

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 seeks to promulgate an emergency rule to revise ch. DWD 301 for protecting migrant workers from the SARS-CoV-2 virus which causes the coronavirus disease. (In this Statement of Scope, the virus and disease will be referred to as "COVID-19.") Chapter DWD 301 regulates migrant labor work agreements and housing conditions in migrant labor camps, imposes field sanitation standards, and provides for notice of migrant labor rights.

On April 14, 2020, at the direction of the Governor, the Secretary-designee of the Wisconsin Department of Health Services (DHS) 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, assisting individuals with COVID-19, and preventing the spread of COVID-19. Because the risks associated with COVID-19 for migrant workers were ongoing when Emergency Order # 25 expired on June 13, 2020, the Department promulgated emergency rule EmR2014 on June 12, 2020. EmR2014 revised ch. DWD 301 to temporarily impose various protections for migrant workers in camps, fields, and employer-provided transportation. The protections were based on the public health information that was then available from DHS and the U.S. Centers for Disease Control and Prevention (CDC). After extensions by the Joint Committee for Review of Administrative Rules (JCRAR), EmR2014 expired on March 8, 2021.

Because the COVID-19 pandemic continued to threaten public peace, health, safety, and welfare, the Department consulted with DHS and interested stakeholders and promulgated another emergency rule, EmR2109, on March 19, 2021. EmR2109 did not duplicate EmR2014 but was based on more recent public health guidance related to the benefits of wearing face coverings, distancing, and otherwise preventing the transmission of COVID-19. After extensions by JCRAR, EmR2109 expired on December 13, 2021.

At present, the Department is preparing a separate Statement of Scope for a permanent rule with objectives that include exploring requirements for ensuring that employers follow best practices in protecting the health and safety of migrant workers in camps, fields, and employer-provided transportation. However, the Department estimates that over 4,400 migrant workers will reside

in employer-provided housing in Wisconsin during 2022. A majority of those migrant workers will arrive in early spring and stay through the fall and the Department will not be able to promulgate a permanent rule in time to protect those migrant workers. Moreover, new variants of concern are being detected in Wisconsin, such as the Delta and Omicron variants, which are potentially more contagious, cause more severe illness, or are more resistant to diagnostics, treatment, or vaccines than the original SARS-CoV-2 strain of the virus. Therefore, a new emergency rule that is focused on COVID-19 is necessary for the immediate 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. The requirements will reflect CDC and DHS recommendations for congregate housing, transportation, and sanitation in order to protect workers from the risk of COVID-19 infection and transmission. The requirements will also reflect guidance by the federal Occupational Safety and Health Administration (OSHA) for mitigating and preventing the spread of COVID-19 in the workplace and for protecting workers who reside in communal living arrangements.

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.

Consistent with the Department's rulemaking authority under s. 103.905, Stats., the Department proposes to promulgate an emergency rule that takes into account current CDC, OSHA, and DHS recommendations. 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 and Seasonal Agricultural Worker Protection Act (MSPA), 29 U.S.C. 1801, et. seq., and its implementing regulations under 20 CFR Part 500, set 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. MSPA also requires the contractors of migrant agricultural workers to provide prior notice to such workers of the working conditions

Regarding COVID-19, the CDC has issued guidance on shared or congregate housing and the CDC and DOL have issued guidance on agricultural workers and employers. OSHA has issued guidance on mitigating and preventing the spread of COVID-19 in the workplace, as well as recommendations for additional considerations for workers who reside in communal living arrangements. The CDC, DOL, and OSHA continue to review their guidance for the purpose of making any necessary updates.

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. However, the long-term net economic impact is expected to be positive because the emergency rule will protect against the spread of COVID-19 and mitigate the significant negative economic impacts on the production of produce that would otherwise result from the spread of COVID-19 in migrant labor camps.

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