

Department of Workforce Development

Rule No.

DWD 301

Relating to

Migrant Labor

Rule Type

Permanent

Detailed Description of the Objective of the Proposed Rule

The objective of the proposed rule is two-fold. First, the Department proposes to create permanent heat illness protection requirements for migrant workers. The Department originally created heat illness protection requirements within former s. DWD 301.09 (2m) (d) and (e), that applied during the 2024 growing season before they were repealed January 1, 2025, based upon the expectation of final federal heat rules being in effect. The Department temporarily reinstated the requirements for the 2025 growing season in emergency rule EmR2505, which expires October 2, 2025. The Department intends to create permanent requirements rather than promulgate emergency rules to address worker safety during extreme heat conditions.

Second, the Department's revisions will address any inconsistencies, update policies, and provide clarification where appropriate, including revisions that the Department determines are needed to provide clarity to camp operators or workers on the requirements under ch. DWD 301.

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

The Department promulgated permanent Clearinghouse Rule CR 23-030, effective February 1, 2024, to better align ch. DWD 301 with federal law and ss. 103.90 to 103.97, Stats. Clearinghouse Rule CR 23-030 also included heat illness protection requirements that were created in s. 301.09 (2m) (d) and (e), which provided for the following: 1) Employers must monitor for heat illnesses and establish a heat illness prevention plan that includes ensuring effective communication during an emergency in the field.; and 2) Employers must provide shade and the opportunity to take breaks when temperatures exceed 80 degrees Fahrenheit.

In Clearinghouse Rule CR 23-030, the Department repealed those heat illness protection requirements effective January 1, 2025, in anticipation of potential federal Occupational Safety and Health Administration (OSHA) regulations for heat injury and illness protection in outdoor and indoor work settings. Because OSHA did not finalize its regulations in time for the 2025

growing season, the Department temporarily reinstated its requirements in emergency rule EmR2025. OSHA held public hearings on its proposed rule over a two-week period from June 23, 2025, to July 2, 2025, and is now in the post-hearing comment period, which is open until September 30, 2025. See <https://www.osha.gov/heat-exposure/rulemaking/>. The Department is seeking to implement its own heat rule in the absence of a federal counterpart.

The Department also seeks to update its rules to ensure they provide consistency and transparency for housing requirements, and they clearly set forth migrant labor contract requirements. The Department began the process of updating its rules under ch. DWD 301 with the amendments that were effective as of February 1, 2024. It now seeks to continue to update ch. DWD 301 to ensure clarity of its requirements, while meeting the needs of the food growers and producers and protecting the health and safety of the migrant workers.

The policy alternative is to do nothing, which would leave unchanged rules in ch. DWD 301 that do not align with federal law and state statutes and that may contain inconsistencies and outdated language and lack clarification. Also, if permanent rules in ch. DWD 301 lack adequate best practice requirements for protecting migrant worker health and safety, specifically regarding protection from heat, the Department may have to rely on promulgating emergency rules to ensure that protection.

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

103.905 Department's duties. The department shall:

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

...

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

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

The estimated time is 120 hours.

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

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

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

OSHA's notice of proposed rulemaking for heat injury and illness prevention in outdoor and indoor work settings states that OSHA's proposed rule would require employers to create a heat injury and illness prevention plan to evaluate and control workplace heat hazards. The proposed

rule would also establish requirements for identifying heat hazards, implementing engineering and work practice control measures at or above an initial heat trigger and a high heat trigger. In addition, the proposed rule would include requirements for developing and implementing a heat illness and emergency response plan, providing training to employees and supervisors, and retaining records. Subject to some exceptions, OSHA's proposed rule would apply to all employers conducting outdoor and indoor work in all general industry, construction, maritime, and agriculture sectors. However, in the notice of proposed rulemaking, OSHA sought input on alternatives and potential exclusions. See 89 Fed. Reg. 70698 (August 30, 2024). OSHA held public hearings on its proposed rule over a two-week period from June 23, 2025, to July 2, 2025, and is now in the post-hearing comment period, which is open until September 30, 2025. See <https://www.osha.gov/heat-exposure/rulemaking/>.

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

The proposed rule is expected to have an economic impact on migrant worker employers and migrant labor camp operators, which may include small businesses, who will have to comply with the proposed rule. However, the impact of creating permanent heat illness protection requirements is expected to be minimal. Migrant worker employers and migrant labor camp operators were required to comply with heat illness protection requirements during the 2024 growing season pursuant to Clearinghouse Rule CR 23-030 and during the 2025 growing season pursuant to emergency rule EmR2505. Regarding the protection of migrant worker health and safety, the Department expects the long-term net economic impact to be positive because the rule will protect migrant workers from heat illness during future growing seasons. Without that protection, there may be significant negative economic impacts on the production of produce. Further, by amending the rules with the purpose of ensuring clarity and transparency in the migrant labor camp and housing requirements, employers and camp operators will not make investments that are unnecessary to be in compliance.

Contact Person: Kathryn Mueller, Bureau of Job Service Section Chief, Department of Workforce Development, Kathryn.Mueller@dwd.wisconsin.gov, (608) 733-3907.