

ATTACHMENT II
Text of 19 TAC

Chapter 66. State Adoption and Distribution of Instructional Materials

Subchapter A. General Provisions

§66.1. Scope of Rules.

The State Board of Education (SBOE) shall adopt a list of instructional materials for use in the public schools of Texas according to the Texas Education Code, Chapter 31, and the requirements in this chapter. Instructional materials recommended as suitable for use in special populations, including bilingual education programs, shall be adopted according to the rules in this chapter for adopting regular instructional materials.

§66.4. Requirement for Registers.

- (a) A register shall be kept by the commissioner of education and appropriate staff of the Texas Education Agency (TEA) to record all personal contacts with publishers, their representatives, agents, authors, consultants, editors, depositories, or any other person who has received or expects to receive any money, thing of value, or financial benefit for an appearance; or contact regarding any instructional materials submitted and being considered for State Board of Education (SBOE) approval.
- (b) Publishers shall file with the commissioner of education, on or before a date specified in the schedule of adoption procedures, a register indicating all visits, meetings, or contacts with SBOE members, including the date, time, location, and purpose of the communication.

§66.7. Manufacturing Standards and Specifications.

- (a) Instructional materials adopted by the State Board of Education (SBOE) shall comply with the standards in the latest edition of Manufacturing Standards and Specifications for Textbooks approved by the national Advisory Commission on Textbook Specifications. If it is determined that good cause exists, the commissioner of education may recommend that the SBOE grant an exception to this requirement.
- (b) If no standards exist for a particular media submitted for adoption, the instructional material is eligible for adoption.
- (c) A publisher shall file a statement certifying instructional materials submitted for consideration will meet minimum manufacturing standards if adopted. Each statement must be made on a form provided by the commissioner of education, signed by a company official, and filed on or before the deadline specified in the schedule of adoption procedures.
- (d) If, during the contract period, the commissioner of education determines that any adopted instructional materials have faulty manufacturing characteristics or are made of inferior materials, the materials shall be replaced by the publisher without cost to the state.

§66.10. Procedures Governing Violations of Statutes--Administrative Penalties.

- (a) Complaints. An official complaint alleging a violation of the Texas Education Code, §31.151, must be filed with the commissioner of education. The commissioner may hold a formal or informal hearing in the case of an apparent violation of statute. Upon determining that a violation has occurred, the commissioner shall report his or her findings to the State Board of Education (SBOE).
- (b) Administrative penalties. Under the Texas Education Code, §31.151(b), the SBOE may impose a reasonable administrative penalty against a publisher or manufacturer found in violation of a provision of §31.151(a). An administrative penalty shall be assessed only after the SBOE has granted the publisher or manufacturer a hearing in accordance with the Texas Education Code, §31.151, and the Administrative Procedure Act.

- (c) Penalties for failure to correct factual errors.
- (1) A factual error shall be defined as a verified error of fact or any error that would interfere with student learning. The context, including the intended student audience and grade level appropriateness, shall be considered.
 - (2) A factual error repeated in a single item or contained in both the student and teacher components of instructional material shall be counted once for the purpose of determining penalties. An identical error in materials with multiple components and formats shall be counted as one error.
 - (3) A penalty may be assessed for failure to correct a factual error identified in the list of corrections submitted by a publisher under §66.54(i) of this title (relating to Samples) or for failure to correct a factual error identified in the report of the commissioner of education under §66.63(d) of this title (relating to Report of the Commissioner of Education) and required by the SBOE. The publisher shall identify errata in an appropriate manner.
- (d) Penalties. A penalty of \$5,000 shall be assessed for each failure to correct a factual error after the deadline established in the proclamation by which publishers must have submitted corrected samples of adopted instructional materials.
- (e) Penalties for failure to deliver adopted instructional materials, including teacher components, in a timely manner or in the quantities the school district or open-enrollment charter school is eligible to receive as specified in the publisher's bid. The SBOE may assess penalties as allowed by law against publishers who fail to deliver adopted instructional materials, including teacher components, in accordance with provisions in the contracts.
- (f) Penalties for selling instructional materials with factual errors. The SBOE may assess administrative penalties in accordance with the Texas Education Code, §31.151, against a seller of instructional materials who sells instructional materials with factual errors.
- (g) Penalties for failure to maintain websites in state-adopted products. The SBOE may assess administrative penalties against a publisher who fails to maintain a website or provide a suitable alternative for conveying the information in the website, or who otherwise fails to meet the requirements of this subsection. Where applicable, the publisher shall monitor, update, and maintain any in-house and third party electronic, web-based, or online products furnished as part of the instructional materials specified in State of Texas Official Publisher Contract for the period determined by the SBOE. If, at any time during the contract period, the commissioner of education determines in a hearing that electronic, web-based, or online instructional materials furnished and supplied under the terms of a contract have faulty manufacturing characteristics or display dated or inferior information that is not in alignment with the Texas essential knowledge and skills that were in place at the time of the materials' original adoption, the instructional materials or information shall be replaced with complying materials or information by the publishers without cost to the state. The publisher further agrees that electronic, web-based or online instructional materials listed in a State of Texas Official Publishers Contract will not be altered in any way that would remove content from the curriculum, or that would change content in the curriculum without prior SBOE approval. The publisher will not allow advertising of any type to be placed in or associated with the materials. The publisher will not add any Internet links to the materials without the approval of the commissioner of education, will not redirect any user accessing the web-based or online instructional materials to other Internet or electronic sites, and will not collect any information about the user or computer accessing the materials that would allow determination of personal information, including email addresses. This section applies only to a website that is a component used to address Texas essential knowledge and skills as part of a state-adopted product.
- (h) State Board of Education discretion regarding penalties. The SBOE may, if circumstances warrant, waive or vary penalties contained in this section for first or subsequent violations based on the seriousness of the violation, any history of a previous violation or violations, the amount necessary to deter a future violation, any effort to correct the violation, and any other matter justice requires.
- (i) Payment of fines. Each affected publisher shall issue credit to the Texas Education Agency (TEA) in the amount of any penalty imposed under the provisions of this section. When circumstances warrant it, TEA is authorized to require payment of penalties in cash within ten days. Each affected publisher who pays a fine

for failure to deliver adopted instructional materials in a timely manner will not be subject to the liquidated damages provision in the publisher's contract for the same failure to deliver adopted instructional materials in a timely manner.

Subchapter B. State Adoption of Instructional Materials

§66.21. Review and Adoption Cycles.

