Chapter 66. State Adoption and Distribution of Instructional Materials

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-sixth of the subjects in the foundation curriculum may be reviewed each year. 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 shall also be considered when determining placement of subjects in the cycle.

(b) 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 shall also be considered when determining placement of subjects in the cycle.

Source: The provisions of this §66.21 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective March 4, 2001, 26 TexReg 1706.

§66.22. Midcycle Review and Adoption.

(a) The State Board of Education (SBOE) shall adopt a midcycle review and adoption for textbooks for a subject for which textbooks 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 textbook 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 textbooks to school districts in the manner specified by the publisher, which may include:

(1) providing the textbook to any district in a regional education service center area identified by the publisher; or

(2) providing a certain maximum number of textbooks specified by the publisher.

(d) Instructional materials submitted for midcycle review shall be placed on the conforming list, non-conforming list, or rejected as specified in the TEC, §31.023 and §31.024.

(e) The publisher of a textbook 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 another textbook for the same subject and grade level.

(f) The publisher of a textbook 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 a textbook submitted for midcycle review shall make available up to three examination copies of each submitted textbook, 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.

Source: The provisions of this §66.22 adopted to be effective December 25, 2007, 32 TexReg 9611; amended to be effective February 22, 2010, 35 TexReg 1454.

§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 the commissioner of education approves. 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.

Source: The provisions of this §66.24 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective March 4, 2001, 26 TexReg 1706; amended to be effective February 22, 2010, 35 TexReg 1454.

§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 24 months before the scheduled adoption of the new instructional materials by the SBOE. The SBOE shall designate a request for the production of textbooks in a subject area and grade level by the school year in which the textbooks are intended to be made available in classrooms and not by the school year in which the SBOE makes the request for production. The SBOE shall amend a proclamation, as necessary, to conform to the textbook funding levels provided by the General Appropriations Act for the year of implementation.

(b) The proclamation shall contain the following:

(1) specifications for essential knowledge and skills in each subject for which bids are being invited;

(2) a maximum cost to the state for adopted instructional materials in each subject for which bids are being invited;

(3) an estimated number of units to be purchased during the first contract year for each subject in the proclamation;

(4) specifications for providing computerized files to produce braille versions of adopted instructional materials; and

(5) a schedule of adoption procedures.

(c) The proclamation shall require instructional materials to cover specific essential knowledge and skills a certain number of times in the student text narrative in addition to end-of-section review exercises, end-of-chapter activities, or unit tests.

(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, including maximum costs, 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 textbooks 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, textbook, 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.

Source: The provisions of this §66.27 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective September 1, 1997, 22 TexReg 3779; amended to be effective March 4, 2001, 26 TexReg 1706; amended to be effective October 12, 2006, 31 TexReg 8354; amended to be effective December 25, 2007, 32 TexReg 9611; amended to be effective February 22, 2010, 35 TexReg 1454.

§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 2011of 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.

Statutory Authority: The provisions of this §66.28 issued under the Texas Education Code, §28.002.

Source: The provisions of this §66.28 adopted to be effective February 15, 1998, 23 TexReg 1019; amended to be effective September 1, 1999, 24 TexReg 3859; amended to be effective September 1, 2000, 25 TexReg 5330; amended to be effective March 4, 2001, 26 TexReg 1706; amended to be effective February 7, 2002, 27 TexReg 746; amended to be effective September 1, 2003, 28 TexReg 6023; amended to be effective October 12, 2006, 31 TexReg 8354; amended to be effective February 22, 2010, 35 TexReg 1454.

§66.30. State Review Panels: Eligibility.

(a) A person is not eligible to serve on a state review panel if, during the three years immediately preceding the appointment, the person:

(1) was employed by or received funds from any individual or entity in any way affiliated with a publishing company or participating in an adoption under which the state or a state review panel will evaluate instructional materials; or

(2) owned or controlled, directly or indirectly, any interest in a publishing company or an entity receiving funds from a publishing company.

(b) For the purposes of this section, an eligible institution under §66.67 of this title (relating to Adoption of Open-Source Instructional Materials) that has submitted open-source materials for adoption is considered to be an entity participating in an adoption.

