

Chapter DWD 301

MIGRANT LABOR

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Note: Chapter Ind 49, Migrant Labor Camps as it existed on April 30, 1978 was repealed and a new chapter Ind 201, Migrant Labor was created effective May 1, 1978. Chapter Ind 201 was revised and renumbered to be chapter ILHR 301 effective March 1, 1993. Chapter ILHR 301, as it existed on December 31, 1997 was renumbered to be chapter DWD 301 effective January 1, 1998.

DWD 301.01 Scope. This chapter is promulgated pursuant to and for the enforcement and implementation of ss. 103.90 to 103.97, Stats.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78; renum. from Ind 201.01, Register, February, 1993, eff. 3-1-93.

DWD 301.015 Definitions. In this chapter and as applied under ss. 103.90 to 103.97, Stats:

Note: For terms that are not used in this chapter, this section includes notes identifying the statutes in which the terms are used.

(1) "Agricultural or horticultural commodity" has the meaning given in 29 CFR 780.112.

(2) "Applicable wage rate" means the actual anticipated straight-time hourly rates that a worker will be paid and any other wages, as defined in s. 109.01 (3), Stats., that are payable to the worker.

(3) "Camp operator" means a person who maintains a migrant labor camp.

(4) "Common use facility" means a structure or area other than sleeping or living quarters that is designed for use by occupants who are not members of the same family.

(5) "Common use room, shower facility, or toilet facility" means a room, toilet facility, or shower facility that is designed for use by occupants who are not members of the same family.

(6) "Communicable disease" means a disease listed in ch. DHS 145 Appendix A.

(7) "Department" means the department of workforce development.

(8) "Employer" has the meaning given in s. 103.90 (2), Stats.

(9) "Employer's own operation" means any farm or other business enterprise wholly owned or managed by the employer.

Note: The above term is used in the definition of "migrant labor contractor" at s. 103.90 (4), Stats.

(10) "Employment" means the act of having direction and control of any worker, being responsible for the wages of a worker, or allowing a worker to perform work for the worker's employer.

(11) "Fee or other consideration" means money or anything of value or benefit paid or promised to be paid for services as a migrant labor contractor.

Note: The above term is used in the definition of "migrant labor contractor" at s. 103.90 (4), Stats.

(12) "Habitable room" has the meaning given in s. SPS 320.07 (37).

(13) "Hand labor" means that work that is performed by hand or with hand tools in the field.

(14) "Handwashing facility" means a facility provided with running water for washing hands, arms, face, and head, including

lavatories, basins, and sinks, both for cleanliness and for safety purposes.

(15) "Immediate family" means any of the following:

(a) A spouse.

(b) Natural, adopted, or foster children; stepchildren; and legal wards.

(c) Natural, foster, or adoptive parents; stepparents; and legal guardians.

(d) Brothers, sisters, and half brothers and sisters.

(e) Grandparents.

Note: The above term is used in the definition of "migrant labor contractor" at s. 103.90 (4), Stats., and in s. DWD 301.07 (23) (b).

(16) "Migrant labor camp" has the meaning given in s. 103.90 (3), Stats.

(17) "Migrant labor contractor" has the meaning given in s. 103.90 (4), Stats.

(18) "Migrant worker" or "worker" has the meaning given in s. 103.90 (5), Stats.

(19) "Occupant" means any person who lives in a migrant labor camp.

(20) "Recruit or recruitment" means to offer, or the offer of, employment to a migrant worker whether by personal contact, telephone, correspondence, or a recall notice due to a union contract.

(21) "Regular employee" means a person employed year round by an employer and who engages in activities as a migrant labor contractor solely for the employer.

Note: The above term is used in the definition of "migrant labor contractor" at s. 103.90 (4), Stats.

(22) "Service buildings" means common use facilities for toilets, lavatories, showers, and laundry facilities.

(23) "Terms and conditions of employment" includes job assignment, layoffs, discharge, filling vacancies, transfers, job bidding, seniority, hours, work schedule, overtime pay, leave of absence, benefits, insurance, pension, vacation, holiday leave, sick leave, and general working conditions.

(24) "Toilet facility" means a facility provided for the purpose of defecation or urination, or both, including water closets and biological or chemical toilets, and urinals.

(25) "Wisconsin commercial building code" means chs. SPS 361 to 366.

(26) "Working day" means any day except Saturday, Sunday, and holidays designated in s. 230.35 (4) (a), Stats.

History: CR 23-030: cr. (title), (intro.), (1), (2), renum. (3), (4) from DWD 301.07 (5) (a), (b) and, as renumbered, am. (4), cr. (5) to (8), renum. (9), (10), (11) from DWD 301.05 (6), DWD 301.06 (2), and DWD 301.05 (4) and am., cr. (12), renum. (13), (14) from DWD 301.09 (6) (a), (b) and am., cr. (15) to (18), renum. (19), (20), (21), (22), (23), (24) from DWD 301.07 (5) (c), DWD 301.06 (2m), DWD 301.05 (5), DWD 301.07 (5) (d), DWD 301.06 (10), and DWD 301.09 (6) (e) and, as renumbered, am. (20) to (23), cr. (25), (26) Register January 2024 No. 817, eff. 2-1-24.

DWD 301.02 Data. The department shall submit data and information relative to ss. 103.90 to 103.97, Stats., and this chap-

ter to the council on migrant labor pursuant to specific requests from the council and through an annual report submitted to the council in January.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78; renum. from Ind 201.02, Register, February, 1993, No. 446, eff. 3-1-93.

DWD 301.03 Forms. The department shall issue and make available any forms that are required to comply with this chapter.

Note: All forms issued by the department to comply with this chapter may be obtained at <https://dwd.wisconsin.gov/jobservice/MSFW/forms.htm> or from the Department of Workforce Development, Migrant and Seasonal Farmworker Programs, Dane County Job Service, 1819 Aberg Avenue, Ste. C, Madison, WI 53704. Email address: MSFW@dwd.wisconsin.gov.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78; renum. from Ind 201.03, Register, February, 1993, No. 446, eff. 3-1-93; am. Register, December, 1997, No. 504, eff. 1-1-98; CR 07-018: am. Register December 2007 No. 624, eff. 1-1-08; **CR 23-030: r. and recr. Register January 2024 No. 817, eff. 2-1-24.**

DWD 301.04 Complainant confidentiality. The department may not disclose the name of a person filing a complaint with the department under s. 103.905 (4), Stats., if the person requests that the person's name not be disclosed by the department.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78; renum. from Ind 201.04, Register, February, 1993, No. 446, eff. 3-1-93; **CR 23-030: r. and recr. (title), r. (1), renum. (2) to DWD 301.04 and am. Register January 2024 No. 817, eff. 2-1-24.**

DWD 301.05 Migrant labor contractors. (1) CERTIFICATE OF REGISTRATION. (a) A person shall apply annually to the department for issuance or renewal of a certificate of registration to engage in activities as a migrant labor contractor on a form prescribed by the department or on the form used to comply with 29 USC 1811(a). The fee for issuance or renewal of the certificate of registration shall be \$100.

Note: Section 103.91 (1), Stats., prohibits a person from engaging in activities as a migrant labor contractor unless the person obtains a certificate of registration from the department. Section 103.91 (3), Stats., requires a certificate to be renewed annually.

(b) The department shall review and make a determination on a person's application under par. (a) within 20 working days after the application is received. The department may extend the time period for making a determination in order to determine whether s. 103.91 (4) (b), (c), or (d), Stats., applies to the person.

Note: Sections 103.91 (4) (b), (c), and (d), Stats., specify the circumstances for denying, suspending, revoking, or not renewing a certificate of registration to engage in activities as a migrant labor contractor based on delinquencies in child or family support, taxes, or unemployment insurance contributions.

(c) If the department refuses to issue a certificate of registration to engage in migrant labor contractor activities to a person or suspends, revokes, or refuses to renew a person's certificate of registration to engage in migrant labor contractor activities, the person may, within 20 days of the date of the refusal, suspension, or revocation, file a written request for a hearing under s. DWD 301.135. The request shall specify the grounds for the review and the relief sought.

(8) DUTIES. Every migrant labor contractor shall do all of the following:

(a) Submit a separate application for a migrant labor contractor employee identification card on a form prescribed by the department or the form used to comply with 29 USC 1811 (b) for each officer, director, partner, or agent of the migrant labor contractor at the time of application or within 10 days after hiring or contracting with such person.

(am) Provide to the department a copy of the migrant labor contractor's certificate of registration as a farm labor contractor issued pursuant to 29 USC 1811 (a) and the certificate of registration issued to any individual hired, employed, or used by the migrant labor contractor to perform farm labor contracting activities.

