

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, 01-31-06]

6.75.2.2 SCOPE: This regulation governs the procedures for the adoption, purchase, and delivery of instructional material.
[6.75.2.2 NMAC - Rp, 6.75.2.2 NMAC, 01-31-06]

6.75.2.3 STATUTORY AUTHORITY: This regulation 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, 01-31-06]

6.75.2.4 DURATION: Permanent
[6.75.2.4 NMAC - Rp, 6.75.2.4 NMAC, 01-31-06]

6.75.2.5 EFFECTIVE DATE: January 31, 2006, unless a later date is cited at the end of a section.
[6.75.2.5 NMAC - Rp, 6.75.2.5 NMAC, 01-31-06]

6.75.2.6 OBJECTIVE: This regulation is designed to facilitate the adoption, requisition and distribution of instructional material.
[6.75.2.6 NMAC - Rp, 6.75.2.6 NMAC, 01-31-06]

6.75.2.7 DEFINITIONS:

A. "Adoption" means approval by the secretary of a multiple list of core/basal instructional materials and a list of non-core/basal supplemental materials for use in the schools.

B. "Chief" means the chief of the state instructional material bureau.

C. "Contract" means an agreement between the department and the publisher or publisher's agent to provide certain material at the best price for the use of students in New Mexico schools and including a penalty for failure to perform.

D. "Core" or "basal" means the primary tool(s) of instruction in a set of subjects and material (science, mathematics, social studies, language acquisition, comprehensive health, early childhood education, special education, physical education, vocational education, fine arts, performing arts, and language arts) or courses that make up a required portion of a curriculum.

E. "Department" means the public education department.

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

G. "Educational media" means a system of instructional materials, computer software, interactive videodisc, magnetic media, CD-ROM, DVD, computer courseware, on-line services, an electronic medium, or other means of conveying information to the student or otherwise containing intellectual content and contributing to the learning process.

H. "Governing authority" means the governing authority of a state agency, a public two-year post-secondary institution, or a private school accredited by the department.

I. "In-state distribution point" means a depository located within the state of New Mexico and meeting the criteria established in Subsection C of 6.75.2.11 NMAC.

J. "Instructional material" means school textbooks and other educational media that are used as the basis for instruction, including combinations of textbooks, learning kits, supplementary material and electronic media.

K. "Instructional material bureau" means that unit established within the department pursuant to the Instructional Material Law.

L. "Local school board" means the governing body of a school district or, as appropriate, the governing authority of a charter school.

M. "Multiple list" means a written list consisting of several items of core/basal instructional material selected for each course of study approved by the department in each grade.

N. "Regional review center" means a designated location where samples of instructional materials will be received and made available to evaluators.

O. "Request for proposals (RFP)" 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 proposals from publishers to supply such material will be considered.

P. "Requisition" means listing by local school boards or governing authorities in a format specified by the in-state distributors, those items from the multiple list they wish to purchase and transmitting the list to the in-state distribution point.

Q. "Section" means the list of core/basal and non-core/basal material adopted in a specific year.

R. "Substitution" means the replacement of an item under contract with a revised edition of the item. [6.75.2.7 NMAC - Rp, 6.75.2.7 NMAC, 01-31-06]

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.

(1) The department will issue the request for proposals (RFP): The RFP shall specify:

(a) the schedule disseminated with the RFPs will establish timelines for adoption, requisition, and distribution of instructional material;

(b) length of contract;

(c) a submission fee to be collected by the department equal to the retail value of the materials submitted for adoption; fees for classroom kits shall be equal to the retail per pupil (based on 20 pupils per class) value of the material; and

(d) such other terms and conditions as the department determines.

(2) The chief, subject to review by the department, may reject any proposal that fails to comply fully with the provisions of the request for proposals, or may reject any or all proposals.

(3) The department may accept any conforming proposal 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.

B. The annual summer review institute. 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.

(1) In conducting the summer review institute, the department shall:

(a) appoint highly qualified teachers (licensure levels two and three -A), who are current practitioners of the content and performance standards, as the reviewers of record; reviewers will be selected proportionally across the state from the eight local school board regions and Albuquerque;

(b) appoint teachers who are licensed in the content areas under review as facilitators of the review teams;

(c) appoint level one teachers, community members, parents, and students preparing for careers as teachers to assist the reviewers of record in the review;

(d) pay to facilitators and reviewers of record a minimum daily stipend of \$100, mileage reimbursement provided that they meet the state qualification standards for mileage reimbursement, and meal reimbursement not to exceed state standards for meal reimbursement, where appropriate; and

(e) reimburse other participants 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, where appropriate as determined by the chief.

(2) The materials under review shall be scored according to the extent of their alignment with state content and performance standards and presented pedagogy.

(a) Materials which score less than 90% alignment with state content and performance standards but higher than 80% alignment shall be assessed by a special panel of reviewers for validation of the score.

(b) Materials which achieve a final total score of 90% or higher may be considered for recommendation to the secretary.

(c) Supplementary and ancillary materials shall be adopted without review.

(d) Core/basal materials shall also be scored on the basis of research-based, data proven effectiveness.

