

**Attachment A: Preamble, including required analysis, for adopting the repeal of 10 TAC Chapter 90, Migrant Labor Housing Facilities §§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. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.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 re-adoption making changes to an existing activity, adding new requirements and codifying current policies and procedures to the Migrant Labor Housing Facilities rule.

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 work load 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. The same required fee amounts for a license are being retained in the new rule.

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, but is associated with a simultaneous re-adoption making changes to an existing activity, including adding new requirements and codifying current policies and procedures to the Migrant Labor Housing Facilities rule.

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 an to eliminate an outdated rule while adopting a new updated rule under separate action. 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.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between February 23, 2024, and March 22, 2024. Comments regarding the proposed repeal were accepted in writing and by email. No comment on the repeal was received.

The Board adopted the final order adopting the repeal on February 6, 2024.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the repealed sections affect no other code, article, or statute.

## **10 TAC Chapter 90, Migrant Labor Housing Facilities**

### **§90.1 Purpose**

### **§90.2 Definitions**

### **§90.3 Applicability**

### **§90.4 Standards and Inspections**

### **§90.5 Licensing**

### **§90.6 Records**

### **§90.7 Complaints**

### **§90.8 Administrative Penalties and Sanctions**

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

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

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 90, Migrant labor Housing Facilities §§90.1 – 90.9 with changes to the proposed text as published in the February 23, 2024, issue of the Texas Register (49 Tex Reg 941). The purpose of the new rule is to provide compliance with Tex. Gov't Code §2306, Subchapter LL and to update the rule to: clarify staff roles, acceptable inspection standards, Department contact methods and website changes. This rule will also update the number of showerheads and lavatory sinks required to be provided, mandate the presence of a working carbon monoxide detector when a combustible fuel is in use, update laundry machine requirements, and require a separate bed to be provided for all workers or couples. The procedures for refunds, follow up inspections, and license and application validity are clarified. Inspections where access to the facility is not allowed will be considered failed. License posting requirements are updated to address housing in hotels, and complaint procedures have been updated to include additional protections for the complainant.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

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:

The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, adding new requirements and codifying current policies and procedures to the Migrant Labor Housing Facilities rule.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The new rule changes do not require additional future legislative appropriations.

4. The new rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, including adding new requirements and codifying current policies and procedures to the Migrant Labor Housing Facilities rule

7. The new rule will not increase or decrease the number of individuals subject to the rule's applicability.

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, Subchapter LL.

1. The Department has evaluated this new rule and determined that none of the strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This rule relates to the procedures for Migrant Labor Housing Facilities. Other than in the case of a small or micro-business that is an applicant for a new or renewal license, no small or micro business are subject to the rule. It is estimated that approximately 700 small or micro-businesses are such applicants; for those entities the new rule provides for clear and more transparent process for applying for a license for Migrant Labor Housing Facilities and does not result in a negative impact for those small or micro businesses. There are not likely to be any rural communities subject to the new rule because this rule is applicable only to applicants seeking to license a Migrant Labor Housing Facility. The fee for applying for a license is either \$75 or \$250 depending on if the applicant is able to provide an inspection report that is less than 90 days old from an acceptable state or federal agency such as the Texas Workforce Commission (TWC) or not. The higher fee is required if the Department must send its own inspectors.

There are approximately 1,100 rural communities in Texas potentially subject to the proposed rule for which the economic impact of the rule is projected to be \$0. 10 TAC Chapter 90 does not implement financial burdens on rural communities, as the cost are associated with submitting an application for a license are completed entirely by private parties. The approximate number of applications for Migrant Labor Housing Facilities located in rural areas are about 80%.

3. The Department has determined that because there are facilities that are in rural areas, this rule will help ensure housing provided to Migrant workers will be safe and in good condition. Besides the collection of fees associated with submitting an application, there are probable positive economic effects on small or micro-businesses or rural communities that house Migrant workers, although the specific impact is not able to be quantified.

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 has no economic effect on local employment because the rule only addresses the procedures for applicants applying for Migrant Labor Housing Facilities license; therefore, no local employment impact statement is required to be prepared for the new rule.

