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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**Ronald Sklansky**  
*Clearinghouse Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

### CLEARINGHOUSE RULE 09-110

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]**

#### **1. Statutory Authority**

a. Section DWD 273.11 (1) appears to be inconsistent with s. 103.34 (11) (a) 1., Stats. Under s. 103.34 (11) (a) 1., Stats., it is the employer who shall obtain a permit and the employee who obtains an identification card. However, s. DWD 273.11 (1) places the requirement on the traveling sales crew members and the operators. The department should consider rewriting s. DWD 273.11 (1) to be consistent with the statutes.

Who is the “operator” of a traveling sales crew? It appears that this person is someone other than an employee or one of the listed positions in s. DWD 273.04 (2) (a). The department should consider defining this position for clarity. If the operator is not the employer, then s. DWD 273.11 (2) is also inconsistent with s. 103.34 (11) (a), Stats., and should be rewritten.

b. Section DWD 273.12 appears to refer to a person who is being paid for traveling sales crew activities. However, under s. 103.34 (11) (a) 1., Stats., it is the employer, not the employee, who is required to obtain a traveling sales crew worker permit. The department should consider rewriting s. DWD 273.12 to be consistent with the statutes.

#### **2. Form, Style and Placement in Administrative Code**

Section DWD 273.09 (2) (intro.) is not correctly drafted as introductory material since it does not end in a colon and lead into the subsequent paragraphs. It should be par. (a) and the other paragraphs should be renumbered.

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. Section DWD 273.09 (1) makes reference to state and federal laws related to vehicle safety. It appears that the U.S. Code sections are cited in s. 103.34 (7) (a) 4., Stats. If so, these sections should also be referenced in the Summary of Related Federal Law section on page 2 of the rule.

b. It is unclear why s. 103.34 (3) (b) 2., Stats., is referenced in s. DWD 273.06. (Note also that subdivisions are numbered by numerals followed by a period.) It appears that subd. 1. should be cited instead. The department should clarify what should be referenced, and if subd. 2. is correct, then s. DWD 273.06 should be rewritten to indicate that it relates to further background check investigations. Also note that “Stats.” should follow the cite.

c. It is unclear why s. 103.34 (5) (a), Stats., is cited in s. DWD 273.08 (2). Section 103.34 (5) (a), Stats., does not include a reference to any deductions that may be taken out of an employee’s paycheck. The department should consider removing this cite or rewriting s. DWD 273.08 (2) to indicate why it is used.

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. In s. DWD 273.02, the phrase “employer or employee who comes within the requirements,” is awkward and appears to inaccurately describe the requirements of s. 103.34, Stats. First, it appears that s. 103.34 (2) and (11) (a) 1., Stats., place requirements upon the employer to comply, not the employee. If so, then s. DWD 273.02 inaccurately describes who comes within the requirements. Second, it appears that the term employee refers to the term “traveling sales crew worker.” If so, then the term “traveling sales crew worker” should be used. Lastly, it is unclear what the phrase “comes within the requirements” means and the phrase should be rewritten with more clarity.

b. It is unclear why the term “misconduct” is defined. It appears that this term is not used in the proposed rule. Also, why is s. 103.34 (9) (e), Stats., the only paragraph cited? It appears that all of the paragraphs in sub. (9) are acts of misconduct and should be cited. The department should consider whether the correct citation is used and whether it should remove the definition of “misconduct” altogether. If the department decides to keep this definition, then the definition should be used later in the proposed rule.

c. The word “shall” should replace “will,” “must,” and “is required to” throughout the rule.

d. The note following s. DWD 273.04 (1) would be more informative if it also indicated where a person could obtain an application.

e. For clarity, instead of using a mathematical equation to define how much the employer’s registration fee should be in DWD 273.04 (2) (c), the department should consider rewriting par. (c) to read: “A registration fee of \$60 for each individual for which the criminal background check....”

f. The terms “traveling sales crew,” “traveling sales crew workers,” and “traveling sales crew activities” all have specific definitions in the statutes. Because these terms are also used throughout ch. DWD 273, the department should consider including these terms in the definitions section and then using them throughout the proposed chapter.

Terms should be used consistently throughout ch. DWD 273. If the definitions listed above are used, then “traveling sales crew members” and “crew members” should be replaced with “traveling sales crew workers.” Also, “crew” should be replaced with “traveling sales crew.”

g. In s. DWD 273.11 (2) (intro.), “government” should be changed to “government-issued” for consistency with sub. (5). In sub. (5), the term should be hyphenated.