

# Significant Legislative Rule Analysis

Chapter 246-358 WAC  
and  
Chapter 296-307 WAC  
a Rule Concerning  
Temporary Worker  
Housing



September 2023



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## **SECTION 1**

### **A brief description of the adopted rule including the current situation/rule, followed by the history of the issue and why the adopted rule is needed.**

RCW 70.114A.065 directs the Department of Health (DOH) and the Department of Labor and Industries (L&I) to adopt joint rules for the licensing, operation and inspection of temporary worker housing (TWH).

DOH, in conjunction with L&I adopted amendments to chapter 246-358 WAC, Temporary Worker Housing and chapter 296-307 WAC, Safety Standards for Agriculture, respectively, to address the hazards of communicable diseases among occupants residing in TWH.

In February 2020, Governor Inslee proclaimed a State of Emergency in Washington State in response to the novel coronavirus disease 2019 (COVID-19) pandemic. Under the initial March 23, 2020, Proclamation 20-25, Stay Home-Stay Healthy, the Governor enacted various forms of social and physical distancing requirements. The Proclamation identified the agriculture industry as an essential business requiring compliance with the social and physical distancing and sanitation requirements of DOH, L&I and the Centers for Disease Control and Prevention to lawfully operate. Proclamation 20-25 was later amended and ultimately a phased-in, county-by-county approach to reopening Washington was enacted titled "Safe Start Washington", issued October 7, 2020. The Governor also issued Proclamation 20-57 and 20-57.1, establishing workplace and transportation requirements for COVID-19 specific to the agriculture industry.

DOH and L&I responded to the COVID-19 pandemic by adopting a series of nine emergency rules beginning May 18, 2020 to protect occupants from the COVID-19 hazards in licensed TWH. The last emergency rule expired January 14, 2023.

Some of the key provisions in the emergency rules required operators to:

- Educate occupants in a language or languages understood by the occupants on COVID-19;
- Provide occupants cloth face coverings;
- Ensure physical distancing of occupants when at housing sites, which included all cooking, eating, bathing, washing, recreational, and sleeping facilities;
- Adhere to specific ventilation requirements maximizing outdoor intake and maintaining maintenance logs and other documentation;
- Ensure frequent cleaning and disinfecting of surfaces;
- Identify and isolate occupants with suspect and confirmed positive COVID-19 cases; and
- Submit to DOH a revised TWH management plan that demonstrates how the operator will comply with the emergency rule requirements.

Throughout the duration of the emergency, DOH and L&I continued to review new information, data, and science as it became available to determine necessary requirements to protect TWH

occupants from COVID-19 and similar airborne infectious disease hazards. Each emergency rule provided specific requirements responding to the needs at the time the emergency rule was adopted.

DOH and L&I have assessed the emergency rule requirements, along with input from interested parties and permanently adopted the following key provisions to address prevention of future outbreaks and the spread of any airborne infectious disease. These key provisions include:

- Requiring updates to the TWH management plan to be submitted to DOH and making the updated plan available to occupants. Requirements for providing the updated plan to occupants in a language or languages understood by the occupants is a current requirement;
- Specific ventilation requirements for all TWH buildings and cherry harvest tents to maximize outdoor air intake and maintaining maintenance logs and other documentation;
- Revisions to the disease prevention and control requirements include:
  - Requiring cooperation with the local health jurisdiction and DOH in the investigation and control of cases, suspected cases, outbreaks and suspected outbreaks of communicable diseases or notifiable conditions;
  - Changes to reporting requirements;
  - Establishing a communicable disease and prevention response plan which includes identifying and isolating occupants with suspect and confirmed cases, and providing medical assistance; and
  - Specific training for those responsible for executing the communicable disease and prevention response plan.

## SECTION 2

### Significant Analysis Requirement

The adopted rules meet the definition for rules requiring significant analysis because they subject TWH operators to a penalty or sanction if violated. RCW 34.05.328. The following SA Table 1. identifies rule sections or portions of rule sections exempt from significant analysis RCW 34.05.328(5) (b) and (c).

