

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. “(No change)” indicates that existing rule text at this level will not be amended.

TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 101. GENERAL ADMINISTRATION

7 TAC §101.2

The Texas State Securities Board proposes an amendment to §101.2, concerning Classification of Regulatory Standards, to make nonsubstantive changes. The proposal would amend subsection (e) to conform terminology to the Texas Securities Act and existing rules. The statutory reference in subsection (f) would be updated to refer to the codified version of the Act, which became effective January 1, 2022. Subsection (f) would also be reorganized, and language concerning a fee that is duplicative of a section in the Act would be replaced with a reference to the statutory provision setting the amount of the fee.

The amendment is being made pursuant to the agency's periodic review of its rules.

Marlene Sparkman, General Counsel, has determined that for the first five-year period the proposed amendment is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed amendment.

Ms. Sparkman has also determined that for each year of the first five years the proposed amendment is in effect the public benefit expected as a result of adoption of the proposed amendment would be improved clarity and statutory compliance by ensuring the rule is current and accurate and that it conforms to §4006.058 of the Act, which would promote transparency and efficient regulation. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed amendment will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. There is no anticipated impact on local employment.

Ms. Sparkman has also determined that for the first five-year period the proposed amendment is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally, the proposed amendment does not create a new regulation, or expand, limit, or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendment is proposed under the authority of the Texas Government Code, Section 4002.151. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposed amendment affects Texas Government Code §4006.058.

§101.2. Classification of Regulatory Standards.

(a) - (d) (No change.)

(e) Opinions. Statements made and opinions expressed orally or in writing by personnel of the State Securities Board in response to inquiries or otherwise, and not specifically identified and promulgated as rules, shall not be considered regulatory standards of the Board and shall not be considered binding upon the Commissioner in connection with specific adjudications undertaken by the Commissioner thereafter. The Commissioner may refuse to answer any question based upon a hypothetical fact situation.

(f) Interpretations by General Counsel.

(1) The Board's General Counsel may respond to inquiries concerning interpretations of the Texas Securities Act or these sections, provided sufficient relevant facts are given and the situation is not hypothetical. [A nonrefundable fee of \$100 must accompany each inquiry.] The General Counsel may refuse to respond to any inquiry. Responses to inquiries may take the following forms:

(A) - (B) (No change.)

(C) an opinion that, under the facts as stated by the inquiring party, a specific exemption appears to be available; this opinion must be followed by a caveat that:

(i) - (ii) (No change.)

(iii) the Texas Securities Act, §4006.153 [§37], places the burden of proof on the party claiming the exemption; and

(iv) (No change.)

(D) (No change.)

(E) a statement that no interpretation will be expressed with regard to a given fact situation; or

(F) (No change.)

(2) A nonrefundable fee in the amount set forth in the Texas Securities Act, §4006.058, must accompany each inquiry.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 27, 2023.

TRD-202301176

Travis J. Iles

Securities Commissioner

State Securities Board

Earliest possible date of adoption: May 7, 2023

For further information, please call: (512) 305-8303



CHAPTER 103. RULEMAKING PROCEDURE

7 TAC §103.6

The Texas State Securities Board proposes an amendment to §103.6, concerning Negotiated Rulemaking, to correct a typographical error in subsection (c). Specifically, the word "in" which is inadvertently missing from this subsection would be inserted where it was intended.

The need for the change was identified as a result of the agency's periodic review of its rules.

Clint Edgar, Deputy Securities Commissioner, has determined that for the first five-year period the proposed amendment is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed amendment.

Mr. Edgar has also determined that for each year of the first five years the proposed amendment is in effect the public benefit expected as a result of adoption of the proposed amendment will be to have a clear and accurate rule. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed amendment will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. There is no anticipated impact on local employment.

Mr. Edgar has also determined that for the first five-year period the proposed amendment is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally, the proposed amendment does not create a new regulation, or expand, limit, or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register*. Written comments should be submit-

ted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendment is proposed under the authority of the Texas Government Code, Sections 4002.151 and 4002.1535. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 4002.1535 requires the Board to develop a policy to encourage the use of negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of Board rules; and appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the Board's jurisdiction.

The proposed amendment affects Chapter 2008 of the Texas Government Code and the Texas Securities Act, Texas Government Code Sections 4001.001-4008.105.

§103.6. *Negotiated Rulemaking.*

(a) - (b) (No change.)

(c) Notice of intent to engage in negotiated rulemaking. After considering the convener's recommendation and report, the Commissioner may direct the Agency Staff to engage in negotiated rulemaking in accordance with the provisions of Government Code, Chapter 2008, and authorize the Agency Staff to perform the duties and requirements set forth in Chapter 2008, including providing any required notices, establishing a negotiated rulemaking committee, and appointing the members of the committee, and appointing a facilitator.

(d) - (f) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 27, 2023.

TRD-202301177

Travis J. Iles

Securities Commissioner

State Securities Board

Earliest possible date of adoption: May 7, 2023

For further information, please call: (512) 305-8303



CHAPTER 104. PROCEDURE FOR REVIEW OF APPLICATIONS

7 TAC §§104.2, 104.3, 104.6

The Texas State Securities Board proposes amendments to §104.2, concerning Purpose; §104.3, concerning Definition of Days; and §104.6, concerning Exceeding the Time Periods. The amendments are being made pursuant to the agency's periodic review of its rules.

Sections 104.2, 104.3, and 104.6 would be amended to more accurately refer to the relevant sections in the Chapter, and the reference to a section of the Texas Securities Act in subsection

(f) of 104.6 would be updated to refer to the codified version of the Act in the Texas Government Code, which became effective January 1, 2022.

Clint Edgar, Deputy Securities Commissioner; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the proposed amendments are in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed amendments are in effect the public benefits expected as a result of adoption of the proposed amendments will be improved clarity and a statutory reference will conform to the codified version of the Act which would promote transparency and efficient regulation. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed amendments will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed amendments are in effect: they do not create or eliminate a government program; they do not require the creation or elimination of existing employee positions; they do not require an increase or decrease in future legislative appropriations to this agency; they do not require an increase or decrease in fees paid to this agency; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or negatively affect the state's economy. Additionally, the proposed amendments do not create a new regulation, or expand, limit, or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed sections in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendments are proposed under the authority of the Texas Government Code, Section 4002.151. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Government Code §2005.003, and the following sections of the Texas Securities Act: Texas Government Code §4002.154; Chapter 4003, Subchapters A, B, and C; and Chapter 4004, Subchapters A-G.

§104.2. Purpose.

Sections 104.2 - 104.6 of this title [These sections] are intended to implement the provisions of Texas Government Code, Chapter 2005. They are not intended to supersede any substantive requirement of the

Texas Securities Act or Board rules. If a provision under one of these sections would cause such a conflict, the provision will not be given effect under the particular circumstances giving rise to the conflict.

§104.3. Definition of Days.

For purposes of §§104.2 - 104.6 of this title [these sections] "days" means each calendar day without any exclusions.

§104.6. Exceeding the Time Periods.

(a) The Agency may exceed the time periods set forth in §104.4 or §104.5 of this title [these sections] if:

(1) the number of permits and registration authorizations exceeds by 15% or more the number processed in the same calendar quarter of the preceding year;

(2) the Securities and Exchange Commission, CRD, IARD, or another public or private entity, including the applicant itself, causes the delay;

(3) the applicant requests delay; or

(4) other conditions exist that give the Agency good cause for exceeding the established time periods.

(b) If it appears to the applicant that for reasons other than those set forth in subsection (a)(2) of this section, the Agency exceeded the time periods [set forth in these sections], the applicant may appeal by filing a complaint in writing with the Deputy Commissioner who shall provide the staff with a copy of the complaint immediately.

(c) - (e) (No change.)

(f) If the complaint is decided in favor of the staff, the applicant may appeal the decision by requesting a hearing before the Commissioner pursuant to the Texas Securities Act, §4007.107(a) [§24-A].

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 27, 2023.

TRD-202301180

Travis J. Iles

Securities Commissioner

State Securities Board

Earliest possible date of adoption: May 7, 2023

For further information, please call: (512) 305-8303



TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 59. CONTINUING EDUCATION REQUIREMENTS

16 TAC §59.3

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 59, §59.3, regarding Continuing Education Requirements. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 59, implement Texas Occupations Code, Chapter 51, Texas Department of Licensing and Regulation.

The proposed rule is necessary to implement rules being concurrently proposed which removed the requirement for registered accessibility specialists to meet continuing education requirements with an approved course provider. The proposed rules modify the list of occupations which are subject to the continuing education requirements of 16 TAC, Chapter 59, by removing registered accessibility specialists.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §59.3, to remove registered accessibility specialists from the list of licensees that must comply with continuing education provider requirements.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Tony Couvillon, has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase in revenue to the state or local government as a result of enforcing or administering the proposed rules.

Tony Couvillon has determined that for each year of the first five years the proposed rule is in effect, there will be an estimated loss in revenue to state government in the amount of \$2,900 per year. This is a result of the loss of registration fees and course approval fees that will no longer be paid by providers of continuing education for registered accessibility specialists, who are no longer required to hold a license.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rules will not affect a local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, providers that offer continuing education courses for only registered accessibility specialists will be able to offer their courses to registrants without the need to be licensed by TDLR, and no provider will need to have a registered accessibility specialist continuing education course approved. This eases regulation, saves these providers money, and might allow more potential providers to enter the industry.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the agency has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the agency has determined the following:

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do not require an increase or decrease in fees paid to the agency. The proposed rules require a decrease in fees to the agency by removing the occupation of registered accessibility specialist from the rules, which then removes the requirement for continuing education providers that offer only registered accessibility specialist continuing education courses to pay a license application fee to obtain a license, and the requirement to submit those types of courses to TDLR for approval and pay the corresponding fee.
5. The proposed rules do not create a new regulation.
6. The proposed rules expand, limit, or repeal an existing regulation. The proposed rule limits an existing regulation by removing the occupation of registered accessibility specialists from the rules.
7. The proposed rules do increase or decrease the number of individuals subject to the rules' applicability. The proposed rule decreases the number of persons subject to the rule's applicability by removing the requirement for providers that offer only registered accessibility specialists continuing education courses to obtain a license.
8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the

absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules>; by facsimile to (512) 475-3032; or by mail to Monica Nuñez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY

The proposed rule is proposed under Texas Occupations Code, Chapter 51, and Texas Government Code, Chapter 469, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rule is those set forth in Texas Occupations Code, Chapter 51, and Texas Government Code, Chapter 469. No other statutes, articles, or codes are affected by the proposed rule.

§59.3. Purpose and Applicability.

These rules are promulgated to establish continuing education provider and course requirements for the following occupations regulated by the Department of Licensing and Regulation:

(1) - (6) (No change.)

~~[(7) Registered accessibility specialists, as provided by Texas Government Code, Chapter 469. Additional continuing education requirements relating to registered accessibility specialists may be found in Chapter 68 of this title.]~~

(7) [(8)] Towing operators, as provided by Texas Occupations Code, Chapter 2308. Additional continuing education requirements relating to towing operators may be found in Chapter 86 of this title.

(8) [(9)] Water well drillers and pump installers, as provided by Texas Occupations Code, Chapters 1901 and 1902. Additional continuing education requirements relating to water well drillers and pump installers may be found in Chapter 76 of this title.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 23, 2023.

