

STATEMENT OF SCOPE

Department of Military Affairs

Rule No.:	<u>New Chapter DMA 3 Small Business Enforcement Discretion</u>
Relating to:	<u>Creation of a chapter regarding small business enforcement discretion</u>
Rule Type:	<u>Permanent</u>

1. Detailed description of the objective of the proposed rule.

This rule will comply with the requirements of s. 227.04, Stats. The proposed rule will establish Chapter DMA 3, which will outline the department's discretion in enforcing 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 enforcing a rule against small businesses that have committed minor violations.

2. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives.

The policy at issue is laid out in s. 227.04, Stats., which requires an agency to promulgate a rule that discloses in advance the discretion that the agency will use in enforcing rules against a small business that commits a minor violation of an administrative rule promulgated by the agency. No new policy is being proposed. There are no policy alternatives.

3. Detailed explanation of statutory authority for the rule, including the statutory citation and language.

Section 227.04 (2m), Stats., provides the authority for the proposed rule and provides as follows:

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. The rule promulgated under this subsection may include the reduction or waiver of penalties for a voluntary disclosure, by a small business, of actual or potential violations of rules.

(b) The rule promulgated under this subsection shall specify the situations in which the agency will allow discretion in the enforcement of a rule against a small business that has committed a minor violation. The rule shall consider the following criteria for allowing

discretion in the enforcement of the rule and the assessment of a penalty, including a forfeiture, fine, or interest:

1. The difficulty and cost of compliance with the rule by the small business.
2. 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.
3. The compliance options available, including options for achieving voluntary compliance with the rule.
4. The level of public interest and concern.
5. The opportunities available to the small business to understand and comply with the rule.
6. Fairness to the small business and to other persons, including competitors and the public.

(c) The rule promulgated under this subsection shall specify the situations in which the agency will not allow discretion in the enforcement of a rule against small businesses that have committed minor violations and shall include all of the following situations in which discretion is not allowed:

1. The violation results in a substantial economic advantage for the small business.
2. The small business has violated the same rule or guideline more than 3 times in the past 5 years.
3. The violation may result in an imminent endangerment to the environment, or to public health or safety.

(d) A rule promulgated under this subsection applies to minor violations committed after the effective date of the rule.

4. Estimate of amount of time that state employees will spend developing the rule and other resources necessary to develop the rule.

The Department of Military Affairs (“DMA”) estimates that developing this rule will take approximately 50 hours. This includes the time spent on investigation and analysis, as well as rule drafting and a public hearing, among other things. The DMA will develop this rule with existing staff.

5. List with description of all entities that may be affected by the proposed rule.

This rule may have a positive impact on small businesses, as defined under s. 227.114 (1), Stats., that commit minor violations of DMA rules when the discretion articulated in the rule is used. Small businesses that follow administrative rules, large businesses, and individuals are not directly affected by the rule; however, as a result of the rule, those other parties may be disadvantaged in comparison to small business violators to the extent that those other parties incur regulatory compliance costs or suffer competitive disadvantages as a result of the small business violations.

6. 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 existing or proposed federal regulation addressing the activities covered by this rule. S. 227.04, Stats., requires this rule.

7. Anticipated economic impact of implementing the rule. Also, please note if the rule is likely to have a significant economic impact on small businesses.

This rule will not raise business costs. When discretion is used to avoid formal sanctions or seek reduced sanctions, the rule may result in an economic benefit for small businesses that violate DMA regulations in minor ways. Small businesses that follow administrative rules may suffer a corresponding disadvantage as a result of the rule, to the extent that the non-violating business incurs compliance costs or suffers a competitive disadvantage as a result of the excused violation. This rule could create a minor disincentive to comply with regulations or allow small businesses to gain market share as a result of a rule violation that goes unpunished. The rule will also result in less money to the state treasury if small businesses are excused from financial penalties for minor rule violations.

8. Contact person.

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