

The State Board of Education (SBOE) proposes amendments to §§66.27, 66.28, 66.30, 66.36, 66.39, 66.41, 66.42, 66.43, 66.63, 66.66, 66.67, 66.72, 66.75, and 66.81 and new §66.76, concerning the state adoption of instructional materials. The proposed rule actions would update rules related to state review and adoption of instructional materials.

BACKGROUND INFORMATION AND JUSTIFICATION: Rules in 19 TAC Chapter 66, Subchapter B, address the adoption of instructional materials, covering topics such as proclamation, public notice, and schedule for adopting instructional materials; requirements for publisher participation; procedures for handling of samples and public access to samples; public comment on instructional materials; adding content during panel review and during the public comment period; and updates to adopted instructional materials.

The proposed revisions to the instructional materials rules would update language to add clarity to the process for publisher participation in the review and adoption process, ensure that the adoption of prekindergarten materials and their alignment to the Texas Prekindergarten Guidelines (TPG) are appropriately included in the rules, and authorize a process for updating of TEKS alignment for adopted materials. The proposed rule actions include amending existing rules and adding a proposed new rule that would address new editions of adopted instructional materials separate from the existing rule on updates to adopted instructional materials. The proposed rule actions also include technical edits throughout.

The SBOE intends for the proposed revisions to be in place for products adopted under *Proclamation 2020* and the *Proclamation 2021* process.

The SBOE approved the proposed revisions for first reading and filing authorization at its September 13, 2019 meeting.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and support services, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking would expand existing regulations related to state review and adoption of instructional materials.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be adding

clarity to the instructional materials adoption process and provide the opportunity for more accurate information regarding the alignment of instructional materials to the TEKS or TPG. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no new data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins October 4, 2019, and ends November 8, 2019. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_\(TAC\)/Proposed_State_Board_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/Proposed_State_Board_of_Education_Rules/). Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in November 2019 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on October 4, 2019.

STATUTORY AUTHORITY. The amendments and new rule are proposed under Texas Education Code, §31.002, which defines open education resource instructional material; TEC, §31.003, which authorizes the State Board of Education (SBOE) to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials; TEC, §31.023, which requires the SBOE to adopt a list of instructional materials that meet applicable physical specifications, contain material covering at least half of the applicable Texas Essential Knowledge and Skills (TEKS) in the student version and in the teacher version, are suitable for the subject and grade level for which the instructional material was submitted, and have been reviewed by academic experts in the subject and grade level for which the instructional material was submitted; TEC, §31.035, which allows the SBOE to adopt supplemental instructional materials that are not on the adopted list if the material covers one or more primary focal points or topics of a subject in the required curriculum, is not designed to serve as the only instructional material for the course, meets applicable physical specifications, is free from factual errors, is suitable for the subject and grade level for which the instructional material was submitted, and has been reviewed by academic experts in the subject and grade level for which the instructional material was submitted. The statute requires the SBOE to identify the TEKS that are covered by the supplemental instructional material and requires the material to comply with the review and adoption cycle provisions; and HB 3526, Section 5, 85th Texas Legislature, Regular Session, 2017, which changes the name of the instructional materials allotment to the technology and instructional materials allotment.

CROSS REFERENCE TO STATUTE. The amendments and new rule implement Texas Education Code, §§31.002, 31.003, 31.023, 31.035, and House Bill (HB) 3526, Section 5, 85th Texas Legislature, Regular Session, 2017.