TRD-202301168

Della Lindquist

Interim General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: May 7, 2023

For further information, please call: (512) 475-4879



CHAPTER 68. ELIMINATION OF ARCHITECTURAL BARRIERS

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas

Administrative Code (TAC), Chapter 68, Subchapter A, §68.10; Subchapter B, §68.20 and §68.30; Subchapter D, §68.50; Subchapter F, §§68.70, 68.75, and 68.76; Subchapter H, §68.90 and §68.93; new rules at 16 TAC, Chapter 68, Subchapter A, §68.11 and §68.12; Subchapter B, §§68.21, 68.22, and 68.31; Subchapter C, §§68.40 - 68.42; Subchapter D, §§68.51 - 68.53; Subchapter F, §§68.73, 68.74, and 68.77; and the repeal of existing rules at 16 TAC, Chapter 68, §§68.31, 68.51 - 68.54, 68.73, 68.74, 68.79, 68.100 and §68.101, regarding the Elimination of Architectural Barriers program; and the addition of subchapter titles to the existing chapter. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 68, implement Texas Government Code, Chapter 469.

The proposed rules implement changes suggested during the internal four-year rule review, incorporate department procedures for registered accessibility specialists, amend outdated rule language, and restructure the existing rules for better organization and for the reader. The proposed rules also include changes to continuing education requirements to provide additional options for licensees.

The proposed rules are necessary to establish requirements regarding accessibility to the public, registered accessibility specialists, building and facility owners, and design professionals.

Advisory Committee Recommendations

The proposed rules were presented to and discussed by the Elimination of Architectural Barriers Advisory Committee at its meeting on February 27, 2023. The Advisory Committee made the following changes to the proposed rules: §§68.10, 68.20, 68.21, 68.30, 68.41, 68.42, 68.50 - 68.53, and 68.74. The Advisory Committee voted and recommended that the proposed rules with changes be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The proposed rules create new Subchapter A, General Provisions, which includes §68.1 and §§68.10 - 68.12.

The proposed rules amend §68.10, Definitions, which revises the definition of "completion of construction" to provide clarity for documenting when construction has been completed; clarifies the definition of owner and the authority of an individual employed by an owner; adds terms for clarification; and removes definitions that are not used in the chapter or otherwise have common meanings. The proposed rules renumber the remaining definitions.

The proposed rules add new §68.11, Technical Standards and Technical Memoranda, to incorporate requirements from §68.100, which is proposed for repeal, and removes the requirement that a technical memorandum which has been drafted by the department be reviewed by the Elimination of Architectural Barriers Advisory Committee.

The proposed rules add new §68.12, Forms, which prescribe the requirements and limitations for forms submitted to and issued by the department.

The proposed rules create new Subchapter B, Registration Requirements; Exemptions, which includes §§68.20 - 68.22 and §68.30 and §68.31.

The proposed rules amend §68.20, Buildings and Facilities Subject to Compliance with the Texas Accessibility Standards, to update the language for clarity, adds provisions for pedestrian components, and relocates exemptions for primary residences to §68.30, and the option for registration and review of projects with an estimated cost of less than \$50,000 to new proposed §68.21.

The proposed rules add new §68.21, Registration of Project Required, to centralize the requirement for registration of all projects subject to the Act and state leases; and adds the provision that projects less than \$50,000 may be registered, which was relocated from §68.20, as discussed above.

The proposed rules add new §68.22, State Leases, to incorporate requirements from §68.101, which is proposed for repeal.

The proposed rules amend §68.30, Exemptions, to relocate the exemption for primary residences from §68.20.

The proposed rules repeal §68.31, Variance Procedures, as the text is being repropounded due to extensive changes outlined below.

The proposed rules add new §68.31, Variance Procedures, to clarify the process for applying for a variance or appealing the denial of a variance request in a format that provides ease of reading for the reader.

The proposed rules create new Subchapter C, Owner Responsibilities, which include §§68.40 - 68.42.

The proposed rules add new §68.40, Owner Responsibilities, to define when an owner is subject to the chapter and clarify the duties and requirements an owner must comply with.

The proposed rules add new §68.41, Inspection Required, to prescribe the timeline and requirements that an owner must comply with when securing an inspection following completion of construction on a project.

The proposed rules add new §68.42, Designated Agent, to clarify the role of a designated agent who may act on behalf of an owner and the process to designate that person.

The proposed rules create new Subchapter D, Construction Documents; Inspections; and Compliance, which includes §§68.50 - 68.53.

The proposed rules amend §68.50, Submission of Construction Documents, to eliminate unnecessary requirements due to the online registration system; incorporates the provision that construction documents submitted to the department are department property from §68.51, which is proposed for repeal; and amends the rules for clarity and to update the language.

The proposed rules repeal §68.51, Review of Construction Documents, as the text is being repropounded due to extensive changes outlined below.

The proposed rules add new §68.51, Plan Review Requirements, to incorporate §68.51, Review of Construction Documents which is proposed for repeal, to update language and clarify requirements related to review of construction documents in a manner that is easier to read.

The proposed rules repeal §68.52, Inspections, as the text is duplicative to provisions in §68.41 and §68.52.

The proposed rules add new §68.52, Inspections and Corrective Modifications, to include inspection report requirements from department procedures and incorporates provisions from §68.52,

Inspections, which is proposed for repeal, and §68.53, Corrective Modifications Following Inspection, which is proposed for repeal.

The proposed rules repeal §68.53, Corrective Modifications Following Inspection, as the text is incorporated in new §68.52, discussed above.

The proposed rules add new §68.53, Transmittal Letters, to clarify the requirements related to transmittal letters by incorporating department procedures for registered accessibility specialists.

The proposed rules repeal §68.54, as the text is duplicative to provisions in proposed new §68.52, Inspections and Corrective Modifications.

The proposed rules create new Subchapter E, Advisory Committee, which includes §68.65.

The proposed rules create new Subchapter F, Registered Accessibility Specialists, which includes §68.70, §§68.73 - 68.77.

The proposed rules amend §68.70, Registered Accessibility Specialists--Qualification for Certification, by standardizing the language and format with other department program rules for license applications.

The proposed rules repeal §68.73, Registration Requirements-Renewal, as the text is being repropounded due to extensive changes outlined below.

The proposed rules add new §68.73, Registered Accessibility Specialist Certification--Renewal Requirements, incorporating requirements for renewal of a certification from §68.73, which is proposed for repeal, and standardizes language and format with other TDLR program rules for renewal.

The proposed rules repeal §68.74, Continuing Education, as the text is being repropounded due to extensive changes outlined below.

The proposed rules add new §68.74, Continuing Education, to reduce the number of hours required for a registered accessibility specialist to renew a certification; removes the requirement that to be eligible for continuing education credit, a course must be approved by the department; and standardizes language for continuing education with other TDLR rules.

The proposed rules amend §68.75, Responsibilities of the Registered Accessibility Specialist, which incorporates department procedures; relocates requirements related to shared services to new §68.77; prescribes a time for maintaining records; and clarifies language.

The proposed rules amend §68.76, Standards of Conduct for the Registered Accessibility Specialist, to provide straightforward conflict of interest provisions; removes provisions related to the use of the state seal, which is not regulated by the department; and clarifies language throughout the section.

The proposed rules add new §68.77, Shared Services, which incorporates provisions from §68.75, discussed above, and department procedures for registered accessibility specialists, and sets requirements for a registered accessibility specialist to engage another registered accessibility specialist to assist in providing services to an owner.

The proposed rules repeal §68.79, Contract Providers, as this license type is not issued by the department.

The proposed rules create new Subchapter G, Fees, which includes §68.80.

The proposed rules create new Subchapter H, Enforcement, which includes §68.90 and §68.93.

The proposed rules amend §68.90, Administrative Sanctions or Penalties, to remove references to the department procedures for registered accessibility specialists as they are being incorporated into the proposed rules; remove references to contract providers which is a license type that is not issued at the department.

The proposed rules amend §68.93, Complaints, Investigations, and Audits, to remove the references to contract providers and clarify inspection provisions to align with technological advances.

The proposed rules repeal §68.100, Technical Standards and Technical Memoranda, which has been repropoed and renumbered as discussed above.

The proposed rules create new Subchapter I, General Technical Requirements, which includes §§68.102 - 68.104.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state governments.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rules will not affect a local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

The proposed rules incorporate department procedures, amend outdated rule language, restructure the existing rules for better organization and for the reader, and in general provide for better implementation and regulation of the required accessibility standards of Texas. These changes will help further ensure that each building and facility subject to the statute and rules is accessible to and functional for persons with disabilities, without causing the loss of function, space, or facilities.

By removing the requirement that some of the continuing education for registered accessibility specialists must be a department-approved course, the proposed rules will allow those licensees to also earn continuing education hours from other providers that offer a broad range of courses in accessibility and industry specific topics. The proposed rules also decrease the number of continuing education hours required for registration renewal from

eight to four, which potentially decreases the amount of money and time a registrant must spend on continuing education.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the agency has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the agency has determined the following:

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules do not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do not require an increase or decrease in fees paid to the agency.
5. The proposed rules do not create a new regulation.
6. The proposed rules expand, limit, or repeal an existing regulation. The proposed rule expands an existing regulation by adding pedestrian route components as a public accommodation subject to the Texas Accessibility Standards, by requiring the owner, owner's designated agent, or an individual representing the owner to be present during the required inspection for accessibility standards compliance, and by requiring the use of various no-cost documents or forms. The proposed rule limits an existing regulation by removing the requirement for registered accessibility specialists to complete continuing education courses approved by TDLR. The proposed rule also reduces the number of hours required for renewal of a certification, but enable a licensee the ability to access a broad range of providers to meet those requirements.
7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.

8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules>; by facsimile to (512) 475-3032; or by mail to Monica Nuñez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

16 TAC §§68.31, 68.51 - 68.54, 68.73, 68.74, 68.79, 68.100, 68.101

STATUTORY AUTHORITY

The proposed repeals are proposed under Texas Occupations Code, Chapter 51, and Government Code, Chapter 469, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed repeals are those set forth in Texas Occupations Code, Chapters 51, and Texas Government Code, Chapter 469. No other statutes, articles, or codes are affected by the proposed repeals.

§68.31. *Variance Procedures.*

§68.51. *Review of Construction Documents.*

§68.52. *Inspections.*

§68.53. *Corrective Modifications Following Inspection.*

§68.54. *Review and Inspection of Buildings and Facilities with an Estimated Construction Cost of Less than \$50,000 or Not Subject to the Act.*

§68.73. *Registration Requirements--Renewal.*

§68.74. *Continuing Education.*

§68.79. *Contract Providers.*

§68.100. *Technical Standards and Technical Memoranda.*

§68.101. *State Leases.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 23, 2023.

TRD-202301167

Della Lindquist

Interim General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: May 7, 2023

For further information, please call: (512) 475-4879

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §§68.10 - 68.12

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, and Government Code, Chapter 469, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, and Texas Government Code, Chapter 469. No other statutes, articles, or codes are affected by the proposed rules.

§68.10. *Definitions.*

The following words and terms, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--Texas Government Code, Chapter 469, Elimination of Architectural Barriers [(the Texas Architectural Barriers Act)].

(2) - (4) (No change.)

{(5) Commerce--Travel, trade, traffic, transportation, or communication among the several States; between any foreign country or any territory or possession and any State; or between points in the same State and through another State or foreign country.}

(5) [(6)] Completion of Construction--The date when final payment to the contractor is made [a construction project results in occupancy or the issuance of a certificate of occupancy]. For public roadway projects, completion of construction occurs upon final payment to [and release of] the contractor performing the work or, if the work is performed by public employees, removal of barricades and opening of all traffic lanes for use.

(6) [(7)] Construction Documents--Drawings, specifications, addenda, change orders, construction change directives and other supplemental documents prepared for the purpose of regulatory approval, permitting, or construction.

{(8) Contract Provider--The state agency or political subdivision under contract with the department to perform plan reviews, inspections, or both.}

(7) [(9)] Crosswalk--That part of a roadway where motorists are required to yield to pedestrians crossing, as defined by state and local regulations, whether marked or unmarked.

