



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: January 21, 2022

TIME: 3:02 PM

WSR 22-04-017

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 for temporary worker housing. 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 through September 24, 2021 (WSR 21-20-022 and WSR 21-20-023) 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 face coverings for use in accordance with DOH guidelines or L&I safety rules and instruct occupants and, as updated, visitors to use face covering in public and at housing, as recommended in the public health orders; (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, prohibits 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:

- Revised all references of "cloth face coverings" to "face coverings" to be consistent with the revised definition of "face coverings." This allows for more flexibility in types used;
- Requires operator to educate all occupants, including those that are fully vaccinated, on how and where they can get answers to vaccine questions. This will promote dissemination of booster information;
- Requires screening and isolation of all suspect SARS-CoV-2 and positive SARS-CoV-2 cases regardless of vaccination status. This aligns with updated information regarding transmission of SARS-CoV-2 among fully vaccinated individuals;
- Revises the language that quarantine after close contact with symptomatic suspect cases or confirmed positive cases is not required for individuals who are fully vaccinated to replace "fully vaccinated" with "up-to-date on COVID-19 vaccinations". Also adds language that the following exposure, individuals who are up-to-date on their COVID-19 vaccinations self-monitor for symptoms and wear a mask during the post-exposure period; and
- Revises the "fully vaccinated" definition for vaccination verification for occupants who are vaccinated against COVID-19 to reference the "current Washington State Department of Health guidance" rather than specific vaccine types and

regimens. The current Department of Health guidance for "fully vaccinated" is the same as was in the previous emergency rule.

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 resulting in the need for 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. 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 agriculture workplace with the other industries covered under the Governor Proclamation 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 includes requirements under the Governor's current proclamation - Washington Ready 20-25.17 and Secretary of Health's Order 20-03.6 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. The Omicron variant and the availability for boosters has presented a change in circumstance. Based on information for the Omicron variant, changes to the emergency rule were needed to address updates to CDC and DOH guidelines regarding quarantine for occupants with exposures who are fully vaccinated but had not received a booster when eligible. Other changes reflect education of fully vaccinated occupants on vaccines due to boosters now available and recommended. This emergency rule is necessary for the preservation of public health, safety, and general welfare of occupants of temporary worker housing for the 2022 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 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: January 21, 2022

Name: Joel Sacks

Title: Director

Signature:

