



PROPOSED RULE MAKING

CR-102 (July 2022)
(Implements RCW 34.05.320)
Do **NOT** use for expedited rule making

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DATE: May 03, 2023

TIME: 10:03 AM

WSR 23-10-092

Agency: Department of Labor and Industries

- Original Notice**
- Supplemental Notice to WSR** _____
- Continuance of WSR** _____

- Preproposal Statement of Inquiry was filed as WSR 20-19-050 ; or**
- Expedited Rule Making--Proposed notice was filed as WSR _____; or**
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or**
- Proposal is exempt under RCW _____.**

Title of rule and other identifying information: (describe subject) Temporary Worker Housing (TWH). Chapter 296-307 WAC, Part L Temporary Worker Housing (TWH). The Department of Health (DOH) in conjunction with the Department of Labor & Industries (L&I) is proposing amendments to address the hazards of communicable diseases such as COVID-19 amongst TWH occupants.

Hearing location(s):

| Date: | Time: | Location: (be specific) | Comment: |
|---------------|--------------|--|--|
| June 20, 2023 | 3:00 p.m. | Virtual and telephonic hearing To join electronically: Link: https://lni-wa-gov.zoom.us/j/85754270385?pwd=TMzZz09 Password (if prompted): TWhouse@2 To join by phone (audio only): 253-205-0468 or 253-215-8782 Meeting ID: 857 5427 0385 Passcode: 355402565 | A pre-hearing overview will occur one hour prior to the start of each public hearing. The hearings will begin at the indicated times and will continue until all oral comments are received. |
| June 26, 2023 | 3:00 p.m. | WSU Mount Vernon NWREC 16650 State Route 536 Mount Vernon, WA 98273 | |
| June 27, 2023 | 3:00 p.m. | Pybus Public Market 3 North Worthen Street Wenatchee, WA 98801 | |
| June 28, 2023 | 2:00 p.m. | Red Lion Hotel Columbia Center 1101 North Columbia Center Blvd. Kennewick, WA 99336 | |

Date of intended adoption: July 25, 2023 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Cynthia Ireland
Address: Department of Labor & Industries
Division of Occupational Safety and Health
PO Box 44620
Olympia, WA 98504-4620

Assistance for persons with disabilities:

Contact Cynthia Ireland
Phone: 360-791-5048

Email: Cynthia.Ireland@Lni.wa.gov

Fax: 360-902-5619

Other:

By (date) 5:00 p.m. July 7, 2023

Fax: 360-902-5619

TTY:

Email: Cynthia.Ireland@Lni.wa.gov

Other:

By (date) June 12, 2023

Purpose of the proposal and its anticipated effects, including any changes in existing rules: RCW 70.114A.065 directs the Department of Health (DOH) and the Department of Labor and Industries (L&I) to adopt joint rules for the licensing, operation and inspection of temporary worker housing (TWH).

In February 2020, Governor Inslee proclaimed a State of Emergency in Washington State as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States. The virus was confirmed to spread person-to-person. Under the initial March 23, 2020 Proclamation 20-25, Stay Home-Stay Healthy, among other things, the Governor enacted various forms of social and physical distancing requirements. This was followed by Proclamation amendments adjusting the Stay Home-Stay Healthy order transitioning to a phased-in approach to re-opening Washington State, referred to as "Safe Start Washington.

In April 2020, DOH and L&I received a petition for rulemaking requesting immediate rule amendments to further protect occupants in TWH and cherry harvest camps. In response to the petition and the Governor's Proclamation 20-25, Stay Home, Stay Health order, DOH in conjunction with the L&I adopted emergency rules to protect occupants from COVID-19 hazards in licensed TWH. The last emergency rule expired January 14, 2023.

Throughout the duration of the emergency, DOH and L&I continued to review new information, data, and science as it became available to determine necessary requirements to protect TWH occupants from COVID-19 and similar airborne infectious disease hazards. Each emergency rule provided specific requirements responding to the needs at the time the emergency rule was adopted.