(8) [(40)] Curb Line--A line that represents the extension of the face of the curb and marks the transition between the sidewalk and the gutter or roadway at a curb ramp or flush landing.

(9) Day--A calendar day.

(10) Department--The Texas Department of Licensing and Regulation.

(11) - (17) (No change.)

(18) Owner--The person(s) [person or persons, company, corporation, authority, commission, board, governmental entity, institution, or any other entity] that hold(s) [holds] title to the subject building or facility subject to compliance with the Act, TAS, and this chapter [For purposes under these rules and the Act, an owner may designate an agent; however, the owner remains responsible for compliance with

the Act]. An individual employed by the owner may sign documents, request an inspection, or initiate other requests for service in accordance with this chapter if authorized by their employer.

(19) - (20) (No change.)

(21) Person--An individual, corporation, partnership, or other legal entity, including a state agency or governmental subdivision.

(22) Project File--Records retained, uploaded, or submitted to TABS.

(23) ~~[(21)]~~ Public Entity--Any state [State or local] government [or any department,] agency or unit of local government or [,] special purpose [purposes] district [, or other instrumentality of a State or States or local government].

(24) ~~[(22)]~~ Public Right-of-Way--Public land or property, usually in interconnected corridors, that is acquired for or dedicated to transportation purposes.

~~[(23) Registered Building or Facility--For the purposes of §469.101 of the Act, a registered building or facility is a construction project that has been assigned a project registration number by the department.]~~

(25) ~~[(24)]~~ Registered Accessibility Specialist--An individual who is certified by the department to perform review and inspection functions of the department.

(26) ~~[(25)]~~ Religious Organization--An organization that qualifies for an exemption from taxation, as a religious organization as provided in Texas Tax Code, Chapter 11, §11.20(c).

~~[(26) Rules--Title 16, Texas Administrative Code, Chapter 68, the administrative rules of the Texas Department of Licensing and Regulation promulgated pursuant to the Act.]~~

(27) (No change.)

(28) Texas Architectural Barriers Online System (TABS)--The online database for the registration of projects subject to the TAS and maintenance of project records.

~~[(28) State Agency--Aboard, commission, department, office, or other agency of state government.]~~

(29) Texas Accessibility Standards (TAS)--The collection of scoping and technical requirements for accessibility to sites, facilities, buildings, and elements by individuals with disabilities, periodically [2012 Texas Accessibility Standards which were] adopted by the Texas Commission of Licensing and Regulation [and became effective March 15, 2012].

~~[(30) Variance Application--The formal documentation filed with the department, by which the owner requests that the department waive or modify accessibility standards.]~~

§68.11. Technical Standards and Technical Memoranda.

(a) The Texas Commission of Licensing and Regulation adopts by reference the 2012 Edition of the Texas Accessibility Standards (TAS), effective March 15, 2012.

(b) The department may publish memoranda to provide clarification of technical matters relating to the Act, TAS, and this chapter.

§68.12. Forms.

(a) To meet the requirements of this chapter, only forms prescribed by the department will be accepted.

(b) Project registration forms submitted to a registered accessibility specialist by an owner must be uploaded in TABS.

(c) The unauthorized alteration of a department form in any manner is prohibited.

(d) A form that has not been completed will not be accepted.

(e) It is a violation of this chapter to provide false or misleading information when submitting a registration forms or project information to the department.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 23, 2023.

TRD-202301161

Della Lindquist

Interim General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: May 7, 2023

For further information, please call: (512) 475-4879



SUBCHAPTER B. REGISTRATION REQUIREMENTS; EXEMPTIONS

16 TAC §§68.20 - 68.22, 68.30, 68.31

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, and Government Code, Chapter 469, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, and Texas Government Code, Chapter 469. No other statutes, articles, or codes are affected by the proposed rules.

§68.20. Buildings and Facilities Subject to Compliance [with the Texas Accessibility Standards].

(a) All buildings or facilities listed under this section are subject to compliance with the Act, TAS, and this chapter, regardless of the estimated cost of construction, unless exempted under §68.30.

(b) The following buildings and facilities are subject to compliance with the Act, TAS, and this chapter:

(1) ~~[(a)]~~ A building or facility used by a public entity [is subject to compliance with the Texas Accessibility Standards (hereinafter "TAS")] if it is constructed, renovated, or modified, in whole or in part, on or after January 1, 1970, using funds from the state or a county, municipality, or other political subdivision of the state.

~~[(b)] [A building or facility referenced by this subsection or subsection (d) that is constructed, renovated, or modified on a temporary or emergency basis e.g. man camps, fixed furniture systems, wall systems, and exhibit areas.]~~

(2) ~~[(e)]~~ A building or facility leased for use or occupied, in whole or in part, by the state under a lease or rental agreement entered into on or after January 1, 1972, except as modified under §68.22 [§68.10].

(c) ~~[(d)]~~ The following private buildings and facilities constructed, renovated, or modified on or after January 1, 1992, and defined as a "public accommodation" by Section 301, Americans with

Disabilities Act of 1990 (42 U.S.C. Section 12181), and its subsequent amendments are subject to the Act, TAS, and this chapter:

(1) A place of lodging that includes guest rooms for short-term stays of 30 days or less where the occupant does not have the right to return to a specific room or unit after the conclusion of their stay, and under conditions and with amenities similar to a hotel, motel, or inn.

(A) Amenities include:

(i) on or off-site management and reservations service;

(ii) rooms available on a walk-up or call-in basis;

(iii) available housekeeping or linen service; and

(iv) acceptance of reservations for a guest room type without guaranteeing a particular unit or room until checking in, and without prior lease or security deposit.

(B) A place of transient lodging with no more than five rooms for rent or hire that is occupied by the proprietor as the proprietor's primary residence as provided under §68.30 is not subject to this section.

{(1) Places of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor. For the purposes of this section, a building or facility is a place of lodging" if it is:}

{(A) An inn, hotel, or motel; or}

{(B) A building or facility that:}

{(i) Provides guest rooms for sleeping for stays that are primarily short-term in nature (generally 30 days or less) where the occupant does not have the right to return to a specific room or unit after the conclusion of his or her stay; and}

{(ii) Provides guest rooms under conditions and with amenities similar to a hotel, motel, or inn, including the following:}

{(i) On or off-site management and reservations service;}

{(ii) Rooms available on a walk-up or call-in basis;}

{(iii) Availability of housekeeping or linen service; and}

{(iv) Acceptance of reservations for a guest room type without guaranteeing a particular unit or room until checking in, and without prior lease or security deposit.}

(2) an [a restaurant, bar, or other] establishment that serves [serving] food or drinks, including a restaurant or bar;

(3) a sports or entertainment venue, including a movie [motion picture house,] theater, concert hall, stadium, or other place of exhibition or entertainment;

(4) a public gathering venue, including an auditorium, convention center, or lecture hall; or other place of public gathering;

(5) a retail establishment or shopping center;

{(5) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;}

(6) a service establishment, including a laundromat, dry-cleaner, bank, barber shop, salon [beauty shop, travel service, shoe re-

pair service, funeral parlor], gas station, [office of an accountant or lawyer, pharmacy, insurance office,] professional office, medical facility, [of a] health care provider, or hospital; or other service establishment];

(7) a public transportation station, including a terminal or depot;

{(7) a terminal, depot, or other station used for specified public transportation;}

(8) a place of recreation, including a park, zoo, or amusement park; or other place of recreation];

(9) a [museum, library, gallery, or other] place of public display or collection, including a museum, library or gallery;

(10) a place of education, including a day care center [nursery], elementary, secondary, undergraduate, or postgraduate private school; or other place of education];

(11) a social service center establishment [day care center], including a senior citizen center, homeless shelter, food bank, or adoption agency; or other social service center establishment]; [and]

(12) a place of exercise or recreation, including a gymnasium, health spa, bowling alley, or golf course; or other place of exercise or recreation.}

(13) a residential amenity space open to the public which is used, leased, or rented to residents, members, non-residents, or non-members;

(14) pedestrian route components that are constructed, renovated, or modified in whole or in part on or after January 1, 2024, within residential development areas where title to said elements will be transferred to a local government authority; and

(15) a building or facility that is constructed, renovated, or modified on a temporary or emergency basis including workforce housing, man camps, fixed furniture systems, wall systems, and exhibit areas.

(d) [(e)] A commercial facility is [Commercial facilities are] subject to the Act, this chapter, and compliance with TAS if it is [they are] intended for non-residential use by a private entity and its [if their] operations will affect commerce, except for [Such application shall not include] railroad locomotives, railroad freight cars, railroad cabooses, commuter or intercity passenger rail cars or any other railroad cars described in the Americans with Disabilities Act (ADA) §242, or covered under the ADA, Title III, railroad rights-of-way, or facilities that are covered or expressly exempted from coverage under the federal Fair Housing Act of 1968.

(e) [(f)] A building or facility [Buildings or facilities] of a religious organization is [are] subject to the Act, this chapter, and compliance with TAS except for areas as provided under §68.30.

{(g) Buildings or facilities with an estimated construction cost of less than \$50,000 or not subject to the Act and compliance with TAS may be registered, reviewed, and/or inspected by a registered accessibility specialist or contract provider.}

§68.21. Registration of Project or Lease Required.

(a) Projects registration required. A building or facility being constructed, renovated, or modified with an estimated construction cost of \$50,000 or more that is subject to compliance with the Act, the TAS, and this chapter must be registered with the department. To register a construction project, an owner must submit:

(1) an application on a form as prescribed by the department; and

(2) the required fee in §68.80.

(b) State lease registration required. A new or renewal lease agreement for an agency of the state of Texas with annual lease expense \$12,000 or more must be registered with the department. To register a lease, a state agency must submit:

(1) an application on a form as prescribed by the department; and

(2) the required fee in §68.80.

(c) Project registration optional. A building or facility being constructed, renovated, or modified with an estimated construction cost of less than \$50,000 or that is exempt under §68.30 may be registered with the department and reviewed and/or inspected by a registered accessibility specialist. A project with an estimated construction cost of less than \$50,000 that is not exempt under §68.30 is subject to compliance with the Act.

§68.22. State Leases.

(a) State leased buildings or facilities with an annual lease expense of \$12,000 or more must be registered with the department in accordance with §68.21.

(b) Buildings or facilities that are leased or occupied in whole or in part for use by the state, shall meet the following requirements of TAS:

(1) New construction shall comply with TAS 201.1.

(2) Additions shall comply with TAS 202.2.

(3) Alterations shall comply with TAS 202.3 and 202.4.

(4) Historic buildings or facilities shall comply with TAS 202.5.

(5) Existing buildings and facilities are ones that have not been constructed, renovated, or modified since April 1, 1994. In an existing building or facility, where alterations are not planned or the planned alterations will not affect an area containing a primary function, the following minimum requirements shall apply:

(A) If parking is required as part of the lease agreement or is provided to serve the leased area, accessible parking spaces shall comply with TAS 208 and 502.

(B) An accessible route from the parking area(s) shall comply with TAS 206 and 402.

(C) At least one entrance serving the leased space shall comply with TAS 206.4.5 and 404.

(D) If toilet rooms or bathrooms are required by the lease agreement or are provided to serve the leased area, at least one set of men's and women's toilet rooms or bathrooms or at least one unisex toilet room or bathroom serving the leased area shall comply with TAS 213 and 603.

(E) Signage at toilet rooms or bathrooms shall comply with TAS 703. Toilet rooms or bathrooms serving the leased area which are not accessible shall be provided with signage complying with TAS 703.1, 703.2.4, 703.2.5, 703.6.2 and 703.7 indicating the location of the nearest accessible toilet room or bathroom within the facility.

(F) If drinking fountains are required by the lease agreement, or are provided to serve the leased area, at least one fountain shall comply with TAS 602. If more than one drinking fountain is provided, at least 50% shall comply with TAS 602.

