

**Attachment 1: Preamble, including required analysis, for adopting the repeal of 10 TAC Chapter 90, Migrant Labor Housing Facilities Rules, §§90.1 – 90.9**

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 90, Migrant Labor Housing Facilities without changes. The purpose of the repeal is to implement new statutory changes that eliminates an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this rulemaking, and the analysis is described below for each category of analysis performed.

**a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.**

1. Mr. Wilkinson has determined that for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program but relates to the repeal, and simultaneous readoption making changes to an existing rule to implement updates as a result of SB 243, 89<sup>th</sup> Texas Legislature (Reg. Session).
2. The repeal does not require a change in work that will require the creation of new employee positions, nor is the repeal significant enough to reduce workload to a degree that any existing employee positions are eliminated.
3. The repeal does not require additional future legislative appropriations.
4. The repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.
5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The action will repeal an existing regulation, to implement updates as a result of SB 243.
7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.
8. The repeal will not negatively or positively affect this state's economy.

**b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.**

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

**c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043.** The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

**d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).**

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect there will be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

**e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5).** Mr. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be a rule in compliance with statute. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

## CHAPTER 90. MIGRANT LABOR HOUSING FACILITIES

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**Attachment 2: Preamble for adopting new 10 TAC Chapter 90, Migrant Labor Housing Facilities Rules, §§90.1 – 90.9**

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 90, Migrant Labor Housing Facilities Rule, §§90.1 – 90.9 with changes to the proposed text as published in the November 21, 2025, issue of the *Texas Register* 202504049. The purpose of the new rule is to comply with SB 243 (89<sup>th</sup> Regular Legislature) which added revisions to the Department's oversight and administration of Migrant Labor Housing Facilities. Original changes based on SB 243 included the addition of a new complaint process; notice; dismissal requirements; remediation of complaints in general and regarding certain violations; and prohibition on retaliation for facility-related complaints. Additionally, the rule outlines a penalty structure for noncompliance and provides for interagency cooperation and outreach/education requirements.

Tex. Gov't Code §2001.0045(b) does apply to the rule because costs may be associated with this action, however these changes are required to implement new statutory changes.

The Department has analyzed this rulemaking, and the analysis is described below for each category of analysis performed.

**a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.**

Mr. Wilkinson has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program. The new rule provides for an assurance that required licensing requirements tasked to the Department are clearly relayed to employers who house and license migrant labor housing facilities. Changes include a new complaint procedure, a penalty structure, and outreach/education requirements.
2. The new rule will require a change in the number of employees of the Department; the enactment of SB 243 included appropriations for three full-time employees to perform the work associated with implementation of SB 243 and this rule.
3. The new rule will require additional future legislative appropriations. The new rule is being adopted because the Texas Legislature in its 89<sup>th</sup> Regular Session passed SB 243. The Department was appropriated an additional \$535,000 per year of the biennium from General Revenue funds to implement the provisions of the legislation and received three new FTEs. It is expected that the appropriation would continue in subsequent biennia to continue implementing the provisions of SB 243.
4. The rule may result in some additional penalty fees paid to the Department in the case of noncompliant providers.
5. The new rule is creating a new regulation, which is being created to implement the requirements of SB 243.
6. The rule action does repeal an existing regulation but only so that the regulation can be replaced with a new rule that may be considered to "expand" the existing regulation on this activity because the change to the rule is necessary to ensure compliance with SB 243.
7. The new rule will not increase or decrease the number of individuals subject to the rule's applicability; and
8. The new rule will not negatively or positively affect the state's economy.

**b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.**

The Department, in drafting this new rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.053.

1. The Department has evaluated this new rule and determined that none of the adverse effect strategies outline in Tex. Gov't Code §2006.002(b) are applicable.
2. The Department has determined that this rule provides specific details on how complaints are processed, provides a revised penalty schedule for noncompliance event(s), and addresses interagency cooperation and outreach/education. Other than in a case of small or micro-business subject to the proposed rule, economic impact of the rule is projected to be none. If rural communities are subject to the new rule, the economic impact of the rule is projected to be none.
- c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.
- d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the new rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule would be that providers have a more compliant workplace.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." There are no anticipated "probable" effects of the new rule on employment in particular geographic regions. If anything, the positive effects will be that providers have a more compliant workplace.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson, Executive Director, has determined that, for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of the new rule be a rule compliant with SB 243. The only economic cost to an individual required to comply with the rule would be for those individuals or entities that choose to be noncompliant, in which case there may be fees for noncompliance event(s).

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new rule is in effect, enforcing or administering the new rule does not have any foreseeable implications related to costs or revenues other than already noted herein.

**SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE.** The Department accepted public comment between November 21, 2025, and December 21, 2025. Comments regarding the proposed repeal were accepted in writing with comments received from: Dave Mauch, Texas Rio Grande Legal Aid, Inc.

