

STATE OF WISCONSIN
DEPARTMENT OF MILITARY AFFAIRS
PROPOSED ORDER ADOPTING RULE

The Wisconsin Department of Military Affairs proposes to create Ch. DMA 3, relating to reduction or waiver of penalties for voluntary self-disclosure by a small business of actual or potential violations of rules or guidelines, and affecting small businesses.

Analysis Prepared by the Department of Military Affairs

1. Statutes Interpreted:

§ 227.04 (2) (b) and § 895.59 Stats.

2. Statutory Authority:

§ 227.04 (2) (b) and § 895.59 (2) Stats.

3. Explanation of Agency Authority:

Section 227.04 (2) (b), Stats., provides that each state agency shall “establish by rule, reduced fines and alternative enforcement mechanisms for minor violations of administrative rules made by small businesses” and requires that the rule include a definition of “minor violation.” Section 895.59 (2), Stats., provides that “each state 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 and guidelines against a small business” and provide notice of the circumstances in which discretion will not be allowed.

4. Related Statutes or Rules:

The Department of Military Affairs has no related rules and there are no related statutes.

5. Plain Language Analysis:

DMA proposes to create Ch. DMA 3 to comply with the requirements of §§ 227.04 and 895.59, Stats.

This rule does all the following:

- Creates a definition of “minor violation” for certain violations of department rules by small businesses.
- Provides that the department may exercise discretion to forego formal sanctions or to seek reduced sanctions when a small business violates department rules.
- Outlines the circumstances where the agency will not allow discretion, including those circumstances identified in § 895.59, Stats.

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

There appear to be no proposed or existing federal regulations that are intended to address the activities to be regulated by this proposed rule.

7. If Held, Summary of Comments Received During Preliminary Comment Period and at Public Hearing on the Statement of Scope:

No such hearing was held.

8. Comparison with Similar Rules in Adjacent States:

Illinois:

There appear to be no rules in Illinois that are like the proposed rule.

Iowa:

There appear to be no rules in Iowa that are like the proposed rule.

Michigan:

There appear to be no rules in Michigan that are like the proposed rule.

Minnesota:

There appear to be no rules in Minnesota that are like the proposed rule.

9. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen:

The Department reviewed statutes that authorize enforcement to determine whether discretionary enforcement could be used and the extent of that discretion.

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

The rule will have no negative impact on small businesses, financial or otherwise and in fact may financially benefit some small businesses.

This rule will have a slight economic impact on the state. The state will lose some money if fees or fines are not collected, or lesser fees are collected.

11. Effect on Small Business:

This rule will not increase any costs for businesses. The rule may produce an economic benefit for small businesses that commit minor violations of DMA regulations when discretion is exercised to forego formal sanctions or to seek reduced sanctions.

12. Agency Contact Person:

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13. Place where comments are to be submitted and deadline for submission:

A public hearing will be held on _____ at _____. Comments may be submitted to the agency contact person listed above or to the Wisconsin Administrative Rules Website at www.adminrules.wisconsin.gov until the day before the hearing.

RULE TEXT

SECTION 1. Chapter DMA 3 is created to read:

Chapter DMA 3
DISCRETIONARY ENFORCEMENT
OF RULES AND GUIDELINES AGAINST SMALL BUSINESSES

DMA 3.01 Authority and purpose.

DMA 3.02 Applicability.

DMA 3.03 Definitions.

DMA 3.04 Use of discretion in enforcement.

DMA 3.05 Limitations on the use of discretion.

DMA 3.01 Authority and purpose. This chapter is promulgated under the authority of §§ 227.04 (2m) and 895.59(2), Stats., to describe the discretion the department may exercise in enforcement actions against small businesses regulated by the department and the circumstances under which no such discretion will be exercised.

DMA 3.02 Applicability. This chapter applies to the department and small businesses regulated by the department or affected by department rules.

DMA 3.03 Definitions. In this chapter:

- (1) “Department” means the department of military affairs.
- (2) “Small business” has the meaning given in § 227.04 (2m), Stats.

DMA 3.04 Use of discretion in enforcement.

- (1) The department may, in accordance with subs. (2) and (3), waive or reduce a penalty otherwise applicable to a small business if the small business voluntarily discloses an actual or potential violation of a department rule or guideline and requests a waiver or reduction if the department is not prohibited under s. DMA 3.05 from doing so.
- (2) In exercising discretion under sub. (1), the department will follow the applicable department rule or guideline when taking an enforcement action against a small business, except that, on a case-by-case basis, the department may use discretion to reduce or waive a penalty based on consideration of the history of violations, the type of business, the severity of the violation and its impact on the public’s health safety and welfare, state or federal statutory requirements for enforcement, and any other relevant factor. In determining a reduction in a monetary penalty, the department may consider the small business’s ability to pay.

- (3) A reduction or waiver of any penalty may not be inconsistent with any requirements established by state or federal statute or regulation.

DMA 3.05 Limitations on the use of discretion. The department may not exercise discretion under s. DMA 3.04 (1) in the enforcement of a rule or guideline under any of the following circumstances:

- (1) The department discovers the violation before the small business discloses it.
- (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 monitoring or sampling requirements that are consistent with the requirements under an existing permit, certificate, or license.
- (4) The violation results in a substantial economic advantage for the small business.
- (5) The small business has repeatedly violated the same statute, rule, or guideline.
- (6) The violation may result in imminent endangerment to the environment or to public health or safety.
- (7) A state or federal statute, federal regulation or department rule prohibits the department's exercise of discretion.
- (8) The small business is operating without a certificate, permit, or license.
- (9) The small business fails to provide the department with credible and verifiable information that it is a small business.
- (10) The violation was willful.

SECTION 2. EFFECTIVE DATE. This rule takes effect on the first day of the month following publication in the Wisconsin administrative register, as provided in § 227.22 (2), Stats.