

Chapter SPS 306

SMALL BUSINESS ENFORCEMENT DISCRETION

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Note: Chapter Comm 200 was renumbered chapter SPS 500 under s. 13.92 (4) (b) 1., Stats., Register December 2011 No. 672. **Chapter SPS 500 was renumbered chapter SPS 306 under s. 13.92 (4) (b) 1., Stats., Register November 2017 No. 743.**

SPS 306.01 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 limit the department's general statutory authority, such as under s. 101.02, Stats., to exercise discretion in the enforcement of rules in order to gain compliance by any business.

History: CR 07-005: cr. Register March 2008 No. 627, eff. 4-1-08.

SPS 306.02 Policy. The department acknowledges the objectives under s. 227.04, 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.

History: CR 07-005: cr. Register March 2008 No. 627, eff. 4-1-08; CR 14-019: am. Register August 2014 No. 704, eff. 9-1-14.

SPS 306.03 Definitions. In this chapter:

(1) "Department" means the department of safety and professional services.

(1m) "Minor violation" has the meaning given in s. 227.04 (1) (a).

Note: Section 227.04 (1) (a) of the Statutes reads as follows: "'Minor violation' means a rule violation that does not cause serious harm to the public, is committed by a small business, and the violation is not willful, the violation is not likely to be repeated, there is a history of compliance by the violator, or the small business has voluntarily disclosed the violation."

(2) "Small business" has the meaning given in s. 227.114 (1), Stats.

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."

History: CR 07-005: cr. Register March 2008 No. 627, eff. 4-1-08; correction in (1) made under s. 13.92 (4) (b) 6., Stats., Register December 2011 No. 672; CR 14-019: cr. (1m), am. (2) Register August 2014 No. 704, eff. 9-1-14; correction in numbering made under s. 13.92 (4) (b) 1., Stats., Register August 2014 No. 704.

SPS 306.04 Exercise of discretion. The department may exercise leniency in the enforcement of rules against small businesses, as compared to other regulated businesses if all of the following apply:

(1) The department has statutory authority to exercise discretion.

(2) The exercise of discretion, in favor of small business, is not contrary to the situations set out in s. 227.04 (2m) (c), Stats., or other applicable law.

(3) The rule violation committed by the small business is a minor violation.

History: CR 14-019: cr. Register August 2014 No. 704, eff. 9-1-14.

SPS 306.10 Enforcement of rules. The department shall consider the following criteria for allowing discretion in the enforcement of rules and the reduction or waiver of penalties with respect to an entity that identifies itself as a small business, when the penalties are under the direct 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.

(1) The difficulty and cost of compliance with the rule by the small business.

(2) The financial capacity of the small business, including the ability of the small business to pay the amount of any penalty that may be imposed.

(3) The compliance options available, including options for achieving voluntary compliance with the rule.

(4) The level of public interest and concern.

(5) The opportunities available to the small business to understand and comply with the rule.

(6) Fairness to the small business and to other persons, including competitors and the public.

History: CR 07-005: cr. Register March 2008 No. 627, eff. 4-1-08; CR 14-019: r. and recr. Register August 2014 No. 704, eff. 9-1-14.