#### **Rule Section §90.1**

**COMMENT SUMMARY:** The commenter noted a formatting correction to the H-2A program reference.

**STAFF RESPONSE:** Staff accepted the correction and updated the proposed rule for adoption.

#### **Rule Section §90.4**

**COMMENT SUMMARY:** Commentor 1 supported the addition of language clarifying acceptable fire extinguishers.

**STAFF RESPONSE:** Staff appreciates the support of Commenter 1.

#### **Rule Section §90.5**

**COMMENT SUMMARY:** Commenter 1 supports the Department's addition of language stating that Providers utilizing hotels and apartments who fail to provide the number of beds or meals as reported at time of application will be deemed noncompliant with regulations. However, they found the phrase "if occupied at the time of inspection" to be limiting in terms of verification methods and felt the Department could be limiting its ability to assess violations.

**STAFF RESPONSE:** Staff agreed with the suggested revision removing the limitation so that verification methods are not limited to only when units are occupied. Revisions have been made responsive to this comment.

#### **Rule Section §90.6**

**COMMENT SUMMARY:** Commentor number 1 expressed concern that requiring only that the text of the mandatory housing poster be in English and Spanish, makes no provisions for Workers who predominantly speak other languages. They suggest that the poster be made in a language understood by the worker.

**STAFF RESPONSE:** Staff agrees with the concern, however does not feel it is reasonable to have the posters generated in any variety of languages that are undetermined as necessary. Alternatively, staff has added a provision for translation of the poster at the request of either a Worker or the Provider.

#### **Rule Section §90.7**

**COMMENT SUMMARY:** Commentor number 1 expressed concern that notice of the dismissal of a complaint was only going to be provided to the Provider and not the worker/Designated Representative.

Commenter number 1 expressed support for the anonymity procedure established by allowing a Designated Representative to file a complaint on behalf of a complainant and allowing the Designated Representative of a complainant to redact the complainant's name and signature from the form or other document appointing them.

Commenter number 1 expressed serious concern that the addition of a required video conference between the Department, complainant, and their Designated Representative for verification purposes, negates the anonymity provided, exceeds Departmental authority, exposes the complainant to retaliation, and puts additional burdens on the complainant. Commenter 1 also noted the logistical challenges of the complainant being able to find a private place to pursue such a video conference, and further notes that access to technology to do a video call may be limited.

In section (h)(3) relating to remediation of a complaint, Commentor 1 felt the use of the term "and/or" would allow a sworn affidavit alone to be acceptable proof of remediation and expressed concern of this being insufficient in the past.

**STAFF RESPONSE:** Staff added language that the notice of dismissal of a complaint will be sent to both the Provider and the complainant/Designated Representative.

While staff is also seeking to preserve a complainant's anonymity in these situations, §2306.934(g) includes the language "if the department reviews the written authorization establishing the representation and verifies that the representative is authorized to submit the complaint". The purpose of the video conference was to achieve this verification without creating a document that could be subject to an open records request. Staff still believes this could be an effective way to achieve this goal but acknowledges that it may not be viable in all situations, so the provision was

amended to include verification through an “in person meeting during the complaint investigation including a follow up inspection” to allow for other options of verification.

It was not the intention of staff to imply that a sworn affidavit alone would be sufficient proof of remediation. Staff intended to use this wording to allow for the discretion to determine if a follow up inspection would also be required as proof of remediation. The wording “and/or” has been replaced to remove the ambiguity.

The Board adopted the final order adopting the new rule on February 5, 2026.

STATUTORY AUTHORITY. The new rule(s) is/are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the new rules affect no other code, article, or statute. The new rule(s) have been reviewed by legal counsel and are within the Agency's authority to adopt.

#### §90.1. Purpose.

The purpose of Chapter 90 is to establish rules governing Migrant Labor Housing Facilities that are subject to being licensed under Tex. Gov't Code Chapter 2306, Subchapter LL (§§2306.921 - 2306.9340). It is recognized that aligning state requirements with the federal standards for migrant farmworker housing that must be inspected in order to participate in other state and federal programs, such as with the U.S. Department of Labor's H-2AH2-A visa program, allows for cooperative efforts between the Department and other state and federal entities to share information. This will reduce redundancies and improve the effectiveness of the required licensing.

#### §90.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Additionally, any words and terms not defined in this section but defined or given specific meaning in Tex. Gov't Code Chapter §§2306.921 - 2306.940, are capitalized. Other terms in 29 CFR §§500.130 - 500.135, 20 CFR §§654.404 et seq., and 29 CFR §1910.142 or used in those sections and defined elsewhere in state or federal law or regulation, when used in this chapter, shall have the meanings defined therein, unless the context herein clearly indicates otherwise.

