Public Hearing Comments Summary
Clearinghouse Rule CR 23-030

The Department of Workforce Development held one public hearing on July 10, 2023, for Clearinghouse Rule CR 23-030, which revises ch. DWD 301 relating to migrant labor.

The comments received on the proposed rule at the public hearing are summarized below. Note that the Department also held a preliminary public hearing on the Scope Statement for the proposed rule, SS 004-22, on April 12, 2022. The comments received on the Scope Statement and the Department's response to them are summarized in the plain language analysis of this proposed rule.

Name	Comment	Response
Jordan Lamb, Principal, The Welch Group	The commenter submitted the following comments on behalf of the Wisconsin Potato & Vegetable Growers Association (WPVGA) and the Wisconsin Farm Bureau Federation (WFBF):	
	Motor vehicle insurance: "We urge the Department to make necessary revisions to DWD 301 to align state standards with federal law related to insurance requirements for motor vehicles used to transport migrant workers. We do not support more stringent state insurance requirements, as this has greatly affected the costs and availability of migrant workers in Wisconsin. It is our understanding that H2-A workers are covered by workers' compensation plan benefits the ENTIRE time that they are in the United States, including during off hours. Under federal law, these workers are considered 'working' from the moment they enter the country – not just the hours that they are on the farm or at their place of employment. As such, they are already covered by workers compensation insurance and, like the federal law, Wisconsin law should NOT require additional, redundant liability insurance coverage. The State of Wisconsin should allow the same options offered under federal law, 29 CFR §§ 500.122, like other states. We ask that this rule be amended to make this change."	The WPVGA Executive Director made a similar comment on the Scope Statement. The Department is declining to make the requested revisions. Under s. 103.91 (8) (f), Stats., migrant labor contractors must have policies insuring them against liability for damages arising out of the operation or ownership by the contractor or the contractor's agent of any vehicle for the transportation of individuals or property in connection with activities as a migrant labor contractor. Migrant labor contractors must annually apply to the Department for a certificate of registration. Section DWD 301.05. In reviewing this application, the Department confirms that the contractor has a policy compliant with s. 103.91 (8) (f), Stats. The current s. DWD 301.05 (8) (c) sets the required policy limits, which are the same as the insurance policy coverage required under federal law. 29 CFR 500.121. The commenter refers to 29 CFR 500.122, which states if an employer provides worker's compensation coverage and the worker is only transported under circumstances for which there is worker's compensation coverage under state law, no additional vehicle liability insurance policy or bond is required. The federal regulation also states if the employer provides

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		transportation of the worker that is not covered by the state's worker's compensation law, a liability insurance policy or liability bond is still required. To determine the effect of adopting the federal rule, the Department considered whether a worker's compensation policy under Wisconsin state law would provide sufficient coverage to meet the requirements of s. 103.81 (8) (f). Contrary to the commenter's statement that "H2-A workers are covered by workers' compensation plan benefits the entire time that they are in the United States," Wisconsin's worker's compensation law would not cover workers being transported prior to the start of or after the completion of their period of employment, or in situations when the transportation is not compulsory for work, such as getting a ride from the contractor to buy groceries. Transportation in these circumstances is "in connection with activities as a migrant labor contractor," and under s. 103.91 (8) (f), Stats., a sufficient insurance policy is required. Worker's compensation insurance alone would not meet the state statutory requirement. The Department administers the Wisconsin worker's compensation law and has concluded that even if the Department adopted the federal regulation, migrant labor contractors would likely still be required to obtain a liability insurance policy or liability bond for transit in these circumstances. Because adopting the federal regulation would not entirely relieve contractors of the obligation to obtain a liability insurance policy or liability bond without altering the customary transportation offered to migrant workers, the Department is declining to make the requested revision.

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	First aid kits: "Creating state specific standards for regulations that are adequately addressed under federal law can cause confusion and unnecessary burdens on employers. Accordingly, we respectfully request that DWD 301 reflect federal standards for first aid kits. Specifically, we ask that Wisconsin simply reference OSHA code Appendix A, Section 1910.266 for first aid kit requirements."	The Department is declining to make the requested change. In the current rule, migrant labor camps are to provide first aid facilities which are "equivalent to the 16 unit First Aid Kit recommended by the American red cross." Section DWD 301.07 (21) (j). In the proposed rule, the Department repeals s. DWD 301.07 (21) (j) and revises s. DWD 301.07 (21) (i) to provide a list of required items for the ease of migrant camp operators, which places all the required items in the rule rather than requiring migrant camp operators to look up the American red cross-recommended kit to determine what specific items are needed. Second, the Department wanted to add a requirement to make face masks available to avoid needing to promulgate emergency rules in the event of future communicable disease outbreaks. This commenter suggests that Wisconsin adopt a federal standard for first aid kits set forth at 29 CFR 1910.266 Appendix A. These are OSHA's requirements for first aid kits used at logging work sites. This standard is not applicable to migrant farm workers and the Department has instead adopted the federal standard set under 29 CFR 1910.151, requiring that "adequate first aid supplies shall be readily available." Appendix A to 29 CFR 1910.151 states that the contents of a first aid kid described in American National Standard (ANSI) Z308.1-1998 would satisfy this requirement for small worksites. The Department reviewed the contents of a first aid kit set forth in this ANSI standard and listed those contents in the revised rule. This will make it easier for migrant camp operators to comply, because they will be able to read the listed items in the rule rather than needing to look up additional standards. A first aid kit that meets ANSI and OSHA standards, plus face masks, meets the standard. The Department's standard does align with federal requirements but lists out the required items for ease of reference rather than citing to another source.

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	Isolation rooms: "We understand that the Department has stated that hotel rooms may serve as temporary isolation rooms for sick workers. We respectfully request that this be specifically stated in the rule language. Accordingly, we ask that the rule include an explicit statement that hotel rooms may be used as temporary isolation rooms for workers."	The Department has made this requested change and revised the proposed rule to clearly states that rooms in hotels, motels or other such facilities licensed under ATCP ch. 72 may satisfy the requirement that migrant camp operators provide written procedures for ensuring that space is available for the temporary isolation of sick or injured camp occupants.
	Windows: "We ask that the proposed change to increase the required total window area which opens from at least 45% to 50% be maintained at 45%. Many existing windows in worker housing are double hung windows. By design, these windows cannot physically be opened to 50% of the total window area. As an alternative, we ask that the Department retain the 45% standard for worker housing facilities that have air conditioning."	The Department revised the proposed rule to revert to the standard in current s. DWD 301.07 (11) (i) 2. which requires that the total window area which opens equals at least 45% of the minimum total window or skylight area required. The equivalent federal standard at 29 CR 1910.142 (b) (7) requires that "at least one-half of each window shall be so constructed that it can be opened for the purposes of ventilation." In the instance of double-hung windows, as described by the commenter, this federal standard would be met as one-half of the window can be opened, though the open portion of the window may account for slightly less than 50% of the total window area. The Department's revision of the proposed rule will still provide for sufficient ventilation, light, and safe egress for camp occupants.
	Heat illness: "Again, we ask that the heat illness prevention plan be consistent with federal law. We ask that DWD 301 align with the federal OSHA rule, which we expect to be issued as a workplace standard for employers shortly. By creating a state specific standard that is different from a federal standard, employers will be forced to comply with two different standards. This will create undue burdens and expense and will not result in any measurable benefits for workers. Accordingly, we ask that the Department simply reference the OSHA standard once it becomes available."	The Department declines to make this change. The Department consulted with the Department of Health Services (DHS) about recommended health and safety changes to current ch. DWD 301. Based on the timetable for OSHA action on this issue, DHS recommended making changes to prevent heat-related illness in the fields. OSHA has taken preliminary action on this issue, including forming a National Advisory Committee on Occupational Safety and Health Heat Injury and Illness Prevention Work Group. OSHA issued an Advanced Notice of Proposed Rulemaking (ANPRM) for Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings on October 27, 2021. The comment period for this ANPRM closed on January 26, 2022, and there is currently no indication of when OSHA may issue a proposed