(b) Keep records that show all of the following for each worker recruited:

1. Name in full and home address.

2. All fees and other consideration paid to the migrant labor contractor on account of the labor or recruitment of the worker.

3. The cost to the migrant labor contractor of goods and services provided to the worker.

4. All sums and the purpose for all sums received from or on behalf of the worker.

(bm) Preserve the records specified in par. (b) for a period of 3 years and make them available to the worker or the department for inspection upon request.

(c) Provide a policy under s. 103.91 (8) (f), Stats., the limits of which with respect to each vehicle shall be not less than \$100,000 for each seat in the vehicle, but in no event is the total insurance required to be more than \$5,000,000 for any one vehicle. For purposes of this paragraph, the number of seats in the vehicle is the manufacturer's rated capacity or, for vehicles fitted or customized after manufacture, the number of seats prescribed in 29 CFR 500.105 (b) (3) (vi) (D). This paragraph shall not apply if the migrant labor contractor furnishes transportation only as the agent of an employer who has obtained a policy of insurance against liability for damages arising out of the operation of motor vehicles with coverage equivalent to the coverage required under this paragraph.

(d) Provide a completed Vehicle Mechanical Inspection Report Form WH-514 for each vehicle used to transport individuals or property in connection with activities as a migrant labor contractor.

Note: Form WH-514 is available for the U.S. Department of Labor at <https://www.dol.gov/sites/dolgov/files/WHDL/legacy/files/wh514.pdf>.

(e) Provide every worker recruited a written work agreement as specified in ss. 103.90 to 103.97, Stats., and this chapter. If recruitment of a worker is by telephone, the migrant labor contractor shall provide the written work agreement as soon as reasonably possible.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78; cr. (9), Register, March, 1986, No. 363, eff. 4-1-86; renum. from Ind 201.05, Register, February, 1993, No. 446, eff. 3-1-93; am. (2), (8) (a), (c) and (d), Register, December, 1997, No. 504, eff. 1-1-98; CR 07-018: am. (1) and (8) (a) Register December 2007 No. 624, eff. 1-1-08; **CR 23-030: cr. (1) (title), cons. (1) and (2) and renum. to (1) (a) and am., cr. (1) (b), (c), r. (3), renum. (4), (5), (6) to DWD 301.015 (11), (21), (9) and am., r. (7), cr. (8) (title), am. (8) (intro.), (a), cr. (8) (am), renum. (8) (b) to (8) (b) (intro.) and (bm) and am., am. (8) (c) to (e), r. (9) Register January 2024 No. 817, eff. 2-1-24.**

DWD 301.06 Work agreements and written disclosures. (1) A single work agreement for a family may be used only when all of the terms and conditions of employment are substantially similar for all working family members.

(1e) A work agreement and written recruiting disclosure statement shall include all of the following:

Note: Section 103.915 (1) (a), Stats., requires that a migrant worker be provided with a written recruiting disclosure statement containing the information required in a work agreement at the time of the worker's recruitment.

(a) A description of cooking, bathing, laundry, and toilet facilities.

(b) A statement of the maximum number of persons to be accommodated in the following:

1. If the work agreement is for employment of a single person, the sleeping area to which the person will be assigned.

2. If the work agreement is for employment of a family, the housing unit to which the family will be assigned.

(c) The positions related to planting, cultivating, raising, harvesting, handling, drying, packing, packaging, processing, freezing, grading, or storing any agricultural or horticultural commodity in its unmanufactured state.

(d) Transportation costs, if any, paid by the worker.

(e) If the employer provides transportation for the worker, the specific mode of transportation, including the type of vehicle used.

(f) If the employer makes a payroll deduction for a travel or subsistence advance, the rate of the deduction.

(3) If an employer does not use the department's prescribed migrant labor work agreement form, the employer shall use a form approved by the department. An employer may not use a form

unless it has been approved by the department prior to its use. When considering an employer's form for approval, the department shall, in addition to the requirements of s. 103.915 (4), Stats., take into account the clarity and design of such form.

(3m) An employer may offer to provide to a migrant worker a migrant labor work agreement in an electronic form as provided in s. 137.15, Stats. If the migrant worker does not consent to receive the migrant labor work agreement electronically, the employer shall provide a physical copy of the migrant labor work agreement. By the first day of work, an employer shall provide a physical copy of the migrant labor work agreement to all migrant workers, including those who consented to receive the agreement electronically.

(8) (a) The minimum work guarantee under s. 103.915 (4) (b), Stats., 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 date of 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. If a worker is notified by the employer to report for work or is employed prior to the approximate beginning date specified in the work agreement, the period of employment and the guarantee of minimum work shall begin on the date the worker is notified to report for work or the date the worker reports for work, whichever is later, and shall continue until the final termination of employment, as specified in the work agreement, signed at the time of recruitment, or earlier if the worker is terminated for cause or due to seriously adverse circumstances beyond the employer's control.

(b) For purposes of par. (a), a date shall be considered "reasonably related to the approximate beginning date specified 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 pursuant to s. 103.915 (4) (b), Stats., is no greater than 15% of the length of time between the approximate beginning date specified in the work agreement and the date of the final termination of employment as specified in the work agreement or 10 days, whichever is shorter.

(c) For purposes of par. (a) and s. 103.915 (4) (b) and (5), Stats., in determining whether an interruption in operations constitutes seriously adverse circumstances beyond the employer's control, the department shall consider the circumstances that led to the interruption of the employer's operations including loss of crops, loss of or inability to operate facilities, or inability to store or process unmarketable, perishable agricultural produce and the department may not consider change-over of equipment or between packs or crops. The department shall also consider the duration of the interruption of the employer's operations in relation to the term of employment identified in the work agreement pursuant to s. 103.915 (4) (a), Stats.

(d) If a migrant worker is required by the employer to isolate under s. DWD 301.075 (2) (d), the migrant worker is considered available for work for purposes of s. 103.915 (4) (b), Stats., during the period of required isolation.

(11) For purposes of s. 103.915 (5), Stats., elapsed time shall be computed on the basis of 500 miles of travel per day.

(12) If the worker will be paid on a piece rate basis, the applicable wage rate included in the work agreement shall be the employer's guaranteed hourly rate. If at the time of recruitment the employer cannot anticipate the exact rate the worker will be paid, the work agreement shall specify a base rate which shall be not less than the base rate paid by the employer at the end of the preceding season for the kind of work specified, together with the words "or more" or similar phrase.

(13) If the applicable wage rate to be paid includes a bonus provision, the work agreement shall clearly state the conditions

under which the bonus shall be paid or forfeited. A work agreement may not state that a migrant worker must continue to work "until the end of the harvest" as a condition to receive a bonus. A bonus may be conditioned on a worker continuing to work up to 7 days beyond the approximate ending date in the work agreement.

(14) If an employer uses multiple sheet forms and signs the agreement first, the work agreement may provide that it may be cancelled by the employer if, by a specific date, the employer or the designated agent has not received a fully signed copy of the work agreement, but only if the provision is set forth in a conspicuous manner compared to the printing of the rest of the work agreement.

(15) The work agreement may provide for cancellation by the employer if the worker fails to notify the employer or designated agent within a reconfirmation period of not less than 15 days of the worker's continuing intention to accept the employment, but only if the provision is set forth in a conspicuous manner compared to the printing of the rest of the work agreement. Notification of reconfirmation may be made by collect telephone call, by an employer provided prepaid postcard, or any other means paid for by the employer.

History: Emerg. cr. (13), eff. 3-30-78; Register, April, 1978, No. 268, eff. 5-1-78; emerg. cr. (12) and (13), eff. 2-21-79; cr. (12) and (13), Register, May, 1979, No. 281, eff. 6-1-79; cr. (14) to (16), Register, March, 1986, No. 363, eff. 4-1-86; renum. from Ind 201.06, Register, February, 1993, No. 446, eff. 3-1-93; am. (5) and (12) (b), Register, December, 1997, No. 504, eff. 1-1-98; CR 07-018: am. (2), (3) and (13), cr. (2m) Register December 2007 No. 624, eff. 1-1-08; **CR 23-030: am. (title), cr. (1e), renum. (2), (2m), to DWD 301.015 (10), (20) and am., cons. (3) and (4) and renum. to (3), cr. (3m), r. (5) to (7), renum. (8) to (8) (a) and am., cr. (8) (b), (d), renum. (9) to (8) (c) and am., renum. (10) to DWD 301.015 (23) and am., am. (11), renum. (12) (a) to (12) and am., r. (12) (b), am. (14), (15), r. (16) Register January 2024 No. 817, eff. 2-1-24.**

DWD 301.07 Migrant labor camps. (1) CERTIFICATE.

