Agency Name: Board of Education

Statutory Authority: 59-5-60(7), 59-5-90, 59-31-30, 59-31-40, 59-31-50, 59-31-210, and 59-31-510 et seq.

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Subject: Textbook Adoption Regulation

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- 01/09/2018 Received by Lt. Gov & Speaker 05/09/2018

H 01/09/2018 Referred to Committee

S 01/09/2018 Referred to Committee

- 03/12/2018 Agency Withdrawal

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- 03/12/2018 Permanently Withdrawn

Document No. 4787

**STATE BOARD OF EDUCATION**

CHAPTER 43

Statutory Authority: 1976 Code Sections 59-5-60(7), 59-5-90, 59-31-30, 59-31-40, 59-31-50, 59-31-210, and 59-31-510 et seq.

43-70. Textbook Adoption Regulation.

**Synopsis:**

Through South Carolina Code of Laws Section 59-5-60(7), the State Board of Education has the responsibility and duty to adopt the instructional materials used for instruction in the free public schools of the state and establish the process for the State Adoption Instructional Materials Program (print and digital). South Carolina contract statutes and any other applicable state laws guide the instructional materials adoption process. Amendments to Regulation 43-70 will update the process for print and digital instructional materials and revise the timeline for the review and adoption of instructional materials provided for student and classroom use.

 The proposed amendments to 43-70 will include moving Regulation 43-71, Section 28 with revisions, adding Regulation 43-73, Section B(2) with revisions, and a new Section 15 for digital materials (state adopted and unvetted).

 The proposed changes to the regulation will update terminology for consistency throughout the document and to bring the regulation in line with other agency regulations. The terminology update will include changing Instructional Materials Review Panel(s) to Panel(s), Instructional Materials Advisory Committee to Advisory Committee, State Board of Education to SBE, State Department of Education to SCDE, State Superintendent of Education to SSE, publisher(s) to publisher(s)/vendor(s); adding (print/digital) after instructional materials.

 Notice of Drafting for the proposed amendments to the regulation was published in the State Register on July 28, 2017.

**Instructions:**

Entire regulation is to be replaced with the following text.

~~Indicates Matter Stricken~~

Indicates New Matter

**Text:**

43-70. ~~Textbook~~ Instructional Materials Adoption Program ~~Regulation~~.

SECTION 1. Statutory Authority

Pursuant to Sections 59-5-60 and 59-31-550, the State Board of Education (SBE) shall have the responsibility and duty to adopt the instructional materials (print/digital) used for instruction in the free public schools of South Carolina subject to the provisions of the sections that follow. South Carolina contract statutes and any other applicable ~~S~~state laws guide the instructional materials adoption process.

~~SECTION 2. Instructional Materials Evaluation Criteria~~

~~General criteria governing the adoption of instructional materials shall be developed and revised by the State Department of Education and presented to the State Board of Education. Specific subject criteria are contained in the grade level education standards adopted by the State Board as well as each curriculum framework, occupational education core, and other program area materials which are not addressed within the standards and/or curriculum framework and shall be used in the evaluation process.~~

SECTION ~~3~~2. Instructional Materials Advisory Committee (Advisory Committee)

The ~~State Board of Education~~ SBE shall appoint, with the recommendation of the State Superintendent of Education (SSE), an ~~Instructional Materials~~ Advisory Committee. The Advisory Committee shall consist of ~~fifteen~~ members~~; six members~~ who are actively engaged in teaching in South Carolina public schools~~; eight members~~ or who are actively engaged in school work either administratively or supervisory~~,~~ with at least one from each congressional district, ~~and two~~ at least one at large~~;~~, and one lay citizen~~, preferably a former member of the State Board of Education~~. It is the intention of the ~~State Board~~ SBE that the Advisory Committee membership includes members whose ~~interests~~ expertise reflect the needs of all students served by the educational system. ~~Seven~~ Half of the members shall be appointed for a term of two years~~; eight~~ and the other members shall be appointed for a term of four years. Thereafter, the term of all appointed members shall be four years. The Advisory Committee shall be facilitated by appropriate staff members from offices of the State Department of Education (SCDE)~~.~~ and meet annually with additional meetings, when necessary, at the request of the SBE, SSE, or a majority of the members.