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		rule. Even if OSHA proceeds with issuing a proposed rule, it will need to go through notice and comment before a final rule is issued. Since there is no timeline for the implementation of a final rule and given the importance of implementing a heat illness rule to promote the health and safety of workers, the Department intends to proceed with implementation of these requirements. OSHA has identified three states with standards for heat exposure. In addition, the National Institute for Occupational Safety and Health (NIOSH) has issued criteria for a recommended standard for occupational exposure to heat and hot environments. The Department reviewed the NIOSH guidelines and the existing state-level standards, as well as OSHA's ANPRM, in developing this proposed heat illness prevention rule.
Jason Culotta, President, Midwest Food Products Association (MWFPA)	The commenter submitted the following comments on behalf of the MWFPA:	
	Motor vehicle insurance: "Concerns remain among growers that the state code's insurance requirements for utilizing migrant worker contractors exceeds federal standards, making Wisconsin difficult to engage these contractors – and the workers they represent."	See above for the Department's response.
	Minimum work guarantee dates: "Retain mention of 10 days prior to beginning date and 7 days before the ending date. Further discussion can certainly be held on what the Department's aim is with this change, but the end-of-pack date may vary from what was initially thought at the start of the season."	The Department declines to make this change. The statute states, "[t]he guarantee shall cover the period from the date the worker is notified by the employer to report for work, which date shall be reasonably related to the approximate beginning date specified in the work agreement, or the date the worker reports for work, whichever is later, and continuing until the final termination of employment, as specified in the work agreement, or earlier if the worker is terminated for cause or due to seriously adverse circumstances beyond the employer's control." Section 103.915 (4) (b), Stats.

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		The current rule sets the period covered by the minimum work guarantee as starting no later than 10 days from the date of the approximate beginning date set in the work agreement, and the ending date as no sooner than 7 days before the ending date specified in the work agreement or earlier if the worker is terminated for cause or for seriously adverse circumstances beyond the employer's control. Section DWD 301.06 (8). The current rule defines "seriously adverse circumstances beyond the employer's control" as "the substantial shutdown of the employer's operations" and provides a non-exhaustive list of examples of what may meet this standard. The Department's revisions address two issues with the current rule. First, the time periods of 10 days after the starting date in the work agreement and 7 days before the end date in the work agreement is inflexible and may not be "reasonably related" to the dates in the work agreement for a contract of shorter duration. Second, under the statute, the period of time covered by the minimum work guarantee terminates either as specified in the work agreement or earlier if the worker is terminated for cause or due to seriously adverse circumstances beyond the employer's control. The 7-day window in the current rule is not supported by the statutory language. The Department discussed revisions to the current rule with the subcommittee of the Governor's Council on Migrant Labor and members expressed that simply using the statutory language of "reasonably related" was too vague and could lead to confusion for migrant workers and employers. Subcommittee members also expressed that shortening the period of time before the minimum guarantee period begins from 10 days was reasonable for contracts of shorter duration. The Department reviewed past work agreements between migrant laborers and employers to compare the anticipated contract length with the difference between the anticipated and actual start dates. At most, the Department found a 7-day

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		difference between the anticipated and actual start dates. This amounted to 6% of the contract's duration. The Department's new proposed s. DWD 301.06 (8) (b) states that a date is "reasonably related" to the approximate beginning date in a work agreement if "the number of days between the date the worker is notified by the employer to report for work and the approximate beginning date specified in the work agreement … is no greater than 15% of the length of time between the approximate beginning date specified in the work agreement and the date of final termination of employment as specified in the work agreement, or 10 days, whichever is shorter." For any contract that is 67 days or more in duration according to the work agreement, the latter would apply because 15% of 67 days is 10 days. That is, the starting date for the minimum guarantee for a contract of this length would be no later than 10 days from the approximate beginning date in the work agreement. Thus, contracts that are 67 days or more in duration will not be impacted by the change from the current rule with this revision. The commenter also asks that the current rule language allowing the end date for the work guarantee to be "no sooner than 7 days before the approximate ending date specified in the work agreement." As stated above, this language is not supported by statute. The Department is retaining the language allowing for the minimum work guarantee period to end earlier than the date specified in the work agreement if there are "seriously adverse circumstances beyond the employer's control." The Department has added clarifying language in new proposed s. DWD 301.06 (8) (c) to identify circumstances that the Department may consider in determining whether an interruption in operations meets this standard. The commenter notes that the 7-day window at the end of the contract is needed because "the end-of-pack date may vary from what was initially thought at the start of the season." The current rule language, allowing for the end of the period covered by the minimum guarantee due to seriously adverse circumstances beyond the employer's control,

