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Details: Emergency Rules by Department of Workforce Development.  
(FORM UPDATED: 08/11/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

### 2009-10

(session year)

### Joint

(Assembly, Senate or Joint)

## Committee for Review of Administrative Rules ...

### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  - (**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)
  - (**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

\* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)

Jim Doyle  
Governor

Roberta Gassman  
Secretary



State of Wisconsin

Department of Workforce Development

OFFICE OF THE SECRETARY  
201 East Washington Avenue  
P.O. Box 7946  
Madison, WI 53707-7946  
Telephone: (608) 266-9427  
Fax: (608) 266-1784  
<http://www.dwd.wisconsin.gov/>  
e-mail: [bernsho@dwd.state.wi.us](mailto:bernsho@dwd.state.wi.us)

December 22, 2009

Senator Jim Holperin  
Co-Chair, Joint Committee for the  
Review of Administrative Rules  
Room 409 South  
State Capitol

Representative Josh Zepnick  
Co-Chair, Joint Committee for the  
Review of Administrative Rules  
Room 219 North  
State Capitol

Re: Emergency rule relating to the effective date of prevailing wage threshold  
statutes, sec. DWD 290.20, Wis. Adm. Code

Dear Senator Holperin and Representative Zepnick:

This emergency rule is scheduled for publication on December 29, 2009, with an  
effective date of January 1, 2010. The enclosed rule documents contain a full analysis  
and explanation of the rule and the finding of emergency

Sincerely,

A handwritten signature in black ink, appearing to read 'Howard Bernstein'. The signature is written in a cursive, flowing style.

Howard Bernstein  
Legal Counsel

cc: Andrew Feldman

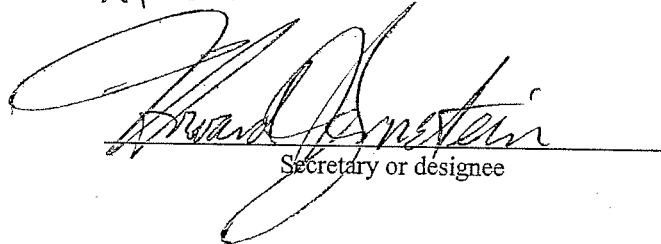
# Rules Certificate

STATE OF WISCONSIN )  
 ) SS  
DEPARTMENT OF WORKFORCE DEVELOPMENT )

I, Roberta Gassman, Secretary of the Department of Workforce Development, and custodian of the official records, certify that the annexed rules relating to the effective date of prevailing wage threshold statutes, sec. DWD 290.20, Wis. Adm. Code, were duly approved and adopted by this department on December 22, 2009.

I further certify that this copy has been compared by me with the original on file in this department and that it is a true copy of the original and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the of the Department of Workforce Development at 201 E. Washington Avenue in the city of Madison, this 22nd day of December 2009.

  
Secretary or designee

## Order Adopting Rules

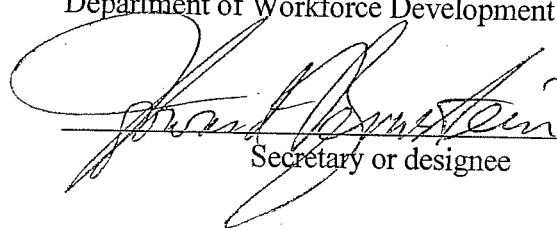
Pursuant to authority vested in the Department of Workforce Development by ss. 66.0903 (5), 103.49 (3g), and 227.11, Stats., the Department of Workforce Development creates rules of the Wisconsin Administrative Code Section DWD 290.20, relating to the effective date of prevailing wage threshold statutes.

The attached rules shall take effect on January 1, 2010, pursuant to s. 227.24 (1) (c), Stats.

Adopted at Madison, Wisconsin this

Date: December 22, 2009

Department of Workforce Development

  
Secretary or designee



**State of Wisconsin  
Department of Workforce Development  
Equal Rights Division**

**EMERGENCY RULE**

**DWD 290 - Prevailing Wage Rates**

**Effective Dates of New and Amended Provisions**

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The Wisconsin Department of Workforce Development creates s. DWD 290.20, relating to the application of new and amended statutes relating to the thresholds for the requirement of prevailing wage rates.

