

WSR 21-03-012
EMERGENCY RULES
DEPARTMENT OF HEALTH

[Filed January 8, 2021, 9:51 a.m., effective January 8, 2021, 9:51 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Chapter 246-358 WAC, Temporary worker housing, the department of health (DOH) in conjunction with the department of labor and industries (L&I) continue to respond to the novel coronavirus disease 2019 (COVID-19) pandemic. DOH and L&I are adopting revisions to the initial emergency rule. DOH and L&I filed the initial emergency rules on May 13, 2020, WSR 20-11-024 and 20-11-025 respectively. As the pandemic continues to impact residents of Washington state and temporary worker housing occupants, and in response to the governor's guidance, DOH and L&I filed a second emergency rule on September 10, 2020, WSR 20-19-048 and 20-19-049, to protect occupants from COVID-19 hazards in licensed temporary worker housing.

This emergency rule continues the requirements adopted in the first and second emergency rule. This emergency rule requires operators to: (1) Educate occupants in a language or languages understood by the occupants on COVID-19; (2) provide occupants cloth face coverings; (3) ensure physical distancing of occupants when at housing sites, which includes all cooking, eating, bathing, washing, recreational, and sleeping facilities; (4) with the exception of group shelters, prohibit the use of the top of bunk beds; (5) ensure frequent cleaning and disinfecting of surfaces; (6) identify and isolate occupants with suspect and confirmed positive cases; (7) ensure isolation requirements are met, including monitoring of occupants in isolation by health care professionals and verification that outside isolation facilities meet the isolation requirements before transporting workers to the facility; (8) report to L&I division of occupational safety and health within twenty-four hours whenever symptomatic or COVID-19 positive workers are placed in isolation; and (9) ensure any changes made to the revised temporary worker housing management plan are submitted to DOH.

The emergency rule will [continue] to include an option for group shelters. A group shelter is where a cohort of up to fifteen occupants stay together and separated from others for housing, work, and transportation. The maximum number of occupants, fifteen, will not change. All dwelling units, facilities, and services must be only used by the group shelter members. If the operator is not the employer, the operator must ensure the employer will follow the group shelter requirements. Under the group shelter options, both the top and bottom bunk of bunk beds may be used, although the occupants must sleep head to toe.

In addition, this emergency rule also: (a) Moves ventilation requirements to its own section; (b) specifies requirements for mechanical ventilation systems including the use of MERV13 filters or the highest supported, maximizing outdoor air intake, and maintaining maintenance logs and other documentation; and (c) adds a medical assistant-certified and medical assistant-registered to the list of health care professionals who may take vital signs of employees in isolation.

Both DOH and L&I each filed a Preproposal statement of inquiry (CR-101) on September 10, 2020, WSR 20-19-047 and 20-10-050 regarding permanent amendments to the existing permanent rules to address hazards from COVID-19 or other outbreaks of airborne infectious diseases.

Some amendments made as part of the emergency rules will be considered for permanent rule making. For example, changes to ventilation requirements, and isolation requirements during an outbreak.

Citation of Rules Affected by this Order: New WAC 246-358-002.

Statutory Authority for Adoption: RCW 70.114A.065.

Other Authority: RCW 43.70.335.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: DOH and L&I continue to take action to help prevent the spread of COVID-19 and respond to the Governor's Proclamation 20-25, Stay Home, Stay Healthy, and the amendments transitioning to a phased-in approach to reopening Washington state, referred to as "Safe Start Washington." Under Proclamation 20-25, agriculture is an essential business and must comply with the social/physical distancing and sanitation requirements of DOH, L&I, and the Centers for Disease Control and Prevention. The existing permanent temporary worker housing rules have specific requirements for the minimum distance between beds that is inconsistent with social/physical distancing requirements requiring emergency rules to, at a minimum, address these requirements. The initial emergency rule was adopted to help prevent the spread of COVID-19. Since the adoption of the first emergency rule, the governor issued Proclamations 20-57 and 20-57.1 addressing workplace and transportation requirements for COVID-19 specific to the agriculture industry. Since the emergency rule was in place, the requirements covered by the rule were not included in the governor's order.

As new information, data, and science become available it is important that DOH and L&I continue to update and immediately amend existing rules to help prevent the spread of COVID-19. This emergency rule is necessary for the preservation of public health, safety, and general welfare of occupants of temporary worker housing as we prepare for and begin the 2021 growing season. The governor's Stay Home, Stay Healthy order as amended to the Safe Start and Proclamation 20-57.1 are currently in effect, and observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest and the governor's order.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 1, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

Date Adopted: January 7, 2021.