DOH and L&I have assessed the emergency rule requirements, along with input from interested parties and are proposing amendments for permanent adoption of the following key provisions to address prevention of future outbreaks and the spread of any airborne infectious disease. These key provisions include:

- Requiring updates to the TWH management plan to be submitted to DOH and making the updated plan available to occupants. Requirements for providing the updated plan to occupants in a language or languages understood by the occupants is a current requirement;
- Specific ventilation requirements for all TWH buildings and cherry harvest tents to maximize outdoor air intake and maintaining maintenance logs and other documentation;
- Revisions to the disease prevention and control requirements include:
 - Requiring cooperation with the local health jurisdiction and DOH in the investigation and control of cases, suspected cases, outbreaks and suspected outbreaks of communicable diseases or notifiable conditions;
 - Changes to reporting requirements;
 - Establishing a communicable disease and prevention response plan which includes identifying and isolating occupants with suspect and confirmed cases, and providing medical assistance; and
 - Specific training for those responsible for executing the communicable disease and prevention response plan.

Reasons supporting proposal: DOH and L&I are committed to take action to help prevent the spread of communicable diseases in TWH sites. Throughout the duration of the COVID-19 emergency, DOH and L&I continued to review new information, data, and science as it became available to determine necessary requirements to protect TWH occupants from COVID-19 and similar airborne infectious disease hazards. This information provided guidance in determining what requirements are necessary to protect TWH occupants from airborne infectious disease hazards. Based on this information and gauging the effectiveness of the nine emergency rules, DOH and L&I identified permanent amendments to protect occupants in TWH.

Statutory authority for adoption: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060.

Statute being implemented: Chapter 49.17 RCW

Is rule necessary because of a:

Federal Law?

Yes No

Federal Court Decision?

Yes No

State Court Decision?

Yes No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: No additional comments

Type of proponent: Private Public Governmental

Name of proponent: (person or organization) Department of Labor & Industries

Name of agency personnel responsible for:

| | Name | Office Location | Phone |
|-----------------|-----------------|-----------------|--------------|
| Drafting: | Teri Neely | Tumwater, WA | 360-902-6652 |
| Implementation: | Craig Blackwood | Tumwater, WA | 360-902-5828 |
| Enforcement: | Craig Blackwood | Tumwater, WA | 360-902-5828 |

Is a school district fiscal impact statement required under [RCW 28A.305.135](#)?

Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

Is a cost-benefit analysis required under [RCW 34.05.328](#)?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name: Cynthia Ireland, Administrative Regulations Analyst

Address: Department of Labor & Industries
Division of Occupational Safety and Health
PO Box 44620
Olympia, WA 98504-4620

Phone: 360-791-5048

Fax: 360-902-5619

TTY:

Email: Cynthia.Ireland@Lni.wa.gov

Other:

No: Please explain:

Regulatory Fairness Act and Small Business Economic Impact Statement

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

(1) Identification of exemptions:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570\(2\)](#) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(3\)](#). Check all that apply:

- | | |
|---|---|
| <input type="checkbox"/> RCW 34.05.310 (4)(b) (Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e) (Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c) (Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f) (Set or adjust fees) |
| <input checked="" type="checkbox"/> RCW 34.05.310 (4)(d) (Correct or clarify language) | <input type="checkbox"/> RCW 34.05.310 (4)(g) (i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(4\)](#) (does not affect small businesses).

This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of how the above exemption(s) applies to the proposed rule: See section 2 below for details.

(2) Scope of exemptions: *Check one.*

- The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.
- The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):
WAC 296-307-010 Definitions - Clarified rule language without changing its effect.
- The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

(3) Small business economic impact statement: *Complete this section if any portion is not exempt.*

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. _____

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

1. Describe the rule, including: a brief history of the issue; an explanation of why the rule is needed; and a brief description of the amendments that would impose new or additional costs on affected businesses, including small businesses.

The Washington State Department of Health (DOH), in conjunction with the Washington State Department of Labor & Industries (L&I) are proposing amendments to chapter 246-358 WAC, Temporary Worker Housing, and chapter 296-307 WAC, Safety Standards for Agriculture, respectively, to address the hazards of communicable diseases amongst occupants residing in temporary working housing. RCW 70.114A.065, requires DOH and L&I to adopt rules for the licensing, operation and inspection and enforcement of temporary worker housing.

