



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: May 28, 2021

TIME: 2:25 PM

WSR 21-12-080

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 subsequent emergency rules on September 10, 2020 (WSR 20-19-048 and WSR 20-19-049), January 8, 2021 (WSR 21-03-012 and WSR 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 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 (DOSH) within 24 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 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.

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 be 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 verifications 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 such 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 shelters 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 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 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 the DOH, L&I, and the 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.

**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 1 Amended 0 Repealed 0

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

New 0 Amended 0 Repealed 0

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	<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: May 28, 2021

Name: Joel Sacks

Title: Director

Signature:

