DEPARTMENT OF AGRICULTURE & RURAL DEVELOPMENT

ENVIRONMENTAL STEWARDSHIP DIVISION

PANDEMIC PUBLIC HEALTH MEASURES IN MIGRANT AGRICULTURAL WORKER HOUSING

EMERGENCY RULES

CERTIFICATE OF NEED FOR EXTENSION OF EMERGENCY

We are continuing to make progress in keeping our families and communities safe, but our work is not done. The state of Michigan has seen the number of cases, hospitalizations, and deaths plummet for vaccinated individuals, while unvaccinated Michiganders remain vulnerable to the effects of COVID-19. From January to July of this year, unvaccinated Michiganders accounted for a staggering 98% of COVID cases, 95% of hospitalizations, and 96% of deaths. The emergence of the Delta variant and the milestone of over 20,000 COVID-19 deaths in Michigan show the seriousness of what we are all facing. While we encourage everyone eligible to get vaccinated, there are populations and portions of the state where more outreach and opportunities are needed, including the migrant and seasonal agricultural workers temporarily here working to harvest and process our crops. At this point in the growing season, there is much left to do, and therefore it is necessary to keep these additional safety provisions for licensed housing in place through the end of the year.

Pursuant to Section 48(1) of 1969 PA 306, as amended, MCL 24.248(1), I hereby certify that it is necessary to extend the effectiveness of the Department of Agriculture and Rural Development Emergency Rules Pandemic Public Health Measures in Migrant Agricultural Worker Housing, which were filed with the secretary of state on March 2, 2021, through the end of the year. Therefore, Pandemic Public Health Measures in Migrant Agricultural Worker Housing Emergency Rules shall remain effective until December 31, 2021.

8/27/2021

_____ _____

Gretchen Whitmer, Governor Date

DEPARTMENT OF AGRICULTURE & RURAL DEVELOPMENT

ENVIRONMENTAL STEWARDSHIP DIVISION

PANDEMIC PUBLIC HEALTH MEASURES IN MIGRANT AGRICULTURAL WORKER HOUSING

EMERGENCY RULES

Filed with the secretary of state on March 2, 2021

These rules take effect upon filing with the secretary of state and shall remain in effect for six months.

By authority conferred on the department of agriculture and rural development by section 12421 of the public health code, 1978 PA 368, MCL 333.12421, and Executive Reorganization Order No. 2017-3, MCL 333.26254.

These emergency rules are promulgated by the Michigan department of agriculture and rural development (MDARD) to respond to the COVID-19 pandemic, and to protect the health, safety, and welfare of migratory laborers and their families who occupy agricultural labor camps.

FINDING OF EMERGENCY

On March 10, 2020, the Michigan department of health and human services (MDHHS) identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, Governor Whitmer issued Executive Order 2020-4. This order declared a state of emergency across the state of Michigan.

To protect workers from COVID-19, Governor Whitmer issued numerous additional Executive Orders, including Executive Orders 2020-111 and 2020-137, focused specifically on protecting migrant and seasonal agricultural workers. These orders required those who provide housing for Michigan's migrant agricultural workers to implement plans to prevent exposure to the novel coronavirus that causes COVID-19, care for individuals with COVID-19, and prevent the spread of disease among their workers based on this directive. It was necessary to take proactive, preventive measures to create safer living conditions for migrant workers, and the department, working collaboratively with licensed camp operators, migrant and seasonal agricultural worker organizations, local health departments, and other state agencies worked throughout the growing season to implement these orders while they were in effect.

Additionally, on August 14, 2020, MDHHS Director Robert Gordon issued an Emergency Order under MCL 333.2253, titled Mandatory Testing, Preventative Measures, and Safe Housing for Agricultural Workers. This order, still in effect, requires a number of protective actions including testing.

The State of Michigan presently has a seven-day average of 84.8 cases per million people. Test positivity was 3.7% as of February 23, 2021. While metrics have recently decreased from all-time highs, the state remains over two and a half times higher than the mid-summer low, according to MDHHS. A high number of cases creates significant pressure on our emergency and hospital systems. An average of 102.4 daily hospital admissions was seen in Michigan in the last week, with individuals under the age of 60 accounting for 40% of all new admissions. There are fewer than 900 Michiganders currently hospitalized for COVID-19 and 4.1% of all available inpatient beds are occupied by patients who have COVID-19. The state death rate is 2.6 deaths per million people and there are approximately 185 weekly deaths in Michigan attributable to COVID-19.

Even where COVID-19 does not result in death, and where our emergency and hospital systems are not heavily burdened, the disease can cause great harm. Recent estimates suggest that one in ten persons who suffer from COVID-19 will experience long-term symptoms, referred to as "long COVID." These symptoms, including fatigue, shortness of breath, joint pain, depression, and headache, can be disabling. They can last for months, and in some cases, arise unexpectedly in patients who had few or no symptoms of COVID-19 at the time of diagnosis. COVID-19 has also been shown to damage the heart and kidneys. Furthermore, minority groups in Michigan have experienced a higher proportion of "long COVID." The best way to prevent these complications is to prevent transmission of COVID-19.