(a) The application fee for an annual certificate to operate a migrant labor camp shall be \$100. Issuance of a certificate to operate a migrant labor camp is contingent on the migrant labor camp satisfying the minimum standards of this chapter.

Note: Section 103.92 (1) (a), Stats., requires every person maintaining a migrant labor camp in this state to apply for a certificate to operate the migrant labor camp and requires the application to be made annually by April 30 or 30 days prior to opening a new migrant labor camp. With certain exceptions, s. 103.92 (3), Stats., requires the department to issue a certificate if the migrant labor camp is in compliance with the department's rules establishing minimum standards for migrant labor camps. Section 103.92 (3), Stats., also provides that a certificate issued by the department authorizes a migrant labor camp to operate until March 31 of the next year.

(ag) A camp operator shall include with an application for a certificate to operate a migrant labor camp all of the following:

1. Documentation from the fire department providing fire protection for the migrant labor camp that the structures used for the migrant labor camp meet all local and state fire codes for the number of expected occupants identified on the application. The documentation shall be based on a fire inspection conducted no more than 6 months before submittal of an application for a certificate to operate a migrant labor camp.

2. The test results for the water sample required under sub. (9) (ar).

3. The written procedures for the temporary isolation of sick or injured occupants required under s. DWD 301.075 (2) (c).

(ar) The department shall review and make a determination on an application for a certificate to operate a migrant labor camp within 140 working days after the application is received or within 20 working days after the last inspection of the migrant labor camp that is needed for issuance of the certificate, whichever is sooner. The department shall schedule each inspection promptly, taking into consideration seasonal conditions and the employer's schedule for the use of the migrant labor camp. If 3 or more inspection visits are needed for issuance of the certificate, the department shall charge an additional fee of \$300 for the third inspection and \$500 for the fourth inspection and each subsequent inspection.

Note: Section 103.92 (3), Stats., requires the department to inspect each migrant labor camp for which an application for a certificate to operate a migrant labor camp is made.

(aw) Except for the denial of a certificate to operate a migrant labor camp that is required under s. 103.92 (6), (7), or (8), Stats., an applicant who wishes to contest the department's denial of a certificate may, within 30 days after the date of the denial, file a written request for hearing under s. DWD 301.135.

Note: Sections 103.92 (6), (7), and (8), Stats., specify requirements for the department to deny a certificate based on delinquencies in child or family support, taxes, or unemployment insurance contributions and such denials are subject to review as specified in those statutes.

(b) A camp operator shall file a separate application for a certificate to operate a migrant labor camp for each separate migrant labor camp that the camp operator maintains. In determining whether certain facilities constitute 2 or more separate migrant labor camps, the department shall consider the distance separating the housing units and whether or not there are shared facilities for the use of the people residing in the housing units.

(c) The department may not conduct any inspection for an applicant under this subsection until the application fee has been paid and the department has received the completed application.

(d) The department shall charge a fee of \$100 for each partial inspection that is requested. A partial inspection is not an additional inspection visit under par. (ar).

(e) A visit to a migrant labor camp that is solely for the purpose of obtaining a water sample for testing is not an additional inspection visit under par. (ar).

(f) If the only purpose for an additional inspection visit is to verify that specified corrections have been made, the department may instead accept letters, emails, photos, receipts, or other documents from the camp operator that verify that the corrections have been made.

(g) A copy of the camp operator's certificate to operate a migrant labor camp shall be posted in a conspicuous place in the migrant labor camp. The posting shall be on a form prescribed by the department and shall be in English and in the language of the occupants if other than English.

(1m) NOTICE OF REVOCATION. If the department determines that a migrant labor camp is operating without a certificate to operate a migrant labor camp or identifies any other violation of this section or s. 103.92, Stats., that would warrant revocation of a certificate, the department shall provide a notice of violation pursuant to s. 103.965 (1), Stats., and allow up to 15 days to correct the violation. If the violation is not corrected, the department shall issue a notice of revocation of the certificate to operate a migrant labor camp. The notice of revocation shall be accompanied by a closing order.

Note: Section 103.92 (4), Stats., allows only certified migrant labor camps to operate in this state and requires the department to order the immediate closing of all other migrant labor camps.

(2) CLOSING ORDER. Within 3 working days from the date of an order closing a migrant labor camp, the department shall transmit the file and a copy of the order to the attorney general or the district attorney for the county in which the violation occurred for prosecution.

Note: Section 103.92 (4), Stats., authorizes the attorney general or district attorney to enforce the department's closing order.

(4) GATES AND GATEWAYS. Any fence around a migrant labor camp shall have one or more unlocked gates or gateways that have a width that is no less than the aggregate width required for exits under the Wisconsin commercial building code for a building with the same occupant load as the migrant labor camp.

(6) PLANS AND SPECIFICATIONS. (ag) In this subsection:

1. "Addition" means construction performed on a building that increases the outside dimensions of the building.

2. "Alteration" means an enhancement, upgrading, or substantial change or modification to a building other than an addition or repair to the building or to electrical, plumbing, heating, ventilating, air conditioning and other systems within the building.

3. "New construction" includes an addition or alteration to an existing building.

4. "Repair" means the act or process of restoring to original soundness, including redecorating, refinishing, nonstructural repairs, or maintenance, or the replacement of existing fixtures, systems, or equipment with the equivalent fixture, system, or equipment.

(ar) Except as provided under par. (b), plans and specifications for all new construction intended for use as housing or common use facilities shall be approved by the department before letting contracts or commencing work.

(b) If the new construction will result in any of the following buildings, the camp operator is not required to submit plans and specifications under par. (ar) if the camp operator submits notice of intent to construct such a building to the department prior to constructing such a building:

1. Single story buildings for use as housing for not more than 2 families.

2. Buildings for use by not more than 8 persons who are not members of the same family.

3. Common use facilities containing less than 25,000 cubic feet total volume that have no floor or roof span greater than 30 feet and that are not more than 2 stories high.

Note: Plans and specifications for all new construction may also require the approval of the Department of Safety and Professional Services, a municipality, or a local governmental unit under the Wisconsin commercial building code. Contact the Department of Safety and Professional Services, Division of Industry Services Plan Review, 4822 Madison Yards Way, Madison, Wisconsin 53705 for further information.

(c) One copy of plans and specifications are required to obtain the department's approval under par. (ar). The plans shall include all of the following:

1. A plot plan of the migrant labor camp that includes the location and grades of adjoining streets, alleys, lot lines, and any other buildings on the same lot or property.

2. The name of the owner of the migrant labor camp.

3. The intended use or uses of all rooms and the number of persons to be accommodated therein.

(f) One set of approved plans shall be kept by the owner of the migrant labor camp or camp operator and made available to a migrant labor inspector of the department.

(7) VARIANCES. (a) The department may, upon written application by a camp operator and inspection by a migrant labor inspector of the department, grant written permission to individual camp operators to vary temporarily from particular provisions in this section. The department may approve a variance under this paragraph that does not extend beyond March 31 of the year immediately following the year of approval if the camp operator indicates the extent of the variance in the application and demonstrates to the department that the variance is necessary for all of the following purposes:

1. Obtaining a beneficial use of an existing facility.

2. Preventing a practical difficulty or unnecessary hardship.

(b) The department may, upon written application by a camp operator and inspection by a migrant labor inspector of the department, grant written permission to a camp operator to permanently vary from the provisions of this section if all of the following apply:

1. The camp operator demonstrates to the department that the variance is necessary for the purposes specified in par. (a) 1. and 2.

2. Appropriate alternative measures have been taken that protect the health and safety of the occupants and serve the purpose of the provisions from which variance is sought.

(c) A variance shall not be effective until granted in writing by the department.

(8) HOUSING SITE. (a) Housing sites shall be well drained and free from depressions in which water may stagnate.

(b) Housing shall not be subject to, or in proximity to conditions which create or are likely to create or attract insects or be subject to noise, traffic, or any similar hazardous condition.

(bm) The principal camp area in which food is prepared and served and where sleeping quarters are located shall be at least 500 feet from any area in which livestock is kept.

(c) Grounds within housing sites shall be free from debris, noxious plants, including poison ivy and uncontrolled weeds or brush.

(d) A housing site shall provide a space for recreation reasonably related to the size of the facility and type of occupancy.

(e) No mobile home unit may be located less than 10 feet from any other building, from the boundary line of the premises on which the mobile home unit is located, or from any street.

