

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Note: Chapter Ind 49, Migrant Labor Camps as it existed on April 30, 1978 was repealed and a new chapter Ind 201, Migrant Labor was created effective May 1, 1978.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 301.02 Data. The department shall submit data and information relative to ss. 103.90 to 103.97, Stats., and this chapter 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. All forms issued by the department may be obtained from DWD, P. O. Box 7972, Madison, Wisconsin 53707-7972.

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.

DWD 301.04 Investigations. (1) "Reasonable daylight hours" means:

(a) Normal daytime business hours for investigation of employers' records.

(b) Between sunrise and sunset for investigation of all other matters.

(2) The department may not disclose the name of a person filing a complaint with the department, if the person requests that his/her 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.

DWD 301.05 Migrant labor contractors. (1) A migrant labor contractor shall apply to the department for a certificate of registration on a form prescribed by the department or on the form used to comply with 29 USC 1811(a).

(2) The annual fee for certification or renewal shall be \$100.

(3) The term "real party in interest" means a person who is engaged, directly or indirectly, in activities as a migrant labor contractor and who conceals his/her activities through another person.

(4) The term "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.

(5) The term "regular employee" means a person employed year round by an employer and who engages in activities as a migrant labor contractor solely for his/her employer.

(6) The term "employer's own operation" means any farm or other business enterprise owned or managed by the employer.

(7) The term "migrant labor contractor's immediate family" includes only:

(a) A spouse.

(b) Children and step-children.

(c) Parents.

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

(e) Grandparents.

(8) Every contractor shall:

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

(b) Keep records which show for each worker recruited: name in full, home address, all sums paid to the contractor on account of the labor or recruitment of the worker, the cost to the contractor of goods and services provided the worker and all sums and the purpose for all sums received from or on behalf of the worker. The contractor shall preserve such records for a period of 3 years and shall 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. The number of seats in the vehicle shall be determined pursuant to the federal regulations relating to the transportation of migrant and seasonal agricultural workers under 29 CFR Part 500. This requirement shall not apply if the 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 Form WH-514 (Vehicle Mechanical Inspection Report) for each vehicle used to transport individuals or property in connection with activities as a migrant labor contractor.

(e) Provide every worker recruited a written work agreement as specified in ss. 103.90 to 103.97, Stats., and this chapter.

(9) The department shall review and make a determination on an application under this section within 20 working days after the application is received.

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.

DWD 301.06 Work agreements. (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.

(2) In the department's interpretation of s. 103.915 (1) (a), Stats., and in this chapter, the term "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 employer.

(2m) In the department's interpretation of s. 103.915 (1) (a), Stats., and in this chapter, the term "recruitment" means offering a migrant worker employment whether by personal contact, telephone, correspondence, or a recall notice due to a union contract. If recruitment is by telephone, the written work agreement shall be furnished as soon as reasonably possible.

(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.

(4) 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.

(5) "Kind of work available" means planting, cultivating, raising, harvesting, handling, drying, packing, packaging, processing, freezing, grading or storing any agricultural or horticultural commodity in its unmanufactured state.

(6) The description in the work agreement of the housing to be supplied shall include a description of cooking, bathing, laundry and toilet facilities and a statement of the maximum number of persons to be accommodated in the sleeping area to which the worker will be assigned, in the case of single persons, or, in the case of families, in the housing unit to which the worker will be assigned.

(7) "Transportation arrangements" means:

(a) Costs, if any, to the worker.

(b) The specific mode of transportation, including the type of vehicle used if the employer is to provide transportation.

(c) The rate of payroll deduction for a travel or subsistence advance, if such advance is to be deducted.

(8) The minimum work guarantee shall cover the period from the date the worker is notified by the employer to report for work, which date shall be no later than 10 days from 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, which date shall be no sooner than 7 days before the approximate ending date 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.