Part of the department's duty under the public health code, 1978 PA 368, MCL 333.1101 to 333.25211, is to ensure that a camp and its proposed operation conforms or will conform to minimum standards of health. In addition, pursuant to section 12421 of the public health code, 1978 PA 368, MCL 333.12421, the department must "promulgate rules for the protection of the health, safety, and welfare of migratory laborers and their families who occupy agricultural labor camps," including "necessary matters relating to their good health, safety, and welfare." In light of the threat of COVID-19, camps must implement certain protocols to maintain such minimum standards of health.

COVID-19 can spread easily in settings where many people live in close proximity, such as the migrant housing camps that house thousands of migrant agricultural workers in Michigan each year. Migrant agricultural workers are an essential part of the workforce in Michigan, and securing their health and well-being helps ensure that Michigan's food supply chain is not disrupted. Taking preventive measures will save lives and keep the state's agricultural sector running smoothly and consistently. Those who provide housing for Michigan's migrant agricultural workers must implement plans to help prevent exposure to the novel coronavirus that causes COVID-19, care for individuals with COVID-19, and help prevent the spread of disease among their workers. Proactive and preventive measures must be taken to create safer living conditions for migrant workers.

Following the standard notice-and-comment rulemaking would result in harm to the public health, welfare, and safety by preventing a timely response to this rapidly changing pandemic. Migrant workers will be arriving only weeks from now to begin preparations for planting, pruning, maintenance, and harvest of our earliest crops, including asparagus. It is imperative that

licensed housing providers have as much notice as possible about the requirements to have in place to protect workers during the 2021 season. To ensure that there is as much time as possible to have plans and procedures in place to protect migrant agricultural workers, it is necessary to promulgate emergency rules as provided for in section 48 of the administrative procedures act of 1969 (APA), 1969 PA 306, MCL 24.248, without following the notice and participation procedures required by sections 41 and 42 of the APA, MCL 24.241 and 24.242.

Rule 1. Definitions.

(1) Definitions used in part 124 of the public health code, 1978 PA 368, MCL 333.12401 to 333.12434, and the rules promulgated under that authority, R 325.3601 to R 325.3699, have the same meanings in these rules.

(2) As used in these rules:

(a) "COVID-19-suspected resident" includes a camp resident who has symptoms of COVID-19 (e.g., fever, cough, shortness of breath) but has not yet received a COVID-19 diagnostic or antigen test result.

(b) "COVID-19-confirmed resident" includes a camp resident who has received a positive result from a COVID-19 diagnostic or antigen test and has not subsequently discontinued transmission-based precautions based on a strategy outlined by the CDC. A description of the CDC recommendations for discontinuation of transmission-based precautions may be accessed at: https://www.cdc.gov/coronavirus/2019-ncov/hcp/disposition-hospitalized-patients.html.

Rule 2. Requirements of licensed camp operators.

(1) As a condition of housing licensure and in order to conform to standards of health in light of the risks of the COVID-19 pandemic, all owners and operators of agricultural labor housing camps licensed by the Michigan department of agriculture and rural development under part 124 of the public health code, 1978 PA 368, MCL 333.12401 to 333.12434, must implement the following:

(a) Develop and ensure implementation of a COVID-19 preparedness and response plan, consistent with recommendations specific to housing in Guidance on Preparing Workplaces for COVID-19, developed by the Occupational Health and Safety Administration, at: https://www.osha.gov/Publications/OSHA3990.pdf and that includes the following:

(i) Identification of a camp supervisor to answer camp occupant questions about safety procedures used in the camp, availability of medical and testing support, and provision of isolation housing as needed.

(ii) A training component to provide each adult camp occupant the following information:

(A) Social distancing measures to reduce and prevent the spread of COVID-19.

(B) Proper wearing of personal protective equipment.

(C) Enhanced sanitation and prevention measures for camp occupants that include:

(I) Cleaning and sanitizing common use areas daily, including, but not limited to, central restrooms, laundry facilities, and communal kitchens.

(II) Provisions for providing cleaning products to occupants for self-contained living units with their own kitchen, bath, and sleeping quarters.

(III) Provisions for cleaning areas where individuals in isolation or quarantine are housed.

(IV) Provisions for separation of beds by at least 6 feet or more in all directions, installation of barriers between beds to shield occupants from aerosol transmission, or other control and prevention measures between beds as approved by the department.

(V) Provisions for cleaning contact areas of vehicles, machinery, equipment, and tools prior to each work shift and between users.

(b) Develop, maintain, and update as necessary a listing of names and emergency contact information for each camp resident with an indication if the housing provider also employs that individual.

(c) Establish a posting location in each camp that is easily accessible to camp occupants for the provision of information relative to COVID-19 mitigation.

Rule 3. Posting of information.

(1) As a condition of housing licensure and in order to conform to standards of health in light of the risks of the COVID-19 pandemic, all owners and operators of agricultural labor housing camps must post information at the location required in Rule 2 that includes all of the following:

(a) Camp name and street address for location by 911 and other emergency services.