(f) 1. To ensure that a housing site is not subject to a hazardous condition arising from pesticide application, the camp operator shall do all of the following:

a. Make a written request for advance notice of aerial pesticide applications from persons who own or control immediately adjacent land, pursuant to s. ATCP 29.51 (2). Upon receipt of notice of an aerial pesticide application, the camp operator shall immediately give notice to occupants.

b. Provide to occupants advance notice of at least 24 hours of any pesticide application on any land adjacent to the camp which is owned or controlled by the camp operator. If the application date or time is changed so that the application will occur before or after the intended date or time specified in the original notice of application, a new notice shall be given as soon as possible prior to the application. In this subdivision, "land adjacent" means land within 250 feet of the housing site, including land separated from the migrant labor camp by a roadway.

3. Notice under subd. 1. shall be given in English and in the language of the occupants, if other than English, by posting a written statement on a camp bulletin board or at the location where the occupants report for work in a place where it can be easily seen by the occupants. The notice shall include all of the following:

- a. The intended date and time of application.
- b. The location of the land on which the pesticide is expected to be applied.
- c. The trade or common name of the pesticide.
- d. A statement from the pesticide label of the practical treatment for potential side effects, including emergency first aid measures and information for physicians on treatment of poisons.

(9) WATER SUPPLY. (ag) Any migrant labor camp regulated as a public water system under ch. NR 809 shall comply with ch. NR 809 in addition to the requirements of this section.

(ar) An adequate and convenient supply of water safe for human consumption, as defined in s. NR 809.04 (42m), shall be provided for the occupants. Water is considered safe for human consumption for purposes of this paragraph if all of the following apply:

1. A water sample obtained within the 3-month period prior to the date the camp is to be occupied has been found total coliform negative by a laboratory accredited under ch. NR 149 or approved by the U.S. environmental protection agency.

2. The water sample under subd. 1. has been analyzed by the laboratory specified in subd. 1. for nitrate concentration and found to contain a total nitrate nitrite level not exceeding the maximum contaminant level specified in NR 809.11 (2). If the maximum contaminant level is exceeded, the department may issue a certificate to operate the migrant labor camp only if the camp operator demonstrates to the satisfaction of the department that the requirements of s. NR 809.11 (3) (a) to (e) are satisfied.

(d) Drinking fountains shall not be located in rooms containing toilet facilities.

(f) Camp operators shall arrange to have well water tested by a laboratory certified pursuant to s. NR 809.76 within 3 months before camp occupancy.

(g) Camp operators shall provide to the department the well construction reports for wells that are required under s. NR 812.10 (11).

(10) EXCRETA AND LIQUID WASTE DISPOSAL. (a) Facilities shall be provided and maintained for effective disposal of excreta and liquid waste in a manner that neither creates nor is likely to create a nuisance or a hazard to health.

(b) Raw or treated liquid waste shall not be discharged or allowed to accumulate on the ground surface of a migrant labor camp.

(c) If public sewer systems are available, all facilities for disposal of excreta and liquid wastes shall be connected thereto.

(d) If public sewers are not available, a subsurface septic tank, seepage system or other type of liquid waste treatment and disposal system shall be provided.

(11) HOUSING. (a) Housing shall comply with all federal, state, and local residential and commercial building codes, including the Wisconsin commercial building code, and with all of the following:

2. Exits and means of escape are subject to sub. (21) (b) to (e) and (f).

3. Maintenance of facilities is subject to sub. (22).

(b) Housing shall have flooring that is constructed of rigid materials, smooth finished, readily cleanable, and so located as to prevent the entrance of ground and surface water.

(c) All of the following space requirements shall be met:

1. Each room used for sleeping purposes shall contain at least 50 square feet of floor space for each occupant.

2. In a room where workers cook, live, and sleep a minimum of 100 square feet per person shall be provided.

(cm) Only a single family may live in a one-family housing unit, except as approved by the department. A single family may include parents and their unmarried children, grandparents, unaccompanied married children, and dependent minor relatives. The department may allow other individuals to share a one-family housing unit with a family, taking into consideration the following factors:

1. Respect for the integrity of the migrant family.
2. Privacy of the occupants.
3. Preference of family members.
4. Relationship of the occupants.
5. Size of the unit.
6. Health and safety concerns.
7. The employer's justification.
8. Compliance with this chapter, s. 106.50, Stats., and other applicable law.

(d) Housing used for a family with one or more children over 6 years of age shall have a room or partitioned sleeping area for the parents. The partition shall be of rigid materials and installed so as to provide reasonable privacy.

(e) In dormitory accommodations a camp operator shall make available upon request curtains or partitions to permit reasonable privacy between individual sleeping units. A bunk bed shall be considered an individual sleeping unit.

(f) Separate sleeping accommodations shall be provided for all the members of each sex or for each family.

(fm) Partitions between living units in a multifamily shelter shall extend from the floor to the ceiling of the shelter.

(g) There shall be adequate and separate arrangements for hanging clothing and storing personal effects for each person or family.

(h) The floor area in each living unit shall have a minimum ceiling height of 7 feet.

(i) Each habitable room shall have at least one window or skylight opening directly to the out-of-doors that satisfies all of the following:

1. The minimum total window or skylight areas in each habitable room, including windows in doors, shall equal at least 10 percent of the usable floor area.

2. The total window area that opens shall equal at least 45 percent of the minimum total window or skylight area required under subd. 1.

(12) SCREENING. (a) Windows and doors that are used for ventilation shall be protected with screening of not less than 16 mesh. This paragraph does not apply to doors in buildings that are cooled with air conditioning.

(b) All screen doors shall be tight fitting, in good repair, and equipped with self-closing devices.

(13) HEATING. (a) All living quarters and service buildings shall be provided with permanently installed and operable heating equipment capable of maintaining a temperature of at least 68 degrees Fahrenheit.

(c) A stove or other source of heat utilizing combustible fuel shall be installed and vented in such a manner as to prevent fire hazards and a dangerous concentration of gases and shall comply with the Wisconsin commercial building code.

(e) If a solid or liquid fuel stove is used in a room with wood or other combustible flooring, the stove shall sit on a concrete slab, insulated metal sheet, or other fireproof material, extending at least 24 inches beyond the perimeter of the base of the stove.

(f) Any wall or ceiling within 24 inches of a solid or liquid fuel stove or a stovepipe shall be of fireproof material.

(g) A vented metal collar shall be installed in accordance with the manufacturer's specifications around a stovepipe, or vent passing through a wall, ceiling, floor, or roof.

(h) A heating system may have automatic controls only if the controls are installed in accordance with the manufacturer's specifications and the controls cut off the fuel supply upon failure or interruption of the flame or ignition, or whenever a predetermined safe temperature or pressure is exceeded.

(14) ELECTRICITY AND LIGHTING. (a) All housing sites shall be provided with electric service.

(b) All habitable rooms, common use rooms, rooms containing toilet facilities, and other areas, including laundry rooms, hallways, and stairways, shall contain adequate ceiling or wall type light fixtures.

(d) Adequate lighting shall be provided for yard areas, and pathways to common use facilities.

(e) All electrical wiring and lighting fixtures shall be installed and maintained in a safe condition and shall comply with the provisions of ch. SPS 316.

(f) Common use facilities shall be provided with a light switch at the entrance door.

(g) Illumination of common use facilities shall be not less than 10 foot candles 30 inches above the floor.

(h) Public passageways, stairways, and exit doors shall be illuminated in accordance with the Wisconsin commercial building code.

(15) TOILETS. (a) All rooms containing toilet facilities shall comply with the Wisconsin commercial building code, except that privies are not permitted.

(c) Urinals of the approved type shall be provided in toilets to be used by 10 or more males in the ratio of one per 40 males or fraction thereof.

Note: Par. (c) is amended eff. 1-1-2028 by CR 23-030 to read:

(c) Urinals installed in accordance with the manufacturer's specifications shall be provided in toilet facilities to be used by 10 or more males in the ratio of one per 25 males or fraction thereof.

(d) Except in individual family units, separate toilet facilities for men and women shall be provided and all of the following apply:

1. Toilet facilities for men and women that are in the same building shall be separated by a solid wall from floor to roof or ceiling.

2. Toilet facilities shall be distinctly marked "men" and "women" in English and in the language of the persons expected to occupy the housing or marked with easily understood pictures or symbols.

(e) Where common use toilet facilities are provided, an adequate and accessible supply of toilet tissue with holders shall be furnished.

(f) All common use toilet facilities shall be well lighted and ventilated and shall be clean and sanitary.

(g) Toilet seats shall be of impervious material or shall be well painted or varnished.

(h) All living quarters and service buildings shall be provided with toilet facilities that are located within 200 feet of each living unit.

