

Subchapter XII — Enforcement

HFS 157.90 Violation and penalty criteria.

(1) SEVERITY LEVELS.

(a) Each violation of a condition of a license or registration or a requirement of ss. 254.31 to 254.45, Stats., or this chapter shall be classified as specified in pars. (b) to (f) after considering all of the following:

1. The actual or potential injury to the environment or to occupational or public health.
2. The actual or potential costs of the damage or injury to the environment or to occupational or public health caused by the violation.
3. The potential danger to the environment or to occupational or public health.
4. The willfulness of the violation.
5. The compliance history of the licensee or registrant.

(b) A violation may be classified at severity level one if any of the following exist:

1. Actual damage or injury to occupational or public health or to the environment are caused by the violation.
2. The violation is characterized by any of the following:
 - a. Willful action.
 - b. Multiple occurrence between inspections.
 - c. Contribution to one or more additional violations.

(c) A violation may be classified at severity level 2 if both of the following exist:

1. The violation results in a circumstance that creates a significant potential for injury or costs to occupational or public health or to the environment.
2. Any of the factors listed in par. (b) 2. are present.

(d) A violation may be classified at severity level 3 if any of the following exist:

1. The potential for danger to the environment or occupational or public health is significant.
2. Any of the factors listed in par. (b) 2. b. and c. are present.

(e) A violation may be classified at severity level 4 if both of the following exist:

1. The violation threatens the environment or occupational or public health.
2. The potential for danger to the environment or occupational or public health is probable.

(f) A violation may be classified at severity level 5 if it is unlikely to cause actual costs or injury to the environment or to occupational or public health.

Note: See Appendix R for examples of severity levels one through 5 violations.

(2) ASSESSMENT OF FORFEITURES.

(a) The department may assess a direct forfeiture for each violation. If the department assesses a forfeiture, the amount of the forfeiture shall be derived from Tables HFS 157.90A and 157.90B.

(b) A forfeiture assessment may not be less than \$100 nor more than \$100,000 for each violation.

**Table HFS 157.90A
BASE FORFEITURES**

Type of User	Amount
All licensees or registrants	\$5,000
Persons not licensed or registered	\$10,000

**Table HFS 157.90B
PERCENTAGE OF BASE AMOUNTS BASED ON
SEVERITY LEVEL OF VIOLATION**

Severity Level	Percent of Amount Listed in Table 157.90A
1	100
2	75
3	50
4	15
5	5

(c) Each day of continued violation constitutes a separate offense.

(d) The department shall send written notice of a forfeiture assessment to the person against whom the forfeiture is assessed. The notice shall specify all of the following:

1. The forfeiture amount.
2. The violation and severity level of the violation on which the forfeiture is based.
3. The statute or rule alleged to have been violated.

4. Notice that the person may contest the department's assessment of a forfeiture by requesting a hearing before the division of hearings and appeals. The notice shall describe the appeal process under s. HFS 157.91 (4).

(e) The department may, at any time, negotiate a settlement related to a violation.

(3) FORFEITURE PAYMENT. (a) A person against whom the department has assessed a forfeiture shall pay the forfeiture to the department within 10 days of the receipt of the notice under sub. (2) (d).

(b) Except as provided in par. (c), if a person contests a forfeiture under s. HFS 157.91 (4), and the division of hearings and appeals upholds the forfeiture assessment, the person shall pay the forfeiture within 10 days after receipt of the final decision after exhaustion of administrative review.

(c) If a person petitions for judicial review under ch. 227, Stats., and the court upholds the forfeiture assessment, the person shall pay the forfeiture within 10 days after receipt of the final judicial decision.

Note: Send forfeiture payments to: Department of Health and Family Services, Radiation Protection Section, P.O. Box 2659, Madison, WI 53701-2659. Certified mail may be sent to: Department of Health and Family Services, Radiation Protection Section, 1 West Wilson St., Room 150, Madison, WI 53702-0007.

(d) The department shall remit all forfeitures paid to the state treasurer for deposit in the school fund.

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HFS 157.91 Notices, orders, reviews and appeals.

(1) NOTICE OF VIOLATION AND ORDER OF ABATEMENT.

(a) If the department finds that a source of radiation as constructed, operated or maintained results in a violation of ss. 254.31 to 254.45, Stats., or of this chapter, the department shall notify in writing, the person in control that is causing, allowing or permitting the violation as to the nature of the violation. The notification shall do all of the following:

1. Specify each statute, rule or condition of a license or registration alleged to have been violated and the severity level of each violation.

2. Order, that prior to a specified time, the person in control shall cease and abate causing, allowing or permitting the violation and take such action as may be necessary to have the source of radiation constructed, operated, or maintained in compliance with ch. 254, Stats., or this chapter.