The duties of the Advisory Committee shall be to study continually the Instructional Materials Review, Selection, and Distribution Process and make recommendations ~~to the State Board of Education through the State Superintendent of Education~~ as to changes ~~needed~~ in the process to meet the instructional materials (print/digital) needs of students, schools, and school districts ~~for instructional materials~~. The Advisory Committee should address: recommendations ~~in regard to exercising options in~~ for existing ~~contracts; recommendations in regard to renegotiating~~ and expiring contracts~~;~~, ~~and recommendations for~~ prioritiz~~ation~~ing ~~of~~ purchases of instructional materials (print/digital) should funds not be available, and adoption areas for the call for bids of instructional materials (print/digital). The Advisory Committee shall give careful attention to the cyclical schedule for new and revised academic standards and career and technology education course standards ~~new and improved methods of presenting instructional materials. The Committee is authorized to~~ and secure the assistance and advice of consultants~~. Special consideration should be given to consultants~~ from within the state. The Advisory Committee shall make report of its recommendations to the SBE through the SSE with a schedule outlining major dates and occurrences of the adoption process. The SSE is authorized to make adjustments in the dates when necessary for the success of the adoption program.

~~The Instructional Materials Advisory Committee shall meet annually at the call of the Chair. Additional meetings, when necessary, may be held at the call of the Chair, a majority of its members, on request by the State Board of Education, or the State Superintendent of Education. However, the State Board of Education reserves the right to limit the number of official meetings this Committee may hold in one school year.~~

~~The Instructional Materials Advisory Committee may make curriculum reports when in its judgment such reports are deemed advisable. The Committee shall report to the State Board of Education not later than May of each year any changes needed to be made in the Instructional Materials Review, Selection, and Distribution Process during the following school year.~~

SECTION ~~4~~3. Instructional Materials Review Panels (Panel) Established

The ~~State Board of Education~~ SBE shall appoint, with the recommendation of the ~~State Superintendent of Education~~ SSE, ~~Instructional Materials Review~~ Panel or Panels for ~~each~~ the areas recommended by the Advisory Committee. ~~for which a curriculum framework has been adopted by the State Board of Education, occupational education core curriculum career and technology education course standards, or other program areas not addressed within a curriculum framework. The number of Panels needed and number of Panel members needed for each framework, occupational education core curriculum the academic standards, career and technology education course standards, or other program areas shall be included in the recommendation from the State Superintendent of Education.~~ Names of potential ~~Review~~ Panel members shall be obtained from district superintendents, ~~State Board of Education~~ SBE members, ~~curriculum framework~~ standards writing teams, ~~State Department of Education~~ SCDE curriculum specialists, and others. ~~For each position there shall be a nominee and one alternate.~~ The SSE shall recommend the number and size of Panels needed with length of service for each member and ~~In the event the nominee does not accept, the State Superintendent of Education~~ is authorized to appoint ~~the~~ alternates should nominees not accept, and to appoint a SCDE staff member or standards writing team member as facilitator for each Panel. ~~and to make other substitutions when necessary.~~

It is the desire of the ~~State Board of Education~~ SBE that a balance be maintained on each ~~Instructional Materials Review~~ Panel between large and small, rural and urban schools and school districts, and that the Panel membership include members whose interests reflect the needs of all students served by the educational system,~~. Each Review Panel may have up to 25 percent~~ and include lay membership. All other members shall be persons who are actively engaged in teaching, in the supervision of teaching, in the administration of public schools, and persons who have had teaching experience, special training or supervision in the subject field in which they have been appointed, or who have expertise in a subject area from which material and information should be integrated within the subject area under review. A majority of those appointed shall be full-time classroom teachers. ~~The recommendations by the State Superintendent of Education shall include the size of each Review Panel, length of service term for each member, and the appointment of a State Department of Education staff member as facilitator for each Review Panel.~~

SECTION ~~5~~4. Subject Areas Open for Bid

The ~~State Board of Education~~ SBE, upon the acceptance of the subject area recommendations from the ~~Instructional Materials~~ Advisory Committee or upon adoption or revision of ~~a curriculum framework~~ standards in a particular subject area, shall call for the adoption of instructional materials. ~~The State Board of Education, through the State Superintendent of Education, shall make information relative to~~ T~~t~~he call for bids with bidding instructions, bid forms, sample of the contract and bond, and information to ensure print and digital instructional materials are accessible to students with disabilities will be made available ~~to publishers/vendors and school administrators, not later than 210 calendar days preceding the adoption date. It shall also make arrangements for an official announcement at least forty-five days before bids are to be opened. This announcement shall be sent~~ to all companies registered with the ~~State Department of Education~~ SCDE, and a notice shall be given by legal advertisement in at least one daily newspaper in the State of South Carolina in accordance with general legal requirements.

