

WSR 21-12-080
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed May 28, 2021, 2:25 p.m., effective May 28, 2021, 2:25 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Chapter 296-307 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 subsequent emergency rules on September 10, 2020 (WSR 20-19-048 and 20-19-049), January 8, 2021 (WSR 21-03-012 and 21-03-013) and May 7, 2021 (WSR 21-11-016 and 21-11-012), to protect occupants from COVID-19 hazards in licensed temporary worker housing. This emergency rule supersedes the May 7, 2021, emergency rule as conditions have changed due to the updated guidance from the Center[s] for Disease Control and Prevention (CDC) regarding mask use and physical distancing for fully vaccinated individuals.

Except as described below, this emergency rule continues the requirements under the previous emergency rules that operators: (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 the ventilation requirements are met, including specific requirements for mechanical ventilation systems or that windows are open in buildings without mechanical ventilation; (6) ensure frequent cleaning and disinfecting of surfaces; (7) identify and isolate occupants with suspect and confirmed positive cases; (8) ensure isolation requirements are met including medical monitoring by a licensed health care provider; (9) 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 (10) ensure any changes made to the revised temporary worker housing management plan are submitted to DOH.

This 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.

Changes to this emergency rule include:

- Updates the requirements related to fully vaccinated occupants as follows:
 - Cloth face coverings do not apply to fully vaccinated occupants.

- Physical distancing other than in sleeping quarters do not apply to fully vaccinated occupants.
- In sleeping quarters with only fully vaccinated occupants, bed spacing must meet the requirements under WAC 296-307-16170 and both beds of bunk beds may be used.
- Operators must first verify employees are fully vaccinated for the reduced physical distancing/bed spacing requirements to apply and to discontinue cloth face covering use.
- To verify vaccination status, operators can have the occupant sign a document attesting to their status or provide proof of vaccination. Operators must be able to demonstrate they have verified vaccination status and the rule identifies possible options for verification methods. Operators are not required to verify vaccination status if they choose to maintain physical distancing and masking for all occupants.
- Removes the provision allowing beds to be separated by nonpermeable barriers placed perpendicular to the wall with a thirty-six inch minimum aisle between the bed and the barrier.
- Clarifies that physical barriers for fixtures such as sinks where occupants may come in close contact for short periods of time is amended to apply only when physical distancing cannot be maintained.
- Clarifies that groups shelter plans can be utilized if all occupants are not fully vaccinated. The provisions for fully vaccinated groups shelter options are removed as unnecessary given the overall changes in the emergency rule for fully vaccinated occupants.
- Streamlines the requirements for cleaning and disinfecting to align with current CDC guidance.
- Makes other changes for consistency and clarity.

Both L&I and DOH 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 296-307-16102.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and 49.17.240.

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 under the current Proclamation 20-25.13 "Healthy Washington - Roadmap to Recovery." 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 CDC. 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 Proclamation 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 becomes 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 for the 2021 growing season. The Governor's Stay Home, Stay Healthy order as amended to the Roadmap for Recovery and Proclamation 20-25.13 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: May 28, 2021.

Joel Sacks
Director

OTS-2279.11

NEW SECTION

WAC 296-307-16102 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 the hazards posed by SARS-CoV-2, the virus that causes coronavirus disease 2019 (COVID-19):

(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, the importance of prompt sanitizing of frequently touched

items; common symptoms and risk factors; how to get a vaccine and where to get answers about vaccine questions unless all occupants are already fully vaccinated; 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. For the purposes of this section, a community health worker is defined as a frontline public health worker who is a trusted member of and/or has an unusually close understanding of the community served. This trusting relationship enables the worker to serve as a liaison/link/intermediary between health/social services and the community to facilitate access to services and improve the quality and cultural competence of service delivery. A community-based outreach worker is defined as a legal aid representative, a union representative, or a representative from other community-based advocacy organizations.

