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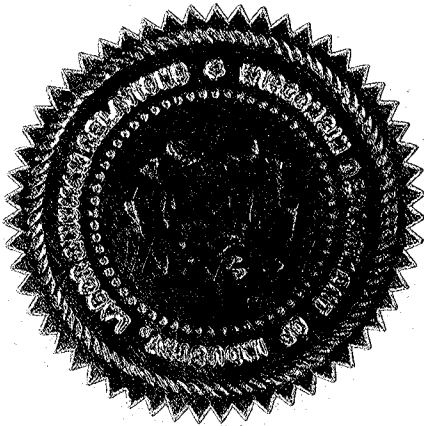
RULES CERTIFICATE

STATE OF WISCONSIN)
) SS
 DEPARTMENT OF)
 WORKFORCE DEVELOPMENT)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

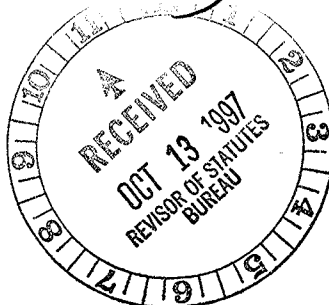
I, Linda Stewart, Secretary of the Department of Workforce Development, and custodian of the official records of said department, do hereby certify that the annexed rule(s) relating to Migrant Labor Code (Subject) were duly approved and adopted by this department on _____ (Date)

I further certify that said copy has been compared by me with the original on file in the department and that the same is a true copy thereof, and of the whole of such original.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at _____ in the city of Madison, this 13th day of October A.D. 1997.

Linda Stewart
 Secretary



1-1-68

ORDER OF ADOPTION

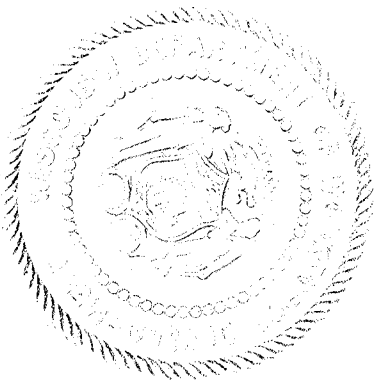
Pursuant to authority vested in the Department of Workforce Development by section(s)

103.905 (1) Stats., the Department of Workforce Development creates; amends; repeals
and recreates; repeals and adopts rules of Wisconsin Administrative Code chapter(s):

DWD 301 (Number)

Migrant Labor Code (Title)

The attached rules shall take effect on Publication pursuant to section 227.22, Stats.



Adopted at Madison, Wisconsin this

date: October 13, 1997

DEPARTMENT OF WORKFORCE DEVELOPMENT

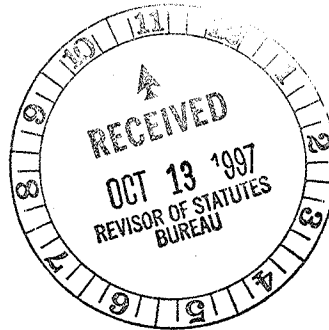
Linda Stewart
Secretary





State of Wisconsin
Department of Workforce Development

RULES in FINAL DRAFT FORM



Rule No.:

DWD 301

Relating to:

Migrant Labor Code

1997 AMENDMENTS TO DWD 301

(MIGRANT LABOR CODE)

The Wisconsin Department of Workforce Development proposes an order to renumber ch. ILHR 301, and, as renumbered, to renumber and amend DWD 301.07(1); to amend DWD 301.03, 301.05(2) and (8)(a), (c), and (d), 301.06(5), and (12)(b), and 301.07(16)(p), (20)(c), and (21)(k)1 and 2; and to create DWD 301.07 (1)(b) to (f), (9)(e), 301.08(7), and 301.13, relating to fee changes, penalty fee assessments and corrective amendments to the migrant labor code.

Analysis

Statutory authority for rule: §103.905, Stats.

Statutes interpreted by the rule: §§103.90 to 103.97, Stats.

This rule revises the code enforcement system followed by the Bureau of Migrant Services of the Department of Workforce Development. Its goal is to improve enforcement by rewarding code-compliant camp operators with fewer inspection visits while increasing the attention, and the penalty fees, directed at camp operators with serious violations.