**SA Table 1. Summary of Sections not requiring Significant Analysis**

WAC Section and Title	Description of Adopted Changes	Rationale for Exemption Determination
<b>WAC 246-358-010 &amp; WAC 296-307-16103 - Definitions</b>	Definitions were added or amended for clarity where necessary.	Definitions are analyzed in the context in which they are used and are determined to be non-

	significant under RCW 34.05.328(5)(b)(iv).
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### SECTION 3

#### Goals and objectives of the statute that the rule implements.

RCW 70.114A.065 directs DOH and L&I to adopt joint rules for the licensing, operation and inspection of TWH and the enforcement thereof. In addition:

- DOH implements chapters 70.114A RCW Temporary worker housing – Health and safety regulations, and RCW 43.70.334 through 43.70.340.
- The general goals and objectives of RCW 70.114A.010 are to encourage safe and sanitary temporary and permanent housing for temporary workers by developing concise regulations, establishing a clear permitting and administrative process, and providing technical assistance to organizations and individuals interested in developing worker housing.
- RCW 70.114A.030 and 43.70.335 apply to TWH that consists of five or more dwelling units, or any combination of dwelling units, dormitories, or spaces that house ten or more occupants. RCW 43.70.335 also requires that: Applicable TWH operators shall secure an annual operating license and pay license fees; licenses may be suspended or revoked for failure or refusal to comply with TWH rules; and that DOH may assess civil fines for failure or refusal to obtain a license. RCW 43.70.337 directs DOH to establish the term of TWH operating licenses and license application procedures.
- RCW 70.114A.040 designates DOH as the single state agency responsible for encouraging development of TWH, and for coordinating the activities of the various state and local agencies related to regulating TWH. L&I, DOH, and the Departments of Commerce and Employment Security have roles in regulating or promoting development of TWH. Local health jurisdictions and local building departments may also regulate aspects of TWH.
- RCW 70.114A.060 gives DOH authority to enforce TWH rules, and to inspect premises covered by the rules.
- RCW 70.114A.081 directs DOH to adopt and enforce a TWH building code under chapter 246-359 WAC. The building code must be in conformance with L&I statutes but may make exceptions from State Building Code Council rules. RCW 43.70.337 requires any TWH operator that complies with the TWH building code to submit plans, obtain a building license from DOH and pay a permit fee to DOH. This statute states that alterations to manufactured structures used as TWH are subject to L&I rules in chapter 43.22 WAC.
- Chapter 49.17 RCW, directs L&I to govern the safety and health standards for conditions of employment.

Collectively the adopted amendments implement the goals and objectives of both DOH and L&I statutes and provide for safe and healthy living conditions of TWH occupants.

#### **SECTION 4**

##### **Explanation of why the rule is needed to achieve the goals and objectives of the statute, including alternatives to rulemaking and consequences of not adopting the adopted rule.**

Chapter 70.114A RCW and RCW 43.70.334 through 43.70.340 regulate TWH construction, licensing, and operations. Rules are needed to establish TWH standards with adequate specificity for administration and enforcement. These statutes direct DOH to establish standards for safe and sanitary temporary and permanent housing for temporary workers by rule. In addition, the statutes direct the DOH and L&I to adopt joint rules for the licensing, operation, and inspection of temporary worker housing. The adopted amendments reflect a joint effort between the two agencies.

Following the State of Emergency proclamation by Governor Inslee, DOH in conjunction with L&I, adopted nine emergency rules to protect the health and safety of occupants in TWH. These emergency rules considered feedback from interested parties, the Centers for Disease Control and Prevention recommendations, and peer-reviewed research to help slow the spread of COVID-19 within the TWH environment. Since COVID-19 is an airborne infectious communicable disease, the emergency rules included new requirements for housing ventilation, isolation, clarifying language, and additions to the disease prevention and control section of chapter 246-358 WAC and chapter 296-307 WAC. DOH and L&I adopted permanent amendments consistent with these emergency rule requirements.

DOH and L&I could elect to make no changes to their respective rules meaning that both agencies would have to consider emergency rulemaking if another communicable disease state of emergency event should occur in Washington mandating requirements that are not addressed in WAC 246-358-175 and WAC 296-307-16190, Disease prevention and control. The adopted amendments will set enforceable standards to help prevent the spread of airborne infectious communicable disease before an outbreak may occur and provide updated safe and healthy living conditions for TWH occupants.