~~Upon formal notice of the call for bids by the State Superintendent of Education, sample copies of the bid forms shall be made available to be used by companies in submitting instructional materials for adoption and a copy of the contract and bond each company shall be required to execute if its materials are adopted.~~

~~The State Superintendent of Education shall develop for State Board of Education approval a schedule outlining major dates and occurrences of the adoption process. The State Superintendent is authorized to make adjustments in the dates when necessary for the success of the adoption program. A copy of the Calendar of Events shall be provided to publishers/vendors with the call for bids.~~

SECTION ~~15~~5. Registering of Bidders and Publishers/Vendors

Any bidder or publisher/vendor submitting instructional materials to the ~~S~~state for adoption shall on or before the day bids are received register with the ~~State Department of Education~~ SCDE the names, ~~home~~ e-mail addresses, and business telephone numbers and addresses of all agents or employees of any kind or persons retained for legal or other services to whom there is being paid or there will be paid any salary, commission or royalty for representing the bidder or publisher/vendor. This information shall be kept open for inspection by the public, members of the ~~State Board of Education~~ SBE, the ~~Instructional Materials~~ Advisory Committee, and the ~~Instructional Material Review~~ Panels. The failure of any bidder or publisher/vendor to register the names, ~~home~~ e-mail addresses, and business telephone numbers and addresses of all agents of any kind as specified shall be deemed as sufficient cause for summary rejection of the bid or proposal of that bidder or publisher/vendor.

SECTION 6. Submission of Materials for Panel Review

~~Publishers/vendors shall submit one copy of a brief along with the official bid for all instructional materials being offered for adoption. Failure to comply with this regulation shall automatically exclude materials for adoption. The brief shall include the level of learning difficulty, an ancillary materials and services list to include designation of free materials and price of optional materials for purchase, and other specific descriptive information as required by the State Superintendent of Education.~~

Each bidding company or its representative is responsible for ~~distributing~~ providing instructional material samples (print/digital) with briefs and correlations using the applicable standards to each member of the appropriate ~~Instructional Materials Review~~ Panel and the SCDE on or before the date set ~~by the State Board of Education~~ for each adoption year. ~~Companies are requested to supply a copy of the briefs with the instructional materials samples to each Panel Member. This may be done by personal delivery or by mail to the address specified by the Review Panel member.~~ The brief shall include the reading level of the student materials, level of learning difficulty, documentation of compliance to ensure print and digital instructional materials are accessible to students with disabilities, and an ancillary materials and services list to include designation of free materials and price of optional materials for purchase, and other specific descriptive information as required by the SSE. Failure to comply with this regulation shall automatically exclude materials for adoption. ~~Arrangements shall be made by the State Superintendent of Education for presentations by each bidder to the appropriate Instructional Materials Review Panel as a group. These group presentations shall take place no sooner than thirty days after the date which bidders are expected to have delivered sample materials. During formal panel deliberations, thirty minute sessions will be scheduled for each bidder with the Instructional Materials Review Panels during which the bidder will be given the opportunity to answer additional questions and present additional information.~~

The publishers/vendors shall notify the SCDE of its intent to reclaim samples of print materials when official bids are submitted. Each publisher/vendor electing to reclaim samples must arrange for collecting samples at its own expense from Panel members and SCDE within 30 days after the SBE has approved the adoption.

~~Review Panels may request additional information and appearances from bidders during the adoption process. This shall be done by the facilitator when requested to do so by the Panel.~~

SECTION 7. Responsibilities of the Instructional Materials Review Panels

Each Panel shall submit to the SBE through the SSE a report of materials recommended for adoption in each subject area for which materials have been solicited for bid. ~~It shall be the duty of each Instructional Materials Review Panel to rate all items offered for adoption and file a written report with the State Superintendent of Education.~~ The report shall consist of the ~~Panel evaluation,~~ list of recommended items ~~which the Panel recommends as suitable for adoption,~~ and an annotation ~~which includes~~ for each ~~item~~ program or series of items which includes the common reading level of ~~text~~ the student materials, ~~level of learning difficulty,~~ and other information as required by the ~~State Superintendent of Education~~SSE. In order to be placed on the recommended list, instructional materials must receive affirmative votes from at least two-thirds of the Panel members.

