

Temporary Worker Housing Rule Comments Received – Due August 24th 2020

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<p>Un comentario: ¿Por qué sale el código en español? Por supuesto sale en ingles también pero no veo el enlace en el mensaje abajo. Eso no entiendo. Translated: One Comment: Why does code come out in Spanish? Of course it comes out in English as well, but I can't see the link in the message below. That I don't understand"</p>	
<ul style="list-style-type: none"> • Banning bunk beds was arbitrary. There was no scientific basis for banning bunk beds. • Bunk beds are allowed if 15 people or fewer live in a group shelter. Where did this number come from? It does not appear in any CDC publication. Did DOH and L&I just make it up? Please cite the scientific justification for 15 person group shelters. • The rules advise employers to discourage visitors but place no requirements whatsoever on occupants. Why is this? 	
<p>I am writing in response to our concerns as they relate to the recent rule changes due to the Covid-19 pandemic. We understand that drastic and immediate changes need to be made to our processes and would like to see changes that are based on scientific data rather than arbitrary regulation. Also, we feel there needs to be a method of survey for input prior to making changes that cannot be rapidly enacted without severely damaging businesses.</p> <p>The first and most drastic change was made in relation to modification of the “work unit” if bunk beds are to be used, or elimination of bunk beds altogether. When a rule like this is to be enacted that drastically changes the landscape of what we have worked hard to provide, it would be beneficial to see the data to support the change. From our perspective, this was more of an alleviation of pressure from external pressures than an actual protection of the workforce. I have yet to see data that supports the elimination of bunk bed use as well as the number of people working as a “cohort” at 15.</p> <p>Another point we would like to bring to review would be our mandate to keep our workforce free of illness, yet we can only discourage visitors and discourage multiple</p>	

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<p>trips to offsite locations. We have worked tirelessly to educate our H2A teams of the risks of visiting public locations and group gatherings, but there are still outbreaks occurring and many personal automobiles coming to and from our housing locations. It seems arbitrary and capricious to enforce rules to an employer if there is not “buy in” from the employees. I would like to propose that a “code of conduct” be made part of H2A contracts that is inclusive of following local laws, maintaining a safe workplace and supporting a team concept (promoting behaviors and patterns that reduce risk to others). We also need enforceable regulation that limits visitors to those that have checked in during normal business hours and creating a system of safe exposure that limits offsite trips to essential services during an epidemic. The general population has been held to this standard, but the H2A workforce has not, yet employers are held responsible for the guest workers’ health and safety. Lastly, we think there needs to be a general committee that is made up of stakeholders in the industry as well as people involved in policy-making. Regulation should be made that is practical, actionable and enforceable. Moreover, they should be proven to actually protect the workforce. One recent example of this is the new regulation requiring onsite visits by a licensed medical professional, twice-daily, for positive Covid-19 workers that are in quarantine. Myself being a practicing dentist and my wife being a practicing physician assistant, we understand the need for regular monitoring of Covid-positive employees. The challenge that has presented with this regulation is that the medical “system” is currently overwhelmed and without local health district involvement, it is extremely challenging and cost-prohibitive to provide these services to remote locations. Also, it is impossible for employees, without constant leadership of the local health districts to regularly monitor the availability of ventilators! Not only are most employers already doing their best to care for their guest workers with their human resource teams (and providing groceries and any other needed services), but there has only been one offender in our industry resulting in death to their employees (three times over!). Truly these instances must be handled on a case-by-case basis and those offenders should be harshly punished rather than enacting overwhelming regulation to all employers!</p> <p>We have been participating in the H2A Guest worker program for many years and have always felt that these people are our “guests” and treated as such. Governing agencies really need to have stakeholder involvement in creating regulation to</p>	

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<p>maintain the safety of their workforce as we are vested in protecting our greatest investment and would like to participate in this process.</p>	
<p>Please allow the housing rule to expire. Most numbers in it do not make sense or have any scientific backing.</p>	
<p>Community-based seasonal farmworker housing providers and other Temporary Worker Housing (TWH) providers are dedicated to the safety of farmworkers and their families. We are doing everything we can to keep residents safe. To serve this essential workforce, we must have practical options and timely answers to questions about implementing TWH Emergency Rules. Please consider:</p> <ol style="list-style-type: none"> 1. DOH/LNI must provide timely responses on requests for clarifications and variances proposals instead of silence or a “we’ll let you know if it’s a problem” approach. 2. DOH/LNI staff seem to be unclear about who has the authority to decide and/or approve variance requests. They and we need to know who can approve what and how to contact the decision maker. 3. We understand DOH/LNI has received an overwhelming number of variance requests, and we propose reducing duplication of questions, clearing the variance bottlenecks, ending confusion, and providing information for all stakeholders at the same time. This could be achieved by publishing Frequently Asked Questions/DOH/LNI answers on the website, including: info on waivers that have been APPROVED; a listing of proposed variances and/or items DOH/LNI will not consider approving, along with DOH/LNI’s rationale. 4. DOH/LNI should identify and communicate all approved ways to modify and occupy TWH while ensuring the safety of farmworkers. DOH/LNI should not only publish what housing providers cannot do, what we CAN do. If there must be new Emergency “Rules,” include APPROVED waivers, variances, etc.. 5. DOH/LNI should also issue guidance for any modifications that can be approved now so that TWH providers can begin planning for next year to address COVID-19. 6. If DOH/LNI has results from research on what has been working, or epidemiological or other medical guidance, (i.e., do UV rays kill the virus, would certain filtration systems work, is there an “approved” system for ventilation, what are nursing 	

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<p>homes/hospitals using, can this be applied to our housing, etc.) this could be made available on the website or in FAQs.</p> <p>7. Guidance must be realistic, appropriate to our operations (i.e., community-based providers do not transport workers), within our authority (we are not FW employers), and cost effective (we are nonprofits):</p> <p>a. Community-based Seasonal Housing providers should be allowed to operate under ‘guidance’ (like homeless shelters which are also providing housing but are not employers) rather than ‘rules’ (established for employer-provided housing).</p> <p>b. Community based off-farm seasonal housing providers that do not have H-2A contracts should not be required to provide transportation. Domestic farmworkers provide their own transportation.</p> <p>c. Community based off-farm seasonal housing providers should not be required to perform extra measures such as taking temperatures, providing food/water and transportation to healthcare of their residents as they are not employees.</p> <p>8. Resources are needed to find quarantine housing within adequate proximity to health care facilities.</p> <p>9. The State of Washington should fund a voucher program that allows farmworkers displaced by the dis-allowed use of the top bunk to stay in a hotel or other reasonable, local accommodations (if such exists).</p> <p>10. The State of Washington should create an operating fund to fill the revenue shortfall created by DOH’s emergency TWH rule that disallows use of the top bunk and thereby significantly reduces occupancy.</p> <p>11. Governor Inslee’s prohibition on evictions appears to contradict DOH’s TWH emergency rules that disallows occupancy of the top bunk. If TWH is occupied but the top bunk cannot be used, housing providers must essentially evict the person in the top bunk and violate the eviction moratorium in order to comply with TWH rules. Please clarify these contradictory edicts.</p> <p>We would like to see the above recommendations included in any process to extend, revise or re-issue the TWH Emergency Rules. Thank you for your consideration.</p>	
<p>Please find attached my comments on the Temporary Worker Housing Rules that will be under review.</p>	

