

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date February 17, 2022
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Chapter DWD 301 - Migrant Labor	
4. Subject COVID-19 protections for migrant workers	
5. Fund Sources Affected <input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected 20.445(1)(a)
7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input checked="" type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input checked="" type="checkbox"/> Could Absorb Within Agency's Budget	
8. The Rule Will Impact the Following (Check All That Apply) <input checked="" type="checkbox"/> State's Economy <input checked="" type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$ Not applicable.	
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
11. Policy Problem Addressed by the Rule On April 14, 2020, at the direction of the Governor, the Secretary-designee of the Wisconsin Department of Health Services (DHS) issued Emergency Order #25 to impose safety measures related to COVID-19 for migrant labor camps for the specific purposes of preventing exposure to COVID-19, assisting individuals with COVID-19, and preventing the spread of COVID-19. Because the risks associated with COVID-19 for migrant workers were ongoing when Emergency Order # 25 expired on June 13, 2020, the Department promulgated emergency rule EmR2014 on June 12, 2020. EmR2014 revised ch. DWD 301 to temporarily impose various protections for migrant workers in camps, fields, and employer-provided transportation. The protections were based on the public health information that was then available from DHS and the U.S. Centers for Disease Control and Prevention (CDC). After extensions by the Joint Committee for Review of Administrative Rules (JCRAR), EmR2014 expired on March 8, 2021. Because the COVID-19 pandemic continued to threaten public peace, health, safety, and welfare, the Department consulted with DHS and interested stakeholders and promulgated another emergency rule, EmR2109, on March 19, 2021. EmR2109 did not duplicate EmR2014 but was based on more recent public health guidance related to the benefits of wearing face coverings, distancing, and otherwise preventing the transmission of COVID-19. After extensions by JCRAR, EmR2109 expired on December 13, 2021. The Department has published Statement of Scope SS 004-22 for a permanent rule with objectives that include exploring requirements for ensuring that employers follow best practices in protecting the health and safety of migrant workers in camps, fields, and employer-provided transportation. However, the Department estimates that over 4,400 migrant workers will reside in employer-provided housing in Wisconsin during 2022. A majority of those migrant workers will arrive in early spring and stay through the fall and the Department will not be able to promulgate a permanent rule in time to protect those migrant workers. Moreover, as the virus mutates, new variants of concern, such as Delta and Omicron, continue to be detected in Wisconsin. Therefore, a new emergency rule that is focused on COVID-19 is necessary for the immediate preservation of public health, safety, and welfare.	

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12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments.

The Department held a preliminary hearing on the Statement of Scope for the emergency rule and received comments from the Midwest Food Products Association and Legal Action of Wisconsin. The Department also received input from Seneca Foods Corporation, United Migrant Opportunity Services, the Governor's Council on Migrant Labor. The Department also received input from the Governor's Council on Migrant Labor, the Department of Health Services, and the Department of Agriculture, Trade and Consumer Protection.

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

None.

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

While there are costs associated with complying with the rule, the rule is intended to minimize the spread of COVID-19 to protect food production and processing and farming operations that use migrant labor and, thereby, have a net positive economic impact on those businesses.

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

The rule is intended to minimize the spread of COVID-19 in migrant labor camps. The alternative is to do nothing.

16. Long Range Implications of Implementing the Rule

The rule is an emergency rule with a temporary duration that is not intended to have long range implications other than preventing the spread of COVID-19.

17. Compare With Approaches Being Used by Federal Government

The Migrant & Seasonal Agricultural Worker Protection Act (MSPA), 29 U.S.C. 1801, et. seq., sets standards for migrant and seasonal agricultural workers regarding housing and transportation. MSPA requires that providers of housing to migrant and seasonal agricultural workers comply with certain minimum standards for health and safety, and that transportation providers have vehicles that meet certain standards for safety. It also requires the contractors of migrant agricultural workers to provide prior notice to such workers of the working conditions.

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

Except in Michigan, no agency in an adjacent state has promulgated rules that specifically address protecting migrant workers from exposure to COVID-19. Except in Michigan, agencies in adjacent states are issuing guidance and recommendations from their health departments and sharing CDC and Occupational Safety and Health Administration recommendations to employers.

On March 2, 2021, the Michigan Department of Agriculture and Rural Development promulgated emergency rules requiring owners and operators of agricultural labor housing camps to develop and implement COVID-19 preparedness and response plans, which must include a training component for providing adult camp residents with information about social distancing, personal protective equipment, and enhanced sanitation and prevention measures. The emergency rules also require camp operators to report to local health departments information about camp residents who exhibit COVID-19 symptoms or who test positive for COVID-19. The emergency rules include other requirements, including requiring camp operators to arrange for those camp residents to be evaluated by healthcare providers and requiring camp operators to provide isolation and quarantine housing to those camp residents. The emergency rules were originally in effect for 6 months, but on August 27, 2021, the Michigan governor extended the rules to remain in effect until December 31, 2021.

19. Contact Name

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20. Contact Phone Number

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ADMINISTRATIVE RULES
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ATTACHMENT A

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

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

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

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

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

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
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