

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 75 INSTRUCTIONAL MATERIALS AND TECHNOLOGY
PART 2 RELATING TO THE PUBLIC EDUCATION DEPARTMENT INSTRUCTIONAL
MATERIAL BUREAU

6.75.2.1 ISSUING AGENCY: Public Education Department
[6.75.2.1 NMAC - Rp, 6.75.2.1 NMAC, 10/15/10]

6.75.2.2 SCOPE: This rule governs the procedures for the adoption, purchase, and delivery of instructional material.
[6.75.2.2 NMAC - Rp, 6.75.2.2 NMAC, 010/15/10]

6.75.2.3 STATUTORY AUTHORITY: This rule is promulgated pursuant to Sections 9-24-8, 22-2-1, 22-15-4, and 22-15-8 NMSA 1978.
[6.75.2.3 NMAC - Rp, 6.75.2.3 NMAC, 010/15/10]

6.75.2.4 DURATION: Permanent
[6.75.2.4 NMAC - Rp, 6.75.2.4 NMAC, 010/15/10]

6.75.2.5 EFFECTIVE DATE: October 15, 2010, unless a later date is cited at the end of a section.
[6.75.2.5 NMAC - Rp, 6.75.2.5 NMAC, 010/15/10]

6.75.2.6 OBJECTIVE: This rule is designed to facilitate the adoption, requisition and distribution of instructional material.
[6.75.2.6 NMAC - Rp, 6.75.2.6 NMAC, 010/15/10]

6.75.2.7 DEFINITIONS:

- A. "Adoption" means authorization by the secretary of a multiple list of core/basal instructional materials and a list of supplemental materials for use in the schools.
- B. "Adoption cycle" means the six year adoption cycle as described in Subsection B of 6.75.2.8 NMAC.
- C. "Alternative format" means the exact duplicate version of the title submission in a format or language other than the original version; examples of alternative formats include CD-ROM, software, online or web based, DVD, compact video or audio disc, video or audio tape.
- D. "Basal" means the materials that constitute the necessary instructional components of a course of study, generally including a student edition, a teacher edition, and workbooks.
- E. "BIE" means the bureau of Indian education of the United States department of education.
- F. "Bundles/packages" means supplemental instructional material packaged together for retail, identified and labeled as: "teacher support", "student support" or "classroom support".
- G. "Challenge to title score" means a written, publisher-submitted document challenging the final score of a title submitted for consideration as an adopted core/basal text.
- H. "Chief" means the bureau chief of the state instructional material bureau.
- I. "Classroom kit" means the packaging of supplemental student support materials which provide exact duplicate items per student for whole class instruction and is sold as one retail price.
- J. "Core" means those subjects for which the department has developed content standards and benchmarks.
- K. "Data" refers to a collection of information, electronic or non-electronic. Data can also refer to raw facts, figures or symbols.
- L. "Department" means the New Mexico public education department.
- M. "Depository" or "textbook depository" - see New Mexico instructional material depository.
- N. "Digital direct instruction course/program" means computer based instruction in which courses use software as the primary delivery method of instruction. The digital instructor provides direct instruction to the student. The classroom instructor primarily provides support rather than instruction. A text book may or may not be required. These courses will be accepted as supplemental material only; they will not be accepted as core/basal material for the review process.

O. “Digital learning content” means technology application information incorporated within the content of the core/basal instructional material for the purpose of supporting development of technological knowledge and skills that students can then apply to all curriculum areas.

P. “Distribution” means transporting to the schools those items of instructional material on the multiple list requisitioned by a particular school or school district.

Q. “Educational media” means print, digital, or electronic material providing or conveying information to the student or otherwise containing intellectual content and contributing to the learning process. Educational courseware or programming that is the primary provider of instruction as well as of information is not included in this definition.

R. “Educational digital media” means a digital system of instructional material, computer software, interactive videodisc, magnetic media, CD-ROM, DVD, computer courseware, online services, electronic media, or other means of conveying information to the student or otherwise containing intellectual content that contributes to the learning process. Educational courseware or programming that is the primary provider of instruction as well as of information is not included in this definition.

S. “Electronic record” means a computer generated item such as an email message, a document file, an image file, etc., received and stored in a form only an electronic device can process.

T. “Eligible entities” means education entities that may participate in the state-funded instructional material program, including:

- (1) all public schools and districts, charter schools, and state-supported schools; and
- (2) non-public schools that have applied and been approved for participation in the program.

U. “Email” means:

- (1) a system that enables users to compose, transmit, receive and manage electronic messages and images across wired or wireless computer networks and through gateways connecting to other local area networks;
- (2) a message transmitted electronically over a communications network.

V. “Form E, Version CB” means the publisher’s form for the submission of core/basal titles of teacher and student editions and student workbooks.