(G) If public telephones are required by the lease agreement, or are provided to serve the leased area, at least one public telephone shall comply with TAS 704.

(H) If an element or space of a lease is not specified in this subsection but is present in a state leasehold, that element or space shall comply with TAS 201.1.

(c) A registered accessibility specialist shall not perform inspection services for an agency of the State of Texas occupying a building or facility that is subject to the renewal or extension of an existing lease.

§68.30. Exemptions.

The following buildings, facilities, spaces, or elements are exempt from the provisions of the Act:

(1) - (2) (No change.)

(3) Van Accessible Parking at Garages Constructed Prior to April 1994. Parking garages where construction was started before April 1, 1994, and the existing vertical clearance of the garage is less than 98", are exempted from requirements to have van-accessible parking spaces located within the garage. If additional surface parking is provided, the required van accessible parking spaces shall be located on a surface lot in closest proximity to the accessible public entrance serving the facility; [and]

(4) Residential Facilities. Those portions of public or privately funded apartments, condominiums, townhomes, and single-family dwellings used exclusively by residents and their guests; and[-]

(5) Places of Primary Residence. A place of transient lodging with no more than five rooms for rent or hire that is occupied by the proprietor as the proprietor's primary residence.

§68.31. Variance Procedures.

(a) To request a variance waiving or modifying an accessibility standard, an owner or the owner's designated agent must submit:

(1) a complete a separate form prescribed by the department for each registered project within a single building or facility;

(2) supporting documentation, including photos, cost analyses, and code references; and

(3) the required fee in §68.80.

(b) A denied variance request may be appealed to the department in writing. An appeal must:

(1) be in writing and signed by the owner or the owner's designated agent;

(2) include supporting documentation; and

(3) include the fee required under §68.80.

(c) An appeal denied by the department may be appealed to the executive director of the department in writing and must include supporting documentation.

(d) The department and executive director will provide written notice of determinations made under this section to the owner and the person making the submission, if applicable.

(e) Variance and Appeal determinations shall be based on the information and supporting documentation submitted with the application and shall be issued in accordance with §469.151 and §469.152 of the Act.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 23, 2023.

TRD-202301160

Della Lindquist

Interim General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: May 7, 2023

For further information, please call: (512) 475-4879



SUBCHAPTER C. OWNER RESPONSIBILITIES

16 TAC §§68.40 - 68.42

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, and Government Code, Chapter 469, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, and Texas Government Code, Chapter 469. No other statutes, articles, or codes are affected by the proposed rules.

§68.40. Owner Responsibilities.

(a) An owner with a construction project with an estimated construction cost of \$50,000 or more is subject to compliance with the Act, TAS, and this chapter.

(b) Within 30 days of the change occurring, an owner must notify the department of a change in:

- (1) contact information; or
- (2) property ownership.

(c) An owner must report a change in the estimated date of completion of construction to the registered accessibility specialist.

(d) When corrective modifications are required, an owner must submit a response on a prescribed form within 30 days to the registered accessibility specialist, in accordance with §68.53, and complete the corrective modifications by the 270th day after the date of the inspection report.

(e) When there is not a design professional with overall responsibility for a registered project, the owner must submit the construction documents to a registered accessibility specialist prior to filing an application for building permit or commencement of construction.

§68.41. Inspection Required.

(a) The owner of a building or facility with a project required to be registered under §68.21 must obtain an inspection by a registered accessibility specialist no later than one year from the date of the completion of construction.

(b) A request for inspection must be in writing and submitted to a registered accessibility specialist.

(c) The owner, the owner's designated agent, or an individual representing the owner is required to be present with the registered accessibility specialist during the inspection. The individual onsite during the inspection must provide a physical or electronic signature on the inspection form prescribed by the department.

§68.42. Designated Agent.

(a) An owner may designate an agent to act on the owner's behalf by submitting a form prescribed by the department.

(b) To be valid, the form must be complete and signed by the owner or an individual employed by the owner. A parent or other person associated with the owner is not authorized to submit or sign the form on behalf of the owner.

(c) A designated agent is authorized to:

- (1) submit project information changes;
- (2) request a waiver or variance;
- (3) make a request for inspection;

(4) communicate with the department on behalf of the owner about the registered project;

(5) receive communications from a registered accessibility specialist; and

(6) submit verification of corrections to a registered accessibility specialist and the department.

(d) A designated agent's failure to comply with the requirements of this chapter on behalf of an owner does not excuse the owner from compliance with the Act, this chapter, and the TAS.

(e) An owner who elects to designate the same agent for multiple registered projects must submit a separate form for each registered project. A single agent designation form is not valid for multiple projects.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 23, 2023.

TRD-202301162

Della Lindquist

Interim General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: May 7, 2023

For further information, please call: (512) 475-4879



SUBCHAPTER D. CONSTRUCTION DOCUMENTS; PLAN REVIEWS; AND INSPECTIONS

16 TAC §§68.50 - 68.53

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, and Government Code, Chapter 469, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, and Texas Government Code, Chapter 469. No other statutes, articles, or codes are affected by the proposed rules.

§68.50. Submission of Construction Documents.

(a) If the estimated construction cost is \$50,000 or more, all [AH] plans and specifications for the construction of or alteration to a

building or facility subject to §469.101 of the Act must be submitted by the design professional preparing the documents along with a form prescribed by the department to a registered accessibility specialist not later than the twentieth day after the plans and specifications are issued [or contract provider for review if the estimated construction cost is at least \$50,000]. In computing time under this section, Saturday, Sunday, and legal holidays are not included. All plans may be submitted in electronic format.

[(b) An architect, registered interior designer, landscape architect, or engineer with overall responsibility for the design of a building or subject to §469.101 of the Act, shall mail, ship, provide electronically, or hand-deliver the construction documents along with a Proof of Submission form to a registered accessibility specialist, or a contract provider not later than the twentieth day after the plans and specifications are issued. In computing time under this subsection, a Saturday, Sunday or legal holiday is not included.]

(b) [(e)] When [In instances when] there is not a design professional with overall responsibility, the owner of a building or facility must submit the [subject to §469.101 of the Act, shall mail, ship, provide electronically, or hand-deliver] construction documents to a registered accessibility specialist[, or a contract provider] prior to filing an application for building permit or commencement of construction.

(c) An owner or design professional may submit revised construction documents to a registered accessibility specialist to review, including change orders, addenda, or letters.

(d) Construction documents provided to the department become the property of the department and will not be returned.

[(d) An Architectural Barriers Project Registration form or Architectural Barriers Project Registration Confirmation Page must be submitted for each subject building or facility and submitted along with the project filing fee when the design professional or owner registers the construction project.]

§68.51. Plan Review Requirements.

(a) Prior to performing a plan review or plan revision, a registered accessibility specialist must have project construction documents for the building or facility.

(b) Submission of revised or supplemental construction documents to the registered accessibility specialist:

(1) prior to the recorded estimated completion of construction must be reviewed as part of a plan revision; or

(2) after completion of construction based on the estimated completion of construction are not required to be reviewed but must be uploaded in the TABS project file.

(c) After review of construction documents, the registered accessibility specialist must provide the owner or the owner's designated agent and the design professional making the submission the plan review findings on or before the 30th day from the date of the report. All plan review findings must be uploaded in TABS.

(d) A plan review or plan revision report must be typewritten and include, at a minimum:

(1) a title indicating whether the report is a "Plan Review Report" or "Plan Revision Report;"

(2) the name and certification number of the registered accessibility specialist preparing the report;

(3) date of the report;

(4) TABS project number issued by the department;

(5) facility name;

(6) project name and address; and

(7) a detailed list of each deficiency, including a reference to the TAS section number, if applicable.

§68.52. Inspections and Corrective Modifications.

(a) Prior to performing an inspection, a registered accessibility specialist must have access to the project in TABS and a written request for inspection from the owner or the owner's designated agent.

(b) To be valid, the owner, the owner's designated agent, or an individual representing the owner is required to be present during the inspection. The individual onsite during the inspection must provide a physical or electronic signature on the inspection form prescribed by the department.

(c) A registered accessibility specialist must complete an inspection report on or before the 30th day from the date of the inspection. An inspection report must be:

(1) provided to the owner on or before the 30th day from the date of the report;

(2) uploaded in TABS;

(3) typewritten and include, at a minimum:

(A) heading titled "Inspection Report;"

(B) the name and certification number of the registered accessibility specialist preparing the report;

(C) date of the report;

(D) date of the inspection;

(E) TABS project number issued by the department;

(F) facility name;

(G) project name and address; and

(H) violations cited in detailed, followed by the TAS section number, including specific information identifying the location of each violation.

(d) If corrective modifications are required to achieve compliance the owner must:

(1) respond to the inspection report on a form prescribed by the department submitted to the registered accessibility specialist not later than the 30th day of the date of the inspection report; and

(2) complete corrective modifications on or before the 270th day from the date of the inspection report.

(e) The owner's corrective modification response must be uploaded in TABS on or before the 30th day from receipt.

§68.53. Transmittal Letters.

(a) A transmittal letter must be provided to an owner on or before the 30th day from the completion of a plan review, plan revision, or inspection and uploaded in TABS.

(b) A transmittal letter must be typewritten and include, at a minimum:

(1) date of the report;

(2) the name and certification number of the registered accessibility specialist preparing the letter;

(3) owner name and address;

(4) TABS project number issued by the department;

- (5) project name, facility name, and address;
- (6) results paragraph, as applicable;
- (7) owner action paragraph, as applicable; and
- (8) disclaimer paragraph, as applicable.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 23, 2023.

TRD-202301163

Della Lindquist

Interim General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: May 7, 2023

For further information, please call: (512) 475-4879



SUBCHAPTER F. REGISTERED ACCESSIBILITY SPECIALISTS

16 TAC §§68.70, 68.73 - 68.77

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, and Government Code, Chapter 469, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, and Texas Government Code, Chapter 469. No other statutes, articles, or codes are affected by the proposed rules.

§68.70. Registered Accessibility Specialist Certification--Eligibility, [Specialists--] Qualifications, and Application Requirements [for Certification].

(a) A person may not perform or offer to provide plan review or inspection services unless the person holds a [An applicant seeking] departmental certification as a registered accessibility specialist. To be certified, an individual must [in order to perform plan review or inspection services shall meet the following minimum qualifications]:

(1) meet [Any] one of the following qualifications:

(A) hold a degree in architecture, engineering, interior design, landscape architecture, or equivalent, and at least [a minimum of] one year experience related to building inspection, building planning, accessibility design or review, accessibility inspection, or equivalent; [or]

(B) have at least eight years of experience related to building inspection, building planning, accessibility design or review, accessibility inspection, or equivalent; or

(C) have at least four years of experience related to building inspection, building planning, accessibility design or review, accessibility inspection, or equivalent, and certification [as an accessibility inspector/plans examiner granted] by a model building code organization as an accessibility inspector or plans examiner; [and]

(2) pass an examination approved by the department; [-]

and

(4) submit the required fee under §68.80.

(b) An applicant must submit the following required documentation in a manner prescribed by the department:

(1) a complete application on a department approved form; and

(2) verifiable evidence that the applicant meets the requirements in subsection (a)(1).

~~[(b) An applicant shall submit a complete application for certification on the Registered Accessibility Specialist Application form, accompanied by all applicable fees. An applicant must complete all requirements, including satisfactory completion of an examination, no later than one year after the date the application is filed. If all requirements are not met within one year, a new application shall be submitted.]~~

(c) (No change.)

(d) An applicant must complete all requirements, including passing the examination in subsection (a)(2), no later than one year from the date the application is submitted. After that year the applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

§68.73. Registered Accessibility Specialist Certification--Renewal Requirements.

