

Proposed Rule Abstract

1. **Agency:** Public Education Department
2. **Rule Citation:** 6.75.2 NMAC, Relating to the Public Education Department Instructional Material Bureau
3. **Rulemaking Action:** Repeal and Replace
4. **Register Issue and Date of Notice of Proposed Rulemaking:** Issue 17, September 11, 2018
5. **Effective Date:** October 30, 2018
6. **Citation to Specific Legal Authority:** Sections 9-24-8, 22-2-1, 22-15-4, and 22-15-8 NMSA 1978
7. **Short Explanation of the Rule's Purpose:** Outline the procedures for the adoption, purchase, and delivery of instructional material.
8. **Link to Full Text of the Rule:** https://webnew.ped.state.nm.us/wp-content/uploads/2018/09/6-75-2_IMB-Rule_STRIKETHROUGH-WEBSITE.docx
9. **How Information on the Rule Can Be Obtained:** <https://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/> or from Jaime Gonzales at (505)-827-7889.
10. **Comment Period and Deadlines:** September 11, 2018 to October 16, 2018 at 5:00 PM. Written comments may be submitted to Jamie Gonzales, Policy Division, New Mexico Public Education Department, Room 101, 300 Don Gaspar Avenue, Santa Fe, NM 87501, rule.feedback@state.nm.us, or by fax to (505) 827-6520.
11. **Rule Hearing:** October 16, 2018 from 9:00 AM to 11:00 AM at 300 Don Gaspar Avenue in Mabry Hall, Santa Fe, NM 87501.
12. **Link to Permanent Agency Rulemaking Record:** <https://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>

Summary of Proposed Rule

The September 11, 2018 issue of the *New Mexico Register* contained the Public Education Department's (PED) proposed repeal and replace of Section 6.75.2 NMAC "Relating to the Public Education Department Instructional Material Bureau." See **Attachment 1, Proposed 6.75.2 NMAC, Relating to the Public Education Department Instructional Material Bureau**. The proposed rule is organized to more clearly outline processes within the PED Instructional Material Bureau, adjusts wording in many clauses for clarity, consolidates some regulations, and eliminates other regulations. Among its many minor changes, the proposed rule also contains two significant deviations from current practice: the proposed rule will allow schools, school districts, and publishers to submit open source and school district-developed materials for review during the summer review institute; and the proposed rule eliminates language stating instructional material receiving 90 percent of the possible points in the summer review institute would be recommended for final adoption as core material, replacing this section with new criteria PED staff will use to recommend core instructional material for adoption.

Analysis

Definitions. The proposed rule eliminates more than half of the definitions in the current rule. Many of the eliminated definitions are unnecessary for the administration of the rule, including definitions for “data,” “e-mail,” and “local school board.” The proposed rule also contains new definitions, including:

- Educational taxonomies - a set of hierarchical models used to classify educational learning objectives into levels of complexity;
- In-adoption - currently adopted instructional material that is approved by the department, and included on the multiple list;
- Instructional material manual – written guidance issued and updated by the department that outlines detailed requirements and procedures related to instructional material;
- Open educational resources (OER) - teaching, learning, and research material that is freely available for use, adaptation, and sharing;
- Open source curriculum (OSC) - a planned sequence of instructional and educational material that covers a full academic course of study, and that may be freely accessed, distributed, and modified; and
- Out-of-adoption - previously adopted instructional material that is no longer considered current by the department and that is not included on the multiple list.
- Reviewer of record - a reviewer who is a qualified teacher with a level 2 or 3-A license with experience in the content area being reviewed.

As is the case under current rule, digital materials submitted for adoption must comply with “interoperability standards,” which the proposed rule defines as industry standards that measure the seamless sharing of data, content, and services among systems and applications.

Instructional Material Eligible for Adoption. Section 8 of the rule defines material that is eligible for review and adoption. As is current practice, publishers will still be required to submit print and digital materials to PED and certify whether submitted materials are core or supplementary instructional materials. However, the proposed rule will also authorize submissions from schools and school districts. In addition to formally published materials, schools, school districts, and content publishers may also submit open source content for review. According to the Brookings

Institute, state adopted material lists can relieve teachers, schools, and school districts from the burden of identifying materials aligned with content standards. The addition of open source materials to the list of materials eligible for adoption may further reduce this burden for teachers using open source materials which are currently reviewed by individual school districts or the teachers themselves. However, the summer review institute is fully funded by fees from publishers who apply to have their materials reviewed; conflicts may arise if publishers feel they are paying for a review institute that will not result in sales to school districts.