In February 2020, Governor Inslee proclaimed a State of Emergency in Washington State in response to the novel coronavirus disease 2019 (COVID-19) pandemic. Under the initial March 23, 2020, Proclamation 20-25, Stay Home-Stay Healthy, the Governor enacted various forms of social and physical distancing requirements. The Proclamation identified the agriculture industry as an essential business requiring compliance with the social and physical distancing and sanitation requirements of DOH, L&I and the Centers for Disease Control and Prevention to lawfully operate. Proclamation 20-25 was later amended and ultimately a phased-in, county-by-county approach to reopening Washington was enacted in "Safe Start Washington", issued October 7, 2020. The Governor also issued Proclamation 20-57 and 20-57.1, establishing workplace and transportation requirements for COVID-19 specific to the agriculture industry.

DOH and L&I responded to the COVID-19 pandemic by adopting a series of nine emergency rules beginning May 18, 2020, to protect occupants from the COVID-19 hazards in licensed temporary worker housing (TWH). The last emergency rule expired January 14, 2023.

Some of the key provisions in the emergency rules required operators to:

- Educate occupants in a language or languages understood by the occupants on COVID-19;
- Provide occupants cloth face coverings;
- Ensure physical distancing of occupants when at housing sites, which included all cooking, eating, bathing, washing, recreational, and sleeping facilities;
- Adhere to specific ventilation requirements maximizing outdoor intake and maintaining maintenance logs and other documentation;
- Ensure frequent cleaning and disinfecting of surfaces;
- Identify and isolate occupants with suspect and confirmed positive COVID-19 cases; and
- Submit to DOH a revised temporary worker housing management plan that demonstrates how the operator will comply with the emergency rule requirements.

Throughout the duration of the emergency, DOH and L&I continued to review new information, data, and science as it became available to determine necessary requirements to protect TWH occupants from COVID-19 and similar airborne infectious disease hazards. Each emergency rule provided specific requirements responding to the needs at the time the emergency rule was adopted.

DOH and L&I have assessed the emergency rule requirements, along with input from interested parties and propose permanent adoption of the following key provisions to address prevention of future outbreaks and the spread of any airborne infectious disease. These key provisions include:

- Requiring updates to the management plan to be submitted to DOH and making the updated plan available to occupants. Requirements for providing the updated plan to occupants in a language or languages understood by the occupants is not changing;
- Specific ventilation requirements for all TWH buildings and tents to maximize outdoor air intake and maintaining maintenance logs and other documentation;
- Revisions to the disease prevention and control requirements include:
 - Requiring cooperation with the local health jurisdiction and DOH in the investigation and control of cases, suspected cases, outbreaks and suspected outbreaks of communicable diseases or notifiable conditions;
 - Changes to reporting requirements;
 - Establishing a communicable disease and prevention response plan which includes identifying and isolating occupants with suspect and confirmed cases, and providing medical assistance; and
 - Specific training for those responsible for executing the communicable disease and prevention response plan.

2. Identify which businesses are required to comply with the rule using the North American Industry Classification System (NAICS).

Table 1. Summary of Businesses Required to comply to the Proposed Rule

| NAICS Code (4, 5 or 6 digit) | NAICS Business Description | Number of businesses in Washington State | Minor Cost Threshold |
|------------------------------|---|--|----------------------|
| 111219 | Other Vegetable (except Potato) and melon Farming | 4133 | 3503.04 |
| 111331 | Apple Orchards | 2325 | 2234.36 |
| 111332 | Grape Vineyards | 2155 | 421.79 |
| 111333 | Strawberry Farming | 288 | 447.51 |
| 111334 | Berry (except Strawberry) Farming | 1064 | 3443.84 |
| 111335 | Tree Nut Farming | 1433 | 817.20 |
| 111336 | Fruit and Tree Nut Combination Farming | 252 | 545.96 |
| 111339 | Other Non-citrus Fruit Farming | 2121 | 755.89 |

3. Identify and analyze the probable costs to comply with the adopted rule.

WAC 296-307-16127 TWH management plan.

Description: These sections currently require all operators to implement a written TWH management plan including standard safety protocols and residency rules for maintaining safe and orderly housing. All plans are to be written in English and in the language most commonly spoken by the occupants. The proposed rule amends WAC 246-358-050 and WAC 296-307-16127 to require the operator, when updating a TWH plan, to submit the updated plan to DOH within 10 calendar days after the updated plan becomes effective and to make the updated plan available to occupants.

