

The Wisconsin Department of Commerce proposes an order to create chapter Comm 200, relating to small business enforcement discretion, and affecting small businesses.

Rule Summary

1. Statutes Interpreted.

Section 895.59 of the Statutes

2. Statutory Authority.

Section 895.59 (2) of the Statutes

3. Explanation of Agency Authority.

Section 895.59 (2) of the Statutes directs the Department to promulgate a rule that discloses the discretion the Department may exercise in the enforcement of rules and guidelines against a small business. The rule must also specify when the Department will not allow this discretion.

4. Related Statute or Rule.

None known.

5. Plain Language Analysis.

The proposed rule discloses the discretion the Department may exercise in enforcement actions that are undertaken to obtain a small business’s compliance with the Department’s rules and guidelines. The proposed rule also specifies when such discretion is not allowed.

An informational Note is included under section Comm 200.01, for alerting readers that the Department has additional discretion – beyond what is specified in this chapter – for enforcing rules to gain compliance by any business, regardless of size. The Department exercises this additional discretion for determining such things as where or when Department staff should perform enforcement inspections.

Similarly, a subsequent informational Note under section Comm 200.10 (1) explains that the Department also has additional, specific discretion to extend a compliance deadline for any entity, regardless of size – after the decision to perform an inspection is made.

Under section Comm 200.10 (3), the Department's responsibility for exercising the discretion in this chapter will not begin until after the corresponding small business entity informs the Department that the entity meets the definition of small business.

6. Summary of, and Comparison With, Existing or Proposed Federal Regulations.

The Department is not aware of any existing or proposed federal regulation that addresses the activities to be regulated by this rule.

7. Comparison With Rules in Adjacent States.

The Department is not aware of any similar rule in an adjacent State.

8. Summary of Factual Data and Analytical Methodologies.

The data and methodology that was used to develop the proposed rules consisted of reviewing (1) the requirements in section 895.59 of the Statutes, (2) the Department's current practices for exercising enforcement discretion, and (3) the corresponding rules that other State agencies have developed in response to section 895.59 of the Statutes.

9. Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of an Economic Impact Report.

The primary document that was used to determine the effect of the proposed rules on small business was 2003 Wisconsin Act 145. This Act addressed numerous aspects of administrative rule making that relate to small business, and required the Department and other State agencies to each promulgate a rule which discloses the discretion that may be exercised when enforcing rules and guidelines against a small business. Neither the Act nor the proposed rule imposes constraints on small business. An economic impact report was not required.

10. Effect on Small Business.

The proposed rule should have a positive effect on small business.

11. Agency Contact Information.

Jim Quast, Wisconsin Department of Commerce, Bureau of Program Development, P.O. Box 2689, Madison, WI, 53707-2689; telephone (608) 266-9292; e-mail jquast@commerce.state.wi.us.

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