(9) The term "seriously adverse circumstances beyond the employer's control" means the substantial shutdown of the employer's operations for reasons including, without limitation because of enumeration, loss of crops, loss of, or inability to operate facilities or inability to store or process unmarketable, perishable agricultural produce; such term shall not apply to the shutdown of the employer's operation for change over of equipment or between packs or crops.

(10) "Terms and conditions of employment" includes, without limitation because of enumeration, 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, or general working conditions.

(11) Elapsed time shall be computed, subject to the limits in s. 103.915 (5), Stats., on the basis of 500 miles of travel per day.

(12) (a) "Applicable wage rates" means the actual anticipated straight-time hourly rates the worker will be paid. If the worker will be paid on a piece rate basis, the work agreement shall show the employer's guarantee 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.

(b) In determining whether the employer has met the weekly or bi-weekly guarantee under s. 103.915 (4) (b), Stats., the straight-time hourly rate which the worker was paid for the greatest number of hours during the preceding work guarantee period shall be used. If there was no preceding work guarantee period, the rate paid the worker during the current guarantee period shall be used. If the worker is paid on a piece rate basis, the employer's specified guaranteed hourly rate shall be used.

(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) When 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.

(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 his or her continuing intention to accept the employment. 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.

(16) Any work agreement utilizing one or both of the options embodied in subs. (14) and (15) shall set forth the optional language in a highly visible manner compared to the printing of the rest of the work agreement.

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.

DWD 301.07 Migrant labor camps. (1) APPLICATION.

(a) The application fee for operating a migrant labor camp shall be \$50, plus the cost of water sampling and testing under sub. (9) (e). Issuance of a certificate to operate will be contingent on the camp satisfying the minimum standards of this chapter. The application fee for a registration after March 31 shall be \$100, plus the cost of water sampling and testing under sub. (9) (e). The department shall review and make a determination on an application under this subsection within 130 working days after the application is received and within 20 working days after the camp has been inspected. The department shall schedule each inspection promptly, taking into consideration seasonal conditions and the employer's schedule for the use of the camp. If 3 or more inspection visits are needed to certify, the department shall charge an additional fee of \$300 for the third inspection and \$500 for the fourth inspection and each subsequent inspection.

(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 shall not conduct any inspection for an applicant under this subsection until the application fee has been paid and the application has been filed.

(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. (a).

(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. (a).

(f) If the only purpose for an additional inspection visit is to verify that specified corrections have been made, the department may instead accept a letter from the camp operator which verifies that the corrections have been made.

(2) CLOSING ORDER. Within 3 working days from the date of an order closing a 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.

(3) NOTICE OF REVOCATION. Every notice of revocation of a certificate to operate a camp shall be accompanied by a closing order.

(4) GATES AND GATEWAYS. “Gates and gateways” means a gate or gateway width of which is no less than the aggregate width required for exits under chs. SPS 361 to 365 on May 1, 1978 for a building the occupant load of which is the same as the occupant load of the migrant labor camp.

(5) DEFINITIONS. (a) “Camp operator” means a person who maintains a migrant labor camp.

(b) “Common use facilities” means structures or areas other than sleeping or living quarters designed to be used by camp occupants not members of the same family.

(c) “Occupant” means any person who lives in a migrant labor camp.

(d) “Service buildings” means common use facilities for toilets, lavatories, showers and laundry facilities.

(6) PLANS AND SPECIFICATIONS. (a) Except as provided under par. (b), plans and specifications for all new construction including additions to existing buildings intended for use as housing or common use facilities shall be approved by the department before letting contracts or commencing work.

Note: Plans and specifications for all new construction, including additions to existing buildings, may also require the approval of the Department of Safety and Professional Services under the Wisconsin Commercial Building Code. Contact the Department of Safety and Professional Services, Division of Safety and Buildings, 201 W. Washington Avenue, Madison, WI 53703 for further information.