In addition, the proposed rule provides housekeeping changes which are determined exempt from the cost/benefit analysis under RCW 34.05.328(5)(b)(iv) as they do not change the effect of the rule. For example, amending the rule language to culturally appropriate verbiage by replacing the phrase “native language” with “language commonly understood.”

Cost(s):

The anticipated costs to the operator to submit a revised plan to DOH are negligible. The agencies anticipate that most operators will e-mail a copy of the plan directly to DOH. Alternatively, operators could mail or fax the report to DOH.

The anticipated costs to the operator to translate the updated sections of the plan to comply with amendments in subsection (2)(b) is variable based on:

- The degree of the changes made in the revised plan;
- If the operator is using the fillable form template¹ provided by DOH;
- How many times an operator will need to update the plan in a given year;
- If an operator is already in compliance with the amendment because section (2)(b) currently requires translation.

For these reasons, the low end of the researched cost range could reasonably be \$0.

The researched high end of the cost estimate to translate the document into a language from English is based on a maximum of five pages (2250 words)¹ allowing for additional site-specific management plans that are beyond the basic required elements in the two-page fillable form² that DOH has available in both English and Spanish. The cost range per word is \$0.09 to \$0.40 depending on the number of words, complexity of the changes, the language pair, and the type of files being translated.³ The most commonly spoken languages in Washington state include Spanish and Spanish Creole, Mandarin, Vietnamese, and Russian.⁴ **Cost Range: \$0 - \$900.00**

The anticipated costs to the operator to provide a revised management plan to occupants is negligible, which could include posting the updated plan.

WAC 296-307-16146 Ventilation. (NEW)

Description: For buildings with a mechanical ventilation system, the proposal requires the operator to maintain the existing system to the manufacturer's specifications and perform regular maintenance and filter changes. When fitting a mechanical ventilation system with a filter the proposed rule requires operators to use a Minimum Efficiency Reporting Value (MERV) 13 rated filter or the highest rated filter that the mechanical ventilation system can support. The operator is required to maintain a written maintenance log that includes filter cleaning and replacement. If a building is equipped with a mechanical ventilation system, the operator must instruct occupants to turn it on while the building is occupied and temporarily shut it down when external conditions pose health and safety risks to occupants. If the building does not have a mechanical ventilation system, the operator must instruct the occupants to close all external openings if external conditions could pose a health or safety risk to the occupants.

Cost(s): The anticipated cost to operators is negligible. DOH and L&I expect that operators will follow the manufacturer's operating manual as a regular practice. It is assumed that most operators are already maintaining mechanical ventilation systems in conformance with the proposed rule and that any changes to comply will be negligible.

The filter compartment in a mechanical ventilation unit can vary in perimeter and thickness. Research of the costs of mechanical ventilation system filters focused on the largest filter available (30 x 36) to calculate the costs to comply with the proposed requirement. The most common filters are 1 to 4 inches thick. To upgrade from a one-inch MERV 8 filter (lowest rated filter) at \$41.54 to a one-inch MERV 13 filter at \$49.43 would cost the operator \$7.89 per filter. To upgrade from a four-inch MERV 8 filter at \$74.90 to a four-inch MERV 13 at \$107.26 would cost the operator \$32.36 per filter. The frequency at which the filter would need to be replaced depends on the filter thickness and outdoor air conditions and is therefore variable.⁵ Additionally, it is assumed that some operators are already in compliance with the proposed rule and therefore would not incur any additional costs to upgrade to a higher rated filter. **Incremental Cost Range per filter: \$0 - \$32.36**

It is assumed that the operator would spend 2 - 4 hours a year doing routine maintenance and logging the task in a written maintenance record. The average hourly mean wage for an operator in Washington State is estimated at \$26.18.⁶ **Cost Range: \$52.36 – \$104.72**

¹ Washington State Department of Health.(accessed April 17, 2023). *Temporary Worker Housing (Migrant Farmworker) – Camp Management Plan*.<https://doh.wa.gov/licenses-permits-and-certificates/facilities-z/temporary-worker-and-migrant-farmworker-housing/camp-plan>.