(1) **Act**--The state law that governs the operation and licensure of Migrant Labor Housing Facilities in the state of Texas, found at Tex. Gov't Code, §§2306.921 - 2306.940.

(2) **Board**--The governing board of the Texas Department of Housing and Community Affairs.

(3) **Business Day**--Any day that is not a Saturday, Sunday, or a holiday observed by the State of Texas.

(4) **Business hours**--8:00 a.m. to 5:00 p.m., local time.

(5) Couple--A pair of individuals, whether legally related or not, that act as and hold themselves out to be a couple; provided, however, that nothing herein shall be construed as creating or sanctioning any unlawful relationship or arrangement.

(6) Department--The Texas Department of Housing and Community Affairs.

(7) Designated Representative--~~M~~means an individual or organization to whom a Migrant Agricultural Worker has given written authorization to exercise the worker's right to file a complaint under Tex. Gov't Code §2306.934.

(8) Director--The Executive Director of the Department or designated staff.

(9) Family--A group of people, whether legally related or not, that act as and hold themselves out to be a Family; provided, however, that nothing herein shall be construed as creating or sanctioning any unlawful relationship or arrangement such as the custody of an unemancipated minor by a person other than their legal guardian.

(10) License--The document issued to a Licensee in accordance with the Act.

(11) Licensee--Any Person that holds a valid License issued in accordance with the Act.

(12) Occupant--Any Person, including a Worker, who uses a Migrant Labor Housing Facility for housing purposes.

(13) Provider--Any Person who provides for the use of a Migrant Labor Housing Facility by Migrant Agricultural Workers, whether the Facility is owned by the Provider, or is contractually obtained (or otherwise established) by the Provider. An agricultural industry employer or a contracted or affiliated entity may be a Provider if it owns, contracts, or pays for the use of a Migrant Labor Housing Facility by Migrant Agricultural Workers, regardless of whether any rent or fee is required to be paid by a Worker. A common short-term property rental owner or operator that does not exclusively rent to Migrant Agricultural Workers is not a Provider solely because they have rented to Migrant Agricultural Workers. The Provider is the operator under Tex. Gov't Code §2306.928.

(14) The State Office of Administrative Hearings (SOAH)--~~I~~is an independent and neutral agency for hearing and mediating administrative disputes and appeals in Texas in accordance with Tex. Gov't Code §2001, Tex. Gov't Code §2003, and 1 TAC §155.

(15) Worker—Also known as Migrant Agricultural Worker, being an individual who is:

(A) working or available for work seasonally or temporarily in primarily an agricultural or agriculturally related industry, and

(B) moves one or more times from one place to another to perform seasonal or temporary employment or to be available for seasonal or temporary employment.

§90.3. Applicability.

- (a) All Migrant Labor Housing Facilities in the state of Texas, which may include hotels and other public accommodations if owned by or contracted for by Providers must be inspected and comply with the requirements in this chapter and 29 CFR §§500.130, 500.132 - 500.135, without the exception provided in 29 CFR §500.131.
- (b) Where agricultural employers own, lease, rent, otherwise contract for, or obtain under other working arrangements, Facilities "used" by individuals or Families that meet the criteria described in the Act, the employer as Provider of said housing, "establishes" and becomes the "operator" of a Migrant Labor Housing Facility, and is the responsible entity for obtaining and "maintaining" the License on such Facility, as those terms are used in Tex. Gov't Code §2306.921 - 2306.922.
- (c) An applicant for a License must facilitate an inspection by the Department with the owner of the property(ies) at which the Migrant Labor Housing Facility is located, or the inspection will be considered failed.
- (d) Owners or operators of homeless shelters, public camp grounds, youth hostels, hotels and other public or private accommodations that do not contract for services with Providers to house Workers are not required to be licensed.
- (e) No License would be required where a Worker is housed exclusively with his/her Family using their own structure, trailer, or vehicle, but temporarily residing on the land of another.
- (f) A Facility may include multiple buildings on scattered or noncontiguous sites, as long as the scattered sites are in a reasonable distance from each other, and the work location and the buildings are operated as one Facility by the Provider.

§90.4. Standards and Inspections.

- (a) Facilities must follow the appropriate housing standard as defined in 29 CFR §500.132, (the Employment and Training Administration (ETA) and Occupational Safety and Health Administrations (OSHA) housing standards also referred to as the "ETA and OSHA Housing Standards"), or if applicable the Range Housing standard as defined in 20 CFR §655.235 or Mobile Housing Standards as defined in 20 CFR §655.304. The inspection checklists setting forth those standards are available on the Department's website at <https://www.tdhca.texas.gov/migrant-labor-housing-facilities>.
- (b) Inspections of the Facilities of applicants for a License and Licensees may be conducted by the Department under the authority of Tex. Gov't Code §2306.928 upon reasonable notice and using the appropriate inspection forms noted in subsection (a) of this section. Inspections may be conducted by other State or Federal agencies, on behalf of the Department, on forms promulgated by those agencies.