Instructional Material Adoption Process

PED adopts instructional materials for certain subjects each year. The proposed rule states materials are to be adopted in the year their current adoption cycle ends. Other adoptions can occur at the request of a publisher with the approval of the chief of the Instructional Material Bureau.

Adoption Cycle. The proposed rule maintains the current six-year adoption cycle for instructional material. PED will still be required to hold an annual summer review institute where teams of teachers will review instructional material for alignment with state content standards. The cost of the review institute will continue to be entirely funded by fees from publishers who wish to have their materials reviewed for adoption. PED will retain the authority to alter the adoption cycle, and may determine if there is an

educational need to hold off-cycle reviews; the proposed rule requires publishers to incur the costs of submitting core instructional material during off-cycle reviews.

Requests for Applications (RfA). As in current regulation, PED will still be required to annually publish an RfA which must contain timelines for the use of adopted materials, the length of the contract between the publisher and PED, processing fee guidelines, and other terms PED deems necessary. Under the proposed rule, the RfA would need to include two additional items: the subject areas for which the instructional material is being considered; and the instructional material review criteria. Publishers will still be required to certify whether each submission is core or supplementary instructional material, but PED will have the authority to modify these classifications. PED will retain the ability to accept any applications that satisfy the criteria in the RfA and are determined to be “advantageous to the state” considering value, cost, and reliability of the publisher. Under the proposed rule, PED would also be able to make determinations based on “all other factors” the department deems relevant.

Review Teams. PED will still be required to assemble review teams annually for the review of instructional material. The proposed rule establishes teachers eligible for reviewing items as “reviewers of record,” or teachers with level 2 or 3A licensure with expertise in the subject area under review. Reviewers of record will still be trained by PED and be required to use review forms developed by the department.

Reviewers of record must be compensated as required by Section 22-15-8 NMSA 1978, though the rule does not specify how the compensation will be calculated.

Review Forms. As in current practice, PED instructional material review forms will be divided into two sections. Section one will focus on whether the instructional material is aligned with state content standards and benchmarks, and includes “scorable performance indicators consistent with current generally accepted education taxonomies.” Section two of the review forms addresses several criteria of effective materials consolidating the 12 current criteria into nine in the proposed rule:

- Relies on culturally responsive pedagogy, consistent with current, generally accepted education taxonomies;
- Provides opportunities for both formative and summative assessment;
- Contains no factual errors;
- Is not religiously affiliated;
- Does not ascribe to politically partisan ideologies;
- Demonstrates no cultural or gender bias;
- Utilizes images, references, and points of view that reflect a multicultural society;
- Integrates opportunities for digital learning into the text; and
- Any other criteria deemed relevant by the department.

The criteria in the proposed rule contain minor wording changes. For example, where the current rules state materials should not contain “partisanship,” the proposed rule specifically discourages “politically partisan ideologies.”

The final catch-all criterion is not present in current rule and gives PED flexibility to edit review forms from year to year.

The proposed rule eliminates three criteria from review forms. Instructional materials would no longer be scored on whether they: support differentiated or personalized learning through style, pace, or needs; can be adapted or configured by teachers to meet evolving needs; or support accountability through integration of assessments and content. The first two eliminated criteria ask reviewers to evaluate how materials will be used on a case-by-case basis and are not directly related to the

material itself, which may have resulted in subjective scores. The third eliminated criterion is redundant with the second of the criteria contained in the proposed rule.

Classification of Adopted Instructional Material. The proposed rule is unclear about the criteria the PED secretary will use to make a final determination for the adoption of instructional materials. Under the current rule, teacher scores from the summer review institute have bearing on whether the material is recommended for adoption; only items that receive more than 90 percent of points on the review form may be considered for adoption as core instructional material, but items scoring below 90 percent of possible points are recommended as supplementary. Paragraph P of Section 6.75.2.8 of the current rule states the Instructional Material Bureau shall submit to the PED secretary items recommended for adoption as core and supplementary, and the secretary is required to “authorize adoption of instructional materials recommended as a result of the summer review institute no later than 90 days after the conclusion of the summer review institute.”

Under the proposed rule, it is unclear to which criteria Instructional Material Bureau staff will refer when making recommendations to the PED secretary regarding core and supplementary instructional material. Unlike the current rule which includes specific point thresholds for whether material can be considered as core instructional material, the proposed rule requires recommendations to be based on whether they exceed, meet, or do not meet “all identified criteria,” but because there is no specific citation within the rule, it is unclear whether these criteria include the reviews from the summer review institute. Section 10 of the proposed 6.75.2 NMAC states PED staff may classify core instructional material as:

When recommending materials for adoption by the secretary, PED would be authorized under the proposed rule to give materials “recognition for special features.”

