

Chapter DHS 19

DISCRETIONARY ENFORCEMENT OF RULES AND GUIDELINES AGAINST SMALL BUSINESSES

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DHS 19.01 Authority and purpose. This chapter is promulgated under the authority of s. 895.59, Stats., to describe the discretion the department may exercise in enforcement actions against small businesses regulated by the department.

History: CR 10–003: cr. Register May 2010 No. 653, eff. 6–1–10.

DHS 19.02 Applicability. This chapter applies to the department and small businesses regulated by the department.

History: CR 10–003: cr. Register May 2010 No. 653, eff. 6–1–10.

DHS 19.03 Definitions. In this chapter:

(1) “Department” means the department of health services.

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

Note: Under s. 895.59, Stats., and this chapter a small business does not include an entity as defined in s. 48.685 (1) (b) or 50.065 (1) (c), Stats., which is subject to the caregiver law.

History: CR 10–003: cr. Register May 2010 No. 653, eff. 6–1–10.

DHS 19.04 Use of discretion in enforcement.

(1) The department may waive or reduce a penalty otherwise applicable to a small business that voluntarily discloses an actual or potential violation of a department rule or guideline and requests a waiver or reduction as a small business, if the department is not prohibited under s. DHS 19.05 from reducing or waiving the penalty.

(2) In exercising discretion under sub. (1), the department will follow the applicable department rule or guideline when taking an enforcement action against a small business, except that, on a case-by-case basis, the department may use discretion to reduce or waive a penalty based on consideration of the history of violations, the type of business, the severity of the violation and its impact on the public’s health safety and welfare, state or federal statutory requirements for enforcement, and any other relevant factor.

(3) (a) A reduction or waiver of any penalty may not be inconsistent with any requirements established by state or federal statute or regulation.

(b) In determining a reduction in a monetary penalty, the department may consider the small business’s ability to pay.

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DHS 19.05 Limitations on the use of discretion. 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:

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

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

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

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

(5) The small business has repeatedly violated the same statute, rule or guideline.

(6) The violation may result in imminent endangerment to the environment or to public health or safety.

(7) A state or federal statute, federal regulation or department rule prohibits the department’s exercise of discretion.

(8) The business is operating without a certificate, permit, or license.

(9) The business fails to provide the department with credible and verifiable information that it is a small business.

(10) The violation was willful.

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