Jessica Todorovich
Chief of Staff

OTS-2301.8

NEW SECTION

WAC 246-358-002 Additional requirements to protect occupants in temporary worker housing from 2019 novel coronavirus (COVID-19) exposure. (1) The operator of temporary worker housing (TWH) under this chapter must implement the following steps to protect occupants from 2019 novel coronavirus (COVID-19) hazards:

(a) Educate occupants and allow entry of community workers:

(i) The operator must educate occupants in a language or languages understood by the occupants on COVID-19, including: How the virus is spread and how to prevent virus spread including the importance of handwashing, the use of cloth face coverings, proper respiratory etiquette, and the importance of prompt sanitizing of frequently touched items; common symptoms and risk factors; and what to do if they develop symptoms.

(ii) The operator must also allow entry of community health workers and community-based outreach workers to provide additional information.

(b) Conspicuously post information regarding the facility's health and safety policies, how to identify symptoms, to whom to report if not feeling well, and where and how to secure medical treatment - all in a language commonly understood by the occupants.

(c) Provide at no cost an adequate number of cloth face coverings for occupants to use in accordance with Washington department of health guidelines, or as required by Washington department of labor and industries (L&I) safety rules. The operator must instruct occupants to use cloth face coverings in public and at housing as recommended in the public health orders.

(d) Develop and implement a physical distancing plan for maintaining six feet of separation between occupants when at housing sites which includes all cooking, eating, bathing, washing, recreational, and sleeping facilities.

(i) In order to facilitate social distancing, the operator must provide additional temporary cooking, bathing, washing, and toilet facilities.

(ii) Sleeping quarters. The operator must ensure:

(A) Beds are spaced at least six feet apart between frames in all directions and arranged so that occupants sleep head to toe; **OR**

(B) Beds are separated by a bed length, floor to near ceiling temporary nonpermeable barrier (e.g., plexiglass, plastic sheeting, etc.) placed perpendicular to wall such that a thirty-six inch minimum aisle exists between the bed and the temporary barrier and occupants sleep head toward wall. The temporary barriers:

(I) Must be made of fire resistant or fire retardant treated material;

(II) Do not impede required egress;

(III) Do not compromise ventilation/air flow; and

(IV) Are cleaned at least daily.

(C) Except as allowed under (f) of this subsection, only the bottom bed of bunk beds may be used.

(iii) The operator must use physical barriers (e.g., plastic shields) for fixtures such as sinks where occupants may come in close contact for short periods of time. Any barriers placed near cooking equipment must be fire retardant.

(iv) The operator must provide additional facilities or services that meet the requirements of this chapter if needed to ensure social distancing in common areas, such as additional refrigeration or portable sinks.

(v) The operator must discourage occupants from visiting buildings or sleeping quarters that are not their assigned living spaces, to minimize potential cross-contamination.

(e) Ventilation.

(i) For the purposes of this section "mechanical ventilation" means the active process of supplying air to or removing air from an indoor space by powered equipment such as motor-driven fans and blowers but not by devices such as wind-driven turbine ventilators and mechanically operated windows.

(ii) If the TWH facility or building has a mechanical ventilation system, the owner shall maintain it according to the manufacturer's specifications and operate the system to provide optimal fresh and filtered air. The operator shall have building maintenance staff or HVAC contractors set their existing mechanical ventilation system to increase ventilation or the percentage of outside air that circulates into the system and verify the following:

(A) All HVAC systems are fully functional, especially those that have been shut down or operating at reduced capacity during the pandemic or off season.

(B) Use HVAC system filters with minimum efficiency reporting value (MERV) rating of at least 13. If the HVAC system does not support MERV 13 filters, use the highest MERV rating filters supported by the HVAC system.

(C) The maximum use of the HVAC system's outdoor air intake, making sure that the exhaust air is not pulled back into the building through the HVAC air intakes or open windows. Reductions in outside air intake may be made when there are hazardous external conditions including, but not limited to, wildfire smoke.

(D) The appropriate personal protective equipment (particulate respirator, eye protection, and disposable gloves) are used when changing filters.

(E) Maintenance checks occur at the beginning of each growing season when preparing buildings to be reopened. Additional checks occur based on manufacturer recommendations (usually quarterly or annually).

