

Publication Date: April 19, 2010
Effective Dates: April 19, 2010 through September 15, 2010

STATE OF WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT
Equal Rights Division

Traveling Sales Crews
DWD 273

The Wisconsin Department of Workforce Development proposes rules to create ch. DWD 273, relating to the regulation of traveling sales crews.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

The statute which provides for the regulation of traveling sales crews became effective on April 1, 2010. The Department has completed its work on the proposed administrative rule which implements the statute, and submitted the proposed rule in final form for legislative review on April 13, 2010. Putting the provisions of the proposed rule into effect during the legislative review period will allow the Department to take any enforcement action that might be needed if there are complaints during this period about the operation of traveling sales crews without the permits required by statute.

Analysis and Report Prepared by the Department of Workforce Development

Statutory authority: Sections 103.34 (13) and 227.11, Stats.

Statutes interpreted: Section 103.34(13), Stats.

Explanation of agency authority. Section 103.34, Stats., created by 2009 Wisconsin Act 3, provides for the regulation of traveling sales crews, which involves the employment of groups of persons as salespersons who travel to a variety of locations and sell consumer goods or services door to door. Section 103.34(13), Stats., provides the authority for rules interpreting the statute, establishing fees, and setting requirements for registration and safety.

Summary of the proposed rule. After providing brief statements on the authority, purpose and applicability of the rule, the proposed rule enumerates the items required for a certificate of registration. These include: a completed application form; two completed fingerprint cards (for the purpose of a criminal background check) for each person who is a proprietor, managing partner, manager, principal officer, employee, agent or representative of the traveling sales crew business who supervises or transports traveling sales crew workers; verification that the applicant has a surety bond, a certificate of deposit, an escrow account, or an irrevocable letter of credit, in the amount of at least \$10,000; a registration fee, in the amount of \$60 for each individual for whom a background check involving fingerprints is required; a mechanic's certification that all vehicles to be used to transport sales crews are in compliance with all safety standards; copies of the information that is to be provided to employees describing the transportation to be provided, and any hazardous materials (such as cleaning supplies) that the crew may be storing, handling, transporting or otherwise having exposure to; and documents showing that the applicant has the required amount of insurance coverage.

The proposed rule provides that the Department shall begin to process the application when it has received all of the required documents, and it shall complete its processing of the application within 30 days of receipt of the results of the criminal background check.

The proposed rule specifies standards for the fingerprint cards that are to be submitted as part of the certification application, requires the applicant or certified operator to notify the Department of any change in information that has

been submitted to the Department, and provides that a certificate of registration may be denied, suspended or revoked if the Department determines that the applicant or certified operator is not in compliance with the law.

The proposed rule specifies the employment and wage payment records that are to be maintained by a certified operator. The proposed rule requires that the vehicles used shall meet all safety requirements and that the certified operator shall provide written information to the traveling sales crew workers on the safe handling, storage and transportation of any products or other materials that accompany the crew in their vehicles.

The proposed rule describes the information that shall be provided by the operator to the Department to obtain traveling sales crew worker permits. This includes, for each traveling sales crew worker, a government picture ID, information on the area of recruitment, the locations where the traveling sales crew will be working, a description of the duties of the traveling sales crew workers, a description of the products being sold, and a statement verifying that this information has been provided to the traveling sales crew workers. The proposed rule provides that permit applications will be processed and permits issued within ten days after the receipt of all application materials. The proposed rule provides that operators and traveling sales crew workers are required to carry permits and identification at all times while working.

The proposed rule provides that a person who is required to obtain a traveling sales crew worker permit is entitled to file a claim for unpaid wages with the Department under sec. 109.09, Stats.

The traveling sales crew statute provides, at sec. 103.34(9)(e), Stats., that the operator shall pay for the return to home travel of a traveling sales crew worker who is unable to work or who is discharged from employment for reasons other than misconduct. For assistance in applying this statutory language, the proposed rule contains a definition of “misconduct” that is consistent with the definition followed by the state unemployment insurance program.

Summary of related federal law. There is no federal law which regulates traveling sales crews or which requires work permits for door to door sales. The traveling sales crew statute makes reference to the following federal laws relating to vehicle safety: 49 USC 13101 to 14915, 49 USC 30101 to 30170, and 49 USC 31101 to 31504.

Comparison with laws in adjacent states. None of the states adjacent to Wisconsin (Illinois, Iowa, Michigan and Minnesota) has a law which regulates traveling sales crews.

