

Order of the Wisconsin Department of Workforce Development

The Wisconsin Department of Workforce Development adopts the following rule to create DWD 301.07 (5) (bm), (11) (j), (k) and (L), (15) (n) and (o), (16) (r), (17) (e) and (f), (20) (h), (i) and (j), (21) (n), and (25), DWD 301.09 (2) (d) and (e) and DWD 301.10, relating to COVID-19 protections for migrant workers.

The statement of scope for this rule, SS 032-20, was approved by the Governor on May 1, 2020, published in register No. 773A3, on May 4, 2020, and approved by the Department on May 22, 2020. This emergency rule was approved by the Governor on June 4, 2020.

Analysis Prepared by the Department of Workforce Development

Finding of Emergency

The Department 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 order, 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 for the specific purposes of preventing exposure to COVID-19, caring for individuals with COVID-19, and preventing the spread of COVID-19. Because the risks associated with COVID-19 for migrant workers are likely to continue after Emergency Order # 25 expires on June 13, 2020, an emergency rule is necessary for the preservation of public health, safety, and welfare.

Statutes Interpreted

Section 103.905, Stats.

Statutory Authority

Section 103.905, Stats.

Explanation of Statutory Authority

The Department has specific and general authority to establish rules to enforce and implement the Wisconsin Migrant Labor Law, ss. 103.90 to 103.97, Stats. This authority includes ensuring migrant labor camps, transportation, and field work are safe for workers.

Related Statutes or Rules

Sections 103.90 to 103.97, Stats., and ch. DWD 301.

Plain Language Analysis

Currently, ch. DWD 301 regulates housing conditions in migrant labor camps, imposes field sanitation standards, and provides notice of migrant labor rights

The rule revises ch. DWD 301 to impose the following additional requirements. The rule requires migrant camp operators to provide separate, isolated living space to workers exhibiting COVID-19 symptoms, except for workers residing in certain family units. The rule specifies requirements for allowing migrant camp operators to provide alternative housing if symptomatic workers cannot be isolated in their current living space. Except for workers residing in individual family units, the rule requires migrant camp operators to assign symptomatic workers to separate toilet rooms or toilets. Except for individual family units, the rule requires daily disinfection of high-touch areas within toilet rooms and bathing, laundry, handwashing, cooking, eating, and sleeping facilities. In addition, hand-washing stations and hand sanitizer must be provided to workers in cooking and eating facilities and within sleeping facilities. In dormitory or barracks style housing, the rule requires reasonable effort to separate beds by at least 6 feet and provides that workers should sleep head-to-toe if possible. The rule requires migrant camp operators to make reasonable efforts to make sanitized cloth face coverings available for workers in living areas. The rule also imposes distancing requirements for field work and worker transportation. Finally, the rule requires migrant camp operators to post the rule's requirements in English and the language of camp occupants.

Summary of, and comparison with, existing or proposed federal regulations

The Migrant and Seasonal Agricultural Worker Protection Act (MSPA), 29 USC 1801, et seq., sets standards for migrant and seasonal agricultural workers regarding housing and transportation.

Summary of comments on the statement of scope and description of how the comments were taken into account in drafting the rule

A preliminary public hearing on the statement of scope was held on May 21, 2020; comments were received at the hearing and by email. In sum, commenters generally supported promulgating rules to supplant Emergency Order # 25 before it expires. Commenters expressed the need for clear rules, as well as for educating workers, in their preferred language, about the protections under the rules, including social distancing, using personal protection equipment (PPE) properly, and reporting symptoms. In addition, commenters expressed the need to include facemask requirements in transportation and the workplace and to address the usage of bunk beds and ventilation in dormitory and barrack-style housing. Commenters suggested

including reporting and retaliation protection for workers. One commenter generally supported incorporating the requirements of Emergency Order # 25 into the rule, but expressed concern that camp operators are unable to meet the social distancing in transportation in employer-provided vehicles and suggested an alternative means of protecting worker safety, such as PPE and distancing through every other seat in the transportation vans.

Agency Response: The Department considered all relevant comments received. The Department agreed that the requirements should be clear and enforceable and has tailored the rule to achieve those goals. The Department also amended the social distancing in transportation requirement to provide an alternative that would protect workers. Comments related to reporting and retaliation protection for workers were deemed outside the scope of the statement of scope.

Comparison with rules in adjacent states

No agency in an adjacent state has promulgated rules that specifically address protecting migrant workers from exposure to COVID-19. Iowa agencies have issued a joint guidance document with recommendations for preventing migrant worker exposure to COVID-19.

Summary of factual data and analytical methodologies

Emergency Order # 25, ch. DWD 301, and relevant statutes relating to the Wisconsin Migrant Labor Law were reviewed as part of the process for developing this proposed rule.

Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis

This rule is intended to prevent the spread of disease in the migrant labor camps and is intended to have no negative impact on business. Therefore, no analysis was necessary.

Effect on small business

No negative impact on small business.

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Place where comments are to be submitted and deadline for submission

E-Mail: DWDAdminRules@dwd.wisconsin.gov
Comments will be accepted until a date to be determined.

SECTION 1. DWD 301.07 (5) (bm) is created to read:

DWD 301.07 (5) (bm) "COVID-19" means the SARS-CoV-2 virus and any related disease.

