



Temporary Worker Housing
Chapters 246-358 WAC and 296-307 WAC
Adopted September 19, 2023
Effective November 1, 2023

The Department of Health (DOH) and the Department of Labor & Industries (L&I) collectively adopted changes to existing rules to address the hazards and spread of communicable diseases such as COVID-19, tuberculosis, and other airborne infectious disease hazards within temporary worker housing (TWH).

Throughout the coronavirus disease 2019 (COVID-19) outbreak, DOH and L&I reviewed information, data, science, and input from interested parties to determine necessary requirements to protect TWH occupants from COVID-19, and in doing so adopted several emergency rules.

DOH and L&I assessed the various emergency rule requirements, along with input from interested parties and have adopted permanent changes to address prevention of future outbreaks and the spread of communicable disease.

The amendments to chapters 246-358 WAC and 296-307-161 WAC were adopted under WSR 23-19-080 and WSR 23-19-073, respectively, on September 19, 2023, and will become effective on November 1, 2023. A copy of the adopted rules are available [here](#).

The adopted rules are different from the text of the proposed rule as it was published in the Washington State Registers WSR 23-10-092 and WSR 23-10-093. The following clarifying and non-substantive changes were made to the proposed rules upon adoption:

A. WAC 246-358-010 and WAC 296-307-16103, Definitions.

1. Added the definition of “Local Health Jurisdiction or LHJ” for rule clarity.
2. The defined term “Mechanical ventilation system” was amended to clearly exclude kitchen and bathroom exhaust fans.
3. Added the definition of “Suspected case” for rule clarity.

B. WAC 246-358-050 and WAC 296-307-16127, TWH management plan.

1. The Department of Health TWH complaint line is available in multiple languages and therefore the reference to the “bilingual TWH complaint line” was changed to “multilingual TWH complaint line.”

C. WAC 246-358-076 and WAC 296-307-16146, Ventilation.

1. The proposed rule was amended to clarify that a filter with an equivalent rating of MERV 13 could be used to comply with the rule.

D. WAC 246-358-175 and WAC 296-307-16190, Disease prevention and control.

1. Removed “Unexpected weight loss” as a symptom that needed to be reported to the local health jurisdiction.
2. Clarified the word “required” to say “directed” when used to describe actions that are given by the local health jurisdiction.
3. Entry of community health workers and community-based outreach workers. The proposed rule was amended to clarify the reasons these workers should be entrusted to enter the property of the TWH to educate occupants about public health, safety, and worker’s rights provided that they notify the operator to set up a designated time and place for the visit.
4. Food preparation, specifically if an occupant is sick, was clarified that a sick occupant cannot prepare food for occupants that are not sick but may prepare food for others that are sick and/or in isolation/quarantine with the sick occupant.
5. “Oral thermometers” was removed from the requirements, as “no touch” or “no contact” thermometers can effectively meet the requirements for fulfilling the communicable disease prevention and response plan requirements.
6. Medical transportation, specifically around transportation provided by a service provider, was clarified to remove “aid service” and instead state “ambulance service or other transportation service”.
7. Communication requirement, specifically access to phone services, was clarified to require operators to provide phone services only if the occupant does not have access to a personal phone.

The following is a summary of all comments received and the agencies’ response:

WAC 246-358-010 / WAC 296-307-16103 – Definitions

Comment: Does mechanical ventilation include items such as bathroom or kitchen exhaust fans like it did during the emergency rule?

Response: Thank you for your comment. The definition of “mechanical ventilation system” was amended to exclude bathroom and kitchen exhaust fans for clarity.

Comment: Can you define what a “Local Health Jurisdiction” is?

Response: Thank you for your comment. The rule language was amended to include the definition of Local Health Jurisdiction.

Comment: Add a definition of Food Safety Modernization Act (FSMA) to the language.

Response: Thank you for your comment. FSMA is not mentioned in the rule and does not apply to TWH so a definition will not be added at this time.

Comment: Change the definition of “Family Shelter” to allow 16 occupants instead of 15.

Response: Thank you for your comment. This is outside the scope of this rule making, but the comment will be considered the next time that chapters 246-358 and 296-307 WAC are open for rule making.

Comment: Definition of “Outbreak”: Who or what determines/defines the period of time? Who specifically defines what an occurrence is? Who specifically defines what a condition is? Who specifically defines the expected number of occurrences? This section is WAY too broad.

Response: Thank you for your comment. This is the definition from Chapter 246-101 WAC Notifiable Condition for outbreak and is consistent for this chapter.

Comment: We understand this definition, which we do not oppose. However, it is unclear how recreational trailers are allowed for use under the TWH rules. We ask for clarification to this definition and the intent of recreational trailer use as they are not listed in 296-307-16103(14) WAC “Dwelling unit. A shelter, building, or portion of a building, which may include cooking and eating facilities, that are:...”