²Washington State Department of Health.(accessed April 17, 2023). *Temporary Worker Housing (Migrant Farmworker) – Camp Management Plan*.<https://doh.wa.gov/licenses-permits-and-certificates/facilities-z/temporary-worker-and-migrant-farmworker-housing/camp-plan>.

³The Translation Company.(accessed April 17, 2023). *Translation Rated – The Ultimate Guide*.
<https://thetranslationcompany.com/resources/5-facts-buying-translation/translation-pricing.htm>

⁴ Language Network (accessed April 17, 2023). *The History of Language in Washington State*.
<https://www.languageetworkusa.com/blog/the-history-of-language-in-washington-state>

⁵ Filterbuy, Inc. (accessed March 30, 2023). *Shop by filter size*. <https://filterbuy.com/>

⁶ U.S. BUREAU OF LABOR STATISTICS. (accessed March 30, 2023). *Occupational Employment and Wage Statistics*. Washington State hourly mean wage for a First-line supervisor of Framing, Fishing, and Forestry Worker. <https://www.bls.gov/oes/current/oes451011.htm>

WAC 296-307-16147 Tents.

Description: These sections currently set requirements for the use of tents as temporary worker housing for cherry harvest. The proposal requires operators to instruct occupants to close all windows and other outside openings when external conditions could pose a health or safety risk to the occupants. In addition, the proposed rule provides housekeeping changes which are determined exempt from the cost/benefit analysis under RCW 34.05.328(5)(b)(iv) as they do not change the effect of the rule.

Cost(s): The anticipated costs are negligible due to the time it would take for operators or occupants to close windows and other outside openings under external hazardous conditions.

WAC 296-307-16190 Disease Prevention and Control.

Description: This section requires operators to cooperate with local health jurisdictions, DOH and L&I in preventing the spread of communicable diseases. The proposal requires the operators to:

- Cooperate with the local health jurisdiction and DOH in the investigation and control of cases, suspected cases, outbreaks and suspected outbreaks of communicable diseases or notifiable conditions.
- Immediately report to the local health jurisdictions occupants known to have or suspected to have communicable diseases made notifiable by emergency rule or emergency declaration, as well as other specific symptoms of serious illness.
- Implement infection control measures as required by the local health jurisdiction for the care of occupants who have been exposed to other occupants with a suspected or positive case of a communicable disease.
- Conspicuously post education in a language commonly understood by all occupants on the communicable disease related health and safety policies of the TWH.
- Develop a communicable disease prevention and response plan that specifies a process to screen occupants for symptoms of communicable diseases and include isolation and quarantine procedures.
- Provide occupants with access to a thermometer to determine if they have a fever.
- If an occupant is isolated or quarantined, provide access to a phone, information on paid leave and workers compensation, access to medical professionals who offer health care services, and provide food and water at no cost to the occupant.
- Provide transportation for an occupant needing medical attention for a communicable disease or suspected communicable disease at no cost to the occupant.
- Document and provide training to persons responsible for executing the communicable disease prevention and response plan at least annually or when the plan is updated.

Cost(s): Many of the proposed amendments were part of the series of nine emergency rules adopted during the COVID-19 pandemic. At that time, DOH and local health jurisdictions supplied thermometers to operators at no cost. The thermometers that were supplied to operators during the pandemic were FDA approved “no contact” infrared forehead thermometers that were purchased for \$17.50 each. Similar thermometers cost \$21.99.⁷ The only new expense would be to purchase thermometers if the operator needs to replace the existing thermometers or if a new operator becomes licensed. **Cost Range: \$0 - \$21.99**

The number of occupants needing urgent care due to a communicable disease could vary widely. The researched cost estimate captures the cost range of a single worker, single occurrence. The assumptions on travel and time for a single worker, single occurrence are presented in Table 2.