(c) In addition to the standards noted in subsection (a) of this section, all Facilities must comply with the following additional state standards:

(1) Facilities shall be constructed in a manner to insure the protection of Occupants against the elements. Facilities shall be maintained in good repair and in a sanitary condition. All doors to the exterior shall have working locks and all windows shall have working interior latches. Each unit shall have a working smoke detector. Fire extinguishing equipment shall be provided in an accessible place located within 100 feet from each Facility. Such equipment shall provide protection equal to a 2 1/2 gallon stored pressure of five gallon pump type water extinguisher. Such equipment shall also have a service tag that indicates no more than a year has passed since last servicing if rechargeable, and that the extinguisher is no more than 12 years old and properly charged if non-rechargeable or disposable. A working carbon monoxide detector must be present in all units that use gas or other combustible fuel.

(2) Combined cooking, eating, and sleeping arrangements must have at least 100 SF per person (aged 18 months and older); the portion of the Facility for sleeping areas must include at least a designated 50 square feet per person.

(3) Facilities for Families with children must have a separate room or partitioned area for adult Family members.

(4) In dormitory-type facilities, separate sleeping accommodations shall be provided for each sex. In Family housing units, separate sleeping accommodations shall be provided for each Family unit.

(5) Facilities previously used to mix, load, or store pesticides and toxic chemicals may not be used for cooking, dishwashing, eating, sleeping, housing purposes, or other similar purposes.

(6) In a central mess or multifamily feeding operation, the kitchen and mess hall shall be constructed in accordance with any applicable local or state rules on food services sanitation.

(7) Beds, bunks, or cots shall have a clear space of at least 12 inches from the floor. Triple-deck bunks shall be prohibited. Single beds shall be spaced not closer than 36 inches laterally or end to end. Bunk beds shall be spaced not less than 48 inches laterally or 36 inches end to end. There shall be a clear ceiling height above a mattress of not less than 36 inches. The clear space above the lower mattress of the bunk beds and the bottom of the upper bunk shall not be less than 27 inches.

(8) Bathrooms, in aggregate shall have a minimum of one showerhead per 10 persons and one lavatory sink per six persons. Showerheads shall be spaced at least three feet apart to insure a minimum of nine square feet of showering space per showerhead.

(9) In all communal bathrooms separate shower stalls shall be provided.

(10) Mechanical clothes washers with dryers or clothes lines shall be provided in a ratio of one per 50 persons. In lieu of mechanical clothes washers, one laundry tray (which is a fixed tub

(made of slate, earthenware, soapstone, enameled iron, stainless steel, heavy duty plastic, or porcelain) with running water and drainpipe for washing clothes and other household linens) or tub per 25 persons may be provided.

(11) All Facility sites shall be provided with electricity. The electrical systems shall conform to all applicable codes and shall be sufficient to provide the electricity with sufficient amperage to operate all required and available features, including but not limited to lighting, stoves, hot water heaters, heating systems, portable heaters, refrigeration, and such other devices as may be connected to wall type convenience outlets.

(12) A separate bed and clean mattress must be provided for each individual Worker or Couple. If a single bed is provided to a ~~e~~Couple, it may not be smaller than a full size.

#### §90.5. Licensing.

(a) Tex. Gov't Code §2306.922 requires the licensing of Migrant Labor Housing Facilities.

(b) Any Person who wants to apply for a License to operate a Facility may obtain the application form from the Department. The required form is available on the Department's website at <https://www.tdhca.texas.gov/migrant-labor-housing-facilities>.

(c) An application must be submitted to the Department prior to the intended operation of the Facility, but no more than 60 days prior to said operation. Applications submitted to the Department that are not complete, due to missing items and/or information, expire 90 days from Department receipt. In this circumstance, the fees paid are ineligible for a refund.

(d) The fee for a License is \$250 per year, except in such cases where the Facility was previously inspected and approved to be utilized for housing under a State or Federal migrant labor housing program, and that such inspection conducted by a State or Federal agency is provided to the Department. Where a copy of such inspection conducted by a State or Federal agency is less than 90 days old, has no material deficiencies or exceptions, and is provided to the Department prior to the Department's scheduled inspection, the application fee shall be reduced to \$75. However, if an inspection or re-inspection by the Department is required at the sole determination by the Department, the full application fee may apply.

(e) The License is valid for one year from the date of issuance unless sooner revoked or suspended. Receipt of a renewal application that is fully processed resulting in the issuance of a renewed license shall be considered as revoking the previous license, with the effective and expiration dates reflecting the renewal. All licenses have the same effective date as their issuance.

(f) Fees shall be tendered by check, money order, or via an online payment system (if provided by the Department), payable to the Texas Department of Housing and Community Affairs. If any check or other instrument given in payment of a licensing fee is returned for any reason, any License that has been issued in reliance upon such payment being made is null and void.