Response: Thank you for your comment. These types of units are allowed as housing units under WAC 246-358-075(19) and WAC 296-307-16145(14), but still must meet the other requirements of this chapter.

Comment: With the growth of the H-2A program legislation has been proposed in Congress to eliminate the requirement that temporary farm workers return to their home countries after one year or less and instead allow workers to receive three-year visas. We suggest a slight modification such as “...employed intermittently and not residing at the same TWH site beyond that which is allowed in the operator's license or employee visa. This would avert potential conflicts between this rule and the H-2A visa program should these changes be adopted.

Response: Thank you for your comment. The definition of “Temporary worker” is compatible with how DOH and L&I license TWH. Any changes to H2-A legislation should be addressed by Employment Security Department or the Department of Labor offices.

Comment: “Worker supplied housing made available to the same worker” is confusing.
Current rule language- “Worker-supplied housing” means housing provided by the worker and made available to the same worker on the operator's TWH site. Worker-supplied housing includes recreational park trailers, recreational vehicles, tents, or other structures that meet the requirements of this chapter.

Response: Thank you for your comment. This is outside the scope of this rule making, but the comment will be considered when clarifying rule language the next time that chapters 246-358 and 296-307 WAC are open for rule making.

Comment: Would also suggest adding “mobile” to the definition or “worker supplied housing” if this is not a permanent fixture.

Response: Thank you for your comment. This is outside the scope of this rule making, but the comment will be considered the next time that chapters 246-358 and 296-307 WAC are open for rule making.

WAC 246-358-050 / WAC 296-307-16127 – TWH management plan

Comment: Employers are required to provide information in the preferred or primary language of the employee. The bilingual services for non-English-speaking callers are vague. We recommend clarifying the language access requirements in the final rule.

Response: Thank you for your comment. The rule language was amended in subsection (1)(a)(i) to state: “Emergency information, including site name and address, emergency contact phone numbers, location of local emergency services, and the department of health ~~bilingual~~ multilingual TWH complaint line”.

WAC 246-358-076 / WAC 296-307-16146 - Ventilation

Comment: Overall this section is laborious to the operators and makes no sense. For example, if a TWH is a house, and only has a fan and a heater (no A/C) the operator is required to instruct occupants to turn on the air system when they are home? What if turning on the air/fan causes the inside temperature of the TWH to increase, like during the summer? Suggest eliminating this section.

Response: Thank you for your comment. Mechanical ventilation refers to systems like HVAC or central air conditioning units therefor no changes were made.

Comment: Several comments were made opposing the use of MERV 13 filters in the mechanical ventilation systems citing undo damage caused to the HVAC

system by using a filter that was outside the recommended manufacturers specifications.

Response: Thank you for your comments. The proposed rule was amended to clarify that a filter with an equivalent rating of MERV13 could be used to comply with the rule.

Comment: Does mechanical ventilation include both heating and cooling? Is cooling required? As you know, we are having more wildfire smoke incidents and I see that the rule mentions turning off the ventilation if outdoor conditions are unhealthy.

Response: Thank you for your comment. Cooling is not a requirement at this time. The intent of turning off a mechanical ventilation system is to ensure that outside air that contains a harmful element is not drawn into the building by mechanical means.

WAC 246-358-077 / WAC 296-307-16147 - Tent requirements and maintenance

Comment: Tents are standard 16-person occupancy suggest changing tent occupancy from 15 to 16.

Response: Thank you for your comment. This is outside the scope of this rule making, but the comment will be considered the next time that chapters 246-358 and 296-307 WAC are open for rule making.

WAC 246-358-175 / WAC 296-307-16190 – Disease prevention and control

Comment: What is the difference between known to have a symptom or disease versus suspected of having a symptom or disease? Are operators supposed to diagnose a symptom or disease and report if they suspect someone is sick or do the operators act after an occupant reports to the operator that they are sick?

Response: Thank you for your comment. The intent of this language was to have an operator report to the local health jurisdiction when an occupant notifies them that a medical professional has diagnosed them with a communicable disease or that the medical professional suspects that they might have a communicable disease based on their symptoms but has not yet received confirmed test results back. To implement this rule change, DOH and L&I will be providing education and technical assistance.

Comment: Does “report if two or more occupants have the following symptoms” mean if 1 person has diarrhea and another is vomiting that the operator must report that?

Response: Thank you for your comment. The intent is if two or more occupants have similar symptoms, then the operator must report the symptoms. Occupants with similar symptoms could indicate a cluster of symptoms that could point to the start of a possible outbreak of disease. To implement this rule change, DOH and L&I will be providing education and technical assistance.

Comment: Two or more occupants with such common symptoms like vomiting could mean that they consumed too much alcohol the night before and not that they have a communicable disease. Is the operator supposed to report if they see or suspect that two or more occupants are throwing up? Often the occupants will go to the doctor and never say anything to the operator.