Source: The provisions of this §66.30 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective February 22, 2010, 35 TexReg 1454.

§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 criteria for selecting panel members. Each appointment to a state review panel shall be made by the commissioner of education with the advice and consent of the State Board of Education (SBOE) member whose district is to be represented. The commissioner of education shall make appointments to state textbook review panels that ensure participation by academic experts in each subject area for which instructional materials are being considered. The appointments shall include educators, parents, business and industry representatives, and employers.

(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 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.

Source: The provisions of this §66.33 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective October 12, 2006, 31 TexReg 8354; amended to be effective February 22, 2010, 35 TexReg 1454.

§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 textbook, as well as in the teacher version of the textbook. 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 textbooks. Panel members will use State Board of Education-approved procedures for evaluating coverage of the essential knowledge and skills in the student text narrative in addition to end-of-section review exercises, end-of-chapter activities, or unit tests as required in the proclamation. 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 to determine if the TEKS have been covered sufficiently in the instructional materials.

(C) Instructional materials shall be evaluated for TEKS coverage at each grade level.

(D) One reference to a TEKS statement is not considered sufficient coverage. At least three examples of each student expectation must be evident in the instructional materials to ensure sufficient coverage.

(E) If a TEKS statement has multiple student expectations, at least three examples of each student expectation must be evident in the instructional materials to ensure sufficient coverage.

(F) TEKS statements are not considered covered if only included in side bars, captions, or one question at the end of a chapter.

(2) make recommendations to the commissioner of education that each submission assigned to be evaluated by the state review panel be placed on the conforming list, nonconforming list, or rejected;

(3) submit to the commissioner of education a list of any factual errors in instructional materials assigned to be evaluated by the state review panel; 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 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 textbook review panel members shall be afforded the opportunity to collaborate with other panel members during the official meetings 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 except during official meetings. State review panel members shall not discuss instructional materials being evaluated with any party having a direct or indirect interest in adoption of instructional materials.

(e) 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.

Source: The provisions of this §66.36 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective March 4, 2001, 26 TexReg 1706; amended to be effective October 12, 2006, 31 TexReg 8354; amended to be effective December 25, 2007, 32 TexReg 9611; amended to be effective February 22, 2010, 35 TexReg 1454.

§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.

Source: The provisions of this §66.39 adopted to be effective September 1, 1996, 21 TexReg 7236.

§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.

Source: The provisions of this §66.42 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective February 22, 2010, 35 TexReg 1454.

§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 conforming list, nonconforming list, or rejected. During this period, state review panel members shall not be contacted either directly or indirectly by 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 the State Board of Education (SBOE).

(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 shall not discuss content of instructional materials under consideration with any subject area staff member of the Texas Education Agency (TEA), except during the official orientation

meeting. Additional requests for information or clarification shall be directed to the commissioner of education or his designee. Copies of all questions from individual members shall be distributed with responses to all members of the appropriate state review panel. This restriction is not intended to prohibit members of the state review panels from contacting designated staff of the TEA regarding adoption procedures.

Source: The provisions of this §66.45 adopted to be effective September 1, 1996, 21 TexReg 7236.

§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 designate instructional materials submitted as appropriate for placement on the conforming list or nonconforming list.

(c) If a student or teacher component of a submission consists of more than one item, a publisher shall provide complete and correct titles of each item included in the student and/or teacher component at the time the statement of intent is filed.

(d) A publisher shall specify hardware or special equipment needed to review any item included in an instructional materials submission.

(e) 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. A publisher who wishes to withdraw an instructional materials submission after having filed a statement of intent to bid shall notify the commissioner of education in writing on or before the date specified in the schedule of adoption procedures.

(f) 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 textbooks 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 textbooks to be provided under the contract; and

(2) include payment of the fee for review of instructional materials submitted for midcycle review.

Source: The provisions of this §66.48 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective August 15, 1999, 24 TexReg 5699; amended to be effective October 12, 2006, 31 TexReg 8354; amended to be effective December 25, 2007, 32 TexReg 9611; amended to be effective February 22, 2010, 35 TexReg 1454.

§66.51. Instructional Materials Purchased by the State.

