

STATEMENT OF SCOPE
Department of Workforce Development

Rule No.

DWD 20

Relating to

Discretionary Enforcement of Rules and Guidelines Relating to Small Businesses

Rule Type

Permanent

Detailed Description of the Objective of the Proposed Rule

This rule will comply with the requirements of s. 227.04 (2m), Stats., as affected by 2013 Wisconsin Act 296. The proposed rule will create ch. DWD 20 to disclose in advance, the discretion the department will follow in the enforcement of rules against a small business that has committed a minor violation. The proposed rule will also specify when the department will not allow discretion in the enforcement of a rule against small businesses that have committed minor violations.

Description of Existing Policies Relevant to the Rule, New Policies Proposed to be Included in the Rule, and an Analysis of Policy Alternatives

Under s. DWD 113.025 the department may grant a waiver or decrease of interest owed by an employer if the employer satisfies certain conditions as it related to Wisconsin's unemployment insurance program.

Chapter DWD 60 relates to supervised business enterprises operated by blind persons. Section DWD 60.10 (8) provides the department may waive the penalty if reports or fees are late due to reasons beyond the operator's control.

Under s. DWD 301.13, violation penalty fees apply only to violations that are not corrected within a specified correction period and are based on a penalty fee system in relation to post-occupancy inspection of migrant labor camps.

The proposed rule will disclose in advance the discretion the department will follow in the enforcement of rules against a small business that has committed a minor violation. The exercise of discretion, on a case-by-case basis, may include any of the following:

- The reduction or waiver of penalties due to a voluntary disclosure by a small business of actual or potential violations of rules or guidelines.

- The financial capacity of the small business, including the ability of the small business to pay the amount of any penalty that may be imposed.
- The difficulty and cost of compliance with the rule by the small business.
- The compliance options available, including options for achieving voluntary compliance with the rule.
- The level of public interest and concern.
- The opportunities available to the small business to understand and comply with the rule.
- Fairness to the small business and to other persons, including competitors and the public.

The proposed rule will also specify the situations in which the department will not allow discretion in the enforcement of a rule against small businesses that have committed minor violation and shall include all of the following in which discretion is not allowed:

- The violation resulted in a substantial economic advantage for the small business.
- The small business has violated the same rule or guideline more than 2 times in the past 5 years.
- The violation may result in an imminent endangerment to the environment, or to public health or safety.

The policy alternative is to do nothing. If the department does not promulgate the proposed rule, the department will be in conflict with state statute requirements.

Detailed Explanation of Statutory Authority for the Rule (Including the Statutory Citation and Language)

Section 227.04 (2m)(a) , Stats.

"Each agency shall promulgate a rule that requires the agency to disclose in advance the discretion that the agency will follow in the enforcement of rules against a small business that has committed a minor violation...."

Estimate of Amount of Time that State Employees Will Spend Developing the Rule and of Other Resources Necessary to Develop the Rule

The estimated time is 80 hours.

List with Description of All Entities that May Be Affected by the Proposed Rule

This rule may impact small businesses as defined under s. 227.114 (1), Stats., that commit minor violations of DWD rules when discretion is exercised.

Summary and Preliminary Comparison with Any Existing or Proposed Federal Regulation that is Intended to Address the Activities to be Regulated by the Proposed Rule

There is no known existing or proposed federal regulation intended to address the activities to be regulated by the proposed rule.

Anticipated Economic Impact of Implementing the Rule (Note if the Rule is Likely to Have a Significant Economic Impact on Small Businesses)

DWD expects the proposed rule to have no economic impact statewide and locally.

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