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**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 most recent state budget legislation, 2009 Wisconsin Act 28, contained amendments to the state laws which require the payment of prevailing wage rates for work done on projects of public works and , in a new statute, for work done on private projects which receive more than \$1,000,000 of public direct financial assistance. The new provisions become effective on January 1, 2010.

The prevailing wage laws require that when a state agency or local governmental unit contracts for the erection, construction, remodeling, repairing, or demolition of a public works project it must obtain a prevailing wage rate determination from the Department of Workforce Development and require that the contractors and subcontractors on the project pay their employees in accordance with the wage rates established by the determination. Under the law as it existed before the enactment of 2009 Act 28, a prevailing wage rate determination was required for any project with an estimated cost of at least \$48,000 (for a single-trade project) or \$234,000 (for a multi-trade project). Act 28 changes these amounts to an estimated project cost of at least \$25,000. Act 28 has also created a new statute, s. 66.0904, Stats., which requires that a private developer obtain and comply with a prevailing wage rate determination for a private project that receives at least \$1,000,000 in direct financial assistance from a local governmental unit.

The state and local governmental units and private developers who may be subject to these new requirements of the prevailing wage laws need immediate guidance as to the manner in which the Department will apply the January 1, 2010 effective date to new projects. This rules provides that guidance by establishing that the new threshold requirements will apply to projects for which a request for bids is issued or a contract is negotiated after January 1, 2010.

**Analysis Prepared by the Department of Workforce Development**

**Statutory authority:** Sections 103.005(1) and 227.11(2), Stats.

**Statutes interpreted:** Sections 66.0903(5), 66.0904(5) and 103.49(3g), Stats.

**Explanation of agency authority.** As the state agency responsible for the administration and enforcement of the state prevailing wage laws, the Department has the authority under secs. 103.005(1) and 227.11(2), Stats., to promulgate and amend administrative rules which interpret the statutes for which it is responsible.

**Summary of the emergency rule.** The most recent state budget legislation, 2009 Wisconsin Act 28, contained amendments to the state laws which require the payment of prevailing wage rates for work done on projects of public works and , in a new statute, for work done on private projects which receive more than \$1,000,000 of public direct financial assistance. The new provisions become effective on January 1, 2010.

The prevailing wage laws require that when a state agency or local governmental unit contracts for the erection, construction, remodeling, repairing, or demolition of a public works project it must obtain a prevailing wage rate determination from the Department of Workforce Development and require that the contractors and subcontractors on the project pay their employees in accordance with the wage rates established by the determination. Under the law as it existed before the enactment of 2009 Act 28, a prevailing wage rate determination was required for any project with an estimated cost of at least \$48,000 (for a single-trade project) or \$234,000 (for a multi-trade project). Act 28 changes these amounts to an estimated project cost of at least \$25,000. Act 28 has also created a new statute, s. 66.0904, Stats., which requires that a private developer obtain and comply with a prevailing wage rate determination for a private project that receives at least \$1,000,000 in direct financial assistance from a local governmental unit.

The state and local governmental units and private developers who may be subject to these new requirements of the prevailing wage laws need immediate guidance as to the manner in which the Department will apply the January 1, 2010 effective date to new projects. This rules provides that guidance by establishing that the new threshold requirements will apply to projects for which a request for bids is issued or a contract is negotiated after January 1, 2010.

**Summary of related federal law.** The federal prevailing wage law applies to a federal public works project for which the contract is greater than \$2,000. This threshold is in statute and is rarely adjusted.

**Comparison with laws in adjacent states.** Minnesota has a statutory threshold of \$2,500 for a single-trade project and \$25,000 for a multi-trade project. Illinois does not have a threshold in its prevailing wage law. The law covers public works projects and defines public works projects as projects financed under various other specified laws. Michigan does not have a threshold in its prevailing wage law. The law covers projects that must be bid and relies on other agencies to determine the thresholds for what projects must be bid. Iowa does not have a prevailing wage law.

**Summary of factual data and analytical methodologies.** The facts relevant to this rule have been summarized in the Finding of Emergency.

