



June 19, 2023

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RE: Comments on Proposed Temporary Worker Housing Rules

To whom it may concern:

Thank you for the opportunity to comment on these proposed rules regarding the Temporary Worker Housing (TWH) standards.

WafLa is a non-profit 501(c)(6) membership organization comprised of nearly 800 agricultural and seasonal employers. We offer ways for our members to access several federal visa programs and receive assistance complying with state and federal labor standards. For the sake of employers, employees, and consumers, we advocate for labor stability to be a reality for all agricultural employers and for farmers and farmworkers to be treated with dignity and respect. These workers, especially the guest workers, need housing, and wafLa helps provide housing solutions for our member farmers and their employees.

Our comments for each section are below. Since the rule proposals by the Washington State Department of Labor & Industries (L&I) and the Washington State Department of Health (DOH) are substantially similar, we will comment on them simultaneously. For each reference to the WACs, we will cite the L&I proposal first, followed by the DOH version.

WAC 246-358-076/WAC 296-307-16146 Ventilation

We have concerns with the requirement of using MERV 13 air filters or the highest MERV rating filter supported by the mechanical ventilation system. MERV 13 air filters are expensive, hospital-grade filters, and their perpetual use will be costly. This stringent requirement might have been justified under the COVID-era emergency rules. Since the COVID era is officially over, adopting this pandemic standard into permanent rules will be expensive and unnecessary.

We believe the TWH standards should allow for whatever air filter the ventilation system manufacturer recommends. If a COVID-like outbreak occurs again, the use of MERV 13 air filters could be considered

at that time for that declared emergency. But for everyday use, the manufacturer recommendations should suffice for the health and financial interests of the TWH owners, operators, and occupants.

WAC 246-358-175/WAC 296-307-16190 Disease prevention and control

The additions to this section present some general and specific issues. Generally, this section is unnecessary, with a few exceptions for serious outbreaks among many occupants. The standards place TWH operators, which may include hotels or hotel-like housing operations, in a position of medical professionals performing triage. Also, TWH operators can issue rules about communicable diseases, but they cannot necessarily control or make decisions for occupants. The language in this section should reflect that reality. Operators should be required to provide information on where occupants can receive health care services and how to address certain symptoms related to serious and easily transmitted diseases, but these rules should recognize that the responsibility ultimately rests with the individual adults occupying the facility.

On a more specific note, subsection (2) states, “Report immediately to the local health jurisdiction....” The requirement to report “immediately” may not be feasible in all cases. We recommend using more realistic language, such as “as soon as reasonably practicable” or something similar. The same change needs to be made in (7)(c).

Subsection (2)(c) sets the bar for symptoms relatively low. Specifically, if “two or more occupants” have diarrhea or vomiting, the operator must report to the local health jurisdiction. Under this standard, if two occupants have too much alcohol to drink and subsequently vomit, the TWH operator is in a reportable position. Reportable situations should occur when many occupants experience the same issues or when a specifically identifiable threat such as COVID is present. Setting the bar at two occupants with symptoms is too low and is thus unmanageable.

Subsection (3) states, “Implement infection control measures for care of occupants who have been exposed to other occupants with a suspected or positive case of a communicable disease.” TWH operators are not necessarily healthcare professionals. Operators should only be responsible for establishing expectations of the occupants’ behavior regarding communicable diseases and for providing information such as what is listed in subsection (4).

Subsection (5) allows “community health workers and community-based outreach workers to provide additional information to occupants...,” followed by several provisions. We appreciate the limitations and stipulations placed upon these visits as outlined in (5)(a), (b), and (c). If visits by community health workers and community-based outreach workers are going to be allowed, those visits should include contact with the TWH operator before the visit, a check-in with TWH staff upon arrival, and the use of appropriate health screenings and personal protective equipment.

However, this section of the proposed rules does not limit the scope of these visits to public health issues. The text of this proposal—“The operator must ... (5) allow entry of community health workers and community-based outreach workers to provide additional information to occupants...” —is not explicitly limited to visits and conversations regarding disease prevention and control. If visits are going to be allowed under this proposed rule, those visits must be explicitly limited in scope to disease prevention and control. There needs to be a nexus to public health and communicable diseases. As such, we ask the agencies to insert language to limit the scope of these visits.

If a nexus to public health exists, we understand the allowance for “community health workers” to visit TWH occupants. However, there is no justifiable reason for “community-based outreach workers” (i.e., legal aid representatives, union representatives, and advocacy organizations) to visit with occupants whenever those representatives choose. Access by community-based outreach workers under this proposed section does absolutely nothing to prevent or control disease. If visits by community-based outreach workers are for sharing public health information, the TWH operator and community health workers can easily communicate that information. We object to including “community-based outreach workers” in this section of these rules and, by extension, the definitions section (WAC 296-358-010/WAC 296-307-16103). We ask for the definition of and allowance for community-based outreach workers to be removed from these proposed rules.


Effective date

Because the use of TWH almost always centers on the agricultural growing season, any changes to rules governing TWH are best implemented between growing seasons. This timing allows TWH owners and operators to make necessary changes to facilities, plans, and licensing for the following year. Requiring compliance with changes to TWH rules in the middle of the 2023 growing season would unnecessarily interrupt TWH owner/operator processes and plans for the current season, and no emergent or immediate need exists because the COVID pandemic is now officially over. Therefore, we request that these rules, if adopted, go into effect for the 2024 growing season and not before.

Please contact me if you have questions or need clarification about these comments.

Thank you for considering our perspective and comments on this rule proposal.

Sincerely,



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