- (a) The State Board of Education (SBOE) shall adopt a review and adoption cycle for subjects in the foundation curriculum. No more than one-fourth of the subjects in the foundation curriculum may be reviewed each biennium. Estimated expenditures shall be considered when determining placement of subjects in the cycle.
- (b) In adopting the cycle, the SBOE:
 - (1) is not required to review and adopt instructional materials for all grade levels in a single year; and
 - (2) shall give priority to instructional materials in the following subjects:
 - (A) foundation curriculum subjects for which the essential knowledge and skills have been substantially revised and for which assessment instruments are required under the Texas Education Code (TEC), Chapter 39, Subchapter B, including career and technical education courses that satisfy foundation curriculum requirements as provided by the TEC, §28.002(n);
 - (B) foundation curriculum subjects for which the essential knowledge and skills have been substantially revised, including career and technical education courses that satisfy foundation curriculum requirements as provided by the TEC, §28.002(n);
 - (C) foundation curriculum subjects not described by subparagraph (A) or (B) of this paragraph, including career and technical education courses that satisfy foundation curriculum requirements as provided by the TEC, §28.002(n); and
 - (D) enrichment curriculum subjects.
- (c) The SBOE shall adopt a review and adoption cycle for subjects in the enrichment curriculum. Placement of a subject in the cycle shall be based on the need for up-to-date materials due to changes in essential knowledge and skills, changing information, and/or changing technology. Estimated expenditures and historical or expected legislative appropriations shall also be considered when determining placement of subjects in the cycle.

§66.22. Midcycle Review and Adoption.

- (a) The State Board of Education (SBOE) shall adopt a midcycle review and adoption for instructional materials for a subject for which instructional materials are not currently under review by the SBOE under the Texas Education Code (TEC), §31.022.
- (b) The SBOE shall establish a fee not to exceed \$10,000 for each instructional materials program submitted for midcycle review.
- (c) A publisher who intends to offer instructional materials for midcycle review shall submit a statement of intent to bid that includes a commitment from the publisher to provide the instructional materials to school districts in the manner specified by the publisher, which may include:
 - (1) providing the instructional materials to any district in a regional education service center area identified by the publisher; or
 - (2) providing a certain maximum number of instructional materials specified by the publisher.

- (d) Instructional materials submitted for midcycle review shall be placed on the adopted list or rejected as specified in the TEC, §31.023 and §31.024.
- (e) The publisher of instructional materials submitted for midcycle review shall enter into a contract with the SBOE for a term that ends at the same time as any contract entered into by the SBOE for instructional materials for the same subject and grade level.
- (f) The publisher of instructional materials submitted for midcycle review is not required to ship samples to education service centers or school districts as specified in the TEC, §31.027.
- (g) The publisher of instructional materials submitted for midcycle review shall make available up to three examination copies of each submitted instructional materials product, including teacher editions and ancillaries, to each SBOE member upon that member's request, beginning on the date in the adoption schedule when publishers file their samples at the Texas Education Agency (TEA). SBOE members may request publishers through the TEA to ship these items directly to interested citizens. Publishers participating in the midcycle review process are responsible for all expenses incurred by their participation. The state does not guarantee return of these SBOE-requested materials.
- (h) Publishers of Internet-based instructional content submitted for midcycle review shall provide the TEA, and SBOE members upon request, with appropriate information, such as locator and login information and passwords, required to ensure public access to their programs throughout the midcycle review period.
- (i) The midcycle adoption process shall follow the same procedures as the regular adoption except to the extent specified in this chapter.
- (j) The SBOE will implement this section only to the extent the commissioner of education determines that funds are appropriated for that purpose.

§66.24. Review and Renewal of Contracts.

- (a) The commissioner of education shall review contracts for instructional materials and recommend which contracts should be renewed for terms not to exceed four years and which contracts should not be renewed.
- (b) The State Board of Education (SBOE) shall decide to renew existing contracts upon determining that the renewal would be in the best interest of the state and after considering the following factors:
 - (1) placement of subject areas in the foundation and enrichment review and adoption cycles;
 - (2) availability of new instructional materials;
 - (3) willingness of publishers to offer materials for readoption and renewal of contracts; and
 - (4) cost of instructional materials under new contract.
- (c) Publishers awarded new contracts shall be prepared to make the adopted instructional materials available for at least one extended contract period of not more than four years at prices that are mutually agreeable to publishers and to the commissioner of education. The SBOE may consider refusing to award future contracts to a publisher who, after receiving written notice to do so, refuses to rebid instructional materials at least one time. Failure of a publisher to negotiate an acceptable price for an extended contract shall not be considered failure to rebid instructional materials.
- (d) Contracts with publishers are limited to the Texas Education Code, Chapter 31.

§66.27. Proclamation, Public Notice, and Schedule for Adopting Instructional Materials.

- (a) The State Board of Education (SBOE) shall issue a proclamation calling for new instructional materials according to the review and adoption cycles for foundation and enrichment subjects adopted by the SBOE. The proclamation shall serve as notice to all publishers and to the public that bids to furnish new materials to the state are being invited. The proclamation shall be issued at least 18 months before the scheduled adoption of the new instructional materials by the SBOE. The SBOE shall designate a request for the production of instructional materials in a subject area and grade level by the school year in which the

instructional materials are intended to be made available in classrooms and not by the school year in which the SBOE makes the request for production.

- (b) The proclamation shall contain the following:
 - (1) specifications for essential knowledge and skills in each subject for which bids are being invited;
 - (2) the requirement that a publisher of adopted instructional materials for a grade level other than prekindergarten must submit an electronic sample of the instructional materials as required by the Texas Education Code, §31.027(a) and (b), and may not submit a print sample copy;
 - (3) the requirement that publishers file with the state review panels print samples, electronic samples in an open file format or closed format, or galley proofs;
 - (4) an estimated number of units to be purchased during the first contract year for each subject in the proclamation;
 - (5) specifications for providing computerized files to produce braille versions of adopted instructional materials;
 - (6) a schedule of adoption procedures; and
 - (7) instructions for the submission of open-source instructional materials that are available for use by the state without charge on the same basis as instructional materials offered for sale.
- (c) The proclamation shall require the instructional materials submitted in response to the proclamation to cover at least 50% of the specific essential knowledge and skills for the subject area and grade level for which the materials are intended at least once in the student text narrative or its electronic equivalent and once in either an end-of-section review exercise, an end-of-chapter activity, or a unit test or their electronic equivalents.
- (d) A draft copy of the proclamation shall be provided to each member of the SBOE and to representatives of the publishing industry to solicit input regarding the draft proclamation prior to the scheduled adoption by the SBOE. The Texas Education Agency may use the Internet to facilitate this process. Any revisions recommended as a result of input from publishers shall be presented to the SBOE along with the subsequent draft of the proclamation.
- (e) Under extraordinary circumstances, the SBOE may adopt an emergency, supplementary, or revised proclamation without complying with the timelines and other requirements of this section.
- (f) The SBOE may issue a proclamation for instructional materials eligible for midcycle review. The midcycle proclamation shall contain the following:
 - (1) specifications for essential knowledge and skills in each subject for which bids are being invited;
 - (2) specifications for providing computerized files to produce braille versions of adopted instructional materials;
 - (3) a fee not to exceed \$10,000 for each program or system of instructional materials intended for a certain subject area and grade level submitted for midcycle review; and
 - (4) a schedule of midcycle adoption procedures.