(a) To renew a certification, a registered accessibility specialist must:

(1) submit a complete renewal application in a manner prescribed by the department;

(2) successfully pass a criminal history background check;

(3) complete eight hours of continuing education as required under §68.74; and

(4) submit the required fee under §68.80.

(b) A registered accessibility specialist with an expired certification must not provide plan review or inspection services.

(c) A certification will not be renewed until continuing education requirements have been met.

§68.74. Continuing Education.

(a) To renew a certification, a registered accessibility specialist must complete four hours of continuing education as provided in this section.

(b) To meet the requirements of this section, continuing education hours must include instruction in one or more of the following topics:

(1) Texas Government Code, Chapter 469, Elimination of Architectural Barriers;

(2) 16 Texas Administrative Code, Chapter 68 - Administrative Rules;

(3) 2012 Texas Accessibility Standards;

(4) technical memoranda published by the department;

(5) 2010 Standards for Accessible Design or other accessibility guidelines proposed or adopted by the Access Board or United States Department of Justice;

(6) Americans with Disabilities Act;

(7) International Code Council/American National Standards Institute (ANSI) A117.1 Standard on Accessible and Usable Buildings and Facilities; or

(8) building and life safety codes related to egress.

(b) A registered accessibility specialist must certify completion of continuing education hours at the time of renewal in a manner prescribed by the department.

(c) Continuing education hours must have been completed within the term of the current certification, in the case of a timely renewal. For a late renewal, the continuing education hours must have been completed within the one-year period immediately prior to the date of renewal.

(d) A registered accessibility specialist will not receive continuing education credit for attending the same course more than once during the one-year renewal period.

(e) A registered accessibility specialist must retain a copy of the certificate of completion for a course for three years after the date of completion. In conducting an inspection or investigation of a registered accessibility specialist, the department may examine the registered accessibility specialist's records to determine compliance with this section.

(f) This section applies to certifications that expire on or after July 1, 2023.

§68.75. Responsibilities of the Registered Accessibility Specialist.

(a) A registered [Registered] accessibility specialist [specialists] may set and collect fees for services rendered [;]but must submit [are responsible for submitting] to the department [any] fees received [the registered accessibility specialist may receive] on behalf of the department no later than 30 days after receipt.

(b) A registered accessibility specialist must secure written authorization:

(1) from an owner prior to performing a plan review, inspection, or related activity of a building or facility with an estimated construction cost of less than \$50,000 or that is not subject to the Act; and

(2) from the department prior to performing a plan review, inspection, or related activity for a building or facility that will be leased or occupied by an agency of the State of Texas.

(c) A registered accessibility specialist must maintain project files for a period of one year following the closure of the project in TABS.

(d) A registered accessibility specialist is required to upload a change in the estimated date of completion of construction within 30 days of receipt from the owner.

[(b) Registered accessibility specialists may share services by engaging the services of another registered accessibility specialist; however each registered accessibility specialist will be held accountable for their own work product and must adhere to all laws, rules, and procedures.]

[(c) Records maintained by registered accessibility specialists, as required by department rules or procedures, are subject to the provisions of the Texas Government Code, Chapter 552, Texas Public Information Act.]

[(d) Registered accessibility specialists shall comply with all procedures established by the department.]

(e) A registered [Registered] accessibility specialist must [specialists shall] provide written notification to the department of changes to contact information within [thirty (30)] calendar days of a change occurring.

§68.76. Standards of Conduct [for the Registered Accessibility Specialist].

(a) Competency. A [The] registered accessibility specialist shall ensure compliance with, be knowledgeable of, and adhere to the Act, the TAS, and this chapter [Technical Memoranda and Bulletins published by the department, and all procedures established by the department]. A [It is the obligation of the] registered accessibility specialist shall [to] exercise reasonable judgment and skill in the performance of plan reviews, inspections, and related activities.

(b) Integrity. A registered accessibility specialist shall not:

(1) be deceitful or make misrepresentations, whether by acts of commission or omission, in the performance of plan review, inspection, and related activities; or

(2) commit acts or practices that constitute threats, coercion, or extortion.

[(b) Integrity. A registered accessibility specialist shall be honest and trustworthy in the performance of plan review, inspection, and related activities, and shall avoid misrepresentation and deceit in any fashion, whether by acts of commission or omission. Acts or practices that constitute threats, coercion, or extortion are prohibited.]

[(c) Interest. The primary interest of the registered accessibility specialist is to ensure compliance with the Act, the rules, and the TAS. The registered accessibility specialist's position, in this respect, should be clear to all parties concerned while conducting plan reviews, inspections, and related activities.]

(c) [(d)] Conflict of Interest. [A registered accessibility specialist is obliged to avoid conflicts of interest and the appearance of a conflict of interest. A conflict of interest exists when a registered accessibility specialist performs or agrees to perform a plan review, inspection, or related activity for a project in which he/she has a financial interest, whether direct or indirect. A conflict of interest also exists when a registered accessibility specialist's professional judgment and independence are affected by his/her own family, business, property, or other personal interests or relationships.]

(1) If a registered accessibility specialist has any business association or financial interest which might reasonably appear to influence the individual's judgment in connection with the performance of a professional service and thereby jeopardize an interest of the registered accessibility specialist's current or prospective client or employer, the registered accessibility specialist shall promptly inform the client or employer in writing of the circumstances of the business association or financial interest.

(2) A registered accessibility specialist shall not solicit or accept, directly or indirectly, any financial or other valuable consideration, material favor, or other benefit of any substantial nature, financial or otherwise, from more than one party in connection with a single project or assignment unless the circumstances are fully disclosed in writing to all parties.

(3) A registered accessibility specialist shall not perform plan reviews, inspections, or related activities while also providing consulting or other professional services on the same registered project.

(d) [(e)] Specific Rules of Conduct. A registered accessibility specialist shall not:

(1) - (7) (No change.)

(8) perform a plan review, inspection, or related activity on a building or facility wherein the registered accessibility specialist participated in creating the overall design of the current project; or

~~[(9) use the Texas State seal without obtaining the appropriate license in accordance with Texas Business and Commerce Code, Chapter 17, §17.08(e); or]~~

~~(9)~~ [(40)] represent himself or herself as an employee of the department or as a person hired by the department.

§68.77. Shared Services.

(a) A registered accessibility specialist may engage the services of another registered accessibility specialist to provide plan review or inspection services.

(b) Each registered accessibility specialist engaged in shared services must:

(1) have a current departmental certification;

(2) complete the assigned plan review or inspection on or before the 30th day from accepting the project in TABS; and

(3) not alter the work product of the other registered accessibility specialist, which includes making amendments to a plan review, inspection report, or corrective modification letter.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 23, 2023.

TRD-202301165

Della Lindquist

Interim General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: May 7, 2023

For further information, please call: (512) 475-4879



SUBCHAPTER H. ENFORCEMENT

16 TAC §68.90, §68.93

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, and Government Code, Chapter 469, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, and Texas Government Code, Chapter 469. No other statutes, articles, or codes are affected by the proposed rules.

§68.90. Administrative Sanctions or Penalties.

(a) If a person violates any provision of the Act, the rules, TAS, ~~[procedures,]~~ or an order of the executive director or commission, proceedings may be instituted to impose administrative sanctions, administrative penalties, or both administrative penalties and sanctions in accordance with the provisions of the Act; Texas Occupations Code, Chapter 51; and Title 16, Texas Administrative Code, Chapter 60 (relating to the Texas Commission of Licensing and Regulation).

(b) It is a violation of the Act for a person to perform a plan review or inspection function of the department, unless that person is

a department employee or ~~[,]~~ a registered accessibility specialist~~[, or a contract provider]~~. A person who is not a ~~[department employee, a]~~ registered accessibility specialist~~[, or a contract provider]~~ and performs a plan review or inspection function of the department is subject to administrative penalties in accordance with the Act or Texas Occupations Code, Chapter 51 and Title 16, Texas Administrative Code, Chapter 60.

(c) (No change.)

§68.93. Complaints, Investigations, and Audits.

(a) (No change.)

(b) Investigations and Audits. Owners of buildings and facilities subject to compliance with the Act, TAS, and this chapter, are subject to investigation by the department. Registered accessibility specialists ~~[and contract providers]~~ are subject to investigation and audit by the department.

(c) Inspection ~~[and Copying]~~ of Records. Records pertaining to a project for which plan review, inspection, or related activities have been or will be performed, must ~~[shall]~~ be made available by the registered accessibility specialist for inspection upon request ~~[and copying by the department]~~. Records must be uploaded in TABS on or before the 14th day ~~[The registered accessibility specialist shall make said records available within fourteen (14) calendar days] of receiving a written request from the department, or within a time prescribed by the department.~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 23, 2023.

TRD-202301166

Della Lindquist

Interim General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: May 7, 2023

For further information, please call: (512) 475-4879



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 21. TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT COMMISSION

CHAPTER 675. OPERATIONAL RULES SUBCHAPTER B. EXPORTATION AND IMPORTATION OF WASTE

31 TAC §675.24

The Texas Low-Level Radioactive Waste Disposal Compact Commission (TLLRWDC or Commission) proposes to amend 31 Texas Administrative Code §675.24, concerning Importation of Certain Low-Level Radioactive Waste for Management or Disposal that is not Required to be Disposed of in the Compact Facility.

SECTION BY SECTION ANALYSIS. Amendments to §675.24 adjust requirements for reporting of non-compact facility low-level radioactive waste and forms from regulatory entities, and

timelines for reporting to the Commission, after an opportunity for public comment.

The Commission proposes the rule amendment to fulfill its responsibilities with respect to 42 United States Code, §§2021(b) - 2021(j) and Texas Low-Level Radioactive Waste Disposal Compact (Compact), §3.04(9) and §3.05(6) as set out in Texas Health and Safety Code (THSC), Chapter 403. The Commission has determined that it is in the public interest to gather information regarding low-level radioactive waste (LLRW) that enters the host state irrespective of whether it requires an agreement for importation for disposal at the Compact Facility. Pursuant to the Commission's authority set out in THSC, §403.006, the Commission proposes to amend §675.24 to facilitate the gathering of that information by requiring a report after material that may become low-level waste enters the state rather than requiring approval for the importation of that material when it accompanies certain categories of LLRW into the host state.

The rule also implements and complies with Texas Health and Safety Code §403.006 ("the Texas Low-Level Radioactive Waste Disposal Compact" or "the Compact") The Commission has determined that it is in the public interest that the Commission require monthly reporting instead of every six months.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS. Stephen Raines, the Commission's Executive Director, has determined that, for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the Commission or for units of state or local government because of the administration or enforcement of the proposed rules.

PUBLIC BENEFIT/COST NOTE. Mr. Raines has also determined, for each year of the first five years the proposed rules would be in effect if adopted, the public benefit anticipated from the changes seen in the proposed rules will be improved process with respect to the presence of low-level radioactive waste in Texas, the Compact's host state. Mr. Raines further has determined there will be no probable economic cost to businesses and individuals required to comply with the rule because no additional burden or requirement on businesses or individuals are added. The new rules impose no additional reporting requirements.

IMPACT ON LOCAL EMPLOYMENT OR ECONOMY. There is no effect on local economy for the first five years that the proposed amendments are in effect because the rules concern activities of only parties involved in the importation, exportation, and disposal of low-level radioactive waste. Therefore, no economic impact statement, local employment impact statement, nor regulatory flexibility analysis is required under Texas Government Code §§2001.022 or 2001.024(a)(6).

COST TO REGULATED PERSONS (COST-IN/COST-OUT). This rule proposal is exempt from the requirements of Texas Government Code §2001.0045 because under subsection (c)(6), the rule is necessary to protect the health, safety, and welfare of the residents of the state, in that it allows the Commission to be informed of the nature, volume, and curie count of radioactive material entering the host state that may become waste that either will need to be disposed of in the Compact Facility or will need to be exported. In any case, as described above in the public benefit and cost note, the proposed amendments do not impose a cost on regulated persons under Government Code §2001.024, including another state agency, a special district, or a local government.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. The Commission has determined the proposed rule will not have an adverse economic impact on small businesses, microbusinesses, or rural communities because of implementing these amendments; therefore, a regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is not required.