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<p>I believe this is a very important matter and that minor changes would best serve the farm worker population in Washington State. Thank you for your consideration. I am a public health professional with over 30 years of experience in a variety of domestic and global health settings. Since 2010 I have supported the eradication and control of polio and other vaccine-preventable diseases in Africa and other parts of the world, and as a CDC and WHO Epidemiologist responded to numerous outbreaks of infectious disease including Ebola, E. Coli, S. Typhi, Yellow Fever and Lassa Fever. I currently work for a local non-profit foundation where I manage a portfolio of > \$20 million annually to combat disease outbreaks and improve global surveillance. Over the past 5 months I have provided expert technical guidance to several entities (including the State of Washington) on farm worker housing and safety, especially with respect to the ongoing COVID-19 pandemic. While I have occasionally received remuneration for these services, most of time has been provided free of charge as a service to the community. I have no agenda or political aims but am motivated by a belief that responses to the pandemic should be based on the best available science and in the best interest of the public.</p> <p>I would like to comment on the Temporary Worker Housing emergency rules related to the COVID-19 pandemic, which are set to expire on September 10, 2020, and are being reviewed by the Department of Health (DOH) and Labor and Industries (L&I) Division. Specifically, I would like to address the definition of the “Group Shelter” (referred to by some growers as Work Groups) which currently reads:</p> <p>“Group shelter” means a dwelling unit or cluster of dwelling units with sleeping facilities for up to fifteen occupants that includes toilet facilities, bathing facilities and, if applicable, food preparation and cooking facilities.</p> <p>I previously sent a detailed assessment to the DOH staff describing the challenges presented by limiting a “Group Shelter” to no more than 15 persons and have attached them for reference. However, I would like to emphasize the point that there is currently no supporting documentation in the scientific literature for establishing fifteen – or any specific number for that matter – as the maximum number of workers who can safely be grouped in a work group cohort. The most recent CDC Guidelines (Agriculture Workers & Employers – Interim Guidance from CDC and the U.S. Department of Labor, Updated June 11, 2020) state:</p>	

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<p><i>Grouping workers together into cohorts may reduce the spread of COV/D-19 transmission in the workplace by minimizing the number of different individuals who come into close contact with each other over the course of a week, and may also reduce the number of workers quarantined because of exposure to the virus. And that Owners/operators can respond inflexible ways to varying levels of disease transmission in the community and be prepared to refine their control plans as needed. A control plan should reflect the specific region, work site space, job tasks, and other features of each farm, ranch, orchard, or other agricultural operations and locations. Those involved in the work can best set priorities and assess how realistic these recommendations are for specific situations at their facilities.</i></p> <p>No where does it mention a specific size or limitation on the maximum size for a cohort. The document goes on to state:</p> <p><i>Grouped workers, as described above, are considered a single household or family. Farmworkers that are in the same shared housing unit should follow the Households Living in Close Quarters Guidance.</i></p> <p>Again, there is no mention of a maximum family size limit or limit in this guidance. It is also worth noting that growers who have adopted the Work Group cohort have made every effort to comply, and in many cases exceeded, the recommendations put forth in the Guidance.</p> <p>Lastly, based on fundamental models of disease transmission and overwhelming data from COVID-19 case studies, the primary risk of transmission occurs when a person is intimately exposed (i.e. w/in 6 feet) to an infected individual for prolonged period of time – generally regarded to be 10-15 minutes or longer. In the farm worker environment, this is most likely to occur in cabins, which typically house up to 7 workers. Workers wear masks and practice social distancing when outside their cabins, and do not work in close proximity to one another in the fields. Adding one or more cabins to an existing work group cohort – which now is limited to two cabins – thus has little impact on</p>	

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<p>the overall risk to each worker. But as explained in the attached assessment, the smaller cohorts can lead to unintended but stressful hardships and may predispose workers to non-compliance or even illness.</p> <p>As you review the Emergency Rules I strongly urge you to consider following the CDC Guidelines noted above, by removing the 15 person limit and allowing owners/operators the flexibility to respond with a group shelter plan that reflects the specific region, work site space, job tasks, and other features of each farm, ranch, orchard, or other agricultural operations and locations. For transparency, if the State has documented evidence, data or scientific support for the fifteen-person Group Shelter limit – that applies to the farm worker environment – that should be included in the review process and made available to the public.</p>	
<p>Thank you for providing Northwest Justice Project an opportunity to comment on your proposed extension of the COVID-19 emergency rules for temporary worker housing. The science regarding the transmission of Covid-19 has developed since these regulations were first adopted. Also, the capacity for testing and the availability of PPE have both grown dramatically. The new regulations must reflect those changes. The need for updated regulations that reflect the available protective measures is demonstrated by the COVID outbreaks in farmworker housing throughout Eastern Washington and particularly in the Brewster area, where at least three workers have died and many more have been hospitalized and sick. This summer’s experience has also demonstrated the need for stronger reporting, inspection, testing and medical care provisions to meet the challenge presented by the pandemic. Of particular concern is the current gap in transparency and information about COVID-19 outbreaks at farmworker housing. If the reporting rules are not addressed, public health authorities and farmworkers themselves will never know how many workers got sick or even died from COVID-19.</p> <p>WAC 296-307-16102 (1) (a) Education: Community health workers and local medical providers need to play a greater role. Operators should be instructed to ask the local health jurisdiction, health clinics and medical providers to provide the required training to their occupants. In our experience, the current requirement to allow entry</p>	

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<p>of community health and outreach workers is not being followed. NJP outreach workers are being denied access to workers at TWH sites. We have also become aware of local clinics being refused access. This requirement should be strengthened and included on the Camp management plan. One consequence of reducing the regulations to a Checklist is that any requirement not on the checklist becomes lost.</p> <p>(1)(c) Face Masks: Now that face masks are readily available this requirement should be made more specific and mandatory. All operator employees must wear masks at the housing, and operators should require that occupants wear masks when using common facilities such as kitchens and laundry. NJP outreach workers recently visited a labor camp in which the housing staff were not wearing masks. Those staff members went into the cabins to speak with workers and also approached our outreach workers without respecting social distancing, despite not wearing any face coverings. This puts both their own health and that of the occupants at risk.</p> <p>(d) Physical distancing: These rules should reflect the knowledge gained about aerosol transmission of the virus.</p> <p>(1) Ventilation: Increased ventilation in temporary worker housing must be given greater attention so as to lower the risk of transmission. The existing language is too vague and inadequate for that purpose. Specific ventilation standards that reflect the advice of infectious disease experts are needed.</p> <p>(2) Require additional portable sinks and stoves where occupants use common kitchens. Currently, groups of workers cannot socially distance when cooking in kitchens shared between multiple housing units.</p> <p>Group shelters: We continue to disagree that the group shelter regulations provide adequate safety and health protections for workers. The density of workers living in these conditions raises their risk of becoming infected with COVID-19 once any other occupant is exposed. This has been demonstrated repeatedly this summer. If the agencies retain the group shelter provisions, at the very least they need to clarify that all of the rules other than the sleeping room rules continue to apply to workers living in group shelters. Furthermore, make explicit that once a member of the group shelter develops symptoms of COVID-19, that all members will be tested, and that those occupants who test positive will be isolated separately from COVID-19 negative occupants of the group housing. Additionally, the limit to the number of occupants in</p>	