(16) BATHING, LAUNDRY AND HANDWASHING. (a) Bathing and handwashing facilities shall be supplied with adequate hot and cold water under pressure and shall be provided for the use of all occupants.

(b) Bathing and handwashing facilities shall be clean and sanitary and located within 200 feet of each living unit.

(c) There shall be a minimum ratio of showerheads as set forth in chs. SPS 361 and 362.

Note: Par. (c) is amended eff. 1-1-2028 by CR 23-030 to read:

(c) There shall be a minimum ratio of one showerhead per 8 occupants of a migrant labor camp.

(d) Showerheads shall be spaced at least 3 feet apart with a minimum of 9 square feet of floor space per showerhead or shall be placed in a commercially available 30-inch shower stall that has an area of at least 6.25 square feet.

(e) Floors of showers shall be constructed of nonabsorbent, nonskid materials and sloped to properly constructed floor drains.

(f) If common use shower facilities for both sexes are located in the same building, the facilities shall be separated by a solid opaque and nonabsorbent wall extending from the floor to ceiling or roof, and shall be plainly designated "men" or "women" in English and in the language of the persons expected to occupy the housing or marked with easily understood pictures or symbols.

(g) Adequate dry dressing space shall be provided in common use shower facilities.

(h) Except in individual family units, separate shower facilities shall be provided for each sex.

(i) Each shower unit for women shall be enclosed as a separate compartment.

(j) Each shower compartment shall be supplemented by an individual dressing compartment.

(k) Lavatories or equivalent units shall be provided in a ratio as set forth in ch. SPS 362.

(L) Mechanical or automatic washers that are supplied with adequate hot and cold water under pressure shall be provided for the use of all occupants in the ratio of one per 20 occupants.

(p) At least one laundry tray, tub, or sink shall be provided in each room that includes a washer.

(r) Dryers shall be provided for the use of all occupants in the ratio of one per 20 occupants.

(17) COOKING AND EATING FACILITIES. (a) If workers or their families are permitted or required to cook in their individual unit,

a space shall be provided and equipped for cooking and eating. The space shall be provided with all of the following:

1. A stove with an oven.
2. Adequate food storage shelves and a counter for food preparation.
- 3m. A refrigerator maintained at 40 degrees Fahrenheit or lower and a freezer maintained at zero degrees Fahrenheit or lower.
4. A table and chairs or equivalent seating and eating arrangements that are commensurate with the capacity of the unit.
5. Adequate lighting and ventilation.
6. An adequate sink with hot and cold water under pressure.
7. Floors that consist of nonabsorbent, easily cleaned materials.

(b) If workers or their families are permitted or required to cook and eat in a common facility, a room or building separate from the sleeping facilities shall be provided for cooking and eating. The room or building shall be provided with all of the following:

1. Stoves with an oven in a ratio of one stove to 10 persons or one stove to 2 families.
2. Adequate food storage shelves and a counter for food preparation.
- 3m. A refrigerator maintained at 40 degrees Fahrenheit or lower and a freezer maintained at zero degrees Fahrenheit or lower.
4. Tables and chairs or equivalent seating adequate for the intended use of the facility.
5. Adequate sinks with hot and cold water under pressure.
6. Adequate lighting and ventilation.
7. Floors that consist of nonabsorbent, easily cleaned materials.

(c) If central mess facilities are provided, the kitchen and mess hall shall be in proper proportion to the capacity of the housing and shall be separate from the sleeping quarters.

(d) Central mess facilities operated by or for the camp operator shall comply with all of the following:

1. The kitchen and dining room shall be separated from sleeping quarters and rooms containing toilet facilities.
2. No kitchen or dining room shall be used for sleeping purposes.
3. Kitchen and dining room tables and chairs or benches shall be so constructed as to be easily kept clean.
4. Table tops or coverings shall be smooth and free from cracks.
5. Dishes and utensils shall be of nontarnishable materials, free from cracks and easily cleaned.
6. Cooking utensils shall be stored on racks or suspended on hooks at least 12 inches above the floor.
7. The kitchen and dining room shall be swept daily.

Note: The department recommends using a sweeping compound that lays the dust.

8. The kitchen and dining room shall be scrubbed with hot soap suds or suitable detergent at least once a week.

Note: During rainy periods, the department recommends scrubbing more often than once a week.

9. Dining tables shall be washed with soap or suitable detergent and water after each meal.
10. Handwashing facilities shall be provided in kitchens and shall include hot and cold water under pressure, soap and individual towelings for use by kitchen personnel only.
11. Cooks and all food handlers shall be clean and wear clean clothing.
12. A sink with ample facilities for providing hot and cold water under pressure shall be provided for washing dishes and kitchen utensils.

13. All dishes and utensils shall be thoroughly scraped and shall be washed and scalded or disinfected.

14. All dishes and utensils shall be air dried.

15. All milk used shall either be adequately pasteurized, evaporated or powdered.

16. Perishable foods such as meats, milk, butter, eggs, and salads shall be kept under refrigeration not to exceed 40 degrees Fahrenheit.

17. Refrigerators shall be thoroughly washed with hot water and soap or suitable detergents at least once a week.

18. Nonperishable foods shall be stored in clean and rodent proof containers elevated above the floor.

19. The wall surface adjacent to cooking areas shall be of fire-resistant material and shall comply with the Wisconsin commercial building code.

(18) GARBAGE AND OTHER REFUSE. (a) Durable, fly tight, rodent tight, and clean containers in good condition of a minimum capacity of 20 gallons, shall be provided adjacent to each housing unit for the storage of garbage and other refuse.

(b) Containers required under par. (a) shall be provided in a minimum ratio of 1 per 10 persons and shall be emptied when full, but not less than twice a week.

(d) The disposal of garbage and other refuse shall be in accordance with state and local law.

(19) INSECT AND RODENT CONTROL. Housing and facilities shall be free of insects, rodents and other vermin.

(20) SLEEPING FACILITIES. (a) Sleeping facilities shall be provided for each person.

(b) Sleeping facilities shall consist of comfortable beds or bunks, and shall be provided with clean mattresses covered with a sanitized, waterproof material.

(bm) Sleeping facilities shall be spaced no closer than 36 inches both laterally and end-to-end and shall be elevated at least 12 inches from the floor.

(c) Any bedding provided by the camp operator shall be clean and sanitary.

(d) Sleeping facilities may not contain triple deck bunks.

(dm) The upper decks of bunk beds shall include guardrails that comply with 16 CFR 1213.3 (a).

(e) The clear space above the top of the lower mattress of a bunk bed and the bottom of the upper deck shall be a minimum of 27 inches.

(f) The distance from the top of the upper mattress to the ceiling shall be a minimum of 36 inches.

(g) Sleeping facilities may not contain beds used for double occupancy except in family accommodations.

(21) FIRE, SAFETY, AND FIRST AID. (a) All buildings shall be constructed and maintained in accordance with applicable state or local fire and safety laws.

(b) Any family housing and housing units for less than 10 persons that are of one-story construction shall have 2 means of escape.

(c) Only one means of escape required under par. (b) may be a readily accessible window with space of not less than 24 by 24 inches that may be opened.

(d) All sleeping quarters intended for use by 10 or more persons, central dining facilities and common assembly rooms shall have at least 2 doors remotely separated so as to provide alternate means of escape to the outside or to an interior hall.

(e) Sleeping and common use rooms located on or above the second story shall comply with the state and local fire and building codes relative to multi-story dwellings and with all of the following:

1. On two-story buildings a modified class "A" type fire escape constructed of wood may be provided as a second exit serving not more than 8 persons.

2. The fire escape and its connectors shall be capable of supporting 100 pounds per square foot and shall be fastened to the building by through bolts of at least seven-eighth inch diameter and nuts and washers of at least 4 inch diameter.

(em) 1. Except as provided in subd. 3., a camp operator shall install portable smoke detectors approved by the underwriters laboratory in all of the following locations:

- a. Except in the kitchen, within 6 feet of the doorway of each sleeping area of each housing unit.
- b. In the basement of each housing unit.
- c. At the head of any stairway on each floor level of each housing unit.

2. Each portable smoke detector required under subd. 1. shall be installed no closer than 3 inches and no farther than 12 inches from the ceiling, except a camp operator may follow a manufacturer's recommendation on the installation of a particular smoke detector in a different location if the camp operator provides the department's migrant labor inspector with proof of the manufacturer's installation recommendation at the time of the camp inspection.

3. This paragraph does not apply to buildings with permanently wired smoke detectors installed by a professional electrician at the time of construction.

(f) Exit lights and signs shall be provided in accordance with the Wisconsin commercial building code.

