

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date June 5, 2023
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Chapter DWD 301	
4. Subject Migrant Labor	
5. Fund Sources Affected <input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected 20.445 (1) (a). Fees paid for certificates of registration by migrant labor contractors and persons who operate migrant labor camps are currently not appropriated to the Department but are deposited in the general fund.
7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input checked="" type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input checked="" type="checkbox"/> Could Absorb Within Agency's Budget	
8. The Rule Will Impact the Following (Check All That Apply) <input checked="" type="checkbox"/> State's Economy <input checked="" type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input checked="" type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0 for local units of government. As for businesses, approximately 281 entities are subject to ch. DWD 301's requirements as of May 2023. Of that number, 207 are employers and 74 are either migrant labor contractors or agents of employers. Of the 281 businesses, 125 of them operate 261 migrant labor camps located throughout the state. The rule may impose implementation and compliance costs on these businesses. However, the Department expects those costs to be minimal for the following reasons. Except for the application fee for an annual certificate to operate a migrant labor camp, the rule does not increase other fees required under current ch. DWD 301 or penalty fees the Department is allowed to assess under the current chapter. In addition, many of the rule's new requirements are consistent with requirements of other state and federal agencies that apply on their own to these businesses and, therefore, do not introduce new compliance standards. Finally, as under the current ch. DWD 301, the rule allows the Department to issue variances from migrant labor camp and field sanitation requirements. Therefore, a business can apply for a variance that reduces implementation and compliance costs, which the Department may grant if the variance is necessary to prevent a practical difficulty or unnecessary hardship and other requirements are satisfied.	
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
11. Policy Problem Addressed by the Rule The Department has not made any substantive revisions to ch. DWD 301 since Clearinghouse Rule CR 07-018 went into effect on January 1, 2008. As a result, certain rules in the current chapter do not align with federal law and Wisconsin statutes, contain inconsistencies and outdated language, and require clarification. The Department is proposing this rule to address those problems. In addition, the Department has had to rely on promulgating emergency rules to protect migrant workers from COVID-19. This rule creates new requirements for diseases and illness prevention in migrant labor camps that should obviate the need for future emergency rules.	
12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments.	

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In drafting the rule, the Department held three meetings with the Ad Hoc Committee on Migrant Seasonal Farmworkers established by the Governor's Council on Migrant Labor. The Ad Hoc Committee's members represent the interests of employers and migrant workers. At the meetings, the members commented on the rule. In addition, the Midwest Food Products Association (MWFPA) and Legal Action of Wisconsin submitted written comments for those meetings. Also, at the preliminary public hearing on the scope statement for the rule (SS 004-22), both the MWFPA and Wisconsin Potato & Vegetable Growers Association submitted written comments and a migrant labor contractor made oral comments. The Department has also posted a draft of the rule on its administrative rules website beginning on May 1, 2023. The purpose of the posting is to solicit comments on economic impact. To date, the Department has not received any comments.

13. Identify the Local Governmental Units that Participated in the Development of this EIA.

None.

14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

As noted in the response to item 9 above, the Department expects the economic and fiscal impact on migrant labor camp operators, contractors, and employers to be minimal.

15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The benefits of implementing the rule are that an updated ch. DWD 301 will align more closely to federal law and Wisconsin statutes, correct inconsistencies, replace outdated language, and provide clarification that is needed in the current chapter. In addition, the rule may obviate the need for emergency rulemaking to protect migrant workers and camp occupants from illnesses and diseases like COVID-19. The alternative is for the Department to not promulgate the rule or to reduce the scope of the rule's updates. Those alternatives would fail to address, in whole or in part, the policy problems addressed by the rule.

16. Long Range Implications of Implementing the Rule

The Department expects that implementing the rule will have a positive long-range impact on migrant labor camp operators, migrant labor contractors, migrant labor employers, and migrant workers. All of these stakeholders will be better served by an updated ch. DWD 301 that resolves the policy problems addressed by the rule.

17. Compare With Approaches Being Used by Federal Government

See the rule's analysis for a comparison with approaches used by the federal government.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

See the rule's analysis for a comparison with approaches used by Illinois, Iowa, Michigan, and Minnesota.

19. Contact Name

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20. Contact Phone Number

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ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

Many of the migrant labor camp operators and migrant labor contractors and employers that are subject to ch. DWD 301 are small businesses as defined in s. 227.114 (1), Stats. For the reasons stated in response to item 9 above, the Department expects the economic and fiscal impact on these small businesses to be minimal. Additionally, some of the rule's new requirements impose compliance costs that are proportionately higher based on the number of occupants in a migrant labor camp and, because migrant labor camps operated by small businesses have fewer occupants than those operated by larger businesses, those costs are anticipated to have only minimal impact on small businesses. For example, the rule requires that in toilet facilities used by at least 10 males, a urinal must be provided for every 25 males, instead of every 40 males, as required under the current chapter. However, based on the Department's review, the change is not anticipated to impact most small businesses because the occupants of their camps do not meet the next threshold of 50 males, which would require installation of a second urinal under the new rules, so only one will be required. The economic impact of this requirement is less for small businesses that operate migrant labor camps with smaller numbers of occupants, as their number of occupants may be below the new ratios and no change at their facilities may be required.

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

The Department reviewed migrant worker agreements and other records relating migrant labor contractors and migrant labor camps submitted to the Department in the course of the Department's duties in regulating migrant labor contractors and migrant labor camps.

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

Section 103.905 (1), Stats., requires the Department to promulgate rules to enforce and implement ss. 103.90 to 103.97, Stats., which impose requirements on migrant labor camp operators and migrant labor contractors and employers without regard to the size of their businesses. Accordingly, the Department lacks authority under those statutes to impose less stringent requirements on small businesses. However, as under current ch. DWD 301, the rule allows the Department to issue variances from migrant labor camp and field sanitation requirements. Therefore, a small business can apply for a variance that reduces that economic impact of a requirement, which the Department may grant if the variance is necessary to prevent a practical difficulty or unnecessary hardship and other requirements are satisfied.

In addition, some of the rule's new reporting requirements are consistent with reporting requirements of other state and federal agencies that apply on their own to small businesses. For example, the requirements to report certain diseases and symptoms to local health officials are consistent with regulations of the Occupational Safety and Health Administration (OSHA) and rules of the Department of Health Services (DHS). In this rule, the Department cannot affect the impact already imposed by OSHA and DHS. However, the Department can clarify that these requirements apply to small businesses.

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

As noted in the response to item 3 above, a small business can apply for a variance from the migrant labor camp and field sanitation requirements.

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5. Describe the Rule's Enforcement Provisions

Except for the following, the rule does not affect the enforcement provisions under current ch. DWD 301:

- The rule prohibits the Department from revoking a certificate to operate a migrant labor camp until after the Department has given the operator a period of up to 15 days to correct violations.
 - The rule eliminates the current chapter's examples of high, medium, and low severity penalties. The Department has determined that the examples are not necessary and restrict the Department's ability to exercise discretion regarding the penalties.
 - The rule creates a hearing process for contesting the Department's denial, suspension, or revocation of migrant labor contractor certificates and migrant labor camp certificates and the Department's assessment of penalty fees.
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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

Yes No