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..." Considering that the rule only provides procedures for an applicant to obtain a Migrant Labor

Housing Facility license, there are no “probable” effects of the new rule on particular geographic regions.

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 will be codifying current policies and procedures to the Migrant Labor Housing Facility rule. There will not be any significant economic cost to any individuals required to comply with the new rule because the processes described by the rule have already been substantially in place through the rule found at this section being repealed.

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 of the state or local governments because it does not have any requirements that would cause additional costs to applicants.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between February 23, 2024, and March 22, 2024. Comments regarding the proposed rule were accepted in writing with comments received from:

1. Duncan McCook, Texas Cotton Ginners' Association
2. Dave Mauch, Attorney, Texas RioGrande Legal Aid, Inc.
3. Sidney Beaty, Research Analysis, Texas Housers

#### **Rule Section §90.1**

**Comment Summary:** No comments received.

#### **Rule Section §90.2**

**Comment Summary:** Commenter 3 supports the language to define couple.

**Staff Response:** Staff appreciates the support of commenter 3 on the language used in the rule.

#### **Rule Section §90.3**

**Comment Summary:** Commenters 2 and 3 support the requirement that the applicant must facilitate the inspection of the housing or have the inspection automatically fail.

Commenter 2 expressed concern on the increasing use of hotels and motels for long-term worker housing and the suitability of these facilities for this purpose based on the cooking and laundry facilities provided, available space to those housed, and prior absence of are require pre-occupancy inspection.

**Staff Response:** Staff appreciates the support of commenters 2 and 3. Concerning public accommodation use, the previous comment appears to have been written prior to Texas Workforce Commission (TWC) requiring employers to obtain a Department Migrant Labor Housing Facility (MLHF) license for all employers meeting the licensing requirement. This

requirement to obtain the TDHCA MLHF license includes employers using public accommodation housing. Part of obtaining a MLHF license for public accommodation housing is first obtaining a passing preoccupancy TDHCA inspection of the housing facility, which is beholden to the same standards as employer-owned housing. This has caused an increase in the number of public accommodations being inspected.

Concerning laundry facility access, as mentioned above, public accommodation housing that is subject to this rule has the same requirements as above, so these licensees are required to provide access to laundry facilities as specified in 10 TAC §90.4(10).

Concerning kitchen facilities, licensees are required to abide by the square footage requirements mentioned in 10 TAC §90.4(2). The Department is aware that public accommodations housing is often used without kitchen facilities that would meet the Occupation Health and Safety Administration (OSHA) standards cited in the Texas rule. The Department mirrors the TWC enforcement of the cited federal regulations in its enforcement of the Texas rule.

Concerning who is liable to obtain a license, the Department requires employers that “provide” Migrant Farmworker Housing to obtain the license for the housing of their employees. The comment mentions difficulty of determining the true owners of the housing in some instances due to a variety of arrangements of varying degrees of formality. This rule does not exclude any housing from these responsibilities due to the formality or lack thereof of how it was obtained, so the phrase “or obtain[ed] under other working arrangements,” was added to address these situations.

#### **Rule Section §90.4**

**Comment Summary:** Commenter 2 was concerned about the misapplication of the Range Housing Standard as defined in 20 CFR §655.235 or Mobile Housing Standards as defined in 20 CFR §655.304 with Department’s addition of these acceptable federal standards for inspection.

Commenter 2 and 3 support the carbon monoxide detector being required in facilities that use gas or other combustible fuel. Commenter 3 further suggested this be applied to all housing facilities.

Commenter 1 requests clarification if the change to require individual beds be provided to each worker couple includes bedding. Commenters 2 and 3 supports the minimum bed requirement, but suggest a mattress and minimum size requirement for couples.

Commenters 2 and 3 request that the Department reinstate the previous TDHCA requirement of 4 burner stoves in all housing.

**Staff Response:** The Departments lists these as the acceptable standards for clarity, but omitted to specify that the Range Housing Standard, as defined in 20 CFR §655.235 or Mobile Housing Standards as defined in 20 CFR §655.304, are only applicable when the Department accepts an inspection conducted by another state or federal agency such as TWC. When accepting these inspections the Department cannot dictate another agency’s procedures, however when another agency’s inspection is not used the Department will conduct its own inspection. All TDHCA

inspection are based on the OSHA Employment, and Training Administration (ETA) standard, and TDHCA requirements. The proposed rule has been updated to clarify this.