(e) Other considerations in the recommendation for adoption may be publisher-provided professional development and general pedagogy.

(f) 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.

(3) Pursuant to Section 22-15-13 NMSA 1978, the department may enter into a contract for the purchase and delivery of instructional material selected from the multiple list adopted by the department.

C. Administration. The department shall develop, implement and maintain procedures to address the requirements that:

(1) the disbursement of funds, using estimated forty-day membership for the next school year, are issued efficiently to districts, state-supported schools and adult basic education centers;

(2) the reimbursement of funds, using estimated forty-day membership for the next school year, are issued efficiently to depositories on behalf of private schools after determining that the materials purchased meet state requirements;

(3) the disposition of instructional material by all entities occurs and if a private school closes, ensure that materials are given to the local district or funds are received for the sale of material;

(4) the instructional material funds are expended on materials which aid in providing direct instruction by providing schools an itemized chart as to what is and what is not allowed; and

(5) the state is receiving the lowest price offered for materials by checking adoption list prices against publishers' catalogue prices, calling publishers' customer service, and exchanging adoption lists with other states.

D. The department shall consider for approval, requests for waiver by the local superintendent of the use of funds allocated for the purchase of instructional material included on the multiple list. The request shall include the specific materials to be purchased, the cost of the purchase and justification for the purchase relating to the improved instruction and performance of students.

[6.75.8 NMAC - Rp, 6.75.2.8 NMAC, 01-31-06]

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 depositories and in-state publishers all requisitions for instructional materials for the next school year no later than March 31, unless justification is provided. For supplemental requisitions received by the in-state distribution point after March 31, delivery to schools shall be made by the later of the following dates: (a) sixty (60) days after receipt or (b) August 1.

C. Each public school district, charter school, adult basic education center 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 discretionary funds (50 % of the total allocation) line item of the entity's instructional material allocation.

D. Entities not receiving orders on a timely basis shall provide written documented evidence of ordering dates and/or 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, private school or adult basic education center 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, and 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, private school or adult basic education center shall keep an itemized list of instructional materials purchased by school and publisher.

G. If closure of a private school is imminent, the school shall contact the chief in writing within 30-days of closure to obtain the approval to dispose of materials either by sale or return to the bureau. If the chief authorizes the school to sell material purchased with state funds, the monies received must be remitted to the bureau.

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, 6.75.2.8 NMAC, 01-31-06]

6.75.2.10 REQUIREMENTS: RESPONSIBILITIES OF PUBLISHERS

A. Contracts 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 contract may result in the rejection of the publisher's proposal.

B. Contracts 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 contract shall:

- (1) require that the publisher agrees to keep sufficient stock at a designated in-state distribution point to assure delivery in accordance with the timelines set forth in this regulation; and
- (2) require that the publisher will be assessed a non-performance penalty of \$100 per day for each day delivery is delayed, up to a maximum of \$10,000 per order.

D. Qualifications.

(1) 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 fiscal year for which funds become available for the purchase of the instructional material.

(2) 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 contract, including price; and,
- (c) during the second, third, and fifth years of the contract only where exceptional justification

is provided.

E. The publisher shall agree to provide free and/or reduced cost materials as stated in the contract on an equitable basis to all schools and shall agree not to provide at free and/or reduced cost, materials not stated in the contract as free/or reduced cost materials.

F. The publisher shall designate an in-state distribution point meeting the criteria established in Subsection C of 6.75.2.11 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.

G. 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 the authorized regional review centers within thirty (30) days of the finalization of a contract.

H. The publisher shall reduce the price of instructional material under contract 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.

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

J. 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).

[6.75.2.10 NMAC - Rp, 6.75.2.8 NMAC, 01-31-06]

6.75.2.11 REQUIREMENTS: RESPONSIBILITIES OF IN-STATE DISTRIBUTION POINTS (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 that:

- (1) for requisitions received by the in-state distribution point before March 31, of each year, delivery to schools shall be made by July 1;
- (2) for supplemental requisitions received by the in-state distribution point after March 31, of each year, delivery to schools shall be made by the later of the following dates: (a) sixty (60) days after receipt or by August 1; the in-state distribution point may reject any incomplete or incorrect requisition.

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) compatible computer capacity to receive and process instructional material orders and to communicate in the automated format as established by the department; and

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

[6.75.2.11 NMAC - Rp, 6.75.2.8 NMAC, 01-31-06]

6.75.2.12 UNOBLIGATED AND UNEXPENDED INSTRUCTIONAL MATERIAL BALANCES

A. Instructional material funds allocated to a school district, state institution or adult basic education center during any fiscal year and not obligated or expended prior to the close of that fiscal year are available to the school district, state institution or adult basic education center for expenditure in subsequent fiscal years. Funds meeting this definition may be budgeted and expended in subsequent fiscal years for any combination of multiple list instructional material and instructional material not included on the multiple list.

B. Any balance remaining in an instructional material account of a private 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.

[6.75.2.12 NMAC - Rp, 6.75.2.9 NMAC, 01-31-06]

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 under: 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 and

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, repealed effective 01-31-06.