Under the proposed rule, the application fee for operating a migrant labor camp is increased from \$10 to \$50 for an application before March 31, and increased from \$25 to \$100 for an application after March 31. If a second inspection visit is required before the camp can be certified, there is no additional charge. However, if a third inspection visit is required, the department will charge an additional fee of \$300. If four or more visits are required, the department will charge an additional fee of \$500 for each additional inspection.

For violations found after a post-occupancy inspection, the proposed rule would supplement the current citation system with a system that bases the penalty fee on the severity of the violation. The proposed rule specifies which code violations are considered high severity, medium severity or low severity.

The proposed fee changes have resulted from a review of fees caused by the statutory changes made by 1995 Act 27. The fee for migrant labor contractor certification, now \$25 for one year, will be increased to \$100 for one year. The application fee for operating a migrant labor camp will also be increased as described above and will include the cost of water sampling and testing (as of

Other proposed rule changes will make corrections in cross-references, printing errors, and references to other statutes or legal requirements.

The rule is renumbered from ILHR 301 to DWD 301 to reflect the change in the department's name from the Department of Industry, Labor and Human Relations to the Department of Workforce Development.

SECTION 1. ch. ILHR 301 is renumbered ch. DWD 301.

SECTION 2. DWD 301.03, as renumbered, is amended to read:

DWD 301.03 All forms issued by the ~~job-service division~~ department may be obtained from ~~DLHR~~ DWD, P.O. Box 7902, Madison, Wisconsin 53707.

SECTION 3. DWD 301.05(2), as renumbered, is amended to read:

DWD 301.05(2) The annual fee for the certification or renewal shall be ~~\$25~~ \$100.

SECTION 4. DWD 301.05(8)(a), (c) and (d), as renumbered, are amended to read:

DWD 301.05(8)(a) Submit a separate Form ~~WH-412~~ WH-512 (Application for Farm Labor Contractor Employee Identification Card) for each officer, director, partner or agent of the contractor at the time of application or within 10 days after hiring such person.

(c) Provide a policy under s. 103.91(8)(f), Stats., the limits of which with respect to each vehicle shall be ~~\$100,000 because of bodily injury to or death of one person in any accident and, subject to such limit for one person, \$300,000 because of bodily injury to or death of 2 or more~~

~~persons in any one accident if 12 persons or less are transported in one vehicle, \$500,000 if more than 12 persons are transported in one vehicle at one time, and \$50,000 because of injury to or destruction of property of others in one accident 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 ~~ES-414~~ WH-514 (Vehicle Mechanical Inspection Report) for each vehicle used to transport individuals or property in connection with activities as a migrant labor contractor.

SECTION 5. DWD 301.06(5) and (12)(b), as renumbered, are amended to read:

DWD 301.06(5) "~~Kind of work available~~" means ~~in a cannery or freezing plant processing specified fruits or vegetables; or farm work planting, cultivating, harvesting, handling, drying, packing, packaging, grading or storing specified fruits or vegetables; or nursery work; or sod farming or Christmas tree cultivation or harvesting planting, cultivating, raising, harvesting, handling, drying, packing, packaging, processing, freezing, grading or storing any agricultural or horticultural commodity in its unmanufactured state.~~

(12)(b) In determining whether the employer has met the weekly or biweekly 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, ~~the shall be used~~. If there was no preceding work guarantee period, the rate paid the worker during the current 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.

SECTION 6. DWD 301.07(1) is renumbered 301.07(1)(a) and amended to read:

DWD 301.07(1)(a) The application fee for operating a migrant labor camp shall be \$10 ~~\$50, plus the cost of water sampling and testing under par. (9)(e)~~. Issuance of a certificate to operate shall be contingent on the camp satisfying the minimum standards of this chapter. The application fee for a registration after March 31 shall be ~~\$25~~ \$100, plus the cost of water sampling and testing under par. (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 three 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.

SECTION 7. DWD 301.07(1)(b) to (f) are created to read:

DWD 301.07(1)(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 two 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.

SECTION 8. DWD 301.07(9)(e) is created to read:

DWD 301.07(9)(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.

SECTION 9. DWD 301.07 (16)(p), (20)(c), and (21)(k)1 and 2, as renumbered, are amended to read:

DWD 301.07(16)(p) If a mechanical washer is provided under par. (o), at least one laundry tray, tub or sink per washer shall be provided ~~per facility~~.