(a) Instructional materials offered for adoption by the State Board of Education (SBOE).

(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) A teacher's component submitted to accompany student instructional materials under consideration for adoption shall be part of the publisher's official bid and shall be provided for the duration of the original contract and any contract extensions at no cost to the school district or open-enrollment charter school as specified in the publisher's bid.

(4) Under the Texas Education Code, §31.025, the official bid price for an instructional material submission may exceed the maximum cost to the state that is established in the proclamation. The state shall only be responsible for payment to the publisher in an amount equal to the maximum cost. A school district ordering instructional materials is responsible for the portion of the cost that exceeds the state maximum.

(5) 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.

(6) 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.)

(7) Publishers shall submit to the TEA a signed affidavit certifying that each individual whose name is listed as an author or contributor of a textbook contributed to the development of the textbook. The affidavit shall also state in general terms each author's involvement in the development of the textbook.

(8) Instructional materials submitted for adoption shall be self-sufficient for the period of adoption. Nonconsumable components shall be replaced by the publisher during the warranty period. Consumable materials included in a student or teacher component of a submission shall be clearly marked as consumable. An item not marked as "consumable" is deemed to be "nonconsumable." The cost of such consumables to the state for the entire contract period may exceed the maximum cost established in the proclamation. School districts may be required to pay the difference between the state maximum cost and the actual cost of the materials.

(9) 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 nine 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.

(10) 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 include essential knowledge and skills covered in the student text narrative in addition to end-of-section review exercises, end-of-chapter activities, or unit tests as required in the proclamation. Correlations shall be submitted in a format approved by the commissioner of education.

(11) The SBOE shall reduce the approved maximum cost for each nonconforming instructional material. The reduced maximum cost for each adopted nonconforming instructional material shall be equal to the original maximum cost for that instructional material times a certain percentage. This percentage shall be the same as the percentage of elements of the essential knowledge and skills covered by the instructional material and that was used by the SBOE to determine whether the instructional material should be designated as conforming, nonconforming, or rejected per the Texas Education Code. Each performance description shall count as an independent element of the essential knowledge and skills of the subject. For those courses where a student expectation is not

identified, the knowledge and skill will replace the student expectation to determine the percentage of student expectations addressed. The reduced maximum cost for nonconforming instructional materials will apply to both foundation and enrichment courses. For nonconforming instructional materials, the state shall be responsible for payment to the publisher in an amount only equal to the reduced maximum cost. A school district ordering nonconforming instructional materials is responsible for the portion of the cost that exceeds the reduced state maximum cost.

(b) Non-adopted instructional materials. A publisher of non-adopted instructional materials selected and purchased by school districts or open-enrollment charter schools under §66.104(c)-(f) of this title (relating to Selection of Instructional Materials by School Districts) shall meet all applicable requirements of the Texas Education Code, §31.151.

Source: The provisions of this §66.51 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective September 1, 2001, 26 TexReg 5807; amended to be effective October 12, 2006, 31 TexReg 8354; amended to be effective December 25, 2007, 32 TexReg 9611.

§66.54. Samples.

(a) Samples of student and teacher components of instructional materials submitted for adoption shall be complete as to content and representative of finished format. Electronic textbooks submitted for adoption, including Internet-based products, must be representative of the final product and completely functional.

(b) The publisher of instructional materials submitted for adoption shall make available up to three examination copies 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). SBOE members may request publishers through the TEA to ship these items directly to interested citizens. Publishers participating in the adoption process are responsible for all expenses incurred by their participation. The state does not guarantee return of these SBOE-requested materials.

(c) Two sample copies 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 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 or specify a lesser number of samples a publisher must provide. 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 official sample copy 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) 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. 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(3), defines a textbook as a book, a system of instructional materials, a combination of a book and supplementary instructional materials that conveys information to the student or otherwise contributes to the learning process, or an electronic textbook.

(g) 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.

(h) A publisher shall provide a list of all corrections necessary 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.

(i) One complete sample copy 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. 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. Corrected samples shall be identical to materials that will be provided to school districts after purchase.

(j) 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.

