

## **Chapter 66. State Adoption and Distribution of Instructional Materials**

### **Subchapter B. State Adoption of Instructional Materials**

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#### **§66.21. Review and Adoption Cycles.**

(a) The State Board of Education (SBOE) shall adopt a review and adoption cycle for subjects in the foundation curriculum. No more than one-sixth of the subjects in the foundation curriculum may be reviewed each year. Placement of a subject in the cycle shall be based on the need for up-to-date materials due to changes in essential knowledge and skills, changing information, and/or changing technology. Estimated expenditures shall also be considered when determining placement of subjects in the cycle.

(b) The SBOE shall adopt a review and adoption cycle for subjects in the enrichment curriculum. Placement of a subject in the cycle shall be based on the need for up-to-date materials due to changes in essential knowledge and skills, changing information, and/or changing technology. Estimated expenditures shall also be considered when determining placement of subjects in the cycle.

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

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#### **§66.24. Review and Renewal of Contracts.**

(a) The commissioner of education shall review contracts for instructional materials and recommend which contracts should be renewed for terms not to exceed four years and which contracts should not be renewed.

(b) The State Board of Education (SBOE) shall decide to renew existing contracts upon determining that the renewal would be in the best interest of the state and after considering the following factors:

- (1) placement of subject areas in the foundation and enrichment review and adoption cycles;
- (2) availability of new instructional materials;

- (3) willingness of publishers to offer materials for readoption and renewal of contracts; and
- (4) cost of instructional materials under new contract.

(c) Publishers awarded new contracts shall be prepared to make the adopted instructional materials available for at least one extended contract period of not more than four years at prices the commissioner of education approves. The SBOE may consider refusing to award future contracts to a publisher who, after receiving written notice to do so, refuses to rebid instructional materials at least one time. Failure of a publisher to negotiate an acceptable price for an extended contract shall not be considered failure to rebid instructional materials.

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

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

(a) The State Board of Education (SBOE) shall issue a proclamation calling for new instructional materials according to the review and adoption cycles for foundation and enrichment subjects adopted by the SBOE. The proclamation shall serve as notice to all registered publishers and to the public that bids to furnish new materials to the state are being invited. The proclamation shall be issued at least 24 months before the scheduled adoption of the new instructional materials by the SBOE.

(b) The proclamation shall contain the following:

- (1) specifications for essential knowledge and skills in each subject for which bids are being invited;
- (2) a maximum cost to the state for adopted instructional materials in each subject for which bids are being invited;
- (3) an estimated number of units to be purchased during the first contract year for each subject in the proclamation;
- (4) specifications for providing computerized files to produce braille versions of adopted instructional materials; and

(5) a schedule for the adoption process.

(c) A draft copy of the proclamation shall be provided to each member of the SBOE and to designated representatives of the publishing industry to solicit input on maximum costs before the SBOE considers the proclamation. In addition, the Texas Education Agency shall hold a public meeting regarding the draft proclamation with representatives of the publishing industry 60-90 days prior to the scheduled adoption of the proclamation by the SBOE. Any revisions recommended as a result of the meeting with publishers shall be presented to the SBOE along with the subsequent draft of the proclamation.

(d) Under extraordinary circumstances, the SBOE may adopt an emergency, supplementary, or revised proclamation without complying with the time lines and other requirements of this section.

*Source: The provisions of this §66.27 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective September 1, 1997, 22 TexReg 3779; amended to be effective March 4, 2001, 26 TexReg 1706.*

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### **§66.28. Adoption by Reference.**

(a) The sections titled "Content Requirements" in the 2001 Proclamation 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 2001. A copy of the 2001 Proclamation 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.

(b) The sections titled "Content Requirements" in the 2002 Proclamation 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 2002. A copy of the 2002 Proclamation 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.

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

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

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### **§66.30. State Review Panels: Eligibility.**

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

- (1) was employed by or received funds from any individual or entity in any way affiliated with a publishing company participating in the adoption under which the state review panel will evaluate instructional materials; or
- (2) owned or controlled, directly or indirectly, any interest in a publishing company or an entity receiving funds from a publishing company.