## SECTION 5

**Analysis of the probable costs and benefits (both qualitative and quantitative) of the adopted rule being implemented, including the determination that the probable benefits are greater than the probable costs.**

**WAC 246-358-050 TWH management plan.**

**WAC 296-307-16127 TWH management plan.**

**Description:** These sections currently require all operators to implement a written TWH management plan including standard safety protocols and residency rules for maintaining safe and orderly housing. All plans are to be written in English and in the language most commonly spoken by the occupants. The adopted rule amends WAC 246-358-050 and WAC 296-307-16127 to require the operator to, when updating a TWH plan, to submit the updated plan to DOH within 10 calendar days after the updated plan becomes effective and to make the updated plan available to occupants.

In addition, the adopted rule provides housekeeping changes which are determined exempt from the cost/benefit analysis under RCW 34.05.328(5)(b)(iv) as they do not change the effect of the rule. For example, amending the rule language to culturally appropriate verbiage by replacing the phrase “native language” with “language commonly understood.”

### **Cost(s):**

The anticipated costs to the operator to submit a revised plan to DOH are negligible. The agencies anticipate that most operators will e-mail a copy of the plan directly to DOH. Alternatively, operators could mail or fax the report to DOH.

The anticipated costs to the operator to translate the updated sections of the plan to comply with amendments in subsection (2)(b) is variable based on:

- The degree of the changes made in the revised plan;
- If the operator is using the fillable form template<sup>1</sup> provided by DOH;
- How many times an operator will need to update the plan in a given year;
- If an operator is already in compliance with the amendment because section (2)(b) currently requires translation.

For these reasons, the low end of the researched cost range could reasonably be \$0.

The researched high end of the cost estimate to translate the document into a language from English is based on a maximum of five pages (2250 words)<sup>1</sup> allowing for additional site-specific

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<sup>1</sup>Washington State Department of Health.(accessed April 17, 2023).*Temporary Worker Housing (Migrant Farmworker) – Camp Management Plan*.<https://doh.wa.gov/licenses-permits-and-certificates/facilities-z/temporary-worker-and-migrant-farmworker-housing/camp-plan>.

management plans that are beyond the basic required elements in the two-page fillable form<sup>2</sup> that DOH has available in both English and Spanish. The cost range per word is \$0.09 to \$0.40 per word depending on the number of words, complexity of the changes, the language pair, and the type of files being translated.<sup>3</sup> The most commonly spoken languages in Washington state include Spanish and Spanish Creole, Mandarin, Vietnamese, and Russian.<sup>4</sup> **Cost Range: \$0 - \$900.00**

The anticipated costs to the operator to provide a revised management plan to occupants is negligible, which could include posting the updated plan.

**Benefit(s):** The TWH management plan includes safety steps and residency rules to maintain a safe and healthy living environment for occupants. The adopted amendment to submit the updated plan to DOH within 10 days ensures that the plan is in compliance with current health and safety requirements of this section. The adopted rule requires operators to make the plan available to occupants to ensure that the occupants have access to the most current plan so, in a case of an emergency, occupants know how to respond.

#### **WAC 246-358-076 Ventilation. (NEW)**

#### **WAC 296-307-16146 Ventilation. (NEW)**

**Description:** For buildings with a mechanical ventilation system, the adopted rule requires the operator to maintain the existing system to the manufacturer's specifications and perform regular maintenance and filter changes. When fitting a mechanical ventilation system with a filter the adopted rule requires operators to use a Minimum Efficiency Reporting Value (MERV) 13 rated filter or the highest rated filter that the mechanical ventilation system can support. The operator is required to maintain a written maintenance log that includes filter cleaning and replacement. If a building is equipped with a mechanical ventilation system, the operator must instruct occupants to turn it on while the building is occupied and temporarily shut it down when external conditions pose health and safety risks to occupants. If the building does not have a mechanical ventilation system, the operator must instruct the occupants to close all external openings if external conditions could pose a health or safety risk to the occupants.

**Cost(s):** The anticipated cost to operators is negligible. DOH and L&I expect that operators will follow the manufacturer's operating manual as a regular practice. It is assumed that most operators are already maintaining mechanical ventilation systems in conformance with the adopted rule and that any changes to comply will be negligible.