W. “Form E, Version SP” means the publisher’s form for the submission of supplemental materials, including bundles, packages, classroom kits, kits, sets, libraries, and collections.

X. “Governing authority” means the governing authority of a state agency, a public two-year post secondary institution, or a non-public school accredited by the department.

Y. “In-state distribution point”. See “New Mexico instructional materials in-state distribution point”

Z. “Instructional material” means school textbooks, educational digital media, electronic books, and other technology that are used as the basis for instruction, including combinations of textbooks, learning kits, supplemental material, and other educational technology (not to include computers, laptops, handheld computers, or other devices used to access instructional material content).

AA. “Instructional material bureau” means that unit established within the department pursuant to the Instructional Material Law.

BB. “Instructional material summer review institute” means the annual review of all submitted core/basal instructional materials conducted required by 22-15-8 NMSA 1978. The institute is conducted by the bureau during the first full week of June.

CC. “Kit” means supplemental instructional material packaged together for one retail price.

DD. “Local school board” means the governing body of a school district or, as appropriate, the governing authority of a charter school.

EE. “Multiple list” means an adopted authorized list of core/basal instructional materials and an adopted authorized list of supplemental instructional materials for use in the schools approved annually, by August 1, by the secretary of education.

FF. “New Mexico instructional material in-state distribution point” means a facility or a set of procedures developed and maintained by a publisher, used by only that publisher, meeting the criteria established in Subsection C of 6.75.2.12 NMAC and authorized through application to the bureau chief, for the purpose of facilitating distribution of that publisher’s instructional materials within New Mexico. The distribution point is responsible for accounting, acquisition, storage, distribution and disposition of adopted textbooks and supplemental instructional materials.

GG. “New Mexico instructional material depository” means a facility authorized through application to the bureau chief to serve as an agent representing multiple publishers and other educational entities for the purpose of managing district/school instructional material orders. The depository is responsible for accounting, acquisition, storage, distribution and disposition of adopted and supplemental instructional materials.

HH. “New Mexico regional review center” means a state authorized location where samples of instructional materials are received from publishers and made available to evaluators, teachers and educational practitioners. The review center is responsible for storage, disposition and inventory of current adopted textbooks and supplemental instructional materials.

II. “Non public school” as used in instructional material law means a secondary or elementary school operated and supported by private individuals, private organizations, corporations, or federal agencies rather than by local or state government or by local or state public agency. Examples include private sectarian schools, private nonsectarian schools, and BIE schools.

JJ. “Online course/program” means computer based instruction in which courses use the internet as the primary delivery method of information. A text book is required and all other materials, as well as, instructional support provided by an on-site instructor.

KK. “Online direct instruction course/program” means computer based instruction in which courses use the internet as the primary delivery method of instruction. The cyber instructor provides direct instruction to the student. The classroom instructor primarily provides support rather than instruction. A text book may or may not be required. These courses will be accepted as supplemental submissions only; they will not be accepted as core/basal submissions for the review process.

LL. “Packages/bundles” means supplemental instructional material packaged together as a single unit of purchase, identified and labeled as “teacher support”, “student support” and “classroom support”.

MM. “Professional development” means the process of increasing the professional capabilities of staff by providing training and educational opportunities.

NN. “Protest” - see “challenge to title score”

OO. “Permanent records” means records that are preserved in an archive.

PP. “Public record” means all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or received by any agency in pursuance of law or in connection with the transaction of public business, preserved or appropriate for preservation, by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of the data contained therein. (Public Records Act, Section 14-3-2 NMSA 1978)

QQ. “Publisher’s agreement” means an agreement between the department and the publisher or publisher’s agent to provide certain material at the lowest price for the use of students in New Mexico schools and including a penalty for failure to perform.

RR. “Review set” means core/basal instructional materials organized for the purpose of a grade level title submission: student edition, teacher edition, student workbook, and alternative format(s).

SS. “Reading intervention program” as used in instructional material law means instructional materials specifically organized and intended to support a program of instruction to develop increased reading skills of struggling readers.

TT. “Regional review center” - See New Mexico regional review center

UU. “Request for applications (RFA)” means the written notice issued by the department to all publishers listing the subjects for which they will adopt material in a specific year and the terms and conditions under which applications from publishers to supply such material will be considered.

VV. “Requisition” means a list of items from the multiple list that local school boards or governing authorities wish to purchase. Such a list must be in a format specified by the in-state distributors and must be transmitted to the in-state distribution point before it becomes a requisition.

WW. “Review” means a standardized process examining submitted core/basal instructional materials to determine the extent of the material’s alignment with the requirements of instructional material law and therefore its suitability for adoption under instructional material law. There are four categories of review.

(1) A “review” is conducted during the annual summer review institute (institute) by a panel of three highly qualified teachers who have been selected for this purpose.

