

The Texas Education Agency (TEA) proposes new §§66.1401, 66.1403, 66.1405, and 66.1407, concerning the instructional materials web portal. The new sections would implement House Bill (HB) 3526 and Senate Bill (SB) 810, 85th Texas Legislature, Regular Session, 2017, by specifying procedures by which publishers submit instructional materials for inclusion in the instructional materials web portal.

**BACKGROUND INFORMATION AND JUSTIFICATION:** HB 3526 and SB 810, 85th Texas Legislature, Regular Session, 2017, added Texas Education Code (TEC), §31.081, to require the commissioner to develop and maintain an instructional materials web portal to assist school districts and open-enrollment charter schools in selecting instructional materials. HB 3526 and SB 810 also added TEC, §31.082, which requires an analysis of instructional materials submitted by publishers for inclusion in the web portal, and TEC, §31.083, which requires that the web portal include a repository of open educational resources that school districts and open-enrollment charter schools can access at no cost.

The proposed new rules would implement HB 3526 and SB 810 by establishing the instructional materials portal, which is designed to promulgate the use of high-quality materials by providing school districts and open-enrollment charter schools access to free, transparent, and user-friendly information. A pilot phase will take place during the spring of 2019, involving a select number of Texas school districts and publishers who have volunteered to participate. The information about instructional materials generated during the pilot will be distributed only to pilot participants.

Proposed new §66.1401, Definitions, would define terms having meanings specific to proposed new Chapter 66, Subchapter DD.

Proposed new §66.1403, Instructional Materials to be Included in the Instructional Materials Portal, would describe the instructional materials that will be included in the instructional materials portal and specify the considerations TEA will use in determining the sequence and scheduling of quality reviews. This provision would enable TEA to cost-effectively manage agency resources and state funds and thereby provide maximum value to school districts and open-enrollment charter schools. The proposed new rule would also specify, in accordance with TEC, §31.082, that instructional materials submitted for quality review may be evaluated to determine the extent to which the materials cover the essential knowledge and skills identified under TEC, §28.002, for the subject and grade level for which the material is intended to be used. The process by which instructional materials are evaluated regarding the extent to which they cover the essential knowledge and skills is conducted under the authority of TEC, §31.023, and State Board of Education rules in 19 TAC Chapter 66, State Adoption and Distribution of Instructional Materials.

Proposed new §66.1405, Procedures for Publishers to Submit Instructional Materials for Inclusion in the Instructional Materials Portal, would establish the procedures publishers must use to submit materials for inclusion in the instructional materials portal and detail the quality review process. In accordance with TEC, §31.082, each instructional material submitted by a publisher for inclusion in the instructional materials portal must undergo an independent analysis by a private entity contracted by TEA. The proposed new rule would inform publishers of the requirements for submission, enabling them to plan and allocate resources appropriately. The proposed new rule would also specify when TEA may not include instructional materials in the quality evaluation process, which allows TEA discretion in the selection and timing of materials to be reviewed to make efficient use of agency resources.

Proposed new §66.1407, Procedures for Open Education Resource Licensors to Submit Materials for Inclusion in the Open Education Resource Repository, would establish the requirements for publishers and open education resource (OER) licensors to submit instructional materials for inclusion in the OER repository, enabling them to plan and allocate resources appropriately. The proposed new rule would also specify when TEA may not include OERs in the quality evaluation process, which allows TEA discretion in the selection and timing of materials to be reviewed to make efficient use of agency resources.

**FISCAL IMPACT:** Martin Winchester, deputy commissioner for educator and systems support, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government required to comply with the proposal beyond what statute requires. TEC, §31.081, requires the commissioner to develop and maintain a web portal to assist school districts and open-enrollment charter schools in selecting



instructional materials and requires that the commissioner use money in the state technology and instructional materials fund to pay any expenses associated with the web portal.