§66.28. Adoption by Reference.

- (a) The sections titled "Content Requirements" in the *Proclamation 2004 of the State Board of Education Advertising for Bids on Instructional Materials* are adopted by this reference as the State Board of Education's official rule governing essential knowledge and skills that shall be used to evaluate instructional materials submitted for consideration under Proclamation 2004. A copy of the *Proclamation 2004 of the State Board of Education Advertising for Bids on Instructional Materials* is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. *Proclamation 2004 of the State*

Board of Education Advertising for Bids on Instructional Materials can be accessed from the Texas Education Agency official website.

- (b) The sections titled "Content Requirements" in the *Proclamation 2005 of the State Board of Education Advertising for Bids on Instructional Materials* are adopted by this reference as the State Board of Education's official rule governing essential knowledge and skills that shall be used to evaluate instructional materials submitted for consideration under Proclamation 2005. A copy of the *Proclamation 2005 of the State Board of Education Advertising for Bids on Instructional Materials* is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. *Proclamation 2005 of the State Board of Education Advertising for Bids on Instructional Materials* may be accessed from the Texas Education Agency official website.
- (c) The sections titled "Content Requirements" in the *Proclamation 2010 of the State Board of Education Advertising for Bids on Instructional Materials* are adopted by this reference as the State Board of Education's official rule governing essential knowledge and skills that shall be used to evaluate instructional materials submitted for consideration under Proclamation 2010. A copy of the *Proclamation 2010 of the State Board of Education Advertising for Bids on Instructional Materials* is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. *Proclamation 2010 of the State Board of Education Advertising for Bids on Instructional Materials* may be accessed from the Texas Education Agency official website.
- (d) The sections titled "Content Requirements" in the *Proclamation 2011 of the State Board of Education Advertising for Bids on Instructional Materials* are adopted by this reference as the State Board of Education's official rule governing essential knowledge and skills that shall be used to evaluate instructional materials submitted for consideration under Proclamation 2011. A copy of the *Proclamation 2011 of the State Board of Education Advertising for Bids on Instructional Materials* is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. *Proclamation 2011 of the State Board of Education Advertising for Bids on Instructional Materials* may be accessed from the Texas Education Agency official website.
- (e) The sections titled "Texas Essential Knowledge and Skills" in the *Request for Supplemental High School Science Materials* and the *Request for Supplemental Science Materials, Grades 5, 6, 7, and 8*, are adopted by this reference as the State Board of Education's official rule governing essential knowledge and skills that shall be used to evaluate instructional materials submitted for consideration for supplemental science materials. Copies of the *Request for Supplemental High School Science Materials* and the *Request for Supplemental Science Materials, Grades 5, 6, 7, and 8*, are available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. The requests for supplemental science materials may be accessed from the Texas Education Agency official website.
- (f) The sections titled "Texas Essential Knowledge and Skills" and "English Language Proficiency Standards" in the *Proclamation 2014 of the State Board of Education Advertising for Bids on Instructional Materials* are adopted by this reference as the State Board of Education's official rule governing essential knowledge and skills that shall be used to evaluate instructional materials submitted for consideration under Proclamation 2014. A copy of the *Proclamation 2014 of the State Board of Education Advertising for Bids on Instructional Materials* is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. *Proclamation 2014 of the State Board of Education Advertising for Bids on Instructional Materials* may be accessed from the Texas Education Agency official website.

§66.30. State Review Panels: Eligibility.

A person nominated to serve on a state review panel shall disclose in any nomination or application, in a manner prescribed by the commissioner of education, whether during the three years preceding the appointment the person:

- (1) was employed by or received funds from any individual or entity affiliated with a publishing company related to the adoption of instructional materials or participated in an adoption under which the state or a state review panel has or will evaluate instructional materials;
- (2) owned or controlled any interest valued at more than \$5,000 in a privately owned publishing company or an entity receiving funds from a publishing company related to the adoption of instructional materials or had direct ownership of stock of a publicly traded company; or
- (3) was employed by an institution of higher education that has submitted open-source instructional materials or is a publisher of instructional materials.

§66.33. State Review Panels: Appointment.

- (a) The commissioner of education shall determine the number of review panels needed to review instructional materials under consideration for adoption, determine the number of persons to serve on each panel, and determine the process for selecting panel members. Each appointment to a state review panel shall be made by the commissioner of education with priority given to qualified individuals who are nominated by State Board of Education (SBOE) members and with the advice and consent of the SBOE member whose district is to be represented. The commissioner of education shall make appointments to state review panels that achieve diversity to the extent possible; ensure that each team has members with sufficient content expertise and experience; and ensure participation by academic experts in each subject area for which instructional materials are being considered, giving priority to content-relevant educators and professors. The appointments shall include educators, parents, business and industry representatives, and employers. The role of each appointee shall be designated by the commissioner of education and disclosed to all appointees on each panel.
- (b) The commissioner of education shall solicit nominations for possible appointees to state review panels from the SBOE, school districts, open-enrollment charter schools, and educational organizations in the state. Nominations may be accepted from any Texas resident. Nominations shall not be made by or accepted from any publishers; hardware or software providers; authors; depositories; agents for publishers, hardware or software providers, authors, or depositories; or any person who holds any official position with a publisher, hardware or software providers, author, depository, or agent.
- (c) The SBOE shall be notified of proposed appointments made by the commissioner of education to state review panels.
- (d) Members of a state review panel may be removed at the discretion of the commissioner of education.

§66.36. State Review Panels: Duties and Conduct.

- (a) The duties of each member of a state review panel are to:
 - (1) evaluate all instructional materials submitted for adoption in each subject assigned to the panel to determine if essential knowledge and skills are covered in the student version of the instructional materials as well as in the teacher version of the instructional materials. All portions of instructional materials must be reviewed by at least two panel members for the purpose of this review. Nothing in this rule shall be construed to contravene the Texas Education Code (TEC), §28.004(e)(5), which makes coverage of contraception and condom use optional in both the student and teacher editions of health instructional materials. Panel members will use State Board of Education (SBOE)-approved procedures for evaluating coverage of the essential knowledge and skills. Coverage must be identified at least once in the student text narrative or its electronic equivalent and once in either an end-of-section review exercise, an end-of-chapter activity, or a unit test or their electronic equivalents. The approved procedures include the following.
 - (A) State review panel members must participate in training to ensure clear and consistent guidelines for determining full Texas essential knowledge and skills (TEKS) coverage within the instructional materials.