- “Recommended” if it meets or exceeds expectations on all “identified criteria,” including research-based effectiveness;
- “Recommended with reservations” if it approaches expectations on “identified criteria,” including research-based effectiveness; or
- “Not recommended” if it is reviewed but does not meet the “identified criteria.”

While the secretary is required under the proposed rule to consider scores from the summer review institute and recommendations from PED staff, the only criteria core and supplementary instructional material are required to meet are the requirements outlined in the original RfA, outlined in Subsection B of the proposed 6.75.2.9 NMAC.

The proposed rule further states supplementary instructional material will be certified as such by publishers and may not be reviewed, but does not list any circumstances under which material reviewed in the summer review institute could be adopted as supplementary. Under the current rule, PED adopts all materials reviewed, though core instructional material that does not receive 90 percent of the possible points during the review is adopted as supplementary. Under the proposed rule, the secretary still has the authority adopt material as supplementary, but it is unclear whether PED will make any recommendation to the secretary regarding the adoption of supplementary material. Instead, the proposed rule states core materials that do not meet the “identified criteria” are “not recommended.” LESC staff will work with PED to clarify which criteria will be used to make recommendations for the adoption of core and supplementary instructional material.

Contracts with Publishers

Publishers will continue to contract with PED to provide instructional materials for a six-year period. However, where the current rule defines circumstances that will allow an alternative contract, the proposed rule gives PED broad authority to determine if an amended contract is necessary. Similar to current practice, the proposed rule states PED will be permitted to enter into a contract when the publisher agrees to:

- Facilitate the distribution of adopted instructional material to local education agencies (LEAs);
- Keep sufficient stock of the materials at a designated depository;
- Ensure timely delivery on a schedule determined by PED;
- Pay late fees for delayed deliveries as determined by the department;
- Bill the appropriate LEA for instructional materials ordered;
- Ensure that all instructional material adopted conforms to the Federal Consumer Product Safety Improvement Act;
- Submit adopted instructional material to the national instructional material accessibility center repository at the American printing house for the blind; and
- Maintain copies of all billings generated for three years after the expiration of the contract or after any court proceedings involving the country.

Generally, the contract requirements are the same in the proposed rule as in the current rule, but with limited specificity. For example, current regulations require publishers to pay a late fee of \$100 per title for each day delivery is delayed, where the proposed rule would give PED the authority to assess late fees on a case-by-case basis.

Open source material or and material developed by LEAs may be made exempt from the contract requirements, but will still need to meet the RfA and review requirements to be considered for adoption as core instructional material.

Eliminated Regulations on Publishers. The current rule contains certain regulations intended to protect equal access to instructional materials for all schools; the proposed rule eliminates many of these regulations. One eliminated regulation allows publishers to designate instructional material on the adopted list as “free or reduced price material.” Under the current rule, publishers must make such material available at no cost or a reduced cost to schools that adopt it, and could not offer different prices to other schools wishing to adopt that material. If the publisher failed to do provide equal cost for the same material, the publisher would be suspended from participation in the instructional material process. Another regulation eliminated in the proposed rule states “the publisher shall reduce the price of instructional material in New Mexico when prices are reduced elsewhere in the United States.”

Neither the proposed nor the current rule requires prices for instructional material to be the same for all schools in the state, but because PED maintains statewide contracts with publishers, the price is equalized for all schools and school districts. The proposed rule does not change this practice.

Substitution. Although the practice is allowed under current rule, the proposed rule more clearly defines the process by which publishers can request substitutions of adopted instructional material. Publishers must submit a formal written request to the department including a justification for the proposed substitution. PED will be required to make a final determination of whether the substitution is in the best interest of students, whether the terms of the original contract with the publisher are still being met, and whether the proposed substitution is substantially the same material as the previous edition.

The proposed rule states funds will be distributed in accordance with the Instructional Material Law. Section 22-15-9 NMSA 1978 requires PED to use a school district's membership on the first reporting date of the prior year to make an initial allocation on or before April 1, followed by a final allocation on January 15 using the membership on the first reporting day of current year.

The proposed rule will still require LEAs receiving instructional material allocations to file a report with the department, to include the total allocation received, the average per-pupil cost of instructional material, year-end cash balances of the instructional material fund, and any other documentation specified by PED. School boards and charter school governing bodies are still responsible for keeping an itemized list of instructional materials in a format prescribed by PED.

