Text of Proposed Revisions to 19 TAC

Chapter 66. State Adoption and Distribution of Instructional Materials

Subchapter B. State Adoption of Instructional Materials

§66.21. Review and Adoption Cycle [~~Cycles~~] .

(a) The State Board of Education (SBOE) shall adopt a review and adoption cycle for instructional materials for elementary grade levels, including prekindergarten, and secondary grade levels for each subject [~~subjects~~] in the required [~~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.

(3) The adoption cycle for subjects in the foundation curriculum shall be organized so that instructional materials for not more than one-fourth of the subjects in the foundation curriculum are reviewed each biennium. A full and complete investigation of instructional materials for each subject in the foundation curriculum shall occur every eight years unless content of instructional materials for a subject is sufficiently current. Estimated expenditures and historical or expected legislative appropriations shall be considered when determining placement of subjects in the cycle.

(4) The adoption cycle for subjects in the enrichment curriculum shall be organized so that placement of a subject in the cycle is based on the need for up-to-date materials that align to revised Texas essential knowledge and skills or the addition of new courses. Estimated expenditures and historical or expected legislative appropriations shall be considered when determining placement of subjects in the cycle.

[~~(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) Texas Education Code (TEC), §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.

(b) Upon the adoption of revised Texas essential knowledge and skills (TEKS), the State Board of Education (SBOE) shall conduct an investigation to determine the extent of the revisions and whether revisions have created a need for new instructional materials.

(c) [~~(a)~~] The SBOE [~~State Board of Education (SBOE)~~] shall issue a proclamation calling for [~~new~~] instructional materials according to the review and adoption cycle [~~cycles for foundation and enrichment subjects~~] adopted by the SBOE if the investigation required in subsection (b) of this section results in the determination that a proclamation is necessary . 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 and shall call for: [~~. 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.~~]

(1) new instructional materials aligned to all of the TEKS for a specific subject and grade level or course(s) and to TEC, §28.002(h), as it relates to that specific subject in understanding the importance of patriotism and functioning productively in a free enterprise society with appreciation for the basic democratic values of our state and national heritage;

(2) supplemental material aligned to new or expanded TEKS for a specific subject and grade level or course(s) and to TEC, §28.002(h), as it relates to that specific subject in understanding the importance of patriotism and functioning productively in a free enterprise society with appreciation for the basic democratic values of our state and national heritage;

(3) new information demonstrating alignment of current instructional materials to the revised TEKS for a specific subject and grade level or course(s) and to TEC, §28.002(h), as it relates to that specific subject in understanding the importance of patriotism and functioning productively in a free enterprise society with appreciation for the basic democratic values of our state and national heritage; or

(4) any combination of the calls described by paragraphs (1)-(3) of this subsection.

(d) The essential knowledge and skills adopted in this title effective in the year in which instructional materials are intended to be made available in classrooms are the SBOE's official rule governing essential knowledge and skills that shall be used to evaluate instructional materials submitted for consideration under the corresponding proclamation.

(e) The essential knowledge and skills that will be used to evaluate instructional materials submitted for consideration under a proclamation and a copy of each proclamation issued by the SBOE may be accessed from the Texas Education Agency website and 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.

(f) Proclamations calling for supplemental materials or new information only shall be issued at least 12 months before the scheduled adoption of instructional materials. Proclamations that include a call for complete new materials to cover all of the TEKS shall be issued at least 18 months before the scheduled adoption of the new instructional materials.

(g) [~~(b)~~] Each [~~The~~] proclamation shall contain the following:

(1) information about and reference to [~~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 pre-adoption sample of the instructional materials as required by the TEC [~~Texas Education Code~~] , §31.027(a) and (b), and may not submit a print sample copy;

(3) the requirement that electronic samples include a word search feature;

(4) [~~(3)~~] the requirement that publishers file with the Texas Education Agency (TEA) [~~state review panels~~] print samples, electronic samples in an open file format or closed format, or galley proofs for use by state review panels ;

(5) the student enrollment of the courses or grade levels called for, to the extent that it is available, for the school year prior to the year in which the proclamation is issued;

[~~(4) an estimated number of units to be purchased during the first contract year for each subject in the proclamation;~~]

(6) [~~(5)~~] specifications for providing computerized files to produce braille versions of adopted instructional materials;

(7) specifications for ensuring that electronic instructional materials are fully accessible to students with disabilities;

(8) [~~(6)~~] a schedule of adoption procedures; and

(9) [~~(7)~~] an option [~~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.