*Source: The provisions of this §66.30 adopted to be effective September 1, 1996, 21 TexReg 7236.*

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### **§66.33. State Review Panels: Appointment.**

(a) The commissioner of education shall: determine the number of review panels needed to review instructional materials under consideration for adoption, determine the number of persons to serve on each panel, and determine the criteria for selecting panel members. Each appointment to a state review panel shall be made by the commissioner of education with the advice and consent of the State Board of Education (SBOE) member whose district is to be represented.

(b) The commissioner of education shall solicit recommendations 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. Recommendations may be accepted from any Texas resident. Nominations shall not be made by or accepted from any publishers; authors; depositories; agents for publishers, authors, or depositories; or any person who holds any

official position with a publisher, author, depository, or agent.

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

(d) Members of a state review panel may be removed at the discretion of the commissioner of education.

*Source: The provisions of this §66.33 adopted to be effective September 1, 1996, 21 TexReg 7236.*

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### **§66.36. State Review Panels: Duties and Conduct.**

(a) The duties of each member of a state review panel are to:

(1) evaluate all instructional materials submitted for adoption in each subject assigned to the panel to determine if essential knowledge and skills are covered;

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

(3) submit to the commissioner of education a list of any factual errors in instructional materials assigned to be evaluated by the state review panel; and

(4) as appropriate to a subject area and/or grade level, ascertain that instructional materials submitted for adoption do not contain content that clearly conflicts with the stated purpose of the Texas Education Code, §28.002(h).

(b) State review panel members shall not accept meals, entertainment, gifts, or gratuities in any form from publishers, authors, or depositories; agents for publishers, authors, or depositories; any person who holds any official position with publishers, authors, depositories, or agents; or any person or organization interested in influencing the selection of instructional materials.

(c) Before presenting recommendations to the commissioner of education, state review panel members shall be given an opportunity to request a meeting with a publisher to obtain responses to questions regarding instructional materials being evaluated by the state review panel. Questions shall be provided to publishers in advance of the meeting.

(d) State textbook review panel members shall be afforded the opportunity to collaborate with other panel members during the official meetings to discuss coverage of Texas Essential Knowledge and Skills, errors, manufacturing specifications, or any other aspect of instructional materials being evaluated. A member of a state review panel shall have no contact with other members of the panel except during official meetings. State review panel members shall not discuss instructional materials being evaluated with any party having a direct or indirect interest in adoption of instructional materials.

(e) Members of each state review panel may be required to be present at the State Board of Education (SBOE) meeting at which instructional materials are adopted.

*Source: The provisions of this §66.36 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective March 4, 2001, 26 TexReg 1706.*

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### **§66.39. State Review Panels: Expenses.**

(a) State review panel members shall be reimbursed for expenses incurred in attending official meetings according to the applicable provisions of the General Appropriations Act.

(b) Expenses shall be paid for designated state review panel members to attend the State Board of Education (SBOE) meeting at which instructional materials are considered for adoption.

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

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### **§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 for the adoption process;
- (6) training in technology appropriate to media submitted for adoption; and
- (7) regulatory requirements, including the Government Code, §572.051 (relating to Standards of Conduct), and the Texas Penal Code, §36.02 (relating to Bribery). Copies of the statutes mentioned in this section shall be supplied to each state review panel member.

*Source: The provisions of this §66.42 adopted to be effective September 1, 1996, 21 TexReg 7236.*

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

(a) State review panel members shall observe a no-contact period that shall begin with the initial communication regarding possible appointment to a state review panel and end after recommendations have been made to the commissioner of education that each submission assigned to be evaluated by the state review panel be placed on the conforming list, nonconforming list, or rejected. During this period, state review panel members shall not be contacted either directly or indirectly by any person having an interest in the adoption process regarding content of instructional materials under evaluation by the panel. This restriction is not intended to prohibit members of the state review panels from seeking advice regarding materials under consideration from the State Board of Education (SBOE).