**LOCAL EMPLOYMENT IMPACT:** The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

**SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT:** The proposal has no direct adverse economic impact for small businesses, microbusinesses, and rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

**COST INCREASE TO REGULATED PERSONS:** The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

**TAKINGS IMPACT ASSESSMENT:** The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking would create a new regulation by providing foundational procedures for the submission of instructional materials as required by TEC, §31.081. The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Mr. Winchester has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be ensuring that school districts and open-enrollment charter schools are well informed regarding the quality of instructional materials, enabling them to choose materials that best serve their needs and improve outcomes for their students. There is no anticipated economic cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would have no data and reporting impact.

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** The TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

**PUBLIC COMMENTS:** The public comment period on the proposal begins February 22, 2019, and ends March 25, 2019. A public hearing to solicit testimony and input on the proposal will be held at 8:30 a.m. on March 21, 2019, in Room 1-100, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Anyone wishing to testify at the hearing must sign in between 8:15 a.m. and 9:00 a.m. on the day of the hearing. The hearing will conclude once all who have signed in have been given the opportunity to comment.

**STATUTORY AUTHORITY.** The new sections are proposed under Texas Education Code (TEC), §31.023, which requires the State Board of Education to determine the percentage of the elements of the essential knowledge and skills of the subject and grade level covered by each instructional material submitted to be included on the list of adopted instructional materials; TEC, §31.081, as added by House Bill (HB) 3526 and Senate Bill (SB) 810, 85th Texas Legislature, Regular Session, 2017, which requires the commissioner to develop and maintain a web portal to assist school districts and open-enrollment charter schools in selecting instructional materials; TEC, §31.081(c), which requires the commissioner to adopt rules to establish the procedure by which a publisher may submit instructional materials for inclusion in the web portal; TEC, §31.082, as added by HB 3526 and SB 810, 85th Texas Legislature, Regular Session, 2017, which requires the commissioner to contract with a private entity to conduct an independent analysis of each instructional material submitted by a publisher for inclusion in the web portal developed under TEC, §31.081; TEC, §31.083, as added by HB 3526 and SB 810, 85th Texas Legislature, Regular Session, 2017, which requires the commissioner to include in the web portal developed under TEC,



§31.081, a repository of open educational resources and other electronic instructional materials that school districts and open-enrollment charter schools may access at no cost; and TEC, §31.084, as added by HB 3526 and SB 810, 85th Texas Legislature, Regular Session, 2017, which authorizes the commissioner to adopt rules as necessary to implement the provisions of TEC, Chapter 31, Subchapter B-2.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §31.023; and §§31.081, 31.082, 31.083, and 31.084, as added by House Bill 3526 and Senate Bill 810, 85th Texas Legislature, Regular Session, 2017.

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#### **§66.1401. Definitions.**

For purposes of this subchapter, the following words and terms shall have the following meanings.

- (1) Classroom set--This term refers to the components of an instructional material, including, but not limited to, the Texas Essential Knowledge and Skills-bearing components sufficient for use by a teacher and 25 students.
- (2) Inclusion--This term means the presentation or display of instructional materials, open education resources (OERs), and related information in the instructional materials portal or on other websites where information is publicly available to which the instructional materials portal links.
- (3) Instructional materials--This term has the meaning assigned by Texas Education Code (TEC), §31.002(1), and §66.27(a) of this title (relating to Proclamation, Public Notice, and Schedule for Adopting Instructional Materials).
- (4) Open education resource--This term has the meaning assigned by TEC, §31.002(1-a) and §31.083.
- (5) Open education resource submission form--This term refers to a document generated and approved by the Texas Education Agency (TEA) on which an OER licensor, a publisher, or TEA records information required for submission of OERs to the repository.
- (6) Open education resource submission process--This term refers to the procedures followed by an OER licensor, a publisher, or TEA when submitting OERs to the OER repository in the instructional materials portal.
- (7) OER licensor--This term means the individual or entity that offers an OER under the terms of an intellectual property license as specified in TEC, §31.083. Publishers and TEA may be OER licensors.
- (8) Professional development services---This term means the training and instruction provided by a publisher or its designee for the purpose of teaching teachers and other educators how to use the publisher's instructional materials.
- (9) Publisher--This term means the developer or distributor of instructional materials and has the meaning assigned by TEC, §31.002(2).
- (10) Evaluation of quality--This term refers to the independent analysis of instructional materials based on their quality and assignment of a quality rating to the materials for publication in the instructional materials portal.
- (11) Evaluation of quality submission form--This term refers to a document generated and approved by TEA in which publishers record information required for submission of instructional materials for an evaluation of quality (EoQ).
- (12) Evaluation of quality submission process--This term refers to the procedures followed by publishers when submitting instructional materials for an EoQ.