Table 2. Assumptions for travel distance and time for a single occupant, single occurrence.

| Range | Seeking Care Travel* | | | | Urgent Care Appointment** | Operator Travel*** | | | |
|----------|----------------------|------------|----------------|------------|---------------------------|--------------------|------------|----------------|------------|
| | Distance (miles) | | Time (minutes) | | Time (minutes) | Distance (miles) | | Time (minutes) | |
| | One-way | Round-trip | One-way | Round-trip | Average | One-way | Round-trip | One-way | Round-trip |
| Low-end | 9 | 18 | 18 | 36 | 55 | 0 | 0 | 0 | 0 |
| High-end | 22 | 44 | 30 | 60 | 70 | 30 | 60 | 60 | 180 |

* Estimated from a study from the Office of Financial Management (Washington State).⁸

⁷ S&S Worldwide. (accessed April 5, 2023). *Infrared Contactless Forehead Thermometer*. Buy Infrared Contactless Forehead Thermometer at S&S Worldwide (swww.com).

⁸ Yen, W. (2013). *How long and how far do adults travel and will adults travel for primary care*. Washington State Office of Financial Management. How Long and How Far Do Adults Travel and will Adults Travel for Primary Care - Research Brief 70 (wa.gov).

** Average urgent care appointment ranges from 55 to 70 minutes.⁹

*** Estimated through conversations with DOH inspectors.

Table 3 uses assumptions from Table 2 to calculate the total cost range for a single occupant, single occurrence.

Table 3. Calculations for total cost range for a single occupant, single occurrence.

| Range | Variable | Occupant Totals | Occupant Cost ^{*,***} | Operator Totals | Operator Cost ^{***} |
|------------------------|-----------------------|---------------------------------|---------------------------------------|----------------------------------|--|
| Low-end | Miles ^{****} | 18 | 18 x \$0.655 = \$11.79 | 0 | 0 |
| | Time | 36 mins + 55 mins = 91 mins | 2 hours x \$16.85 = \$33.70 | 0 | 0 |
| High-end ^{**} | Miles ^{****} | 44 | Added to operator | 60 + 44 = 104 | 104 x \$0.655 = \$68.12 |
| | Time | 60 mins + 70 mins = 130 mins | 3 hours x \$16.85 = \$50.55 | 180 mins + 70 mins = 250 mins | 5 hours x \$26.18 = \$130.90 |

*Rounded-up to the nearest hour.

**High-end operator cost totals assume that the operator goes with the occupant with the appointment (additional time) and takes the worker with them, therefore miles accrue only once under the operator cost.

*** Average mean wage of a worker \$16.85¹⁰ and average mean wage of a first-line supervisor (TWH operator) of \$26.18.¹¹

****DOH Mileage cost based on the estimated rate of \$0.655 per mile¹².

As the estimates produced are per occupant, per occurrence the total cost in a given year to an operator and occupant are indeterminate. Additionally, it is recognized that the high-end of the cost range is likely an underestimate as an average length of travel was used, but the time estimate for an infectious disease could be considerably longer. **Cost Range: \$45.49 - \$249.57**

Local health jurisdictions, DOH, L&I, and the Centers for Disease Control and Prevention have multilingual flyers that are readily available to the public at no cost for operators to use to educate occupants on communicable disease related health and safety policies. It is estimated that it could take up to 2 hours (time to locate and request copies) for operators to comply with this proposed amendment. The average hourly mean wage for an operator in Washington State is estimated at \$26.18². **Cost Range: 0.00 - \$52.36**

DOH is creating a template for operators to use to assist in the development of a communicable disease prevention and response plan. DOH estimates that it will take approximately 2 hours for operators to develop the plan using the DOH created template. The average mean wage of a first-line supervisor (TWH operator) is \$26.18¹³ **Cost Range: 0.00 - \$52.36**

The number of occupants that may need to be isolated or quarantined in a particular year due to a communicable disease could vary widely. The estimated cost captures the cost range of a single occupant, single occurrence. Operators can employ an H-2A classified worker or a worker that is not classified as an H-2A worker. Section 218 of the Immigration and Nationality Act authorizes the lawful admission into the United States of temporary, nonimmigrant workers (H-2A workers) to perform agricultural labor or services of a temporary or seasonal nature.¹⁴ H-2A worker housing standards state that for temporary non-immigrant workers, the operators will provide three meals a day or have free convenient kitchen space and provide lodging to the workers that they employ. Operators may choose to house workers in transient accommodations such as motels or hotels or have onsite temporary labor housing that conforms to the