<rule>

§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 [~~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; online [~~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 education resource 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) The SBOE shall issue a proclamation calling for instructional materials according to the review and adoption cycle 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:
- (1) new instructional materials aligned to all of the TEKS for a specific subject and grade level or course(s) or to the Texas Prekindergarten Guidelines (TPG) 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 [~~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) or to new or expanded TPG 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 [~~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) or the revised TPG 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 [~~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 or TPG shall be issued at least 18 months before the scheduled adoption of the new instructional materials.
- (g) Each proclamation shall contain the following:
- (1) information about and reference to 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, §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) the requirement that publishers file with the Texas Education Agency (TEA) 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;
 - (6) 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) a schedule of adoption procedures; and
 - (9) an option for the submission of open education resource instructional materials that are available for use by the state without charge on the same basis as instructional materials offered for sale.
- (h) The proclamation shall require the instructional materials submissions to cover:
- (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) 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 solicit input regarding the draft proclamation prior to its scheduled adoption by the SBOE. 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) If the SBOE determines that good cause as defined by the SBOE exists, the SBOE may adopt an emergency, supplementary, or revised proclamation without complying with the timelines and other requirements of this section.
- (k) 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.
- (1) 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.
 - (2) A publisher that ~~[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.
 - (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 with adopted materials ~~[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. 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. 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 that ~~[who]~~ offers electronic instructional materials must provide a report for each electronic component that verifies that the components follow the Web Content Accessibility Guidelines (WCAG) identified in the proclamation ~~[2.0 AA standards]~~ and technical standards required by the Federal Rehabilitation Act, Section 508. The report must be prepared by an independent third party and be based on an audit testing ~~[the accessibility of]~~ a random sampling of each different type of electronic component ~~[pages]~~ as outlined in each proclamation. If applicable, the ~~[The]~~ number of pages to be audited to meet the requirements in the proclamation shall be determined by the publisher.
 - (3) A publisher that ~~[who]~~ provides access to materials to students with disabilities through an alternate format shall include a link to that material on the entrance page of the main product.
 - (4) Materials delivered online shall meet minimum web-based standards.
 - ~~[(5) — 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) ~~[(6)]~~ 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.
 - ~~[(6) — If, during the contract period, the commissioner determines that any publisher's adopted instructional materials do not comply with the WCAG standards identified in the proclamation or the technical standards required by the Federal Rehabilitation Act, Section 508, the publisher's instructional materials contract may be presented to the SBOE for termination.]~~
 - (7) A publisher of adopted instructional materials shall make available samples that meet the requirements of this subsection to an SBOE member upon that member's request, beginning on the date the publishers are required to submit their final samples to the Texas Education Agency (TEA).
- (b) Publishers participating in the adoption process are responsible for all expenses incurred by their participation.
- (c) ~~[(b)]~~ A publisher that ~~[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 and system requirements 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 that ~~[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.

(d) ~~(e)~~ A publisher that ~~[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 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. The original sample submission must remain unchanged through the entire review and adoption process, though updated samples can be added to the publisher's submission. These samples are copyrighted by the publisher and are not to be downloaded for use in classrooms or for any purpose other than public review.
- ~~(2) 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.~~
- ~~(3) Electronic samples must be free of sales or marketing materials.~~
- (4) ~~(2)~~ ~~[The TEA may request additional samples if they are needed.]~~ These samples shall be made available electronically for public review. Publishers of instructional content accessed electronically ~~[through the internet]~~ shall provide all necessary ~~[appropriate]~~ information, such as locator and login information and passwords, required to ensure public access to their programs throughout the review period.
- ~~(5) (3)~~ 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.
- ~~(6) (4)~~ A publisher shall provide a complete description of all student and teacher components of an instructional materials submission ~~[along with the required electronic sample]~~ .
- ~~(7) (5)~~ 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.
- ~~(6) 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) (7)~~ 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. Samples for review must be as free from factual and editorial

error as possible and reflect the quality of the final product intended to go into classrooms. Publishers have the option to provide reviewers with ~~[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. The state does not guarantee return of sample instructional materials.

- ~~[(8) — 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.]~~
- (9) 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.
- ~~[(10) — 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.]~~
- ~~[(11) — 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.]~~
- ~~[(12) — 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.]~~
- (e) The TEA may request additional samples if they are needed.
- (f) ~~[(d)]~~ A publisher that ~~[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.]~~
- ~~(2) [(2)]~~ 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.

- (3) ~~(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 if the publisher filed an initial bid for that course or grade level by the deadline in the schedule of adoption procedures . Supplemental bids may not be submitted for prices higher than were provided in the initial bids.
- ~~(5) Each instructional material or ancillary material that is offered as part of a bundle must also be available for purchase individually.~~
- (g) Each instructional material or ancillary material that is offered as part of a bundle must also be available for purchase individually.
- (h) ~~(e)~~ A publisher that ~~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 ; ~~and~~ ~~;~~
- ~~(C) certification that all corrections required by the commissioner and SBOE have been made.~~
- (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.
- (i) ~~(f)~~ A publisher may not submit instructional materials for review that have been authored or contributed to by a current employee of the TEA.
- (j) ~~(g)~~ A publisher or author may not solicit input, directly or indirectly, on new or revised content from a member of the state review panel for a product the panelist reviewed while the product is being considered or even after the product has been adopted or rejected.
- ~~(k) 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.~~
- ~~(l) 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 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 on or before the deadline in the schedule for submitting the list of corrections.~~

- (m) 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.
- (n) 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 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.
- (o) ~~(h)~~ 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.