GOVERNMENT GROWTH IMPACT STATEMENT. In compliance with Texas Government Code §2001.0221, the agency has prepared a government growth impact statement. During the first five years the proposed rule is in effect, this proposed amendments: (1) will not create or eliminate a government program; (2) will not result in an increase or decrease in the number of agency employees; (3) will not require an increase or decrease in future legislative appropriations to the agency because there are no costs associated with the rule; (4) will not lead to an increase or decrease in fees paid to a state agency; (5) will not create a new regulation; (6) will not repeal an existing regulation; and (7) will not result in an increase or decrease in the number of individuals subject to the rule; and (8) The proposed amendment will not positively or adversely affect the state's economy because it involves no fiscal requirements.

ENVIRONMENTAL REGULATORY ANALYSIS. The Commission has determined the proposed rules are not "major environmental rules" as defined by Texas Government Code, §2001.0225 and are not subject to its requirements.

TAKINGS IMPACT STATEMENT. The Commission has concluded the proposed rules do not restrict or limit an owner's right to his or her real property that would otherwise exist in the absence of this action.

SUBMITTAL OF COMMENTS. Written comments may be submitted to Stephen Raines, Executive Director, 1502 West Avenue, Austin, Texas 78701, or, by electronic mail to comments@tlrwdcc.org. All comments should reference "Rules" in the subject field. The comment period closes on 30 days after the date this notice is published. Copies of the proposed rulemaking can be obtained from the Commission's website at <http://www.tlrwdcc.org/rules/>. For further information, please contact Stephen Raines, Executive Director, (512) 350-6241.

STATUTORY AUTHORITY. The rules are proposed under the authority granted in §3.05(4) of the Compact, which authorizes the Commission to adopt, by a majority vote, bylaws and rules necessary to carry out the terms of the Compact. The proposed rules implement and facilitate the Commission's obligations and due diligence regarding §3.05(6) and §§4.02, 4.04(2), (5); 4.05 (1) - (4); 6.01, and 6.02 of the Compact as set out at Tex. Health & Safety Code §403.006.

§675.24. Requirement to Report on the Importation of Certain Low-Level Radioactive Waste for Management or Disposal that is not Required to be Disposed of in the Compact Facility.

(a) This section is applicable only in the host state.

(b) This section is applicable only to State of Texas licensed waste processors or brokers, or source consolidators, of certain radioactive waste (LLRW) that is included within the definition of low-level radioactive waste found in 30 TAC §336.2(89) (relating to Definitions) as the definition is in effect on the date this section becomes effective, or as 30 TAC §336.2(89) may be amended or renumbered in the future.

(c) [(b)] This section is designed to gather information on the importation into the host state for disposal or management of certain low-level radioactive waste that:

[(1) is required when shipped to be listed on Nuclear Regulatory Commission (NRC) Forms 540 or 541 (Uniform Low-Level Waste Manifest Shipping Forms);]

[(2) is included within the definition of low-level radioactive waste found in 30 TAC §336.2(89) (relating to Definitions) as the definition is in effect on the date this section becomes effective or as 30 TAC §336.2(89) may be amended or renumbered in the future, but is not intended for disposal in the Compact Waste Facility;]

(1) [(3)] is not low-level radioactive waste described by 42 United States Code, §2021c(b)(1) (relating to waste disposal for which the Federal government is responsible) or waste that is regulated under §675.23 of this title (relating to Importation of Waste from a Non-Party Generator for Disposal); [and]

(2) is required, when shipped, to be listed on Nuclear Regulatory Commission (NRC) Uniform Low-Level Waste Manifest Shipping Forms or other shipping paperwork (including but not limited to Bill of Lading, Hazardous Waste Manifest, or other manifest); or

(3) is radioactive material being received for processing, recycling or consolidation and becomes low level radioactive waste as a result of the processing, recycling or consolidation; and becomes low-level radioactive waste as a result of the processing, recycling, consolidation, including radioactive waste imported into the Compact under NRC 10 CFR Part 110 (under a general or specific license) for processing, recycling or consolidation.

[(4) for the purposes of this section, the material described in this subsection will be referred to as Non-Compact-Facility Low-Level Radioactive Waste ("NCFW").]

(d) [(e)] Any entity in the host state that imports NCFW or radioactive material which is subsequently declared NCFW must enter into an agreement with the Commission that contains a requirement that it will report to the Commission on a monthly [semiannual] basis the following information with respect to each shipment of NCFW that it has received in the previous month [six-month period]:

(1) the name of the generator;

(2) the name of the unaffiliated state, territory, or low-level waste compact (if any), or foreign country of origin (including State and City) where the waste originated;

(3) the activity of the waste in curies;

(4) the gross volume or weight of the waste; the date of receipt; whether the waste is being stored, processed, disposed, or otherwise managed [provided; however, that waste that has been disposed of in the same reporting period in which it was received shall only report gross volume or weight]; [and]

(5) the physical location of management or the date of and physical location of disposal of that waste;[-]

(6) documentation or supporting information to address the requirement for an export agreement from another compact; and

(7) federal documentation supporting import/export of waste from a foreign country, including import/export under 10 CFR Part 110.

(e) Waste must be reported each reporting period until the waste has been returned to the generator, sent out of the compact for disposal or additional processing, or disposed of within the Compact;

(f) If a change in material classification occurs for any material in possession of the agreement holder (such as radioactive material being reclassified as LLRW due to processing, recycling, or consolidation or other factors), then that LLRW must be reported during the next reporting period, and subsequent reporting periods;

(g) [(d)] Monthly [Semi-annual] reports must be submitted electronically on forms provided or approved by the Commission and must be received [submitted] before the 15th day of the month [31st day after the end of each six-month period of the Commission's fiscal year, which begins on September 1 and ends on August 31]. An entity may file its monthly semi-annual report on its own form if the Commission has provided its prior written authorization for the form submitted. The report shall only contain information concerning NCFW as defined in this section.

(h) [(e)] An entity that imports [low-level radioactive waste into the host state as described in subsection (e) of this section shall] NCFW into the host state must have entered into an agreement with the Commission within 90 days after the effective date of this section or within such time extensions thereafter as the Commission may allow. Entities formed after the effective date of this rule or that apply to import waste into the host state [New entrants that import waste into the host state as described in subsection (e) of this section] must enter into an NCFW agreement with the Commission within 30 days of commencement of management operations and prior to importing NCFW. To the maximum extent possible, each agreement entered into under this section will contain provisions identical to those in each other agreement entered into under this section.

(i) [(f)] An entity that imports NCFW [waste] into the host state [as described in subsection (e) of this section] shall submit an application for entry into an agreement with the Commission electronically or on a paper [on a] form authorized [provided] by the Commission.

(j) [(g)] Failure on the part of an entity that imports NCFW [waste] into the host state as described in subsection (d) [(e)] of this section to comply with any provision of this section or the agreement entered into pursuant to subsection (i) [(f)] of this section may result in the Commission reporting such failures to the [host] state or federal agency that has licensed, permitted, or [otherwise] authorized the operation of such entities.

(k) [(h)] The Commission may unilaterally revoke or amend an NCFW agreement [on its own motion or in response to an application by the agreement holder]. When the Commission amends an NCFW agreement [on its own motion], it may provide a reasonable time to allow the other party to the agreement [holder] to make the changes necessary to comply with any additional requirements imposed by the Commission. No importation of NCFW shall be allowed under an NCFW [any amended] agreement for the importation of NCFW until:

(1) the NCFW agreement or any amendment to the NCFW agreement has been executed by both the Commission and the agreement holder; and

(2) the agreement holder has made any changes necessary to comply with additional requirements.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 22, 2023.
TRD-202301147



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 16. COMPTROLLER GRANT PROGRAMS [BROADBAND DEVELOPMENT] SUBCHAPTER C. TEXAS OPIOID ABATEMENT FUND PROGRAM

34 TAC §§16.200 - 16.222

The Comptroller of Public Accounts proposes new §§16.200, concerning definitions, 16.201, concerning opioid abatement strategies, 16.202, concerning grant issuance plan, 16.203, concerning notice and applications, 16.204, concerning availability of funds, 16.205, concerning engage in business in Texas, 16.206, concerning peer review panel members, 16.207, concerning authorized officials, 16.208, concerning grant application review, 16.209, concerning amount of grant award, 16.210, concerning financial responsibility, 16.211, concerning allowable costs; disbursement of grant funds, 16.212, concerning grant requirements, 16.213, concerning use of council's grant management system, 16.214, concerning code of ethics, 16.215, concerning reporting, 16.216, concerning grant reduction or termination, 16.217, concerning extensions, 16.218 concerning noncompliance, 16.219, concerning monitoring grant award performance and expenditures, 16.220, concerning records retention; audit, 16.221, concerning forms and other documents, and 16.222, concerning references.

These rules will be located in 34 Texas Administrative Code, Chapter 16, new Subchapter C (Texas Opioid Abatement Fund Program). Additionally, the title of Chapter 16 will be changed from "Broadband Development" to "Comptroller Grant Programs" to allow these rules to be included in Chapter 16 along with the broadband development rules.

Section 16.200 provides definitions.

Section 16.201 describes the council's process for determining and approving opioid abatement strategies that are eligible for grant funding, and for categorizing and prioritizing each strategy.

Section 16.202 describes the council's process for adopting a grant issuance plan that allocates grant funds among one or more grant cycles. The council will establish various grant cycles based on the categories established in §16.201 and will describe the details of each cycle. This section also incorporates the regional allocations as provided by the 87th Legislative Session, General Appropriations Act, article IX, §17.18(b).

Section 16.203 requires a notice of funding availability (NOFA) to be published, as necessary, on the *Texas.gov eGrants* website and the comptroller's website, and describes the information that may be included in a NOFA. The section also describes grant application requirements.

Section 16.204 states that grant funding is contingent upon the availability of funds and upon approval of a grant application by the council, and that neither the rules nor a grant agreement create any right to receive a grant award.

Section 16.205 requires grant recipients to be engaged in business in Texas.

Section 16.206 allows the council to select and compensate individuals who live and work outside the state of Texas to serve as peer review panel members for purposes of a peer review analysis for each grant application, unless a special need justifies selecting one or more individuals living and working in Texas. This panel will minimize the potential for conflicts of interest in the peer review of grant applications. This section requires a peer review panel member who has a present relationship with, or has received or will receive any benefit from, a grant applicant to disclose this relationship or benefit. This section also prohibits a member from reviewing a grant application of a grant applicant if such a relationship or benefit exists.

Section 16.207 requires each grant applicant to designate a person to act on behalf of the grant applicant.

Section 16.208 describes the process for reviewing grant applications. Program staff will review the applications during an initial screening to determine compliance with the necessary administrative requirements. Then grant applications will be scored by the peer review panel members. The council will make the final decision on all grant awards based on the council's review and the information provided by peer review panel members.

Section 16.209 establishes the council as the sole entity permitted to set the grant award amount and establishes that the council is not required to fund any grant at the amount the grant applicant requests.

Section 16.210 requires the grant recipient to manage the day-to-day operations and activities of the grant and to maintain a sound financial management system to account for the grant award funds.

Section 16.211 requires costs to be reasonable and necessary for the proper and efficient performance and administration of the grant project and requires grant funds to be disbursed on a reimbursement basis.

Section 16.212 details grant requirements, including compliance with the provisions outlined in the grant agreement and state and federal law. This section also establishes the grant recipient as the entity legally and financially responsible for compliance with the grant agreement and state and federal law, and prohibits grant funds from being used for costs that will be reimbursed by another funding source.