(b) An operator constructing any of the following buildings shall not be required to submit plans and specifications under par. (a) if the 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 10 persons not members of the same family.
3. Common use facilities containing less than 25,000 cubic feet total volume providing they have no floor or roof span greater than 30 feet and are not more than 2 stories high.

(c) Three copies of plans and one copy of specifications are required for approval.

(d) Plans shall include:

1. A plot plan of the migrant camp which includes the location and grades of adjoining streets, alleys, lot lines and any other buildings on the same lot or property.
2. Name of owner.
3. Intended use or uses of all rooms, and the number of persons to be accommodated therein.

(e) All requirements of chs. SPS 361 to 365, Wisconsin Commercial Building Code applicable to approval of plans shall apply unless specifically exempted from this code.

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

(7) VARIANCES. (a) The department may, upon written application by a camp operator and inspection by a migrant labor inspector, grant written permission to individual camp operators to vary temporarily from particular provisions set forth in this section, which variance may not extend beyond March 31 of the year immediately following the year of approval, if the extent of the variance is clearly specified and if the camp operator demonstrates to the department that:

1. A variance is necessary to obtain a beneficial use of an existing facility;
2. A variance is necessary to prevent a practical difficulty or unnecessary hardship; and

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

1. The camp operator satisfies the requirements of par. (a) 1. and 2.
2. Appropriate alternative measures have been taken to protect the health and safety of the occupants and to assure that the purpose of the provisions from which variance is sought will be observed.

(c) Written application for a variance under this subsection shall be filed with the department. A variance shall not be effective until granted in writing by the department.

Note: The application form for a variance may be obtained by request from the Bureau of Migrant, Refugee, and Labor Services, P.O. Box 7972, Madison WI 53707-7972.

(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.

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

(d) The 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 shall be located less than 10 feet from any other building or from the boundary line of the premises on which it is located.

(f) 1. To insure that the housing site is not subject to a hazardous condition arising from pesticide application, the camp operator shall give notice to camp occupants immediately or as soon as reasonably possible, of the aerial application of pesticides on immediately adjacent land, as defined in ch. ATCP 29, which is owned or controlled by another party, such notice having been received by the camp operator. Camp operators shall request this notice from persons who own or control adjacent land.

2. To insure that the housing site is not subject to a hazardous condition arising from pesticide application, the camp operator shall provide to camp 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, “adjacent land” means land within 250 feet of the housing site, including land separated from the camp by a roadway.

3. As used in subs. 1. and 2., notice shall be given in English and in the language of the camp occupants, if other than English, by posting a written statement on a camp bulletin board or at the

location where the camp occupants report for work in a place where it can be easily seen by the camp occupants. The notice shall include, but not be limited to: the intended date and time of application, the location of the land on which the pesticide is expected to be applied, the trade or common name of the pesticide and a statement from the pesticide label of the practical treatment for potential side effects, including but not limited to emergency first aid measures and information for physicians on treatment of poisons.

(9) WATER SUPPLY. (a) An adequate and convenient supply of water safe for human consumption shall be provided for the camp occupants. As used in this subsection, “safe for human consumption” means:

1. That a water sample obtained within the 6 month period prior to the date the camp is to be occupied has been found bacteriologically safe by a state approved laboratory; and

2. That the water sample has been analyzed by the approved laboratory for nitrate concentration and found to contain a nitrate–nitrogen level not exceeding 10 milligrams per litre. If the nitrate–nitrogen level exceeds 10 milligrams per litre, a camp may be certified provided that:

a. A notice is posted at each water outlet, and actual notice is provided, in language understandable by the camp occupants, stating that the water may be hazardous to the health of infants under 6 months of age and to pregnant women; and

b. A supply of water containing a nitrate–nitrogen level not exceeding 10 milligrams per litre is provided for consumption by infants and pregnant women and the notice informs the camp occupants that this supply of water for infants and pregnant women is available.

(c) Common drinking cups shall not be permitted.