(2) A “second review” is conducted during the annual summer review institute for all titles submitted for review that did not achieve a 90% alignment score, but that achieved or exceeded an 80% score. The second review is conducted by a different panel of three highly qualified teachers in order to validate scores and ensure that titles receive a full opportunity to meet adoption requirements.

(3) A “departmental review” is a third review that may be convened for any submitted title at the chief’s discretion. It may be conducted during the institute or at a later time. The departmental review is conducted by a panel of three department administrators in order to ensure the reliability and validity of the review process.

XX. “Review set” means the student edition, teacher edition and student workbook for a title that has been submitted for adoption.

YY. “Set” means supplemental curriculum or instructional materials packaged together as a single unit, with one retail price.

ZZ. “Special review” means a review of new material that is not conducted during the summer review institute, but is conducted within twelve months of the secretary’s authorization of the adoption. It may be convened at the request of a publisher with the approval of the chief, or for other reasons as determined by the chief. The special review is conducted by a panel of three highly qualified teachers who have been selected for this purpose. If requested by a publisher, the cost of the special review is borne by the publisher.

AAA. “Substitution” means the replacement of an item under publisher’s agreement with a revised edition of the item.

BBB. “Summer review institute” - see “instructional material summer review institute”

CCC. “Supplement 9” means the written set of administrative requirements developed by the instructional material bureau to provide guidance regarding regulations, policy and general procedures for districts, charter schools, non-public schools, state-supported schools and publishers to participate in the “free use of instructional material” program.

DDD. “Supplemental materials” means materials used to reinforce, enrich, or extend the basic program of instruction; including ancillary items referenced as, bundles, packages, kits, classroom kits, sets, libraries, and collections.

EEE. “Waiver” means a process by which a district may request authorization to use instructional material money allocated for the purchase of core/basal materials to purchase supplemental instructional materials. [6.75.2.7 NMAC - Rp, 6.75.2.7 NMAC, 010/15/10]

6.75.2.8 REQUIREMENTS: RESPONSIBILITIES OF THE DEPARTMENT

A. Annual adoption. There shall be one (1) annual adoption, provided however, that the department may allow other adoptions upon a finding that an emergency is determined to exist.

B. Material shall be adopted for a period of six years. The subject area of each annual adoption shall consist of those subject areas whose adoption period expires at the end of the year during which the adoption is conducted.

C. The department will issue the request for applications (RFA). The RFA shall specify:

- (1) timelines for adoption, requisition, and distribution of instructional material;
- (2) length of publisher’s agreement;
- (3) a submission fee to be collected by the department not to exceed the retail value of the materials submitted for adoption; and
- (4) such other terms and conditions as the department determines.

D. The chief, subject to review by the department, may reject any application that fails to comply fully with the provisions of the request for applications, or may reject any or all applications.

E. The department may accept any conforming application which is determined to be most advantageous to the state, considering the educational value of material, cost to state, reliability of the publisher, and all other significant factors.

F. The department shall conduct an annual summer review institute during the first full week of June each year for the review of core/basal texts submitted for the current adoption.

G. In conducting the summer review institute, the department shall:

- (1) appoint highly qualified teachers (licensure levels 2 and 3-A) who are endorsed in the content areas under review as the reviewers of record; to the extent possible, reviewers will be selected proportionally across the state from the eight local school board regions and Albuquerque;
- (2) appoint highly qualified teachers (licensure levels 2 and 3-A) as facilitators of the review teams;
- (3) appoint New Mexico community members, parents, level one teachers, and students preparing for careers as teachers to observe the reviewers of record in the review;
- (4) contract with qualified vendors to arrange venue management and to provide for meals, lodging and compensation consistent with prevailing rates for facilitators and reviewers; and
- (5) where appropriate as determined by the chief, reimburse other personnel who have contracted or agreed to provide services such as clerical support, process management, additional supervision or training for mileage, provided they meet state qualification standards for mileage reimbursement, and provide room and board and meal reimbursement not to exceed state standards for meal reimbursement.

H. Printed and digital materials under review shall be scored according to the extent of their alignment with state content and performance standards, pedagogy consistent with current educational taxonomies, and other relevant criteria.

I. The department shall develop and use a standardized review form incorporating the scoring rubric and space for the publishers' alignment citations and the reviewer's scores.

J. The review form shall be divided into two sections.

K. Section I shall consist of citations showing alignment with New Mexico standards and benchmarks and shall include scorable performance indicators for all relevant standards and benchmarks consistent with Bloom's taxonomy or other generally accepted taxonomies as determined by the content bureau.