(F) Keep a maintenance log including documentation of filter selection (include selection reason if less than MERV 13 filtration is used), filter conditions, and outside air settings. Operators shall make records required by this section available to the state agency representatives upon request.

(iii) The operator must instruct residents in buildings with mechanical ventilation to:

(A) Turned on mechanical ventilation systems (i.e., mini split system, window units, HVAC) or open windows whenever the TWH facility or building is occupied.

(B) Temporarily shut down the system when pesticides are being applied in the vicinity of the building.

(C) Operate exhaust fans in restrooms continuously at maximum capacity.

(iv) The operator shall ensure that filters in any ventilation system used in a TWH facility or building are clean and in good repair.

(v) In buildings without mechanical ventilation systems, windows must be open whenever occupied. Windows must be closed when conditions outside of the building could pose a hazard to occupants including, but not limited to, during dust storms or when pesticides are being applied to fields near the building. The operator must instruct residents to remove or redirect personal fans to prevent blowing air from one worker to another.

(f) Group shelters. If the TWH is set up to accommodate a group shelter and a group shelter is formed, the operator must designate which occupants are part of each group and maintain the same occupants in each group shelter. "Group shelter" means a dwelling unit or cluster of dwelling units with sleeping facilities for up to fifteen occupants that includes toilet facilities, bathing facilities and, if applicable, food preparation and cooking facilities. All facilities and services within the group shelter are for the sole use of the occupants of the group shelter and must be marked as such.

(i) Sleeping quarters. In group shelters, the operator must:

(A) Arrange beds so that the heads of beds are as far apart as possible - at least six feet apart. Both beds of bunk beds may be used. Bunk bed occupants must sleep head to toe.

(B) Maintain egress requirements.

(C) Provide all occupants suitable storage space including personal storage space for clothing and personal articles. Ensure all or a portion of the space is enclosed and lockable.

(ii) Common areas. In group shelters, the operator must instruct occupants to maintain physical distancing and wear cloth face coverings whenever possible.

(iii) Multiple group shelters. More than one group shelter may share facilities and common areas as long as:

(A) The facilities and areas are used by only one group shelter at a time;

(B) Adequate time is given to each group to accomplish daily activities;

(C) All high contact surfaces are sanitized between each group; and

(D) Schedules are shared and conspicuously posted.

(iv) Transportation and work. To utilize the group shelter option, the operator must ensure that members of each shelter group stay together and separate from other groups, occupants, or workers, including during transportation and work. If the operator is not the employer, the operator must ensure the employer will follow the group shelter requirements.

(v) The operator must encourage each group shelter to designate one or two occupants to run errands if items cannot be provided by the operator. These designated occupants can be the main contact for procuring groceries or other items for the group shelter in order to limit public contact and potential disease transmission.

(vi) The operator must quarantine or test all members of a group shelter if a member of the group shelter develops symptoms of COVID-19, as directed by the local health agency.

(g) Clean and disinfect surfaces. The operator must:

(i) Clean and disinfect common areas on a regular schedule, at least as frequent as required by this chapter.

(ii) Wipe down and disinfect surfaces that are touched by multiple individuals at least daily using an EPA-approved disinfectant or diluted bleach solution.

(iii) Provide adequate supplies and instructions to occupants for cleaning and disinfecting of living spaces of dwelling units, family shelters, and group shelters. Occupants must be able to clean and disinfect frequent touched surfaces, bathroom, and cooking areas as needed. Chemicals used for cleaning and disinfecting must be labeled as to its intended purpose in a language commonly understood by the occupants using labeling requirements in chapter 296-901 WAC, Globally harmonized system for hazard communication.

(iv) Ensure adequate supplies of single-use soap and paper towels at all sinks to allow for frequent handwashing. Portable handwashing stations or hand sanitizer may be provided in addition to required facilities.

(v) Provide training in a language or languages understood by contracted workers regarding COVID-19 cleaning, disinfecting, and sanitizing protocols for any contracted cleaning labor prior to their arrival to clean temporary worker housing. In addition to any personal protective equipment required under L&I rules to perform the cleaning activities, provide and require that those contracted workers use disposable gloves and wear cloth face coverings covering nose and mouth while working at the site.

(vi) Clean and disinfect areas where occupants with suspect COVID-19 exposure have been according to CDC guidelines and before the space is used by others.

(2) Isolation.