**§66.1403. Instructional Materials to be Included in the Instructional Materials Portal.**

- (a) The following instructional materials shall be included in the instructional materials web portal:
  - (1) instructional materials included in the list of instructional materials adopted by the State Board of Education (SBOE), as specified in Texas Education Code, §31.023. Instructional materials adopted by the SBOE are not included in the evaluation of quality (EoQ) process unless:
    - (A) a publisher submits instructional materials through the EoQ submission process;
    - (B) a member of the SBOE makes a written request that an instructional material be included in an EoQ; or
    - (C) more than 10% of local education agencies statewide request that an instructional material be included in an EoQ;
  - (2) instructional materials submitted directly to the Texas Education Agency (TEA) by a publisher through the EoQ submission process;
  - (3) instructional materials owned by TEA or open education resources (OERs) submitted by TEA; and
  - (4) OERs submitted directly to TEA through the OER submission process for inclusion in the OER repository. OER materials are not included in the repository unless:
    - (A) a publisher or other OER licensor submits such materials through the EoQ submission process; or
    - (B) TEA submits such materials for which TEA is the OER licensor for the purposes of being reviewed for quality.
- (b) TEA may determine the sequence and scheduling of quality reviews based on the following considerations:
  - (1) the availability and allocation of resources for completion of quality reviews;
  - (2) the needs of public schools in Texas;
  - (3) the timing of submission to TEA; and
  - (4) other factors deemed relevant by TEA to maximize the effectiveness of the quality review process.
- (c) Instructional materials that have been submitted for an EoQ may be reviewed for alignment with the Texas Essential Knowledge and Skills and, when applicable, the English Language Proficiency Standards. TEA may choose to conduct such reviews according to the process established by the SBOE.
- (d) TEA may exclude from the quality review process a submission that does not constitute an instructional material.

**§66.1405. Procedures for Publishers to Submit Instructional Materials for Inclusion in the Instructional Materials Portal.**

- (a) A publisher that submits instructional materials for an evaluation of quality (EoQ) shall:
  - (1) submit a completed Texas Education Agency (TEA)-generated EoQ submission form by the deadline stated in the submission form. TEA may adapt the submission form, as it deems necessary, to develop and maintain the instructional materials web portal;
  - (2) sign a set of assurances at the time of submission assuring compliance with the requirements listed in this subchapter;
  - (3) submit instructional materials that are:
    - (A) in electronic format;
    - (B) complete and include all content to be used in the final product; and
    - (C) fully functional for review purposes;



