

WSR 20-11-024
EMERGENCY RULES
DEPARTMENT OF HEALTH
[Filed May 13, 2020, 10:52 a.m., effective May 18, 2020]

Effective Date of Rule: May 18, 2020.

Purpose: Chapter 246-358 WAC, Temporary worker housing, the department of health (DOH) in conjunction with the department of labor and industries (L&I) are responding to the novel coronavirus disease 2019 (COVID-19) pandemic by adopting a new section to protect occupants from COVID-19 hazards in licensed temporary worker housing. The emergency rule requires operators: (1) Educate occupants in a language or languages understood by the occupants on COVID-19; (2) provide occupants cloth face coverings; (3) ensure physical distancing of occupants when at housing sites, which includes all cooking, eating, bathing, washing, recreational, and sleeping facilities; (4) ensure frequent cleaning and disinfecting of surfaces; (5) identify and isolate occupants with suspect and confirmed positive cases; and (6) submit to DOH a revised temporary worker housing management plan that demonstrates how the operator will comply with the emergency rule requirements.

In addition, the emergency rule includes an option for group shelters. A group shelter is where a cohort of up to fifteen 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. The physical distancing requirements of the emergency rule otherwise prohibit the use of the top bunk of bunk beds.

Citation of Rules Affected by this Order: New WAC 246-358-002.

Statutory Authority for Adoption: RCW [70.114A.065](#).

Other Authority: RCW [43.70.335](#).

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.

Reasons for this Finding: DOH and L&I are taking action to help prevent the spread of COVID-19 and respond to the Governor's Proclamation 20-25, Stay Home, Stay Healthy. Under Proclamation 20-25, agriculture is an essential business and must comply with the social/physical distancing and sanitation requirements of the DOH, L&I, and the Centers for Disease Control and Prevention. The temporary worker housing rules have specific requirements for the minimum distance between beds that is inconsistent with social/physical distancing requirements requiring emergency rules to, at a minimum, address these requirements. Two farmworker labor unions also petitioned DOH and L&I to adopt emergency rules for temporary worker housing to protect occupants from COVID-19. This emergency rule is necessary for the preservation of public health, safety, and general welfare of occupants of temporary worker housing. The Governor's Stay Home, Stay Healthy order is currently in effect, and observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest and the governor's order.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 1, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

Date Adopted: May 13, 2020.

NEW SECTION

WAC 246-358-002 Additional requirements to protect occupants in temporary worker housing from 2019 novel coronavirus (COVID-19) exposure.

(1) The operator of temporary worker housing (TWH) under this chapter must implement the following steps to protect occupants from 2019 novel coronavirus (COVID-19) hazards:

(a) Educate occupants in a language or languages understood by the occupants on COVID-19, including: How the virus is spread and how to prevent virus spread including the importance of handwashing, the use of cloth face coverings, proper respiratory etiquette, and the importance of prompt sanitizing of frequently touched items; common symptoms and risk factors; and what to do if they develop symptoms. The operator must also allow entry of community health workers and community-based outreach workers to provide additional information.

(b) Conspicuously post information regarding the facility's health and safety policies, how to identify symptoms, to whom to report if not feeling well, and where and how to secure medical treatment – all in a language commonly understood by the occupants.

(c) The operator must provide cloth face coverings for occupants to use in accordance with Washington department of health guidelines, or as required by Washington department of labor and industries (L&I) safety rules. The operator must instruct occupants to use cloth face coverings in public and at housing as recommended in the public health orders.

(d) Develop and implement a physical distancing plan for maintaining six feet of separation between occupants when at housing sites which includes all cooking, eating, bathing, washing, recreational, and sleeping facilities.

(i) Sleeping quarters. The operator must ensure:

(A) Beds are spaced at least six feet apart between frames in all directions and arranged so that occupants sleep head to toe; **OR**

(B) Beds are separated by a bed length, floor to near ceiling temporary nonpermeable barrier (e.g., plexiglass, plastic sheeting, etc.) placed perpendicular to wall such that a thirty-six inch minimum aisle exists between the bed and the temporary barrier and occupants sleep head toward wall. Materials must be fire resistant or fire retardant treated.

The operator must ensure that temporary barriers:

- Do not impede required egress;
- Do not compromise ventilation/air flow; and
- Are cleaned at least daily.

(C) Except as allowed under (e) of this subsection, only the bottom bed of bunk beds may be used.

(ii) The operator must use physical barriers (e.g., plastic shields) for fixtures such as sinks where occupants may come in close contact for short periods of time.

(iii) Provide additional facilities or services that meet the requirements of this chapter if needed to ensure social distancing in common areas, such as additional refrigeration or portable sinks.

(iv) The operator must discourage occupants from visiting buildings or sleeping quarters that are not their assigned living spaces, to minimize potential cross-contamination.