L. Section II shall consist of citations showing that the material under review meets other relevant criteria, including but not limited to:

- (1) is built around effective pedagogy and instructional design;
- (2) incorporates the principles of culturally responsive pedagogy and differentiated instruction;
- (3) incorporates and reflects current educational taxonomies supporting the development of higher order thinking skills;
- (4) has no factual error;
- (5) has no religious affiliation or partisanship;
- (6) has no cultural bias or gender bias;
- (7) demonstrates and reflects images, references and points of view reflecting a multicultural society;
- (8) integrates digital learning content within the text;
- (9) supports differentiated or personalized learning through style, pace, or needs;
- (10) can be adapted or configured by teacher to meet evolving needs;
- (11) supports accountability through integration of assessments and content; and
- (12) provides both formative and summative assessment opportunities.

M. Core/basal materials may also be scored on the basis of research-based, data proven effectiveness, publisher-provided professional development, pedagogy consistent with current educational taxonomies and other relevant criteria as determined by the bureau chief or developed in consultation with the content bureau and other highly qualified educational practitioners.

N. The materials under review shall be scored as follows.

(1) Core/basal materials that achieve a final total score of 90% or higher alignment with state content and performance standards and other relevant criteria may be considered for recommendation to the secretary for adoption as core/basal materials.

(2) Core/basal materials that score less than 90% alignment but greater than 80% with state content and performance standards and other relevant criteria shall be re-assessed by a second panel of reviewers for validation of the score.

(3) The chief, subject to the review of the department, may also convene a departmental panel of reviewers in order to ensure the validity and reliability of the review process.

(4) Core/basal materials that score less than 90% alignment with state content and performance standards and other relevant criteria will be recommended to the secretary for adoption as supplemental.

(5) Submitted supplemental titles may also be considered for recommendation to the secretary for adoption as supplemental materials.

O. Educational digital media. The contract, review, and evaluation process and standards involving digital, electronic, or web-based materials and media shall be the same as print materials, with these qualifications.

(1) Educational digital media shall comply with current interoperability standards; and any other specifications deemed necessary by the chief for an appropriate and effective review of educational digital media.

(2) Equipment such as computer hardware, technology devices or equipment intended to deliver or display the material but which are not instructional materials shall not be offered free or at reduced prices with instructional materials. This includes but is not limited to computers, laptops, handheld devices, microscopes, CD/DVD players, overhead or LCD projectors, electronic whiteboards, phone/music/transmitting and listening devices, and cameras.

(3) Publishers are required to provide to the instructional material bureau at the time of the review any hardware, software, or special equipment which may be needed for a review of instructional material.

(4) Publishers will be responsible for costs associated with the provision of needed hardware, software or special equipment.

(5) Materials requiring proprietary equipment provided by or through the publisher will not be considered for adoption.

P. Subsequent to the review, materials will be recommended to the secretary for adoptions by a panel of reviewers and department staff. The secretary will authorize adoption of instructional materials no later than August 1 of each adoption cycle.

Q. Pursuant to Section 22-15-13 NMSA 1978, the department may enter into a publisher's agreement for the purchase and delivery of instructional material selected from the multiple list adopted by the department.

R. Administration. It is the responsibility of the instructional material bureau to administer the provisions of the Instructional Material Law (22-15-1 NMSA 1978). The bureau shall issue such additional guidance, clarification and direction as deemed necessary by the chief to promote effective, efficient and equitable processes for all bureau responsibilities pertaining to the free use of instructional materials. This material shall be compiled or revised annually and issued as a supplement to 6.75.2 NMAC. The supplement is hereby incorporated by reference as if fully set out within this document. In addition, the bureau shall develop, implement and maintain procedures to address the requirements that:

(1) funds are efficiently allocated by the instructional material bureau to districts, charter schools, and state-supported schools using estimated forty-day membership for the next school year;

(2) funds are efficiently allocated by the instructional material bureau for non-public schools using estimated forty day membership for the next school year;

(3) funds are efficiently disbursed by the flowthrough bureau of the administrative services division to districts, charter schools, and state-supported schools;

(4) funds are efficiently reimbursed by flowthrough bureau of the administrative services division to depositories on behalf of non-public schools after determining that the materials purchased meet state requirements;

(5) schools wishing to use instructional material funds to purchase non-adopted materials are provided with examples and assistance in determining whether the desired materials are allowed under instructional material law; and

(6) the state is receiving the lowest price offered for materials .

S. Pursuant to Subsections A and B of 22-15-4 NMSA 1978 the bureau shall, at the discretion of the chief, conduct periodic audits of the instructional material accounts and textbook inventories required under Subsections E and F of 6.75.2.9 NMAC and by Paragraphs (3) through (5) of Subsection C of 6.75.2.10 NMAC, of any entities receiving funds under the provisions of Instructional Material Law.