- (B) State review panel members must participate in a team during the review and reach a consensus, or a simple majority if the panel members are unable to reach consensus, to determine whether the TEKS have been covered sufficiently in the instructional materials.
 - (C) Instructional materials shall be evaluated for TEKS coverage at each grade level.
 - (D) A student expectation may be considered sufficiently covered only if the instructional materials provide one of the following:
 - (i) an opportunity for the teacher to teach each component of the knowledge or skill in the teacher material;
 - (ii) an opportunity for the student to learn each component of the knowledge or skill in the student material or the teacher material; or
 - (iii) an opportunity for the student to demonstrate each component of the knowledge or practice each component of the skill in the student material or the teacher material.
 - (E) Student expectations are not considered covered if only included in side bars, captions, or questions at the end of a section or chapter.
 - (F) Each student expectation must be clearly evident in the instructional materials to ensure sufficient coverage.
 - (G) Student expectations that contain the word "including" reference content that must be covered in instructional materials, while those containing the phrase "such as" are intended as possible illustrative examples and are not required to be covered in instructional materials.
- (2) make recommendations, through the submission of a consensus report, or, if necessary, majority and minority reports that reflect the opinions of all panel members listed by team role, to the commissioner of education that each submission assigned to be evaluated by the state review panel be placed on the adopted list or rejected;
 - (3) submit to the commissioner of education a list of any factual errors in instructional materials discovered during the review conducted by the state review panel through the submission of a consensus report, or, if necessary, majority and minority reports that reflect the opinions of all panel members listed by team role, to determine what factual errors have been discovered; and
 - (4) as appropriate to a subject area and/or grade level, ascertain that instructional materials submitted for adoption do not contain content that clearly conflicts with the stated purpose of the TEC, §28.002(h).
- (b) State review panel members shall not accept meals, entertainment, gifts, or gratuities in any form from 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) Before presenting recommendations to the commissioner of education, state review panel members shall be given an opportunity to request a meeting with a publisher to obtain responses to questions regarding instructional materials being evaluated by the state review panel. Questions shall be provided to publishers in advance of the meeting.
 - (d) State review panel members 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, errors, manufacturing specifications, or any other aspect of instructional materials being evaluated. A member of a state review panel shall have no contact with other members of the panel regarding the instructional materials being reviewed, except during official virtual and face-to-face reviews. State review panel members shall not discuss instructional materials being evaluated with a member of the SBOE or with any party having a financial interest in the adoption of instructional materials prior to the conclusion of the review.

- (e) State review panel members participating in the face-to-face review shall affix their signatures to all recommendations to the commissioner of education. State review panel members participating in the virtual review shall submit their recommendations electronically through email, which will serve as their electronic signatures.
- (f) Members of each state review panel may be required to be present at the State Board of Education meeting at which instructional materials are adopted.

§66.39. State Review Panels: Expenses.

- (a) State review panel members shall be reimbursed for expenses incurred in attending official meetings according to the applicable provisions of the General Appropriations Act.
- (b) Expenses shall be paid for designated state review panel members to attend the State Board of Education (SBOE) meeting at which instructional materials are considered for adoption.

§66.42. State Review Panels: Orientation.

State review panel members shall receive an orientation including at least the following:

- (1) the responsibilities of a state review panel member;
- (2) statutes and rules pertaining to the state adoption process;
- (3) essential knowledge and skills specified for subjects included in the proclamation;
- (4) identifying factual errors;
- (5) the schedule of adoption procedures;
- (6) training in technology appropriate to media submitted for adoption; and
- (7) regulatory requirements, including the Government Code, §572.051 (relating to Standards of Conduct), and the Texas Penal Code, §36.02 (relating to Bribery). Copies of the statutes mentioned in this section shall be supplied to each state review panel member.

§66.45. State Review Panels: No-Contact Periods.

- (a) State review panel members shall observe a no-contact period that shall begin with the initial communication regarding possible appointment to a state review panel and end after recommendations have been made to the commissioner of education that each submission assigned to be evaluated by the state review panel be placed on the adopted list or rejected. During this period, state review panel members shall not have direct or indirect communication with any person having an interest in the adoption process regarding content of instructional materials under evaluation by the panel. This restriction is not intended to prohibit members of the state review panels from seeking advice regarding materials under consideration from educators, experts, parents, or students.
- (b) State review panel members shall report immediately to the commissioner of education any communication or attempted communication by any person regarding instructional materials being evaluated by the panel.
- (c) State review panel members may request information or clarification regarding content of instructional materials under consideration from Texas Education Agency (TEA) staff members with knowledge of the Texas essential knowledge and skills during the virtual or face-to-face reviews. Answers to relevant questions asked by individual members shall be shared with all members of the appropriate state review panel.

§66.48. Statement of Intent to Bid Instructional Materials.

- (a) Each publisher who intends to offer instructional materials for adoption shall submit a statement of intent to bid and preliminary price information on or before the date specified in the schedule of adoption procedures. The statement of intent with preliminary price information shall be accompanied by publisher's data submitted in a form approved by the commissioner of education.

- (b) A publisher shall indicate the percentage of Texas essential knowledge and skills that it believes are sufficiently covered in the instructional materials.
- (c) A publisher shall specify hardware or special equipment needed to review any item included in an instructional materials submission.
- (d) Additions to a publisher's submission shall not be accepted after the deadline for filing statements of intent, except as allowed in the schedule of adoption procedures included in the proclamation.
- (e) A publisher who intends to offer instructional materials for midcycle review shall submit a statement of intent to bid and price information on or before the date specified in the schedule of adoption procedures under midcycle review. The statement of intent to bid must:
 - (1) specify the manner in which instructional materials will be provided to school districts, including:
 - (A) the regional education service center area(s) to be served; or
 - (B) the certain maximum number of copies of instructional materials to be provided under the contract; and
 - (2) include payment of the fee for review of instructional materials submitted for midcycle review.

§66.51. Instructional Materials Ordered Through the State.

Instructional materials offered for adoption by the State Board of Education.