(b) State review panel members shall report immediately to the commissioner of education any communication or attempted communication by any person regarding instructional materials being evaluated by the panel.

(c) State review panel members shall not discuss content of instructional materials under consideration with any subject area staff member of the Texas Education Agency (TEA), except during the official orientation meeting. Additional requests for information or clarification shall be directed to the commissioner of education or his designee. Copies of all questions from individual members shall be distributed with responses to all members of the appropriate state review panel. This restriction is not intended to prohibit members of the state review panels from contacting designated staff of the TEA regarding adoption procedures.

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

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## **§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 on or before the date specified in the schedule for the adoption process. The statement of intent shall be accompanied by publisher's data submitted in a form approved by the commissioner of education.
- (b) A publisher shall designate instructional materials submitted as appropriate for placement on the conforming list or nonconforming list.
- (c) If a student or teacher component of a submission consists of more than one item, a publisher shall provide complete and correct titles of each item included in the student and/or teacher component at the time the statement of intent is filed.
- (d) A publisher shall specify hardware or special equipment needed to review any item included in an instructional materials submission.
- (e) Additions to a publisher's submission shall not be accepted after the deadline for filing statements of intent, except as allowed in the schedule of adoption activities included in the proclamation. A publisher who wishes to withdraw an instructional materials submission after having filed a statement of intent to bid shall notify the commissioner of education in writing on or before the date specified in the schedule for the adoption process.

*Source: The provisions of this §66.48 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective August 15, 1999, 24 TexReg 5699.*

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## **§66.51. Instructional Materials Purchased by the State.**

- (a) Instructional materials offered for adoption by the State Board of Education (SBOE).
  - (1) Publishers may not submit instructional materials for adoption that have been authored by an employee of the Texas Education Agency (TEA).
  - (2) The official bid price of an instructional material submission shall not exceed the price included with the official sample filed under §66.54 of this title (relating to Samples).
  - (3) A teacher's component submitted to accompany student instructional materials under consideration for adoption shall be part of the publisher's official bid and shall be provided

for the duration of the original contract and any contract extensions at no cost to every teacher that uses the adopted student materials in a school district or open-enrollment charter school.

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

(5) Any discounts offered for volume purchases of adopted instructional materials shall be included in price information submitted with official samples and in the official bid.

(6) The official bid filed by a publisher shall include separate prices for each item included in an instructional material submission. The publisher shall guarantee that individual items included in the student and/or teacher component shall be available for local purchase at the individual prices listed for the entire contract period.

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

(8) Instructional materials submitted for adoption shall be self-sufficient for the period of adoption. Nonconsumable components shall be replaced by the publisher during the warranty period. Consumable materials included in a student or teacher component of a submission shall be clearly marked as consumable. The cost of such consumables to the state for the entire contract period shall not exceed the maximum cost established in the proclamation.

(9) 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. Correlations shall be submitted in a format approved by the commissioner of education.

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

*Source: The provisions of this §66.51 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective September 1, 2001, 26 TexReg 5807.*

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#### **§66.54. Samples.**

- (a) Samples of student and teacher components of instructional materials submitted for adoption shall be complete as to content and representative of finished-format binding.
- (b) Four sample copies of the student and teacher components of each instructional materials submission shall be filed with each of the 20 regional education service centers (ESCs) on or before the date specified in the schedule for the adoption process. 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 information and passwords, required to ensure public access to their programs throughout the review period.
- (c) If it is determined that good cause exists, the commissioner of education may extend the deadline for filing samples with ESCs or specify a lesser number of samples a publisher must provide. At its discretion, the State Board of Education (SBOE) may remove from consideration any materials proposed for adoption that were not properly deposited with the ESCs, the Texas Education Agency (TEA), or members of the state review panel.
- (d) Three official sample copies 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 for the adoption process. Price information required by the commissioner of education shall be included in each sample. In addition, the publisher shall provide a complete description of all items included in a student and teacher component of an instructional materials submission.
- (e) 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 on or before the date specified in the schedule for the adoption process. 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, supplementary materials, or descriptions of ancillary or supplementary materials to state review panel members.
- (f) 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.