T. Pursuant to Subsection C of 22-15-4 NMSA 1978 the bureau shall withdraw or withhold the privilege of participating in the free use of instructional material in case of any violation of or noncompliance with the provisions of the Instructional Material Law or any rules adopted pursuant to that law;

U. The department shall consider for approval, requests for waiver by the local superintendent to use funds allocated for the purchase of adopted core/basal instructional material to purchase non-adopted or supplemental material. The request shall include the specific materials to be purchased, the cost of the purchase and justification for the purchase relating to the improved performance of students.

[6.75.2.8 NMAC - Rp, 6.75.2.8 NMAC, 09/15/10]

6.75.2.9 REQUIREMENTS: RESPONSIBILITIES OF LOCAL SCHOOL BOARDS OR GOVERNING AUTHORITIES

A. Each local school board shall develop and implement a process for the selection of instructional materials and shall ensure that parents and other community members are involved in the implementation of this process.

B. Schools and districts must submit to authorized New Mexico depositories or authorized New Mexico in-state distribution points all requisitions for instructional materials for the next school year no later than March 31, unless justification is provided. Delivery schedules are to be as follows.

(1) For core and supplemental instructional materials requisitions received by the New Mexico depository or in-state distribution point prior to March 31 of each year, delivery to schools shall be made by the later of the following dates: within thirty (30) days prior to the beginning of classes, or by July 1.

(2) Core and supplemental orders received after March 31 will be delivered by the later of the following dates: within sixty (60) days after the receipt of the order or August 1.

(3) For free instructional material requisitions received by the New Mexico depository or in-state distribution point prior to March 31, delivery to schools shall be made by the later of the following dates: within thirty (30) days prior to the beginning of classes, or by July 1.

(4) Free instructional material requisitions received after March 31 will be delivered by the later of the following dates: within sixty (60) days after the receipt of the order or August 1.

C. Each public school district, charter school, and state institution may purchase items of instructional material as defined herein and not on the state-adopted list by issuing a purchase order to the publisher or the publisher's authorized agent. The entity is responsible for payment to the vendor/publisher, etc. The cost of the items, plus transportation charges, will be charged to the supplemental funds (50 % of the total allocation) line item of the entity's instructional material allocation.

D. If entities do not receive their orders on a timely basis, they shall provide to the bureau written documented evidence of ordering dates and other pertinent information as required by the department.

E. Annually, at a time specified by the department, each local school board of a school district and each governing authority of a state institution or non-public school acquiring instructional material pursuant to the Instructional Material Law (22-15-1 to 22-15-14 NMSA 1978) shall file a report with the department. The annual report shall include the total instructional material allocation received, the average per pupil cost, year-end cash balances and other documentation as required by the department.

F. Pursuant to the Instructional Material Law (22-15-1 to 22-15-14 NMSA 1978), each local school board of a school district and each governing authority of a state institution or non-public school shall keep an itemized list of instructional materials purchased by school and publisher.

G. Disposal of instructional materials.

(1) Out of adoption (older than 6 years). Instructional material deemed unusable/obsolete does not require PED-IMB approval to discard or donate. These items may be disposed of at the district/school's discretion.

(2) In-adoption (still within the 6 year cycle).

(a) A district/school wishing to discard, donate or give away instructional material still listed on the NM multiple adoption list that must obtain PED-IMB approval. The request shall include a letter justifying the request to discard, donate or give the items away and an inventory listing of the materials shall be provided to the chief.

(b) A district/school wishing to sell instructional material that is under adoption does not require PED-IMB approval. All funds received from the sale of the material must be remitted to PED-IMB for redeposit in the school's/district's instructional material account.

(3) Upon order of the chief, a school/district, state institution, or non public school shall transfer to the department or its designee instructional material purchased with instructional material funds that is in usable condition and for which there is no use expected by the respective schools.

H. All entities receiving monies for instructional materials will be provided training on the process of obtaining funds, ordering materials, receiving funds, returning funds for sold or lost materials, and completing the annual report.

[6.75.2.9 NMAC - Rp, 6.75.2.9 NMAC, 10/15/10]

6.75.2.10 REQUIREMENTS: RESPONSIBILITIES OF NON-PUBLIC SCHOOLS

A. Instructional material funds shall be distributed to nonpublic schools as agents for the benefit of students entitled to the free use of the instructional material (22-15-7 NMSA 1978).

B. Eligibility to participate in the free use of instructional materials is authorized by application to the chief. Application must be made by April 1 preceding the first school year for which participation is requested.

(1) Upon approval, the non-public school is authorized to participate in the fund for two consecutive years.

(2) Application to renew participation for an additional two years must be made by April 1 in the second year of participation.

C. Funding is dependent upon the nonpublic school meeting the following requirements.

(1) Provide all information requested on the initial application and on all applications for renewal.

(2) Submit a 40-day membership count annually.

(3) Submit an annual instructional material budget report by August 1.