- (1) Publishers may not submit instructional materials for adoption that have been authored by an employee of the Texas Education Agency (TEA).
- (2) The official bid price of an instructional material submission may exceed the price included with the statement of intent to bid filed under §66.48 of this title (relating to Statement of Intent to Bid Instructional Materials).
- (3) Any discounts offered for volume purchases of adopted instructional materials shall be included in price information submitted with statement of intent to bid and in the official bid.
- (4) The official bid filed by a publisher shall include separate prices for each item included in an instructional material submission. The publisher shall guarantee that individual items included in the student and/or teacher component shall be available for local purchase at the individual prices listed for the entire contract period. (Individual component prices are listed to show school districts the replacement costs of components and not to reflect publisher's bid prices for these components.)
- (5) Publishers shall submit to the TEA a signed affidavit certifying that each individual whose name is listed as an author or contributor of the instructional materials contributed to the development of the instructional materials. The affidavit shall also state in general terms each author's involvement in the development of the instructional materials.
- (6) Student materials offered for adoption may include consumable components in subjects and grade levels in which consumable materials are not specifically called for in the proclamation. In such cases, publishers must meet the following conditions.
 - (A) The per student price of the materials must include the cost of replacement copies of consumable student components for the full term of the adoption and contract, including any extensions of the contract terms, but for no more than 12 years. The offer must be set forth in the publisher's official bid.
 - (B) The publisher's official bid shall contain a clear explanation of the terms of the sale, including the publisher's agreement to supply consumable student materials for the duration of the contract and extensions as noted in subparagraph (A) of this paragraph.
 - (C) The publisher and the school district shall determine the manner in which consumable student materials are supplied beyond the initial order year.

- (7) On or before the deadline established in the schedule of adoption procedures, publishers shall submit correlations of instructional materials submitted for adoption with essential knowledge and skills required by the proclamation. These correlations shall identify evidence of each student expectation addressed at least once in the student text narrative or its electronic equivalent and once in either an end-of-section review exercise, an end-of-chapter activity, or a unit test or their electronic equivalents as well as student expectations addressed in the teacher version of the instructional materials. Correlations shall be submitted in a format approved by the commissioner of education.

§66.54. Samples.

- (a) Samples of student and teacher components of instructional materials submitted for adoption shall be complete as to content and functional for review purposes.
- (b) The publisher of instructional materials submitted for adoption shall make available an electronic copy in an open file format or closed format of each submitted student and teacher component to each State Board of Education (SBOE) member upon that member's request, beginning on the date in the adoption schedule when publishers file their samples at the Texas Education Agency (TEA).
- (c) One electronic sample copy in an open file format or closed format of the student and teacher components of each instructional materials submission shall be filed with each of the 20 regional education service centers (ESCs) on or before the date specified in the schedule of adoption procedures. The TEA may request additional samples if they are needed. These samples shall be available for public review. Publishers of Internet-based instructional content submitted for review shall provide the ESCs with appropriate information, such as locator and login information and passwords, required to ensure public access to their programs throughout the review period. Samples to ESCs are not required for instructional materials submitted for midcycle review, as specified in §66.22(f) of this title (relating to Midcycle Review and Adoption).
- (d) If it is determined that good cause exists, the commissioner of education may extend the deadline for filing samples with ESCs. At its discretion, the SBOE may remove from consideration any materials proposed for adoption that were not properly deposited with the ESCs, the TEA, or members of the state review panel.
- (e) One electronic sample copy in an open file format or closed format of each student and teacher component of an instructional materials submission shall be filed with the TEA on or before the date specified in the schedule of adoption procedures. The TEA may request additional samples if they are needed. In addition, the publisher shall provide a complete description of all items included in a student and teacher component of an instructional materials submission.
- (f) On request of a school district, a publisher shall provide an electronic sample of submitted instructional materials and, at the publisher's discretion or upon request, may also provide print sample copies. A publisher of prekindergarten materials is not required to submit electronic samples of submitted prekindergarten instructional materials. Samples of submitted prekindergarten materials must match the format of the products to be provided to schools upon ordering.
- (g) One sample copy of each student and teacher component of an instructional materials submission shall be filed with each member of the appropriate state review panel in accordance with instructions provided by the TEA. Publishers have the option to file with the state review panels print samples, electronic samples in an open file format or closed format, or galley proofs. To ensure that the evaluations of state review panel members are limited to student and teacher components submitted for adoption, publishers shall not provide ancillary materials or descriptions of ancillary materials to state review panel members. Texas Education Code, §31.002, defines instructional materials as content that conveys the essential knowledge and skills of a subject in the public school curriculum through a medium or a combination of media for conveying information to a student. The term includes a book, supplementary materials, a combination of a book, workbook, and supplementary materials, computer software, magnetic media, DVD, CD-ROM, computer courseware, on-line services, or an electronic medium, or other means of conveying information to the student or otherwise contributing to the learning process through electronic means, including open-source instructional material.

- (h) The TEA, ESCs, and affected publishing companies shall work together to ensure that hardware or special equipment necessary for review of any item included in a student and/or teacher component of an instructional materials submission is available in each ESC. Affected publishers may be required to loan such hardware or special equipment to any member of a state review panel who does not have access to the necessary hardware or special equipment.
- (i) A publisher shall provide a list of all corrections necessary to comply with applicable laws, rules, or the proclamation to each student and teacher component of an instructional materials submission. The list must be in a format designated by the commissioner of education and filed on or before the deadline specified in the schedule of adoption procedures. If no corrections are necessary, the publisher shall file a letter stating this on or before the deadline in the schedule for submitting the list of corrections. On or before the deadline for submitting lists of corrections, publishers shall submit certification that all instructional materials have been edited for accuracy, content, and compliance with requirements of the proclamation.
- (j) One complete electronic sample copy in an open file format or closed format of each student and teacher component of adopted instructional materials that incorporate all corrections required by the SBOE shall be filed with the commissioner of education on or before the date specified in the schedule of adoption procedures. The complete sample copies filed with the TEA must be representative of the final program. In addition, each publisher shall file an affidavit signed by an official of the company verifying that all corrections required by the commissioner of education and SBOE have been made.
- (k) On request of a school district, a publisher shall provide an electronic sample of adopted instructional materials and, at the publisher's discretion or upon request, may also provide print sample copies. A publisher of prekindergarten materials is not required to submit electronic samples of adopted prekindergarten instructional materials. Samples of adopted prekindergarten materials must match the format of the products to be provided to schools upon ordering.
- (l) Publishers participating in the adoption process are responsible for all expenses incurred by their participation. The state does not guarantee return of sample instructional materials.

§66.57. Regional Education Service Centers: Procedures for Handling Samples; Public Access to Samples.