**Anticipated costs incurred by the private sector.** The rule does not have a significant fiscal effect on the private sector.

**Effect on small business.** The rule affects small businesses as defined in s. 227.114 (1), Stats., but does not have a significant economic impact on a substantial number of small businesses, because the prevailing wage costs are ultimately borne by the entities that contract for the projects.

**Analysis used to determine effect on small business.** As stated in the paragraph immediately above, the prevailing wage costs are ultimately borne by the entities that contract for the projects. Also, to the extent that the changes in the threshold rate enacted in 2009 Wisconsin Act 28 have any other fiscal effect, this rule does not create any fiscal effect that is independent of the effect of the statutory changes in the budget act.

### Rule Text

#### **SECTION 1. DWD 290.20 is created to read:**

**DWD 290.20 Application of effective date.** (1) PROJECTS OF PUBLIC WORKS, REQUESTS FOR BIDS. For projects under s. 66.0903, Stats., which are subject to bidding, the department shall apply the threshold amount of \$25,000 to projects for which a request for bids is issued after January 1, 2010.

(2) PROJECTS OF PUBLIC WORKS, NEGOTIATED CONTRACTS. For projects under s. 66.0903, Stats., which are covered by negotiated contracts, the department shall apply the threshold amount of \$25,000 to projects for which an agreement is made after January 1, 2010, as shown by a signed contract or other evidence of an agreement.

(3) PUBLICLY FUNDED PRIVATE CONSTRUCTION PROJECTS, REQUESTS FOR BIDS. For projects under s. 66.0904, Stats., which are subject to bidding, the department shall apply the threshold amount of \$1,000,000 to projects for which a request for bids is issued after January 1, 2010 and for which at least \$1,000,000 in direct financial assistance is committed as of the date that the request for bids is issued.

(4) PUBLICLY FUNDED PRIVATE CONSTRUCTION PROJECTS, NEGOTIATED CONTRACTS. For projects under s. 66.0904, Stats., which are covered by negotiated contracts, the department shall apply the threshold amount of \$1,000,000 to projects for which an agreement is made after January 1, 2010, as shown by a signed contract or other evidence of an agreement, and for which at least \$1,000,000 in direct financial assistance is committed as of the date that the negotiated agreement has been signed by all of the parties to the agreement.

**SECTION 2. EFFECTIVE DATE.** This rule shall take effect on January 1, 2010, as provided in s. 227.24(1)(d), Stats.





Jim Doyle  
Governor

Roberta Gassman  
Secretary



State of Wisconsin

Department of Workforce Development

OFFICE OF THE SECRETARY  
201 East Washington Avenue  
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Fax: (608) 266-1784  
<http://www.dwd.wisconsin.gov/>  
e-mail: [bernsho@dwd.state.wi.us](mailto:bernsho@dwd.state.wi.us)

December 22, 2009

Senator Jim Holperin  
Co-Chair, Joint Committee for the  
Review of Administrative Rules  
Room 409 South  
State Capitol

Representative Josh Zepnick  
Co-Chair, Joint Committee for the  
Review of Administrative Rules  
Room 219 North  
State Capitol

Re: Emergency rule relating to the adjustment of thresholds for the application  
of payment and performance bond requirements under sec. DWD 293.02,  
Wis. Adm. Code

Dear Senator Holperin and Representative Zepnick:

This emergency rule is scheduled for publication on December 29, 2009, with an  
effective date of January 1, 2010. The enclosed rule documents contain a full analysis  
and explanation of the rule and the finding of emergency

Sincerely,



Howard Bernstein  
Legal Counsel

cc: Andrew Feldman

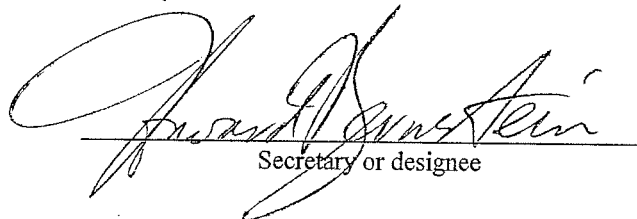
# Rules Certificate

STATE OF WISCONSIN )  
 ) SS  
DEPARTMENT OF WORKFORCE DEVELOPMENT )

I, Roberta Gassman, Secretary of the Department of Workforce Development, and custodian of the official records, certify that the annexed rules relating to the adjustment of thresholds for application of payment and performance bond requirements were duly approved and adopted by this department on December 22, 2009.