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

(e) The department shall conduct the water sampling and testing for each camp. The cost of the testing and sampling shall be included in the application fee under s. DWD 301.07 (1) (a).

Note: The requirement for water testing applies only to well water. In addition, the camp operator has the option of doing sampling and testing in the 6 month period before occupancy and submitting the results to the department.

(10) EXCRETA AND LIQUID WASTE DISPOSAL. (a) Facilities shall be provided and maintained for effective disposal of excreta and liquid waste in a manner which 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 the 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 the following codes or sections of this code.

1. Structural design and construction shall meet requirements of chs. SPS 361 to 365, Wisconsin Commercial Building Code.

2. Exit requirements shall be as specified under sub. (21).

3. Maintenance of facilities shall be as specified under sub. (22).

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

(c) 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 spouses. 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 double 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.

1. 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.

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

2. The total window area which opens shall equal at least 45% of the minimum window or skylight area required, unless comparable adequate ventilation is supplied by mechanical or some other method.

(12) SCREENING. (a) All outside openings shall be protected with screening of not less than 16 mesh.

(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, operable heating equipment capable of maintaining a temperature of at least 68° F.

(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 be in compliance with chs. SPS 361 to 365, 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) An approved vented metal collar shall be installed around a stovepipe, or vent passing through a wall, ceiling, floor or roof.

(h) If a heating system has automatic controls, the control shall be of the approved type which cuts 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) Each habitable room and all common use rooms, and areas including, without limitation due to enumeration: laundry rooms, toilets, hallways, stairways, shall contain adequate ceiling or wall type light fixtures.

(d) Adequate lighting shall be provided for the yard area, 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, stairway and exit doors shall be illuminated in accordance with chs. SPS 361 to 365, Wisconsin Commercial Building Code.

(15) TOILETS. (a) All toilet rooms shall comply with the applicable provisions of chs. SPS 361 to 365, 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.

(d) Except in individual family units, separate toilet accommodations for men and women shall be provided.

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

2. Toilets shall be distinctly marked “men” and “women” in English and in the language of the persons expected to occupy the housing.

(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 toilets 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) Toilet facilities shall be located within 200 feet of each living unit.

(m) Service facilities and existing facilities constructed and existing facilities converted to housing for migrants shall have water closets.

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

(b) The 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.

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

(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.

(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 with a separate compartment.

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

(k) Lavatories or equivalent units shall be provided in a ratio as set forth in chs. SPS 361 and 362.

(L) Mechanical or automatic laundry facilities, supplied with adequate hot and cold water under pressure, shall be provided for the use of all occupants.

(o) In any migrant labor camp, or laundry facility in an existing migrant labor camp, the camp operator shall provide mechanical or automatic washers in the ratio of one per 30 persons.

(p) If a mechanical washer is provided under par. (o), at least one laundry tray, tub or sink per washer shall be provided.

(q) If an automatic washer is provided under par. (o), at least one laundry tray, tub or sink shall be provided per facility.

(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. Such space shall be provided with:

1. A cookstove with an oven.

2. Adequate food storage shelves and a counter for food preparation.

3. Provisions for mechanical refrigeration of food at a temperature of not more than 45°F.

4. A table and chairs or equivalent seating and eating arrangements, all commensurate with the capacity of the unit.

5. Adequate lighting and ventilation.

6. An adequate sink with hot and cold water under pressure.

(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. Such room or building shall be provided with:

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.

3. Mechanical refrigeration for food at a temperature of not more than 45°F.

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 shall be 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 be in accordance to the following:

1. The kitchen and dining room shall be separated from sleeping quarters and toilet rooms.

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, preferably with sweeping compound to lay the dust.

8. The kitchen and dining room shall be scrubbed with hot soap suds or suitable detergent at least once a week and preferably more often during a rainy period.

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° F.

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 chs. SPS 361 to 365, Wisconsin Commercial Building Code.