General criteria governing the adoption of instructional materials (print/digital) shall be developed and revised by the SCDE for use in the evaluation process and include the specific subject criteria contained in the grade level academic standards adopted by the SBE, career and technology education course standards, other program area criteria which are not addressed within the standards, and accessibility to print and digital instructional materials for students with disabilities. Each Panel member must submit signed ratings sheets to the facilitator of the Panel for the SCDE files.

~~There is no limit to the number of individual items or series of items which may be recommended by a Review Panel. All submitted items which meet the general and subject specific criteria as outlined in the grade level educational standards, curriculum framework, occupational education core curriculum, or other program areas for that subject should be recommended for adoption. However, prior provisions notwithstanding, the State Board of Education is not required to adopt any instructional materials recommended by the Review Panels that in the judgment of the State Board of Education are unsatisfactory.~~

~~The State Board of Education shall not approve and add a textbook or instructional materials to the state list of adopted materials unless it has been reviewed and rated by a properly constituted Instructional Materials Review Panel.~~

To facilitate efficient and competent evaluations by the ~~Review~~ Panels, the ~~State Board of Education~~ SBE shall furnish the Panels with detailed instructions pertaining to its duties~~;~~ to include an orientation and access to ~~and copies of~~ the subject's standards~~, curriculum framework, occupational education core curriculum,~~ and other program area instruction~~;~~, instructional materials evaluation criteria~~;~~, information to ensure print and digital instructional materials are accessible to students with disabilities, information on manufacturing and industry standards for print and digital materials, and the time schedule necessary in order that the ~~State Board of Education~~ SBE complete its work in an orderly fashion. It shall be the duty of the ~~State Superintendent of Education~~ SSE or ~~his/her~~ the designee to serve as coordinator and liaison between the ~~State Board of Education~~ SBE and the ~~Review~~ Panels.

The ~~Review~~ Panels are authorized to secure the assistance and advice of consultants. Special consideration should be given to consultants from within the state. ~~The Panels may receive clerical services from the State Department of Education.~~

~~Each Panel member must submit signed ratings sheets to the facilitator of the Review Panel for the State Department of Education files.~~

Arrangements may be made by the SSE’s designee for presentations by each bidder to the appropriate Panel as a group. The SCDE’s designee or Panels may request additional information and appearances including questions and answer sessions from bidders during the adoption process.

All submitted items which meet the general and subject specific criteria as outlined in the grade level academic standards, career and technology education, or other program area criteria for that subject should be recommended for adoption. However, prior provisions notwithstanding, the SBE is not required to adopt any instructional materials recommended by the Panels that in the judgment of the SBE are unsatisfactory.

The SBE shall not approve and add a textbook or instructional materials to the state list of adopted materials unless it has been reviewed and rated by a properly constituted Panel.

~~Textbooks shall not be recommended by the Instructional Materials Review Panels and the State Board of Education shall not adopt textbooks that fail to meet the official "Manufacturing Standards and Specifications for Textbooks." As national standards are developed for non-traditional materials, the State Board of Education may require adherence to those as well. Provided the State Board of Education reserves the right to waive minor deviations and technicalities, however, in each case the bidder is responsible for showing cause why the standards cannot be met. Copies of the official manufacturing and specifications and other applicable standards shall be made available for review to the bidding companies.~~

In the event a~~n Instructional Materials Review~~ Panel cannot submit a report that is acceptable to the ~~State Board of Education~~ SBE, the Panel may be dissolved and a new Panel appointed in the same manner as the original Panel or the area may be considered for opening at a later date by the ~~Instructional Materials~~ Advisory Committee.

Each ~~Instructional Materials Review~~ Panel shall be dissolved according to the scheduled date of their term expiration.

SECTION 8. Public Review of Materials (Print/Digital)

The ~~State Superintendent of Education~~ SSE shall make arrangements for a thirty-day public review of materials (print/digital) recommended or under review by the ~~Instructional Materials Review~~ Panels prior to taking those recommendations to the ~~State Board of Education~~ SBE. The public review ~~sites~~ shall be conducted virtually and/or at display sites held in geographically distributed locations around the state ~~at as many state-supported colleges and universities or, if necessary, other designated sites as will agree to host such reviews~~. The print materials or digital access to the materials for the public review shall be provided by the bidding companies. ~~Public review sites shall be advertised in each congressional district in the newspaper with the largest circulation figures for that district.~~ The SCDE shall announce the public review through its Web site, the news media, and school districts.