(g) A fee, when received in connection with an application is earned and is not subject to refund. At the sole discretion of the Department, refunds may be requested provided the fee payment or portion of a payment was not used toward the issuance of a License or conducting of an inspection.

(h) Upon receipt of a complete application and fee, the Department shall review the existing inspection conducted by a State or Federal agency, if applicable and/or schedule an inspection of the Facility by an authorized representative of the Department. Inspections shall be conducted during Business Hours on weekdays that the Department is open, and shall cover all units that are subject to being occupied. Inspections by other State or Federal agencies in accordance with the requirements in 29 CFR §§500.130 - 500.135 may be accepted by the Department for purposes of this License, only if notice is given to the Department prior to the inspection in order for the Department to consider the inspection as being conducted by an authorized representative of the Department in accordance with Tex. Gov't Code §2306.928. In addition, a certification of the additional state standards described in 10 TAC §90.4(c), relating to Standards and Inspections, must be provided by the applicant, along with any supplemental documentation requested by the Department, such as photographs.

(i) The Person performing the inspection on behalf of the Department shall prepare a written report of findings of that inspection. The Department, when it determines it is necessary based on risk, complaint, or information needed at time of application, may conduct follow-up inspections.

(1) If the Person performing the inspection finds that the Facility, based on the inspection, is in compliance with 10 TAC §90.4, relating to Standards and Inspections, and the Director finds that there is no other impediment to licensure, the License will be issued.

(2) If the Person performing the inspection finds that although one or more deficiencies were noted that will require timely corrective action which may be confirmed by the Provider without need for re-inspection, and the Director finds that there is no other impediment to licensure, the License will be issued subject to such conditions as the Director may specify. The applicant may, in writing, agree to these conditions, request a re-inspection within 60 days from the date of the Director's letter advising of the conditions, provide satisfactory documentation to support the completion of the corrective action as may be required by the Department, or treat the Director's imposing of conditions as a denial of the application.

(3) If the Person performing the inspection finds that one or more deficiencies were noted that will require timely corrective action and the deficiencies are of such a nature that a re-inspection is required, the applicant shall address these findings and advise the Department, within 60 days from the date of written notice of the findings, of a time when the Facility may be re-inspected. If a re-inspection is required, the License may not be eligible for the reduced fee described in subsection (d) of this section and the balance of the \$250 fee must be remitted to the Department prior to the re-inspection. If Occupants are allowed to use the Facility prior to the re-inspection the applicant must acknowledge the operation of the Facility in violation of these rules, and pay a fee to the Department as laid out in §90.8 of this chapter (relating to Civil Penalties and Sanctions) through the date the Facility is approved by the inspector, and eligible for licensing. If the results of the re-inspection are satisfactory and the Director finds that there

is no other impediment to licensure, the License will be issued. If it is the determination of the Director that the applicant made all reasonable efforts to complete any repairs and have the property re-inspected in a timely manner, the penalty for operating a Facility without a License may be reduced to an amount determined by the Director, but not less than \$50 per person per day.

(4) If the person performing the inspection finds that the Facility is in material noncompliance with §90.4 of this chapter (relating to Standards and Inspections), or that one or more imminent threats to health or safety are present, the Director may deny the application. In addition, the Department may also take action in accordance with §90.8, relating to Civil Penalties and Sanctions.

(5) If access to all units subject to inspection is not provided or available at time of inspection, the inspection will automatically fail.

(j) If the Director determines that an application for a License ought to be granted subject to one or more conditions, the Director shall issue an order accompanying the License, and such order shall:

(1) Be clearly incorporated by reference on the face of the License;

(2) Specify the conditions and the basis in law or rule for each of them; and

(3) Such conditions may include limitations whereby parts of a Facility may be operated without restriction and other parts may not be operated until remedial action is completed and documented in accordance with the requirements set forth in the order.

(k) Correspondence regarding an application should be addressed to: Texas Department of Housing and Community Affairs, Attention: Migrant Labor Housing Facilities, P.O. Box 12489, Austin, Texas 78711-2489 or migrantlaborhousing@tdhca.texas.gov.

(l) The Department shall inform the applicant in writing, (which may be electronically) addressed to a contact provided on the most recent application, of what is needed to complete the application and/or if a deviation found during the inspection requires a correction in order to qualify for issuance of a License.

(m) For Providers that are housing Workers in hotels or apartments, failing to provide beds or meals as reported during the application process will, ~~if occupied at the time of inspection and~~ upon the Department's confirmation, result in the finding of noncompliance of not meeting state or federal housing standards as defined in the subchapter.

(n) Any changes to an issued License (such as increasing occupancy and/or adding a building or unit) may be made at the sole determination of the Department, based on current rules and policy, within 30 days of the License issuance. Any changes requested more than 30 days after License issuance will require the submission of an application for renewal, new inspection, and new fee payment, per the applicable rate.