The Department deems the addition of carbon monoxide detectors would unnecessarily reduce the supply of otherwise acceptable housing if imposed on facilities using only electric appliances.

Staff concurs the proposed wording of should be clarified and has updated the change to require a bed and clean mattress instead of the term “bedding.” The minimum size for a bed shared by a couple was also added. The requirement to provide a four-burner stove, instead of other currently allowable alternatives, exceeds the federal minimum standards, and could be limiting for otherwise acceptable housing. Thus, the Department is not recommending further change based on this comment.

### **Rule Section §90.5**

**Comment Summary:** Commenter 3 raises the question on the lower fee payment for applications that do not require a TDHCA inspection, and requests that the language allowing Department discretion in issuing a higher fee be removed.

Commenter 2 and 3 request that the Department codify what supplemental documentation would be requested in addition to an employer’s self-certification of compliance with the requests of 10 TAC §90.4(c).

Commenter 2 supports the changes in §90.5(i and m).

Commenter 3 requests a stricter penalty schedule.

**Staff Response:** The Department does not agree that raising the application fees is appropriate at this time. The higher fee is charged since an on-site inspection will be conducted by the Department. The fees were originally lowered since the Department did not conduct an on-site inspection, and to incentivize compliance with the licensing requirement. This is having the desired effect, and will need to continue for now.

The items listed on the attestation are the same as the Department requirements from 10 TAC §90.4(c). This attestation was originally required so that the Department would be able to accept other state and federal inspections. These items are checked for during TDHCA inspections. Requiring specific additional checklist items would prove to be difficult due to these requirements not applying to all types of housing and would prove to be an administrative burden to the Department at current staffing levels. Currently the Department requests additional documentation from employers based on risk of noncompliance and these requests are situation specific. The Department will add a penalty of perjury statement to the attestation form within 120 days.

Staff appreciates the support of commenter 2.

The penalty rate is specified in statute along with the procedures for enforcement, so at this time the Department cannot make any changes.

#### **Rule Section §90.6**

**Comment Summary:** Commenter 2 is concerned that the language allowing hotels to post the license and complaint line poster in the lobby may result in it being posted where workers will not see it.

**Staff Response:** The language of the change was updated to require that if this option is chosen the poster must be in a common area and easily visible.

#### **Rule Section §90.7**

**Comment Summary:** Commenters 2 and 3 supports the changes in §90.7(b) and (b)(4).

**Staff Response:** Staff appreciates the support of commenters 2 and 3.

#### **Rule Section §90.8**

**Comment Summary:** No comments received.

#### **Rule Section §90.9**

**Comment Summary:** No comments received.

### **CHAPTER 90 MIGRANT LABOR HOUSING FACILITIES**

#### **§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 - 2306.933). 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 H2-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 - 2306.933, 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 - 2306.933.



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

(6) Director--The Executive Director of the Department ~~or its~~ their designated staff.

(7) 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.

(8) Couple--A pair of individuals, people, 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.

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

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

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

(124) 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.

(132) Worker--A 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, ~~or~~ 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 --.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><https://www.tdhca.state.tx.us/migrant-housing/index.htm>.

(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. [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](#) SF 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) ~~Communal~~ 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 addition to mechanical clothes washers, one laundry tray per 100 persons shall be provided.~~ 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 bedding must be provided for each individual worker or Couple. If a single bed is provided to a couple, it may not be smaller than a full queen 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><https://www.tdhca.state.tx.us/migrant-housing/index.htm>.

(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.

(j) 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 Migrant Labor Housing 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 by signed letter](#), 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 although one or more deficiencies were noted that will require timely corrective action, the deficiencies are of such a nature that a re-inspection is required, the applicant shall address these findings and advise [the inspector or 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 will](#) 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 of up to \$200 per day of operation 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 \$200.