(h) [~~(c)~~] The proclamation shall require the instructional materials submissions [~~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.~~]

(1) content essential knowledge and skills for the subject area and grade level or course for which the materials are intended:

(A) at least once in the student text narrative; and

(B) once in an end-of-section review exercise, an end-of-chapter activity, or a unit test; and

(2) process essential knowledge and skills:

(A) at least once in the student text narrative and once in an end-of-section review exercise, an end-of-chapter activity, or a unit test; or

(B) twice in an end-of-section review exercise, an end-of-chapter activity, or a unit test.

(i) [~~(d)~~] A draft copy of the proclamation shall be provided to each member of the SBOE and posted on the TEA website, and the TEA shall [~~to representatives of the publishing industry to~~] solicit input regarding the draft proclamation prior to its [~~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.

(j) [~~(e)~~] If the SBOE determines that good cause as defined by the SBOE exists [~~Under extraordinary circumstances~~] , the SBOE may adopt an emergency, supplementary, or revised proclamation without complying with the timelines and other requirements of this section.

(k) [~~(f)~~] The SBOE may issue a proclamation for instructional materials eligible for midcycle review. The midcycle adoption process shall follow the same procedures as the regular adoption except to the extent specified in this subsection. [~~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;~~]

(1) [~~(3)~~] The midcycle proclamation shall include a fee not to exceed $10,000 for each program or system of instructional materials intended for a certain subject area and grade level or course submitted for midcycle review . Publishers participating in the midcycle review process are responsible for all expenses incurred by their participation. [~~; and~~]

(2) A publisher who intends to offer instructional materials for midcycle review shall commit to provide the instructional materials to school districts in the manner specified by the publisher. The manner in which instructional materials are provided may include:

(A) providing the instructional materials to any district in a regional education service center area identified by the publisher; or

(B) providing a certain maximum number of instructional materials specified by the publisher.

(3) 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.

(4) The publisher of instructional materials submitted for midcycle review is not required to provide samples to education service centers or school districts as specified in the TEC, §31.027.

[~~(4) a schedule of midcycle adoption procedures.~~]

(5) The publisher of instructional materials submitted for midcycle review shall make available one electronic examination copy of each submitted instructional materials product, including materials intended for teacher use 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 TEA. The state does not guarantee return of these SBOE-requested materials.

§66.28. Requirements for Publisher Participation.

(a) A publisher who intends to offer instructional materials for review shall comply with product standards and specifications.

(1) Hard copy 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, as applicable. If the commissioner of education determines that good cause exists, the commissioner may approve an exception for a specific portion or portions of this requirement.

(2) A publisher who offers electronic instructional materials must provide a report for each electronic component that verifies that the components follow Web Content Accessibility (WCAG) 2.0 AA standards and technical standards required by the Federal Rehabilitation Act, Section 508.

(3) Materials delivered online shall meet minimum web-based standards.

(4) A publisher shall file a statement certifying instructional materials submitted for consideration will meet applicable product standards and specifications if adopted. Each statement must be made in a format designated by the commissioner of education, signed by a company official, and filed on or before the deadline specified in the schedule of adoption procedures in each proclamation.

(5) 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.

(b) A publisher who intends to offer instructional materials for adoption shall submit a statement of intent to bid on or before the date specified in the schedule of adoption procedures.

(1) The statement of intent to bid shall be submitted in a format designated by the commissioner of education.

(2) A publisher shall indicate in the statement of intent to bid the percentage of Texas essential knowledge and skills that the publisher believes are sufficiently covered in each instructional materials submission.

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

(4) Additions to a publisher's statement of intent to bid shall not be accepted after the deadline for filing statements of intent to bid, except as allowed in the schedule of adoption procedures included in a proclamation.

(5) 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:

(A) specify the manner in which instructional materials will be provided to school districts as specified in §66.27(k)(2) of this title (relating to Proclamation, Public Notice, and Schedule for Adopting Instructional Materials); and

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

(c) A publisher who intends to offer instructional materials for review shall comply with the following requirements for providing pre-adoption samples.

