

The Texas Education Agency (TEA) proposes an amendment to §66.1403, concerning instructional materials to be included in the instructional materials portal. The proposed amendment would modify the rule to specify how the State Board of Education (SBOE) may nominate an instructional material for inclusion in the evaluation of quality (EoQ) process.

BACKGROUND INFORMATION AND JUSTIFICATION Section 66.1403 describes the instructional materials that will be included in the instructional materials portal and specifies the considerations the TEA will use in determining the sequence and scheduling of quality reviews. Subsection (a)(2) states that a member of the SBOE may request that an instructional material be included in the EoQ process.

The proposed amendment to §66.1403 would change the provision in subsection (a)(2) to specify that a request to include instructional materials in the EoQ process must be in the form of a nomination made by the SBOE. This proposed change is in response to a recommendation made by the SBOE Texas Resource Review Ad Hoc Committee and adopted by the SBOE.

FISCAL IMPACT: Kristen Dobson, associate commissioner for product strategy, has determined that for the first five-year period 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 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. During the first five years the proposed rulemaking would be in effect, it would limit an existing regulation and would increase the number of individuals subject to its applicability. The proposed amendment would limit an existing regulation by limiting the authority of an individual SBOE member to request that an instructional material be included in the EoQ process. The proposal would require that the request be approved by a majority of the members of the SBOE, thereby increasing the number of individuals subject to its applicability by increasing the number of SBOE members required to make the request.

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 create a new regulation; would not expand or repeal an existing regulation; would not 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: Ms. Dobson 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 instructional materials recommended by the SBOE to be included in the EoQ process reflect the intent of a majority of board members. 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 March 6, 2020, and ends April 6, 2020. 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 March 6, 2020. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/). Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §31.081, which requires the commissioner to develop and maintain a web portal to assist school districts and open-enrollment charter schools in selecting instructional materials; and TEC, §31.082, 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.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §31.081 and §31.082.

<rule>

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

- (a) Instructional materials may be included in the evaluation of quality (EoQ) process if:
 - (1) a publisher or an open education resource (OER) licensor submits instructional materials through the EoQ submission process;
 - (2) ~~[a member of]~~ the State Board of Education nominates ~~[requests in writing that]~~ an instructional material for inclusion ~~[be included]~~ in an EoQ; or
 - (3) more than 10% of local education agencies request in a format determined by the Texas Education Agency (TEA) that an instructional material be included in an EoQ.
- (b) The following instructional materials may be included in the instructional materials web portal:
 - (1) instructional materials submitted by TEA; and
 - (2) OERs submitted directly to TEA through the OER submission process for inclusion in the OER repository. OER materials may not be included in the repository unless:
 - (A) a publisher or other OER licensor submits such materials through the EoQ submission process;
 - (B) TEA submits such materials for which TEA is the OER licensor for the purposes of being reviewed for quality; or
 - (C) the materials are submitted in accordance with subsection (a)(2) or (3) of this section.
- (c) Instructional materials included in the EoQ process shall be included in the instructional materials portal.
- (d) 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.
- (e) TEA may exclude from the quality review process a submission that does not constitute an instructional material.