I further certify that this copy has been compared by me with the original on file in this department and that it is a true copy of the original and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the of the Department of Workforce Development at 201 E. Washington Avenue in the city of Madison, this 22nd day of December 2009.

  
Secretary or designee

## Order Adopting Rules

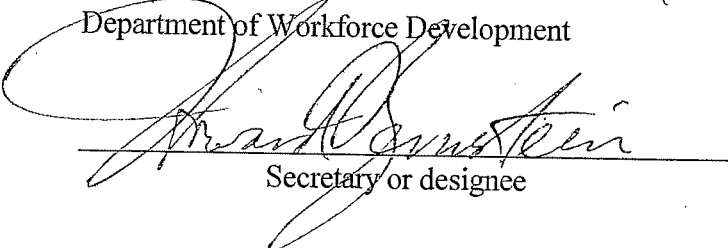
Pursuant to authority vested in the Department of Workforce Development by ss. 66.0903 (5), 103.49 (3g), and 227.11, Stats., the Department of Workforce Development amends rules of the Wisconsin Administrative Code Section DWD 293.02, relating to the adjustment of thresholds for application of payment and performance bond requirements.

The attached rules shall take effect on January 1, 2010, pursuant to s. 227.24 (1) (c), Stats.

Adopted at Madison, Wisconsin this

Date: December 22, 2009

Department of Workforce Development

  
Secretary or designee



**State of Wisconsin  
Department of Workforce Development  
Equal Rights Division**

**EMERGENCY RULE**

**Adjustment of Thresholds for Payment and  
Performance Assurance Requirements**

**DWD 293.02**

The Wisconsin Department of Workforce Development amends s. DWD 293.02, relating to the adjustment of thresholds for payment and performance assurance bond requirements and affecting small businesses.

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**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 adjustment of the thresholds for the application of the project payment and performance assurance bond requirements ensures that the adjustments are effective on a date certain that is prior to the time of year that project requests are generally submitted to the Department and the need for obtaining bonding is determined. The adjustment avoids imposing an additional administrative burden on local governments and state agencies caused by an effective decrease of the thresholds due solely to inflation in the construction industry. If these new thresholds are not put into effect by emergency rule, the old thresholds will remain effective for approximately six to seven months, until the conclusion of the permanent rule-making process. The thresholds are based on national construction cost statistics and are unlikely to be changed by the rule-making process.

**Analysis Prepared by the Department of Workforce Development**

**Statutory authority:** Sections 103.005(1), 779.14 (1s), and 227.11, Stats.

**Statute interpreted:** Section 779.14, Stats.

**Explanation of agency authority.** Section 779.14, Stats., sets the cost thresholds for the payment and performance assurance bond requirements that apply to contracts for the performance of labor or furnishing of materials for a public improvement project or

public work. Section 779.14 (1s), Stats., requires the Department to biennially adjust the thresholds for various requirements in proportion to any change in construction costs since the last adjustment if the adjustment to be made would not be less than 5%.

**Summary of the emergency rule.** Chapter DWD 293 provides adjusted thresholds for various payment and performance assurance bond requirements that apply to contracts with state or local governments for the performance of labor or furnishing of materials for a public improvement or public work. This rule adjusts these thresholds to reflect a 6.82% increase in construction costs from December 2007 to December 2009.

**Summary of analytical methodology.** Section DWD 293.01 provides that the Department will adjust the thresholds on the basis of the change in the construction cost index as published in the *Engineering News-Record*, a national construction trade publication. Thresholds are rounded to the nearest thousand.

**Comparison to federal law.** The threshold for application of the federal contractor payment and performance bond requirements is \$100,000. This threshold is in the statute and is rarely adjusted.