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		already accounts for such a situation. The commenter's requested change is therefore not necessary to meet the commenter's objection, and also arguably conflicts with the statutory language.
	Windows: "The proposal to expand the total window area which opens from at least 45% to 50 % of the minimum total window area will create unneeded expense for camp operators. Many windows in existing dormitories are double hung and cannot physically be opened to 50% of the total window area. A better approach would be to retain the prior 45% for housing with air conditioning and require 50% for housing without air conditioning."	See above for the Department's response.
	Door screens: "While the Department verbally acknowledged that buildings with air conditioning are not subject to this screen requirement, there is too much room for interpretation. This exception should be clearly expressed in the rule."	The Department has made the requested change to clarify that a building employing air conditioning is not required to install screen doors.
	Urinals: "The proposed rule lowers the urinal ratio for men from one per 40 to one per 25. This change should provide a grandfather clause for existing facilities."	The Department declines to make the requested change. By statute, the certifications for migrant labor camps are not continuing, meaning a migrant labor camp operator must apply annually for a certificate to operate a camp. Section 103.92 (1) (a), Stats. A grandfather clause is not appropriate because there cannot be a continuing license. The rule change aligns with the federal standards, which require "one unit or 2 linear feet of urinal trough for each 25 men." 29 CFR 1910.142 (d) (6). Migrant camp operators may seek a variance to this provision. Section DWD 301.07 (7).
	Showerheads: "The proposed rule sets the showerhead ratio to one per eight occupants of a migrant labor camp. A grandfather clause should also apply."	The Department declines to make the requested change. As stated in the above response, a grandfather clause is not appropriate because there cannot be a continuing license. The rule change aligns with the Department of Safety and Professional Services, which has adopted the International Building Code standards. Migrant camp operators may seek a variance to this provision. Section DWD 301.07 (7).

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	First aid kits: "Rather than itemizing the various quantity and quality of items in a state-specific list of first aid kid materials, DWD 301 should reflect a federal standard such as listed in the OSHA code in Appendix A to section 1910.266. Please see: 1910.266 App A - First-aid Kits (Mandatory) | Occupational Safety and Health Administration (osha.gov)"	See above for the Department's response.
	Isolation rooms: "The Department has verbally committed that hotel rooms may serve as temporary isolation rooms. This should be clearly reflected in the language of the rule, perhaps as a note to this section."	See above for the Department's response.
	Heat illness: "The heat illness prevention plan in state code should align with the federal OSHA rule that is expected to be issued soon. By codifying a standard in DWD 301 without allowing for harmonization with the impending OSHA rule, employers will ultimately need to comply with two similar but differing standards. Language should be added allowing the new state standard until a federal one is promulgated, at which point the state would align with the federal code."	See above for the Department's response.
	Filing of complaints: "It has been suggested to the Department that anyone, not just a migrant worker, should be allowed to file a complaint against an employer of migrant workers. We strongly discourage the Department from taking this step towards opening this process to parties beyond the signatories of the migrant worker contracts."	Section 103.905 (4), Stats., requires the Department to investigate "any complaint filed with the department concerning any violation of ss. 103.90 to 103.97." The Department has not made any changes to ch. DWD 301 that would alter who may file a complaint and the Department will continue to accept any complaint filed, as required by statute.
	Dates of worker payouts: "One additional issue that is beyond the scope of this rulemaking and would need to be considered as a statutory change are the dates of worker payout found on p. 44, lines 1-3. The note here references Section 103.93 (1) (b), Stats., which requires employers to pay wages due migrant workers within 3	The note following s. DWD 301.08 (2) is a reference to the statutory requirement at s. 103.93 (1) (b), Stats., regarding the payment of earned wages. Changing this statutory requirement is outside the scope of the Department's rulemaking authority and, therefore, the Department declines to make the requested change.

