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Clearinghouse Rule 08-015

**PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF FINANCIAL INSTITUTIONS
ADOPTING RULES**

2 The Wisconsin Department of Financial Institutions proposes an order to create ch. DFI-Gen 2
3 relating to small business enforcement discretion.

Analysis Prepared by the Department of Financial Institutions.

Statute(s) interpreted: s. 895.59, Stats.

Statutory authority: ss. 895.59(2), and 227.11(2), Stats.

Related statute or rule: None.

Explanation of agency authority: Pursuant to s. 895.59(2), Stats., the legislature directed that the department promulgate a rule that discloses in advance the discretion that the agency will follow in the enforcement of rules and guidelines against a small business.

Summary of proposed rule: The objective of the rule is create ch. DFI—Gen 2. Pursuant to s. 895.59(2), Stats., the legislature directed that the department promulgate a rule that discloses in advance the discretion that the agency will follow in the enforcement of rules and guidelines against a small business. Pursuant to s. 895.59(2), Stats., the purpose of this rule is to disclose the discretion the department will follow in the enforcement of rules and guidelines against a small business. The rule sets forth situations when the department shall and shall not exercise discretion in the enforcement of rules or guidelines against a small business.

Summary of and preliminary comparison with existing or proposed federal regulation: None known.

Comparison with rules in adjacent states: None known.

Summary of factual data and analytical methodologies: The department reviewed the requirements of s. 895.59, Stats., and similar rules promulgated by other Wisconsin state agencies.

Analysis and supporting documentation used to determine effect on small business: The rule sets forth, as mandated by the legislature in s. 895.59, Stats., existing department policies. The rule creates no additional requirements on small business.

Agency Contact Persons

To obtain a copy of the proposed rule or fiscal estimate at no charge, to submit written comments regarding the proposed rule, for questions regarding the agency's internal processing of the proposed rule, and for substantive questions on the rule, contact Mark Schlei, Deputy General Counsel, Department of Financial Institutions, Office of the Secretary, P.O. Box 8861, Madison, WI 53708-8861, tel. (608) 267-1705, e-mail mark.schlei@dfi.state.wi.us. A copy of the proposed rule may also be obtained and reviewed at the Department of Financial Institution's website, www.wdfi.org. Written comments regarding the proposed rule may also be submitted via the department's website contact page, e-mail the secretary. Written comments must be received by the conclusion of the department's hearing regarding the proposed rule.

Pursuant to the statutory authority referenced above, the Wisconsin Department of Financial Institutions adopts the following:

4 SECTION 1. Ch. DFI—Gen 2 is created to read:

5 **CHAPTER DFI-CCS 2**

6 **SMALL BUSINESS ENFORCEMENT DISCRETION**

7 **DFI—Gen 2.01 Purpose.** The purpose of this chapter is to disclose, pursuant to s. 895.59,
8 Stats., in advance the discretion the department will follow in the enforcement of rules and
9 guidelines against a small business.

10 **DFI—Gen 2.02 Definitions.** In this chapter:

11 (1) "Department" means the department of financial institutions.

12 (2) "Small business" has the meaning set forth ins. 895.59(1)(b), Stats.

13 **DFI—Gen 2.03 Discretion.** (1) Except as provided in sub. (2), the department shall exercise the
14 following discretion in the enforcement of rules and guidelines against a small business:

15 (a) The department shall provide a reduction or waiver of penalties for a voluntary disclosure, by
16 a small business, of actual or potential violations of rules or guidelines.

17 (b) The department may consider the small business's ability to pay when determining the
18 amount of any monetary penalty, assessment, or surcharge.

19 (2) The department shall not exercise discretion in the enforcement of rules or guidelines against
20 a small business in any of the following situations:

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

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

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

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

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

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

30 **Effective date.** This rule takes effect as provided in s. 227.22 (2) (intro.), Stats.

Dated: _____ Agency: _____