(18) GARBAGE AND OTHER REFUSE. (a) Durable, fly tight, 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) Refuse containers shall be provided in a minimum ratio of 1 per 10 persons.

(c) Refuse shall be collected at least twice a week, or more often if necessary.

(d) The disposal of refuse, which includes garbage, 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.

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

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

(e) The clear space above the top of the lower mattress of a double deck bunk 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, of one story construction, shall have 2 means of escape.

(c) One of the 2 required means of escape may be a readily accessible window with space of not less than 24 x 24 inches which 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 except that:

1. On two-story buildings a modified class 'A' 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 (at least 7/8 inch diameter and nut and washer (at least 4 inch diameter).

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

a. In each sleeping area of each housing unit or elsewhere in the unit within 6 feet of the doorway of each sleeping area and not in a kitchen.

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 shall be installed no closer than 3 to 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.

4. A smoke detector required under this paragraph shall be approved by underwriters laboratory.

(f) Exit lights and signs shall be provided in accordance with chs. SPS 361 to 365, 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 1/2 gallon stored pressure or 5 gallon pump type water extinguisher.

(i) First aid facilities shall be provided and readily accessible for use at all times.

(j) First aid facilities shall be equivalent to the 16 unit First Aid Kit recommended by the American red cross, and shall be provided in a ratio of 1 per 50 persons, except as provided under par. (k).

(k) A kit supplied to each family shall be deemed to satisfy the requirements of par. (i) if it contains at least the following items:

1. 3 1/2 yards gauze bandage 1 inch width.

2. 1 1/2 yards 1/2 inch adhesive tape.

3. 12 adhesive bandages.

4. 7/8 oz. first aid cream.

5. Two 2 x 2 2-12 ply gauze pads.

(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 camp occupants as to camp occupancy and care. A copy of all such rules shall be posted in the camp where they can be easily seen by the camp occupants and shall be given to the occupants together with the work agreement. All such rules

shall be written in English and, if the customary language of any occupant is not English, in the language of the occupant.

(b) A camp operator or agent shall:

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

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

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

4. Designate an individual or employee to be responsible for the compliance with this section. Such person's name shall appear on the material posted under sub. (24).

(c) Each occupant of a camp shall:

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

2. Keep in a clean and orderly manner that part of the camp and premise which 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 rubbish and garbage by placing it in containers provided for rubbish and garbage.

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

(b) The department inspector 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 camp occupants if other than English, shall be posted in the camp or where the occupants report for work in a place easily seen by the camp occupants. The copy shall state where copies of the rules 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.

DWD 301.08 Wages. (1) Drafts or checks shall be made payable to the order of individual workers.

(2) The term "termination of the period of employment for which the worker was employed" means termination by either party for whatever reason.

(3) Partial payment under s. 103.93 (1) (b), Stats., shall not be allowed 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) Every employer shall furnish to each migrant worker an individual wage statement. 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.

(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.

(7) In cases affecting migrant workers, the statutes and rules authorizing the department to investigate and collect wage claims and enforce the wage and hour laws may be administered by the bureau of migrant services.

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.

DWD 301.09 Field sanitation standards. In operations where 6 or more migrant workers are engaged in hand labor, the employer shall meet the requirements of subs. (1) to (5) without cost to the worker.

(1) **TOILET FACILITIES.** Toilet facilities shall be provided in the ratio of one facility per every 20 workers, regardless of gender, located within $\frac{1}{4}$ mile of each employee's work place in the field or, if not feasible, at the closest vehicular access. Toilet facilities shall have doors than can be closed and latched from the inside.

(2) **HANDWASHING FACILITIES.** (a) Handwashing facilities shall be provided in the ratio of one facility per every 20 workers, regardless of gender, located within $\frac{1}{4}$ mile of each employee's work place in the field, or if not feasible, at the closest vehicular access.