Summary of factual data and analytical methodologies. The proposed rule is based on the requirements of sec. 103.34, Stats.

Effect on small business. Because the proposed rule carries forward the requirements of the statute and does not establish new requirements, the proposed rule does not have an effect on small business.

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SECTION 1. Chapter DWD 273 is created to read:

Chapter DWD 273 Traveling Sales Crews

DWD 273.01 Authority and purpose. This rule is adopted in accordance with s. 103.34, Stats., to provide rules for the administration of the laws relating to traveling sales crews.

DWD 273.02 Applicability. This chapter applies to any employer of traveling sales crew workers, and to any individuals who are employed or who have applied to be employed as traveling sales crew workers, to whom the requirements of s. 103.34, Stats., apply.

DWD 273.03 Definitions. Unless otherwise provided, in this chapter:

(1) “Department” means the Department of Workforce Development.

(2) “Employee” means an individual who is recruited in Wisconsin to be a traveling sales crew worker or who is working in Wisconsin as a traveling sales crew worker.

(3) “Employer” means an entity that is operating a traveling sales crew in Wisconsin or that recruits any traveling sales crew worker in Wisconsin.

(4) “Misconduct” for the purposes of s. 103.34(9)(e), Stats., means conduct evincing such willful or wanton disregard of an employer's interests as is found in a deliberate violation or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Mere inefficiency, unsatisfactory conduct, failure of good performance as the result of inability or incapacity, inadvertencies of ordinary negligence in isolated instances, or good-faith errors in judgment or discretion are not to be deemed "misconduct.”

NOTE: The term “misconduct is defined because s. 103.34(9)(e), Stats., provides as follows: “(9) No employer of a traveling sales crew worker and no employee, agent, or representative of that employer who supervises or transports traveling sales crew workers may do any of the following: (e) Abandon a traveling sales crew worker who is unable to work due to illness or injury or who is discharged from employment for reasons other than misconduct without providing for the return of the traveling sales crew worker to his or her permanent place of residence.”

(5) “Operator” means a person, corporation, limited liability company or other entity that employs, offers to employ, or otherwise recruits an individual to work as a traveling sales crew worker, including a proprietor, managing partner, manager, principal officer, employee, agent or representative of the entity.

(6) “Traveling sales crew” has the same meaning as in s. 103.34(1)(d), Stats.

NOTE: Sec. 103.34(1)(d), Stats., defines “traveling sales crew” as “2 or more individuals who are employed as salespersons or in related support work, who travel together in a group, and who are absent overnight from their permanent places of residence for the purpose of selling consumer goods or services to consumers from house to house, on any street, or in any other place that is open to the public. “Traveling sales crew” does not include 2 or more individuals who are traveling together for the purpose of participating in a trade show or convention or 2 or more immediate family members who are traveling together for the purpose of selling consumer goods or services.”

(7) “Traveling sales crew activities” has the same meaning as in s. 103.34(1)(e), Stats.

NOTE: Sec. 103.34(1)(e), Stats., defines “traveling sales crew activities” as “(e) “Traveling sales crew activities” means the sale of consumer goods or services to consumers from house to house, on any street, or in any other place that is open to the public or related support work. “Traveling sales crew activities” does not include the sale of consumer goods or services from a fixed location at a concert, festival, carnival, street fair, public exhibition, or other similar special event with the permission of the organizer of the special event.”

(8) “Traveling sales crew worker” has the same meaning as in s. 103.34(1)(f), Stats.

NOTE: Sec. 103.34(1)(f), Stats., defines “traveling sales crew worker” as “a member of a traveling sales crew.”

DWD 273.04 Certificate of registration. (1) APPLICATION. In order to apply for a 12 month original or renewal certificate of registration as a traveling sales crew employer under this chapter, the applicant shall fully complete a written application form furnished by the department and return it to the department.

Note: Applications should be delivered to the Department of Workforce Development, Equal Rights Division, at Room A300, 201 East Washington Avenue, Madison Wisconsin, or they may be mailed to the DWD Equal Rights Division at P.O. Box 8928, Madison WI 53708. Application forms may be obtained by writing to the DWD Equal Rights Division at this address, or calling (608) 266-6860, or visiting the DWD Equal Rights Division website at <http://dwd.wisconsin.gov/er/> .

(2) **ITEMS REQUIRED.** Along with the completed application form, the following items must be provided to the department:

(a) Two completed fingerprint cards for each person who is a proprietor, managing partner, manager, or principal officer of the applicant, and for each employee, agent or representative of the applicant who supervises or transports traveling sales crew workers.

(b) Evidence that the applicant has obtained, as confirmation of its ability to pay any compensation owed to an employee or any penalty imposed by the department, one of the following in the amount of at least \$10,000: a surety bond, a certificate of deposit, an escrow account or an irrevocable letter of credit.

(c) A registration fee of \$60.00 for each individual for whom the criminal background check under s. 103.34 (3)(b)2., Stats., is required.

(d) Certification by a motor vehicle mechanic that all vehicles used by the applicant to transport traveling sales crews are in compliance with all applicable Wisconsin and federal safety standards as described in s. DWD 273.09(2). The costs associated with any vehicle inspection are the responsibility of the applicant.

(e) A copy of the statement provided by the applicant to its employees, as required by s. 103.34 (5)(a)9, which describes the transportation to be provided to the employee and which identifies any hazardous materials that the sales crews shall be storing, handling, transporting or having any exposure to, and a copy of any additional information concerning the storage, handling or transportation of hazardous materials which may be required by s. 103.34 (7)(b), Stats.

(f) Documentation showing that the applicant has in force insurance policies with minimum coverage for commercial automobile liability of \$500,000 per person, \$2,000,000 per accident and \$500,000 of physical damage, and also has commercial general liability coverage of at least \$500,000 per occurrence and \$1,000,000 aggregate.

(3) ISSUANCE. The department shall process a certificate of registration application when all of the required application documents have been received by the department. The department shall request the criminal background check within 30 calendar days of receipt of the completed application materials. The department shall complete its processing of the registration application within 30 calendar days of its receipt of the results of the criminal background check.

DWD 273.05 Fingerprint cards. When it is necessary to complete the criminal background check required by s. 103.34(3)(b)2, Stats., the applicant shall provide two completed fingerprint cards for each individual identified in s. DWD 273.04(2)(a). The fingerprinting on these cards shall be completed by a federal, state, or local law enforcement agency, or a private entity duly authorized to provide fingerprinting services. The applicant shall include, with the fingerprint cards submitted, documentation identifying the agency or business that administered the fingerprinting.

DWD 273.06 Change of status. If a change occurs in any of the information submitted to the department under s. 103.34 (3)(a), Stats., the registrant shall notify the department of that change within 30 calendar days after the change occurs. If the registrant hires any new individuals who are required to have a criminal background check involving fingerprint cards performed under s. 103.34 (3)(b)2., Stats., the registrant shall submit to the department, for each new individual hired, an additional registration fee of \$60.00 and two completed fingerprint cards.

DWD 273.07 Suspension or revocation of registration. The department may deny, suspend, revoke, restrict or refuse the certificate of registration if the department determines the applicant or registrant is not in compliance with s. 103.34, Stats.

DWD 273.08 Payment and compensation. (1) PAYMENT AND RECORDS REQUIRED. The employer of a traveling sales crew shall provide payment to its employees on the regularly agreed upon pay dates. The employer shall keep, for three years, the following records for all traveling sales crew workers:

- (a) Name and address.
- (b) Date of birth.
- (c) Date of entering and leaving employment.
- (d) Time of beginning and ending of work each day.
- (e) Time of beginning and ending of meal periods, when the traveling sales crew worker's meal periods are required or when such meal periods are to be deducted from work time.
- (f) Total number of hours worked per day and per week.
- (g) Rate of pay and wages paid each payroll period.
- (h) The amount of and reason for each deduction from the wages earned.
- (i) Output of the traveling sales crew worker, if paid on other than time basis.
- (j) Documentation that the traveling sales crew worker has been paid the applicable minimum wage for all hours worked each pay period.

(2) DEDUCTIONS. The employer may make deductions from pay as allowed under s. 103.34(6)(b), Stats. The employer shall state clearly on the traveling sales crew worker's paycheck, pay envelope, or paper accompanying the wage payment, the number of hours worked, the rate of pay and the amount of and reason for each deduction from the wages due or earned by the traveling sales crew worker, except such miscellaneous deductions as may have been

authorized by request of the individual traveling sales crew worker for reasons personal to himself or herself. The employer may use a reasonable coding system.

DWD 273.09 Worker safety. (1) VEHICLES. The vehicle used to transport traveling sales crews shall be used for its intended use. The vehicle shall have all safety equipment required under state and federal laws. The safety equipment shall be operational as defined in these laws.

(2) TRANSPORTATION OF MATERIALS. If any motor vehicle is used by the operator of a traveling sales crew to carry the products or samples of the products that the traveling sales crew is selling, the following requirements apply:

(a) If the product may pose any hazard to health due to contact with skin, or the breathing of fumes, or for any other reason, the operator shall obtain written information from the manufacturer or an equivalent source on the potential health hazards. The operator shall provide this information to all traveling sales crew workers and shall include the information provided in its application for a certificate of registration.

(b) The operator shall prepare a plan for the storage of products that are carried with the traveling sales crew which specifies how the products are to be stored in the vehicle, and during any temporary storage outside of the vehicle, to minimize the risk of injury to traveling sales crew workers. The operator shall provide this information to all traveling sales crew workers and shall include the information provided in its application for a certificate of registration.

DWD 273.10 Insurance. The registered operator of a traveling sales crew shall maintain in force the following insurance policies:

(a) Commercial automobile liability that provides minimum coverage limits of \$500,000 per person, \$2,000,000 per accident and \$500,000 of physical damage.

(b) Commercial general liability that provides minimum coverage limits of \$500,000 per occurrence and \$1,000,000 aggregate.

DWD 273.11 Traveling Sales Crew Worker Permits. (1) REQUIREMENT.

The operator of a traveling sales crew shall obtain a permit for each traveling sales crew worker who works in Wisconsin or who is recruited from Wisconsin before the traveling sales crew worker begins work.

(2) APPLICATION. In order to obtain a traveling sales crew worker permit from the department, the traveling sales crew operator shall submit to the department a government-issued picture ID, which shall include date of birth and permanent home address for each worker. Accompanying the government picture ID, a letter from the operator of the traveling sales crew shall be submitted which identifies the following:

(a) The location where the traveling sales crew worker was recruited.

(b) The locations where the traveling sales crew worker shall be working.

(c) A description of the traveling sales crew worker's general duties and responsibilities.

(d) A description of the products being sold.

(e) A statement verifying that the required disclosure statement has been provided to the traveling sales crew worker.

(3) PROCESSING. Within ten calendar days of receipt of the completed application materials, the department shall complete its processing of the application and issue the permit.

(4) OPERATOR REQUIREMENT TO CARRY PERMIT. The operator of a traveling sales crew and anyone supervising or transporting a traveling sales crew worker shall carry at all times, while engaged in traveling sales crew activities, a copy of each permit. An operator shall provide a traveling sales crew worker's permit upon the request of a deputy of the department, a law enforcement officer, or a person with whom the employer, traveling sales crew worker, agent or representative is doing business.

(5) TRAVELING SALES CREW WORKER REQUIREMENT TO CARRY PERMIT. While engaged in traveling sales crew activities, a traveling sales crew worker shall carry at all times his or her original traveling sales crew worker permit, his or her identification card and his or her government-issued picture ID. A traveling sales crew worker shall provide any one or more of these documents upon the request of a deputy of the department, a law enforcement officer, or a person with whom the traveling sales crew worker is doing business.

DWD 273.12 Wage claims. A person for whom an operator is required to obtain a traveling sales crew worker permit is entitled to file an unpaid wage complaint with the department under s. 109.09, Stats.

SECTION 2. EFFECTIVE DATE. This rule shall take effect on April 16, 2010, or upon publication in the official state newspaper, whichever date is later, pursuant to s. 227.24 (1) (c), Stats.

FISCAL ESTIMATE
DOA-2048 N(R03/97)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

Subject

Regulation of traveling sales crews

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation

or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs - May be possible to Absorb

 Within Agency's Budget Yes
 No

Decrease Costs

Local: No local government costs

1. Increase Costs

Permissive

 Mandatory

2. Decrease Costs

Permissive

 Mandatory

3. Increase Revenues

Permissive Mandatory

4. Decrease Revenues

Permissive Mandatory

5. Types of Local Governmental Units Affected:

Towns Villages Cities

Counties Others _____

School Districts WTCS Districts

Fund Sources Affected

GPR FED PRO PRS SEG

SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The proposed rule does not create any costs that are separate from costs potentially due to the new statute.

Long-Range Fiscal Implications

None

Agency/Prepared by: (Name & Phone No.)

Authorized Signature/Telephone No.