Response: Thank you for the comment. The intent is if two or more occupants have similar symptoms, then the operator must report the symptoms. Occupants with similar symptoms could indicate a cluster of symptoms that could point to the start of a possible outbreak of disease. To implement this rule change, DOH and L&I will be providing education and technical assistance.

Comment: Operators are not doctors. Every illness causes a fever. How would an operator know if an occupant has “unexpected weight loss?”

Response: Thank you for the comment. The intent is if two or more occupants have similar symptoms, then the operator must report the symptoms. Occupants with similar symptoms could indicate a cluster of symptoms that could point to the start of a possible outbreak of disease. “Unexpected weight loss” was removed as a symptom. To implement this rule change, DOH and L&I will be providing education and technical assistance.

Comment: The definition of “community health worker” and “community-based outreach worker” are too broad and non-specific. These definitions would allow access to anyone that states that they are a community health worker or a community-based outreach worker. The definition or language should be specific to clarify the reason for these individuals to seek an audience with the occupants of the housing and should stipulate when it is appropriate to visit the housing site.

Response: Thank you for your comment. The rule language was amended to clarify that site visits are to provide additional education to occupants about public health, safety, and worker’s rights. The rule requires all site visits to be arranged and agreed upon in advance between the operator and the person

or persons visiting the housing site. This rule is not intended to restrict or limit any existing rights of temporary worker housing occupants, community health workers, or community-based outreach workers related to access to temporary housing sites where there is not a safety and health exposure concern related to communicable diseases.

Comment: When the rule “prohibits any individual with a communicable disease from preparing, cooking, serving, or handling food, food stuffs, or materials in dining halls” does mean that they cannot prepare their own food in a communal kitchen inside a small housing unit? Often during COVID the occupant was sick and isolating but was well enough to prepare their own food. Does the rule prohibit them from cooking their own food?

Response: Thank you for your comment. The language was amended to clarify that any occupant that has a communicable disease is prohibited from preparing food or handing food stuffs for individuals who are not sick.

Comment: Recommends removing oral thermometers and only allowing no touch/no contact thermometers to ensure that there is no cross contamination.

Response: Thank you for your comment. Removed the use of oral thermometers.

Comment: What does “aid service” mean in: “If the transportation is not provided by an **aid service** or ambulance service, the operator shall provide personal protective equipment to individuals providing transportation”?

Response: Thank you for your comment. The language was clarified to remove “aid service” and to replace it with “other transportation service”. **Clarified language:** “If the transportation is not provided by an ~~aid service~~ or ambulance service or other transportation service, the operator shall provide personal protective equipment to individuals providing transportation.”

Comment: What if the occupant has their own phone service, does the operator still have to provide phone services if an occupant is quarantined or isolating?

Response: Thank you for your comment. The rule language was amended to clarify that if the occupant has their own phone service then the operator does not need to provide those services.

Comment: Define Immediately.

Response: Thank you for the comment. DOH and L&I apply the common dictionary definition of the term “immediately”, which is ***“In an immediate manner; without intervention of any other person or thing”***. Given this is a common word and there is no intent to apply a different definition, a definition does not need to be added to the rule.

Comment: How can an operator “implement infection control measures” as stated in subsection 3 when they are not medical professionals?

Response: Thank you for your comment. Individual outbreaks will be unique to the type of communicable disease it is. The Local Health Jurisdiction will investigate and assess the unique conditions happening in the individual locations and recommend the needed infectious control measures to implement at that location.

Comment: Suggest adding "diagnosed": (6) Prohibit any individual with a diagnosed communicable disease from preparing, cooking, serving, or handling food, foodstuffs, or materials in dining halls.

Response: Thank you for your comment. Diagnosed was not added to the rule because an occupant with a suspected but not yet diagnosed communicable disease can be contagious and transmit a disease and must not be allowed to prepare or handle foodstuffs as well as those that have been diagnosed.

Comment: In subsection 7a What defines a ‘health screening’? Who is the local health jurisdiction, and what authority do they have? How is a TWH operator supposed to know or understand what process may be needed to screen occupants for symptoms of communicable disease? And how do they know when that might be needed?

Response: Thank you for your comment. The powers and duties of local health departments, boards and officers are identified in law in chapter 70.05 RCW. Individual outbreak responses will be unique to the type of communicable disease. The Local Health Jurisdiction will investigate and assess the unique conditions happening in the individual locations and recommend the needed health screenings to implement at that location.

Overall rule comment

Comment: The proposed September 1, 2023 effective date of the rule should be extended to go into effect after the 2023 growing season is over.

Response: Thank you for your comment. The effective date of the rule was changed to November 1, 2023, to coincide with the mailing of the 2024 growing season application.

Comment: Change the word “operator” to “Farmer” throughout the rule.

Response: Thank you for your comment. “Operator” is defined in RCW 70.114A.020 and is consistent with the intended use in this rule chapter.

Any person may petition the adoption or amendment of these rules in accordance with [RCW 34.05.330](#).

For more information regarding these rules, you may contact:

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