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<sup>2</sup>Washington State Department of Health.(accessed April 17, 2023). *Temporary Worker Housing (Migrant Farmworker) – Camp Management Plan*.<https://doh.wa.gov/licenses-permits-and-certificates/facilities-z/temporary-worker-and-migrant-farmworker-housing/camp-plan>.

<sup>3</sup>The Translation Company.(accessed April 17, 2023). *Translation Rated – The Ultimate Guide*.  
<https://thetranslationcompany.com/resources/5-facts-buying-translation/translation-pricing.htm>

<sup>4</sup>Language Network (accessed April 17, 2023). *The History of Language in Washington State*.  
<https://www.languagenetworkusa.com/blog/the-history-of-language-in-washington-state>



The filter compartment in a mechanical ventilation unit can vary in perimeter and thickness. Research of the costs of mechanical ventilation system filters focused on the largest filter available (30 x 36) to calculate the costs to comply with the adopted requirement. The most common filters are 1 to 4 inches thick. To upgrade from a one-inch MERV 8 filter (lowest rated filter) at \$41.54 to a one-inch MERV 13 filter at \$49.43 would cost the operator \$7.89 per filter. To upgrade from a four-inch MERV 8 filter at \$74.90 to a four-inch MERV 13 at \$107.26 would cost the operator \$32.36 per filter. The frequency at which the filter would need to be replaced depends on the filter thickness and outdoor air conditions and is therefore variable.<sup>5</sup> Additionally, it is assumed that some operators are already in compliance with the adopted rule and therefore would not incur any additional costs to upgrade to a higher rated filter.

**Incremental Cost Range per filter: \$0 - \$32.36**

It is assumed that the operator would spend 2 - 4 hours a year doing routine maintenance and logging the task in a written maintenance record. The average hourly mean wage for an operator in Washington State is estimated at \$26.18.<sup>6</sup> **Cost Range: \$52.36 – \$104.72**

**Benefit(s):** Requiring proper maintenance allows for the maximum amount of outdoor air intake to be introduced into a building, increasing the number of fresh air exchanges per hour and helping to slow the transmission of air-borne illnesses.<sup>7</sup> The higher the MERV rating of a filter, the better the filter can remove indoor air pollutants such as viruses that can cause an air-borne illness, smoke, dust, and allergens to improve the indoor air quality. Closing external openings and temporarily shutting down mechanical ventilation systems when outside conditions may pose a health and safety risk will improve the overall air quality inside the building to protect the occupant's health.

#### **WAC 246-358-077 Tent Requirements and Maintenance.**

#### **WAC 296-307-16147 Tents.**

**Description:** These sections currently set requirements for the use of tents as temporary worker housing for cherry harvest. The adopted rule requires operators to instruct occupants to close all windows and other outside openings when external conditions could pose a health or safety risk to the occupants.

In addition, the adopted rule provides housekeeping changes which are determined exempt from the cost/benefit analysis under RCW 34.05.328(5)(b)(iv) as they do not change the effect of the rule.

**Cost(s):** The anticipated costs are negligible due to the time it would take for operators or occupants to close windows and other outside openings under external hazardous conditions.

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<sup>5</sup> Filterbuy, Inc. (accessed March 30, 2023). *Shop by filter size*. <https://filterbuy.com/>

<sup>6</sup> U.S. BUREAU OF LABOR STATISTICS. (accessed March 30, 2023). *Occupational Employment and Wage Statistics*. Washington State hourly mean wage for a First-line supervisor of Framing, Fishing, and Forestry Worker. <https://www.bls.gov/oes/current/oes451011.htm>

<sup>7</sup> U.S. Environmental Protection Agency. (accessed April 9, 2023). *Science and Technical Resources related to Indoor Air and Coronavirus (COVID-19)*

**Benefit(s):** Closing external openings during times of external hazardous conditions such as wildfire smoke or dust will improve the overall air quality inside the tent to protect occupant's health.