(1) Complete electronic samples of student and teacher components of instructional materials shall be provided to the Texas Education Agency (TEA) and the 20 regional education service centers (ESCs) on or before the date specified in the schedule of adoption procedures in a proclamation. Samples submitted for review shall be complete versions of the final product and must include all content intended to be in the final product, not just the content identified in the correlations. Samples of electronic products must be fully functional for review purposes and meet any other specifications identified in the proclamation.

(2) A publisher of instructional materials submitted for adoption shall make available samples that meet the requirements of subsection (a) of this section to an SBOE member upon that member's request, beginning on the date the publishers are required to submit their samples to the TEA.

(3) 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 appropriate information, such as locator and login information and passwords, required to ensure public access to their programs throughout the review period.

(4) If the commissioner of education determines that good cause exists, the commissioner 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 supplied to the ESCs, the TEA, or SBOE members.

(5) A publisher shall provide a complete description of all student and teacher components of an instructional materials submission along with the required electronic sample.

(6) On request of a school district, a publisher shall provide an electronic sample of submitted instructional materials and 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.

(7) 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.

(8) One sample copy of each student and teacher component of an instructional materials submission shall be provided for each member of the appropriate state review panel in accordance with instructions provided by the TEA. Publishers have the option to file with the TEA print samples, electronic samples in an open file format or closed format, or galley proofs. An electronic sample of print instructional materials must be offered in a format that simulates the print or "view only" version and that does not contain links to external sources. 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.

(9) On or before the deadline established in the schedule of adoption procedures, publishers shall submit correlations of instructional materials submitted for review with essential knowledge and skills required by the proclamation. Correlations shall be provided for materials designed for student use and materials designed for teacher use and must identify evidence of each student expectation addressed in the ways specified in §66.27(h) of this title. Correlations shall be submitted in a format designated by the commissioner of education.

(10) The TEA, ESCs, and participating 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. Participating publishers may be required to lend 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.

(11) A publisher shall provide a list of all corrections required to be made to each student and teacher component of an instructional materials submission to bring them into compliance with applicable laws, rules, or the proclamation. 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 statement to that effect in a format designated by the commissioner of education 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.

(12) 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.

(13) 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.

(d) A publisher who intends to offer instructional materials for adoption shall comply with the following bid requirements.

(1) Publishers shall file official bids with the commissioner of education according to the schedule of adoption procedures and in a manner designated by the commissioner.

(2) The official bid price of an instructional materials submission may exceed the price included with the statement of intent to bid filed under subsection (b) of this section.

(3) The official bid filed by a publisher shall include separate prices for each item included in an instructional materials submission. A publisher shall guarantee that individual items included in the student and/or teacher component are 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.

(4) A publisher may submit supplemental bids with new package options or lower prices for existing packages or components according to the schedule of adoption procedures included in the proclamation. Supplemental bids may not be submitted for prices higher than were provided in the initial bids.

(5) Each instructional material or ancillary material must be available for purchase individually or as part of a bundle.

(e) A publisher who intends to offer instructional materials for adoption shall comply with the following additional requirements.

(1) A publisher shall submit to the TEA a signed affidavit including the following:

(A) certification that each individual whose name is listed as an author or contributor of the instructional materials contributed to the development of the instructional materials; and

(B) a general description of each author's or contributor's involvement in the development of the instructional materials.

(2) Student materials offered for possible 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.

(f) A publisher may not submit instructional materials for review that have been authored or contributed to by a current employee of the TEA.

(g) A publisher who intends to offer instructional materials for adoption shall comply with additional requirements included in a proclamation related to submission of instructional materials for adoption.

[~~§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.~~]

[~~(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.~~]

§66.29. Websites in State-Adopted Instructional Materials.

(a) 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.

(b) A 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 the contract for the period determined by the State Board of Education (SBOE).

(c) 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.

(d) Electronic, web-based, or online instructional materials may not be altered in any way that would remove or change content that was used to qualify the product for adoption in the curriculum without prior SBOE approval.

(e) The publisher may not allow advertising of any type to be placed in or associated with the materials.

(f) The publisher may 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 that are not directly related to the content, and may not collect any information about the user or computer accessing the materials that would allow determination of personal information, including email addresses.

§66.30. State Review Panels: Eligibility and Appointment .