§66.30. State Review Panels: Eligibility and Appointment.

- (a) 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, subject to this section, the process for selecting panel members.
- (b) As determined by this section, panel members shall serve with the advice and consent of the member from whose district the panel member resides.
- (c) The commissioner ~~[of education]~~ shall solicit nominations for possible appointees to state review panels from the State Board of Education (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.
- (d) A person nominated to serve on a state review panel shall disclose in any nomination or application, in a manner designated by the commissioner ~~[of education]~~, his or her residence and whether currently or at any time in the 36 months 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 to the adoption of 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 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 education resource instructional materials or is a publisher of instructional materials.
- (e) The commissioner ~~[of education]~~ shall propose appointments to state review panels that, to the extent possible, as determined by the commissioner, include the following:
- (1) individuals nominated by SBOE members;
 - (2) individuals representing a diverse mixture of gender, race, and SBOE districts;
 - (3) a majority of members with content expertise and experience;
 - (4) academic experts in each subject area for which instructional materials are being considered, giving priority to content-relevant educators and professors; and
 - (5) educators, parents, business and industry representatives, and employers.
- (f) For purposes of this section, an "academic expert" is a person who:
- (1) is a public-school ~~[public school]~~ teacher with at least ten years of classroom teaching experience; or
 - (2) has at least a master's degree in the subject area; or

- (3) is a professor at an accredited four-year institution of higher education in Texas.
- (g) The commissioner [~~of education~~] shall notify the SBOE of the proposed appointments. The commissioner shall assign each appointee to the SBOE district in which he or she resides.
- (h) An SBOE member may reject the proposed appointment of a panel member representing that member's SBOE district by notifying the commissioner via electronic mail within five business [~~seven~~] days of receiving the proposed appointment list. Failure to reject a proposed appointment within five business [~~seven~~] days constitutes consent for the appointment.
- (i) After close of the five-business-day [~~seven-day~~] period under subsection (h) of this section, the commissioner may propose additional members if necessary. The commissioner shall provide to the SBOE member who represents the district of residence for each additional proposed panel member the opportunity for review of additional members in accordance with the time period and rejection rules under subsection (h) of this section. The SBOE shall be notified of finalized appointments made by the commissioner [~~of education~~] to state review panels. The final list of appointees, their roles, and who nominated them shall be given to each member of the SBOE no later than the first public meeting following the finalization of the panels.
- (j) 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.
- (k) The role of each appointee shall be designated by the commissioner [~~of education~~] and disclosed to all appointees on each panel.
- (l) 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.

§66.36. 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) or Texas Prekindergarten Guidelines (TPG) 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) The duties of the members of a state review panel are to:
- (1) evaluate all instructional materials submitted for review assigned to the panel to determine if essential knowledge and skills are covered in the instructional materials intended for student use and the instructional materials intended for teacher use. 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. 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. The requirements to be met in evaluating coverage of essential knowledge and skills shall include the following.

- (A) 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 or TPG have been covered sufficiently in the instructional materials.
 - (B) A publisher's citation for coverage of any specific student expectation may be accepted only if it provides one of the following:
 - (i) an opportunity for the teacher to teach the component of the knowledge or skill in the teacher material;
 - (ii) an opportunity for the student to learn the component of the knowledge or skill in the student material or the teacher material; or
 - (iii) an opportunity for the student to demonstrate the component of the knowledge or practice the component of the skill in the student material or the teacher material.
 - (C) Student expectations are not considered covered if only included in side bars, captions, or questions at the end of a section or chapter.
 - (D) Each student expectation must be clearly evident in the instructional materials to ensure sufficient coverage.
 - (E) 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 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 or TPG are and are not covered in each product assigned to be evaluated by the state review panel;
 - (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) submit to the commissioner [of education] a list of all 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;
 - (5) as appropriate for a subject area and/or grade level, ascertain that instructional materials submitted for review 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 State Board of Education (SBOE) [SBOE] compliance with subsection (a) of this section and with this subsection.
- (c) 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) Before presenting a final report 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) 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 or TPG, errors, components, or any other aspect of instructional materials being evaluated. A member of a state review panel shall not discuss with other members of the panel the instructional materials being reviewed, except during official virtual and face-to-face reviews.
- (f) State review panel members shall not discuss instructional materials being evaluated with a member of the SBOE [~~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) State review panel members participating in the face-to-face review shall affix their signatures to all reports to the commissioner [~~of education~~]. State review panel members participating in the virtual review shall submit their reports electronically through email accounts owned by the review panel members, which will serve as their electronic signatures.
- (m) Members of each state review panel may be required to be present at the SBOE meeting at which instructional materials are adopted.

§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.
- (g) One electronic final sample of all instructional materials adopted by the State Board of Education shall be retained in each ESC for the entire adoption period for review by interested persons.

§66.41. Adding Content During the Panel Review.

- (a) A publisher may add or edit content to instructional materials during the panel review [~~review and adoption process~~] only to allow the materials to:
 - (1) meet the Texas essential knowledge and skills (TEKS) or Texas Prekindergarten Guidelines (TPG) 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 or TPG coverage percentage indicated by the publisher on the correlation document 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) The instructional materials public comment period begins when the electronic samples of materials under consideration for adoption are posted on the Texas Education Agency (TEA) website and ends 14 days prior to the meeting at which the State Board of Education (SBOE) will vote to adopt instructional materials.
- (b) [~~(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 TEA [Texas Education Agency (TEA)] website and provided to the SBOE [State Board of Education (SBOE)] and participating publishers.
- (c) ~~(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.
- (d) ~~(e)~~ 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.

§66.43. Adding Content During the Public Comment Period.

- (a) Publishers that [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, and document changes on the list of corrections and editorial changes, as specified in §66.28 of this title (relating to Requirements for Publisher Participation).
- (b) Changes to content in materials under consideration for adoption made in accordance with subsection (a) of this section, including those proposed in response to public comment, 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) 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.
- (d) ~~(e)~~ 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).

§66.63. Report of the Commissioner of Education.

- (a) State review panels appointed by the commissioner of education shall review all instructional materials submitted for consideration for adoption. The commissioner shall prepare a preliminary report on instructional materials under consideration for adoption that includes the following:

- (1) the findings of the review panels regarding Texas essential knowledge and skills (TEKS) or Texas Prekindergarten Guidelines (TPG) and English language proficiency standards (ELPS) coverage; and
 - (2) alleged factual errors identified by state review panels.
- (b) The preliminary report will be provided to publishers participating in the review process. According to the schedule of adoption procedures, a publisher with a [whose] product that 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.
- (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 or TPG and/or designated 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) of this title (relating to Adding Content During the Panel Review) regarding eligibility to provide new content and, upon completion of the final review, be identified as meeting:
- (1) at least 95% of the TEKS or TPG coverage percentage indicated by the publisher on the correlation document for that product; or
 - (2) less than 50% of the TEKS or TPG 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 commissioner [of education] shall submit to the State Board of Education (SBOE) a final report regarding TEKS or TPG 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).

§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.
- (b) The SBOE shall adopt instructional materials in accordance with the TEC, §31.023. Instructional materials may be adopted only if:
- (1) they meet at least 50% of the Texas essential knowledge and skills (TEKS) or Texas Prekindergarten Guidelines (TPG) 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 student use and materials designed for teacher use. In determining the percentage of the TEKS or TPG covered by instructional materials, each student expectation shall count as an independent element of the TEKS or TPG ;
 - (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) the publisher has agreed to ensure that they follow the Web Content Accessibility Guidelines (WCAG) and technical specifications of the Federal Rehabilitation Act, Section 508, as specified in the proclamation;
 - (4) ~~(3)~~ they are free from factual errors, including significant grammatical or punctuation errors that have been determined to impede student learning or that make the product of a quality not acceptable in Texas public schools , 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;