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<p>the group should not be allowed to increase above 15. A provision that builds in from the start that should one worker get sick that 20 to 25 workers will also get sick, is not a health provision, but rather a systemic devaluation of farmworker lives and health.</p> <p>(f) Clean and Disinfect: Require explicit cleaning and disinfection schedule, at least daily for common areas. NJP has heard from workers that this cleaning and disinfection is not being done at all housing sites. This requirement might be more subject to compliance monitoring if operators were required to post a schedule in which the person doing the cleaning writes in the date in which they carried out the sanitizing and signs it each time.</p> <p>(iv) Given the high contagion rate of COVID in temporary worker housing, additional sinks should be made mandatory in high density housing.</p> <p>(g) Identify and Isolate: The strengthening of these provisions is a high priority in protecting the health and safety of farmworker occupants.</p> <p>(ii) The identification provision has proven insufficient in the timely identification, testing and treatment of farmworkers with COVID-19, so as to limit contagion in the housing. The regulation should require that operators inform the DOH housing program as well as the local health jurisdiction immediately upon identifying a likely COVID case at their housing. This provision might increase the coordination between local and state health agencies required for an effective response.</p> <p>(iii) Once a COVID positive test has been confirmed, the operator must arrange for testing of all workers at the housing site, and reporting of the results to the local health jurisdiction and the department of health.</p> <p>(iv) Include the language from the governor’s proclamation regarding isolation housing here, so that all requirements for housing can be found in one place. Clarify applicability of protections for workers in quarantine housing as well as isolation housing.</p> <p>(2) TWH management plan: The plan should require more explanation of planned COVID prevention measures beyond completion of the checklist. A checklist encourages operators to check all of the boxes without necessarily working through how they are going to implement the needed changes. The plan should require that operators specify the schedule for cleaning and disinfection of facilities, for example. Furthermore, the checklist fails to list the prohibition on bunkbeds (outside of the group shelter), nor does it adequately set out the serious commitment required to</p>	

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<p>carry out a true group shelter model. Not surprisingly, almost every housing site in the state has chosen the group shelter model. However, it is far from clear how many providers are implementing the associated protections.</p> <p>(3) Eliminate the language regarding variances. The emergency regulations set out minimum needed protections for farmworkers. Including variance language here suggests to operators that compliance with these regulations may not be needed. Of course, WAC 296- 307-16120(1) remains in effect for those employers who need it, but there is no reason to repeat it in the housing regulations.</p> <p>Finally, both departments need to plan proactive inspections of housing sites with reported probable or confirmed COVID positive occupants, so that they can inspect conditions and monitor the response quickly enough so as to limit further outbreak. Complaint based enforcement of farmworker health and safety is not effective. The understandable fear of retaliation is too great. H-2A workers, residents of much of the temporary worker housing in Washington State at this point, are particularly vulnerable to the fear of retaliation. They are dependent on the contractors and employers who bring them to Washington for current and future work opportunities. Many of them have told us that if their current employer fails to bring them back next year that they have no other opportunities to return to the United States. An H-2A worker reports that a Gebbers Farm manager warned the workers that they could say what they wanted to a visiting Labor and Industries representative, but that they should remember that “the fish dies from its own mouth.” Workers at another H-2A camp were too afraid last week to accept COVID care packages from NJP outreach workers because, they said, a supervisor was watching.</p>	
<p>The Washington Farm Bureau is the state’s largest agricultural organization representing more than 47,000 member families statewide. We are a voluntary, grassroots advocacy organization representing the social and economic interests of farm and ranch families at the local, state and national level. That is why Washington Farm Bureau is known as the voice of agriculture in our state.</p> <p>Washington Farm Bureau was deeply involved in the creation of the temporary worker housing rules for agriculture. The success of the policy relies on a multi-layer approach for worker protection as a fail-safe to cover any protective measures that may fail. To date, this approach has been overwhelmingly successful for members of Washington</p>	

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<p>Farm Bureau’s Retro/Safety Department. These members represent 40-45% of the farmers in Washington State and have had zero violations regarding temporary worker housing COVID-19 temporary rules.</p> <p>We appreciate the opportunity to offer to the record, real agriculture data as it relates to temporary worker housing. We respectfully request that the Department of Labor & Industries and Department of Health continue with the temporary rule as currently outlined until the end of harvest or until an endemic problem arises that requires emergency attention. Until that time, we recommend that any violations of the rule be enforced accordingly as to not unnecessarily penalize employers who are successfully applying the temporary rule.</p>	
<p>Thank you for the opportunity to comment on the proposed extension of emergency measures related to COVID-19 in Temporary Worker Housing (WAC 246-358-002; WAC 296-307-16102). The Washington State Tree Fruit Association (WSTFA) represents the growers, packers, and marketers of apples, pears, cherries and other tree fruits in Washington state. These labor-intensive crops represent nearly 30% of the agricultural farm gate value produced in our state, and many of our members operate temporary worker housing facilities for their workforce.</p> <p>While we do have concerns about the precedent of extending an emergency rule beyond the 120 days allowed using this procedure, we also recognize that at this time COVID-19 remains a hazard that must be addressed. At the same time, we do not consider making these emergency measures permanent to be the appropriate response at this time. Instead, we understand them to be important, necessary, and temporary measures enacted in response to the unprecedented challenges of this pandemic. Further, we recognize that these unprecedented challenges require rapid and creative responses by both government and industry.</p> <p>However, there is one area we believe should be addressed in the proposed extension of emergency measures: the variance process provided for in the rule has not allowed employers and other temporary worker housing operators the ability to respond promptly.</p>	

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<p>Although we understand the challenges posed by COVID-19 response for the agencies, employers who sought to use the variance process to implement alternative, but equally protective, measures have been frustrated by the slow pace of review and approval of these proposals. We have already had constructive discussions with LNI DOSH staff on ways to address delays in the variance process, and would like to summarize some of our concerns and recommendations as part of this comment period. We think this process could be made more efficient for both employer housing providers and the agencies by doing the following:</p> <ol style="list-style-type: none"> 1. Providing the agencies’ responses to proposed variances, so that housing operators know which potential measures the agencies have considered and which have been deemed insufficient. This could also be achieved through the publication of guidance or frequently asked questions. 2. Where multiple variances have been submitted and approved using the same approach, the agencies should incorporate them into the emergency rule as a standard alternative. This might include descriptions of enhanced PPE options where distancing is a challenge, or administrative and management controls that might allow for larger group shelter cohorts or the sharing of facilities by multiple cohorts. 3. For those issues that the agencies have identified as recurring concerns, such as ventilation, the agencies should reference any research, guidance, or examples of measures applied under similar conditions for use as a guide. 4. Identify agency points of contact who will provide status updates on variance applications, and consult with housing providers on how best to achieve compliance. <p>Our industry shares the agencies’ goal of ensuring the safety of our workforce, and we would be happy to discuss opportunities to achieve this and to improve the emergency rules at any time.</p>	
<p>We appreciate the opportunity to comment on ways that your agencies can improve the existing COVID-19 emergency temporary worker housing rules. Since your agencies promulgated these rules, farmworkers have experienced a “large and disproportionate</p>	