Selection, Purchase, Distribution, and Disposal of Instructional Materials

Both the current and proposed rules require local boards of education and charter school governing bodies to develop and implement a process for the selection of instructional material. Under the proposed rule, LEAs will be expected to comply with PED-issued manual containing timelines and requirements specific to instructional material distributions and purchases. The proposed rule also clarifies how LEAs may spend their instructional material allocations as provided by law in Section 22-15-9 NMSA 1978.

Purchasing Requirements of School Districts, State Educational Institutions, and Charter Schools pursuant to Proposed 6.75.2 NMAC and Section 22-15-9 NMSA 1978

School Districts and State Educational Institutions	Charter Schools
<ul style="list-style-type: none"> • May spend up to 100 percent of their allocation on adopted material; • Shall not spend more than 50 percent of their allocation on non-adopted material, 25 percent of which may be spent on other classroom materials; and • May submit a waiver to exceed the 50 percent limit noted above. 	<ul style="list-style-type: none"> • May spend up to 100 percent of their allocation on adopted and non-adopted material; and • May spend 25 percent of their allocation on other classroom materials.

Source: PED

Distribution of Instructional Material. Instructional material will continue to flow through state depositories, on a schedule found in the instructional material manual to be published by PED. The proposed rule does not significantly alter requirements on depositories, but adds a new regulation noting PED may disapprove depositories that fail to meet all those requirements.

Disposal of Instructional Material. As under current rule, school districts and charter schools do not need PED's approval to dispose of out-of-adoption materials. However, the proposed rule will require written approval from PED for the disposal of materials still in-adoption. LEAs must obtain approval prior to selling in-adoption materials, although they may set the price for in-adoption, so long as it does not exceed the original cost of the materials. All funds from the sale of in-adoption materials must be remitted to PED for deposit in the LEA's instructional material.

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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, hereinafter the department.
 [6.75.2.1 NMAC - Rp, 6.75.2.1 NMAC, 12/15/2016]

6.75.2.2 SCOPE: ~~This rule governs the procedures for the adoption, purchase, and delivery of instructional material.~~ This rule governs all public schools and eligible state education institutions pursuant to Section 22-15-7 NMSA 1978. If any part of application of this rule is held invalid, the remainder of the rule or its application in other situations shall not be affected.
 [6.75.2.2 NMAC - Rp, 6.75.2.2 NMAC, 12/15/2016]

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, 12/15/2016]

6.75.2.4 DURATION: Permanent.
 [6.75.2.4 NMAC - Rp, 6.75.2.4 NMAC, 12/15/2016]

6.75.2.5 EFFECTIVE DATE: ~~December 15, 2016~~ October 30, 2018, unless a later date is cited at the end of a section.
 [6.75.2.5 NMAC - Rp, 6.75.2.5 NMAC, 12/15/2016]

6.75.2.6 OBJECTIVE: ~~This rule is designed to facilitate the adoption, requisition and distribution of instructional material.~~ This rule governs the procedures for the adoption, purchase, and delivery of instructional material.
 [6.75.2.6 NMAC - Rp, 6.75.2.6 NMAC, 12/15/2016]

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 supplementary materials for use in the schools.

~~_____~~ **B. "Adoption cycle"** means the six year adoption cycle unless the department determines a need to change the 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. "Bundles/packages"** means supplementary instructional material packaged together for retail, identified and labeled as: "teacher support", "student support" or "classroom support".

~~_____~~ **F. "Bureau"** means the instructional material bureau of the department

~~_____~~ **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 supplementary 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 or internet based programs as the primary delivery method of instruction. The digital instructor

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provides direct instruction to the student. The classroom instructor primarily provides support rather than instruction. A textbook may or may not be required.

_____ **O.** — **“Digital learning content”** means technology application information incorporated within the content of the 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.

_____ **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.

_____ **S.** — **“Electronic record”** means a computer-generated item such as an e-mail 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 as agents for the benefit of students in the state-funded free use of instructional material program, including all public schools and districts, charter schools, and state-supported schools.

_____ **U.** — **“E-mail”** 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”** means the publisher’s form for the submission of core/basal and supplementary titles.

_____ **W.** — **“Governing authority”** means the governing authority of a state agency or a public two-year post-secondary institution accredited by the department.

_____ **X.** — **“In-state distribution point”**. See “New Mexico instructional materials in-state distribution point”.

_____ **Y.** — **“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 (not to include computers, laptops, handheld computers, or other devices).

_____ **Z.** — **“Instructional material bureau”** means that unit established within the department pursuant to the Instructional Material Law.

_____ **AA.** — **“Instructional material summer review institute”** means the annual review of all submitted core/basal instructional materials required by Section 22-15-8 NMSA 1978. The institute is conducted by the bureau.