(4) Submit an annual instructional material inventory report by August 1.

(5) Submit requested reports as deemed necessary by the bureau.

(6) If the nonpublic school shows no instructional material budget activity by November 15th of the school year, the school's participation in the free instructional material process will be suspended for the remainder of the school year. To reinstate the funding for the following school year the school must complete a re-application process before February.

D. The non-public school as agent receiving instructional material pursuant to the Instructional Material Law (22-15-1 NMSA 1978) is responsible for distribution of the instructional material for use by eligible students and for the safekeeping of the instructional material.

E. The non-public school may select instructional material for the use of its students from the multiple list adopted by the department. Each non-public school may also purchase items of instructional material as defined herein and not on the state-adopted list provided such purchases are made through a New Mexico instructional material depository or a New Mexico in-state distribution point.

F. Schools must submit all instructional materials requisitions for the next school year no later than March 31, unless justification is provided. Delivery schedules are the same as specified in Paragraphs (1) through (4) of Subsection B of 6.75.2.9 NMAC.

G. The department shall provide payment to a publisher or depository on behalf of a non-public school for instructional material as defined above.

H. Any balance remaining in an instructional material account of a non-public school at the end of the fiscal year shall remain available for reimbursement by the department for instructional material purchases in subsequent years.

I. Disposal of instructional materials.

(1) If closure of a non-public school is imminent, the school shall inform the chief in writing within 30-days of closure. Disposal of instructional material purchased with state instructional material funds shall follow these procedures.

(2) Out of adoption (older than 6 years). Instructional material deemed unusable/obsolete does not require PED-IMB approval to discard or donate. These items may be disposed of at the nonpublic school's discretion.

(3) In-adoption (still within the 6 year cycle)

(a) A nonpublic school wishing to discard, donate or give away instructional material still listed on the NM multiple adoption list must obtain PED-IMB approval. The request shall include a letter of justification and the request to discard, donate or give the items away and an inventory listing of the materials

(b) A nonpublic school wishing to sell instructional material that is under adoption must obtain PED-IMB approval. All funds received from the sale of the material must be remitted to PED-IMB.

(4) Upon order of the chief, a school district, state institution, or non public school shall transfer to the department or its designee instructional material purchased with instructional material funds that is in usable condition and for which there is no use expected by the respective schools.

J. All money collected by a non-public school for the sale, loss, damage or destruction of instructional material received pursuant to the Instructional Material Law shall be sent to the department of education.

K. The non-public school as agent receiving instructional material shall keep accurate records of all instructional material, including cost records, on forms and by procedures prescribed by the division.

L. Annually, at a time specified by the department, each governing authority of a non-public school acquiring instructional material pursuant to the Instructional Material Law shall file a report with the department that includes an itemized list of instructional material purchased, by vendor; the total cost of the instructional material; the average per-student cost; and the year-end cash balance.

[6.75.2.10 NMAC - N, 10/15/10]

6.75.2.11 REQUIREMENTS: RESPONSIBILITIES OF PUBLISHERS

A. Publisher's agreements shall be returned to the department fully executed by the publisher no later than thirty (30) days after receipt by the publisher. Failure to return the fully executed publisher's agreement may result in the rejection of the publisher's application.

B. Publisher's agreements shall be for a period of six (6) years, except where material is necessary for:

- (1) the completion or update of a series or educational media previously adopted; or
- (2) the transfer of a subject from one section to another.

C. The publisher's agreement shall:

(1) require that the publisher agrees to furnish and provide distribution to the schools the instructional material submitted and adopted;

(2) require that the publisher agrees to keep sufficient stock at the designated New Mexico instructional material depository or New Mexico instructional material in-state distribution point to assure delivery in accordance with the timelines set forth in this regulation;

(3) require that if delivery of instructional material is delayed beyond deadlines established in 6.75.2.12 NMAC or specified in correspondence to the publisher by the chief, the publisher shall pay the NMPED

\$100 per day for each day delivery is delayed, up to a maximum of \$10,000 per title, as liquidated damages, to include instructional materials labeled/promoted as being of no cost or at reduced price;

(4) require that the publisher (or designee) agrees to bill the public school districts, charter schools and state supported schools for instructional material ordered;

(5) require that the publisher (or designee) agrees to bill the New Mexico public education department on the behalf of the nonpublic schools;

(6) require that all materials submitted for adoption and sale in the state of New Mexico conform to the requirements of the Consumer Product Safety Improvement Act;

(7) require that the publisher agrees to submit files of adopted instructional materials that conform to the national instructional material accessibility standard (NIMAS) at no additional cost to the national instructional material accessibility center (NIMAC) repository at the American printing house for the blind (Section 22.15.26-29 NMSA, 1978 "Braille Access Act", and 6.75.4 NMAC);

(8) require the publisher to maintain, for three years after the termination or expiration of the agreement, or after any court proceedings involving this agreement, copies of all billings generated under this agreement.