(20)(c) Any bedding provided by the camp ~~ope-ator~~ operator shall be clean and sanitary.

(21)(k)1 3 1/2 ~~yards~~ yards gauze bandage 1 inch width.

(21)(k)2 1 1/2 ~~yards~~ yards 1/2 inch adhesive tape.

SECTION 10. DWD 301.08(7) is created to read:

DWD 301.08(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.

SECTION 11. DWD 301.13 is created to read:

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: sec. 103.965(1), Stats., provides that in most cases there shall be a correction period for migrant code violations: "(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 (DWD 301.07(9)).
3. Disposal of excreta and liquid waste not in compliance (DWD 301.07(10)).
4. Lack of functioning permanent heater in living unit or service building (DWD 301.07(13)).
5. Electrical outlet, washing machine, or refrigerator not effectively grounded (DWD 301.07(14)).
6. Electrical wiring in unsafe condition (DWD 301.07(14)).

7. Lack of flush toilet as required by code (DWD 301.07(15)).
8. Presence of privy in violation of code (DWD 301.07(15)).
9. Lack of required kitchen facilities (DWD 301.07(17)).
10. Lack of sink with hot and cold water in kitchen (DWD 301.07(17)).
11. Violation of requirement for two means of escape (DWD 301.07(21)).
12. Violation of requirement for second exit, second stairway or fire escape on second story (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 (DWD 301.07(21)).

14. Violation of requirements as to pesticides (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 (DWD 301.07(9)(b)).
2. Housing not in good repair, cracks to outside, lack of smooth flooring, or violation of space or ceiling height requirements (DWD 301.07(11)).
3. Violation of window, screening or screen door requirements (DWD 301.07(11)(i), (12)).
4. Lack of electrical outlets (DWD 301.07(14)(e)).
5. Violation of requirements on hand washing sinks, showers, or washing machines (DWD 301.07(16)).
6. Lack of fireproof material behind stove unit (DWD 301.07(17)).
7. Violation of garbage can or garbage pickup requirements (DWD 301.07(18)).

8. Mattress not clean or with waterproof cover (DWD 301.07(20)).
9. Lack of first-aid kit (DWD 301.07(21)).
10. Violation of handrail or platform step requirements (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 (DWD 301.07(8)).
2. Lack of space for recreation (DWD 301.07(8)(d)).
3. Code violation as to common drinking cups (DWD 301.07(9)).
4. Violation of requirements for partition, or shelf and pole for personal effects (DWD 301.07(11)).
5. Violation of requirement for light fixture or light in a yard area (DWD 301.07(14)).
6. Lack of toilet paper holder (DWD 301.07(15)).
7. Violation of sign requirements (DWD 301.07(21)).
8. Lack of dressing space in shower room (DWD 301.07(16)).
9. Lack of laundry tub (DWD 301.07(16)).
10. Inadequate central mess facility (DWD 301.07(17)).
11. Presence of vermin (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 employe 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 employe other than the employe 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.

SECTION 12. EFFECTIVE DATE. This rule shall take effect on January 1, 1998.

(End)

Tommy G. Thompson
Governor

Linda Stewart
Secretary



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State of Wisconsin

Department of Workforce Development

Gary Poulson
Assistant Revisor of Statutes
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131 W. Wilson St.
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Douglas LaFollette
Secretary of State
10th Floor
30 West Mifflin Street
Madison, Wisconsin 53703

Dear Messrs. Poulson and LaFollette:

TRANSMITTAL OF RULE ADOPTION

CLEARINGHOUSE RULE NO.: 96-151

RULE NO.: DWD 301

RELATING TO: Migrant Labor Code

Pursuant to section 227.20, Stats., agencies are required to file a certified copy of every rule adopted by the agency with the offices of the Secretary of State and the Revisor of Statutes.

At this time, the following material is being submitted to you:

1. Order of Adoption.
2. Rules Certificate Form.
3. Rules in Final Draft Form.

Pursuant to section 227.114, Stats., a summary of the final regulatory flexibility analysis is included for permanent rules. A fiscal estimate and fiscal estimate worksheet is included with an emergency rule.

Respectfully submitted,

A handwritten signature in cursive script that reads "Linda Stewart".

Linda Stewart
Secretary

