

The State Board of Education (SBOE) proposes new §§67.27, 67.29, 67.31, 67.33, 67.39, 67.41, 67.61, and 67.63, concerning state review and approval of instructional materials. The proposed new sections would implement House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, by defining the procedures and policies for the selection, appointment, training, and duties of instructional materials review and approval (IMRA) reviewers; outlining the procedures for IMRA public access and public comment; and specifying procedures for materials to be updated or revised following approval by the board. The proposed new sections would also outline the procedures for local districts to adopt instructional materials.

BACKGROUND INFORMATION AND JUSTIFICATION: Texas Education Code (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.

At the June 2024 meeting, the SBOE approved 19 TAC Chapter 67, State Review and Approval of Instructional Materials, Subchapter B, State Review and Approval, §67.43, Lists of Approved and Rejected Instructional Materials, for second reading and final adoption.

The proposed new sections in Subchapter B would define the procedures and policies for the selection, appointment, training, and duties of IMRA reviewers; outline the procedures for IMRA public access and public comment; and specify procedures for materials to be updated or revised following approval by the board.

The proposed new sections in Subchapter C would outline the procedures for local districts to request sample copies of materials under review and clarify the procedures for selection and local adoption of instructional materials by school districts and open-enrollment charter schools.

The SBOE approved the proposed new sections for first reading and filing authorization at its November 22, 2024 meeting.

FISCAL IMPACT: Todd Davis, associate commissioner for instructional strategy, has determined that for the first five years the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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, or rural communities; therefore, no regulatory flexibility analysis specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal may impose a cost on regulated persons. Publishers of SBOE-approved materials assume all costs associated with receiving approval from the SBOE and making updates and/or substitutions to their approved materials. This is not mandatory unless a participant in the review and approval process opts to submit their materials voluntarily. Further, the SBOE may assess penalties as allowed by law against publishers that fail to obtain approval for updates to content in state-adopted instructional

materials prior to delivery of the materials to school districts. However, these rules are necessary to implement legislation and, therefore, are 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. During the first five years the proposed rulemaking would be in effect, it would create new regulations regarding the procedures and policies for the selection, appointment, training, and duties of IMRA reviewers; outline the procedures for IMRA public access and public comment; and specify procedures for materials to be updated or revised following approval by the board.

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. Davis 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 defining the procedures and policies for the selection, appointment, training, and duties of IMRA reviewers; outlining the procedures for IMRA public access and public comment; and specifying procedures for materials to be updated or revised following approval by the board. 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 or reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: 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 December 20, 2024, and ends at 5:00 p.m. on January 21, 2025. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in January 2025 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on December 20, 2024.

STATUTORY AUTHORITY. The new sections are proposed 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; TEC, §31.022, as amended by House Bill (HB) 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 (TEA) under TEC, §31.023; and TEC, §31.023, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which requires the commissioner of education to establish, in consultation with and with the approval of the SBOE, a process for the annual review of instructional materials by TEA. In conducting a review under this section, TEA must use a rubric developed by TEA in consultation with and approved by the SBOE.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §31.003(a); and §31.022 and §31.023, as amended by House Bill 1605, 88th Texas Legislature, Regular Session, 2023.

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§67.27. IMRA Reviewers: Eligibility and Appointment.