(o) An applicant or Licensee that wishes to appeal any order of the Director, including the appeal of a denial of an application for a License or an election to appeal the imposing of conditions upon a License, may appeal such order by sending a signed letter to the Director within thirty (30) days from the date specified on such order, indicating the matter that they wish to appeal.

§90.6. Records.

(a) Each Licensee shall maintain and upon request make available for inspection by the Department, the following records:

- (1) Copies of all correspondence to and from the Department. This shall include the current designation of each Provider;
- (2) A current list of the Occupants of the Facility and the date that the occupancy of each commenced;
- (3) Documentation establishing that all bedding facilities were sanitized prior to their being assigned to the current occupant; and
- (4) Copies of any and all required federal, state, or local approvals and permits, including but not limited to any permits to operate a waste disposal system or a well or other water supply, and any correspondence to or from such approving or permitting authorities.

(b) All such records shall be maintained for a period of at least three years.

(c) A Licensee shall post in at least one conspicuous location in a Facility or in at least one building per site for a scattered site Facility:

- (1) A copy of the License;
- (2) A decal provided by the Department with the licensing program logo and the year for which the License was granted; and
- (3) A complaint procedure poster or notice in at least 20 point bold face type using the form provided on the Department's website at <https://www.tdhca.texas.gov/migrant-labor-housing-facilities>, which is written in English and Spanish. However, at the request of a Provider or Worker, the Department, at its expense, will translate the poster to additional requested languages.
- (4) For hotels, the License and poster described in paragraph (3) of this subsection may be posted in the lobby or front desk area only if this area is clearly visible, allows for easy reading of the aforementioned documents, and is readily accessible to the hotel guests and general public. If the hotel refuses to allow this posting, the License and poster described in this paragraph then must be posted in each room used to house the Workers.

§90.7. Complaints.

(a) If the Department receives any complaint, it shall investigate it by appropriate means, including the conducting of a complaint inspection. Any complaint inspection will be conducted after giving the Provider notice of the inspection and an opportunity to be present. The complainant will be contacted by the Department as soon as possible but no later than 10 days after making a complaint and such a call may be relayed to local authority(s) if a possible life threatening safety or health issue is involved. Complaints received by the Department:

(1) will be accepted through the Department's Internet website, in person at any Department office, or by telephone to 1-833-522-7028, or written notice to the Department (either through mail or electronic mail); and

(2) May be made in English, Spanish, or other language, as needed.

(3) May only be submitted by:

(A) An occupant of the Facility that is the subject of the complaint;

(B) A prospective occupant of the Facility that is the subject of the complaint;

(C) The Designated Representative of a person described by subparagraph (A) or (B) of this paragraph; or (D) An individual, including the owner or tenant of an adjacent property, that has observed a clear violation of this chapter.

(b) On receipt of a complaint, the Department will not later than the fifth day after the date on which the Department receives a complaint, the Department shall notify the Provider by electronic mail that is the subject of the complaint. Notice under this subsection must include:

(1) the date that the complaint was received;

(2) the subject matter of the complaint;

(3) the name of each person contacted in relation to

the complaint, if any; and

(4) the timeline for remedying a complaint that is not otherwise dismissed by the Department.

(c) If the Department is unable to make contact with a Provider of a Facility for the purpose of serving a notification of a complaint, the Department shall serve the notification of the complaint via registered or certified mail, return receipt requested.

(d) If the Department determines that a complaint is unfounded or does not violate the standards adopted by rule, the Department may dismiss the complaint and shall include a statement of the

reason for the dismissal in the record of the complaint. The Department shall provide timely notice of any dismissal of the complaint, including the explanation for the dismissal, to the Provider of the Facility that is the subject of the complaint, and the complainant or their Designated Representative.

(e) A Designated Representative may not be required to reveal the name of any Worker on whose behalf the representative submitted a complaint under this section if the Department reviews the written authorization establishing the representation and verifies that the representative is authorized to submit the complaint. The Department will verify the Designated Representative is authorized through the following process:

(1) A written authorization must be submitted to the Department, using a Department-provided form or another document containing the following:

(A) The name of the Designated Representative, their contact information, and the name of any applicable organization they are representing.

(B) The complainant's name and contact information, if authorized to disclose.

(C) Whether the complainant wishes and authorizes the Designated Representative to disclose their name.

(D) The complainant's employer, contact information, and housing address.

(E) The length of time the authorization is valid for, not to exceed one year, as well as the effective date of the authorization.

(F) A list of the communications the Designated Representative is authorized to conduct on the complainant's behalf.

(G) The signature of both the complainant and the Designated Representative. The complainant's signature may be redacted by the Designated Representative if confidentiality is requested.