Section 16.213 explains how the grant applicant or grant recipient's use of the electronic grant management system requires certain affirmations, including that the information submitted is true and correct and that the signatures are valid.

Section 16.214 requires all council members, peer review panel members, and program staff members to avoid acts which are improper or give the appearance of impropriety in the disposition of grant funds. This section also requires the council to adopt a code ethics to provide guidance related to the ethical conduct of the council members, peer review panel members, and program staff. The code of ethics will be distributed to each council member, peer review panel member, and program staff member.

Section 16.215 requires grant recipients to submit periodic reporting in accordance with the grant agreement. This section also authorizes the director, upon reasonable notice, to request any additional information necessary to show that grant funds are being used for the intended purpose and that the grant recipient has complied with the grant agreement.

Section 16.216 allows the council to reduce or terminate a grant award based on circumstances described in this section.

Section 16.217 allows the council to approve no cost time extensions for a grant recipient requesting additional time to complete a grant project.

Section 16.218 allows the council to hold a grant recipient accountable for noncompliance with the grant agreement and any applicable law, and sets forth the penalties for noncompliance.

Section 16.219 requires the council to monitor grant awards to ensure compliance and proper stewardship of grant award funds.

Section 16.220 requires grant recipients to maintain all records regarding the grant project and provides records retention and audit review requirements.

Section 16.221 authorizes the council to prescribe forms or other documents necessary for the implementation of this program and to require these forms or other documents to be submitted electronically.

Section 16.222 specifies which subchapter in Government Code, Chapter 403 applies to this program because Chapter 403 contains two subchapters entitled "Subchapter R."

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed new rules are in effect, the rules: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed new rules would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed new rules would benefit the public by implementing the current statute. There would be no significant anticipated economic cost to the public. The proposed new rules would have no significant fiscal impact on small businesses or rural communities.

Comments on the proposal may be submitted to Amanda Lopez, Director, Opioid Abatement Fund Council, at OAF.C.Public@cpa.texas.gov or at P.O. Box 13528 Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under Government Code, §403.511, which authorizes the comptroller to adopt rules to implement Government Code, Chapter 403, Subchapter R, as added by 87th Legislature, 2021, R.S., Chapter 781 (Senate Bill 1827), §1, concerning the statewide opioid settlement agreement.

The amendments implement Government Code, Chapter 403, Subchapter R, as added by 87th Legislature, 2021, R.S., Chapter 781 (Senate Bill 1827), §1, concerning the statewide opioid settlement agreement.

§16.200. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Authorized official--The individual, including designated alternates, named by a grant applicant or grant recipient, who is authorized to act for the grant applicant or grant recipient in submitting the grant application and executing the grant agreement and associated documents or requests.

(2) Comptroller--The Texas Comptroller of Public Accounts.

(3) Council--The Texas Opioid Abatement Fund Council established by Government Code, §403.503, to manage the distribution of money allocated to the council from the Opioid Abatement Trust Fund, established by Government Code, §403.506 in accordance with a statewide opioid settlement agreement. A reference in this subchapter to the council includes the director and program staff members unless the provision indicates otherwise.

(4) Council member--A member of the council.

(5) Director--The program staff member designated by the comptroller to serve as the director for the council who performs duties as necessary to manage the day-to-day operations of the council.

(6) Grant agreement--A legal agreement executed by a grant recipient and the director, on behalf of the council, setting forth the terms and conditions for a grant award approved by the council.

(7) Grant applicant--A person or entity that has submitted through an authorized official an application for a grant award under this subchapter.

(8) Grant application--A written proposal submitted by a grant applicant to the director in the form required by the council that, if successful, will result in a grant award.

(9) Grant award--Funding awarded by the council pursuant to a grant agreement providing money to the grant recipient to carry out a grant project in accordance with statutes, rules, regulations, and guidance provided by the council.

(10) Grant recipient--A grant applicant that receives a grant award under this subchapter.

(11) NOFA--Notice of funding availability.

(12) Peer review--The review process performed by the peer review panel and used to provide guidance and recommendations to the council in making decisions for grant awards. The process involves the consistent application of standards and procedures to produce a fair, equitable, and objective evaluation of grant applications, based on the evidence-based opioid abatement strategies developed by the council under Government Code, §403.509, as well as other relevant requirements of the NOFA and the grant application.

(13) Peer review panel--A group of experts in the field of opioid abatement who are selected to conduct peer review of grant applications.

(14) Peer review panel member--A member of the peer review panel.

(15) Program staff member--A member of the comptroller's staff assigned by the comptroller to provide assistance to the council. This term includes the director.

(16) Statewide opioid settlement agreement--A settlement agreement and related documents entered into by this state through the

attorney general, political subdivisions that have brought a civil action for an opioid-related harm claim against an opioid manufacturer, distributor, or retailer, and opioid manufacturers, distributors, or retailers relating to illegal conduct in the marketing, promotion, sale, distribution, and dispensation of opioids that provide relief for this state and political subdivisions of this state.

§16.201. Opioid Abatement Strategies.

(a) The council shall determine and approve one or more evidence-based opioid abatement strategies that are eligible for grant funding. To be approved as eligible for funding, a strategy must be:

(1) an opioid abatement strategy provided in the opioid abatement settlement agreements;

(2) supported with evidence-based data; and

(3) in compliance with all applicable state and federal law.

(b) For each strategy approved as an eligible strategy, the council shall categorize the strategy as:

(1) treatment and recovery;

(2) prevention; or

(3) public safety training and coordination of care.

(c) Within each category, the council shall rank each strategy in order of priority for grant funding.

(d) The council may, from time to time, review and amend the list of eligible strategies, the categorization of strategies, or the ranking of strategies within each category.

§16.202. Grant Issuance Plan.

(a) The council shall adopt a grant issuance plan that allocates grant funds among one or more grant cycles.

(b) The grant issuance plan shall include:

(1) the number and order of grant cycles;

(2) the category, and one or more eligible strategies within that category, that will be eligible for grant funding during each grant cycle;

(3) the amount of grant funds allocated to each grant cycle;

(4) the parameters for the regional component of each grant cycle;

(5) the parameters for the targeted intervention component of each grant cycle; and

(6) any other information necessary to implement the grant issuance plan, such as any matching or volunteer requirements, any limitations to the types of eligible applicants, or other requirements.

(c) Grant awards made each grant cycle will be limited to one of the categories listed in §16.201(b) of this subchapter.

(d) The council shall designate one or more eligible strategies within the category for each grant cycle in accordance with the priority ranking adopted under §16.201(c) of this subchapter.

(e) Each grant cycle will be divided into two main funding components:

(1) Of the funds allocated to a grant cycle, 75% shall be allocated among the regional healthcare partnership regions using the following regional allocations:

(A) Each region's allocation will be determined using the following regional allocations:

(i) 5.515633% allocated to region 1.

(ii) 7.813739% allocated to region 2.

(iii) 17.455365% allocated to region 3.

(iv) 3.902955% allocated to region 4.

(v) 2.542550% allocated to region 5.

(vi) 9.845317% allocated to region 6.

(vii) 7.285670% allocated to region 7.

(viii) 3.495025% allocated to region 8.

(ix) 9.594819% allocated to region 9.

(x) 9.457202% allocated to region 10.

(xi) 1.372268% allocated to region 11.

(xii) 3.390769% allocated to region 12.

(xiii) 0.749727% allocated to region 13.

(xiv) 1.749546% allocated to region 14.

(xv) 2.596578% allocated to region 15.

(xvi) 1.363928% allocated to region 16.

(xvii) 3.325101% allocated to region 17.

(xviii) 5.741368% allocated to region 18.

(xix) 1.827600% allocated to region 19.

(xx) 0.974842% allocated to region 20.

(B) Within each region and provided there are a sufficient number of eligible grant applicants, no single grant recipient will receive 100% of the funds allocated to a respective region.

(2) Of the funds allocated to a grant cycle, 25% shall be allocated for targeted interventions. The council shall establish parameters for the authorized uses of the targeted intervention component of each grant cycle.

(A) The parameters may include:

(i) a limitation to one or more geographic areas based on opioid incidence information; and

(ii) a limitation to one or more eligible strategies based on opioid incidence information.

(B) The council shall rank the parameters relating to geographic areas and eligible strategies in order of priority for grant funding. For example, if the council limits targeted intervention grants to, in order of priority, locations A, B, C, and D and to, in order of priority, strategies X and Y, the council shall also specify whether a grant application from location A for strategy Y is a higher priority than a grant application from location B for strategy X.

(f) The council may, from time to time, review and amend the grant issuance plan.

§16.203. Notice and Applications.

(a) For each grant cycle in the grant issuance plan adopted under §16.202 of this subchapter, the council shall, as necessary, publish a NOFA on the Texas.gov eGrants website and the comptroller's website.

(b) The NOFA may include:

(1) the amount of grant funds available for grant awards for each regional healthcare partnership region under the regional component;

(2) the amount of grant funds available for grant awards and any limitations on the number of grant awards under the targeted intervention component;

(3) the strategy or strategies that are eligible for grant funding and the order of priority for grant funding;

(4) the minimum and maximum amount of grant funds available for each grant application;

(5) limitations on the geographic distribution of grant funds under the regional component and under the targeted intervention component;

(6) eligibility requirements;

(7) grant application requirements;

(8) grant award and evaluation criteria;

(9) the date by which grant applications must be submitted to the council;

(10) the anticipated date of grant awards;

(11) any preferred criteria relevant to the grant application;

(12) parameters for allowable costs reimbursable under the grant awards; and

(13) any other necessary information.

(c) All grant applications submitted under this subchapter must comply with the requirements contained in this subchapter and in the relevant NOFA published by the council.

(d) Grant applicants must apply for a grant award using the procedures, forms, and certifications prescribed by the council.

(e) During the review of a grant application, a program staff member may require a grant applicant to submit additional information necessary to complete the review. Such requests for information do not serve as notice that the council intends to fund a grant application; however, failure to respond to requests for additional information may impact the ability to review and evaluate the grant application.

(f) Grant applications shall:

(1) seek to remediate the opioid crisis in this state by using efficient and cost-effective methods that are directed to regions of this state experiencing opioid-related harms; and

(2) satisfy the requirements set forth in this subchapter; Government Code, Chapter 403, Subchapter R; and the relevant NOFA published by the council.

§16.204. Availability of Funds.

All grant funding is contingent upon the availability of funds and upon approval of a grant application by the council. Neither this subsection nor a grant agreement creates any entitlement or right to grant funds by a grant applicant.

§16.205. Engage in Business in Texas.

(a) Except as addressed by a NOFA, to be eligible to receive a grant award, a grant applicant must engage in business in the state of Texas by:

(1) maintaining employees in the state of Texas;

(2) having a fixed place of business in the state of Texas; or

(3) providing any service in the state of Texas, whether or not the individuals performing the service are residents of the state.

(b) Grant applicants responding to a NOFA may be located outside the state of Texas when the grant application is submitted and

reviewed; however, the grant applicant must demonstrate that it engages in business in the state of Texas as a condition of the grant award.

(c) A grant recipient's failure to engage in business in the state of Texas is a violation of these rules for the purpose of §16.218 of this subchapter.

§16.206. Peer Review Panel Members.

(a) To minimize the potential for conflicts of interest in the peer review of grant applications, the council may select and compensate individuals who live and work outside of the state of Texas to serve as peer review panel members, unless a special need justifies selecting one or more individuals living or working in Texas.

(b) If an individual who lives or works in Texas is selected to serve as a peer review panel member, the director must provide an explanation of the special need and how any potential for conflict of interest will be mitigated to the council at the time the peer review panel member is selected.