(g) A publisher shall provide a list of all corrections necessary to each student and teacher component of an instructional materials submission. The list must be in a format designated by the commissioner of education and filed on or before the deadline specified in the schedule for the adoption process. 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.

(h) Three complete sample copies 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 for the adoption process. In addition, each publisher shall file an affidavit signed by an official of the company verifying that all corrections required by the commissioner of education and SBOE have been made. Corrected samples shall be identical to materials that will be provided to school districts after purchase.

(i) Publishers participating in the adoption process are responsible for all expenses incurred by their participation. The state does not guarantee return of sample instructional materials.

*Source: The provisions of this §66.54 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective March 4, 2001, 26 TexReg 1706; amended to be effective September 1, 2002, 27 TexReg 7105.*

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## **§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 for the adoption process, each ESC representative shall notify the commissioner of education of all irregularities in sample

shipments. The appropriate publisher shall be notified of any sample shipment irregularities reported by the ESCs.

(b) Public access to samples.

(1) One sample of all instructional materials under consideration for adoption shall be retained in each ESC for review by interested persons until notification is received from the TEA. Any additional samples shall be made available to be checked out according to rules established by each ESC based on demand. Appropriate information, such as locator 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 for the adoption process, each ESC shall issue a news release publicizing the date on which sample instructional materials will be available for review at the center and shall notify all school districts in the region of the schedule.

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

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**§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 for the adoption process.

(3) Copies of written comments and lists of factual errors shall be provided to the State Board of Education (SBOE), participating publishers, regional education service centers (ESCs), and persons who have filed written requests.

(b) Public hearing before the SBOE. On a date specified in the schedule for the adoption process,

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 only from residents of Texas. Copies of speeches made at the hearing may be distributed to SBOE members. No other written material may be distributed during the hearings. Persons who wish to testify must notify the commissioner of education on or before the date specified in the schedule for the adoption process. The notice must identify the subject areas and titles about which testimony will be presented. The SBOE may limit the time available for each person to testify.

(2) Oral responses to testimony at the hearing may be made by official representatives of publishing companies who have requested time to present responses on or before the date specified in the schedule for the adoption process.

(3) The commissioner of education shall have a complete record of the hearing made and transcribed. The transcript of the hearing shall be provided to the SBOE, ESCs, participating publishers, and persons who have filed written requests. The official record shall be held open for 14 calendar 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 10 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 for the adoption process shall be accepted according to the SBOE Operating Rules, §2.10 (relating to Public Testimony).

*Source: The provisions of this §66.60 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective September 1, 1997, 22 TexReg 3779.*

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### **§66.63. Report of the Commissioner of Education.**

(a) The commissioner of education shall review all instructional materials submitted for consideration for adoption. The commissioner's review shall include the following:

- (1) evaluations of instructional materials prepared by state review panel members, including recommendations that instructional materials be: placed on the conforming list, placed on the nonconforming list, or rejected;
- (2) compliance with established manufacturing standards and specifications;
- (3) recommended corrections of factual errors identified by state review panels;
- (4) prices of instructional materials submitted for adoption; and
- (5) whether instructional materials are offered by a publisher who refuses to rebid instructional materials according to §66.24 of this title (relating to Review and Renewal of Contracts).

(b) Based on the review specified in subsection (a) of this section, the commissioner of education shall prepare preliminary recommendations that instructional materials under consideration be: placed on the conforming list, placed on the nonconforming list, or rejected. According to the schedule for the adoption process, a publisher shall be given an opportunity for a show-cause hearing if the publisher elects to protest the commissioner's preliminary recommendation.

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

(d) The commissioner of education shall submit for SBOE approval a report on corrections of factual errors that should be required in instructional materials submitted for consideration. The report on recommended corrections shall be sent to the SBOE, affected publishers, regional education service centers (ESCs), and other persons, such as braillists, needing immediate access to the information. The commissioner shall obtain written confirmation from publishers that they would be willing to make all identified corrections should they be required by the SBOE.