Source: The provisions of this §66.54 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective March 4, 2001, 26 TexReg 1706; amended to be effective September 1, 2002, 27 TexReg 7105; amended to be effective October 12, 2006, 31 TexReg 8354; amended to be effective December 25, 2007, 32 TexReg 9611; amended to be effective February 22, 2010, 35 TexReg 1454.

§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 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. Any additional samples shall be made available to be checked out according to rules established by each ESC based on demand. 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.

Source: The provisions of this §66.57 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective September 1, 2002, 27 TexReg 7105; amended to be effective February 22, 2010, 35 TexReg 1454.

§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 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 testimony made at the hearing may 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.

(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 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 Public Testimony).

Source: The provisions of this §66.60 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective September 1, 1997, 22 TexReg 3779; amended to be effective October 12, 2006, 31 TexReg 8354; amended to be effective October 12, 2006, 31 TexReg 8354; amended to be effective February 22, 2010, 35 TexReg 1454.

§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 conforming list, placed on the nonconforming list, or rejected (To be conforming, instructional materials must cover all essential knowledge and skills as required by the proclamation in the student text narrative in addition to end-of-section review exercises, end-of-chapter activities, or unit tests.);

(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 preliminary recommendations that instructional materials under consideration be placed on the conforming list, placed on the nonconforming list, or rejected. According to the schedule of adoption procedures, a publisher shall be given an opportunity for a show-cause hearing if the publisher elects to protest the commissioner's preliminary recommendation.

(c) The commissioner of education shall submit to the State Board of Education (SBOE) final recommendations that instructional materials under consideration be placed on the conforming list, placed on the nonconforming list, or rejected.

(d) 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 braillists, 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.

Source: The provisions of this §66.63 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective December 25, 2007, 32 TexReg 9611; amended to be effective February 22, 2010, 35 TexReg 1454.

§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) A committee of the State Board of Education (SBOE) shall be designated by the SBOE chair to review the commissioner's report concerning instructional materials recommended for state adoption. The committee shall report the results of its review to the SBOE.

(c) The SBOE shall adopt both a list of conforming and nonconforming instructional materials in accordance with the Texas Education Code (TEC), §31.023. Instructional materials may be adopted only if they:

(1) meet the requisite percentage of Texas Essential Knowledge and Skills (TEKS) required under the TEC, §31.023. 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; 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).

(d) Instructional materials submitted for placement on a conforming or nonconforming list may be rejected by majority vote of the SBOE in accordance with the TEC, §31.024.

(e) The SBOE shall either adopt or reject each submitted instructional material in accordance with the TEC, §31.024.

(f) The SBOE may allow a publisher to withdraw from the adoption process after the date specified in the proclamation due to recommended placement on a conforming or nonconforming list, manufacturing specifications required as a condition of adoption by the SBOE that the publisher states cannot be met, or failure to agree to make corrections required by the SBOE.

Source: The provisions of this §66.66 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective September 1, 1997, 22 TexReg 3779; amended to be effective October 12, 2006, 31 TexReg 8354; amended to be effective December 25, 2007, 32 TexReg 9611; amended to be effective February 22, 2010, 35 TexReg 1454.

§66.69. Ancillary Materials.

(a) "Ancillary materials" are defined by the Texas Education Agency (TEA) as materials that are not listed on the publisher's intent to bid statement but which the publisher plans to provide to districts and open-enrollment charter schools free with their order. A publisher of adopted instructional materials shall provide any ancillary item free of charge or at the same price discount to the same extent that the publisher provides the item free of charge or at a price discount to any state, public school, or school district in the United States. Free or discounted price ancillary items will be distributed equitably to all school districts and open-enrollment charter schools regardless of size. The title of each ancillary item that a publisher will make available to school districts and open-enrollment charter schools at no charge and the ratio at which each item shall be supplied shall be filed with the TEA according to the schedule contained in the proclamation. A publisher must notify TEA of any ancillaries provided to school districts and open-enrollment charter schools that are not listed with TEA. All packages of ancillary materials shipped to school districts and open-enrollment charter schools shall be labeled, "Ancillary Materials -- Not Reviewed by the State Board of Education."