A summary of the comments received during the public review period shall be provided to the ~~State Board of Education~~ SBE to facilitate their adoption of instructional materials (print and digital).

SECTION 9. Manufacturing and Industry Standards and Accessibility Compliance for Print and Digital Instructional Materials ~~Review Panel Recommendations Submitted to State Board of Education~~

The ~~State Department of Education~~ SCDE shall provide to the ~~State Board of Education~~ SBE~~, the Instructional Materials Advisory Committee,~~ and the ~~Instructional Materials Review~~ Panels information to assist in determining whether instructional materials (print and digital) offered for adoption meet the official "Manufacturing Standards and Specifications for Textbooks," industry standards for digital materials, Federal requirements to ensure print and digital instructional materials are accessible to students with disabilities, or other materials standards as available. A list shall be furnished of materials (print and digital) offered for adoption which, in the ~~Department's~~ SCDE’s judgment, fail to meet the manufacturing standards and specifications and specify in detail the deviations the ~~State Department of Education~~ SCDE finds prior to the rating by the ~~Review~~ Panels.

Instructional m~~M~~aterials which may not meet the appropriate manufacturing standards for print materials or industry standards for digital materials ~~and specifications for those types of materials~~ may be adopted when recommended by the appropriate ~~Instructional Materials Review~~ Panel and when the Panel's justification is deemed sufficient by the ~~State Board of Education~~ SBE. The SBE reserves the right to waive minor deviations and technicalities; however, in each case the bidder is responsible for showing cause why the standards cannot be met. Information on the official manufacturing standards and specifications, industry standards, and other applicable standards shall be made available to the bidding companies.

The ~~Review~~ Panels may recommend and the ~~State Board of Education~~ SBE may adopt instructional materials (print and digital) in manuscript or beta stage. Provided, however, any contract awarded for materials (print and digital) in manuscript or beta form shall be subject to final approval by the ~~State Board of Education~~ SBE and the ~~Review~~ Panels as to the final wording, format, illustrations and captions, and ~~physical~~ construction. None of the members of a~~n~~ ~~Instructional Materials Review~~ Panel for subject matter adopted in manuscript or beta form shall be discharged until final action has been taken by the ~~State Board of Education~~ SBE on the completed product.

The SCDE’s designee will provide publishers/vendors and Panel members with information and instructions on the Federal requirements regarding the accessibility of print and digital materials for students with disabilities. Bidding publishers/vendors shall be required to provide documentation of compliance to the Federal requirements in brief submitted to the Panel members and the SCDE’s designee. Should any portion of the print or digital materials not conform to the standards of accessibility, the publisher/vendor will receive instructions on the procedures to bring the materials in compliance with the Federal requirements. Failure of the publisher/vendor to rectify the noncompliant materials will exclude the print or digital materials from the instructional materials adoption process.

~~SECTION 10. State Board of Education Approval of Instructional Materials~~

~~Each Instructional Materials Review Panel shall submit to the State Board of Education through the State Superintendent of Education materials recommended for adoption in each subject area for which materials have been solicited for bid.~~

SECTION ~~11~~10. Publish Instructional Materials Listing

The ~~State Department of Education~~ SCDE shall publish annually a listing of the newly adopted instructional materials (print/digital) for use in the public schools of South Carolina~~. A copy shall be provided~~ and shall make the listing available to ~~each~~ schools and school districts.

SECTION ~~12~~11. Substitution of Instructional Materials (Print/Digital)

Substitutions of new ~~copyrights~~ editions of instructional materials (print/digital) under contracts shall be allowed only with written permission as specified below.

 A. Any company under contract desiring to substitute a ~~later copyright~~ newer edition of adopted instructional materials (print/digital) ~~with minor changes that can be used interchangeably in the same classroom without confusion~~ may make application to the ~~State Superintendent of Education~~ SSE. The company shall ~~submit~~ provide the appropriate number of samples or digital access of the edition under contract, samples or digital access of the edition it proposes to substitute, and complete lists of changes between the editions.