- (4) ensure submitted instructional materials remain final and unchanged throughout the quality review process, unless otherwise specified by TEA;
  - (5) make submitted instructional materials available for reviewers for the duration of a review period to be determined by TEA and made known to publishers;
  - (6) include information required for reviewers to complete electronic reviews of instructional materials, including, but not limited to:
    - (A) hardware and system requirements for the review of any item included in an instructional material submission; and
    - (B) information for online products, including internet location, keycodes, passwords, and other login information required to ensure access to the materials being reviewed throughout the review period;
  - (7) provide specialized computer hardware or other equipment necessary to review all items included in a student or teacher component of an instructional material for the duration of the review period in a quantity to be determined by TEA and communicated to the publisher at the time the materials are submitted for review;
  - (8) provide the following information in a format determined by TEA and communicated to publishers by way of the EoQ submission form regarding the instructional materials submitted:
    - (A) computer hardware and system requirements for use of the materials;
    - (B) availability and description of professional development services;
    - (C) a report for each electronic component that verifies that the component complies with §66.28(a)(2) of this title (relating to Requirements for Publisher Participation), which can be satisfied by a report prepared for submission to the SBOE; and
    - (D) a complete description of all student and teacher components;
  - (9) provide accurate and up-to-date pricing information for each instructional material, including:
    - (A) the price for a single copy of or individual access to, in the case of online materials, each item included in an instructional material;
    - (B) a list of the components of an instructional material that comprise a classroom set and the price for such classroom set;
    - (C) the price for replacement of consumable materials for a period up to 12 years; and
    - (D) the price for subscriptions to online materials for the first year of the purchase agreement and for each subsequent year up to 12 years;
  - (10) make samples of instructional materials available for public review during a review period determined by TEA, as deemed necessary by TEA and made known to publishers by TEA;
  - (11) assume responsibility for all expenses incurred by participation in the review process, as TEA does not guarantee return of sample instructional materials;
  - (12) acknowledge that TEA and its designee have final authority for determining all quality ratings;
  - (13) provide evidence in the form of an identification number provided by the Texas Secretary of State proving that the publisher is approved to conduct business in the state of Texas;
  - (14) verify that the publisher is the copyright owner of the instructional materials; and
  - (15) verify that the individual submitting the materials is legally authorized to act on behalf of the publisher.
- (b) TEA may not include materials in the quality evaluation process if:
- (1) materials have been authored or contributed to by a current employee of TEA or its designated independent evaluator, unless those materials are open education resources;



- (2) publishers directly or indirectly contact reviewers before or during the review process if such contact or solicitation relates to the quality evaluation process; or
  - (3) reviewers lack capacity to evaluate all submitted materials.
- (c) Publishers that submit materials for quality evaluation may not withdraw those materials from the review process after the materials have been approved for review by TEA.
- (d) This section does not apply to or otherwise limit the submission of instructional materials by TEA for inclusion in the instructional materials portal.

**§66.1407. Procedures for Open Education Resource Licensors to Submit Materials for Inclusion in the Open Education Resource Repository.**

- (a) An open education resource (OER) licensor that submits OERs for inclusion in the OER repository shall:
  - (1) submit a completed Texas Education Agency (TEA)-generated OER submission form, which TEA may adapt, as it deems necessary, to develop and maintain the instructional materials web portal;
  - (2) sign a set of assurances at the time of submission assuring compliance with the requirements in this subchapter;
  - (3) submit instructional materials that:
    - (A) are in electronic format; and
    - (B) meet TEA requirements to be included in the repository;
  - (4) provide the following information in a format determined by TEA and communicated to the OER licensor by way of the OER submission form regarding the OERs submitted:
    - (A) computer hardware and system requirements for use of materials;
    - (B) availability of professional development services in a format requested by TEA;
    - (C) a report for each electronic component that verifies that the component complies with §66.28(a)(2) of this title (relating to Requirements for Publisher Participation);
    - (D) a complete description of all student and teacher components; and
    - (E) access information for web-based products, including internet location, login, and password information;
  - (5) assume responsibility for all expenses incurred by submitting materials to the repository;
  - (6) provide evidence that materials meet the OER definition; and
  - (7) verify that the individual submitting the materials is the OER licensor or is legally authorized to act on behalf of the OER licensor.
- (b) If any of the requirements specified in subsection (a) of this section are not met, TEA may choose not to include those OERs in the repository until all requirements are met.
- (c) TEA may not include OERs in the quality evaluation process if reviewers do not have capacity to conduct quality evaluations for all submitted materials.
- (d) OER licensors that update materials in the OER repository must resubmit an OER submission form.