- (a) All instructional materials review and approval (IMRA) reviewers must complete an application. The application will include a resume and supervisor contact information and must request any professional associations, affiliations, and groups in a format approved by the State Board of Education (SBOE) chair.
- (b) The IMRA reviewer application shall be posted to the SBOE website.
- (c) An IMRA reviewer may serve as a quality reviewer or as a suitability reviewer.
- (d) IMRA quality reviewers must meet one of the following minimum qualification requirements:
 - (1) educators with three or more years of experience;
 - (2) district or campus personnel who have taught and/or directly supported the grade level(s) and subject area(s) or course(s) for at least three years;
 - (3) adjunct professors at an accredited institution of higher education in Texas for at least three years;
or
 - (4) persons with evidence of strong content knowledge and experience in the grade level(s) and subject area(s) or course(s).
- (e) The Texas Education Agency (TEA) may reject a quality reviewer applicant if the candidate does not meet minimum eligibility as outlined in this section.
- (f) All eligible quality reviewer applicants shall be evaluated by TEA staff using the applicants' experience and qualifications rated on a scale of 1-3. The best qualified individuals are ranked 1.
- (g) Once rated, all eligible quality reviewer applicants are shared with the SBOE member for which the applicant is a district resident.
- (h) TEA staff provides all quality reviewer applicants and their applications to the SBOE member for which the applicant is a district resident, and the SBOE member may adjust rankings, veto applicants, and/or identify top candidates.
- (i) The SBOE member has two weeks to return applicants and their rankings to TEA staff. If the SBOE member does not submit a response, TEA staff's ranking shall remain unchanged.
- (j) IMRA quality reviewers must be approved by the SBOE member for which they are a district resident.
- (k) If an individual invited to serve on a quality review panel declines the invitation, the relevant SBOE member will select an alternate from the list of candidates within one week. To the extent an SBOE member fails to select an alternate within one week, the top-ranked applicant is deemed selected.
- (l) In the event TEA does not receive enough applications to fill available roles, TEA may:
 - (1) reduce the size of the review team to no fewer than three reviewers;
 - (2) postpone the review of materials using the SBOE-approved strategy for prioritizing selection of instructional materials for review; or
 - (3) modify the review schedule to allow for additional recruitment efforts.
- (m) TEA staff shall build quality review panels using top candidates identified from each SBOE district. As final selections are made, TEA may consider the following characteristics to ensure that each individual review panel is balanced and has the necessary qualifications. The guidelines are established to ensure that the work groups are highly qualified, reflect the make-up of the state's educators, and include representation from the following.
 - (1) Experience: highly qualified educators and others with evidence of strong content knowledge and experience in the subject and/or grade level or bands and/or course(s).
 - (2) Position: a variety of positions reflected such as classroom teachers, campus- and district-level administrators/specialists, education service center subject area personnel, representatives from higher education, and community members, including parents and employers.

- (3) School district size: large, midsize, and small school districts.
- (4) Demographics: multiple and different racial and ethnic groups and males and females.
- (5) School district/charter school: a variety of local education agencies are represented, including open-enrollment charter schools.
- (6) Expertise: if a work group is assigned a grade band, at least one reviewer with experience teaching for each grade level will be prioritized.
- (n) TEA staff shall maintain a database of individuals who have served on an IMRA review panel during the review process.
- (o) Applicants are exempt from subsection (a) of this section if they have previously served as an IMRA quality reviewer and received an acceptable performance rating.
- (p) Texas residency is a minimum requirement for any IMRA suitability reviewer.
- (q) Each SBOE member shall annually nominate a minimum of 20 applicants to serve as suitability reviewers and rank them from most preferred to least preferred.
- (r) A panel for suitability review consists of three reviewers and shall reflect the political affiliation of the SBOE. No more than one suitability reviewer per panel may be from any one SBOE district.
- (s) TEA staff shall build suitability review panels using top candidates identified from each SBOE district. As final selections are made, TEA may consider the following characteristics to ensure that each individual review panel is balanced and has the necessary qualifications.
 - (1) Experience: successful participation as a quality or suitability reviewer in a past review.
 - (2) Demographics: multiple and different racial and ethnic groups and males and females.
- (t) If an individual invited to serve on a review panel declines the invitation, the relevant SBOE member will select an alternate from the list of candidates within one week. To the extent a member fails to select an alternate within one week, the top-ranked applicant is deemed selected.
- (u) If there are not enough suitability reviewers available for a review cycle, TEA shall request more nominations from each SBOE member. To the extent a member fails to nominate additional candidates within one week, candidates from other SBOE member districts may be considered.
- (v) If an SBOE member who nominated reviewers no longer holds the office before the start of the annual review, the new SBOE member may nominate different suitability reviewers or adjust their rankings. If the office is vacant, the SBOE chair may nominate different suitability reviewers or adjust their rankings.