*Source: The provisions of this §66.63 adopted to be effective September 1, 1996, 21 TexReg 7236.*

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

(a) Publishers shall file the following documents with the commissioner of education according

to the schedule for the adoption process:

- (1) three copies of the official bid form; and
- (2) appropriate proof of authority to do business in the State of Texas.

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

(c) By a vote of a majority of the SBOE, the SBOE shall adopt a list of conforming instructional materials and a list of nonconforming instructional materials under the Texas Education Code, §31.023 and §31.024. Instructional materials may be rejected for:

- (1) failure to meet essential knowledge and skills specified in the proclamation. In determining the percentage of elements of the essential knowledge and skill covered by instructional materials, each performance description shall count as an independent element of the essential knowledge and skills of the subject;
- (2) failure to meet established manufacturing standards and specifications recognized by the SBOE;
- (3) failure to correct errors of fact; or
- (4) content that clearly conflicts with the stated purpose of the Texas Education Code, §28.002(h).

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

*Source: The provisions of this §66.66 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective September 1, 1997, 22 TexReg 3779.*

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## **§66.69. Ancillary Materials.**

A publisher of adopted instructional materials shall provide any ancillary item free of charge or at

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

*Source: The provisions of this §66.69 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective March 4, 2001, 26 TexReg 1706.*

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### **§66.72. Preparing and Completing Contracts.**

- (a) The state contract form shall not be changed or modified without approval of the Texas Education Agency's (TEA) legal counsel.
- (b) Contract forms shall be sent to the publishers for signature. Signed contracts returned by the publishers shall be signed by the chair of the State Board of Education and attested to by the commissioner of education. Properly signed and attested contracts shall be filed with the TEA.

*Statutory Authority: The provisions of this §66.72 issued under the Texas Education Code, §31.003 and §31.026.*

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

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### **§66.75. Revised Editions.**

- (a) A publisher may submit a request to the commissioner of education for approval to substitute a revision, update, or later edition of state-adopted instructional materials. A publisher requesting a substitution shall provide the request in writing, along with two copies of the revision, update, or later edition, and one copy of the corresponding state-adopted instructional material.
- (b) Requests for approval of substitutions shall provide that there will be no additional cost to the

state.

(c) Except for electronic instructional materials, requests for approval of substitutions shall not be approved during the first year of the original contract.

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

(e) Requests for substitutions of state-adopted instructional materials with revised editions must be approved by the State Board of Education (SBOE) if the revised edition differs in its coverage of the Texas essential knowledge and skills from the original submission adopted by the SBOE.

*Source: The provisions of this §66.75 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective August 15, 1999, 24 TexReg 5699.*

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### **§66.78. Delivery of Adopted Instructional Materials.**

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

(b) Each publisher is required to have adopted instructional materials in stock and available for distribution to school districts throughout the entire adoption period. A back order is defined as adopted instructional material not in stock when ordered and not available for delivery to school districts or open-enrollment charter schools on the specified shipment date. The commissioner of education shall report the number of back-ordered materials by publisher to the State Board of Education (SBOE).

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

(d) Each publisher with instructional materials on back order shall notify affected school districts

of the expected ship dates for each title on back order.

(e) Payments from the Texas Education Agency (TEA) for adopted instructional materials shall be made directly to the publisher or to any agent or trustee designated in writing by the publisher.

(f) Any publisher, at its discretion, and at least 60 days after notifying the TEA in writing, may change from one depository to another approved depository, except with respect to newly adopted instructional materials in the first year of adoption, when at least 120 days written notice to the TEA is required.

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

- (1) present evidence of financial viability adequate to ensure performance of obligations under all contracts on an annual basis;
- (2) provide specifications for the warehouse; equipment; as appropriate, evidence of a climate-controlled environment for storage of electronic media; plans for staffing of the proposed depository; and computer capability to receive and process orders and communicate in the automated format specified by the TEA;
- (3) submit assurances that a proper stock of instructional materials is available; and
- (4) submit a list of publishers under contract with the request.

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