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<p>impact of COVID-19”¹ and at least four agricultural farmworkers have died from COVID-19. The growing body of scientific evidence concerning the spread of COVID-19 requires major, not minor, revisions to the emergency temporary worker housing rules so that these rules and your agencies’ actions meaningfully place farmworker lives at the forefront. As Governor Inslee stated during his August 20, 2020 press conference, “we owe it to these workers and their families to continuously improve the systems we have to reduce the risk of COVID as much as we possibly can.”</p> <p>It has been almost 5 months since we petitioned your agencies to enact emergency regulations that protect the farmworkers who are the backbone of the agricultural industry. At least five farmworkers have lost their lives because adequate protections were not in place:</p> <p>Earl Edwards, Juan Carlos Santiago Rincon, Francisco Montiel, Jose Antonio Torres Bravo, and David Cruz. Although these tragedies made it to our State’s headlines, we still do not know COVID-19’s true reach within the agricultural industry due to lack of transparency and coordination between health departments and state agencies and the ever-present threat of retaliation that our farmworkers face. What we do know is that the existing emergency housing rules have failed to protect farmworker lives.</p> <p>A. Inadequate Spacing Fails to Reduce the Risk of Infection in Housing</p> <p>We remain committed to our stance on bunkbeds and the spacing necessary to meaningfully reduce the spread of COVID-19 in temporary worker housing. As the Department of Health indicated, “high-density shared housing,” like the housing used by Gebbers, presents a significant risk of the rapid spread of COVID-19.³ We urge your agencies to protect each individual farmworker life by banning the use of both bunks in bunkbeds in labor camps and requiring housing operators to provide, at a minimum, 150-200 square feet per two persons and a minimum of 150 square feet per each worker older than 50 years old with pre-existing conditions.</p> <p>B. Specific COVID-19 Ventilation Standards Needed to Reduce Risk of Infection in Housing</p> <p>We call your attention to the letter penned by 239 scientists across the globe: It is Time to Address Airborne Transmission of COVID-19.⁵ Since that July 6th letter, a team of virologist and aerosol scientists confirmed that “floating respiratory droplets called aerosols contain live virus.” When Stemilt informed your agencies that it could find “no pattern or correlation between the number of employees per room and positive or</p>	

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<p>negative [COVID-19] test results,” your agencies had information that required it to consider other factors contributing to the spread of COVID. Instead of contemplating specific ventilation standards that could mitigate the transmission of COVID-19, your agencies merely required that plastic barriers do not compromise existing ventilation when used in non-group housing, WAC 296-307-16102(d)(i)(B); WAC 246-358-002(d)(i)(B), and only required group housing cohorts operators to “take steps to improve ventilation wherever possible.” WAC 296-307-16102(e)(i)(B); WAC 246-358-002(e)(i)(B). We urge your agencies to immediately adopt specific ventilation standards that will meaningfully reduce the risk of contracting COVID-19 in temporary worker housing.</p> <p>C. Testing Before Housing Placement We applaud our Governor for finally mandating testing when agricultural outbreaks meet certain baselines; however, we remain deeply concerned that testing is a reactive, not proactive, response. Testing before placement in temporary worker housing is a fundamental step that would reduce the risk of the asymptomatic spread of COVID-19. The State has “found . . . that this disease can sneak up on people. That they're not even aware they're having significant problems and then losing their lives.” We urge your agencies to adopt stronger testing measures that protect workers as they arrive to housing sites and to take the lead on contact tracing for farmworkers residing in temporary worker housing.</p> <p>D. Significant Flaws in Enforcement – Strong Anti-Retaliation Provisions Required Although non-compliance with the COVID-19 temporary worker housing regulations “may result in administrative action,” we have yet to hear that your agencies have revoked housing licenses or fined housing operators following COVID-19 worker deaths or illness. We are deeply concerned that compliance is monitored via an agency checklist, which fails to contain all the temporary worker housing requirements, and by announced on-site visits that give housing operators adequate time to create the illusion of compliance and threaten residents into silence.</p> <p>Although the rules require housing operators to permit entry of outreach and community-health workers onto housing facilities, many outreach coordinators have reported that it is nearly impossible to access housing facilities let alone communicate with residents to conduct necessary outreach. Some outreach workers have reported</p>	

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<p>that they have been greeted by unmasked housing managers who approached their persons well within six feet.</p> <p>Rules that are inadequately enforced are as effective as not having any codified protections to begin with. Our essential farmworkers need your agencies to enact anti-retaliation measures and engage in meaningful unannounced enforcement to ensure that their lives are treated with dignity and respect.</p> <p>E. Conclusion</p> <p>We appreciate the recent additional steps that your agencies and the Governor have taken to protect farmworkers, but, based on current infection rates and the disparate impact on these essential lives, it is evident that the existing rules and lack of meaningful enforcement have failed to protect the farmworker community. We urge you to adopt our proposed changes and welcome an open discussion with your agencies, especially regarding specific ventilation standards.</p>	
<p>This message is in response to the 8-20-2020 LNI e-mail request for input on the current Temporary Worker Housing (TWH) emergency rules related to the COVID-19 pandemic (WAC 246-358-002; WAC 296-307-16102). We thank you for the opportunity to provide input and are confident LNI and DOH will modify/clarify the codes to make them better.</p> <ul style="list-style-type: none"> • I did not receive the 8-20-2020 LNI e-mail directly; however, was forwarded it by colleagues in the industry. • WAC 246-358-002 and WAC 296-307-16102 are not easily searchable at https://apps.leg.wa.gov/wac/default.aspx making it difficult to locate a current/revised/updated complete copy to review and implement. The Governor issued Proclamations, provisions and updates are similarly hard to access unless you link to the news & media page. One website in a format easy to maneuver from either LNI, DOH or the Governor’s office with access to these records and their updates is appreciated. • The Temporary Worker Housing emergency rules related to transportation, examples below, as enforced by LNI and DOH are burdensome in which the 	

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<p>industry cannot operate. <u>Crucial updates must be made to the language contained in the various codes, proclamations, provisions, etc. to allow employers to transport multiple shelter groups in a single vehicle boarded separately, seated together and allowed to sit less than six feet apart if wearing Personal Protective Equipment, such as face coverings.</u> An example being TWH 1 occupancy is 60 people designated into four shelter groups of 15 people each. All four groups transport in a single vehicle, boarded separately by group, seated together by group and allowed to sit less than six feet apart from any group if wearing Personal Protective Equipment, such as a face covering.</p> <ul style="list-style-type: none"> ○ WAC 296-307-16102 (1)(e)(iii) states “Transportation and work. To utilize the group shelter option, the operator must ensure that members of each shelter group stay together and separate from other groups, occupants, or workers, including during transportation and work. If the operator is not the employer, the operator must ensure the employer will follow the group shelter requirements.” ○ WAC 296-307-16102 (3) states “Consistent with WAC 296-307-16120(1), an operator may request a temporary variance from the requirements of this section when another means of providing equal protection is provided.” ○ Proclamation 20-57 Provision (2)(b) states “Under WAC 296-307-16102(e)(iii), the administrators of a group shelter, either the employer or the housing operator, “must ensure that members of each shelter group stay together and separate from other groups, occupants, or workers, including during transportation.” Except for the driver, a shelter group is not permitted to travel with others in the vehicle. Subsection (1)(e), relating to drivers, applies without exception.” ○ Proclamation 20-57 Provision (2)(c) states “When transporting a shelter group in a single vehicle, employees of the same group may sit less than six feet if wearing PPE consistent with the General Provisions, subsection (c), and the documents referenced therein.” ● LNI issued a timely acknowledgment letter in receipt of our variance application related to WAC 296-307-16102(1)(e)(iii); however, this record did 	

