

Texas Administrative Code - Proposed Rule
Community Development Block Grant (CDBG) Program
(pending publication in the Texas Register – approx. December 6, 2019)

CHAPTER 30. COMMUNITY DEVELOPMENT
SUBCHAPTER A. TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

The Texas Department of Agriculture (Department) proposes amendments to Title 4, Part 1, Chapter 30, Subchapter A, Division 1, §30.3, relating to Program Overview; the repeal of Subchapter A, Division 3, §30.60, relating to the Disaster Relief Fund, and §30.61, relating to the Urgent Need Fund; and new Subchapter A, Division 3, §30.60, relating to the State Urgent Need Fund. The proposal repeals two funding categories in the Texas Community Development Block Grant (TxCDBG) program no longer administered by the Department and includes rules for a new category of funding that will be administered by the Department.

Sections 30.60 and 30.61 are proposed for repeal to remove rules relating to the Disaster Relief Fund and the Urgent Need Fund, two funding categories in the TxCDBG program which are no longer administered by the Department. New §30.60 adds rules related to the State Urgent Need Fund, which replaces the former disaster relief fund category. The proposed rules are related to the State Urgent Need Fund application cycle, eligibility requirements, and selection procedures. Amendments to §30.3 reflect the changes made as a result of the proposed repeal and new rules.

Suzanne Barnard, Director for CDBG Programs, has determined that for the first five years the proposal is in effect, there will be no adverse fiscal implications for state or local governments as a result of the proposal.

Ms. Barnard has also determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of administering the rules will be a more streamlined process to improve and increase access to emergency funding for local communities in need. There will be no adverse economic effect on micro-businesses, small businesses or individuals as a result of the proposal. There will be no adverse impact to rural communities.

Ms. Barnard has provided the following information related to the government growth impact statement, as required pursuant to Texas Government Code, §2001.0221. During the first five years the proposal is in effect:

- (1) no new or current government programs will be created or eliminated;
- (2) no employee positions will be created or eliminated;
- (3) there will be no increase or decrease in future legislative appropriations to the Department;
- (4) there will be no increase or decrease in fees paid to the Department;
- (5) there will be a repeal of existing regulations and new regulations will be created by the proposal;
- (6) there will be no increase or decrease to the number of individuals subject to the proposal, as communities must comply with CDBG program rules and eligibility requirements in order to receive funding from the various TxCDBG programs; and
- (7) the proposal is not anticipated to have an adverse effect on the Texas economy.

Written comments on the proposal may be submitted to Suzanne Barnard, Director for CDBG Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to RuleComments@TexasAgriculture.gov. Comments must be received no later than 5 p.m. on December 30, 2019.

DIVISION 1. GENERAL PROVISIONS

4 TAC §30.3

The proposal is made under Texas Government Code §487.051, which designates the Department as the agency to administer the federal community development block grant non-entitlement program, and §487.052, which provides authority for the Department to adopt rules as necessary to implement Chapter 487.

The code affected by the proposal is Texas Government Code, Chapter 487.

§30.3. Program Overview.

(a) Fund categories. TxCDBG Program assistance is available through the following seven fund categories.

(1) – (4) (No change.)

(5) State Urgent Need (SUN) Fund is available for assistance and recovery following a disaster situation.

[Disaster Relief/Urgent Needs Fund is available for assistance and recovery following a disaster situation or for qualifying urgent infrastructure needs. This fund is divided into two programs:

(A) Disaster Relief (DR) Fund provides assistance for eligible activities to address emergency situations where an official state or federal disaster declaration has been issued; and

(B) Urgent Need (UN) Fund provides assistance for eligible activities that will restore water or sewer infrastructure whose sudden failure has resulted in death, illness, injury or pose an imminent threat to life or health within the affected jurisdiction.]

(6) – (7) (No change.)

(b) (No change.)

