



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 24, 2021

TIME: 8:13 AM

WSR 21-20-023

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), May 7, 2021 (WSR 21-11-016 and 21-11-012), and May 28, 2021, WSR 21-12-080 (L&I) and June 1, 2021, WSR 21-12-083 (DOH), to protect occupants from COVID-19 hazards in licensed temporary worker housing.

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 who are not fully vaccinated when at housing sites, which includes all cooking, eating, bathing, washing, recreational, and sleeping facilities; (4) With the exception of group shelters and sleeping quarters with only fully vaccinated occupants, 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 and quarantine all occupants except those who are fully vaccinated when exposed to COVID-19; (8) Ensure quarantine and 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. The rule keeps the group shelter provisions. A group shelter is where a cohort of up to 15 occupants stay together and separated from others for housing, work, and transportation. 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:

- 1) Making the rule consistent with the Governor's Proclamation - Washington Ready 20-25.17 and Secretary of Health's Order 20-03.5 for indoor masking by requiring the operator provide an adequate number of cloth coverings for all occupants not just occupants who are not fully vaccinated. The emergency rule continues to require operators instruct occupants, and as updated visitors, to use cloth face covering in public and at housing, as recommended in the public health orders and to instruct group shelter occupants to wear face coverings in common areas whenever possible.
- 2) Under the updates to the Governor's Proclamations and the Secretary of Health's Orders, masks are required indoors by all occupants and visitors regardless of vaccination status except masks are not required by occupants who are verified as fully vaccinated when the indoor area is not generally accessible to the public and there are no volunteers, visitors, or occupants who are not part of the same groups shelter or who do not work at the same worksite as the occupants are present.

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. 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. Proclamation 20-57.1 was rescinded on July 1, 2021 to align agricultural workplaces with the other industries covered under the 20-25.14, "Washington Ready" and the specific requirements applicable to temporary worker housing had been previously incorporated into the emergency rules.

This emergency rule incorporates the Governor's current proclamation - Washington Ready 20-25.17 and Secretary of Health's Order 20-03.5 for masking. 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.

**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 24, 2021

Signature:

Name: Joel Sacks



Title: Director