- (a) Handling procedures.
 - (1) Each regional education service center (ESC) executive director shall designate one person to supervise all shipments of instructional materials. The Texas Education Agency (TEA) shall provide to each designated person forms to be used in reporting receipt of sample shipments.
 - (2) On or before the date specified in the schedule of adoption procedures, each ESC representative shall notify the commissioner of education of all irregularities in sample shipments. The appropriate publisher shall be notified of any sample shipment irregularities reported by the ESCs.
- (b) Public access to samples.
 - (1) One electronic sample of all instructional materials under consideration for adoption shall be retained in each ESC for review by interested persons until notification is received from the TEA. 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 period.
 - (2) Regional ESCs shall ensure reasonable public access to sample instructional materials, including access outside of normal working hours that shall be scheduled by appointment.
 - (3) On or before the date specified in the schedule of adoption procedures, each ESC shall issue a news release publicizing the date on which sample instructional materials will be available for review at the center and shall notify all school districts in the region of the schedule.

§66.60. Public Comment on Instructional Materials.

- (a) Written comments.

- (1) Any resident of Texas may submit written comments for, against, or about any instructional materials submitted for adoption.
 - (2) Written comments and lists of factual errors shall be submitted to the commissioner of education on or before the deadlines specified in the schedule of adoption procedures.
 - (3) Copies of written comments and lists of factual errors shall be posted on the Texas Education Agency (TEA) website in summary form and provided to the State Board of Education (SBOE), participating publishers, regional education service centers (ESCs), and persons who have filed written requests.
- (b) Public hearing before the SBOE. On a date specified in the schedule of adoption procedures, the SBOE shall hold a hearing on instructional materials submitted for adoption that may, at the discretion of the SBOE chair, be designated an official meeting of the SBOE.
- (1) Testimony at the hearing shall be accepted from Texas residents and non-residents with priority given to Texas residents. Copies of written testimony made at the hearing shall be distributed to SBOE members. No other written material may be distributed during the hearings. Persons who wish to testify must notify the commissioner of education on or before the date specified in the schedule of adoption procedures. The notice must identify the subject areas and titles about which testimony will be presented. The SBOE may limit the time available for each person to testify in an effort to hear from everyone who has registered to testify. Persons will 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).
 - (2) Oral responses to testimony at the hearing may be made by official representatives of publishing companies who have requested time to present responses on or before the date specified in the schedule of adoption procedures.
 - (3) The commissioner of education shall have a complete record of the hearing. The recorded hearing or transcript of the hearing shall be provided on the TEA website and to the SBOE, ESCs, participating publishers, and persons who have filed written requests. The official record shall be held open for ten business days after the close of the hearings. During this period, any person who participated in a hearing before the SBOE and any official representative of a publishing company may submit a written response to written comments and/or oral testimony presented at the hearing.
 - (4) Within ten business days after the record is closed, the commissioner shall send copies of responses to written and/or oral testimony to members of the SBOE, ESCs, participating publishers, and persons who have filed written requests.
- (c) Public comment on instructional materials not adopted on schedule. Public comment on instructional materials not adopted by the SBOE on the date specified in the schedule of adoption procedures shall be accepted according to the SBOE Operating Rules, §2.10 (relating to Oral Public Testimony in Connection with Regular Board and Committee Meetings).

§66.63. Report of the Commissioner of Education.

- (a) The commissioner of education shall review all instructional materials submitted for consideration for adoption. The commissioner's review shall include the following:
- (1) evaluations of instructional materials prepared by state review panel members, including recommendations that instructional materials be placed on the adopted list or rejected. To be adopted, instructional materials must cover at least 50% of the essential knowledge and skills as required by the proclamation at least once in the student text narrative or its electronic equivalent and once in either an end-of-section review exercise, an end-of-chapter activity, or a unit test or their electronic equivalents;
 - (2) compliance with established manufacturing standards and specifications;
 - (3) recommended corrections of factual errors identified by state review panels;

- (4) prices of instructional materials submitted for adoption; and
 - (5) whether instructional materials are offered by a publisher who refuses to rebid instructional materials according to §66.24 of this title (relating to Review and Renewal of Contracts).
- (b) Based on the review specified in subsection (a) of this section, the commissioner of education shall prepare a preliminary report on instructional materials under consideration for adoption. The preliminary report will be provided to publishers participating in the review process. According to the schedule of adoption procedures, a publisher whose product meets one of the criteria in subsection (d) of this section shall be given an opportunity for a show-cause hearing if the publisher elects to protest the commissioner's preliminary recommendation.
- (c) The show-cause hearing is a formal opportunity for a publisher to present evidence that the preliminary report does not accurately reflect the extent to which the content provided to the state review panels addresses the required Texas essential knowledge and skills (TEKS) and/or designated English language proficiency standards (ELPS). The show-cause hearing is not a forum to address complaints alleging procedural irregularities or violations of statutes or rules.
- (d) To be eligible for a show-cause hearing, a product must meet the requirements of §66.79(b) of this title (relating to Adding Content During the Review and Adoption Process) regarding eligibility to provide new content and, upon completion of the final review, be identified as meeting:
- (1) at least 95% of the TEKS coverage percentage indicated by the publisher on the complete program description form for that product; or
 - (2) less than 50% of the TEKS for the subject and grade for which the product is intended and/or less than 100% of the ELPS designated for the subject and grade for which the product is intended.
- (e) The commissioner of education shall submit to the State Board of Education (SBOE) final recommendations that instructional materials under consideration be placed on the adopted list or rejected.
- (f) The commissioner of education shall submit for SBOE approval a report on corrections of factual errors that should be required in instructional materials submitted for consideration. The report on recommended corrections shall be sent to the SBOE, affected publishers, regional education service centers (ESCs), and other persons, such as brailleists, needing immediate access to the information. The commissioner shall obtain written confirmation from publishers that they would be willing to make all identified corrections should they be required by the SBOE.

§66.66. Consideration and Adoption of Instructional Materials by the State Board of Education.

- (a) Publishers shall file three copies of the official bid form with the commissioner of education according to the schedule of adoption procedures.
- (b) The State Board of Education (SBOE) shall adopt a list of adopted instructional materials in accordance with the Texas Education Code (TEC), §31.023. Instructional materials may be adopted only if they:
- (1) meet at least 50% of the Texas essential knowledge and skills (TEKS) for the subject and grade level in the student version of the instructional materials as well as in the teacher version of the instructional materials. In determining the percentage of elements of the TEKS covered by instructional materials, each student expectation shall count as an independent element of the TEKS of the subject;
 - (2) meet the established physical specifications adopted by the SBOE;
 - (3) are free from factual errors, including significant grammatical or punctuation errors that have been determined to impede student learning, or the publisher has agreed to correct any identified factual errors, or grammatical or punctuation errors that have been determined to impede student learning, prior to execution of a contract pursuant to §66.72 of this title (relating to Preparing and Completing Contracts); and

- (4) receive majority vote of the SBOE. However, no instructional material may be adopted that contains content that clearly conflicts with the stated purpose of the TEC, §28.002(h).
- (c) Instructional materials submitted for placement on the adopted list may be rejected by majority vote of the SBOE in accordance with the TEC, §31.024.
- (d) The SBOE shall either adopt or reject each submitted instructional material in accordance with the TEC, §31.024.
- (e) A publisher may withdraw from the adoption process at any time prior to final adoption for any reason by providing notification in writing to the commissioner of education. Notification of withdrawal is final and irrevocable.