D. Qualifications.

(1) Publishers are required to provide to the instructional material bureau at the time of the review any hardware, software, or special equipment which may be needed for a review of instructional material.

(2) Publishers will be responsible for costs associated with the provision of needed hardware, software or special equipment.

(3) Items of instructional material, including accompanying material, must be in proof format by the adoption date and in finished format by May 1 immediately preceding the annual instructional material summer review institute.

(4) Substitutions of new or revised editions will be allowed by the chief:

(a) only if the substitution will be advantageous to the user schools;

(b) subject to all terms and conditions of the original publisher's agreement, including price;

and

(c) upon a determination by the chief that the proposed changes are minor, the new edition is substantially the same material as the old edition, and a special review is not necessary.

(5) Software updates that improve functionality, performance, or accuracy may be allowed after review by the chief.

(6) Materials designated by the publisher on the final approved list as free or reduced cost material and services such as teachers' editions, workbooks, duplicating masters, in service training, consultants, etc., will be made available at no cost or at a reduced cost to any schools that adopt its instructional material.

(7) Free or reduced cost materials or service may not include computer hardware, technology devices or equipment intended to deliver or display the material but which are not instructional materials. This includes but is not limited to computers, laptops, handheld devices, microscopes, CD/DVD players, overhead or LCD projectors, electronic whiteboards, phone/music/transmitting and listening devices, and cameras.

(8) Any free or reduced cost material or service described on the state adoption list and made available at no cost or at a reduced cost to a school that adopts its instructional material will be made available on an equitable basis to all schools that adopt its instructional material.

(9) The quantity of free or reduced price material provided shall be calculated according to the number of teachers using the material, and not according to the amount of material purchased.

(10) The publisher shall make no offer of free or reduced price material or services that have not been designated as such on the final approved list.

(11) If the publisher fails to list all free or reduced price material and services the publisher will be suspended from participation in the New Mexico instructional material process until such time as the department determines that the publisher shall be allowed to resume participation.

(12) If the publisher fails to make available at no cost or at a reduced cost to all schools the same material or service that is offered or provided at no cost or at a reduced cost to any school, the publisher will be suspended from participation in the New Mexico instructional material process until such time as the department determines that the publisher shall be allowed to resume participation.

E. The publisher shall designate a New Mexico instructional material depository meeting the criteria established in Subsection C of 6.75.2.12 NMAC or a New Mexico in-state distribution point meeting the criteria established in Subsection C of 6.75.2.13 NMAC for the distribution of instructional material and to act as the agent for the publisher for requisition, billing, and receipt of payments for the purchase of instructional material.

F. The publisher shall provide samples of core/basal student and teacher instructional materials as well as other material they deem necessary to provide adequate instruction to designated regional review centers within thirty (30) days of the finalization of a publisher's agreement.

G. The publisher shall reduce the price of instructional material under publisher's agreement in New Mexico when prices are reduced elsewhere in the United States so that no such item or items shall at any time be sold in New Mexico at a higher wholesale price than received for items elsewhere in the United States, like conditions prevailing.

H. The publisher shall ensure the use of the international standard book number (ISBN) system where applicable.

I. Publishers are prohibited from conducting a pilot program in which schools receive free materials and professional development during the eighteen (18) month period previous to the official date of adoption of those materials (August 1 for each cycle).

J. Challenges to review scores must be filed by the publisher within ten working days of receipt of the price agreement from the department.

[6.75.2.11 NMAC - Rp, 6.75.2.10 NMAC, 10/15/10]

6.75.2.12 REQUIREMENTS: RESPONSIBILITIES OF NEW MEXICO INSTRUCTIONAL MATERIAL DEPOSITORIES

A. It is the responsibility of depositories to distribute instructional materials to schools and districts in a timely and accurate fashion and to ensure the following.

(1) For core and supplemental instructional materials requisitions received by the New Mexico depository or in-state distribution point prior to March 31 of each year, delivery to schools shall be made by the later of the following dates: within thirty (30) days prior to the beginning of classes, or by July 1.

(2) Core and supplemental orders received after March 31 will be delivered by the later of the following dates: within sixty (60) days after the receipt of the order or August 1.

(3) For free instructional material requisitions received by the New Mexico depository or in-state distribution point prior to March 31, delivery to schools shall be made by the later of the following dates: within thirty (30) days prior to the beginning of classes, or by July 1.

(4) Free instructional material requisitions received after March 31 will be delivered by the later of the following dates: within sixty (60) days after the receipt of the order or August 1.

B. The depositories will provide training to all entities receiving monies for instructional materials on the online process for ordering instructional materials.