- (5) ~~(4)~~ they are deemed to be suitable for the subject area and grade level;
- (6) ~~(5)~~ they have been reviewed by academic experts in the subject and grade level; and
- (7) ~~(6)~~ they receive approval by majority vote of the SBOE.
- (c) No instructional material may be adopted that contains content that clearly conflicts with the stated purpose of the TEC, §28.002(h).
- (d) Instructional materials submitted for review may be rejected by majority vote of the SBOE in accordance with the TEC, §31.024.
- ~~(e) Instructional materials the board determines that, based on the initial review, contain extensive errors and make a product of a quality not acceptable in Texas public schools are not determined to be free from factual errors or of a quality acceptable in Texas public schools.~~
- ~~(f) ~~(e)~~~~ A publisher may withdraw from the adoption process at any time prior to execution of a contract with the SBOE for any reason by providing notification in writing to the commissioner of education. Notification of withdrawal is final and irrevocable.
- ~~(g) ~~(f)~~~~ The commissioner may remove materials from the adopted list if the publisher fails to meet deadlines established in the schedule of adoption procedures.

§66.67. Adoption of Open Education Resource Instructional Materials.

- (a) "Open education resource instructional material" means teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that allows for free use, reuse, modification, and sharing with others, including full courses, course materials, modules, textbooks, streaming videos, tests, software, and any other tools, materials, or techniques used to support access to knowledge.
- (b) The State Board of Education (SBOE) shall place open education resource 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 education resource 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 that specializes ~~[who specialize]~~ in the subject area of the instructional materials.
- (d) To submit open education resource 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 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 required by subsection (d) of this section shall be provided in a format designated by the commissioner of education.
- (f) A publisher that ~~[who]~~ offers open education resource 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. Specific standards that must be met will be specified in each proclamation.
- (g) Before placing open education resource 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) Not later than the 90th day after the date open education resource instructional materials are submitted as provided by the TEC, §31.0241, the SBOE may review the instructional materials. The SBOE:
 - (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) shall post with the list adopted under the TEC, §31.023, comments made by the SBOE regarding the open education resource instructional materials placed on the list; and
 - (3) shall distribute SBOE comments to school districts.

§66.72. Contracts.

- (a) The state contract shall not be changed or modified without approval of the Texas Education Agency (TEA) legal counsel.
- (b) Contracts 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 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 official ~~[statement of intent to]~~ bid specified in §66.28(f) ~~[§66.28(b)]~~ of this title (relating to Requirements for Publisher Participation).
- (d) A publisher of adopted materials may add post-contractual bids to its contract in response to identified needs of districts.
- (e) The commissioner ~~[of education]~~ shall annually review contracts for instructional materials and identify those that should be renewed.
- (f) 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.
- (g) 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 that ~~[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.
- (h) Contracts with publishers are subject to all provisions of the Texas Education Code (TEC), Chapter 31.
- (i) The SBOE may execute a contract for the printing of open education resource instructional materials on the adopted list that allows a school district or an open-enrollment charter school to requisition printed copies of open education resource instructional materials as provided by the TEC, §31.103.

§66.75. Updates to Adopted Instructional Materials.

- (a) A publisher may submit a request to the commissioner of education for approval to update content in ~~[substitute an updated edition of]~~ state-adopted instructional materials. A publisher requesting approval of a content update ~~[new edition]~~ shall provide a written ~~[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.]~~ This requirement includes electronic instructional materials and Internet products for which all users receive the same updates. The request must be accompanied by an electronic sample of the proposed updates. Proposed changes shall be posted on the Texas Education Agency (TEA) website for a minimum of 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 updates must certify in writing that the new material meets the applicable essential knowledge and skills and is free from factual errors.]~~

- (b) A publisher that requests to update content in state-adopted instructional materials must comply with the following additional requirements:

- (1) provide that there will be no additional cost to the state;
- (2) certify in writing that the new material meets the applicable essential knowledge and skills and is free from factual errors; and
- (3) certify that the updates do not affect the product's coverage of Texas Education Code (TEC), §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.

- (c) ~~[(d)]~~ With prior commissioner approval, publishers may, at any time, make changes that do not affect the product's Texas essential knowledge and skills (TEKS) 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. If no action has been taken by the end of the 30 days, the request is deemed approved. This requirement includes electronic instructional materials and Internet products for which all users receive the same updates. Proposed changes shall be posted on the TEA website for a minimum of seven calendar days prior to approval] .

- (1) 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 prior to their introduction into

state-adopted instructional materials to confirm that the changes do not affect TEKS coverage or coverage of TEC, §28.002(h).