§67.29. IMRA Reviewers: Training, Duties, and Conduct.

- (a) Instructional materials review and approval (IMRA) reviewers shall participate in training that includes at least the following:
 - (1) the responsibilities of an IMRA reviewer;
 - (2) statutes and rules pertaining to the IMRA process;
 - (3) essential knowledge and skills specified for subjects and grades or courses included in the proclamation or request for instructional materials, including clear and consistent guidelines for determining Texas Essential Knowledge and Skills (TEKS), Texas Prekindergarten Guidelines (TPG), or English Language Proficiency Standards coverage within the instructional materials;
 - (4) identifying factual errors;
 - (5) the schedule of IMRA procedures;
 - (6) regulatory requirements, including Texas Government Code, §572.051 (relating to Standards of Conduct), and Texas Penal Code, §36.02 (relating to Bribery); and
 - (7) IMRA quality and suitability rubrics.

- (b) IMRA reviewers shall not accept meals, entertainment, gifts, or gratuities in any form from State Board of Education (SBOE) members; publishers, authors, or depositories; agents for publishers, authors, or depositories; any person who holds any official position with publishers, authors, depositories, or agents; or any person or organization interested in influencing the selection of instructional materials.
- (c) IMRA reviewers shall be afforded the opportunity to collaborate with other panel members during the official virtual and face-to-face reviews to discuss coverage of TEKS or TPG, errors, components, or any other aspect of instructional materials being evaluated. Reviewers shall not discuss with other reviewers of the panel the instructional materials being reviewed, except during official virtual and face-to-face reviews.
- (d) IMRA reviewers shall not discuss instructional materials being evaluated with a member of the SBOE, unions, organizations, or associations or with any party having a financial interest in the approval of instructional materials prior to the conclusion of the review. The review is considered to have concluded on the date that the final list of instructional materials recommended for approval is posted on the SBOE website.
- (e) SBOE members may attend review panel meetings but may not discuss materials under review with state review panel members.
- (f) IMRA reviewers shall observe a no-contact period that shall begin with the initial communication regarding possible appointment to a state review panel and end when they are released from their duties. During this period, IMRA reviewers shall not have direct or indirect communication with any person having an interest in the approval process regarding content of instructional materials under evaluation by the panel.
- (g) The restrictions in subsections (c)-(f) of this section are not intended to prohibit IMRA reviewers from providing public testimony to the SBOE either at a public hearing or in any regularly scheduled meeting in accordance with the SBOE Operating Rules, §2.12 (relating to Public Hearings).
- (h) IMRA reviewers shall report immediately to the commissioner of education and chair of the SBOE any communication or attempted communication by any person not officially involved in the review process regarding instructional materials being evaluated by the panel.

§67.31. Procedures for Public Access to and Handling of IMRA Samples.

- (a) Each regional education service center (ESC) executive director shall designate one person to supervise all access to pre-approval instructional materials under consideration.
- (b) On or before the date specified in the request for instructional materials for review, each ESC representative shall notify the commissioner of education of all irregularities in electronic samples in a manner designated by the commissioner. The appropriate publisher shall be notified of any sample irregularities reported by the ESCs.
- (c) One electronic sample of all pre-approval instructional materials under consideration shall be retained in each ESC for review by interested persons. The review sample must remain available until the ESC receives the electronic final approved product sample on the date specified in the schedule of instructional materials review and approval (IMRA) procedures.
- (d) Appropriate information, such as locator and login information and passwords, shall be made available by the ESCs to ensure public access to Internet-based instructional content throughout the review or contract period, as appropriate.
- (e) Regional ESCs shall ensure reasonable public access to pre-approval instructional materials under consideration, including access outside of normal working hours that shall be scheduled by appointment.
- (f) On or before the date specified in the schedule of IMRA procedures, each ESC shall publicize the date on which pre-approval instructional materials under consideration will be available for review and shall notify all school districts in the region of the schedule.
- (g) One electronic final sample of all instructional materials approved by the State Board of Education shall be retained in each ESC for the entire contract period for review by interested persons. Samples of approved prekindergarten materials must match the format of the products to be provided to schools upon ordering.