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<p>not provide a timeframe for the technical evaluation of the proposal and supporting documents. We have yet to be contacted by the technical specialist to verify when this will be completed. Through this process to determine if a variance request was necessary we received conflicting guidance from various DOH and LNI representatives. <u>It is crucial that DOH and LNI employees provide consistent and accurate regulatory assistance. Additionally LNI must provide timely evaluations of variance applications in response to COVID-19 emergency rulemaking.</u></p>	
<p>This is a public comment to the State Departments of Health and Labor & Industries regarding the current Temporary Worker Housing emergency rules related to the COVID-19 pandemic. (WAC 246-358-002; WAC 296-307-16102).</p> <p>BACKGROUND OF GEBBERS FARMS: Gebbers Farms is a family owned and operated farming organization based in Brewster, Washington. As one of the top apple and cherry farmers in the state, Gebbers Farms employs roughly 4,500 people, of which about half are domestic workers who live in surrounding communities, and the rest are guest workers.</p> <p>EFFORTS TO PROTECT WORKERS: Gebbers Farms believes that its workforce is part of the family. It takes seriously the safety and health of that workforce. In February 2020, when very little was known about how the virus would affect the country, Gebbers Farms proactively worked with the local county health department to learn what it needed to do to protect workers in case COVID-19 came to Brewster. The company began distributing educational materials to employees as early as the end of February.</p> <p>Immediately after the State's "Emergency Rule," WAC 296-307-16102, was published, Gebbers Farms consulted infectious disease specialist Dr. Vincent Seaman to review its COVID- 19 protocols. Dr. Vincent is a highly regarded expert in the field whose expertise has been used by the State of Washington in COVID-19 matters. These protocols included grouping employees into cohorts, separating cohorts from one another, providing employees personal protective equipment, conducting daily temperature checks, monitoring for COVID-19 symptoms, and providing multi-lingual public health educational materials. The Gebbers Farms protocols apply to every aspect of housing, transportation and working.</p>	

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<p>Gebbers Farms has also worked closely with representatives of the Okanogan County Health Department, and the State Department of Health. Those representatives have commended Gebbers Farms for its leadership, cooperation, implementation of stringent COVID-19 protocols and efforts to prioritize worker safety.</p> <p>OUTLINE OF EMERGENCY RULES:</p> <p>WAC 296-307-16102 was enacted to protect occupants in temporary worker housing such as those operated by Gebbers Farms. It calls for many of the steps that Gebbers Farms had already incorporated into its protocols, including communication with workers, physical distancing, sanitizing, masking and the use of cohorts.</p> <p>The WAC gave growers two options to protect workers: discontinue use of bunk beds under section (d), or follow a "group shelter/cohort" approach under section (e). Discontinuing the use of bunk beds was not possible, so Gebbers Farms is following the group shelter approach. Under the group shelter rules, worker cohorts are limited to 15 people for all camps, under all circumstances. This blanket 15 person limit applies to all facets of the workplace, including toilet facilities, bathing facilities, food preparation areas, kitchens, laundry, and transportation. Although well-intentioned, limiting all cohorts to 15 is adversely impacting worker health and wellbeing, as explained below.</p> <p>IV. RECOMMENDED CHANGES TO PROMOTE WORKER HEALTH AND WELLBEING:</p> <p>1. The 15-worker cohort should be changed.</p> <p>Gebbers Farms and Dr. Seaman support the use of cohorts. As Dr. Seaman notes, however, there is no scientific rationale or basis for limiting cohort size to 15. The number appears to be entirely arbitrary, divorced from consideration of farm operations and the impact of such small groups on worker health and wellbeing. The cohort limit should not be "one-size fits all." Rather, cohorts should be designed based on a smart, science-based approach that tailors the size of the cohort to the circumstances of each camp/farm environment. This includes consideration of cabin size, camp size, and the availability of shared cooking, shower, and transportation facilities. As Dr. Seaman explains in his attached letter (Exhibit A), "the number of occupants in a Work Group should be that which provides the greatest protection for individual workers and maintains the separation of different Work Groups in the camp."</p>	

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<p>For many Gebbers Farms camps, the optimum size of the Work Group is 35 or 42, based on the configuration of the camps and facilities. The rigid use of an across-the-board 15-worker limit detracts from the goals of protection and separation. Here's why:</p> <p>Each camp has limited cooking, showering, and transportation facilities. To reduce the risk of transmission of COVID-19, Gebbers Farms sanitizes these facilities after each group uses them. The smaller the work group, the more limited the available time for each group to use these facilities each day.</p> <p>For example, a Gebbers Farms bus can hold 50 workers. Imposing a limit of 15 requires many more round trips between the camps and the orchards. Those trips are further delayed by the need to sanitize each bus between trips. Similarly, since showers and cooking facilities must be sanitized between uses, the smaller the group, the less time available for use by each group.</p> <p>As a result, workers are left waiting for a bus in the morning and waiting in the orchard after work, often in either the hot sun or in the dark. To get a tum in the showers, some groups have to get out of bed in the middle of the night. Employees face similar challenges preparing fresh meals. The current schedule at one camp shows the first group must arrive in the kitchen at 2:30 a.m. Exhibit B.</p> <p>The waiting time, lack of sleep and difficulty preparing food collectively increase worker stress. Stress is well-known as a source of negative impact on the immune system, leading to workers being more susceptible to disease. This stress will only increase as the weather turns colder and the days get shorter.</p> <p>Small groups also mean a higher risk of transmission between groups. The more groups in a camp, the less separation exists between them, and the more likely it is that groups will come into contact with each other. This in turn increases the transmission risk between groups. A larger cohort reduces this risk.</p> <p>Similarly, Dr. Seaman suggests that guest workers at Gebbers Farms travel in larger groups. In his attached letter (Exhibit C), Dr. Seaman recommends:</p> <ul style="list-style-type: none"> • Face shields and masks • Assigning seats based on lodging groups • Sanitizing each day <p>According to Dr. Seaman, this approach will be just as protective of workers and eliminate the negative consequences of the 15-worker micro group.</p>	

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<p>The testing protocol should be adjusted.</p> <p>Gebbers Farms has long-recognized the value of testing workers for COVID-19. It attempted unsuccessfully to have testing implemented in February. Therefore, when the Department of Health issued its August 19, 2020 "Order of the Secretary of Health 20-04", Gebbers Farms cooperated fully in providing its employees for testing. In fact, Cass Gebbers, the CEO of Gebbers Farms, was one of the first employees to be tested. Gebbers Farms has worked closely with the State Department of Health and the Okanogan County Public Health Department in implementing the testing program; both agencies have lauded Gebbers Farms' support and cooperation in testing and in promoting employee health. The County officials called the Gebbers Farms protocols "impeccable" and stated that "the increase in positive tests in Okanogan County, and particularly in the Brewster area, is a community issue not attributable to Gebbers Farms or any single business." Dr. Scott Lindquist, State Epidemiologist for Communicable Diseases, and the professional responsible for overseeing the testing at Gebbers Farms, wrote: "First and foremost, let me thank you for the herculean efforts you have made to satisfy the testing order. I am truly impressed with your families commitment to get your employees tested in such a timely and thoughtful manner."</p> <p>Although Gebbers Farms actively supports testing, the specific testing protocol should include flexibility and be based on scientifically supported approaches that are more conducive to worker health and wellbeing:</p> <p>Retesting of workers should be limited: The August 19, 2020 Department of Health Order specifically requires all employees to be tested before September 2, 2020. As part of its ongoing testing program, Gebbers Farms had a number of its employees tested just before the Order was issued. Any employees who tested positive or had COVID-19 symptoms were isolated. Employees who were just tested should not have to be retested. Dr. Lindquist agreed, suggesting that there would be no need for retesting employees who were tested within 14 or even 30 days before the Order went into effect. However, the Department of Health later informed Gebbers Farms that it would not consider any tests conducted on or after August 11, 2020, or a mere 7 days before the Order became effective. Any worker who tested positive on August 10, for example, almost certainly will still have a positive test a few days later. The lookback period should be 30 days, not 7. A 30-day lookback should also apply to any</p>	