**WAC 246-358-175 Disease Prevention and Control.**

**WAC 296-307-16190 Disease Prevention and Control.**

**Description:** This section requires operators to cooperate with local health jurisdictions, DOH and L&I in preventing the spread of communicable diseases. The adopted rule requires the operators to:

- Cooperate with the local health jurisdiction and DOH in the investigation and control of cases, suspected cases, outbreaks and suspected outbreaks of communicable diseases or notifiable conditions.
- Immediately report to the local health jurisdictions occupants known to have or suspected to have communicable diseases made notifiable by emergency rule or emergency declaration, as well as other specific symptoms of serious illness.
- Implement infection control measures as required by the local health jurisdiction for the care of occupants who have been exposed to other occupants with a suspected or positive case of a communicable disease.
- Conspicuously post education, in a language commonly understood by all occupants on the communicable disease related health and safety policies of the TWH.
- Develop a communicable disease prevention and response plan that specifies a process to screen occupants for symptoms of communicable diseases and include isolation and quarantine procedures.
- Provide occupants with access to a thermometer to determine if they have a fever.
- Provide access to a phone if an occupant is isolated or quarantined and information on paid leave and workers compensation, access to medical professionals who offer health care services, and provide food and water at no cost to the occupant.
- Provide transportation for an occupant needing medical attention for a communicable disease or suspected communicable disease at no cost to the occupant.
- Document and provide training to persons responsible for executing the communicable disease prevention and response plan at least annually or when the plan is updated.

**Cost(s):** Many of the adopted amendments were part of the series of nine emergency rules adopted during the COVID-19 pandemic. At that time, DOH and local health jurisdictions supplied thermometers to operators at no cost. The thermometers that were supplied to operators during the pandemic were FDA approved "no contact" infrared forehead thermometers that were purchased for \$17.50 each. Similar thermometers cost \$21.99.<sup>8</sup>The

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<sup>8</sup>S&S Worldwide. (accessed April 5, 2023). *Infrared Contactless Forehead Thermometer*. [Buy Infrared Contactless Forehead Thermometer at S&S Worldwide \(ssww.com\)](https://www.ssw.com).

only new expense would be to purchase thermometers if the operator needs to replace the existing thermometers or if a new operator becomes licensed. **Cost Range: \$0 - \$21.99**

The number of occupants needing urgent care due to a communicable disease could vary widely. The researched cost estimate captures the cost range of a single worker, single occurrence. The assumptions on travel and time for a single occupant, single occurrence are presented in SA Table 2.

SA Table 2. Assumptions for travel distance and time for a single occupant, single occurrence.

	Seeking Care Travel*				Urgent Care Appointment**	Operator Travel***			
	Distance (miles)		Time (minutes)		Time (minutes)	Distance (miles)		Time (minutes)	
Range	One-way	Round-trip	One-way	Round-trip	Average	One-way	Round-trip	One-way	Round-trip
Low-end	9	18	18	36	55	0	0	0	0
High-end	22	44	30	60	70	30	60	60	180

\* Estimated from a study from the Office of Financial Management (Washington State).<sup>9</sup>

\*\* Average urgent care appointment ranges from 55 to 70 minutes.<sup>10</sup>

\*\*\* Estimated through conversations with DOH inspectors.

SA Table 3 uses assumptions from SA Table 2 to calculate the total cost range for a single occupant, single occurrence.

SA Table 3. Calculations for total cost range for a single occupant, single occurrence.

Range	Variable	Occupant Totals	Occupant Cost*,***	Operator Totals	Operator Cost***
Low-end	Miles****	18	18 x \$0.655 = <b>\$11.79</b>	0	0
	Time	36 mins + 55 mins = 91 mins	2 hours x \$16.85 = <b>\$33.70</b>	0	0

<sup>9</sup>Yen, W. (2013). *How long and how far do adults travel and will adults travel for primary care*. Washington State Office of Financial Management. [How Long and How Far Do Adults Travel and will Adults Travel for Primary Care - Research Brief 70 \(wa.gov\)](#).

<sup>10</sup>Accessed on April 15, 2023. [Solvhealth.com](#)

High-end**	Miles****	44	Added to operator	60 + 44 = 104	104 x \$0.655 = <b>\$68.12</b>
	Time	60 mins + 70 mins = 130 mins	3 hours x \$16.85 = <b>\$50.55</b>	180 mins + 70 mins = 250 mins	5 hours x \$26.18 = <b>\$130.90</b>

\*Rounded-up to the nearest hour.

