



RULE-MAKING ORDER EMERGENCY RULE ONLY

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

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: January 08, 2021

TIME: 9:56 AM

WSR 21-03-013

Agency: Department of Labor & Industries

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 Health (DOH) in conjunction with the Department of Labor & 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 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 filed a second emergency rule on September 10, 2020, WSR 20-19-048 and WSR 20-19-049, to protect occupants from COVID-19 hazards in licensed temporary worker housing.

This emergency rule continues the requirements adopted in the first and second emergency rule. This emergency rule requires operators to: (1) Educate occupants in a language or languages understood by the occupants on COVID-19; (2) Provide occupants cloth face coverings; (3) Ensure physical distancing of occupants when at housing sites, which includes all cooking, eating, bathing, washing, recreational, and sleeping facilities; (4) With the exception of group shelters, prohibit the use of the top of bunk beds; (5) Ensure frequent cleaning and disinfecting of surfaces; (6) Identify and isolate occupants with suspect and confirmed positive cases; (7) Ensure isolation requirements are met, including monitoring of occupants in isolation by health care professionals and verification that outside isolation facilities meet the isolation requirements before transporting workers to the facility; (8) Report to L&I Division of Occupational Safety and Health (DOSH) within 24 hours whenever symptomatic or COVID-19 positive workers are placed in isolation; and (9) Ensure any changes made to the revised temporary worker housing management plan are submitted to DOH.

This 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, this emergency rule also: (a) Moves ventilation requirements to its own section; (b) Specifies requirements for mechanical ventilation systems including the use of MERV13 filters or the highest supported, the maximizing outdoor air intake, and maintaining maintenance logs and other documentation; and (c) Adds a medical assistant-certified and medical assistant-registered to the list of health care professionals who may take vital signs of employees in isolation. Also, L&I added two notes that are guidance only.

Both L&I and DOH each filed a Preproposal Statement of Inquiry (CR-101) on September 10, 2020, WSR 20-19-047 and WSR 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 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:
Amended:
Suspended:

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 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 Centers for Disease Control and Prevention (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 as we prepare for and begin the 2021 growing season. The Governor's Stay Home, Stay Healthy order as amended to the Safe Start and Proclamation 20-57.1 are currently in effect, and observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest and the Governor's order.

**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>
-----	----------	---------	----------	----------	----------

The number of sections adopted on the agency's own initiative:

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
-----	----------	---------	----------	----------	----------

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
-----	----------	---------	----------	----------	----------

The number of sections adopted using:

Negotiated rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Pilot rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Other alternative rule making:	New	<u>1</u>	Amended	<u>0</u>	Repealed	<u>0</u>

Date Adopted: January 8, 2021

Signature:

Name: Joel Sacks

A handwritten signature in black ink that reads "Joel Sacks". The signature is written in a cursive style with a large initial 'J' and 'S'.

Title: Director