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<p>future testing that may be required under section (o) of the Governor’s Proclamation 20.57.1 (“nine positive cases within a 14-day window...”)</p> <ul style="list-style-type: none"> • Previously isolated employees should not be isolated again: Under Gebbers Farms protocol, an employee who experiences symptoms consistent with COVID-19 is placed in isolation for 14 days. If the employee has continuing symptoms, that isolation period is extended until he is not symptomatic. Testing the employee again is unnecessary because he has been in isolation and is not symptomatic. The Department of Health's current position fails to account for these employees who have already been through isolation. Under the Department's view, someone who is asymptomatic but gets a positive test result must return isolation for 10 days (a total of 24 days even if he has no symptoms). The Department's interpretation runs counter to Dr. Lindquist's professional opinion expressed to Gebbers Farms representatives. The Department should not conclude that a new infection has been established when an employee has already isolated and recovered. An additional 10 days of isolation is not necessary to protect such a fully-recovered employee. Isolation just deprives that employee of income during the second isolation period. • Protocols for positive. but asymptomatic workers should be determined by Gebbers Farms in consultation with County health officials: The protocols used when an asymptomatic worker tests positive should focus on worker health and wellbeing, including the impact of disruptions to lodging arrangements and the potential breaking apart of existing cabin units. Differences in camp size and the availability of cooking, bathing and transportation facilities also should be considered. The best approach is to allow the grower to design protocols in consultation with County health officials, rather than a one-size-fits-all approach dictated by WAC 296-307-16102(d) and (e). Later rounds of testing should be limited: Proclamation 20.57. I requires retesting of the entire workforce if the local health jurisdiction reports that the workforce (i) has more than nine positive cases within a 14-day window; or (ii) has an attack rate greater than or equal to 10 percent of the workforce within a 14-day window. Because Gebbers Farms in particular has thousands of workers, nine positive tests is a tiny fraction of the workforce, not evidence of an outbreak of COVID-19. Gebbers Farms will break the workforce into separate workplaces under section (o) of the Proclamation, but even those workplaces will be large enough that nine positive tests still remains a very small percentage. For example, if the smaller "workplace" has 1 000 	

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<p>workers, nine positive test results is less than 1 % of that group, which is a low number relative to the larger community. The entire Gebbers Fanns' workforce ought not to be retested each time 9 workers test positive.</p> <p>Todd Reuter, Foster Garvey – Attorneys for Gebbers Farms</p> <p>Exhibit A – Seaman</p> <p>Exhibit B</p> <p>Exhibit C - Seaman</p>	
<p>The disease COVID-19, which is caused by the virus SARS-CoV-2, is relatively new to the human population. With this novelty comes learning and adjusting. Since adoption of “Additional requirements to protect occupants in temporary worker housing from 2019 novel coronavirus (COVID-19) exposure” (WAC 296-307-16102), our understanding of transmission of the disease has improved. It was initially thought that the disease was transmitted primarily via contact and emission of large droplets via coughing, sneezing, and speaking. More recently we have realized the potential for airborne transmission of the disease.</p> <p>This new understanding requires that we alter our approach to reducing its transmission. Because transmission of the virus can occur via small airborne aerosols (less than 5 μm), the virus has the potential to be transported further than 6 to 8 ft and be suspended in the airflow without depositing for many minutes.</p> <p>Initially, it was thought that distance and barriers would be adequate to control exposures. Because the disease can be spread by exposure to an airborne virus, ventilation systems should be optimized for exposure reduction. For commercial building ventilation systems, this means increasing the amount of outdoor air brought in and filtering the return air with high efficiency filters. Current ASHRAE guidance recommends using MERV-13 or higher rated filters in building HVAC systems. Given the fact that most TWH does not have mechanical ventilation systems that are used in the summer months, these are not feasible options. Due to the relatively small size of the bedrooms in most TWH, we suggest adding into the rule the use of stand-alone high efficiency air filtration units. If these are sized appropriately for the room, they can effectively reduce potential exposure to the infectious agent. Care should be taken when selecting a device because some will have other features that may generate ozone, a strong respiratory irritant. We also suggest that including additional</p>	

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<p>independent ratings of the devices filtration capacity such as the AHAM room air cleaner certification program may provide useful guidance for selection.</p>	
<p>Thank you for accepting comments in the above referenced rulemaking and for the hard work your departments are doing to ensure Washingtonians remain safe during these unprecedented times.</p> <p>Wafla is a non-profit 501(c)(6) membership organization comprised of more than 500 agricultural and seasonal employers. Wafla assists seasonal employers in the Northwest in complying with complex labor and employment regulations; wafla members aspire to be the model for regulatory compliance. Our mission is to pursue “a legal and stable workforce for farmers, and the dignity of legal presence for farm workers.” Wafla is the largest H-2A provider in the state of Washington. Our members employed more than 12,000 H-2A workers in 2019 to support their permanent and seasonal U.S. workforce and ensure the continued viability of tens of thousands of downstream agricultural-related jobs for Washingtonians.</p> <p>The regulations which are the subject of these comments were issued separately on May 13 by the Department of Health (WAC 246-358-002) and the Department of Labor and Industries (WAC 296-307-16102), and titled “Additional requirements to protect occupants in temporary worker housing from 2019 novel coronavirus (COVID-19) exposure.” Hereinafter they are referenced simply as the “Emergency Rules.” The Emergency Rules, as implemented, are not feasible. There is no scientific basis for the 15-person group shelter exception to the bunk bed ban, and it therefore should be expanded in accordance with the recommendations from infectious disease experts and the experience on the ground.</p> <p>An amendment to one section of the Emergency Rules was issued directly by the Governor on August 19. The amendment to WAC 246-358-002(1)(g) and WAC 296-307-16102(1)(g) is illegal, nonsensical, and not feasible. It must be immediately rescinded. Wafla provides comments first on the Governor’s emergency amendments to the Emergency Rules, and next on the Emergency Rules themselves.</p> <p>On August 19, Governor Jay Inslee issued Proclamation 20-57.1, which incorporated by reference a document titled “AGRICULTURAL COVID-19 REQUIREMENTS” (Hereinafter</p>	