\*\*High-end operator cost totals assume that the operator goes with the occupant with the appointment (additional time) and takes the worker with them, therefore miles accrue only once under the operator cost.

\*\*\* Average mean wage of a worker \$16.85 <sup>11</sup> and average mean wage of a first-line supervisor (TWH operator) of \$26.18. <sup>12</sup>

\*\*\*\*DOH Mileage cost based on the estimated rate of \$0.655 per mile<sup>13</sup>.

As the estimates produced are per occupant, per occurrence the total cost in a given year to an operator and occupant are indeterminate. Additionally, it is recognized that the high-end of the cost range is likely an underestimate as an average length of travel was used, but the time estimate for an infectious disease could be considerably longer. **Cost Range: \$45.49 - \$249.57**

Local health jurisdictions, DOH, L&I, and the Centers for Disease Control and Prevention have multilingual flyers that are readily available to the public at no cost for operators to use to educate occupants on communicable disease related health and safety policies. It is estimated that it could take up to 2 hours (time to locate and request copies) for operators to comply with this adopted amendment. The average hourly mean wage for an operator in Washington State is estimated at \$26.18<sup>2</sup>. **Cost Range: 0.00 - \$52.36**

DOH is creating a template for operators to use to assist in the development of a communicable disease prevention and response plan. DOH estimates that it will take approximately 2 hours for operators to develop the plan using the DOH created template. The average mean wage of a first-line supervisor (TWH operator) is \$26.18 <sup>14</sup> **Cost Range: 0.00 - \$52.36**

<sup>11</sup> Washington State Department of Labor and Industries. (accessed April 7, 2023). *Agriculture Policies – Wages*. <https://www.lni.wa.gov/workers-rights/agriculture-policies/wages>. (Average of the state minimum wage of \$15.74 per hour and the adverse effect wage rate for Jan 2023 of \$17.97)

<sup>12</sup> U.S. BUREAU OF LABOR STATISTICS. (accessed March 30, 2023). *Occupational Employment and Wage Statistics*. Washington State hourly mean wage for a First-line supervisor of Framing, Fishing, and Forestry Worker. <https://www.bls.gov/oes/current/oes451011.htm>

<sup>13</sup> Washington State Office of Financial Management. (accessed April 6, 2023). *Per diem rate tables*. [Per diem rate tables | Office of Financial Management \(wa.gov\)](https://www.ofm.wa.gov/per-diem-rate-tables)

<sup>14</sup> U.S. BUREAU OF LABOR STATISTICS. (accessed March 30, 2023). *Occupational Employment and Wage Statistics*. Washington State hourly mean wage for a First-line supervisor of Framing, Fishing, and Forestry Worker. <https://www.bls.gov/oes/current/oes451011.htm>

The number of occupants that may need to be isolated or quarantined in a particular year due to a communicable disease could vary widely. The estimated cost captures the cost range of a single occupant, single occurrence.

Operators can employ an H-2A classified worker or a worker that is not classified as an H-2A worker. Section 218 of the Immigration and Nationality Act authorizes the lawful admission into the United States of temporary, nonimmigrant workers (H-2A workers) to perform agricultural labor or services of a temporary or seasonal nature.<sup>15</sup> H-2A worker housing standards state that for temporary non-immigrant workers, the operators will provide three meals a day or have free convenient kitchen space and provide lodging to the workers that they employ. Operators may choose to house workers in transient accommodations such as motels or hotels or have onsite temporary labor housing that conforms to the requirement in chapter 246-358 WAC and chapter 296-307 WAC.<sup>16,17</sup> Non-H-2A operators may choose on-site operator owned housing or apartment rentals, but are not required to provide housing for domestic agriculture workers. If the operators choose to provide housing, they must comply with the requirements of chapter 246-358 WAC and chapter 296-307 WAC.