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	days or additional wages within 2 days. Changing this to allow payment to coincide with a scheduled payroll would be preferable."	
Erica Sweitzer-Beckman, Farmworker Attorney, Legal Action of Wisconsin	The commenter specified that she submitted the following comments in her role as appointed member of the Governor's Council on Migrant Labor.	
	Rule clarity: The commenter stated that many of the rule's proposed changes provide clarity that could increase compliance with the Wisconsin Migrant Labor Act (WMLA) and improve safety and dignity in migrant worker homes and workplaces.	The Department appreciates the feedback and no further response is required.
	Written disclosures: "The additional language regarding written disclosures in DWD 301 will promote compliance with the WMLA."	The Department has added language at DWD 301.06 to clarify what information must be included in the written recruiting disclosure statement as required by s. 103.915(1)(a).
	Motor vehicle insurance: "The draft vehicular insurance requirements provision maintains the requirements of Wis. Stat. § 103.91(8)(f) and provides a baseline level of economic protection for migrant farmworker families who travel in migrant contractor provided vehicles."	See above for the Department's response.
	Minimum work guarantee: "The updates to DWD 301.06 (9) correct some of its previous inconsistencies with Wis. Stat. § 103.915(4)(b); but, could be modified to be more consistent with the structure and purpose of the statute." The commenter proposed the following modification: • "The draft rule's definition of `reasonably related to the approximate beginning date specified in a work agreement' automatically provides for a 10 day or 15% reduction of the work guarantee period. (Draft page 10, lines 5-10). The 10 day and 15% reduction authorizations could be decreased to 3 days and 5% to provide more consistency with the balance set forth in the	The Department declines to make this change. As described above, the Department's change to the minimum guarantee language to ensure the beginning date for the purposes of the minimum guarantee is "reasonably related" to the start date in the work agreement aligns with the statutory language. Removing the 7-day allowance from the end date for the minimum work guarantee period also aligns the rule with the statutory language.

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	WMLA and to advance WMLA's purpose."	
	Heat illness: "The heat exhaustion prevention measures in the proposed draft provide crucial lifesaving provisions for Legal Action of Wisconsin's clients." The commenter also proposed the following modification: • "The heat related illness section could be strengthened to further discourage retaliation against workers who take breaks, which would create a safer work environment for our clients."	The Department declines to make additional changes. Section 103.905 (4), Stats., gives the Department the authority to investigate any complaint filed with the Department concerning violations of the migrant labor law. Section 103.905 (5), Stats., states the Department shall enforce the migrant labor law and rules promulgated under the law. These statutes give workers recourse if there is a violation of this statute.
	Laundry facilities: "The increased access to laundry facilities is a step in improving worker status and addressing camp health concerns."	The Department appreciates the feedback and no further response is required.
	Definitions – employ and employment: "The definitions of `employ' and `employment' could mirror the language of the Migrant and Seasonal Agricultural Worker Protection Act (AWPA) 29 U.S.C § 1802(g) and the Fair Labor Standards Act (FLSA) 29 USC § 203(g). Under both the AWPA and the FLSA, `employ includes suffer or permit to work.' A uniform definition of the employment relationship under these three laws would reduce the possibility of confusion."	The Department declines to make this change. The definition of "employment" in new proposed s. DWD 301.015 (10) is the same definition used in the current rule at s. DWD 301.06 (2).
	Definitions – recruit and recruitment: • "The definitions of `Recruit' or `recruitment' could be modified to recognize the variety of ways employers, contractors, or recruiters *can offer or imply offer* of employment to a migrant worker *including express or implied offers* made through personal contact, telephone, correspondence, or a recall notice due to a union contract." • "Wis. Stat. §103.915, recognizes that implied and	The Department declines to make this change. The definition of "recruitment" in new proposed s. DWD 301.015 (20) is the same definition used in the current rule in s DWD 301.06 (2m). As the commenter notes, the text in s. 103.915 (1), Stats., covers an "implied job offer" that induces a migrant worker to come to Wisconsin for employment and requires the person making this express or implied job offer to comply with the requirements of s. 103.915, Stats. The commenter's objective of ensuring that individuals making express or implied offers of employment are covered by s. 103.915, Stats., does not require the requested changes.

