



RULE-MAKING ORDER EMERGENCY RULE ONLY

CR-103E (December 2017) (Implements RCW 34.05.350 and 34.05.360)

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STATE OF WASHINGTON
FILED

DATE: September 10, 2020

TIME: 11:47 AM

WSR 20-19-049

Agency: Department of Labor & Industries (L&I)

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
 - No
- If Yes, explain:

Purpose: Chapter 296-307 WAC, Temporary worker housing. The Department of Labor & Industries (L&I) in conjunction with the Department of Health (DOH) are adopting revisions to the initial emergency rule to support the continued response to the novel coronavirus disease 2019 (COVID-19) pandemic. DOH and L&I filed the initial emergency rules on May 13, 2020 and WSR 20-11-024 and WSR 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 are filing a second rule to protect occupants from COVID-19 hazards in licensed temporary worker housing. The emergency rule will continue to require 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.

The emergency rule will continue to include an option for group shelters. A group shelter is where a cohort of up to 15 occupants stay together and separated from others for housing, work, and transportation. The maximum number of occupants, 15, 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 to the requirements of the initial emergency rule, this second emergency rule will also:

- Clarify minimum expectations for ensuring adequate ventilation to include: mechanical ventilation systems must be turned on or windows must be open whenever the sleeping quarters are occupied, and mechanical ventilation systems must be maintained according to the manufacturer's specifications.
- Add isolation requirements, including monitoring of occupants in isolation by health care professionals consistent with requirements for agricultural workplaces under the Governor's August 19, 2020 Proclamation 20-57.1 and verification that outside isolation facilities meet the isolation requirements before transporting workers to the facility.
- Add a requirement to report to Division of Occupational Safety and Health (DOSH) within 24 hours whenever symptomatic or COVID-19 positive workers are placed in isolation.
- Clarify that barriers near cooking equipment must be fire retardant.
- Clarify the requirements for use of shared facilities and common areas for multiple group shelters.
- Clarify existing requirements for the labeling of chemicals.
- Requires any changes made to the revised temporary worker housing management plan be submitted to DOH.

Both DOH and L&I will each file a Preproposal Statement of Inquiry (CR-101) 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 rulemaking. For example, changes to ventilation requirements, and isolation requirements during an outbreak.

Citation of rules affected by this order:

New: WAC 296-307-16102
Repealed: None
Amended: None
Suspended: None

Statutory authority for adoption: RCW 49.17.010, RCW 49.17.040, RCW 49.17.050, RCW 49.17.060, and RCW 49.17.240

Other authority:

EMERGENCY RULE

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.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

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 re-opening Washington State, referred to as “Safe Start Washington”. Under the initial Proclamation 20-25, agriculture is an essential business and must comply with the social/physical distancing and sanitation requirements of the DOH, L&I, and the U.S. 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 emergency rule, the Governor has also 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 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. 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.

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Federal rules or standards:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Recently enacted state statutes:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

The number of sections adopted at the request of a nongovernmental entity:

New	<u>1</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted on the agency’s own initiative:

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New 0 Amended 0 Repealed 0

The number of sections adopted using:

Negotiated rule making: New 0 Amended 0 Repealed 0

Pilot rule making: New 0 Amended 0 Repealed 0

Other alternative rule making: New 1 Amended 0 Repealed 0

Date Adopted: September 10, 2020

Signature:

Name: Joel Sacks



Title: Director