§67.33. Public Comment on Instructional Materials.

- (a) The instructional materials public comment period begins when the electronic samples of materials under consideration for approval are posted on the State Board of Education (SBOE) website and ends after 60 calendar days.
- (b) Any resident of Texas may submit written comments for, against, or about any instructional materials submitted for review. All feedback shall be submitted to the commissioner of education in a format designated by the commissioner on or before the deadlines specified in the schedule of instructional materials review and approval (IMRA) procedures.
- (c) Copies of written feedback and lists of reported alleged factual errors and suitability flags shall be posted on the SBOE website and provided to the SBOE and participating publishers.
- (d) The SBOE shall hold a hearing on instructional materials submitted for review during a regularly scheduled meeting prior to the meeting at which the SBOE will vote to approve instructional materials.
 - (1) Testimony at the hearing shall be accepted from Texas residents and non-residents with priority given to Texas residents.
 - (2) Copies of written testimony provided at the hearing shall be distributed to SBOE members and to publishers with materials under consideration.
 - (3) Persons who wish to testify must register in accordance with registration procedures in the SBOE Operating Rules, §2.10 (relating to Oral Public Testimony in Connection with Regular Board and Committee Meetings).
 - (4) The SBOE may limit the time available for each person to testify to hear from everyone who has registered to testify.
 - (5) Persons may also be allowed to register to testify at the hearing, but priority will be given to those persons who registered prior to the deadline, in accordance with the SBOE Operating Rules, §2.12 (relating to Public Hearings).
 - (6) Oral responses to testimony at the hearing may be made by official representatives of publishing companies.
 - (7) An archived recording of the hearing shall be provided on the Texas Education Agency (TEA) website.
 - (8) All written publisher responses to comments or public testimony provided at the hearing shall be posted to the TEA website within five working days of their receipt from the publisher.
- (e) Public comment on instructional materials not approved by the SBOE on the date specified in the schedule of IMRA procedures shall be accepted according to the SBOE Operating Rules, §2.10.

§67.39. Updates to Approved Instructional Materials.

- (a) A publisher may submit a request to the commissioner of education for approval to update content in State Board of Education (SBOE)-approved instructional materials. A publisher requesting approval of a content update shall provide a written request in a manner designated by the commissioner that includes an explanation of the reason for the update. This requirement includes electronic instructional materials and Internet products for which all users receive the same updates. The request must be accompanied by an electronic sample of the proposed updates. Proposed changes shall be posted on the Texas Education Agency (TEA) website for a minimum of 30 calendar days prior to approval.
- (b) A publisher that requests to update content in state-approved instructional materials must comply with the following additional requirements:
 - (1) provide that there will be no additional cost to the state or local education agencies (LEAs);
 - (2) certify in writing that the new material meets the applicable essential knowledge and skills, is free from factual errors, and is suitable and appropriate for the grade level and subject/course(s); and

- (3) certify that the updates do not affect the product's coverage of Texas Education Code, §28.002(h), as it relates to that specific subject and grade level or course(s) in understanding the importance of patriotism and functioning productively in a free-enterprise society with appreciation for the basic democratic values of our state and national heritage.
- (c) All requests for updates must be approved by the SBOE prior to their introduction into state-approved and locally adopted instructional materials.
- (d) The SBOE may assess penalties as allowed by law against publishers that fail to obtain approval for updates to content in state-approved instructional materials prior to delivery of the materials to school districts.
- (e) A publisher of instructional materials may provide alternative formats for use by school districts if:

 - (1) the content is identical to SBOE-approved content; and
 - (2) the alternative formats include the identical revisions and updates as the original product and the cost to the state and LEAs is equal to or less than the cost of the original product.