 B. If, after consultation with the appropriate ~~Review~~ Panel~~,~~ or the SCDE’s designee, the ~~State Superintendent of Education~~ SSE concludes that the two editions can be used interchangeably in the same classroom without confusion, the ~~State Superintendent~~ SSE is authorized to grant permission to substitute the new edition. ~~All substitutions made under this provision shall comply with Section 9 of the regulations as to the construction of the instructional materials. All substitutions made under this provision shall be approved by the State Superintendent of Education and reported to the State Board of Education.~~

 ~~B~~C. If, after consultation with the appropriate Panel, or the SCDE’s designee, the newer edition ~~Any company, desiring to substitute a later copyright~~ of adopted instructional material (print/digital) ~~that~~ is deemed so different from the original material that it cannot be used interchangeably in the same classroom without confusion, the SSE shall require ~~must make application to the State Board of Education and~~ the publisher/vendor ~~agree~~ to ~~take up~~ replace all ~~copies~~ of the old editions (print/digital) ~~of the old instructional material~~ in use in the public schools of South Carolina with the newer editions. ~~and allow~~ Additionally, the publisher/vendor must allow an exchange rate to the State equal to any equity they have in the used material. ~~The State Board of Education shall examine the company's request and if, in its judgment, there is sufficient merit to warrant further consideration, the State Board of Education shall instruct the appropriate Instructional Materials Review Panel to review the materials for substitution. After receiving the recommendation of the Panel, the State Board of Education shall determine whether the substitution shall be allowed.~~

 D. All substitutions made under this provision shall comply with Section 9 of the regulations as to the manufacturing and industry standards for instructional materials (print/digital). All substitutions made under this provision shall be approved by the SSE and reported to the SBE.

 ~~C~~E. In all substitutions allowed, prices shall not exceed the price named in the original contract.

SECTION ~~13~~12. ~~Instructional Materials Review~~ Panel and Advisory Committee Expenses

All members of the ~~Instructional Materials~~ Advisory Committee and of the ~~Instructional Materials Review~~ Panels except ex-officio members or full-time employees of the State of South Carolina shall be paid expenses as prescribed by~~S~~state law and as funds are available.

SECTION ~~14~~13. Submission of Materials by Schools or School Districts

A school or school district may submit for review~~,~~ materials (print/digital) which in ~~their~~ its opinion best suit the needs of the students in ~~their~~ itscare. Upon submission, the school or school district shall be notified of the time frame within which they may expect to have the materials (print/digital) for use in schools. Materials (print/digital) to be used during the following school year must be approved by the ~~State Board of Education~~ SBE ~~by May of each year~~.

The ~~State Department of Education~~ SCDE shall request the publisher/vendor to submit the materials (print/digital) for adoption and ~~copies of~~ to provide sample materials ~~for use by~~ to the appropriate ~~Instructional Materials Review~~ Panel. Inability to secure agreement from the publisher/vendor for participation in the review process shall result in a denial of the request for review. Any item previously reviewed by a ~~Review~~ Panel in the initial call for bids for a subject area shall not be considered for review under this section.

If the publisher/vendor agrees to submit the materials (print/digital) for adoption, all applicable adoption regulations will be followed. Materials (print/digital) approved under this section shall be available for public review through the ~~State Department of Education~~ SCDE. Under no circumstances shall this section be used as a vehicle to circumvent the ~~S~~state instructional materials (print/digital) adoptions.

Section 14. Materials Reviewed but Not Adopted.

 A. Pursuant to Section 59-31-45, the SBE shall add to the approved list any materials or series of materials which have been reviewed but not recommended by the appropriate Panel if the materials or series are requested in writing by the boards of trustees of five or more school districts or by the boards of trustees of two or more school districts with a combined population of 25,000 or more students. Requests shall be received during any 365-day period.

 B. The materials shall be added to the approved list within thirty days following the receipt of the requisite number of requests, provided that the publisher whose materials are to be added to the approved list as provided in this section complies with the same provisions regarding materials as other publishers/vendors including, but not limited to, price, durability, accessibility for students with disabilities, and availability. No designation shall be included upon the approved list which indicates the manner in which any materials were added to the list.