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	express job offers are used to induce migrant seasonal farmworkers to come to Wisconsin. For example, some of Legal Action's clients have been recruited with language as vague as, `We're going to go make some money.' Similarly, agricultural employers recruit through methods ranging from loudspeaker announcements in rural towns in Mexico to direct messages on Instagram and the methods of recruiting are evolving. To remain relevant to an ever-changing recruitment market, the rule language could add the word `includes' to indicate the list of recruitment methods is not exhaustive."	
	Toilet facilities: "Minor changes to the proposed draft could further clarify that all members of a field harvest field crew are entitled to minimal safety and dignity protections of the toilet facility provisions of DWD 301." The commenter suggested the following: • "With the increased mechanization of many sectors of agricultural labor, more jobs that were previously done by hand are now assisted in part by machinery and this trend will likely increase even more as technology progresses. Nonetheless, the need for human beings to use toilet facilities remains consistent. The proposed draft could clarify that all members of the field crew are protected by Wis. Admin Code DWD 301's provisions. For example, OSHA's definition of `hand labor operations' includes `other activities or operations performed in conjunction with hand labor in the field.'" • "The proposed draft could add [an] additional notice requirement to ensure workers receive notice of their right to reasonable opportunity to access the toilet facilities." This suggestion is	The Department declines to make this change. The definition of "hand labor" in new proposed s. DWD 301.015 (13) as "work that is performed by hand or with hand tools in the field" is similar to the definition used in current rule in s. DWD 301.09 (6) (a) ('"[h]and labor' means that work which is performed manually in the field"), but adds clarity in relation to the use of hand tools. The commenter cites to OSHA's definition of "hand labor operations." That definition, at 29 CFR 1928.110, states, "Except for purposes of paragraph (c)(2)(iii) of this section, *hand-labor operations* also include other activities or operations performed in conjunction with hand labor in the field." Paragraph (c)(2)(iii) contains the OSHA requirements for toilet and handwashing facilities. The Department's definition of "hand labor" is used to determine applicable field sanitation standards and is consistent with the OSHA requirement. The Department also declines to add a notice requirement. Section DWD 301.14 already requires posting a summary of the requirements of ch. DWD 301 "in a conspicuous place in all migrant labor camps or where the occupants report for work in a place easily seen by the occupants." Another notice requirement would be redundant.

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	based on reports to Legal Action of Wisconsin about noncompliance with field toilet facility requirements and the unique embarrassment shared by female field workers who must request toilet facility access from lead field workers who are often male.	
	Hazardous air quality: "The OSHA recommends that all employers have plans and preparations in place to protect workers by preventing or minimizing exposure to hazardous air quality. DWD 301 could require employers to develop air quality monitoring procedures –using publicly available resources such as the Environmental Protection Agency index and to develop a plan to protect workers from air quality hazards."	The Department declines to make this change, but instead refers employers to OSHA guidance in protecting outdoor workers from hazards associated with poor air quality.
	Temperature standards for housing and sleeping areas: "High heat index conditions during sleep and other non-working hours reduce the body's ability to recover from work related heat stress. The DWD could strengthen the heat exhaustion mechanisms in the field sanitation section by including heat index standards for [migrant farmworker and seasonal farmworker] housing and sleeping areas."	The Department declines to make this change. The Department's new rule on heat illness is based on existing guidance on high heat procedures. Section DWD 301.07 (11) (2) requires that windows open in order to provide ventilation.
	Elimination of bunk beds: "Bunk beds increase the density and proximity of workers in employer provided housing. Eliminating bunk bed use in Wisconsin would advance the purpose of the WMLA and improve the status of Wisconsin's migrant workers."	The Department declines to make this change. The Department is retaining the current requirements that sleeping facilities not contain triple deck bunks and that there is a minimum of 27 inches between lower and upper bunks and a minimum of 36 inches between the upper bunk and the ceiling. 301.07(20)(d), (e), (f). The Department is adding a requirement that upper decks of bunk beds include guard rails. Section DWD 301.07 (20) (dm). The Department is also requiring that sleeping facilities be spaced "no closer than 36 inches both laterally and end-to-end." Section DWD 301.07 (20) (bm). Finally, the Department is retaining the current requirement that rooms used