_____ **BB.** — **“Kit”** means supplementary instructional material packaged together for one retail price.

_____ **CC.** — **“Local school board”** means the governing body of a school district or, as appropriate, the governing authority of a charter school.

_____ **DD.** — **“Multiple list”** means a written list of those instructional materials approved by the department.

_____ **EE.** — **“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 instructional materials.

_____ **FF.** — **“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 instructional materials.

_____ **GG.** — **“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 core/basal instructional materials.

_____ **HH.** — **“Online course/program”** means computer-based instruction in which courses use the internet as the primary delivery method of information. A textbook may or may not be required.

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~~_____ **H.** “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 textbook may or may not be required.~~

~~_____ **JJ.** “Other adoptions” means an adoption of new material that is not conducted during the summer review institute. 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. Other adoptions may be for core/basal material, which is reviewed, or for supplementary material which is not reviewed. The department shall charge a processing fee to vendors of instructional materials not to exceed the retail value of the instructional material submitted for adoption.~~

~~_____ **KK.** “Other classroom material” means materials other than textbooks that are used to support direct instruction to students.~~

~~_____ **LL.** “Packages/bundles” means supplementary instructional material packaged together as a single unit of purchase, identified and labeled as “teacher support”, “student support” or “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 documents, papers, letters, books, maps, tapes, photographs, recordings and other materials, regardless of physical form or characteristics, that are used, created, received, maintained or held by or on behalf of any public body and relate to public business, whether or not the records are required by law to be created or maintained. (Public Records Act, Section 14-2-6 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.** “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.~~

~~_____ **SS.** “Regional review center” see “New Mexico regional review center”.~~

~~_____ **TT.** “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.~~

~~_____ **UU.** “Requisition” means a list of items 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.~~

~~_____ **VV.** “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 ninety percent alignment score, but that achieved or exceeded an eighty percent 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.~~

~~_____ (4) “Special review” means a review of new material that is not conducted during the summer review institute. 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. The department shall charge a processing fee to vendors of instructional materials not to exceed the retail value of the instructional material submitted for adoption.~~

~~_____ **WW.** “Review set” means the instructional material submitted for review at the summer institute for inclusion as core/basal. The review set generally consists of the student edition and the teacher edition. The review set may include the student workbook, if the student workbook is relied upon to meet any of the citations demonstrating alignment with the standards and other relevant criteria.~~

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

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

~~ZZ. “Summer review institute” see “instructional material summer review institute”.~~

~~AAA. “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, state supported schools and publishers to participate in the “free use of instructional material” program.~~

~~BBB. “Supplementary 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.~~

~~CCC. “Waiver” means a process by which a district may request authorization to use funds allocated for the purchase of instructional materials included on the state adopted multiple list for purchase of materials not included on the state adopted multiple list.~~

~~[6.75.2.7 NMAC Rp. 6.75.2.7 NMAC, 12/15/2016]~~

6.75.2.7 DEFINITIONS:

A. “Adoption” means authorization by the department of core and supplementary instructional material for use in public school districts, charter schools, and state educational institutions.

B. “Adoption cycle” means the period during which instructional material adopted by the department shall be considered current.

C. “Core instructional material” means the comprehensive print or digital educational material, including basal material, which constitutes the necessary instructional components of a full academic course of study in those subjects for which the department has adopted content standards and benchmarks.

D. “Core subject areas” means those subject areas for which the department has adopted content standards and benchmarks.

E. “Depository” means an entity approved by the department that represents publishers for the purpose of managing district or school instructional material orders. Responsibilities of the depository include:

(1) accounting;

(2) acquisition;

(3) storage;

(4) distribution; and

(5) disposition of adopted instructional material.

F. “Educational taxonomies” means a set of hierarchical models used to classify educational learning objectives into levels of complexity.

G. “In-adoption” means currently adopted instructional material that is approved by the department, and included on the multiple list.

H. “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.

I. “Instructional material manual” means written guidance issued and updated by the department that outlines detailed requirements and procedures related to instructional material.

J. “Interoperability standards” means the current industry standards that measure the seamless sharing of data, content, and services among systems and applications.

K. “Local education agency” or “LEA” means a local school district, charter school, or state educational institution.

L. “Multiple list” means a written list of those instructional materials approved by the department.

M. “Open educational resources” or “OER” means teaching, learning, and research material that is freely available for use, adaptation, and sharing.

N. “Open source curriculum” or “OSC” means a planned sequence of instructional and educational material that covers a full academic course of study, and that may be freely accessed, distributed, and modified.