⁹ Accessed on April 15, 2023. Solvhealth.com

¹⁰ Washington State Department of Labor and Industries.(accessed April 7, 2023).Agriculture Policies – Wages.<https://www.lni.wa.gov/workers-rights/agriculture-policies/wages>. (Average of the state minimum wage of \$15.74 per hour and the adverse effect wage rate for Jan 2023 of \$17.97)

¹¹ U.S. BUREAU OF LABOR STATISTICS. (accessed March 30, 2023). Occupational Employment and Wage Statistics. Washington State hourly mean wage for a First-line supervisor of Framing, Fishing, and Forestry Worker. <https://www.bls.gov/oes/current/oes451011.htm>

¹² Washington State Office of Financial Management.(accessed April 6, 2023). Per diem rate tables. Per diem rate tables | Office of Financial Management (wa.gov)

¹³ U.S. BUREAU OF LABOR STATISTICS. (accessed March 30, 2023). Occupational Employment and Wage Statistics. Washington State hourly mean wage for a First-line supervisor of Framing, Fishing, and Forestry Worker. <https://www.bls.gov/oes/current/oes451011.htm>

¹⁴ U.S. Department of Labor.(accessed April 14, 2023).H-2A: Temporary Agricultural Employment of Foreign Workers. <https://www.dol.gov/agencies/whd/agriculture/h2a>

requirement in chapter 246-358 WAC and chapter 296-307 WAC.^{15,16} Non-H-2A operators may choose on-site operator owned housing or apartment rentals, but are not required to provide housing for domestic agriculture workers. If the operators choose to provide housing, they must comply with the requirements of chapter 246-358 WAC and chapter 296-307 WAC.

The assumed low-end cost range to isolate or quarantine an occupant of the TWH would be in housing that the operator owns, that the isolated occupant owns a cell phone or that there is a land line available for use, and the operator would only need to supply the occupant with food and water for the day. It is assumed that the high-end cost range to isolate or quarantine an occupant would include securing an additional hotel/motel room, supplying the isolated occupant with a cell phone (daily rate), and supplying the occupant with food and water. The following assumptions apply:

- The cost of a hotel/motel room ranges from \$98.00 to \$232.00 per day.¹⁷
- The average monthly cost of a cell phone in the US is \$114.00 (equivalent to around \$4.00 daily).¹⁸
- The daily cost of food (three meals per day) and water is \$59.00.¹⁹

As the length of time that an occupant or occupants may need to be isolated or quarantined in a given year is variable, the total annual cost is indeterminate. **Single occupant, single occurrence, Daily Cost Range: \$59.00 - \$ 295.00**

It is estimated that the time to train an individual to execute the communicable disease prevention and response plan will take 30 to 60 minutes of both the operator and the person being trained to execute the plan. The average mean wage of a first-line supervisor (operator/trainer) is \$26.18.²⁰ The average hourly mean wage of an entry level agricultural worker is \$16.85.²¹ **Cost Range: \$21.52 - \$43.03**

4. Determine whether or not the proposed rule will impose more than minor costs on businesses in an industry.

While most of the costs of the proposed rule can be estimated, there are some that are indeterminate and variable, as the given multiplier is unknown. The multiplier in section 3 above is the number of occupants that could need urgent care due to a communicable disease in a given year or the number of occupants that could need to be isolated or quarantined in a particular year due to a communicable disease. Because these are variable and therefore indeterminate costs, the agencies are unable to determine if the costs of the proposed rule are greater than the minor cost threshold ranging from 421.79 for Grape Vineyards and 3,503.04 for Other Vegetable (except Potato) and melon Farming.

5. If the proposed rule is likely to impose a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses.

The agencies do not anticipate that there is any single factor that makes a business more or less likely to be impacted by the proposed rule since quarantine and care costs of occupants are variable and indeterminate over any given year and that the benefits are public health and safety for all. As such, L&I assumes there is a disproportionate impact on small businesses. L&I reviewed the list of methods for reducing the impact on small businesses under RCW 19.85.030 and found them inapplicable.