(e) Group shelters. If the TWH is set up to accommodate a group shelter and a group shelter is formed, the operator must designate which occupants are part of each group and maintain the same occupants in each group shelter. "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. All facilities and services within the group shelter are for the sole use of the occupants of the group shelter and must be marked as such.

(i) Sleeping quarters. In group shelters, the operator must:

(A) Arrange beds so that the heads of beds are as far apart as possible – at least six feet apart. Both beds of bunk beds may be used. Bunk bed occupants must sleep head to toe.

(B) Take steps to improve ventilation wherever possible.

(C) Maintain egress requirements.

(D) Provide all occupants suitable storage space including personal storage space for clothing and personal articles. Ensure all or a portion of the space is enclosed and lockable.

(ii) Common areas. In group shelters, the operator must instruct occupants to maintain physical distancing and wear cloth face coverings whenever possible.

(iii) 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.

(iv) The operator must encourage each group shelter to designate one or two occupants to run errands if items cannot be provided by the operator. These designated occupants can be the main contact for procuring groceries or other items for the group shelter in order to limit public contact and potential disease transmission.

(v) The operator must quarantine or test all members of a group shelter if a member of the group shelter develops symptoms of COVID-19, as directed by the local health agency.

(f) Clean and disinfect surfaces. The operator must:

(i) Clean and disinfect common areas on a regular schedule, at least as frequent as required by this chapter.

(ii) Wipe down and disinfect surfaces that are touched by multiple individuals at least daily using an EPA-approved disinfectant or diluted bleach solution.

(iii) Provide adequate supplies and instructions to occupants for cleaning and disinfecting of living spaces of dwelling units, family shelters, and group shelters. Occupants must be able to clean and disinfect frequent touched surfaces, bathroom, and cooking areas as needed.

(iv) Ensure adequate supplies of single-use soap and paper towels at all sinks to allow for frequent handwashing. Portable handwashing stations or hand sanitizer may be provided in addition to required facilities.

(v) Provide training in a language or languages understood by contracted workers regarding COVID-19 cleaning, disinfecting, and sanitizing protocols for any contracted cleaning labor prior to their arrival to clean temporary worker housing. In addition to any personal protective equipment required under L&I rules to perform the cleaning activities, provide and require that those contracted workers use disposable gloves and wear cloth face coverings covering nose and mouth while working at the site.

(g) Identify and isolate sick occupants. The operator must develop and implement a plan to identify and isolate sick occupants, including:

(i) A process to screen occupants for symptoms of COVID-19 as identified by the centers for disease control and prevention (CDC), including fever, cough, shortness of breath, difficulty breathing, chills, shaking with chills, muscle pain, headaches, and loss of taste or smell. The operator must provide each occupant with a thermometer or must designate and train a person to use a 'no touch' or 'no contact' thermometer to check all occupants' temperatures daily. All thermometers must be properly sanitized between each use or each day. Any worker with a temperature of 100.4°F or higher is considered to have a fever.

(ii) Upon identification of suspect COVID-19 cases, the operator must contact the local health officer immediately as required under WAC 296-307-16190 and provide transportation for any medical evaluation or treatment. Ensure individuals providing transportation have appropriate personal protective equipment.

(iii) Isolate suspect COVID-19 cases with sleeping, eating, and bathroom accommodations that are separate from others. If the suspect occupant resides in a room with family members, the sick occupant will have the option to isolate with the family members.

(iv) Confirmed COVID-19 cases must be isolated and only housed with other confirmed cases and must have separate bathroom, cooking and eating facilities from people who have not been diagnosed with COVID-19. If the confirmed occupant resides in a room with family members, the sick occupant will have the option to isolate with the family members.

(v) The operator must provide food and water and monitor for safety occupants in isolation at the operator's facility or ensure that these services are provided if isolated at another facility, such as a state or local government quarantine facility.

(h) Clean and disinfect areas where occupants with suspect COVID-19 exposure have been according to CDC guidelines and before the space is used by others.

(2) The operator must revise the facility's written TWH management plan to include implementation of the requirements in this section, as applicable.

(a) The plan must identify a single point of contact at the TWH for COVID-19 related issues.

(b) The operator must share the plan with all occupants on the first day the plan is operational or the first day the occupant arrives at the TWH. The operator must designate a person that will ensure all occupants are aware of all aspects of the plan and be available to answer questions.

(c) The operator must submit the revised TWH management plan to the state department of health within ten calendar days of the effective date of this section.

(d) Failure to submit a revised plan or properly implement the requirements of this section may result in administrative action, including license suspension or fines.

(3) Consistent with WAC 246-358-040(1), an operator may request a temporary variance from the requirements of this section when another means of providing equal protection is provided.

(4) In the event that any provisions of this section are in conflict with other regulations in this chapter, such other regulation shall be deemed superseded for purposes of this chapter.