



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 10-003

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

1. Statutory Authority

Section 895.59 (1) (b), Stats., requires agencies to promulgate rules governing the reduction or waiver of penalties for voluntary disclosure, by a small business, of actual or potential violations of rules or guidelines. Section DHS 19.04 provides for a reduction or waiver process for violations of federal and state statutes and federal regulations. What statutory authority exists for extending the discretionary enforcement authority of the department to enforcement of federal statutes and regulations and state statutes? [See also s. DHS 19.04 (1).]

2. Form, Style and Placement in Administrative Code

a. On the second page of the rule preface, both occurrences of the notation “ss.” should be replaced by the notation “s.” since the statutes are referenced in the disjunctive form.

b. In s. DHS 19.02, the phrase “These rules apply” should be replaced by the phrase “This chapter applies.”

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

a. In the rule preface comparison of Iowa law, the comma should be deleted.

b. In the rule preface summary of factual data and analytical methodologies, it appears that the sentence would be more clear if the phrase “the limitations if any of” were deleted.

c. Section DHS 19.04 (2) should be reworded to reflect that the department will follow applicable law and in instances where it has the authority to provide a reduction or waiver of penalty of its own rules and guidelines, it will consider the factors listed.

d. Section DHS 19.04 (3) (a) should be amended to state that a reduction or waiver of any penalty “may not be inconsistent” with any requirements established by state or federal statute or regulation.

e. In the first sentence of s. DHS 19.05, “will not” should be changed to “may not” so the sentence reads: “The department may not exercise discretion under s. DHS 19.04 (1) in the enforcement of a rule or guideline under any of the following circumstances:”.