(b) The department may authorize the substitution of prepackaged towelettes for handwashing facilities when such a variation is necessary to prevent a practical difficulty or unnecessary hardship and the substitution does not compromise the health and safety of the worker.

(c) Written application for a variance under par. (b) shall be filed with the department on a form prescribed by the department. A variance shall not be effective until granted in writing by the department.

(3) **DRINKING WATER.** Potable drinking water to meet worker needs shall be provided at a readily accessible location. The water provided to the workers shall be cool and kept in insulated containers which are clean and sanitary. A supply of water shall be available in sufficient amount to meet worker needs. The water shall be dispensed in single serving drinking cups. The use of common drinking cups or dippers is prohibited.

(4) **MAINTENANCE.** (a) Toilet and handwashing facilities shall be clean and sanitary.

(b) Potable water containers shall be covered, cleaned and refilled daily.

(c) Disposal of wastes from facilities shall not cause unsanitary conditions.

(d) Toilet facilities shall be provided with an adequate supply of toilet paper.

(5) **REASONABLE USE.** Workers shall be allowed reasonable opportunities during the workday to use the facilities.

(6) **DEFINITIONS.** (a) "Hand labor" means that work which is performed manually in the field.

(b) "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.

(c) “Potable water” means all water which may be distributed by any agency or individual, public or private, for human consumption, washing of the person, the preparation of foods or beverages, or for the cleansing of any utensil or article used in the course of preparation or consumption of food or beverages for human beings.

(d) “Sanitary condition” means that condition of good order and cleanliness which precludes the probability of disease transmission.

(e) “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.

(f) “Work place” means the area in which work is performed as defined in s. DWD 301.06 (5) except canneries and freezing plants, and is not in the proximity of any existing sanitary facilities.

(7) VARIANCES. (a) The department may, upon written application by a camp operator and after inspection by a migrant labor inspector, grant a variance to a provision of this section if it determines that an equivalency is established in the petition for variance which meets the intent of the provision involved.

(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 observed.

(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 petition is granted constitutes a violation of this chapter for which a compliance order may be issued or a variance may be revoked.

(d) Any person who wishes to contest a determination on a petition for variance may, within 30 days after the date of the determination, file a request for hearing with the secretary. The request shall contain a statement of the specific reasons for contesting the determination. The secretary may deny the request if he or she determines that it sets forth insufficient reasons for a hearing. If the secretary grants the request, he or she may designate a hearing examiner to conduct the hearing and to issue either a recommended decision to the secretary or a final decision.

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.

DWD 301.11 Compliance dates. History: Cr. Register, February, 1993, No. 446, eff. 3-1-93; correction in (1) (f) made under s. 13.93 (2m) (b) 7., Stats., Register, December, 1997, No. 504; CR 07-018; r. Register December 2007 No. 624, eff. 1-1-08.

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 the statutes or the administrative rules has taken place. The intent of this section is to supplement the system of code enforcement based on citations taken to court with a system based on administrative penalty fees. A penalty fee system 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.

Note: Section 103.965 (1), Stats., provides that in most cases there shall be a correction period for migrant code violation: “(I)f 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.” The violation penalty fees in this section of the code will apply only to violations that are not corrected within the specified correction period.

(2) ISSUANCE. A penalty fee assessment may be issued by the migrant services bureau director or the director’s designee.

(3) SEVERITY OF RISK. (a) Code violations shall be rated on a severity scale of high, medium and low.

(b) 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.