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		for sleeping purposes contain 50 square feet of floor space for each occupant. Section DWD 301.07 (11) (c) 1. These requirements will reduce the density and proximity of workers in employer-provided housing while ensuring migrant camp operators are able to provide sufficient housing for workers.
	Violation transparency: "The current version of DWD 301.13(5)(a) provides that `any affected employee' may request administrative review after the department assesses a penalty fee; but, current Department practices provide only notification to the party receiving the fine, and not affected workers regarding penalty assessment decisions. Affected workers who do not receive notification regarding penalty assessment decisions are unlikely to contest such decisions within the required 30 day time frame. A revised version could ensure that affected workers and/or camp occupants receive notice of violation determinations and penalty decisions and the opportunity to appeal such decisions."	The commenter seeks greater transparency of penalty decisions. The Department declines to change the rule but will take the commenter's suggestion to provide greater transparency into consideration.
	Variance notification: "Similarly, the variance application process could include a mechanism to notify the labor camp occupants who are most affected by variance decisions. As an example, the existing mechanism in the OSHA workplace variance process requires employers to notify affected workers of the variance proposal and provides workers with a mechanism for expressing opposition to a proposed variance. 29 U.S.C. §§ 1905.10(b)(9)-(10). Wisconsin's variance applications could contain similar provisions that would require camp operators seeking a variance to publicly post information regarding the variance applications and provide a mechanism for workers to contact DWD to comment on the proposed variance."	The Department declines to make this change. The OSHA mechanism at 29 USC 1905.10 (b) (9) is in the context of variances to OSHA rules within a workplace. In that context, the employer seeking the variance would have access to the affected employees. Migrant camp operators seeking a variance under s. DWD 301.07 (7) do so before the Department grants a certification to operate a migrant labor camp, which must happen prior to the arrival of migrant workers. As such, it would not be a viable process for the Department to review comments on variances. The Department notes that migrant labor camps operators must apply annually for certification. Further, migrant camp operators are required to post s. DWD 301.07 in the migrant labor camp in English and in the language of the camp occupants if other than English. Section DWD 301.07 (24). These two provisions allow a migrant camp occupant to contact DWD about variances to the migrant camp rules, which DWD may take into account if there

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		are future requests for a variance.
John Bauknecht, Attorney, United Migrant Opportunity Services (UMOS)	On behalf of UMOS, the commenter supported the rule in its entirety. He also commented, without elaborating, that additional amendments of current ch. DWD 301 could be in the best interests of the migrant farmworker population.	The Department appreciates the feedback and no further response is required.
	Waivers: The commenter also made the following comment: "In recognizing that all amendments and changes, large and small, may have an unintended consequence in increasing the cost or level of difficulty in compliance by the agricultural industry, it is recommended that the DWD utilize waivers or similar methods in the initial stages of implementation. An example of this is the requirement that increases the total openable window area from 45% to 50%. The rationale provided for this amendment is to create consistency with OSHA regulations 29CFR 1910.142(b)(7). As stated in the hearing by Jason Culotta, President of Midwest Food Products Association, double hung windows could, under some circumstances, create significant issues in existing units that are currently in compliance. This comment is not intended to show opposition by UMOS to this specific Section. However, if it does provide an example of the need for flexibility when physical or economic factors may be appropriate for consideration in granting a reasonable accommodation."	See the above responses of the Department addressing this concern.