

The State Board of Education (SBOE) adopts new §67.43, concerning state review and approval of instructional materials. The new section is adopted with changes to the proposed text as published in the August 2, 2024 issue of the *Texas Register* (49 TexReg 5616) and will be republished. The new section addresses the removal of a set of instructional materials from the lists of approved and rejected instructional materials outlined in Texas Education Code (TEC), §31.022.

REASONED JUSTIFICATION: TEC, Chapter 31, addresses instructional materials in public education and permits the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials. House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, significantly revised TEC, Chapter 31, including several provisions under SBOE authority. HB 1605 also added a new provision to TEC, Chapter 48, to provide additional funding to school districts and charter schools that adopt and implement SBOE-approved materials. In addition, the bill added requirements related to adoption of essential knowledge and skills in TEC, Chapter 28.

At the January-February meeting, the SBOE approved 19 TAC Chapter 67, State Review and Approval of Instructional Materials, Subchapter B, State Review and Approval, §67.21, Proclamations, Public Notice, and Requests for Instructional Materials for Review; §67.23, Requirements for Publisher Participation in Instructional Materials Review and Approval (IMRA); and §67.25, Consideration and Approval of Instructional Materials by the State Board of Education, and Subchapter D, Duties of Publishers and Manufacturers, §67.81, Instructional Materials Contracts, and §67.83, Publisher Parent Portal, for second reading and final adoption. At that time, the board expressed a desire to clarify the rules related to the list of approved instructional materials outlined in TEC, §31.022.

Adopted new §67.43 clarifies the conditions under which the SBOE could remove instructional materials from the list of approved instructional materials as well as the list of rejected instructional materials. The new section also outlines the timeline for these decisions and their impact on school district procurement.

The SBOE approved the new section for first reading and filing authorization at its June 28, 2024 meeting and for second reading and final adoption at its September 13, 2024 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the new section for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2025-2026 school year. The earlier effective date will allow for clarification to districts and publishers regarding the conditions under which the SBOE could remove instructional materials from the list of approved instructional materials and the use of the entitlements outlined in TEC, §48.307 or §48.308, related to materials removed from the approved instructional materials list. The effective date is 20 days after filing as adopted with the Texas Register.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began August 2, 2024, and ended at 5:00 p.m. on September 3, 2024. The SBOE also provided an opportunity for registered oral and written comments at its September 2024 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comments received and corresponding responses.

Comment. A Texas parent commented in support of new 19 TAC Chapter 67.

Response. The SBOE agrees.

Comment. A Texas parent asked that the SBOE approve the curriculum being reviewed related to IMRA without amendments.

Response. This comment is outside the scope of the proposed rulemaking.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §31.003(a), which permits the State Board of Education (SBOE) to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials; and TEC, §31.022, as amended by House Bill 1605, 88th Texas Legislature, Regular Session, 2023, which requires the SBOE to review instructional materials that have been provided to the board by the Texas Education Agency under TEC, §31.023.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §31.003(a) and §31.022, as amended by House Bill 1605, 88th Texas Legislature, Regular Session, 2023.

<rule>

§67.43. Lists of Approved and Rejected Instructional Materials.

- (a) The list of approved instructional materials shall be maintained by the State Board of Education (SBOE).
- (b) The SBOE may remove instructional materials from the list of approved instructional materials if:
 - (1) the Texas Essential Knowledge and Skills (TEKS), Texas Prekindergarten Guidelines (TPG), or applicable English Language Proficiency Standards (ELPS) intended to be covered by the material are revised or a publisher revises the material without the approval of the SBOE in accordance with Texas Education Code (TEC), §31.022(c);
 - (2) the instructional materials, through a finding of the SBOE, are not compliant with the parent portal standards in §67.83 of this title (relating to Publisher Parent Portal); or
 - (3) the instructional materials violate any provisions of TEC, Chapter 31.
- (c) A publisher of the specific instructional material shall be provided a minimum of 30 days' notice of the proposed removal. A representative of the publisher of the specific instructional material shall be given the opportunity to address the SBOE at the meeting where the SBOE is considering removing that publisher's product from the list of approved materials.
- (d) If instructional materials are removed from the list of approved instructional materials, school districts and open-enrollment charter schools may not apply the entitlements outlined in TEC, §48.307 or §48.308, to future purchases or subscriptions of the removed instructional materials.
- (e) A school district or an open-enrollment charter school that selects subscription-based instructional materials from the list of approved instructional materials approved under TEC, §31.022 and §31.023, may cancel the subscription and subscribe to a new instructional material on the list of approved instructional materials before the end of the state contract period under TEC, §31.026, if:
 - (1) the district or charter school has used the instructional material for at least one school year and the Texas Education Agency (TEA) approves the change based on a written request to TEA by the district or charter school that specifies the reasons for changing the instructional material used by the district or charter school; or
 - (2) the SBOE removes the instructional material to which the district or charter school is subscribed from the list of approved instructional materials.
- (f) The SBOE shall maintain the list of rejected instructional materials.
- (g) Instructional materials shall be removed from the list of rejected instructional materials if a publisher submits a revised set of instructional materials for review through the process required by TEC, §31.022 and §31.023, and the SBOE places the revised instructional materials on the list of approved instructional materials.
- (h) The SBOE may remove instructional materials from the list of rejected instructional materials if a publisher submits a revised set of instructional materials for review through the process required by TEC, §31.023 and §31.022, and the SBOE takes no action before the end of the calendar year.
- (i) This section applies to instructional materials approved by the SBOE after January 1, 2024.