(4) CLASSIFICATION OF VIOLATIONS. (a) The following violations are examples of the high severity classification:

1. Operating an uncertified migrant labor camp (s. 103.92, Stats.)
2. Drinking water not tested (s. DWD 301.07 (9)).
3. Disposal of excreta and liquid waste not in compliance (s. DWD 301.07 (10)).
4. Lack of functioning permanent heater in living unit or service building (s. DWD 301.07 (13)).
5. Electrical outlet, washing machine, or refrigerator not effectively grounded (s. DWD 301.07 (14)).
6. Electrical wiring in unsafe condition (s. DWD 301.07 (14)).
7. Lack of flush toilet as required by code (s. DWD 301.07 (15)).
8. Presence of privy in violation of code (s. DWD 301.07 (15)).
9. Lack of required kitchen facilities (s. DWD 301.07 (17)).
10. Lack of sink with hot and cold water in kitchen (s. DWD 301.07 (17)).
11. Violation of requirement for 2 means of escape (s. DWD 301.07 (21)).
12. Violation of requirement for second exit, second stairway or fire escape on second story (s. DWD 301.07 (21)).
13. Violation of code requirements as to fire extinguisher, flammable materials, secure L.P. gas cylinder, safety valve on gas hot water heater, or smoke detector (s. DWD 301.07 (21)).
14. Violation of requirements as to pesticides (s. DWD 301.07 (8) (f), (21) (m)).

(b) The following violations are examples of the medium severity classification:

1. Lack of cold water tap as required by code.
2. Housing not in good repair, cracks to outside, lack of smooth flooring, or violation of space or ceiling height requirements (s. DWD 301.07 (11)).
3. Violation of window, screening or screen door requirements (s. DWD 301.07 (11) (i), (12)).
4. Lack of electrical outlets (s. DWD 301.07 (14) (e)).
5. Violation of requirements on hand washing sinks, showers, or washing machines (s. DWD 301.07 (16)).
6. Lack of fireproof material behind stove unit (s. DWD 301.07 (17)).
7. Violation of garbage can or garbage pickup requirements (s. DWD 301.07 (18)).
8. Mattress not clean or with waterproof cover (s. DWD 301.07 (20)).
9. Lack of first-aid kit (s. DWD 301.07 (21)).
10. Violation of handrail or platform step requirements (s. DWD 301.07 (11)).

(c) The following violations are examples of the low severity classification:

1. Code violations as to odors, noise, traffic, weeds, ground depressions, debris, or livestock proximity (s. DWD 301.07 (8)).
2. Lack of space for recreation (s. DWD 301.07 (8) (d)).
3. Code violation as to common drinking cups (s. DWD 301.07 (9)).
4. Violation of requirements for partition, or shelf and pole for personal effects (s. DWD 301.07 (11)).

5. Violation of requirement for light fixture or light in a yard area (s. [DWD 301.07 \(14\)](#)).
6. Lack of toilet paper holder (s. [DWD 301.07 \(15\)](#)).
7. Violation of sign requirements. (s. [DWD 301.07 \(21\)](#)).
8. Lack of dressing space in shower room (s. [DWD 301.07 \(16\)](#)).
9. Lack of laundry tub (s. [DWD 301.07 \(16\)](#)).
10. Inadequate central mess facility (s. [DWD 301.07 \(17\)](#)).
11. Presence of vermin (s. [DWD 301.07 \(8\) \(b\), \(19\)](#)).

(5) ADMINISTRATIVE REVIEW. (a) After the department has assessed a penalty fee, the camp operator, the employer or any affected employee may request an administrative review. All requests for administrative review shall be in writing and must be mailed to the department within 15 days of the notice of penalty assessment. A request for administrative review shall specify the reasons for contesting the penalty assessment.

(b) The administrative review shall be conducted by a designated department employee other than the employee who issued the penalty assessment. The administrative review is not a contested case proceeding. The administrative review shall conclude with a written determination that either affirms, reverses or modifies the initial determination.

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](#).

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 camp occupants. The posting shall be on a form prescribed by the department and shall be in English and in the language of the camp occupants if other than English.

Note: The required posting may be obtained from the Bureau of Migrant, Refugee, and Labor Services, P.O. Box 7972, Madison WI 53707-7972.

History: [CR 07-018](#): cr. [Register December 2007 No. 624](#), eff. 1-1-08.