(a) A person nominated to serve on a state review panel shall disclose in any nomination or application, in a manner designated [~~prescribed~~] by the commissioner of education, whether currently or at any time in the 36 months [~~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 involved in or connected [~~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 involved in or connected [~~related~~] to the adoption of instructional materials or had direct ownership of stock of a publicly traded company involved in or connected to the adoption of instructional materials ; or

(3) was employed by an institution of higher education that has submitted open-source instructional materials or is a publisher of instructional materials.

(b) The commissioner of education shall determine the number of review panels needed to review instructional materials under consideration for adoption, the number of persons to serve on each panel, and the process for selecting panel members.

(c) 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. Said consent shall be given by the SBOE member within seven days of being notified of the commissioner of education's proposed appointments or consent is implied. Notification and consent shall be provided by electronic mail. The commissioner of education shall make appointments to state review panels that achieve diversity to the extent possible; ensure that each team has at least a majority of members with sufficient content expertise and experience (as determined by the commissioner); 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.

(d) 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 provider, author, depository, or agent.

(e) The SBOE shall be notified of appointments made by the commissioner of education to state review panels.

(f) The commissioner of education shall inform nominees who are not appointed to a state review panel that all members of the public may review instructional materials and give input during the public comment period.

(g) Members of a state review panel may be removed at the discretion of the commissioner of education at any time prior to the completion of the review.

[~~§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: Training, Duties , and Conduct.

(a) State review panel members shall participate in training that includes 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 and grades or courses included in the proclamation;

(4) clear and consistent guidelines for determining Texas essential knowledge and skills (TEKS) coverage within the instructional materials;

(5) identifying factual errors;

(6) the schedule of adoption procedures;

(7) instruction in the use of technology appropriate to media submitted for adoption; and

(8) 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.

(b) [~~(a)~~] The duties of the members [~~each member~~] of a state review panel are to:

(1) evaluate all instructional materials submitted for review [~~adoption in each subject~~] assigned to the panel to determine if essential knowledge and skills are covered in the instructional materials intended for student use and [~~version of~~] the instructional materials intended for teacher use [~~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 as described in §66.27(h) of this title (relating to Proclamation, Public Notice, and Schedule for Adopting Instructional Materials) to be considered complete. [~~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 requirements to be met in evaluating coverage of essential knowledge and skills shall [~~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.~~]

(A) [~~(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.~~]

(B) [~~(D)~~] A publisher's citation for coverage of any specific student expectation may be accepted [~~considered sufficiently covered~~] only if it provides [~~the instructional materials provide~~] one of the following:

(i) an opportunity for the teacher to teach the [~~each~~] component of the knowledge or skill in the teacher material;

(ii) an opportunity for the student to learn the [~~each~~] component of the knowledge or skill in the student material or the teacher material; or

(iii) an opportunity for the student to demonstrate the [~~each~~] component of the knowledge or practice the [~~each~~] component of the skill in the student material or the teacher material.

(C) [~~(E)~~] Student expectations are not considered covered if only included in side bars, captions, or questions at the end of a section or chapter.

(D) [~~(F)~~] Each student expectation must be clearly evident in the instructional materials to ensure sufficient coverage.

(E) [~~(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) submit [~~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 indicating which TEKS are and are not covered in [~~that~~] each product [~~submission~~] assigned to be evaluated by the state review panel [~~be placed on the adopted list or rejected~~] ;

(3) if applicable, submit 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 indicating which English language proficiency standards required for any specific product as established by the proclamation are and are not covered in each product assigned to be evaluated by the state review panel;

(4) [~~(3)~~] submit to the commissioner of education a list of all [~~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~~]

(5) [~~(4)~~] as appropriate for [~~to~~] a subject area and/or grade level, ascertain that instructional materials submitted for review [~~adoption~~] do not contain content that clearly conflicts with the stated purpose of the TEC, §28.002(h) ; and [~~.~~]

(6) at the conclusion of the review process, certify to the SBOE compliance with subsection (a) of this section and with this subsection.

(c) [~~(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.

(d) [~~(c)~~] Before presenting a final report [~~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.

(e) [~~(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, components [~~manufacturing specifications~~] , or any other aspect of instructional materials being evaluated. A member of a state review panel shall not discuss [~~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.~~]

(f) State review panel members shall not discuss instructional materials being evaluated with a member of the State Board of Education (SBOE) or with any party having a financial interest in the adoption of instructional materials prior to the conclusion of the review. The review is considered to have concluded on the date that the list of instructional materials recommended for adoption is posted on the Texas Education Agency (TEA) website.