SECTION 2. DWD 301.07 (11) (j), (k) and (L) are created to read:

DWD 301.07 (11) (j) A camp operator shall provide a separate, isolated living space to workers exhibiting symptoms of COVID-19, unless the symptomatic worker resides in a one-family housing unit or in a family living unit that is part of a multifamily unit. If a camp operator is unable to isolate workers with symptoms in their current living space, the camp operator shall provide alternative housing in a separate room or building from other workers.

Note: Symptoms of COVID-19 be found at the following website of the Centers for Disease Control and Prevention: <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>.

(k) If alternative housing is required under par. (j), a camp operator shall seek a variance under sub. (7) (a) in accordance with the following requirements:

1. When possible, a variance request shall be submitted in advance of the need for alternative housing. If a variance has not been requested in advance, the camp operator shall submit a request as soon as the camp operator becomes aware of the

need for alternative housing. The department's variance form is available upon request by email to MSFW@dwd.wisconsin.gov. All variance requests must be submitted on the department's variance form to MSFW@dwd.wisconsin.gov.

2. The department shall approve or deny the request for a variance within two business days of receipt of the request.

3. The variance may be subject to inspection and be in effect pending inspection. The department shall conduct inspections as soon as practicable and inspections may be performed remotely in conjunction with camp operators.

(L) Food and water shall be provided to workers under isolation under par. (j) in order to minimize the need to leave isolation.

SECTION 3. DWD 301.07 (15) (n) and (o) are created to read:

DWD 301.07 (15) (n) A worker exhibiting symptoms of COVID-19 shall immediately be assigned to a separate toilet room, if reasonably possible, or a separate toilet if a separate toilet room is not available. This paragraph does not apply to workers residing in individual family units.

(o) High-touch areas within all toilet rooms, except in individual family units, shall be disinfected daily.

SECTION 4. DWD 301.07 (16) (r) is created to read:

DWD 301.07 (16) (r) High-touch areas within all bathing, laundry and handwashing facilities, except in individual family units, shall be disinfected daily.

SECTION 5. **DWD 301.07** (17) (e) and (f) are created to read:

DWD 301.07 (17) (e) Hand-washing stations and hand sanitizer with at least 60% alcohol shall be provided to workers in all cooking and eating facilities.

(f) High-touch areas within all cooking and eating facilities, except in individual family units, shall be disinfected daily.

SECTION 6. DWD 301.07 (20) (h), (i) and (j) are created to read:

DWD 301.07 (20) (h) In dormitory or barracks style housing, reasonable effort shall be made to separate beds by at least six feet and workers should sleep head-to-toe, as possible.

(i) High-touch areas within sleeping facilities shall be disinfected daily.

(j) Hand-washing stations and hand sanitizer with at least 60% alcohol shall be made available to workers within sleeping facilities.

SECTION 7. DWD 301.07 (21) (n) is created to read:

Section DWD 301.07 (21) (n) Camp operators shall make all reasonable efforts to make sanitized cloth face coverings available for workers to be worn in the living areas of the camp in accordance with guidance of the Centers for Disease Control and Prevention.

Note: Guidance of the Centers for Disease Control and Prevention can be found at: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html>.

SECTION 8. DWD 301.07 (25) is created to read:

DWD 301.07 (25) POSTING OF EMERGENCY RULE. (a) In this subsection, "emergency rule" means the requirements under subs. (5) (bm), (11) (j), (k) and (L), (15) (n) and (o), (16) (r), (17) (e) and (f), (20) (h), (i) and (j), and (21) (n) and ss. DWD 301.09 (2) (d) and (e) and 301.10.

(b) The department shall make this emergency rule available for posting in English and in the language of the camp occupants if other than English. Camp operators shall post this emergency rule in English and in the language of the camp occupants if other than English.

SECTION 9. DWD 301.09 (2) (d) and (e) are created to read:

DWD 301.09 (2) (d) Handwashing facilities shall provide soap and water or hand sanitizer with at least 60% alcohol.

(e) If the department has authorized the substitution of prepackaged towelettes for handwashing facilities through a variance, that variance is revoked. All handwashing facilities must comply with par. (d).

SECTION 10. DWD 301.10 is created to read:

DWD 301.10 Social distancing. (1) FIELD WORK. Workers engaged in hand labor shall work at least six feet from any other person whenever possible while working in the fields.

(2) TRANSPORTATION. (a) Employers shall ensure that workers engage in social distancing on all transportation of workers between work and their residences and other transportation provided by the employer to allow workers to obtain necessary supplies and services and sit at least six feet apart. If the employer is unable to meet the six-foot distancing requirement on transportation, it shall provide sanitized face masks or cloth face coverings and require all vehicle occupants to wear face masks or cloth face coverings during transport. Hand sanitizer with at least 60% alcohol should be available in all transport vehicles. All high touch surfaces in vehicles should be cleaned and disinfected at least once per day. Disinfectants should be used that meet the United

States Environmental Protection Agency (EPA) criteria for use against SARS-CoV-2, the virus that causes COVID-19.

Note: EPA-approved disinfectant for use against SARS-CoV-2 can be found here: <https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2>

(b) Employers shall ensure that workers exhibiting symptoms of COVID-19, as defined in s. DWD 301.07 (5) (bm), are transported separately to their residences and to other locations in transportation provided by the employer from workers not exhibiting symptoms.

SECTION 11. This emergency rule shall take effect upon publication in the official state newspaper.

Dated this _____ day of June , 2020

STATE OF WISCONSIN
DEPARTMENT OF WORKFORCE
DEVELOPMENT

Caleb Frostman, Secretary