(c) A peer review panel member shall immediately disclose to the director a present relationship with a grant applicant or any benefit the peer review panel member has received or knows the member will receive from a grant applicant.

(d) A peer review panel member who has a present relationship with a grant applicant, or has received or knows the member will receive any benefit from a grant applicant, may not review that grant application.

§16.207. Authorized Officials.

(a) Each grant applicant must designate an authorized official and must submit to the director:

(1) a resolution from the grant applicant's governing body that, at a minimum, designates an authorized official to act on the grant applicant's behalf and authorizes the authorized official to submit a grant application;

(2) the authorized official's title, mailing address, telephone number, and email address; and

(3) the grant applicant's physical address.

(b) A grant applicant or grant recipient must notify the director as soon as practicable of any change in the information provided under subsection (a) of this section. If there is a change of authorized official, a grant applicant or grant recipient must also submit to the director a new resolution from the grant applicant's governing body that, at a minimum, designates an authorized official to act on the grant applicant's behalf.

§16.208. Grant Application Review.

(a) The grant application review process shall consist of three steps:

(1) initial screening;

(2) peer review; and

(3) council review and approval.

(b) Initial screening.

(1) Program staff members shall review each grant application to determine whether the grant application complies with the requirements contained in this subchapter and the relevant NOFA published by the council. Grant applications that do not meet these requirements will not be eligible for review under this section.

(2) A program staff member shall submit each grant application that meets the requirements described in subsection (b)(1) of this section to the peer review panel for review.

(c) Peer review.

(1) Peer review panel members shall review each grant application that is submitted for review by program staff as described in subsection (b)(2) of this section.

(2) Peer review panel members shall assign a score for the application based on the application's merit and accounting for the criteria in the relevant NOFA published by the council, and shall submit this information to a program staff member.

(3) If a peer review panel member recommends changes to the grant funds amount requested by the grant applicant or to the goals and objectives or timeline for the proposed grant project, the recommended changes and explanation shall be submitted to a program staff member.

(4) The peer review panel's scores, rankings and other information submitted for the council's consideration are recommendations and are advisory only.

(d) Council review and approval.

(1) After receipt of the peer review scores and recommendations described in subsection (c) of this section, program staff members shall compile a list of grant applications reviewed by the peer review panel ranked in order by the final overall evaluation score. The final evaluation score is determined by averaging together the scores assigned by the peer review panel members under subsection (c)(2) of this section.

(2) For each application, a program staff member shall submit to council members:

(A) the grant application's final overall peer review evaluation score;

(B) the grant application's peer review ranking;

(C) a summary of the grant application;

(D) other information submitted by the peer review panel for the council's consideration; and

(E) any other information required for the council's consideration of the grant application.

(3) In making grant award decisions, the council:

(A) shall ensure that grant funds are allocated fairly and spent to remediate the opioid crisis in this state by using efficient and cost-effective methods in accordance with the opioid strategies approved by the council under Government Code, §403.509(a)(1) and §16.201 of this subchapter, and the grant issuance plan adopted by the council under §16.202 of this subchapter; and

(B) may consider factors including:

(i) a grant applicant's experience;

(ii) a grant project's estimated timeline;

(iii) matching funds or sustainability plan, if any;

(iv) cost effectiveness, efficacy and overall impact of the grant project;

(v) geographic location of the grant project;

(vi) community partnerships; and

(vii) any additional factors listed in the relevant NOFA published by the council.

(4) The council shall vote on each grant application in accordance with Government Code, §403.509(c). The council may vote on multiple grant applications at one time.

(5) If the council approves a grant award, the council shall specify the total amount of money approved to fund the grant project.

(6) All grant funding decisions are final and are not subject to appeal.

(7) The approval of a grant award shall not obligate the council to make any additional, supplemental, or other grant award.

§16.209. Amount of Grant Award.

(a) The amount of a grant award is determined solely by the council.

(b) The council is not obligated to fund a grant at the amount requested by the grant applicant.

§16.210. Financial Responsibility.

(a) The grant recipient is responsible for managing the day-to-day operations and activities supported by the grant agreement and is accountable to the council for the performance of the grant agreement, including the appropriate expenditure of grant award funds and all other obligations of the grant recipient.

(b) The grant recipient must maintain a sound financial management system that provides appropriate fiscal controls and accounting procedures to ensure accurate preparation of reports required by the grant agreement and adequate identification of the source and application of grant funds awarded to the grant recipient.

§16.211. Allowable Costs; Disbursement of Grant Funds.

(a) Allowable costs are costs that are reasonable and necessary for the proper and efficient performance and administration of the grant project, and allocable to the grant project.

(b) The council disburses grant funds by reimbursing the grant recipient for allowable costs already expended.

(c) The relevant NOFA published by the council may provide additional information on allowable costs by grant project and a schedule for disbursement of grant funds.

§16.212. Grant Requirements.

(a) Grant recipients must comply with:

(1) the terms and conditions of the grant agreement;

(2) the requirements of Government Code, Chapter 403, Subchapter R;

(3) the relevant provisions of the Texas Grant Management Standards and the State of Texas Procurement and Contract Management Guide, or their successors, adopted in accordance with Texas law; and

(4) all applicable state or federal statutes, rules, regulations, or guidance applicable to the grant award.

(b) A grant recipient is the entity legally and financially responsible for compliance with the grant agreement, and state and federal laws, rules, regulations, and guidance applicable to the grant award.

(c) Grant funds may not be used for costs that will be reimbursed by another funding source. The director may require a grant applicant or grant recipient to demonstrate through accounting records

that funds received from another funding source are not used for costs that will be reimbursed by the council.

§16.213. Use of Council's Grant Management System.

By utilizing the council's electronic grant management system to create, exchange, execute, submit, and verify legally binding grant agreement documents, grant award reports, and other grant information, a grant applicant or grant recipient:

- (1) certifies that all information submitted is true and correct;
- (2) agrees that the authorized official's electronic signature is the legal equivalent of the authorized official's manual signature;
- (3) agrees that the council may rely upon the authorized official's electronic signature as evidence that the grant recipient consents to be legally bound by the terms and conditions of the grant agreement or related form as if the document was manually signed; and
- (4) agrees to provide prompt written notification to the director of any changes regarding the status or authority of the individual(s) designated by the grant applicant or grant recipient to be the grant applicant's or grant recipient's authorized official.

§16.214. Code of Ethics.

- (a) All council members, peer review panel members, and program staff members shall avoid acts which are improper or give the appearance of impropriety in the disposition of funds administered by the council.
- (b) The council shall adopt a code of ethics to provide guidance related to the ethical conduct required of council members, peer review panel members, and program staff members.
- (c) The code of ethics shall be distributed to each council member, peer review panel member, and program staff member.

§16.215. Reporting.

- (a) Grant recipients must submit to a program staff member designated by the director periodic reports for each funded grant project for the duration of the grant agreement. The frequency, format and requirements of the reports shall be determined at the discretion of the director at the direction of the council.
- (b) At the director's sole discretion and at any time, the director, upon reasonable notice, may request any additional data and reporting information that the director deems necessary to substantiate that grant funds are being used for the intended purpose and that the grant recipient has complied with the terms, conditions, and requirements of the grant agreement.

§16.216. Grant Reduction or Termination.

(a) If a grant recipient seeks to terminate any grant award before the termination date listed in the grant agreement, the grant recipient must notify the director in writing immediately.

(b) The council may reduce or terminate any grant award when circumstances require reduction or termination, including when:

- (1) the grant recipient is found to be noncompliant under §16.218 of this subchapter;
- (2) the grant recipient and the council agree to the reduction or termination of a grant award;
- (3) grant funds are no longer available to the council; or
- (4) conditions exist that make it unlikely that objectives of the grant award will be accomplished.

(c) If a grant award is reduced or terminated by the council, the director must notify the grant recipient in writing.

§16.217. Extensions.

(a) The director may approve a grant recipient's written request for a no cost time extension of the termination date of the grant agreement to permit the grant recipient additional time to complete the work of the grant project if the grant recipient is in good fiscal and programmatic standing.

(b) A written request for a no cost time extension must include:

- (1) a timeline of events beginning on the date of grant award;
 - (2) a detailed explanation why the grant project is not expected to be completed within the grant term; and
 - (3) if applicable, supporting documentation demonstrating extenuating circumstances.
- (c) The director may approve one or more no cost time extensions. The duration of each no cost time extension may be no longer than six months from the termination date of the grant agreement, unless the director finds that special circumstances justify authorizing additional time to complete the work of the grant project.

(d) Approval of a no cost time extension request must be supported by a finding of good cause and the grant agreement shall be amended to reflect the change.

(e) The director's decision to grant or deny a no cost time extension request is final and is not subject to appeal.

§16.218. Noncompliance.

(a) If the council has reason to believe that a grant recipient has violated any term or condition of the grant recipient's grant agreement or any applicable laws, rules, regulations, or guidance relating to the grant award, the director shall provide written notice of the allegations to the grant recipient and provide the grant recipient with an opportunity to respond to the allegations.

(b) If the council finds that a grant recipient has failed to comply with any term or condition of a grant agreement, or any applicable laws, rules, regulations, or guidance relating to the grant award, the council may:

- (1) require the grant recipient to refund the grant award or a portion of the grant award;
- (2) withhold grant award amounts to a grant recipient pending correction of the deficiency;
- (3) disallow all or part of the cost of the activity or action that is not in compliance;
- (4) terminate the grant award in whole or in part;
- (5) bar the grant recipient from future consideration for grant funds under this subchapter; or
- (6) exercise any other legal remedies available at law.

(c) A grant recipient shall not be required to forfeit grant funds received if it fails to perform due to acts of war, terrorism, natural disaster declared by the governor of this state, an act of God, force majeure, a catastrophe, or such other occurrence over which the grant recipient has no control.

§16.219. Monitoring Grant Award Performance and Expenditures.

The council shall monitor grant awards to ensure that grant recipients comply with applicable financial, administrative, and programmatic terms and conditions and exercise proper stewardship over grant award funds. Such terms and conditions include requirements set forth in the grant agreement, and applicable laws, rules, regulations, or guidance relating to the grant award.

§16.220. Records Retention; Audit.

(a) Grant recipients must maintain all financial records, supporting documents, and all other records pertinent to the grant project or grant award for the later of:

(1) five years following the submission of a final report; or

(2) if any litigation, claim, or audit is started, or any open records request is received, before the expiration of the five-year records retention period, one year after the completion of the litigation, claim, audit, or open records request and resolution of all issues which arise from it.

(b) At any time during the grant agreement and during the retention period described in subsection (a) of this section, the director or the director's designee may, upon reasonable notice, request any records from or audit the books and records of a grant recipient or conduct an on-site review at a grant recipient's location to verify that the grant recipient has complied with the terms, conditions, and requirements of the grant agreement, and any applicable laws, rules, regulations, or guidance relating to the grant award.

(c) During an on-site review, a grant recipient must provide the director or the director's designee with access to all records, information, and assets that the director or the director's designee determines are reasonably relevant to the scope of the on-site review.

(d) If the director or the director's designee requests records or information from the grant recipient, the grant recipient must provide

the requested records or information to the director or the director's designee not later than 30 days after a written request is made by the director or the director's designee.

§16.221. Forms and Other Documents.

Unless otherwise required by law, the council may prescribe all forms or other documents required to implement this subchapter and may require that the forms or other documents be submitted electronically.

§16.222. References.

All references in this subchapter to statutory provisions in Government Code, Chapter 403, Subchapter R, refer to the provisions added by 87th Legislature, 2021, R.S., Chapter 781 (Senate Bill 1827), §1.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 24, 2023.

TRD-202301171

Victoria North

General Counsel for Fiscal and Agency Affairs

Comptroller of Public Accounts

Earliest possible date of adoption: May 7, 2023

For further information, please call: (512) 475-2220

◆ ◆ ◆