Chapter SPS 500

SMALL BUSINESS ENFORCEMENT DISCRETION

SPS 500.01 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 chs. 48, 50, 938, 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 500.02 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.

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

SPS 500.03 Definitions. In this chapter:

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

(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).

History: 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 101.02, 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.

(3) “Entity” means a facility, organization or service that is licensed or certified by or registered with the department.

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 to provide direct care or treatment services to clients; or an agency that employs or contracts with an individual to provide personal care services. “Entity” includes a hospital, a home health agency licensed under s. 50.49, 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. Kindergarten under s. 48.57 (3n) 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.
4. An entity, as defined in s. 48.685 (1) (b).

SPS 500.10 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 small business’s ability to pay when determining the amount of any monetary penalty, when the monetary penalty is under the control of the department.

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(2) (a) 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:

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.

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

5. The small business has repeatedly violated the same rule or guideline.

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

(b) The department may decline to exercise discretion in the enforcement of a rule or guideline with respect to a small business, if the small business fails to correct the violation in accordance with the department’s rules and guidelines.

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