O. “Other adoptions” means an adoption of new material that is not conducted during the summer review institute.

P. “Other classroom material” means materials other than textbooks that are used to support direct instruction to students.

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Q. “Out-of-adoption” means previously adopted instructional material that is no longer considered current by the department and that is not included on the multiple list.

R. “Processing fee” means the bid fees charged to vendors for each item of instructional material submitted for adoption, not to exceed the retail price.

S. “Request for applications” or “RfA” means the written notice issued by the department soliciting the submission of new instructional material in specified subject areas, and outlining the terms and conditions of the department’s review and adoption process.

T. “Research-based effectiveness” means the demonstrated effectiveness of instructional material in supporting students to meet or exceed grade-level goals according to New Mexico content standards, and as demonstrated by the best available evidence for curricula in the relevant grade and subject. For core instructional material, evidence shall include an independently conducted experimental or quasi-experimental research study or review by nationally-recognized, independent experts in curricula review. LEA-created core instructional materials may also demonstrate effectiveness using correlational evidence that students using the core instructional material meet or exceed grade-level proficiency as measured by the state assessment.

U. “Reviewer of record” means a reviewer who is a qualified teacher with a level 2 or 3-A license with experience in the content area being reviewed.

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

W. “Supplementary instructional material” means supporting instructional material used to reinforce, enrich, or enhance instruction driven by core instructional material. Pursuant to Section 22-15-8 NMSA 1978, the department may choose not to review supplementary materials. [6.75.2.7 NMAC - Rp, 6.75.2.7 NMAC, 10/30/2018]

6.75.2.8 REQUIREMENTS – RESPONSIBILITIES OF THE DEPARTMENT:

A. There shall be a summer review institute; however, the chief may allow other adoptions upon a finding, made by the chief, that an educational need exists.

B. Materials shall be adopted for a period of six years unless the department determines a need to alter the cycle due to instructional or financial reasons. 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 unless the cycle is altered by the department. The department shall notify the districts, charter schools, and state-supported schools of the cycle alteration no later than December 31 of the year prior to the summer review institute.

C. The department will issue the 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 chief, subject to review by 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 for the review of core/basal materials submitted for 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**

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~~(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 any generally accepted taxonomies as determined by the bureau.~~

~~L. Section II shall consist of citations showing that the material under review meets other relevant criteria, including:~~

~~(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 department and other highly qualified educational practitioners.~~

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

~~(1) Materials that achieve a final total score of ninety percent 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) Materials that score less than ninety percent alignment but greater than eighty percent 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) Materials that score less than ninety percent alignment with state content and performance standards and other relevant criteria will be recommended to the secretary for adoption as supplementary.~~

~~(5) Submitted supplementary titles and instructional materials that are not reviewed may also be considered for recommendation to the secretary for adoption as supplementary 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~~

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with instructional materials. This includes computers, laptops, handheld devices, 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 summer review institute, the bureau will submit to the secretary of education a list of materials recommended for adoption as core/basal and supplementary. The secretary will authorize adoption of instructional materials recommended as a result of the summer review institute no later than ninety days after the conclusion of the summer review institute.~~

~~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 (Section 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 40-day membership for the next school year;~~

~~(2) funds are efficiently disbursed by the fiscal grants management bureau of the administrative services division to districts, charter schools, and state supported schools;~~

~~(3) 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~~

~~(4) the state is receiving the lowest price offered for materials.~~

~~S. Pursuant to Subsections A and B of Section 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 of any entities receiving funds under the provisions of Instructional Material Law.~~

~~T. Pursuant to Subsection C of Section 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 instructional material to purchase non-adopted instructional 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, 12/15/2016]~~

6.75.2.8 INSTRUCTIONAL MATERIAL ELIGIBLE FOR ADOPTION:

A. The department shall review and adopt instructional material in core subject areas for use in public school districts, charter schools, and state educational institutions. Publishers that meet the criteria set forth in Subsection B of 6.75.2.9 NMAC may submit instructional material to the department for consideration through the process outlined in 6.75.2.9 NMAC. Publishers may submit print format, digital format, or both of instructional material for consideration and shall certify whether their instructional materials are one of the following:

(1) core instructional material; or

(2) supplementary instructional material.

B. OER and OSC instructional material may be considered for adoption by the department as either core or supplementary instructional material.

C. OER and OSC instructional material may be:

(1) submitted by the department for adoption consideration

(2) submitted by schools, districts, or publishers for adoption consideration.

D. LEAs may submit instructional material to the department for adoption consideration.

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E. Digital instructional material submitted for consideration shall comply with current interoperability standards, along with any other specifications deemed necessary by the department.