(a) The operator must develop and implement a plan to identify and isolate sick occupants, including:

(i) A process to screen occupants for symptoms of COVID-19 as identified by the centers for disease control and prevention (CDC), including fever, cough, shortness of breath, difficulty breathing, chills, shaking with chills, muscle pain, headaches, and loss of taste or smell. The operator must provide each occupant with a thermometer or must designate and train a person to use a "no touch" or "no contact" thermometer to check all occupants' temperatures daily. All thermometers must be properly sanitized between each use or each day. Any worker with a temperature of 100.4°F or higher is considered to have a fever.

(ii) Upon identification of suspect COVID-19 cases, the operator must contact the local health officer immediately as required under WAC 296-307-16190 and provide transportation for any medical evaluation or treatment. Ensure individuals providing transportation have appropriate personal protective equipment.

(iii) Isolate suspect COVID-19 cases with sleeping, eating, and bathroom accommodations that are separate from others. If the suspect occupant resides in a room with family members, the sick occupant will have the option to isolate with the family members.

(iv) Confirmed COVID-19 cases must be isolated and only housed with other confirmed cases and must have separated bathroom, cooking and eating facilities from people who have not been diagnosed with COVID-19. If the confirmed occupant resides in a room with family members, the sick occupant will have the option to isolate with family members.

(v) The operator must report COVID-19-symptomatic or positive TWH occupants in isolation to the department of labor and industries' division of occupational safety and health (DOSH) within twenty-four hours after placement. This notification can be made by telephone to the department of labor and industries toll-free telephone number, 1-800-4BE-SAFE (1-800-423-7233), or to DOSH by any other means.

(b) The operator must ensure appropriate isolation facilities for COVID-19-symptomatic or positive TWH occupants, including the following:

(i) Ensure that a licensed health care professional visits occupants twice per day, at the employer's expense. At a minimum, the health care professional must assess symptoms, vital signs, and oxygen saturation via pulse oximetry, and perform a respiratory exam. For the purposes of this subsection, a licensed health care professional means:

(A) An individual licensed under chapter 18.79 RCW as a registered nurse;

(B) An individual licensed under chapter 18.71 RCW as a physician;

(C) An individual licensed under chapter 18.71A RCW as a physician assistant;

(D) An individual licensed under chapter 18.57 RCW as an osteopathic physician;

(E) An individual licensed under chapter 18.57A RCW as an osteopathic physician assistant;

(F) An individual licensed under chapter 18.79 RCW as an advanced registered nurse practitioner; and

(G) An individual licensed under chapter 18.71 RCW as a paramedic or emergency medical technician (EMT) and authorized to monitor COVID-19 symptomatic or positive individuals as authorized by the local medical program director, EMS administrators, and fire chief while working in their agency/jurisdiction.

(H) A medical assistant-certified (MA-C) or medical assistant-registered (MA-R) credentialed under chapter 18.360 RCW and under the delegation and supervision of a licensed health care practitioner. The MA-C or MA-R may assist their supervisor or another licensed health care practitioner in performing the respiratory exam via telemedicine while the MA-C or MA-R is on-site.

(ii) Guarantee that the occupants have ready access to telephone service to summon emergency care.

(iii) Ensure that occupants in isolation have access to advanced life support emergency medical services within twenty minutes, and an emergency room with ventilator capability within one hour.

(iv) Provide occupants with information about paid leave and workers compensation.

(v) Permit access to other medical professionals who offer health care services in addition to those licensed health care professional required under (b) (i) (A) through (H) of this subsection.

(vi) The operator must provide food and water and monitor for safety occupants in isolation.

(vii) If the operator uses other isolation facilities, such as hotels, county or state run isolation centers, the operator must verify that the isolation facility complies with requirements of this section prior to transporting workers to the facility.

(3) The operator must revise the facility's written TWH management plan to include implementation of the requirements in this section, as applicable.

(a) The plan must identify a single point of contact at the TWH for COVID-19 related issues.

(b) The operator must share the plan with all occupants on the first day the plan is operational or the first day the occupant arrives at the TWH. The operator must designate a person that will ensure all occupants are aware of all aspects of the plan and be available to answer questions.

(c) If changes are made to the TWH management plan, the operator must submit the revised TWH management plan to the state department of health within ten calendar days of the effective date of this section.

(d) Failure to submit a revised plan or properly implement the requirements of this section may result in administrative action, including license suspension or fines.

(4) Consistent with WAC 246-358-040(1), an operator may request a temporary variance from the requirements of this section when another means of providing equal protection is provided.

(5) In the event that any provisions of this section are in conflict with other regulations in this chapter, such other regulation shall be deemed superseded for purposes of this chapter.

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