C. Depositories must meet the following requirements:

(1) financial viability adequate to ensure performance of all obligations under a contract between the publisher and the depository for the purpose of distributing instructional material to schools and school districts within New Mexico;

(2) warehouse facilities, including location, equipment, and staffing patterns, adequate to ensure performance of all obligations under a contract between the publisher and the depository for the purpose of distributing instructional material to schools and school districts within New Mexico;

(3) procedures, systems and capacity to interface directly with an approved online ordering, inventory and reporting system to receive and process instructional material orders;

(4) procedures, systems and capacity to communicate such reports as the department may require in the automated format as established by the department; and

(5) sufficient inventory of instructional material to fill requisitions in accordance with the timelines set forth in this regulation.

[6.75.2.12 NMAC - Rp, 6.75.2.11 NMAC, 10/15/10]

6.75.2.13 REQUIREMENTS: Responsibilities of in-state distribution points

A. It is the responsibility of publishers operating in-state distribution points to distribute instructional materials to schools and districts in a timely and accurate fashion and to ensure the following.

(1) For core and supplemental instructional materials requisitions received by the New Mexico depository or in-state distribution point prior to March 31 of each year, delivery to schools shall be made by the later of the following dates: within thirty (30) days prior to the beginning of classes, or by July 1.

(2) Core and supplemental orders received after March 31 will be delivered by the later of the following dates: within sixty (60) days after the receipt of the order or August 1.

(3) For free instructional material requisitions received by the New Mexico depository or in-state distribution point prior to March 31, delivery to schools shall be made by the later of the following dates: within thirty (30) days prior to the beginning of classes, or by July 1.

(4) Free instructional material requisitions received after March 31 will be delivered by the later of the following dates: within sixty (60) days after the receipt of the order or August 1.

B. The publisher operating the in-state distribution point will provide training to all entities receiving monies for instructional materials on the process for ordering instructional materials.

C. In-state distribution points must meet the following requirements:

(1) financial viability adequate to ensure performance of all obligations described in Paragraphs (1) through (4) of Subsection A of 6.75.2.13 NMAC for distributing instructional material to schools and school districts within New Mexico;

(2) storage and shipping facilities and procedures adequate to ensure performance of all obligations under Paragraphs (1) through (4) of Subsection A of 6.75.2.13 NMAC for distributing instructional material to schools and school districts within New Mexico;

(3) contractual arrangements with a New Mexico instructional material depository to receive, process and forward instructional material orders through an approved online ordering, inventory and reporting system, or procedures, systems and capacity to interface directly with an approved online ordering, inventory and reporting system to receive and process instructional material orders;

(4) procedures, systems and capacity to communicate such reports as the department may require in the automated format as established by the department; and

(5) sufficient inventory of instructional material to fill requisitions in accordance with the timelines set forth in this regulation.

[6.75.2.13 NMAC - Rp, 6.75.2.11 NMAC, 10/15/10]

6.75.2.14 UNOBLIGATED AND UNEXPENDED INSTRUCTIONAL MATERIAL BALANCES

A. Instructional material funds allocated to a school district or state institution during any fiscal year and not obligated or expended prior to the close of that fiscal year are available to the school district or state institution for expenditure in subsequent fiscal years. Funds meeting this definition shall be budgeted and expended in subsequent fiscal years consistent with the requirements of Subsection C of Section 22-15-9 NMSA 1978.

B. Any balance remaining in an instructional material account of a non-public school at the end of a fiscal year remains available for reimbursement by the department for multiple list instructional material purchases in subsequent fiscal years.

[6.75.2.14 NMAC - Rp, 6.75.2.12 NMAC, 10/15/10]

HISTORY OF 6.75.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives:

SDE 75-2, (Certificate No. 75-2) Regulation Relating to the State Department of Education Instructional Materials Division, filed 6-4-75.

SDE 77-2, Regulation Relating to the State Department of Education Instructional Materials Division, filed 2-7-77.

SBE 79-12, Relating to the State Department of Education Instructional Material Division, Procedures for the Adoption, Purchase and Delivery of Instructional Material, filed 9-21-79.

SBE Regulation No. 83-5, Relating to the State Department of Education Instructional Material Division - Procedures for the Adoption, Purchase, and Delivery of Instructional Material, filed 8-31-83.

SBE Regulation 93-20, Relating to the State Department of Education Instructional Materials Bureau - Procedures for the Adoption, Purchase, and Delivery of Instructional Material, filed 10-19-93.

History of Repealed Material:

6.75.2 NMAC, Relating to the Public Education Department Instructional Material Bureau, filed 11-1-2000 - Repealed effective 1-31-2006.

6.75.2 NMAC, Relating to the Public Education Department Instructional Material Bureau, filed 1-13-2006 - Repealed effective 10-15-2010.