3. Give notice of any forfeiture assessment.

4. Give notice that an order issued under this paragraph is subject to review by the department.

(b) If the department finds that a condition exists that constitutes an immediate threat, the department shall include in a notice of violation and order issued under par. (a), the recitation of the existence of the threat and the findings pertaining to the threat. The department may summarily cause the abatement of the violation.

(c) Upon receipt of a notice of violation and order under this subsection the person in control shall do all of the following:

1. Cease and abate the violation and take action as necessary to comply with ss. 254.31 to 254.45, Stats., or this chapter, before the time specified in the order.

2. Send to the department a written plan of correction for each violation, within 10 days after receipt of the notice of violation and order, that describes the action taken to comply with the order and the date within which the violation was corrected.

(d) The department shall, within a reasonable period after receipt of the plan of correction, inspect the source of radiation to ensure that the violation that is the subject of an order under this subsection is in compliance with ss. 254.31 to 254.45, Stats., and this chapter.

(e) The department may extend the period specified in par. (c) 2., for submission by the person in control of a plan of correction.

Note: A plan of correction should be sent to: Department of Health and Family Services, Radiation Protection Section, P.O. Box 2659, Madison, WI 53701-2659. Certified mail may be sent to: Department of Health and Family Services, Radiation Protection Section, 1 West Wilson St., Room 150, Madison, WI 53702-0007.

(2) PETITION FOR REVIEW.

(a) A person to whom an order is issued under sub. (1) may petition the department for review of the order by submitting within 10 days after receipt of the department's order, to the administrator of the division of public health, a written petition for review. A petition for review shall include all of the following:

1. Name and address of the person filing the petition.

2. License number.

3. Reason for requesting the review.

4. Alternative solution.

5. Relief sought.

6. A copy of the notice of violation and order subject to review.

7. Written documentation in support of the petition for review.

Note: A petition for review should be sent to: Department of Health and Family Services, Radiation Protection Section, P.O. Box 2659, Madison, WI 53701-2659. Certified mail may be sent to: Department of Health and Family Services, Radiation Protection Section, 1 West Wilson St, Room 150, Madison, WI 53702-0007.

(b) Failure to petition the department for review as required under par. (a) may result in a denial of the review.

(3) EMERGENCY ORDERS.

(a) If the department finds that an emergency exists concerning a matter subject to regulation under ss. 254.31 to 254.45, Stats., or this chapter, that requires immediate action to protect the public health or safety, the department may

issue an emergency order without hearing or notice. The order shall recite the existence of the emergency and state such action the department deems necessary to mitigate the emergency.

(b) An emergency order shall be issued within 24 hours of finding the emergency and shall be effective upon issuance. An emergency order shall remain in effect for up to 90 days after issuance, unless revoked or modified by the results of a hearing held under sub. (4). Any person to whom an emergency order is issued shall immediately comply with the order.

(c) A person to whom an emergency order is issued may contest the action by filing with the division of hearings and appeals, within 10 days after receipt of the emergency order, a written request for hearing under sub. (4).

(4) HEARING.

(a) Any person against whom the department takes an action under sub. (3) or s. HFS 157.90 (2), may contest the action by sending to the division of hearings and appeals, within 10 days after receipt of the action, a written request for hearing under s. 227.44, Stats. The hearing request shall contain all of the following:

1. Name and address of the person filing the request.
2. The license number.
3. Reason for the hearing request.
4. Relief sought.
5. A copy of any notice issued by the department that is the subject of the action.

(b) Materials mailed to the division of hearings and appeals shall be considered filed with the division on the date of the postmark. Materials submitted by personal service or by inter-departmental mail shall be considered filed on the date the materials are received by the division. Materials transmitted by facsimile shall be considered filed on the date the materials are received by the division as recorded on the division facsimile machine.

Note: The mailing address of the Division of Hearings and Appeals is: 5005 University Avenue, Suite 201, Madison, WI 53705-5400. The facsimile transmission number is 608-267-2744.

(c) On the date a hearing request is sent to the division of hearings and appeals under par. (a), the petitioner shall send a copy of the hearing request to the department.

Note: A copy of the hearing request should be sent to: Department of Health and Family Services, Radiation Protection Section, P.O. Box 2659, Madison, WI 53701-2659. Certified mail may be sent to: Department of Health and Family Services, Radiation Protection Section, 1 West Wilson St, Room 150, Madison, WI 53702-0007.

(d) The division of hearings and appeals shall commence a hearing within 30 days of receipt of a request for hearing and issue a final decision within 15 days after the close of the hearing. Proceedings before the division shall be governed by ch. 227, Stats.

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