(g) SBOE members may attend review panel meetings but may not discuss materials under review with state review panel members.

(h) 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 when the final report showing the findings of the review panels is posted on the TEA website. 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.

(i) The restrictions in subsections (e)-(h) of this section are not intended to prohibit members of the state review panels from seeking advice from educators, experts, or parents regarding the meaning or intent of the student expectations that the materials must cover.

(j) The restrictions in subsections (e)-(h) of this section are not intended to prohibit members of the state review panels from providing public testimony to the SBOE either at a public hearing or in any regularly scheduled meeting in accordance with the SBOE Operating Rules, §2.12 (relating to Public Hearings).

(k) State review panel members shall report immediately to the commissioner of education any communication or attempted communication by any person not officially involved in the review process regarding instructional materials being evaluated by the panel.

(l) [~~(e)~~] State review panel members participating in the face-to-face review shall affix their signatures to all reports [~~recommendations~~] to the commissioner of education. State review panel members participating in the virtual review shall submit their reports [~~recommendations~~] electronically through email accounts owned by the review panel members , which will serve as their electronic signatures.

(m) [~~(f)~~] Members of each state review panel may be required to be present at the SBOE [~~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.~~]

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

(a) Each regional education service center (ESC) executive director shall designate one person to supervise all access to electronic samples of instructional materials.

(b) 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 electronic samples in a manner designated by the commissioner. The appropriate publisher shall be notified of any sample irregularities reported by the ESCs.

(c) One electronic sample of all instructional materials under consideration for adoption shall be retained in each ESC for review by interested persons. The review sample must remain available until the ESC receives the electronic final adopted product sample on the date specified in the schedule of adoption procedures.

(d) Appropriate information, such as locator and login information and passwords, shall be made available by the ESCs to ensure public access to Internet-based instructional content throughout the review or contract period, as appropriate.

(e) Regional ESCs shall ensure reasonable public access to sample instructional materials, including access outside of normal working hours that shall be scheduled by appointment.

(f) On or before the date specified in the schedule of adoption procedures, each ESC shall publicize the date on which sample instructional materials will be available for review and shall notify all school districts in the region of the schedule.

§66.41. Adding Content During the Panel Review.

(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 correlation document 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 any factual errors.

(b) To be eligible to have content added as described in subsection (a) of this section, the material 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 material; and

(2) at least 75% of the ELPS designated for the subject and grade for which the material is intended.

(c) A publisher shall have one opportunity to provide a written request for the Texas Education Agency (TEA) to further review instructional material that, in accordance with subsection (b) of this section, is not eligible to have new content added. The request for further review must be received by TEA within the timeframe established by the TEA at the start of the review.

(d) New content may be provided as print samples, electronic samples in an open file format or closed format, or galley proofs for review by the state review panels.

(e) New content must be provided to the review panels as quickly as possible and within the timeframe established by the TEA.

(f) Electronic samples of new content approved by the review panels for the purpose of making the product eligible for adoption shall be submitted to the TEA and each education service center prior to the adoption of instructional materials. New content submitted under this subsection must be submitted by the deadline established in the schedule of adoption procedures in the proclamation.

(g) If a publisher receives a request or a "no report" from a panel, the publisher shall be given no less than 48 hours to provide content in response to the request or report.

§66.42. Public Comment on Instructional Materials.

(a) Any resident of Texas may submit written comments for, against, or about any instructional materials submitted for adoption.

(1) Written comments shall be submitted to the commissioner of education in a format designated by the commissioner on or before the deadlines specified in the schedule of adoption procedures.

(2) Alleged factual errors shall be submitted to the commissioner of education in a format designated by the commissioner on or before the deadlines specified in the schedule of adoption procedures.

(3) Copies of written comments and lists of reported alleged factual errors shall be posted on the Texas Education Agency (TEA) website and provided to the State Board of Education (SBOE) and participating publishers.

(b) The SBOE shall hold a hearing on instructional materials submitted for review during a regularly scheduled meeting prior to the meeting at which the SBOE will vote to adopt instructional materials.