The assumed low-end cost range to isolate or quarantine an occupant of the TWH would be in housing that the operator owns, that the isolated occupant owns a cell phone or that there is a land line available for use, and the operator would only need to supply the occupant with food and water for the day. It is assumed that the high-end cost range to isolate or quarantine a occupant would include securing an additional hotel/motel room, supplying the isolated occupant with a cell phone (daily rate), and supplying the occupant with food and water. The following assumptions apply:

- The cost of a hotel/motel room ranges from \$98.00 to \$232.00 per day.<sup>18</sup>
- The average monthly cost of a cell phone in the US is \$114.00 (equivalent to around \$4.00 daily).<sup>19</sup>
- The daily cost of food (three meals per day) and water is \$59.00.<sup>20</sup>

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<sup>15</sup> U.S. Department of Labor. (accessed April 14, 2023). *H-2A: Temporary Agricultural Employment of Foreign Workers*. <https://www.dol.gov/agencies/whd/agriculture/h2a>

<sup>16</sup> U.S. Department of Labor. (accessed April 9, 2023). *Fact Sheet #26D: Meal Obligations for H-2A Employers*. [Fact Sheet #26D: Meal Obligations for H-2A Employers | U.S. Department of Labor \(dol.gov\)](#)

<sup>17</sup> U.S. Department of Labor. (accessed April 7, 2023). *H-2A Housing Standards for Rental and Public Accommodations*. [Fact Sheet #26G: H-2A Housing Standards for Rental and Public Accommodations | U.S. Department of Labor \(dol.gov\)](#)

<sup>18</sup> Washington State Office of Financial Management. (accessed April 6, 2023). *Per diem rate tables*. [Per diem rate tables | Office of Financial Management \(wa.gov\)](#).

<sup>19</sup> Money Saving Pro. (accessed April 7, 2023). *What is the average cell phone bill per month in 2023? What is the Average Cell Phone Bill per Month in 2023?* - [MoneySavingPro](#).

<sup>20</sup> U.S. Department of Labor. (accessed April 9, 2023). *Allowable Meal Charges and Reimbursements for Daily Subsistence*. [Meal Charges and Travel Subsistence | U.S. Department of Labor \(dol.gov\)](#)

As the length of time that an occupant or occupants may need to be isolated or quarantined in a given year is variable, the total annual cost is indeterminate. **Single occupant, single occurrence, Daily Cost Range: \$59.00 - \$ 295.00**

It is estimated that the time to train an individual to execute the communicable disease prevention and response plan will take 30 to 60 minutes of both the operator and the person being trained to execute the plan. The average mean wage of a first-line supervisor (operator/trainer) is \$26.18.<sup>21</sup> The average hourly mean wage of an entry level agricultural worker is \$16.85.<sup>22</sup> **Cost Range: \$21.52 - \$43.03**

**Benefit(s):** Using thermometers to screen for the presence of a fever could be an early indication of an infection that may need medical attention. Having transportation to seek medical attention to confirm the presence of a communicable disease can help to slow the spread of the infection. Having a prepared communicable disease prevention and response plan and educating occupants using multilingual flyers about common communicable diseases will allow occupants to know when to distance themselves from other occupants of the TWH. Isolation and quarantine help protect the occupants by preventing exposure to people who have or may have a contagious disease. Isolation separates sick people with a contagious disease from people who are not sick. Quarantine separates and restricts the movement of people who were exposed to a contagious disease to see if they become sick.<sup>23</sup> Training designated personnel to execute the communicable disease prevention and response plan will help slow the spread of a communicable disease due to early detection and possible isolation or quarantine of contagious occupants.

**SA Table 4. Summary of Section 5 probable cost(s) and benefit(s)**

WAC Section and Title	Probable Cost Range	Probable Benefit(s)
246-358-050 TWH Management Plan 296-307-16127 TWH Management Plan	Translation services \$0.00 - \$900.00	Ensure that health and safety requirements are met
246-358-076 Ventilation	Per filter: \$0 - \$32.36 Routine maintenance and logging time: \$52.36 - \$104.72	Improve indoor air quality within the building while also protecting occupants from external hazards

<sup>21</sup>U.S. BUREAU OF LABOR STATISTICS. (accessed March 30, 2023). *Occupational Employment and Wage Statistics*. Washington State hourly mean wage for a First-line supervisor of Framing, Fishing, and Forestry Worker. <https://www.bls.gov/oes/current/oes451011.htm>

<sup>22</sup>Washington State Department of Labor and Industries.(accessed April 7, 2023).*Agriculture Policies – Wages*.<https://www.lni.wa.gov/workers-rights/agriculture-policies/wages>. (Average of the state minimum wage of \$15.74 per hour and the adverse effect wage rate for Jan 2023 of \$17.97)

<sup>23</sup>Center for Disease Control and Prevention. (accessed April 7, 2023).*Quarantine and Isolation*. [Quarantine and Isolation | Quarantine | CDC](#).