§66.67. Adoption of Open-Source Instructional Materials.

- (a) "Open-Source Materials" are defined by the Texas Education Code (TEC), §31.002, as electronic instructional materials that are available for downloading from the Internet at no charge to a student and without requiring the purchase of an unlock code, membership, or other access or use charge, except for a charge to order an optional printed copy of all or part of the instructional materials. The term includes state-developed open-source instructional materials purchased under the TEC, Chapter 31, Subchapter B-1.
- (b) The State Board of Education (SBOE) shall place open-source instructional materials submitted for a secondary-level course on the adopted list if the instructional materials meet the criteria outlined in subsections (c) and (d) of this section.
- (c) Open-source instructional materials must be:
 - (1) submitted by an eligible institution, defined as a public institution of higher education that is designated as a research university or emerging research university under the Texas Higher Education Coordinating Board's accountability system, or a private university located in Texas that is a member of the Association of American Universities, or a public technical institute, as defined by the TEC, §61.003;
 - (2) intended for a secondary-level course; and
 - (3) written, compiled, or edited primarily by faculty of an eligible institution who specialize in the subject area of the instructional materials.
- (d) To submit open-source instructional materials, an eligible institution must:
 - (1) certify by the board of regents, or corresponding governing body, or president of the university, or by an individual authorized by one of these entities, that the instructional materials qualify for placement on the adopted list based on the extent to which the instructional materials cover the essential knowledge and skills identified under the TEC, §28.002;
 - (2) identify each contributing author;
 - (3) certify by the appropriate academic department of the submitting institution that the instructional materials are accurate; and
 - (4) certify that:
 - (A) for instructional materials for a senior-level course, a student who successfully completes a course based on the instructional materials will be prepared, without remediation, for entry into the eligible institution's freshman-level course in that subject; or
 - (B) for instructional materials for a junior-level and senior-level course, a student who successfully completes the junior-level course based on the instructional materials will be prepared for entry into the senior-level course.
- (e) All submissions required by subsection (d) of this section shall be made in a format approved by the SBOE and the commissioner of education.

- (f) Technology-based open-source instructional materials shall be required to comply with the technical standards in the Rehabilitation Act, §508, as applicable.
- (g) All university-developed open-source instructional materials submissions shall be reviewed independently by the same process used in §66.36 of this title (relating to State Review Panels: Duties and Conduct) to confirm the content meets the criteria for placement on the adopted list based on the extent to which the instructional materials cover the essential knowledge and skills. The SBOE shall notify the submitting institution of any discrepancy with alignment with essential knowledge and skills.
- (h) Before placing open-source instructional materials submitted under subsection (b) of this section on the adopted list, the SBOE shall direct the Texas Education Agency (TEA) to post the materials on the TEA website for 60 days to allow for public comment and the SBOE shall hold a public hearing on the instructional materials.
- (i) Not later than the 90th day after the date open-source instructional materials are submitted as provided by the TEC, §31.0241, the SBOE may review the instructional materials. The SBOE shall:
 - (1) post with the list adopted under the TEC, §31.023, comments made by the SBOE regarding the open-source instructional materials placed on the list; and
 - (2) distribute SBOE comments to school districts.

§66.72. Preparing and Completing Contracts.

- (a) The state contract form shall not be changed or modified without approval of the Texas Education Agency's (TEA) legal counsel.
- (b) Contract forms shall be sent to the publishers for signature. Signed contracts returned by the publishers shall be signed by the chair of the State Board of Education (SBOE) and attested to by the commissioner of education. Properly signed and attested contracts shall be filed with the TEA.
- (c) The publisher of instructional materials submitted for midcycle review shall:
 - (1) enter into a contract with the SBOE for a term that ends at the same time as any contract entered into by the SBOE for other instructional materials for the same subject and grade level; and
 - (2) commit to provide the instructional materials in the manner specified by the publisher in the statement of intent to bid midcycle materials in §66.48(e) of this title (relating to Statement of Intent to Bid Instructional Materials).

§66.73. Contracts for Printing of Open-Source Instructional Materials.

- (a) The State Board of Education (SBOE) may execute a contract for the printing of open-source instructional materials listed on the adopted list.
- (b) The contract shall allow a school district or an open-enrollment charter school to requisition printed copies of open-source instructional materials as provided by the Texas Education Code, §31.103.
- (c) The contract form shall be approved by, and shall not be changed or modified without approval of, the Texas Education Agency's (TEA) legal counsel.
- (d) Contract forms shall be sent to the awarded vendor for signature. Signed contracts returned by the awarded vendor shall be signed by the chair of the SBOE and attested to by the commissioner of education. Properly signed and attested contracts shall be filed with the TEA.

§66.75. Updates.

- (a) A publisher may submit a request to the commissioner of education for approval to substitute an updated edition of state-adopted instructional materials. A publisher requesting an update shall provide the request in writing, along with two mock-ups or screen capture copies of the updated edition, and one copy of the corresponding state-adopted instructional material. This section includes electronic instructional materials and Internet products for which all users receive the same updates.

- (b) Requests for approval of the updated edition shall provide that there will be no additional cost to the state.
- (c) Publishers submitting requests for approval of the updates must certify in writing that the new material meets the applicable essential knowledge and skills and is free from factual errors.
- (d) Responses from the commissioner of education to update requests shall be provided within 30 days after receipt of the request. If no action has been taken by the end of the 30 days, the updates shall be deemed approved.
- (e) All requests for updates involving content in state-adopted instructional materials must be approved by the State Board of Education (SBOE) prior to their introduction into state-adopted instructional materials. The SBOE may assess penalties as allowed by law against publishers who fail to obtain approval for updates to content in state-adopted instructional materials prior to delivery of the materials to school districts. Publishers may, at any time, make changes that do not affect Texas essential knowledge and skills coverage.
- (f) Publishers must agree to supply the previous version of state-adopted instructional materials to school districts that choose to continue using the previous version during the duration of the original contract. This subsection does not apply to online instructional materials.
- (g) A publisher of instructional materials may provide alternative formats for use by school districts if:
 - (1) the content is identical to SBOE-approved content;
 - (2) the alternative formats include the identical revisions and updates as the original product; and
 - (3) the cost to the state and school is equal to or less than the cost of the original product.
- (h) Alternative formats may be developed and introduced at a time when the subject or grade level is not scheduled in the cycle to be considered for at least two years, in conformance with the procedures for adoption of other state-adopted materials.
- (i) Publishers must notify the commissioner of education in writing if they are providing SBOE-approved products in alternative formats.
- (j) Publishers are responsible for informing districts of the availability of the alternative formats and for accurate fulfillment of these orders.
- (k) The commissioner of education may add alternative formats of SBOE-approved products to the list of available products disseminated to school districts.