(1) Testimony at the hearing shall be accepted from Texas residents and non-residents with priority given to Texas residents. Copies of written testimony provided at the hearing shall be distributed to SBOE members and to publishers with materials under consideration. Persons who wish to testify must register in accordance with registration procedures in the SBOE Operating Rules, §2.10 (relating to Oral Public Testimony in Connection with Regular Board and Committee Meetings). 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.

(3) An archived recording of the hearing shall be provided on the TEA website.

(4) All written publisher responses to comments or public testimony provided at the hearing shall be posted to the TEA website within five working days of their receipt.

(c) 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.

[~~§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.~~]

§66.43. Adding Content During the Public Comment Period.

(a) Publishers who wish to add or modify content after submitting their electronic pre-adoption samples but prior to adoption must make the new content available to the public and must meet all the same requirements with that new content that the original pre-adoption sample meets as specified in §66.28 of this title (relating to Requirements for Publisher Participation).

(b) Changes to content in materials under consideration for adoption must be received by the Texas Education Agency by seven business days prior to the meeting at which the State Board of Education will vote to adopt instructional materials. The proposed changes shall be posted on the Texas Education Agency website at least five business days prior to the meeting at which the State Board of Education will vote to adopt instructional materials. Changes to content in materials under consideration for adoption proposed in response to public testimony must be received by the Texas Education Agency by 5:00 p.m. on the Wednesday prior to the meeting at which the State Board of Education will vote to adopt instructional materials.

(c) After materials have been adopted, content changes must be made in accordance with §66.75 of this title (relating to Updates to Adopted Instructional Materials).

[~~§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) State review panels appointed by the [~~The~~] commissioner of education shall review all instructional materials submitted for consideration for adoption. The commissioner [~~commissioner's review~~] shall prepare a preliminary report on instructional materials under consideration for adoption that includes [~~include~~] the following:

(1) the findings of the review panels regarding Texas essential knowledge and skills (TEKS) and English language proficiency standards (ELPS) coverage; and

[~~(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;~~]

(2) [~~(3)~~] alleged [~~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 report [~~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 TEKS [~~Texas essential knowledge and skills (TEKS)~~] and/or designated ELPS [~~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 §66.41(b) [~~§66.79(b)~~] of this title (relating to Adding Content During the Panel 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 correlation document [~~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) Upon the conclusion of the period of time designated for show-cause hearings, the [~~The~~] commissioner of education shall submit to the State Board of Education (SBOE) a final report regarding TEKS and ELPS coverage, alleged factual errors identified by either the publisher or the review panel, and information regarding whether a publisher on the list has refused to rebid instructional materials according to §66.72 of this title (relating to Contracts). [~~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 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.~~]

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

(a) The State Board of Education (SBOE) shall either adopt or reject each submitted instructional material in accordance with the Texas Education Code (TEC), §31.024.

[~~(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 SBOE [~~State Board of Education (SBOE)~~] shall adopt [~~a list of adopted~~] instructional materials in accordance with the TEC [~~Texas Education Code (TEC)~~] , §31.023. Instructional materials may be adopted only if [~~they~~] :

(1) they meet at least 50% of the Texas essential knowledge and skills (TEKS) when the SBOE calls for materials as specified in §66.27(c)(1) of this title (relating to Proclamation, Public Notice, and Schedule for Adopting Instructional Materials) or meet requirements of the proclamation when the SBOE calls for materials as specified in §66.27(c)(2) or (3) of this title for the subject and grade level or course(s) in materials designed for [~~the~~] student use and [~~version of the instructional~~] materials designed for [~~as well as in the~~] teacher use [~~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) the publisher has agreed to ensure that they meet the established physical specifications adopted by the SBOE prior to making materials available for use in districts ;

(3) they 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 making them available for use in districts and charter schools [~~execution of a contract pursuant to §66.72 of this title (relating to Preparing and Completing Contracts)~~] ; and

(4) they receive approval by 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) No instructional material may be adopted that contains content that clearly conflicts with the stated purpose of the TEC, §28.002(h).

(d) [~~(c)~~] Instructional materials submitted for review [~~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 referenced in this section 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) provide certification [~~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 information and certifications [~~submissions~~] required by subsection (d) of this section shall be provided [~~made~~] in a format designated by [~~approved by the SBOE and~~] the commissioner of education.

