

**Temporary Worker Housing (TWH) – Emergency Rule – Filing May 7, 2021  
Comments Received April 22<sup>nd</sup> thru 29<sup>th</sup> 2021**

Comments	Response
<p>I would like to thank you for the opportunity to submit questions to the rulemaking process. Though we are a relatively small employer in the H2A world, the emergency TWH rules (and most certainly permanent rules) have had a major financial impact in our company and in the already targeted agriculture industry. We understand that there is no agriculture without employees. We care about our employees and protecting them is our concern, and to date we have taken every measure, recommendation, and ideas to do exactly that; protect our employees.</p> <p>Therefore, our questions are:</p> <ol style="list-style-type: none"> <li>1. What considerations will be given to employers who have a <b>100% vaccinated population</b> in TWH?</li> <li>2. What is the source of the scientific data used for the permanent rulemaking process?</li> <li>3. How is the science being applied in the TWH, who is analyzing the facts and making the recommendations?</li> <li>4. Besides DOH &amp; LNI, who are the <b>“interested parties”</b> with input on developing a permanent TWH rule?</li> <li><del>5. Medical monitoring: So far, every medical professional sends patients home to “Self monitor” and most will not even give you an in person appointment. (sorry, can’t find a way to make it a question, because we already know the answer)</del></li> <li>6. We would like to know the science behind the cohort number of 15, how was this number picked?</li> </ol> <p>We (the industry) understand that this is all new and renewing every day, and there is no handbook to consult. But treating the Ag. industry as if suddenly, we are all negligent, all the time, is helping no one. Those of us that have chosen ag. — <i>in this case a global food source</i>— as our career or calling, know that there is no other industry that gives you the pride in saying “I have a very tiny part in feeding the world” and some of the actions against the industry takes that way from us.</p> <p>We ask that you take the Stakeholders <b>measurable</b> efforts into consideration before deciding on a permanent</p>	

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<p>rule. Foreign Guest Workers are part of our community and should be treated with equanimity. Employees are our most valuable resource and in these ever changing times we need communication and guidance before rules limiting our abilities to provide a world food source.</p>	
<p>Thank you for receiving our comments and questions in advance of your first stakeholder meeting regarding a possible permanent emergency TWH rule.</p> <p>The Governor declared a state of emergency in March 2020. Thereafter, the Department of Health issued guidance for TWH facilities which was very helpful. An emergency housing regulation followed this in May. We supported the regulation because it was an emergency; it was a proper use of the law, which allows an exception to APA rulemaking for emergencies.</p> <p>From there, unfortunately, political forces took over. The farmworker advocate industry filed a lawsuit, which caused the agencies to deviate from the best science and feasible rules. From there, the agency began a process of rolling over the emergency rules. The political process has tainted agency decisions. This is unfortunate. How else can you explain the twice-daily house calls and some of the other requirements that exist only for agriculture? We look forward to a transparent process where the agencies collect the best science, disseminate it for stakeholders, and proceed with feasible solutions.</p>	
<p>Baseline Principles</p> <ol style="list-style-type: none"> <li>1. The rules must be governed by the best science, not political expediency.</li> <li>2. The rules must be based on a comparison between the community/unlicensed housing and licensed TWH.</li> <li>3. Appropriate triggers. Licensed TWH should not be forced to endure harsh regulations because there are outbreaks in community housing or unlicensed housing like there will be in late May when workers travel from California to Washington for the cherry harvest.</li> <li>4. Equity: Farmworker housing must be treated equitably. The current TWH rules treat farmworkers differently from other groups, and this must end.</li> </ol>	

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<p>Comparison between licensed TWH and Local Community Housing. The CDC and state DOH studied the pandemic outbreak in Brewster and concluded that it was likely by community spread. Data is requested as follows:</p> <p>1. Testing: Greater than 7,000 workers have arrived at TWH and have been tested. There have been 16 positive tests, and there has not been a positive test since February. This is a positive result that is far lower than the local community in any county where TWH is located.            Data Request: Please provide the latest results from the testing of farmworkers arriving in TWH.</p> <p>2. Vaccinations: Virtually all workers living in TWH facilities have been vaccinated, a much higher percentage than workers in the local community in any county where TWH is located.            Data Request: Please provide a comparison in the percentage of workers vaccinated in TWH compared with farmworkers who do not reside in TWH.</p> <p>3. Enforcement of the Regulation: All employer-owned facilities that house seasonal workers are subject to the regulation. However, the regulation is not being enforced. There are many housing facilities for seasonal workers that are not licensed, and adopting more onerous regulations will only cause more facilities to drop their licenses.</p> <p>There are greater than 30,000 licensed TWH beds. How many unlicensed facilities exist, and what are the agencies doing about these?            Data Request:</p> <ul style="list-style-type: none"> <li>• What is the fine for an employer operating an unlicensed TWH facility?</li> <li>• How many citations have been given for operating an unlicensed TWH facility in the past five years?</li> <li>• How many warnings have been given to unlicensed housing operators in the past five years?</li> </ul>	
Permanent Rulemaking Discussion Issues	

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<p>Vaccinations – does an occupant’s vaccination status impact the rule requirements? Isn’t this the point of vaccinations? Please solicit the opinion of medical experts on this subject. For example, Scott Lindquist, state epidemiologist for communicable diseases, recently wrote that the rules should be modified to account for vaccinations. The agency should solicit his opinion on the further restrictions required once all residents have been vaccinated</p> <p>If substantially all residents of a TWH facility have been vaccinated, what is the risk from a medical perspective? The science is overwhelming. Once all residents have been vaccinated, the number of “breakthrough” events where people become infected falls to almost nothing. Does the agency have any scientific data to indicate the risk levels once all residents have been vaccinated?</p> <p>The cost/benefit to maintaining costly rules strongly weighs in favor of returning to pre-COVID regulations once all residents have been vaccinated. The agencies should collect scientific evidence on the risk associated after residents are vaccinated, publish their findings, and proceed accordingly.</p>	
<p>Medical monitoring – how to ensure adequate medical monitoring of occupants in isolation. The Court threw out the current medical monitoring requirement. Medical experts, including state epidemiologist Lindquist, have stated that the current requirement is no longer necessary. A worker who develops COVID symptoms should be taken to the doctor. The doctor should prescribe the treatment, including the treatment intervals. Any requirement for medical monitoring must be based on the advice of the treating physician.</p>	
<p>Air circulation and filtration – should there be additional requirements where sleeping quarters have no mechanical ventilation. The baseline question is exposure and risk. What is the risk to workers who have all been vaccinated sleeping in a properly sanitized space? Does the addition of</p>	