§66.78. Delivery of Adopted Instructional Materials.

- (a) Each publisher is required to have adopted instructional materials in stock and available for distribution to school districts throughout the entire adoption period. A back order is defined as adopted instructional material not in stock when ordered and not available for delivery to school districts or open-enrollment charter schools on the specified shipment date. The commissioner of education shall report the number of back-ordered materials by publisher to the State Board of Education (SBOE).
- (b) Each publisher shall guarantee delivery of instructional materials at least ten business days before the opening day of school of the year for which the instructional materials are ordered if the instructional materials have been ordered by a date specified in the sales contract.
- (c) Each publisher with instructional materials on back order shall notify affected school districts of the expected ship dates for each title on back order.
- (d) Payments from the Texas Education Agency (TEA) for adopted instructional materials shall be made directly to the publisher or to any agent or trustee designated in writing by the publisher.
- (e) Any publisher, at its discretion, and at least 60 days after notifying the TEA in writing, may change from one depository to another approved depository, except with respect to newly adopted instructional materials in the first year of adoption, when at least 120 days written notice to the TEA is required.

§66.79. Adding Content During the Review and Adoption Process.

- (a) A publisher may add or edit content to instructional materials during the review and adoption process only to allow the materials to:
 - (1) meet the Texas essential knowledge and skills (TEKS) coverage percentage the publisher had specified on the complete program description form submitted for that instructional product;
 - (2) meet 100% of the English language proficiency standards (ELPS) designated for the subject and grade for which the instructional product is intended; and
 - (3) address concerns raised during public testimony at a public hearing of the State Board of Education (SBOE) and requested by a majority vote of the SBOE, as allowed by law.
- (b) To be eligible to have content added as described in subsection (a) of this section, an instructional product must, upon its initial review, be identified as meeting:
 - (1) at least 75% of the TEKS coverage percentage indicated by the publisher on the complete program description form submitted for that instructional product; and
 - (2) at least 75% of the ELPS designated for the subject and grade for which the instructional product is intended.
- (c) A publisher shall have one opportunity to provide a written request for the Texas Education Agency (TEA) to further review an instructional product that is not eligible to have new content added according to subsection (b) of this section.
- (d) New content submitted for review shall be submitted in a format approved by the commissioner of education and shall be made available for public review at the TEA and at each education service center (ESC) prior to the adoption of instructional materials. New content submitted under this subsection must be submitted by the deadline determined by the TEA.

§66.81. Ancillary Materials.

- (a) Ancillary materials are defined as materials that are not listed on the official bid form, but which a publisher plans to provide to school districts and open-enrollment charter schools free with their order of instructional materials from the list of adopted materials. A publisher of adopted instructional materials shall provide any ancillary item free of charge to the same extent that the publisher provides the item free of charge to any state, public school, or school district in the United States.
- (b) The State Board of Education may impose a reasonable administrative penalty not to exceed \$5,000 against a publisher or manufacturer who knowingly violates subsection (a) of this section.

Subchapter C. Local Operations

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

- (a) According to the schedule of adoption procedures, a publisher shall provide each school district and open-enrollment charter school with information that fully describes instructional materials submitted for adoption. Descriptive information provided to each school district or open-enrollment charter school shall be identical.
- (b) Upon request by the instructional materials coordinator of a school district or open-enrollment charter school, a publisher shall provide one complete electronic sample in an open file format or closed format of adopted 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." Samples to schools are not required for materials submitted for midcycle review, as specified in §66.22(f) of this title (relating Midcycle Review and Adoption).

- (c) 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.

§66.104. Selection 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 adopt a policy for selecting instructional materials. Final selections must be recorded in the minutes of the board of trustees or governing body.
- (b) A report listing instructional materials selected for use in a school district or open-enrollment charter school shall be transmitted to the Texas Education Agency (TEA) no later than April 1 each year.
- (c) In making a requisition, a school district or open-enrollment charter school may requisition instructional materials on the list adopted under the Texas Education Code, §31.023, for grades above the grade level in which the student is enrolled.
- (d) Adopted instructional materials shall be supplied to a pupil in special education classes as appropriate to the level of the pupil's ability and without regard to the grade for which the instructional material is adopted or the grade in which the pupil is enrolled.
- (e) A school district or open-enrollment charter school may order replacements for instructional materials that have been lost or damaged directly from the publisher of the instructional materials.
- (f) School districts or open-enrollment charter schools shall not be reimbursed from state funds for expenses incurred in local handling of instructional materials.
- (g) Selection and use of ancillary materials provided by publishers under §66.69 of this title (relating to Ancillary Materials) is at the discretion of each local board of trustees or governing body.

§66.105. Certification by School Districts.

- (a) Prior to the beginning of each school year, each school district and open-enrollment charter school shall submit to the State Board of Education (SBOE) and commissioner of education certification that for each subject in the required curriculum under the Texas Education Code, §28.002, other than physical education, and each grade level, the district or charter school provides each student with instructional materials that cover all elements of the essential knowledge and skills adopted by the SBOE. The certification shall be submitted in a format approved by the commissioner of education. Upon request by the commissioner of education, the certification shall include supporting documentation describing the instructional materials on which the certificate is based.
- (b) The certifications shall be ratified by local school boards in public, noticed meetings.
- (c) The provisions in subsections (a) and (b) of this section are applicable both to state-adopted instructional materials and to non-state-adopted instructional materials.

§66.107. Local Accountability.

- (a) Each school district or open-enrollment charter school shall conduct an annual physical inventory of all currently adopted instructional materials that have been requisitioned by, and delivered to, the district. The results of the inventory shall be recorded in the district's files. Reimbursement and/or replacement shall be made for all instructional materials determined to be lost.
- (b) All instructional materials must be turned in at the end of the school year or when the student withdraws from school.
- (c) The board of trustees of a school district may not require an employee of the district to pay for instructional materials or instructional technology that is stolen, misplaced, or not returned by a student.