Note: When there is a designated or recognized office at an employer's establishment, all visitors should check in to provide their name and contact information and complete a screening to ensure they are symptom free. To the extent possible, a minimum number of visitors should be allowed at a time and 6-foot physical distancing should be maintained. Personal protective equipment must be worn at all times.

(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) The operator must provide at no cost an adequate number of cloth face coverings for occupants who are not fully vaccinated 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 who are not fully vaccinated 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. Fully vaccinated occupants are not required to physically distance except as indicated in (d)(ii)(B) of this subsection.

(i) If needed to facilitate physical 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 in sleeping quarters where not all occupants are fully vaccinated. Except as allowed under (f) of this subsection, only the bottom bed of bunk beds may be used.

(B) In sleeping quarters where all occupants are fully vaccinated, bed spacing must meet the requirements under WAC 296-307-16170 and both bunks 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 and where physical distancing cannot be maintained. Any barriers placed near cooking equipment must be fire retardant.

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

(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/building has a mechanical ventilation system, maintain it according to the manufacturer's specifications and operate the system to provide optimal fresh and filtered air. TWH operators must 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) Make sure 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 a 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) Maximize the HVAC system's outdoor air intake. Make sure exhaust air is not pulled back into the building through HVAC air intakes or open windows. Reductions in outside air intake may be made when there are hazardous external conditions such as wildfire smoke.

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

(E) Maintenance checks must occur at the beginning of each growing season when preparing buildings to be reopened. Additional checks must 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) Turn on mechanical ventilation systems (i.e., 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 shelter plans can be utilized if all occupants are not fully vaccinated. 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 common areas on a regular schedule, at least as frequently as required by this chapter.

(ii) Provide adequate cleaning supplies to occupants for cleaning and disinfecting of living spaces of dwelling units, family shelters, and group shelters.

(iii) Clean and disinfect areas where symptomatic suspect SARS-CoV-2 cases or confirmed SARS-CoV-2 positive cases have been, according to CDC guidelines and before the space is used by others.

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

(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.

(2) COVID-19 screening and isolation of suspect SARS-CoV-2 and positive SARS-CoV-2 cases.

(a) The operator must develop and implement a plan to identify and isolate occupants with suspect SARS-CoV-2 and positive SARS-CoV-2, 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. Fully vaccinated occupants do not need to be screened for COVID-19.

(ii) A "suspect SARS-CoV-2 case" is defined as a person with signs and symptoms compatible with COVID-19 above who has not been tested yet, or refuses testing. Upon identification of suspect SARS-CoV-2 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 SARS-CoV-2 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) Other individuals who have been in close contact of the symptomatic suspect SARS-CoV-2 case or confirmed SARS-CoV-2 positive must be quarantined, and remain separated from others in the housing. Individuals who have been fully vaccinated per CDC guidelines are not required to quarantine. Members of a group shelter will quarantine together. Individuals may leave quarantine when they meet CDC guidance for quarantine or when released from quarantine by the local health officer. Anyone becoming symptomatic or testing positive for SARS CoV-2 during quarantine will be moved to isolation.

(v) Any occupant in quarantine must continue to be screened for symptoms of COVID-19 as described in (a)(i) of this subsection.

(vi) Confirmed SARS-CoV-2 positive cases must be isolated and only housed with other confirmed cases and must have separate 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 confirmed occupant will have the option to isolate with the family members.

(vii) The operator must report suspect SARS-CoV-2 cases or SARS-CoV-2 positive TWH occupants in isolation to the division of occupational safety and health (DOSH) within twenty-four hours after placement.

Note: This notification can be made by telephone to the department's 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 suspect SARS-CoV-2 cases or SARS-CoV-2 positive TWH occupants, including the following:

(i) Ensure that a licensed health care professional visits or assesses employees daily, at the employer's expense to perform a health check for each individual in isolation. Evaluations by licensed health care providers may be performed in-person, using audio telemedicine, or video telemedicine. At a minimum, the health care professional must review symptoms; temperature; oxygen saturation via pulse oximetry; and determine if additional medical services are needed, such as an in-person evaluation or treatment. If the licensed health care professional is not already familiar with the occupant's medical history, the licensed health care professional must obtain relevant medical history from the occupant.