- (2) Responses from the commissioner to update requests shall be provided within 30 days after receipt of the request. If no action has been taken by the end of the 30 days, the request is deemed approved.
- (d) ~~(e)~~ All requests for updates involving content used in determining the product's eligibility for adoption 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. Proposed changes shall be posted on the TEA website for a minimum of seven calendar days prior to approval. The SBOE may assess penalties as allowed by law against publishers ~~that~~ ~~who~~ fail to obtain approval for updates to such content in state-adopted instructional materials prior to delivery of the materials to school districts.
- (e) ~~(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 electronic ~~online~~ instructional materials.
- (f) ~~(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.
- (g) ~~(h)~~ Alternative formats may be developed and introduced at any time during the adoption cycle ~~[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.
- (h) ~~(i)~~ Publishers must notify the commissioner ~~[of education]~~ in writing if they are providing SBOE-approved products in alternative formats.
- (i) ~~(j)~~ Publishers are responsible for informing districts of the availability of the alternative formats and for accurate fulfillment of orders for them.
- (j) ~~(k)~~ The commissioner ~~[of education]~~ may add alternative formats of SBOE-approved products to the list of adopted products available to school districts.
- (k) ~~(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.
- (l) The commissioner may provide an opportunity for publishers to submit updated content and new correlations to that content to update the product's official TEKS coverage percentage. The commissioner shall post an annual schedule of review procedures on the agency website to provide publishers with adequate notice of review timelines. The updated content shall be reviewed by state review panels during the next available state review panel meeting in accordance with the annual schedule of review procedures. Following the review, the commissioner shall provide a report to the SBOE that includes the following:
- (1) the findings of the review panels regarding the TEKS or Texas Prekindergarten Guidelines (TPG) coverage as provided in the updated content; and
 - (2) alleged factual errors in the updated content identified by state review panels.
- (m) The SBOE shall either accept or reject each updated TEKS or TPG coverage percentage and errors report in accordance with §66.66 of this title (relating to Consideration and Adoption of Instructional Materials by the State Board of Education). An updated TEKS alignment determination is considered final, pursuant to TEC, §31.023(a-1).

§66.76. New Editions of Adopted Instructional Materials.

- (a) A publisher may submit a request to the commissioner of education for approval to substitute a new edition of state-adopted instructional materials. A publisher requesting approval of a new edition shall provide a written request in a manner designated by the commissioner that includes an explanation of the reason for the substitution. The request must be accompanied by an electronic sample and a correlation document that meets all the requirements of the correlation document provided for the initial review. This requirement includes electronic instructional materials and Internet products for which all users receive the same updates. Proposed changes shall be made available for public review on the Texas Education Agency (TEA) website for a minimum of 60 calendar days prior to approval.
- (b) A publisher that requests to substitute a new edition of state-adopted instructional materials must comply with the following additional requirements:
- (1) provide that there will be no additional cost to the state,
 - (2) certify in writing that the new material meets the applicable Texas essential knowledge and skills (TEKS) or Texas Prekindergarten Guidelines (TPG) and is free from factual errors, and
 - (3) certify that the updates in the new edition do not affect the product's coverage of Texas Education Code (TEC), §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.
- (c) With prior commissioner approval, publishers may, at any time, substitute a new edition if the changes made to the new edition do not affect the product's TEKS coverage or its coverage of TEC, §28.002(h).
- (1) Substitution requests to content that was not used in determining the product's eligibility for adoption must be submitted to the commissioner to confirm the changes do not affect TEKS coverage or coverage of TEC, §28.002(h).
 - (2) Responses from the commissioner to update requests shall be provided within 30 days after receipt of the request. If no action has been taken by the end of the 30 days, the request is deemed approved.
 - (3) Proposed changes shall be posted on the TEA website for a minimum of seven calendar days prior to approval.
- (d) All requests for updates involving content used in determining the product's eligibility for adoption 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. The SBOE may assess penalties as allowed by law against publishers that fail to obtain approval for updates to such content in state-adopted instructional materials prior to delivery of the materials to school districts.
- (e) 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 electronic instructional materials.

§66.81. Ancillary Materials.

- (a) Ancillary materials are defined as materials that 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 or Texas Prekindergarten Guidelines 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 that [who] knowingly violates subsection (a) of this section.

