

STATEMENT OF SCOPE
Department of Workforce Development

Rule No.

DWD 301

Relating to

COVID-19 protections for migrant workers

Rule Type

Emergency

Finding of Emergency

The Department of Workforce Development seeks to promulgate a new emergency rule in ch. DWD 301 for protecting migrant workers from the SARS-CoV-2 virus which causes the coronavirus disease 2019. (In this Statement of Scope, the virus and disease will be referred to as "COVID-19.") On April 14, 2020, at the direction of the Governor, the Secretary-designee of the Wisconsin Department of Health Services issued Emergency Order #25 to impose safety measures related to COVID-19 for migrant labor camps. Because the risks associated with COVID-19 for migrant workers are likely to continue after Emergency Order # 25 expires, an emergency rule is necessary for the preservation of public health, safety, and welfare.

Detailed Description of the Objective of the Proposed Rule

The objective of the proposed emergency rule is to create requirements for protecting migrant workers from COVID-19 and prevent the spread of COVID-19 in this state.

Description of Existing Policies Relevant to the Rule, New Policies Proposed to be Included in the Rule, and an Analysis of Policy Alternatives

Currently, ch. DWD 301 regulates housing conditions in migrant labor camps, imposes field sanitation standards, and provides notice of migrant labor rights. In addition, s. 103.917, Stats., requires employers to provide safe and adequate transportation for migrant workers and s. 103.905 requires the Department to promulgate rules to enforce those migrant labor laws, including s. 103.917. Emergency Order #25 provides additional requirements on migrant labor camp operators for the specific purposes of preventing exposure to COVID-19, caring for individuals with COVID-19, and preventing the spread of COVID-19.

To the extent they are within the rulemaking authority of the Department under s. 103.905, Stats., the provisions of Emergency Order # 25 will be included in the emergency rule and will supplant the requirements imposed by Emergency Order #25. The policy alternative is for the Department to continue to enforce ch. DWD 301 and s. 103.917, Stats., without imposing

additional requirements that would protect migrant workers from COVID-19 and prevent the spread of COVID-19 in this state.

Detailed Explanation of Statutory Authority for the Rule (Including the Statutory Citation and Language)

103.905 Department's duties. The department shall:

(1) Promulgate rules for the enforcement and implementation of ss. 103.90 to 103.97.

...

(5) Enforce, or cause to be enforced, ss. 103.90 to 103, and cooperate with other officers, departments, boards, agencies or commissions of this state, or of the United States, or of any other state, or of any local government in the enforcement of such sections.

Estimate of Amount of Time that State Employees Will Spend Developing the Rule and of Other Resources Necessary to Develop the Rule

The estimated time is 30 hours.

List with Description of All Entities that May Be Affected by the Proposed Rule

The proposed emergency rule will affect migrant workers, migrant worker employers, and migrant labor camp operators.

Summary and Preliminary Comparison with Any Existing or Proposed Federal Regulation that is Intended to Address the Activities to be Regulated by the Proposed Rule

The Migrant & Seasonal Agricultural Worker Protection Act (MSPA), 29 U.S.C. 1801, et. seq., sets standards for migrant and seasonal agricultural workers regarding housing and transportation. MSPA requires that providers of housing to migrant and seasonal agricultural workers comply with certain minimum standards for health and safety, and that transportation providers have vehicles that meet certain standards for safety. It also requires the contractors of migrant agricultural workers to provide prior notice to such workers of the working conditions.

Anticipated Economic Impact of Implementing the Rule (Note if the Rule is Likely to Have a Significant Economic Impact on Small Businesses)

The proposed emergency rule is expected to have an economic impact on migrant worker employers and migrant labor camp operators, which may include small businesses, who will have to comply with the emergency rule.

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Approval by signature of the agency head or authorized individual

Pamela McGillivray, Chief Legal Counsel
Authorized Signature

Dated