F. Publishers shall incur any costs associated with the provision of hardware, software, or special equipment necessary for the review of instructional material.

G. The department shall not consider instructional material that requires proprietary equipment provided by or through the publisher to view.

[6.75.2.8 NMAC - Rp, 6.75.2.8 NMAC, 10/30/2018]

~~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 April 15, unless justification is provided. Delivery schedules are to be as follows:~~

~~(1) For core/basal and supplementary instructional materials requisitions received by the New Mexico depository or in-state distribution point prior to April 15 of each year, delivery to schools shall be made by the later of the following dates: within 30 days prior to the beginning of classes, or by July 1.~~

~~(2) Core/basal and supplementary orders received after April 15 will be delivered by the later of the following dates: within 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 April 15, delivery to schools shall be made by the later of the following dates: within 30 days prior to the beginning of classes, or by July 1.~~

~~(4) Free instructional material requisitions received after April 15 will be delivered by the later of the following dates: within 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 non-adopted funds (maximum fifty percent 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 and in a format specified by the department, each local school board of a school district and each governing authority of a state institution acquiring instructional material pursuant to the Instructional Material Law (Sections 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 (Sections 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 shall keep an itemized list of instructional materials purchased in a format prescribed by the bureau.~~

~~G. Disposal of instructional materials.~~

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

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

~~(a) A district/school wishing to discard, donate or give away instructional material still listed on the NM multiple adoption list must obtain bureau 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 bureau approval. All funds received from the sale of the material must be remitted to the bureau for redeposit in the school's/district's instructional material account.~~

~~(3) Upon order of the chief, a school/district or state institution 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 school.~~

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~~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, 12/15/2016]~~

6.75.2.9 INSTRUCTIONAL MATERIAL ADOPTION PROCESS:

A. Adoption cycle. The department shall conduct an annual summer review institute during which reviewers of record shall review instructional material for alignment with state content standards and benchmarks and other criteria deemed relevant by the department. The department’s annual summer review institute shall serve as the primary opportunity for new instructional material to be reviewed and considered for adoption.

(1) Annual review and adoption of new instructional material shall cover those core subject areas with adoption periods expiring at the end of the year in which the review is being conducted.

(2) Instructional material shall be adopted by the department for a period of six years, unless the department determines a need to alter the adoption cycle.

(3) Off-cycle reviews and adoptions of new instructional material may occur at any time the department deems necessary, based on educational need.

(4) Publishers submitting core instructional material for off-cycle review shall incur the costs associated with review, as determined by the department.

(5) The department shall notify LEA’s of any cycle alterations no later than December 31 of the year prior to the summer review institute.

B. Request for applications.

(1) The department shall issue an RfA annually to solicit submissions of proposed new instructional material. The RfA shall include:

(a) the core subject area(s) for which new instructional material is being considered;
(b) timelines for adoption, requisition, and distribution of adopted instructional material;

(c) length of contracts between the department and approved publishers;

(d) criteria for demonstrating research-based effectiveness of instructional material;

(e) instructional material review criteria;

(f) processing fee guidelines; and

(g) other terms, conditions, and forms deemed necessary by the department.

(2) Publishers shall certify whether each submission is core or supplementary instructional material. The department shall determine whether or not the publisher has appropriately categorized each submission and may reclassify material if necessary.

(3) Publishers shall submit instructional material for consideration in the format and by the dates set forth by the department.

(4) The department may accept any applications that:

(a) satisfy all criteria outlined in the RfA;

(b) are determined to be advantageous to the state, considering the educational value of the instructional material submitted, cost to the state, and reliability of the publisher; and

(c) all other factors it deemed relevant by the department.

(5) The department may reject any applications that fail to satisfy all criteria outlined in the RfA.

C. Review teams.

(1) Each review team shall be composed of reviewers of record and facilitated by department-selected facilitators.

(2) The department shall ensure that reviewers of record are compensated in accordance with Sections 22-15-8 NMSA 1978.

(3) The department shall ensure that reviewers of record receive adequate training and utilize the review forms developed by the department.

D. Review forms. The review forms utilized by reviewers of record shall include the scoring rubric which shall consist of a minimum of two sections.

(1) Section one shall focus on whether or not proposed instructional material aligns with department adopted content standards and benchmarks and shall include scorable performance indicators, consistent with current, generally accepted education taxonomies.

(2) Section two shall focus on the extent to which the proposed instructional material under review:

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(a) relies on culturally responsive pedagogy, consistent with current, generally accepted education taxonomies;

(b) provides opportunities for both formative and summative assessment;

(c) contains no factual errors;

(d) is not religiously affiliated;

(e) does not ascribe to politically partisan ideologies;

(f) demonstrates no cultural or gender bias;

(g) utilizes images, references, and points of view that reflect a multicultural society;

(h) integrates opportunities for digital learning into the text; and

(i) any other criteria deemed relevant by the department.