(f) A publisher who offers open-source instructional materials must provide a report for each electronic component that verifies that the component substantially follows Web Content Accessibility (WCAG) 2.0 AA standards and technical standards required by the Federal Rehabilitation Act, Section 508, as applicable.

[~~(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.~~]

(g) [~~(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. Public comment shall be provided to members of the SBOE and posted on the TEA website within five working days of its receipt.

(h) [~~(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) may request an independent review that follows the same process used in §66.36 of this title (relating to State Review Panels: Training, 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 in alignment with essential knowledge and skills;

(2) [~~(1)~~] shall 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

(3) [~~(2)~~] shall 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 [~~Agency's~~] (TEA) legal counsel.

(b) Contracts [~~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 adopted by the SBOE [~~submitted for midcycle review~~] shall:

(1) enter into a contract with the SBOE for a term not to exceed eight years and 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 §66.28(b) [~~§66.48(e)~~] of this title (relating to Requirements for Publisher Participation [~~Statement of Intent to Bid Instructional Materials~~]).

(d) The commissioner of education shall annually review contracts for instructional materials and identify those that should be renewed.

(e) The SBOE shall 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 review and adoption cycle;

(2) availability and projected cost of new instructional materials;

(3) willingness of publishers to renew contracts; and

(4) cost of instructional materials under a renewal contract.

(f) 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.

(g) Contracts with publishers are subject to all provisions of the Texas Education Code (TEC), Chapter 31.

(h) The SBOE may execute a contract for the printing of open-source instructional materials on the adopted list that allows a school district or an open-enrollment charter school to requisition printed copies of open-source instructional materials as provided by the TEC, §31.103.

§66.73. 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. Upon request, 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 publisher's contract with the Texas Education Agency.

(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.

[~~§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 to Adopted Instructional Materials .

(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 approval of a new edition [~~an update~~] shall provide the request in writing in a manner designated by the commissioner of education that includes an explanation of the reason for the update. The request must be accompanied by an electronic sample and a correlation document that meets all the requirements of the correlation document provided for the initial review. [~~, along with two mock-ups or screen capture copies of the updated edition, and one copy of the corresponding state-adopted instructional material.~~] This requirement [~~section~~] includes electronic instructional materials and Internet products for which all users receive the same updates. Proposed changes shall be posted on the Texas Education Agency website for a minimum of seven calendar days prior to approval.

(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 content [~~the~~] updates must certify in writing that the new material meets the applicable essential knowledge and skills and is free from factual errors.

(d) Publishers may, at any time, make changes that do not affect the product's Texas essential knowledge and skills coverage or its coverage of Texas Education Code, §28.002(h), as it relates to that specific subject and grade level or course(s), understanding the importance of patriotism and functioning productively in a free enterprise society with appreciation for the basic democratic values of our state and national heritage. Requests for approval of updates to content that was not used in determining the product's eligibility for adoption must be submitted to the commissioner of education to confirm the changes do not affect Texas essential knowledge and skills coverage or coverage of TEC, §28.002(h). Responses from the commissioner of education to update requests shall be provided within 30 days after receipt of the request. This requirement includes electronic instructional materials and Internet products for which all users receive the same updates. Proposed changes shall be posted on the Texas Education Agency website for a minimum of seven calendar days prior to approval. [~~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 used in determining the product's eligibility for adoption [~~in state-adopted instructional materials~~] must be approved by the State Board of Education (SBOE) prior to their introduction into state-adopted instructional materials. Requests must be submitted in a format designated by the commissioner and must include correlations to applicable student expectations. This requirement includes electronic instructional materials and Internet products for which all users receive the same updates. The SBOE may assess penalties as allowed by law against publishers who fail to obtain approval for updates to such 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 for them .

(k) The commissioner of education may add alternative formats of SBOE-approved products to the list of adopted [~~available~~] products available [~~disseminated~~] to school districts.

(l) Publishers of SBOE-adopted instructional materials may, at any time, without seeking approval from the SBOE or the commissioner of education, make technical enhancements or improvements that do not add or change content, provided the enhancements do not change the technical requirements for districts to continue to be able to access the materials in the same manner as originally submitted.

[~~§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. Ancillaries are not evaluated in the review process and are not used to verify Texas essential knowledge and skills coverage. 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. Any ancillary material may be part of a bundled package of materials, but each component of that package must be available for purchase individually.

(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.