296-307-16146 Ventilation		
246-358-077 Tent Requirements and Maintenance  296-307-16147 Tents	Negligible	Improve the overall air quality inside the tent.
246-358-175 Disease Prevention and Control  296-307-16190 Disease Prevention and Control	Thermometer: \$0 - \$21.99, Single occupant, single occurrence seeking medical treatment: \$45.49 - \$249.57, Posting flyers: 0.00 - \$52.36, Prevention and response plan: 0.00 - \$52.36 Single occupant, single occurrence, daily isolation, and quarantine: \$59.00 - \$ 295.00, Training: \$21.52 - \$43.03	Having a thermometer allows occupants to be screened for the presence of a fever as an early indication of illness to help reduce the threat of spreading communicable disease. Having access to transportation to seek medical attention in the case of a suspected communicable disease infection allows operators to deploy the communicable disease and response plan to help slow the spread of communicable diseases to other occupants. Educating occupants on communicable disease related illnesses can slow the spread of communicable diseases. Isolation and quarantine helps protect occupants by preventing exposure to people who have or may have a contagious disease. Having trained personnel onsite to execute the communicable disease and response plan will help slow the spread of disease by early detection and possible quarantine of contagious occupants.

**Determination**

**Probable Benefits greater than Probable Costs**

It is determined that the probable benefits of the adopted rule amendments are greater than the probable costs.

## **SECTION 6**

**List of alternative versions of the rule that were considered including the reason why the adopted rule is the least burdensome alternative for those that are required to comply and that will achieve the goals and objectives of the adopted rule.**

Alternative versions of the adopted rule were considered as suggested by interested parties. These suggestions ranged from relaxing current health and safety requirements to adding substantial new requirements for TWH operators. The health and safety benefit of each suggested change was considered whether the change was consistent with the statutory authority, and whether the change could be complied with at a reasonable cost. It was determined that the adopted rules represent the least burdensome alternative for those required to comply that will achieve the general goals and objectives of the underlying statutes.

DOH & L&I considered a proposal that operators would be responsible for reporting communicable disease listed as a notifiable condition under chapter 246-101 WAC, Notifiable conditions. After further consideration and suggestions by interested parties, this was removed from the proposal as it was determined that operators are not trained to diagnose communicable diseases. Reporting of these diseases to local health jurisdictions is the responsibility of health care providers and health care facilities, which is more appropriate.

Interested parties concurred with the requirement to allow entry of community health workers or community-based outreach workers to provide additional information to occupants and recommended adding some basic personal safety requirements for a planned site visit. The proposal was revised to allow site visits by community health workers or community-based outreach workers if they contact the operator before the visit so the operators know that someone is visiting the site. The community worker must meet with a designated site employee before going onto the site and agree to a health screening and the use of personal protection equipment if the local health jurisdiction requires it. These health and safety requirements will protect both the community worker and the occupants of the TWH.

## **SECTION 7**

**Determination that the rule does not require those to whom it applies to take an action that violates requirements of another federal or state law.**

The adopted rule does not require those who must comply to take action that violates requirements of another state or federal law.



## **SECTION 8**

**Determination that the rule does not impose more stringent performance requirements on private entities than on public entities unless required to do so by federal or state law.**

Not applicable. There are no public entities that must comply with the current or adopted rules.

## **SECTION 9**

**Determination if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, determine that the difference is justified by an explicit state statute or by substantial evidence that the difference is necessary.**

The adopted rule does not differ from federal regulation or statute applicable to the same activity or subject matter. Where applicable, the adopted rules are consistent with federal Occupational Safety and Health Administration 29 CFR 1910.142 rules that implement the Seasonal and Migrant Worker Protection Act.

## **SECTION 10**

**Demonstration that the rule has been coordinated, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter.**

The adopted rule has been coordinated with other federal, state and local laws applicable to the same activity or subject matter. The adopted rules are consistent with L&I regulations under chapter 296-307 WAC.