(b) Name and phone number of the current camp supervisor.

(c) Phone number for the local health department.

(d) Phone number for the Michigan COVID-19 hotline, 888-535-6136.

(e) Information on health clinics within 10 miles of the camp, and state established medical, isolation, and quarantine facilities established for coronavirus response.

(f) Information on the location of additional sanitation and PPE supplies.

(g) A copy of the current license issued by the department for the housing.

(2) The information in subrule (1)(a) to (f) of this rule must be printed in English, Spanish, and if 5% or more of camp occupants speak another language, that language.

Rule 4. Suspected or confirmed cases.

(1) As a condition of housing licensure and in order to conform to standards of health in light of the risks of the COVID-19 pandemic, licensed camp operators must:

(a) Report the name, address, living unit label, and pertinent contact information for any COVID-19 suspected or confirmed individual in licensed housing to the local health department as soon as practical but in no event later than 24 hours of receiving notice about the suspected or confirmed case of COVID-19.

(b) Arrange for COVID-19-suspected and COVID-19-confirmed residents to be evaluated by a healthcare provider through the county local health department or a federally qualified health center. Initial contact with the local health department or the federally qualified health center must occur as soon as practical but in no event later than 24 hours of receiving notice about the suspected or confirmed case of COVID-19.

(c) Provide isolation housing for COVID-19-confirmed residents approved by either the department or the local health department, unless the COVID-19-confirmed resident resides where they can effectively isolate themselves. COVID-19-confirmed residents must have access to bathroom facilities used only by COVID-19-confirmed residents. Food and water must be delivered, and dedicated cooking facilities may be provided.

(d) Provide quarantine housing approved by either the department or the local health department for COVID-19-suspected residents and individuals who were exposed to a confirmed COVID-19

positive individual. Quarantined individuals must have access to bathroom facilities used only by COVID-19-suspected residents and individuals who were exposed to a confirmed COVID-19 positive individual. Food and water must be delivered, and dedicated cooking facilities may be provided.

(e) Post notice at the entrance to the isolation and quarantine areas that anyone entering must wear proper PPE, including a facemask and gloves, and wash their hands thoroughly immediately after departure.

Rule 5. Applicability.

(1) Camps that have been licensed for calendar year 2021 have 30 days from the effective date of these rules to comply with the provisions of these rules.

(2) The department may grant an exemption from a provision of these rules if there is clear and convincing evidence that the alternative to the rule complies with the intent of the emergency rule from which exemption is sought.

(3) Nothing in this section shall be construed to permit owners or operators of employer-provided migrant housing camps to deny access to any person on the basis that the camp is a worksite.

March 1, 2021

Gary McDowell, Director, Department of Agriculture and Rural Development — Date

Pursuant to Section 48(1) of the administrative procedures act of 1969, 1969 PA 306, as amended, MCL 24.248(1), I hereby concur in the finding of the Michigan Department of Agriculture & Rural Development that the circumstances creating an emergency have occurred and the promulgation of the above rules is required for the preservation of the public health, safety, and welfare.

2/25/2021

Gretchen Whitmer, Governor — Date

LEGISLATIVE SERVICE BUREAU
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Legal Division

Kevin H. Studebaker, Director

CERTIFICATE OF APPROVAL

On behalf of the Legislative Service Bureau, and as required by section 45 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.245, I have examined the proposed emergency rules of the Department of Agriculture and Rural Development, dated February 24, 2021, titled "Pandemic Public Health Measures in Migrant Agricultural Worker Housing." I approve the rule as to form, classification, and arrangement.

Dated: February 24, 2021

LEGISLATIVE SERVICE BUREAU

By: Elizabeth R Edberg

Elizabeth R. Edberg,
Legal Counsel

Michigan Legislature
124 W. Allegan Street, 3rd Floor • P.O. Box 30036 • Lansing, MI 48909-7536 • (517) 373-9425 • Fax: (517) 373-5642

STATE OF MICHIGAN
GRETCHEN WHITMER
GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

ORLENE HAWKS
DIRECTOR

LEGAL CERTIFICATION OF RULES

I certify that I have examined the attached **emergency administrative rules**, dated February 24, 2021, in which the Department of Agriculture and Rural Development proposes to promulgate emergency rules entitled "**Pandemic Public Health Measures in Migrant Agricultural Worker Housing – Emergency Rules.**"

The Legislative Service Bureau has approved the proposed rules as to form, classification, and arrangement.

I approve the rules as to legality pursuant to the Administrative Procedures Act, MCL 24.201 *et seq.* and Executive Order No. 2019-6. In certifying the rules as to legality, I have determined that they are within the scope of the authority of the agency, do not violate constitutional rights, and are in conformity with the requirements of the Administrative Procedures Act.

Dated: February 24, 2021

Michigan Office of Administrative Hearings and Rules

By: Katie Wienczewski

Katie Wienczewski,
Attorney