(b) Designated ancillaries shall be made available to the State Board of Education (SBOE) upon request. Individual SBOE members are not authorized to act on behalf of the SBOE in requesting and making changes to supplemental or ancillary materials.

Source: The provisions of this §66.69 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective March 4, 2001, 26 TexReg 1706; amended to be effective October 12, 2006, 31 TexReg 8354; amended to be effective December 25, 2007, 32 TexReg 9611.

§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 a textbook 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 another textbook for the same subject and grade level; and

(2) commit to provide the textbook in the manner specified by the publisher in the statement of intent to bid midcycle materials in §66.48(f) of this title (relating to Statement of Intent to Bid Instructional Materials).

Source: The provisions of this §66.72 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective August 15, 1999, 24 TexReg 5699; amended to be effective December 25, 2007, 32 TexReg 9611.

§66.73. Contracts for Printing of Open-Source Textbooks.

(a) The State Board of Education (SBOE) may execute a contract for the printing of an open-source textbook listed on the conforming or nonconforming list.

(b) The contract shall allow a school district or an open-enrollment charter school to requisition printed copies of an open-source textbook 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.

Source: The provisions of this §66.73 adopted to be effective February 22, 2010, 35 TexReg 1454.

§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 copies of the updated edition, and one copy of the corresponding state-adopted instructional material. This section includes electronic textbooks 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) Requests for approval of the updates shall not be approved during the first year of the original contract unless the commissioner of education determines that changes in technology, curriculum, or other reasons warrant the updates.

(d) 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.

(e) Responses from the commissioner of education to update requests shall be provided within 30 days after receipt of the request.

(f) 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.

(g) Publishers shall request approval from the commissioner of education for electronic design changes and/or updates that improve performance, design, and technology capabilities that enhance the operation and usage for students and teachers but do not include changes to Texas essential knowledge and skills coverage or new content.

(h) Publishers must agree to supply the previous version of state-adopted textbooks 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.

(i) 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.

(j) 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.

(k) Publishers must notify the commissioner of education in writing if they are providing SBOE-approved products in alternative formats.

(l) Publishers are responsible for informing districts of the availability of the alternative formats and for accurate fulfillment of these orders.

(m) The commissioner of education may add alternative formats of SBOE-approved products to the list of available products disseminated to school districts.

Source: The provisions of this §66.75 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective August 15, 1999, 24 TexReg 5699; amended to be effective October 12, 2006, 31 TexReg 8354; amended to be effective February 22, 2010, 35 TexReg 1454.

§66.78. Delivery of Adopted Instructional Materials.

(a) Under the Texas Education Code (TEC), §31.151, each publisher of adopted instructional materials is required to maintain a depository in this state or arrange with a depository in this state to receive and fill orders for textbooks. Publishers whose products are delivered on-line or are warehoused and shipped from a facility less than 300 miles from the Texas border are not required to maintain a depository in Texas. Publishers who do not maintain a depository in Texas in accordance with TEC, §31.151, must deliver textbooks to a school district or open-enrollment charter school without a delivery charge to the school district, open-enrollment charter school, or state.

(b) 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).

(c) Each publisher shall guarantee delivery of textbooks at least ten business days before the opening day of school of the year for which the textbooks are ordered if the textbooks have been ordered by a date specified in the sales contract.

(d) Each publisher with instructional materials on back order shall notify affected school districts of the expected ship dates for each title on back order.

(e) 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.

(f) 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.

(g) Any request to establish a new depository shall be submitted to the commissioner of education by September 1. The effective date for any new depository shall be April 1 of the year following approval. Each party requesting authority to establish a new depository shall:

(1) present evidence of financial viability adequate to ensure performance of obligations under all contracts on an annual basis;

(2) provide specifications for the warehouse; equipment; as appropriate, evidence of a climate-controlled environment for storage of electronic media; plans for staffing of the proposed depository; and computer capability to receive and process orders and communicate in the automated format specified by the TEA;

(3) submit assurances that a proper stock of instructional materials is available; and

(4) submit a list of publishers under contract with the request.

Source: The provisions of this §66.78 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective March 4, 2001, 26 TexReg 1706; amended to be effective February 7, 2002, 27 TexReg 746.