- Reducing, modifying, or eliminating substantive regulatory requirements. Reducing, modifying, or eliminating substantive regulatory requirements is not legal or feasible in meeting the objectives and requirements of WISHA and the DOH TWH statute.
- Simplifying, reducing, or eliminating recordkeeping and reporting requirements. Simplifying, reducing, or eliminating recordkeeping and reporting requirements is not legal or feasible in meeting the objectives and requirements of WISHA and the DOH TWH statute.
- Reducing the frequency of inspections. Reducing the frequency of inspections is not legal or feasible in meeting the objectives and requirements of WISHA and the DOH TWH statute.

¹⁵ U.S. Department of Labor. (accessed April 9, 2023). *Fact Sheet #26D: Meal Obligations for H-2A Employers*. Fact Sheet #26D: Meal Obligations for H-2A Employers | U.S. Department of Labor (dol.gov)

¹⁶ U.S. Department of Labor. (accessed April 7, 2023). *H-2A Housing Standards for Rental and Public Accommodations*. Fact Sheet #26G: H-2A Housing Standards for Rental and Public Accommodations | U.S. Department of Labor (dol.gov)

¹⁷ Washington State Office of Financial Management. (accessed April 6, 2023). *Per diem rate tables*. Per diem rate tables | Office of Financial Management (wa.gov).

¹⁸ Money Saving Pro.(accessed April 7, 2023). *What is the average cell phone bill per month in 2023?*. What is the Average Cell Phone Bill per Month in 2023? - MoneySavingPro.

¹⁹ U.S. Department of Labor. (accessed April 9, 2023). *Allowable Meal Charges and Reimbursements for Daily Subsistence*. Meal Charges and Travel Subsistence | U.S. Department of Labor (dol.gov)

²⁰ U.S. BUREAU OF LABOR STATISTICS. (accessed March 30, 2023). *Occupational Employment and Wage Statistics*. Washington State hourly mean wage for a First-line supervisor of Framing, Fishing, and Forestry Worker. <https://www.bls.gov/oes/current/oes451011.htm>

²¹ Washington State Department of Labor and Industries.(accessed April 7, 2023). *Agriculture Policies – Wages*.<https://www.lni.wa.gov/workers-rights/agriculture-policies/wages>. (Average of the state minimum wage of \$15.74 per hour and the adverse effect wage rate for Jan 2023 of \$17.97)

- Delaying compliance timetables. Delaying compliance is not legal or feasible in meeting the objectives and requirements of WISHA and the DOH TWH statute.
- Reducing or modifying fine schedules for noncompliance. The statutes require DOH and L&I to jointly establish a formal agreement that identifies the roles of each of the two agencies with respect to enforcement, and for the agreement to include, to the extent feasible, inspection and enforcement actions by a single agency, and shall include measures to avoid multiple citations for the same violation. DOH and L&I have a Memorandum of Understanding addressing enforcement as required. For L&I, reducing fine schedules for noncompliance for small businesses. RCW 49.17.180 addresses the civil penalties for WISHA citations and requires L&I give consideration in the penalty assessment to factors including the size of the employer's business. WAC 296-900-14015 (Table 11) sets forth the specific process for penalty adjustments including employer size, with reductions of 20% up to 70%.

6. Describe how small businesses were involved in the development of the proposed rule.


DOH and L&I communicated on the rule development process via electronic email distribution lists. L&I developed and shared draft proposed rules and circulated them for stakeholder feedback. Small business employers and organizations representing small businesses were involved throughout these processes and DOH and L&I considered their feedback throughout the process.

7. Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule.

L&I does not anticipate that the compliance with proposed rules will lead to a significant number of job creations or cuts. Employers will be able to meet the proposed requirements using existing staff without new hires. Similarly, it is unlikely that employers would need to dismiss employees as a result of the proposed rule amendments.

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name: Cynthia Ireland, Administrative Regulations Analyst
 Address: Department of Labor & Industries
 Division of Occupational Safety and Health
 PO Box 44620
 Olympia, WA 98504-4620
 Phone: 360-791-5048
 Fax: 360-902-5619
 TTY:
 Email: Cynthia.Ireland@Lni.wa.gov
 Other:

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|--------------------------|--|
| Date: May 3, 2023 | Signature:  |
| Name: Joel Sacks | |
| Title: Director | |