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<p>the Governor’s Emergency AG Laws.” The Governor’s AG Laws were issued shortly after the Emergency Rules, and have been a subject of much confusion within the agricultural community because senior officials at L&I and DOH are on record as saying the only regulations needed are housing regulations. DOSH Assistant Director Ann Soiza has testified that DOSH already has authority under the safe workplace law to issue mandatory guidance for worksites.</p> <p>It therefore came as a shock to the agricultural community when, two weeks after the Emergency Rules were issued, and in the midst of a trial in which the state’s senior occupational and workplace specialist was stating that additional workplace safety rules were not needed, the Governor, by proclamation, issued the Governor’s Emergency Ag Laws. DLI did not even post the Governor’s Emergency Ag Laws until the day after they were published by the Governor.</p> <p>Unlike the Emergency Rules, there was no stakeholder process for the Governor’s Emergency Ag Laws. The bottom line is that Governor’s Emergency Ag Laws, including the amendment to the Emergency Laws, must be stricken.</p> <p>1. The Governor’s Emergency Ag Laws are an illegal amendment to the Emergency Housing Rule Issued by the Agencies.</p> <p>The Emergency Rules are promulgated under authority of the Administrative Procedures Act, RCW Chapter 34.05. RCW 34.05.570 states:</p> <p>(1) If an agency for good cause finds:</p> <p>(a) 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;</p> <p>(b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; or</p> <p>(c) In order to implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012, or 2013, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency, the agency may dispense with those requirements and adopt, amend, or repeal the rule on an emergency basis. The agency's finding and a concise statement of</p>	

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<p>the reasons for its finding shall be incorporated in the order for adoption of the emergency rule or amendment filed with the office of the code reviser under RCW 34.05.380 and with the rules review committee.</p> <p>(2) An emergency rule adopted under this section takes effect upon filing with the code reviser, unless a later date is specified in the order of adoption and may not remain in effect for longer than one hundred twenty days after filing. Identical or substantially similar emergency rules may not be adopted in sequence unless conditions have changed or the agency has filed notice of its intent to adopt the rule as a permanent rule, and is actively undertaking the appropriate procedures to adopt the rule as a permanent rule. This section does not relieve any agency from compliance with any law requiring that its permanent rules be approved by designated persons or bodies before they become effective.</p> <p>(3) Within seven days after the rule is adopted, any person may petition the governor requesting the immediate repeal of a rule adopted on an emergency basis by any department listed in RCW 43.17.010. Within seven days after submission of the petition, the governor shall either deny the petition in writing, stating his or her reasons for the denial, or order the immediate repeal of the rule. In ruling on the petition, the governor shall consider only whether the conditions in subsection (1) of this section were met such that adoption of the rule on an emergency basis was necessary. If the governor orders the repeal of the emergency rule, any sanction imposed based on that rule is void. This subsection shall not be construed to prohibit adoption of any rule as a permanent rule.</p> <p>(Emphasis added).</p> <p>In accordance with the plain language of the statute, only an agency – not the Governor – can adopt an emergency rule. RCW 34.05.570(1),</p> <p>Section (p) of the Governor’s Emergency Ag Laws states:</p> <p>(p) Isolation. As required by WAC 246-358-002(1)(g) and WAC 296-307-16102(1)(g), in the event an employer or housing operator elects to isolate COVID-19-symptomatic or positive employees in temporary worker housing units, employers must monitor the employees.</p>	

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<p>In addition to the requirements set forth in the administrative code provisions, employers must adhere to the following protocols for any employee or employees isolated at temporary worker housing units:</p> <ul style="list-style-type: none"> (i) Ensure that a licensed healthcare professional visits employee twice per day, at the employer’s expense. At a minimum, the healthcare professional must assess symptoms, vital signs, and oxygen saturation via pulse oximetry, and perform a respiratory exam; (ii) Guarantee that the employees have ready access to telephone service to summon emergency care; (iii) Ensure that employees in isolation have access to advanced life support emergency medical services within 20 minutes, and an emergency room with ventilator capability within one hour; (iv) Provide employees with information about paid leave and workers compensation; and (v) Permit access to other medical professionals who offer healthcare services in addition to those required under subsection (i) of this subsection (p). (Emphasis added). <p>The Governor’s Emergency Ag Laws add a new section to the Emergency Rules, with five new requirements for employers or housing operators. There simply is no other way to interpret this, since the Governor’s Emergency Ag Law specifies the exact section of the Emergency Rule that is being amended.</p> <p>The Governor is not an agency. The Governor has broad powers to adopt new laws during an emergency and may even suspend the enforcement of laws in the public interest. But the Governor cannot amend a law that has been legally created by the Legislature.</p> <p>In this case, the Governor has de facto amended RCW 34.05.570(1) so that it now states:</p> <p>(1) If an agency or the Governor for good cause finds: . . .</p> <p>The portion of the Governor’s Emergency Ag Laws which amend the Emergency Rule are an invalid intrusion on the Administrative Procedures Act because the Governor cannot amend a law. But there are other problems with the Governor’s proclamation.</p> <p>2. The Governor’s Emergency Ag Laws are an illegal violation of well-known workers’ compensation laws and regulations.</p>	

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<p>Wafila strongly supports monitoring workers who are in isolation. We thank L&I community relations staff who discovered that this was not happening. Thanks to their efforts, a system is now in place to make this happen. Unfortunately, the Governor’s staff, in their zeal to penalize employers, have created an illegal regulation/law.</p> <p>Section (i) of the Governor’s Emergency Ag Laws requires employers to pay for two visits per day from a “licensed healthcare professional.” Section (iv) requires employers to educate workers regarding their rights to submit a workers’ compensation claim for coronavirus exposure. The department of Labor and Industries (DLI) has distributed numerous fact sheets informing workers of their right to submit a claim or directing employers to assist workers in the process of filing claims.</p> <p>In the case of COVID-19, a worker living at employer provided housing would submit a claim at the initial diagnosis of symptoms. (p)(iv). The employer or housing operator would thereafter place the worker in an isolation facility and arrange medical care, at the owner’s expense. (p)(i). Any employer or other person who has made even a casual study of workers’ compensation regulations or attended an introductory workers’ compensation class knows that it is impermissible for an employer to pay for treatment to a worker once a claim has been filed. This provides another strong argument as to why the agency, DLI, not the Governor, should create emergency rules. Luckily, there is an easy fix. DLI should merely amend the Governor’s Emergency Ag Laws to require the workers’ comp treatment provider to direct the daily in person healthcare professional visit.</p> <p>3. The Governor’s Emergency Ag Laws are non-sensical.</p> <p>The Governor’s Emergency Ag Laws specify that an employer arranges and pays for two visits per day from a licensed healthcare professional, (p)(i), and requires the employer or operator to permit access to other healthcare providers. (p)(v). Coupled with the requirement to file a workers’ compensation claim, it is confusing and non-sensical. These two sections – (i) and (v) – should be combined and clarified.</p> <p>4. The Governor’s Emergency Ag Laws are not feasible.</p> <p>All occupational safety regulations must be feasible. Attorneys for DLI recently argued in Thurston County Superior Court that certain regulations urged by worker advocates could not be adopted because they were not feasible, and this risks many employers</p>	