**Comparison of payment and performance bond thresholds in adjacent states.** Minnesota has a public contractors' performance and payment bond requirement that applies to a contract that exceeds \$75,000. Illinois requires a bond if a contract for a public work exceeds \$5,000. Neither state appears to have a mechanism for adjustment of the thresholds, other than statutory amendment. Michigan has a performance bond requirement without a clear statutory threshold. The Department is not aware of a performance bond requirement for public works contracts in Iowa.

**Effect on small business.** The rule affects small businesses as defined in s. 227.114 (1), Stats., but does not have a significant economic impact on a substantial number of small businesses.

**Analysis used to determine effect on small business.** Many construction companies are small businesses. The adjustment of the thresholds for application of the payment and performance bond requirements prevent these provisions from affecting more and more public works projects over time due solely to the effects of inflation.

**SECTION 1. DWD 293.02 is amended to read:**

**DWD 293.02 (1) STATE CONTRACTS.** (a) The payment and performance assurance requirements in s. 779.14 (1m) (c) 1., Stats., shall apply to contracts with the state for the performance of labor or furnishing materials for a public improvement or public work with a contract price exceeding ~~\$15,000~~ \$16,000 but not exceeding ~~\$139,000~~ \$148,000.

(b) The payment and performance assurance requirements in s. 779.14 (1m) (c) 2., Stats., shall apply to contracts with the state for the performance of labor or furnishing materials for a public improvement or public work with a contract price exceeding ~~\$139,000~~ \$148,000 but not exceeding ~~\$345,000~~ \$369,000.

(c) The payment and performance assurance requirements in s. 779.14 (1m) (c) 3., Stats., shall apply to contracts with the state for the performance of labor or furnishing materials for a public improvement or public work with a contract price exceeding ~~\$345,000~~ \$369,000.

**(2) LOCAL GOVERNMENT CONTRACTS.** (a) The payment and performance assurance requirements in s. 779.14 (1m) (d) 1., Stats., shall apply to contracts, other than contracts with the state, for the performance of labor or furnishing materials for a public improvement or public work with a contract price exceeding ~~\$15,000~~ \$16,000 but not exceeding ~~\$69,000~~ \$74,000.

(b) The payment and performance assurance requirements in s. 779.14 (1m) (d) 2., Stats., shall apply to contracts, other than contracts with the state, for the performance of labor or furnishing materials for a public improvement or public work with a contract price exceeding ~~\$69,000~~ \$74,000 but not exceeding ~~\$139,000~~ \$148,000.

(c) The payment and performance assurance requirements in s. 779.14 (1m) (d) 3., Stats., shall apply to contracts, other than contracts with the state, for the performance of labor or furnishing materials for a public improvement or public work with a contract price exceeding ~~\$139,000~~ \$148,000.

**SECTION 2. EFFECTIVE DATE.** This rule shall take effect on January 1, 2010, as provided in s. 227.24 (1) (d), Stats.





Jim Doyle  
Governor

Roberta Gassman  
Secretary



State of Wisconsin

Department of Workforce Development

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e-mail: [bernsho@dwd.state.wi.us](mailto:bernsho@dwd.state.wi.us)

April 14, 2010

Senator Jim Holperin  
Co-Chair, Joint Committee for the  
Review of Administrative Rules  
Room 409 South  
State Capitol

Representative Josh Zepnick  
Co-Chair, Joint Committee for the  
Review of Administrative Rules  
Room 219 North  
State Capitol

Re: Emergency rule relating to traveling sales crews

Dear Senator Holperin and Representative Zepnick:

This emergency rule is scheduled for publication on April 16, 2010, and will become effective on that date. The enclosed rule documents contain a full analysis and explanation of the rule and the finding of emergency.

Sincerely,

A handwritten signature in black ink, appearing to read 'Howard Bernstein'. The signature is written in a cursive style with a large, sweeping initial 'H'.

Howard Bernstein  
Legal Counsel

Enclosure



**State of Wisconsin  
Department of Workforce Development  
Equal Rights Division**

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**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.

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**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.

**Agency contact person.** Timara Budack, Section Chief, Labor Standards Section, (608) 267-2495, [Timara.Budack@dwd.wisconsin.gov](mailto:Timara.Budack@dwd.wisconsin.gov).

**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.