(2) If the written authorization indicates that a complainant wishes to maintain confidentiality, the Department will conduct a virtual conference (or, upon the request of the complainant, an in-person meeting that can occur during the complaint investigation including during a follow up inspection) with the Designated Representative and the complainant, to confirm the validity of the written representation authorization, and to discuss any other details of the authorization, as needed.

(f) The Department may seek to protect the identity of any complainant from disclosure, but cannot guarantee a complainant's identity would not be subject to disclosure under the law. However, as stated and conditioned in subsection (e), a Designated Representative may not be required to reveal the name of any Worker on whose behalf the representative submitted a complaint.

(g) A person who owns, establishes, maintains, operates, or otherwise provides a Facility, and a Person who employs a Worker who occupies a Facility may not retaliate against a person for filing a complaint or providing information in good faith relating to a possible violation of this chapter.

(h) Remediation of a complaint:

(1) Not later than the seventh day after the date that notice is received under Tex. Gov't Code §2306.934, the Provider of a Facility shall remedy the complaint.

(2) Proof of ~~f~~ remediation, at the Department's sole discretion and determination will be submitted in the form of visual evidence (such as photos/videos, invoices/receipts, etc.); and a sworn affidavit. A, and/or follow up inspection by the Department's designated inspectors, prior to the end of the prescribed corrective action period, may also be proof of remediation.

(3) For a Provider of a Facility who receives notice under Tex. Gov't Code §2306.934(e) or who does not submit proof of remediation in the manner provided by Subsection (b) of this section, the Department shall have the Facility inspected as soon as possible following the seventh day after the date notice is received under Tex. Gov't Code §2306.934 to ensure remediation of the complaint.

(i) Remediation of a Complaint Regarding Certain Violations: This section applies only to a complaint that alleges a violation that the Department determines poses an imminent hazard or threat to the health and safety of the occupants of the Facility, including violations of rules adopted by the Department concerning sanitation. Examples include but are not limited to: failure to provide minimum sq. footage per person, insufficient or substandard bedding, bed sharing, insufficient kitchen facilities or meals not provided and insufficient waste disposal and interruption in or access to water.

(1) Subject to Subsection (3), not later than the 30th day after the date notice is received under Tex. Gov't Code §2306.934, the Provider of a Facility that is the subject of a complaint described by Subsection (h) of this section shall remedy the complaint.

(2) The Department may refer a complaint described herein to a local authority for immediate inspection of the Facility.

(3) The Provider must relocate or provide for the relocation to another Facility of the occupants of a Facility that is the subject of a complaint under Subsection (h) of this section if the remediation of that complaint is projected to take longer than a period of 30 days. The relocation must be completed within seven days. A Facility to which a Person is relocated under this subsection:

(A) must meet the standards described in §90.4 of this chapter (relating to Standards and Inspections);

(B) must be located in the same vicinity as the vacated Facility;

(C) any moving expenses shall be paid by the Provider; and

(D) Provider shall hand-deliver or send via certified mail, return receipt requested, a written notice in both English and Spanish (or any other language that may be the primary language of the workers involved). This notice shall be in plain language and detail timeframes, procedure for payments/reimbursements, likely time frames for moving, and all relevant phone numbers and other contact information, including the Department's complaint line. Providers must arrange a reader to communicate with illiterate Workers.

(E) These relocation procedures and requirements shall not apply when the Workers housed are temporarily in the United States under an H-2A visa authorized by 8 U.S.C. Section 1101(a)(15)(H)(ii)(a).

(j) The Department may conduct interviews, including interviews of Providers and Occupants, and review such records as it deems necessary to investigate a complaint.

(k) Any violations not resolved in the time frame above will be subject to the enforcement procedure described in §90.8 of this chapter (relating to Civil Penalties and Sanctions).

(l) Complaints regarding Migrant Labor Housing Facilities will be addressed under this section, and not §1.2 of this title (relating to Department Complaint System to the Department).

#### §90.8. Civil Penalties and Sanctions.

(a) When the Director finds that the requirements of the Act or these rules are not being met, he or she may assess civil penalties or impose other sanctions as set forth herein. Nothing herein limits the right, as set forth in the Act, to seek injunctive and monetary relief through a court of competent jurisdiction.

(b) A civil penalty collected by the Department, the county attorney for the county in which the violation occurred, or the attorney general, at the request of the Department, shall be deposited to the credit of the general revenue fund and may be appropriated only to the Department for the enforcement of this chapter.

(c) For violations that present an imminent threat to health or safety or if licensee has a history of violations, if not promptly addressed, the Director may suspend or revoke the affected License.