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<p>becoming scofflaws. It is simply not currently feasible for licensed healthcare professionals to make two in person wellness check for every worker in isolation. There is no CDC recommendation for this, and it certainly is not done for local workers or in any other industry in the state. Under current conditions, section (p)(i) of the Governor’s Emergency Ag Laws is simply not feasible.</p> <p>Likewise, Section (p)(iii) of the Governor’s Emergency Ag Laws are not feasible. We will leave it to other commentators to explain that many licensed housing locations are not within 20 minutes of an ambulance or one hour of an emergency room and the proclamation of a governor cannot change that fact.</p> <p>The Governor’s Emergency Ag Laws should be amended and re-inserted in any future re-write of the Emergence Rules. Wafla strongly supports fixing the mistakes outlined above with section (p) of the Governor’s Emergency Ag Laws as follows:</p> <ul style="list-style-type: none"> • Remove “at the employer’s expense” from Section (i). • Specify that workers should receive a once daily in person wellness check and other medical treatment “as directed by the treating physician designated in the worker’s compensation claim.” • Combine Section (i) and Section (v). The treating physician should directs wellness checks. • Replace the rigid time standards in Section (iii) with a “reasonable” time standard. <p>II. CHANGES TO THE EMERGENCY RULE</p> <p>Exactly 21 days prior to the scheduled termination of the Emergency Rules, DLI and the Department of Health (DOH) announced that the Emergency Rules will be extended, with the possibility of “minor revisions.” Here are our comments and recommendations for revision:</p> <p>1. There is no legal basis to extend the Emergency Rule.</p> <p>Emergency rules expire after 120 days unless there has been a change in conditions. RCW 34.05.570(2). The adoption of an emergency rule requires a finding of an emergency which precludes the opportunity for public comment. RCW 34.05.570(1). Finally, an agency may extend an emergency rule when it has filed notice of an intent to adopt a permanent rule. RCW 34.05.570(2).</p>	

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<p>When the agencies adopted the Emergency Housing Rules in mid-May, we were in the midst of a pandemic we did not understand, and we worried that farm workers living in seasonal housing would spread the disease. In the ensuing three months, we have learned that TWH operators and occupants have performed well, and most transmission occurs in the community. We have also learned that, contrary to the narrative from advocates with a political agenda, farm workers who live in TWH own automobiles and have friends and relatives in town. In short, occupants of TWH facilities are like other members of the community. They are complying with community rules, and the only thing we have learned is that the Emergency Rule is no longer necessary.</p> <p>2. Banning bunk beds was political and arbitrary. There is no logical or scientific basis to continue the bunk bed ban.</p> <p>The Emergency Rules bans bunk beds unless occupants are living in Group Shelter arrangement. There is not now, and there never was, a scientific basis to ban bunk beds. DOH has admitted this on several occasions. The evidence is overwhelming. For example, there are numerous instances people using bunk beds where only one of the two occupants of the bunk bed test positive.</p> <p>DOH officials have observed that transmission of the virus occurs when many people are gathered in a small space, whether that space is a bedroom, a classroom, or a fraternity party.</p> <p>The solution is obvious. The Emergency Rule should be amended to permit occupancy of 80 percent of the licensed total for facilities that retain bunk but cannot comply with the Group Shelter requirements.</p> <p>The 15-person Group Shelter Requirement similarly lacks any basis in fact or science.</p> <p>The Emergency Rule contains an exemption from the bunk bed ban if workers live in a Group Shelter. The rule limits a group shelter to groups of up to 15 workers who live, sleep, eat, and otherwise limit themselves to activities within the group. When they go outside the group, members of the group shelter cohort generally wear a mask and maintain the CDC recommendation for social distancing.</p>	

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<p>There is not now, and never was, any basis for limiting the number of people in a group shelter to 15 unrelated individuals. For many operators, it is not feasible to limit the group to this number. Placing an arbitrary limit of 15 on a group has no basis in science. When pushed, regulators respond that they heard that 15 is the number that fits in a van. Vans are one popular method of transporting workers.</p> <p>Another popular method of transporting workers is a school bus. In general, the maximum capacity of a school bus is approximately 50 individuals. In order to limit the spread of disease, filling buses to 80 percent capacity, and requiring face shields (in addition to face masks) makes sense.</p> <p>Wafila therefore recommends that DLI and DOH convene a panel of infectious disease experts to determine a figure for Group Shelter that is based in best science. Permitting up to 40 individuals to inhabit a Group Shelter or cohort group would substantially increase the feasibility of the rule and would be consistent with an 80 percent occupancy for a typical school bus.</p> <p>4. The Variance Procedure is illusory and therefore does not exist, thus nullifying the rule.</p> <p>In our initial comments to the Emergency Rule, wafila pointed out that the law requires the provision for a variance to any occupational safety regulations. The variance procedure encourages innovation, if an employer can devise the proper engineering and/or administrative controls so that the proposed solution is “as effective as” the regulation in protecting workplace safety. Thank you for including a variance procedure in the Emergency Rule.</p> <p>Unfortunately the variance procedure has been illusory. DLI is under intense political pressure to deny variance requests. Furthermore, in most cases it has taken greater than 2 months to process variance requests. Put another way, it is taking more than half the maximum time the regulation can legally be in place to process a variance request.</p> <p>The solution is to require the agency to immediately review the request and publish an interim order within 15 days allowing the employer to use the proposed system unless</p>	

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<p>the agency can demonstrate the proposed variance will not be as effective as the rule to mitigate the risk of infectious transmission. The rules must explicitly permit housing operators to ban visitors.</p> <p>We recently viewed photos of a candidate for state office, displayed on his Facebook page just prior to the primary election, visiting a TWH facility in Brewster. The candidate states that he is an employee of Northwest Justice Project (NJP), he has travelled from Grant County to Okanogan County, and he was visiting the facility to speak to workers and distribute flyers. This is how coronavirus spreads.</p> <p>While visiting Brewster, Governor Inslee commented that unions want “access” to labor camps. Are the Governor and employees of the legal services community not aware that allowing visitors to a Group Shelter spreads virus, sends precisely the wrong signal to workers, and destroys the Group Shelter concept?</p> <p>TWH operators are trying to desperately to limit visitors. They require visitors to check in at an office, state their business, sign a waiver of liability, and agree to follow CDC recommendations when at the facility. This is vitally important, and reinforces the message to occupants to do the right thing.</p> <p>Limiting visitors is an important tool. Operators who strictly limit visitors face far fewer cases of infection, and it sends positive reinforcement to workers who are used to inviting relatives and friends to the facilities. The Emergency Rule must be amended to explicitly permit employers and operators the right to limit access to official visitors who sign a log, sign a waiver, and agree to follow CDC recommendations concerning social distancing when visiting the facility.</p>	
<p>Thank you for allowing us to comment on the proposed extension of Emergency regulations WAC 296-307-16102, and WAC 246-358-002. The Washington Growers League represents agricultural employers exclusively in the area of labor and employment. We also operate temporary worker housing for use by growers who lease for their employees, and for walk-in renters.</p>	

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<p>After hearing about other housing operators receiving variances on the 15 person limit, we are struck by how arbitrary the decisions to grant variances on the group limit appear to be. As we move forward under pandemic conditions, the Washington State agriculture industry needs more objective guidance on how to determine when and under what conditions groups larger than 15 may be acceptable.</p> <p>We anticipate that pandemic conditions will exist during the 2021 growing season. Communication with the decision-makers at L&I on the variance process have been difficult and slow. Please consider convening meetings to discuss the rationale behind the L&I decisions on this and other issues. The slow and limited communication has created concerns about the consistency and fairness of the variance decisions to date.</p>	