(g) Fire extinguishing equipment shall be provided in a readily accessible place located not more than 100 feet from each housing unit.

(h) Fire extinguishing equipment shall provide protection equal to a 2.5 gallon stored pressure or 5 gallon pump type water extinguisher.

(i) First aid facilities consisting of at least all of the following shall be provided in a ratio of one per 50 persons and shall be readily accessible for use at all times:

1. Sixteen adhesive bandages.
2. Two and a half yards of adhesive tape.
3. Ten antibiotic applications.
4. Ten antiseptic applications.
5. One breathing barrier.
6. One burn dressing.
7. Ten burn treatments.
8. One cold pack.
9. Two eye coverings with means of attachment.
10. One fluid ounce of eye skin wash.
11. Six hand sanitizers.
12. Two pairs of medical exam gloves.
13. One 2 inch by 4 yard roller bandage.
14. One 4 inch by 4 yard roller bandage.
15. One pair of scissors.
16. Two sterile pads.
17. Two trauma pads.
18. One triangular bandage.
19. Ten face masks.

(L) No flammable or volatile liquids or materials may be stored in or adjacent to rooms used for living purposes, unless needed for current household use.

(m) Agricultural pesticides and toxic chemicals may not be stored in the housing area.

(22) CAMP OPERATORS' AND OCCUPANTS' RESPONSIBILITIES. (a) A camp operator or agent may establish reasonable rules relating to the responsibility of occupants as to migrant labor camp occu-

pancy and care. A copy of all such rules shall be posted in the migrant labor camp where they can be easily seen by the occupants and shall be given to the occupants together with the work agreement. All such rules shall be written in English and the language of occupants if other than English.

(b) A camp operator or agent shall do all of the following:

1. Clearly explain to occupants their responsibilities under any rules established under par. (a).

2. At least once a week inspect the migrant labor camp area, structures, toilets, showers, and other facilities and ensure that each is maintained in a clean and orderly condition and that broken or damaged property is promptly repaired.

3. Designate an employee or other individual to maintain the grounds and common use facilities in a clean and orderly condition at least daily, except that in migrant labor camps occupied by 100 or more persons, the camp operator shall provide a full-time person or the equivalent to perform all duties required under this subdivision during the period that the migrant labor camp is occupied.

4. Designate an employee or other individual to be responsible for compliance with this paragraph and post the employee's or other individual's name with the copy of this section that is posted under sub. (24).

(c) Each occupant shall do all of the following:

1. Use the sanitary and other facilities furnished by the migrant labor camp.

2. Keep in a clean and orderly manner that part of the migrant labor camp and premises that the occupant occupies or uses.

3. Be responsible for the cleanliness of the dwelling units to which the occupant has been assigned and adjacent grounds.

4. Dispose of garbage and other refuse by placing it in containers provided for garbage and other refuse.

(23) INSPECTION. (a) All migrant labor camps including individual dwelling units shall be opened to inspection by representatives of the department at all of the following times:

1. Normal daytime business hours for investigation of employers' records.

2. Between sunrise and sunset for investigation of all other matters.

(b) A migrant labor inspector of the department shall make the inspector's presence known to the camp operator or an adult member of the operator's immediate family or the person designated as responsible for compliance with this section and to any affected occupant before making an inspection.

(24) POSTING OF RULES. A copy of this section prepared by the department in English, and in the language of the occupants if other than English, shall be posted in the migrant labor camp or where the occupants report for work in a place easily seen by the occupants. The copy shall state where copies of the rules under this section may be obtained.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78; emerg. am. (11) (c), eff. 1-5-79; am. Register, May, 1979, No. 281, eff. 6-1-79; am. (9) (a) and cr. (1) (cm) and (cn), Register, May, 1981, No. 305, eff. 6-1-81; cr. (8) (f), Register, October, 1982, No. 322, eff. 11-1-82; corrections in (4), (6) (e), (11) (a) 1., (13) (c), (14) (h), (15) (a) and (m), (16) (o), (17) (a) 6. and (d) 19. and (21) (f) made under s. 13.93 (2m) (b) 7. and 14., Stats., Register, October, 1985, No. 358; am. (1), Register, March, 1986, No. 363, eff. 4-1-86; renum. from Ind 201.07 and am. (7), (9) (a) 2.a. and b., (b), (10) (d), (11) (c) (intro.), (h), (i) (intro.), (13) (a), (14) (e), (15) (a) to (c) (intro.), (f), (g), (m) (16) (L) (o) to (q) (17) (a) 6. and (21) r. (11) (bm), (cm), (cn), (gm), (13) (b), (d), (14) (c), (15) (c) 1., (i) to (L), (16) (m) and (n), Register, February 1993, No. 446, eff. 3-1-93, corrections made under s. 13.93 (2m) (b) 5. and 7., Register, August, 1995, No. 476; renum. (1) to be (1) (a) and am., cr. (1) (b) to (f), (9) (e) and am. (16) (p), (20) (c), (21) (k) 1. and 2., Register, December, 1997, No. 504, eff. 1-1-98; correction in (14) (e) made under s. 13.93 (2m) (b) 7., Stats., Register, December, 1997, No. 504; CR 07-018: r. (9) (b), (15) (b) and (c) 2., cr. (11) (cm) and (21) (em), am. (13) (a), r. and recr. (16) (c) and (k) Register December 2007 No. 624, eff. 1-1-08; corrections in (4), (6) (e), (11) (a) 1., (13) (c), (14) (h), (15) (a) and (21) (f) made under s. 13.93 (2m) (b) 7., Stats., Register December 2007 No. 624; corrections in (4), (6) (e), (11) (a) 1., (13) (c), (14) (e) and (h), (15) (a), (16) (c) and (k), (17) (d) 19., (21) (f) made under s. 13.92 (4) (b) 7., Stats., Register January 2012 No. 673; **CR 23-030: r. and recr. (1) (title), renum. (1) (a) to (1) (a) and (ar) and am., cr. (1) (ag), (aw), am. (1) (c) to (f), cr. (1) (g), am. (2), renum. (3) to (1m) and am., am. (4), r. (5) (title), renum. (5) (a), (b), (c), (d) to DWD 301.015 (3), (4), (19), (22) and, as**

renumbered. am. (4), (22), renum. (6) (a) to (6) (ar) and am., cr. (6) (ag), am. (6) (b) (intro.), 2., 3., cons. (6) (c) and (d) and renum. to (6) (c) and am., r. (6) (e), am. (6) (f), (7) (a) to (c), cr. (8) (bm), am. (8) (c) to (e), renum. (8) (f) 1., 2., 3., (9) (a) (intro.), 1. to (8) (f) 1. (intro.) and a., b., 3. (intro.), (9) (ar) (intro.), 1. and am., r. (9) (a) 2., a., b., cr. (9) (ag), r. (9) (c), am. (9) (d), r. (9) (e), cr. (9) (f), (g), am. (10) (a), (b), renum. (11) (a) to (11) (a) (intro.) and am., r. (11) (a) 1., r. and recr. (11) (a) 2., am. (11) (a) 3., (b), (c) (intro.), (d), (e), renum. (11) (f) 1. to (11) (fm), am. (11) (i), (12), (13) (a), (c), (g), (h), (14) (b), (d), (h), (15) (a), (c), renum. (15) (d) to (15) (d) (intro.) and am., am. (15) (d) 1., 2., (e), (f), (h), r. (15) (m), am. (16) (a) to (d), (f), (i) to (k), cons. (16) (L) and (o) and renum. to (16) (L) and am., am. (16) (p), r. (16) (q), cr. (16) (r), am. (17) (a) (intro.), 1., r. (17) (a) 3., cr. (17) (a) 3m., am. (17) (a) 4., cr. (17) (a) 7., am. (17) (b) (intro.), r. (17) (b) 3., cr. (17) (b) 3m., am. (17) (b) 7., (d) (intro.) 1., 7., 8., 16., 19., am. (18) (a), cons. (18) (b) and (c) and renum. (18) (b) and am., am. (18) (d), cr. (20) (bm), (dm), am. (20) (e), (21) (title), (b), (c), (e), (em) 1. (intro.), a., 2., r. (21) (em) 4., am. (21) (f), (h), renum. (21) (i) to (21) (i) (intro.) and am., cr. (21) (i) 1. to 19., r. (21) (j), (k), am. (22) (a), (b), (c) (intro.), 1., 2., 4., renum. (23) (a) to (23) (a) (intro.) and am., cr. (23) (a) 1., 2., am. (23) (b), (24) Register January 2024 No. 817, eff. 2-1-24, except am. (15) (c), (16) (c) effective 1-1-28; correction in (6) (ag) 4. made under s. 35.17, Stats., Register January 2024 No. 817.

DWD 301.075 Disease and illness prevention and control. (1) Camp operators, employers, and migrant labor contractors shall comply with s. 252.05 (3), Stats., and, upon identification of a migrant worker's case or suspected case of a communicable disease, make a report to a local health officer as required under s. DHS 145.04 (3).

Note: An explanation of the communicable disease reporting requirements under s. DHS 145.04 (3) is available at <https://www.dhs.wisconsin.gov/disease/reporting.htm>.

(2) A camp operator shall do all of the following:

(a) Report to a local health officer a migrant worker's case of suspected food poisoning or an unusual prevalence in a migrant labor camp of any illness in which fever, diarrhea, sore throat, vomiting, jaundice, productive cough, weight loss, runny nose, eye irritation, body aches, fatigue, headache, or shortness of breath is a prominent symptom.

(b) Prohibit any individual with a communicable disease from preparing, cooking, serving, or handling food, foodstuffs, or materials in any kitchen or dining room operated in connection with a migrant labor camp or regularly used by occupants.

(c) Provide written procedures for the temporary isolation of sick or injured occupants, including procedures for ensuring that, when required, space is available for the temporary isolation, which may include rooms in hotels, motels, or tourist rooming houses that are licensed under s. ATCP 72.04.

(d) Suitably isolate any person reasonably suspected of having a communicable disease for the amount of time recommended by public health authorities.

History: CR 23-030: cr. Register January 2024 No. 817, eff. 2-1-24.

DWD 301.08 Wages. (1) For purposes of s. 103.93 (1) (a), Stats., payment of wages by check or draft includes payment by direct deposit. Checks or drafts shall be made payable to the order of individual workers for whom payment is being made.

Note: Section 103.91 (1) (a), Stats., requires wage to be paid in U.S. currency or by check or draft.

(2) For purposes of s. 103.93 (1) (b), Stats., "termination of the period of employment for which the worker was employed" includes termination by either party for whatever reason.

Note: Section 103.93 (1) (b), Stats., generally requires every employer to pay in full all wages due any migrant worker within 3 days after the termination of the period of employment for which the worker was employed. Section 103.915 (5), Stats., provides for an exception to this requirement.

(3) Partial payment under s. 103.93 (1) (b), Stats., is prohibited unless the employer is unable to determine the amount of piece rate wages owed a worker because of a lack of confirmation from a processor buyer.

(4) Any additional wages due a worker under s. 103.92 (1) (b), Stats., shall be paid within 2 days after such wages are determined.

(5) (a) Every employer shall furnish to each migrant worker an individual wage statement for each pay period at the time of payment. A wage statement may not combine information on wages earned by multiple members of a family. Wage statements shall show the amount of gross and net wages paid by the

employer to the worker, the number of hours worked, and the amount of and reason for each deduction from the wages of the worker. A reasonable coding system may be used by an employer.

(b) If an employer electronically furnishes a migrant worker an individual wage statement under par. (a), the employer shall furnish a paper copy of the statement to the migrant worker upon the migrant worker's request.

(6) Authorizations for deductions or withholding from wages must be specific as to the amount and reason for the deduction. A general statement authorizing the employer to make deductions for future loans, services, loss, or damage to property shall be invalid.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78; renum. from, Ind 201.08, Register, February, 1993, No. 446, eff. 3-1-93; cr. (7), Register, December, 1997, No. 504, eff. 1-1-98; CR 07-018: am. (5) Register December 2007 No. 624, eff. 1-1-08; CR 23-030: am. (1) to (3), renum. (5) to (5) (a) and am., cr. (5) (b), am. (6), r. (7) Register January 2024 No. 817, eff. 2-1-24.

DWD 301.09 Field sanitation standards. (1m) OPERATIONS WITH 6 OR MORE MIGRANT WORKERS. (a) *Applicability.* This subsection applies to operations where 6 or more migrant workers are engaged in hand labor.

(b) *Toilet facilities.* Toilet facilities shall be provided in the ratio of one facility per every 20 workers engaged in hand labor, regardless of gender, and located within one-fourth mile of each worker's work place in the field or, if not feasible, at the closest vehicular access to the work place. Toilet facilities shall have doors than can be closed and latched from the inside.

(c) *Handwashing facilities.* Handwashing facilities shall be provided in the ratio of one facility per every 20 workers engaged in hand labor, regardless of gender, and located within one-fourth mile of each worker's work place in the field, or if not feasible, at the closest vehicular access to the work place.

(d) *Maintenance.* 1. Toilet and handwashing facilities required under this subsection shall be clean and sanitary and the toilet facilities shall be provided with an adequate supply of toilet paper.

2. Disposal of wastes from facilities serving workers engaged in hand labor shall not cause unsanitary conditions.

(2m) ALL OPERATIONS. (a) *Applicability.* This subsection applies to operations where any number of migrant workers are engaged in hand labor.

(b) *Drinking water.* 1. Potable drinking water to meet the needs of workers engaged in hand labor shall be provided at a readily accessible location. The water provided to the workers shall be suitably cool. A supply of water shall be available in sufficient quantity at the beginning of the work shift to provide one quart per worker per hour for drinking for the entire shift. Employers may begin the shift with smaller quantities of water if they have effective procedures for replenishment during the shift as needed to allow workers to drink one quart or more per hour. The water shall be dispensed in single serving drinking cups or water bottles. The use of common drinking cups or dippers is prohibited.

2. Potable water containers for workers engaged in hand labor shall be covered, cleaned, and refilled daily or more often as necessary.

(c) *Reasonable opportunity.* Workers engaged in hand labor shall be allowed reasonable opportunities during the workday to hydrate and use toilet and handwashing facilities.

(d) *Heat illness.* 1. 'Signs or symptoms.' a. If a supervisor observes or any worker reports any signs or symptoms of heat illness in any worker engaged in hand labor, the employer shall take immediate action commensurate with the severity of the illness.

b. The employer shall implement emergency response procedures if the signs or symptoms under subd. 1. a. are indicators of severe heat illness, such as decreased level of consciousness, staggering, vomiting, disorientation, irrational behavior, or convulsions.

c. The employer shall monitor a worker engaged in hand labor who exhibits signs or symptoms of heat illness and, before allowing the worker to be left alone or return to the worker's housing, provide for first aid or emergency medical services in accordance with the heat illness prevention plan required under subd. 2.

2. 'Heat illness prevention plan.' An employer shall establish, implement, and maintain, an effective heat illness prevention plan. The plan shall be in writing in English and in the language of occupants if other than English. The employer shall make the plan available at the migrant labor camp and, upon request, to representatives of the department. The plan shall include procedures for complying with sub. (2m) (b) and par. (e) and effective emergency response procedures that provide for all of the following:

a. Ensuring that effective communication by voice, observation, or electronic means is maintained so that workers engaged in hand labor can contact a supervisor or emergency medical services when necessary. An electronic device, such as a cell phone or text messaging device, may be used for this purpose only if reception in the area is reliable.

b. Responding to signs and symptoms of possible heat illness of workers engaged in hand labor, including first aid measures and procedures for providing emergency medical services.

c. Contacting emergency medical services and, if necessary, transporting workers engaged in hand labor to a place where they can be reached by an emergency medical services provider.

d. Ensuring that, in emergencies, clear and precise directions to the migrant labor camp are provided as needed to emergency responders.

Note: Par. (d) is repealed eff. 1-1-2025 by CR 23-030.

(e) *Access to shade.* 1. When the outdoor temperature in a work area exceeds 80 degrees Fahrenheit, an employer shall maintain one or more areas with shade at all times while workers are present that are either open to the air or provided with ventilation or cooling. The amount of shade present shall be at least enough to accommodate the number of workers resting or taking outdoor meals so that they can sit fully in the shade in a normal posture without being in physical contact with each other. The shade shall be located as close as practicable to the areas where workers are working.

2. When the outdoor temperature in a work area does not exceed 80 degrees Fahrenheit, an employer shall either provide shade that complies with subd. 1. or provide timely access to shade upon a worker's request.

3. An employer shall allow and encourage workers to take a preventative cool-down rest in the shade at any time when they feel the need to do so to protect themselves from overheating. If a worker takes a preventative cool-down rest, all of the following apply:

a. The worker shall be monitored and asked if the worker is experiencing symptoms of heat illness.

b. The worker shall be encouraged to remain in the shade.

c. The worker may not be ordered back to work until any signs or symptoms of heat illness have abated or until 5 minutes after the worker obtained access to the shade, whichever is later.

4. If a worker exhibits signs or reports symptoms of heat illness while taking a preventative cool-down rest under subd. 3., the employer shall provide appropriate first aid or emergency response as specified in the heat illness prevention plan established under par. (d) 2.

5. When the outdoor temperature in a work area equals or exceeds 95 degrees Fahrenheit, an employer shall implement high heat procedures that provide for all of the following to the extent practicable:

a. Ensuring that effective communication by voice, observation, or electronic means is maintained so that workers at a work site can contact a supervisor when necessary. An electronic

device, such as a cell phone or text messaging device, may be used for this purpose only if reception in the area is reliable.

b. Observing workers for alertness and signs or symptoms of heat illness.

c. Designating one or more employees at each work site as authorized to call for emergency medical services and allowing other employees to call for emergency medical services when no designated worker is available.

d. Reminding workers throughout the work shift to drink plenty of water.

e. Pre-shift meetings before the commencement of work to review the high heat procedures, encourage workers to drink plenty of water, and remind workers of their right under subd. 3. to take a preventative cool-down rest when necessary.

Note: Par. (e) is repealed eff. 1-1-2025 by CR 23-030.

(7) **VARIANCES.** (a) The department may, upon written application by a camp operator on a form prescribed by the department and after inspection by a migrant labor inspector of the department, grant a variance to a provision of this section if the department determines that the application provides for an equivalency that meets the intent of the provision. A variance is not effective until granted in writing by the department.

(b) An equivalency is established for the purposes of par. (a) when appropriate alternative measures have been taken to protect the health and safety of workers and to assure that the purpose of the provision from which the variance is sought will be accomplished.

(c) A variance issued under this subsection may be either temporary or permanent. In granting a variance, the department may impose specific conditions to promote the protection of the health, safety, and welfare of the workers. Violation of any condition under which a variance is granted constitutes a violation of this chapter for which the department may revoke the variance or seek enforcement under s. 103.905 (5), Stats.

History: Cr. Register, October, 1985, No. 358, eff. 1-1-86, emerg. cr. (7), eff. 2-10-86; r. (1) (b), renum. (1) (a) to be (1), cr. (7), Register, June, 1986, No. 366, eff. 7-1-86; renum. from Ind 201.09 and am. (7) (a), Register, February, 1993, No. 446, eff. 3-1-93; correction in (6) made under s. 13.93 (2m) (b) 1., Stats., Register, December, 1997, No. 504; CR 07-018: am. (2) (c) Register December 2007 No. 624, eff. 1-1-08; CR 23-030: r. (intro.), renum. (1) to (1m) (b) and am., cr. (1m) (title), (a), renum. (2) (title) to (1m) (c) (title), renum. (2) (a) to (1m) (c) and am., r. (2) (b), (c), cr. (2m) (title), (a), cr. (2m) (d), (e), r. (2m) (d), (e), renum. (3) (title) to (2m) (b) (title), renum. (3) to (2m) (b) 1. and am., renum. (4) (title) to (1m) (d) (title), renum. (4) (a), (b), (c) to (1m) (d) 1., (2m) (b) 2., (1m) (d) 2. and am., r. (4) (d), renum. (5) to (2m) (c) and am., r. (6) (title), renum. (6) (a), (b) to DWD 301.015 (13), (14) and am., r. (6) (c), (d), renum. (6) (e) to DWD 301.015 (24), r. (6) (f), am. (7) (a) to (c), r. (7) (d) Register January 2024 No. 817, eff. 2-1-24, except (2m) (d), (e) repealed eff. 1-1-25.

DWD 301.13 Violation penalty fees. (1) **PURPOSE.** This section applies to post-occupancy inspections of migrant labor camps and other situations in which the department determines that a violation of ss. 103.90 to 103.97, Stats., or this chapter has taken place. The intent of this section is to supplement the system of enforcement under s. 103.97, Stats., that is based on citations taken to court with a system based on administrative assessment of penalty fees. A system based on administrative assessment of penalty fees enables the department to focus on violations that are serious and base the size of the fee on the degree of danger created by the violation.

(2) **ISSUANCE.** Subject to sub. (3), the department may issue a penalty fee assessment for a violation of ss. 103.90 to 103.97, Stats., or this chapter that is not corrected within a correction period specified in s. 103.965 (1), Stats.

Note: Section 103.965 (1), Stats., provides that in most cases there is a correction period for violations: "Except as provided in [s. 103.965 (2), Stats.], if the department determines that any person has violated ss. 103.90 to 103.97 the person shall have a reasonable time, not to exceed 15 days from the day he or she receives notice of the violation, to correct the violation. If the violation is corrected within that period, no penalty may be imposed under s. 103.97." Section 103.965 (2), Stats., specifies violations for which there is no correction period.

(3) **SEVERITY OF RISK.** Violations of ss. 103.90 to 103.97, Stats., and this chapter shall be rated on a severity scale of high,

medium, and low. A high severity violation may result in a penalty fee assessment of no more than \$1,000.00. A medium severity violation may result in a penalty fee assessment of no more than \$500.00. A low severity violation may result in a penalty fee assessment of no more than \$250.00.

(5) ADMINISTRATIVE REVIEW. Any person who wishes to contest the issuance of a penalty fee assessment under sub. (2) may, within 30 days after the date of the issuance, file a written request for hearing under s. DWD 301.135.

History: Cr. Register, December, 1997, No. 504, eff. 1-1-98; correction in (4) (b) 1, made under s. 13.93 (2m) (b) 7., Stats., Register December 2007 No. 624; **CR 23-030: am. (1), (2), cons. (3) (a) and (b) and renun. (3) and am., r. (4), r. and recr. (5) Register January 2024 No. 817, eff. 2-1-24.**

DWD 301.135 Hearings. (1) A person shall serve a written request for a hearing under s. DWD 301.05 (1) (c), 301.07 (1) (aw), or 301.13 (5) on the department by personal delivery or certified mail to the office of the secretary of the department.

Note: For personal delivery, the office of secretary is located at 201 East Washington Avenue, Madison, Wisconsin 53703. For certified mail, the mailing address of the office of secretary is P.O. Box 7946, Madison, Wisconsin 53707.

(2) Within 10 days of receipt of a request for a hearing, the department shall designate a hearing officer to preside over the hearing. The hearing officer shall give reasonable notice of the hearing by registered mail, return receipt requested, to the department and the person requesting the hearing. The notice shall include all of the following:

- (a) A reasonable time and place of hearing.
- (b) A statement of the provisions of this chapter or ss. 103.90 to 103.97, Stats., that are the basis of the action to be contested at the hearing.
- (3)** The procedures under ch. 227, Stats., shall apply to the disposition of the request for hearing, except that all of the following apply:

(a) The hearing officer shall receive, and make part of the record, documentary evidence offered by any party and accepted at the hearing. Copies thereof shall be made available by the party submitting the documentary evidence to any party to the hearing upon request.

(b) Technical rules of evidence shall not apply to hearings conducted pursuant to this section, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied, where reasonably necessary, by the hearing officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence.

(c) The hearing officer shall issue a written decision within 30 days of the close of the hearing record. The hearing officer's decision constitutes final agency action.

History: CR 23-030: cr. Register January 2024 No. 817, eff. 2-1-24.

DWD 301.14 Posting of migrant worker rights. A summary of the provisions of this chapter shall be posted in a conspicuous place in all migrant labor camps or where the occupants report for work in a place easily seen by the occupants. The posting shall be on a form prescribed by the department and shall be in English and in the language of the occupants if other than English.

Note: The required posting may be obtained at <https://dwd.wisconsin.gov/jobservice/MSFW/forms.htm> or from the Department of Workforce Development, Migrant and Seasonal Farmworker Programs, Dane County Job Service, 1819 Aberg Avenue, Ste. C, Madison, WI 53704. Email address: MSFW@dwd.wisconsin.gov. For other posting requirements, see ss. DWD 301.07 (1) (g) (certificate to operate migrant labor camp), 301.07 (8) (f) 3. (pesticide application notice), 301.07 (22) (a) (migrant labor camp's occupancy and care rules), 301.07 (22) (b) 4. (name of employee or other individual responsible for complying with s. DWD 301.07 (22) (b)), and 301.07 (24) (copy of s. DWD 301.07 rules). In addition, the posting requirement for nitrate maximum contaminant levels under s. NR 809.11 (3) (b) applies to a camp operator who is required under s. DWD 307.07 (9) (ar) 2. to demonstrate that the requirements of s. NR 809.11 (3) (a) to (e) are satisfied.

History: CR 07-018: cr. Register December 2007 No. 624, eff. 1-1-08; **CR 23-030: am. Register January 2024 No. 817, eff. 2-1-24.**