 200.03 (2) and that the situations referenced in sub. (2) do not apply.

(END)

EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro.), Stats., these rules shall become effective on the first day of the month commencing after the date of publication in the Wisconsin administrative register.

File reference: Comm 200/rules 2006 PH