(d) For violations that the Department determines poses an imminent hazard or threat to the health and safety of the occupants of the facility, including violations of rules adopted by the Department concerning sanitation, the Provider will need to follow the relocation procedure described in 10 TAC §90.7(i)(3) relating to situations and procedures needed when Workers have to be relocated to alternate housing. (e) For each violation of the Act or rules a civil penalty according to the attached penalty schedule but not less than \$50 for each Person occupying the Facility in violation of this

chapter for each day that the violation occurs will be assessed at the Department's sole determination.

(f) An action to collect a civil penalty under this section may be brought by:

- (1) the Department through the contested case hearing process described by Tex. Gov't Code § 2306.930(b);
- (2) the county attorney for the county in which the violation occurred, or the attorney general, at the request of the Department; or
- (3) a Migrant Agricultural Worker if:
  - (A) a complaint regarding the violation for which the civil penalty is sought has been submitted under Tex. Gov't Code §2306.934; and (B) at the time the complaint described by Paragraph (C) is submitted, the worker:
    - (i) lives in the Facility that is the subject of the complaint; and
    - (ii) is not temporarily in the United States under an H-2A visa authorized by 8 U.S.C. Section 1101(a)(15)(H)(ii)(a).

(g) An action to collect a civil penalty under this section may not be brought while:

- (1) a contested case hearing brought by the Department under Tex. Gov't Code §2306.930(b) and relating to the same Facility is pending;
- (2) an action for injunctive relief relating to the same violation is pending under Tex. Gov't Code §2306.932;
- (3) an action brought by a county attorney or the attorney general and relating to the same migrant labor housing facility is pending; or
- (4) the Provider of the Facility that is the subject of the action is:
  - (A) Awaiting for the Facility to be inspected under Tex. Gov't Code §2306.935(c) to confirm remediation of the violation that is the subject of the action; or
  - (B) providing housing at a Facility under Tex. Gov't Code §2306.936(d) to which the Migrant Agricultural Workers who occupied the Facility that is the subject of the action have been relocated under the procedures described in 10 TAC §90.7(i)(3).

(h) A civil penalty under this section begins accruing on the earlier of:

- (1) for a violation with a remediation period described by Tex. Gov't Code §2306.935, the day that:

(A) the Department determines based on information submitted under Tex. Gov't Code §2306.935(b) that the Provider has failed to remedy the violation; or

(B) an inspection described by Tex. Gov't Code §2306.935(c) establishes that the Provider has failed to remedy the violation; or

(2) for a violation with a remediation period described by Tex. Gov't Code §2306.936, the 31st day following the date that notification of the complaint is received from the Department, unless the Provider has relocated under Tex. Gov't Code §2306.936(d) the Migrant Agricultural Workers who occupied the Facility that is the subject of the complaint.

(i) The Department shall issue a civil penalty invoice in accordance with the attached schedule for any findings of noncompliance that remain uncorrected as of the accrual dates noted above, provided that the TDHCA Compliance Division has not approved a corrective plan or extension. These invoices will be sent by electronic mail and USPS to the addresses provided on the most recent TDHCA license application. A civil penalty invoice must be paid within 30 days of issuance by the Department.

(j) In the event that there are multiple findings of noncompliance subject to civil penalties that fall under multiple groups in the attached schedule, the civil penalty shall be for the higher penalty amount.

(k) Failure to timely pay a civil penalty invoice shall cause the TDHCA Compliance Division to refer the unpaid invoice to the TDHCA Legal Division. The Legal Division will first attempt to resolve the matter informally. If the Legal Division is unable to resolve the matter informally, the Director, with the approval of the Board, shall cause a contested case hearing to be docketed before a SOAH administrative law judge in accordance with §1.13 of this title (relating to Contested Case Hearing Procedures), which outlines the remainder of the process. Alternatively, the Department may request that an action to collect the civil penalty be brought by the county attorney for the county in which the violation occurred, or the attorney general.

(l) The court in a suit brought under this chapter may award reasonable attorney's fees to the prevailing party.

(m) Civil penalties assessed regarding Migrant Labor Housing Facilities will be addressed under this section. Nothing herein limits the right, as set forth in the Act, to seek injunctive and monetary relief through a court of competent jurisdiction.

#### §90.9. Dispute Resolution, Appeals, and Hearings.

(a) A Licensee is entitled to appeal any order issued by the Director, including any order as a result of an inspection or a complaint and any order denying a License or issuing a License subject to specified conditions.

- (b) In lieu of or during the pendency of any appeal, a Licensee may request to meet with the Director or, at his or her option, his or her designee to resolve disputes. Any such meeting may be by telephone or in person. Meetings in person shall be in the county where the Facility affected is located, unless the Licensee agrees otherwise.
- (c) A Licensee may request alternative dispute resolution in accordance with the Department's rules regarding such resolution set forth at §1.17 of this title (relating to Alternative Dispute Resolution).
- (d) All administrative appeals are contested cases subject to, and to be handled in accordance with, Chapters 2306 and 2001, Tex. Gov't Code.