(ii) Provide the health care provider performing the evaluation with information on the location of the isolation facilities and what the distance is from isolation facility and the nearest advanced life support emergency medical services, an emergency room with ventilator capability, and outpatient nonemergency medical services. If the health care provider has a question about the safety, health, or well-being for the occupant in isolation, they may contact the housing operator for further information.

(iii) For evaluations done by telehealth, the operator must ensure each occupant in isolation has or is provided a working telephone with a clear connection. The operator must also provide the occupant with a U.S. Food and Drug Administration approved pulse oximeter and thermometer with written and verbal instructions on use and interpretation of their results in the occupant's preferred language.

(iv) If an occupant prefers not to self-operate the pulse oximeter, and/or thermometer, the employer must ensure that they have competent assistance.

(v) Interpretation services must be provided when the medical professional is not fluent in the occupant's preferred language.

(vi) For 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) if authorized to monitor suspect SARS-CoV-2 cases or SARS-CoV-2 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.

(I) Facilitate transportation for in-person medical evaluation or treatment when specified or recommended by a medical provider or upon request of the occupant.

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

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

(ix) Permit access to other medical professionals who offer health care services in addition to the licensed health care professional(s) contracted to provide health checks.

(x) The operator must provide food and water.

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

(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 296-307-16120(1), an operator may request a temporary variance from the requirements of this section when another means of providing equal protection is provided.

(5) Vaccination verification.

(a) Occupants who are vaccinated against COVID-19 by a two-dose mRNA vaccine (such as Moderna and Pfizer), or a single dose vaccine (such as Johnson & Johnson), are considered "fully vaccinated" two weeks after the final dose of vaccine (the second dose for a two-dose regimen, or the single dose for a single-dose regimen). Occupants who have been vaccinated outside the United States with a vaccine that has received World Health Organization (WHO) Emergency Use Listing (EUL) are considered fully vaccinated if:

(i) The occupant has completed the full vaccination series;

(ii) The appropriate amount of time has passed according to the manufacturer's guidance for the occupant to be fully protected.

(b) Occupants who have not received an FDA-authorized or WHO Emergency Use Listing COVID-19 vaccine must not be considered fully vaccinated.

(c) The operator is not required to verify vaccination status if masking and physical distancing are to be maintained; operators have the choice to maintain masking and physical distancing in their housing.

(d) If an occupant declines to provide verification of their vaccination status, they are not considered fully vaccinated.

(e) The operator must have a demonstrable process to verify vaccination status, but is not required to keep a copy of occupant's vaccination records, which may require secure and confidential handling as a medical record. The operator must establish a way of demonstrating they have verified vaccination status for occupants who are not

wearing masks and are not being required to maintain a six-foot physical distance. Examples may include:

- Creating a log of the names of occupants who have been verified as fully vaccinated and the date that the verification was done;
- Marking an occupant's badge, site credential, or other individually identified item to indicate the occupant's status as fully vaccinated;
- Documented occupant attestations of vaccination; or
- Other methods that demonstrate an operator has verified an occupant has been fully vaccinated.

(f) To verify vaccination status, operators can require occupants to provide proof of vaccination status or signed document attesting to the employee's fully vaccinated status.

(i) Proof of vaccination means one of the following:

- A CDC vaccination card (which includes name of person vaccinated, type of vaccine provided, and date last dose administered);
- A photo of a CDC vaccination card as a separate document or a photo of the occupant's vaccine card stored on a phone or electronic device; or
- Documentation of vaccination from a health care provider electronic health record or state immunization information system record.

(ii) Signed self-attestation may be done in hard copy or electronically.

(g) The operator must provide evidence of their process to verify occupant vaccination status to the department upon request.

(6) 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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