~~SECTION 15. Registering of Bidders and Publishers~~

~~Any bidder or publisher submitting instructional materials to the State for adoption shall on or before the day bids are received register with the State Department of Education the names, home addresses, and business telephone numbers of all agents or employees of any kind or persons retained for legal or other services to whom there is being paid or there will be paid any salary, commission or royalty for representing the bidder or publisher. This information shall be kept open for inspection by the public, members of the State Board of Education, the Instructional Materials Advisory Committee, and the Instructional Material Review Panels. The failure of any bidder or publisher to register the names, home addresses, and business telephone numbers of all agents of any kind as specified shall be deemed as sufficient cause for summary rejection of the bid or proposal of that bidder or publisher.~~

Section 15. Digital Instructional Materials (State Adopted and Unvetted)

Utilizing the funds designated by the SBE, the SCDE shall determine a per pupil amount using the prior year's 135-Day Average Daily Membership for unfunded state adopted digital instructional materials and digital student materials that have not been vetted. These funds shall be made available to all school districts subject to the following procedures:

 A. Unfunded State Adopted Digital Student Materials. The SCDE shall create a digital instructional materials list composed of those items which have received SBE approval but are unfunded. By using the form available on the SCDE’s Instructional Materials Web site, a district may request an allocation for one-year digital access by denoting the number of students, grade level, and subject for which the digital materials will be used.

 B. Unvetted Digital Student Materials. By using the form available on the SCDE’s Instructional Materials Web site, publishers/vendors may request to have digital student materials added to an unvetted list of instructional materials that have not been evaluated through the instructional materials adoption process or approved by the SBE.

Registered companies with unvetted student digital materials are required to submit to the SCDE the one-year cost and product information, brief, and correlations of the digital student materials to the appropriate academic standards, career and technology education course standards, or other program areas which are not addressed within the standards. Information in the brief shall include the intended course or subject area with the assigned Instructional Activity Code, the readability level, documentation of compliance to ensure the digital instructional materials are accessible to students with disabilities, and other specific descriptive information as required by the SSE. Failure to provide completed brief and correlation will automatically exclude the digital materials from the unvetted list.

Previously reviewed instructional materials will be excluded from the list of unvetted digital materials. Should the publisher/vendor submit the unvetted materials for review as part of a call for bids for instructional materials, the bid materials will be removed from the unvetted list.

By using the form available on the SCDE’s Instructional Materials Web site, a district may request an allocation by denoting the number of students, grade level, and subject with the assigned Instructional Activity Code for which the unvetted digital materials will be used. The use of the unvetted digital student materials shall be the responsibility of the school district.

The SCDE shall not be responsible for the use by schools of the unvetted digital materials including the content, alignment to standards, lack of accessibility for students with disabilities, quality, or any other aspect of the digital materials. The unvetted digital materials shall not be placed on state contract; therefore, the availability and cost of these materials will not be assured.

SECTION 16. Conflict of Regulations

Any or all rules and regulations which may be in conflict with the provisions of this regulation are hereby declared null and void.

SECTION 17. ~~State Board of Education~~ SBE Waiver

 A. The SBE may, in its discretion and upon written request of the ~~Department~~ SCDE or any person who is subject to this regulation, grant a variance from one or more specific provisions of this regulation. The requesting party shall:

 1. identify the specific provisions of this regulation from which variance is sought

 2. demonstrate that compliance with the identified provision would not be in the best interest of students, schools, school districts, or the state; and

 3. demonstrate that the variance will have no significant adverse impact on the students, schools, school districts, or the state.

 B. In granting a variance, the ~~State Board~~ SBE may impose conditions reasonably necessary to assure that the subject activity will have no adverse impact on the students, schools, school districts, or the state.

 C. Any variance granted by the ~~State Board~~ SBE may be immediately withdrawn if the ~~State Board~~ SBE finds noncompliance with conditions of the variance or other information that the variance is not in the public interest or that the petitioner has provided false or inaccurate information on which the variance was granted.

 D. Nothing herein shall be construed as a waiver of the ~~State Board~~ SBE's right to deny any petition for a variance.

**Fiscal Impact Statement:**

 None.

**Statement of Rationale:**

Regulation 43-70 amendments detail an update to the process and timeline for the state adoption of instructional materials, adding new procedures for digital materials, and cleaning up terminology for consistency and to bring the regulation in line with other agency regulations.

 Regulation 43-70, Section 28 moves to Regulation 43-70, Section 14 with revisions. This Section pertains to Regulation 43-70 and the state adoption of instructional materials.

 The proposed amendments to 43-70 include adding Regulation 43-73, Section B(2) with revisions and a new Section 15 for digital materials (state adopted and unvetted).