(4) If the person performing the inspection finds that the Migrant Labor Housing 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 Administrative 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 Migrant Labor Housing 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, TX 78711-2489 [or migrantlaborhousing@tdhca.texas.gov](mailto:migrantlaborhousing@tdhca.texas.gov).

(l) The Department shall ~~issue a letter informing~~ inform the applicant in writing 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) 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.

(n) 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 poster provided by the Department or the following notice in at least 20 point bold face type: If you have concerns or problems with the condition or operation of this Facility or your unit, the Texas Department of Housing and Community Affairs (the Department) is the state agency that licenses and oversees this Facility. You may make a complaint to the Department by calling, toll-free, 1-833-522-7028, or by writing to Migrant Labor Housing c/o TDHCA, P.O. Box 13941, Austin, TX 78711-3941. This office has staff that speaks Spanish. To the fullest extent that we can, we will keep your identity confidential. The Department's rules prohibit any Facility or Provider from retaliating against you for making a complaint. Si Usted tiene preocupaciones o problemas con la condición u operación de esta instalación o su unidad, el Departamento de Vivienda y Asuntos Comunitarios del Estado de Texas (El Departamento o TDHCA) es la agencia que da licencia y supervisa esta instalación. Usted puede mandar sus quejas al Departamento por teléfono gratuitamente por marcando 1-833-522-7028 o escribiendo a Migrant Labor Housing c/o TDHCA, P.O. Box 13941, Austin, TX 78711-3941. La oficina tiene personas que hablan español. A lo mas posible que podemos, protegeremos su identidad. Las regulaciones del Departamento prohíben cualquier represalias por la instalación por el operador contra personas que se quejen contra ellos.

(4) For hotels, the License and poster described in §90.6(4)(c)(3) 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 §90.6(4)(c)(3) 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.

(b) A Licensee, through its Provider, shall be provided a copy of the substance of any complaint (or, if the complaint was made verbally, a summary of the matter) and given a reasonable opportunity to respond. Generally, this shall be 10 business days.

(1) Complaints may be made in writing or by telephone to 1-833-522-7028.

(2) Complaints may be made in English, Spanish, or other language.

(3) To the fullest extent permitted by applicable law, the identity of any complainant shall be maintained as confidential (unless the complainant specifically consents to the disclosure of their identity or requests that the Department disclose their identity).

(4) Licensees and Providers shall not engage in any retaliatory action against an Occupant for making a complaint in good faith. Any retaliatory action may be subject to administrative penalties and sanctions per §90.8 of this chapter.

(c) If any complaint involves matters that could pose an imminent threat to health or safety, all time frames shall be accelerated, and such complaint shall be addressed as expeditiously as possible.

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

(e) The Department shall review the findings of any inspection and its review and, if it finds a violation of the Act or these rules to have occurred, issue a notice of violation.

(f) A notice of violation and order will be sent to the Licensee to the attention of the Provider.

(g) The notice of violation will set forth:

(1) The complaint or other matter made the subject of the notice;

(2) The findings of fact;

(3) The specific provisions of the Act and/or these rules found to have been violated;

(4) The required corrective action;

(5) Any administrative penalty or other sanction to be assessed; and

(6) The timeframe for the Licensee either to agree to the recommended corrective action, and accept the administrative penalties and/or sanctions, or to appeal the matter.

(h) The order will set forth:

(1) The complaint or other matter made the subject of the order;



- (2) The findings of fact;
  - (3) The specific provisions of the Act and/or these rules found to have been violated;
  - (4) The required corrective action;
  - (5) Any administrative penalty or other sanction assessed; and
  - (6) The date on which the order becomes effective if not appealed or otherwise resolved.
- (i) 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 Administrative 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 administrative penalties or impose other sanctions as set forth in subsections (b) - (d) of 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.
- (b) For each violation of the Act or rules a penalty of up to \$200 per day per violation may be assessed.
- (c) For violations that present an imminent threat to health or safety, if not promptly addressed, the Director may suspend or revoke the affected License.
- (d) Administrative penalties assessed regarding Migrant Labor Housing Facilities will be addressed exclusively under this section, and are not subject to 10 TAC Chapter 2, relating to Enforcement.

#### **§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 migrant labor housing 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.