- (f) Alternative formats may be developed and introduced at any time during the instructional materials review and approval cycle using the procedures for approval of other SBOE-approved materials.
- (g) Publishers must notify the commissioner in writing if they are providing SBOE-approved products in alternative formats.

§67.41. New Editions of Approved Instructional Materials.

- (a) A publisher may submit a request to the commissioner of education for approval to substitute a new edition of state-approved instructional materials. A publisher requesting approval of a new edition shall provide a written request in a manner designated by the commissioner that includes an explanation of the reason for the substitution. The request must be accompanied by an electronic sample and a correlation document that meets all the requirements of the correlation document provided for the initial review. This requirement includes electronic instructional materials and Internet products for which all users receive the same updates. Proposed changes shall be made available for public review on the Texas Education Agency website for a minimum of 60 calendar days prior to approval.
- (b) A publisher that requests to substitute a new edition of state-approved instructional materials must comply with the following additional requirements:

 - (1) provide that there will be no additional cost to the state or local education agencies;
 - (2) certify in writing that the new material meets the applicable Texas Essential Knowledge and Skills or Texas Prekindergarten Guidelines, is free from factual errors, and is suitable and appropriate for the grade level and subject/course(s); and
 - (3) certify that the updates in the new edition do not affect the product's coverage of Texas Education Code, §28.002(h), as it relates to that specific subject and grade level or course(s) in understanding the importance of patriotism and functioning productively in a free-enterprise society with appreciation for the basic democratic values of our state and national heritage.

- (c) All requests for updates involving content used in determining the product's eligibility for approval must be approved by the State Board of Education (SBOE) prior to their introduction into state-approved and locally adopted instructional materials.
- (d) The SBOE may assess penalties as allowed by law against publishers that fail to obtain approval for updates to content in SBOE-approved instructional materials prior to delivery of the materials to school districts.

STATUTORY AUTHORITY. The new sections are proposed 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; TEC, §31.022, as amended by House Bill (HB) 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 (TEA) under TEC, §31.023; and TEC, §31.023, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which requires the commissioner of education to establish, in consultation with and with the approval of the SBOE, a process for the annual review of instructional materials by TEA. In conducting a review under this section, TEA must use a rubric developed by TEA in consultation with and approved by the SBOE.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §31.003(a); and §31.022 and §31.023, as amended by House Bill 1605, 88th Texas Legislature, Regular Session, 2023.

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§67.61. Sample Copies of Instructional Materials for School Districts.

- (a) Upon request by the instructional materials coordinator of a school district or an open-enrollment charter school, a publisher shall provide one complete electronic sample in an open file format or closed format of approved instructional materials. Samples of learning systems and electronic, visual, or auditory media may be provided in demonstration or representative format. Samples of instructional materials provided to school districts shall be labeled "Sample Copy - Not for Classroom Use."
- (b) Samples supplied to school districts shall be provided and distributed at the expense of the publisher. No state or local funds shall be expended to purchase, distribute, or ship sample materials. Publishers may make arrangements with school districts or open-enrollment charter schools to retrieve samples after local selections are completed, but the state does not guarantee return of sample instructional materials.

§67.63. Selection and Local Adoption of Instructional Materials by School Districts.

- (a) Each local board of trustees of a school district or governing body of an open-enrollment charter school shall select instructional materials in an open meeting as required by Texas Government Code, Chapter 551, including public notice.
- (b) A school district or an open-enrollment charter school may requisition instructional materials on the list approved under the Texas Education Code, §31.023, for grades above the grade level in which the student is enrolled.
- (c) Locally adopted instructional materials shall be supplied to a student in special education classes as appropriate to the level of the student's ability and without regard to the grade for which the instructional material is adopted or the grade in which the student is enrolled.
- (d) School districts or open-enrollment charter schools shall not be reimbursed from state funds for expenses incurred in local handling of instructional materials.