DIVISION 3. ADMINISTRATION OF PROGRAM FUNDS

4 TAC §30.60, §30.61

The proposal is made under Texas Government Code §487.051, which provides the Department authority to administer the state's community development block grant non-entitlement program, and §487.052, which provides authority for the Department to adopt rules as necessary to implement Chapter 487.

The code affected by the proposal is Texas Government Code, Chapter 487.

[§30.60. Disaster Relief (DR) Fund.]

[§30.61. Urgent Need (UN) Fund.]

DIVISION 3. ADMINISTRATION OF PROGRAM FUNDS

4 TAC §30.60, §30.61

The proposal is made under Texas Government Code §487.051, which provides the Department authority to administer the state's community development block grant non-entitlement program, and §487.052, which provides authority for the Department to adopt rules as necessary to implement Chapter 487.

The code affected by the proposal is Texas Government Code, Chapter 487.

§30.60. State Urgent Need (SUN) Fund.

(a) Application cycle. Applications are accepted on an as-needed basis throughout a program year to support relief efforts and activities related to addressing a natural disaster in which a state disaster declaration has been issued.

(b) Eligibility determination.

(1) To be eligible to apply, a community must be named in:

(A) a Governor's proclamation of disaster; or

(B) a request by the Governor's designee for state agencies to assist the community in responding to the event.

(2) Disaster events which have received a Presidential declaration of disaster, or for which the Governor's Request for Presidential Disaster Declaration has been submitted and is pending, are not eligible for SUN funding.

(3) For drought-related disaster events, the community must also have reported to the Texas Commission on Environmental Quality that inadequate water is available, as described in the application guide.

(c) Eligible activities. Eligible SUN activities include repair, replacement, rehabilitation, or improvement of public infrastructure.

(1) SUN funded activities must address damage caused by the disaster event or resolve an issue that is a direct result of the disaster event.

(2) SUN funded activities must make permanent improvements and not be temporary in nature.

(3) Mitigation measures such as elevating critical equipment or installing generators to avoid future damage are not eligible as the primary SUN funded project but may be included to further improve an otherwise eligible project.

(4) Redundant or backup systems are not eligible for SUN funding.

(5) Activities to address privately-owned water and wastewater systems may be considered if matching funds are included in the application.

(d) Selection procedures. To qualify for the SUN Fund, a community must meet the following criteria. Detailed selection factors, and other eligibility and project requirements are available in the application guideline.

(1) The situation addressed by the community must be both unanticipated and beyond the community's control.

(2) The problem being addressed must be of recent origin. This means that the application for assistance must be submitted to the department no later than six months from the date of the state issued disaster declaration listing the community's jurisdiction.

(3) The community must demonstrate that adequate local funds are not available, i.e., the community has less than six months of unencumbered general operations funds available in its balance as evidenced by the last available audit required by state statute, or funds from other state or federal sources are not available to completely address the problem.

(4) The department may consider whether funds under an existing TxCDBG contract are available to be reallocated to address the situation.

(5) The department may determine that a community with a history of unsatisfactory performance and/or management capacity on previous TxCDBG contracts may still be eligible for funding under the SUN Fund; however, the contract administrator for the SUN Fund grant must be approved by the department.

(e) Award limits. A community may not apply for or receive more than one SUN Fund grant award to address a single disaster situation.

(1) Activities that benefit a utility system must include all beneficiaries of the system, unless a specific target area is identified based on the proposed improvements.

(2) The department will not consider multiple applications from different applicants that benefit substantially the same project area.

(3) Applications that address natural disaster events across multiple jurisdictions may be eligible for larger grant amounts as described in the application guide.

(f) Funding priorities.

(1) The department will prioritize applications for safe drinking water over other eligible activities.

(2) The department may also prioritize the use of SUN funds for other activities by announcing the priority on the department's website and/or the application guide.

(g) Funded projects. Due to the urgent nature of projects, activities funded under the SUN Fund must be completed within eighteen months from the start date of the contract agreement.