E. The department may send instructional material through a secondary review process, at its discretion, to ensure scores are valid.

F. The department shall ensure that collaboration occurs with New Mexico pueblos, tribes and designated tribal organizations, pursuant to Section 11-18-3 NMSA 1978 and shall ensure instructional materials for American Indian students enrolled in public schools are culturally relevant pursuant to Section 22-23A-2 NMSA 1978.

G. At the time of review, publishers shall provide the department with any hardware, software, or special equipment necessary to review instructional material submitted.

H. Other adoptions.

(1) Other adoptions may be processed at the request of a publisher with the approval of the instructional material bureau chief, or for other reasons as determined by the instructional material bureau chief.

(2) Other adoptions may be for core instructional material, which is reviewed, or for supplementary material which may not be reviewed.

(3) Other adoptions shall require a processing fee to vendors of instructional materials not to exceed the retail value of the instructional material submitted for adoption.

I. Substitution.

(1) Publishers may submit formal substitution requests to the department for in adoption instructional material.

(2) Publishers wishing to request substitutions shall submit to the department a written request along with justification for the proposed substitution. The department shall allow substitutions of instructional material when it determines:

(a) the proposed substitution is in the best interest of students;

(b) all terms and conditions of the original contract with the publisher are still being met; and

(c) the proposed substitution is limited to minor revisions and contains substantially the same material as the previous edition.

[6.75.2.9 NMAC - Rp, 6.75.2.9 NMAC, 10/30/2018]

6.75.2.10 REQUIREMENTS - RESPONSIBILITIES OF PUBLISHERS:

A. Publisher's agreements shall be returned to the department fully executed by the publisher no later than 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 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; or

(3) other adoptions, special reviews, or a change to the adoption cycle.

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

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~~\$100 per day per title for each day delivery is delayed, 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 all materials submitted for adoption and sale in the state of New Mexico conform to the requirements of the Consumer Product Safety Improvement Act;~~

~~(6) 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 (Sections 22-15-26 thru 29 NMSA 1978 "Braille Access Act", and 6.75.4 NMAC);~~

~~(7) 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 an equal or lower 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 computers, laptops, handheld devices, 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.~~

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~~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 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 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 10 working days of receipt of the price agreement from the department.~~

~~[6.75.2.10 NMAC - Rp, 6.75.2.11 NMAC, 12/15/2016]~~

6.75.2.10 CLASSIFICATION AND ADOPTION OF INSTRUCTIONAL MATERIAL:

~~A. The department shall make adoption recommendations to the secretary using the following guidelines:~~

~~(1) Core instructional material:~~

~~(a) that meets or exceeds expectations on all identified criteria, including research-based effectiveness, may be designated as recommended and may also receive recognition for special features identified by the department; or~~

~~(b) that approaches expectations on identified criteria, including research-based effectiveness, may be designated as recommended with reservations; or~~

~~(c) that is reviewed but does not meet the criteria shall not be recommended for adoption.~~

~~(2) Supplementary instructional material certified by publishers and accepted by the department as such may not be reviewed.~~

~~B. The secretary shall consider recommendations from the reviewers of record and shall make final decisions regarding the adoption of core and supplementary instructional material.~~

~~(1) Instructional material selected for adoption shall:~~

~~(a) meet all requirements outlined in the RfA; and~~

~~(b) meet all requirements outlined in Subsection B of~~

~~6.75.2.9 NMAC.~~

~~(2) The secretary shall authorize adoption of instructional material no later than 90 calendar days after the conclusion of the instructional material review.~~

~~[6.75.2.10 NMAC - Rp, 6.75.2.10 NMAC, 10/30/2018]~~

6.75.2.11 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/basal and supplementary instructional materials requisitions received by the New Mexico depository or in-state distribution point prior to April 15 of each year, delivery to schools shall be made by the later of the following dates: within 30 days prior to the beginning of classes, or by July 1.~~

~~(2) Core/basal and supplementary orders received after April 15 will be delivered by the later of the following dates: within 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 April 15, delivery to schools shall be made by the later of the following dates: within 30 days prior to the beginning of classes, or by July 1.~~

~~(4) Free instructional material requisitions received after April 15 will be delivered by the later of the following dates: within 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:~~

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~~(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.~~

~~[6.75.2.11 NMAC - Rp, 6.75.2.12 NMAC, 12/15/2016]~~

6.75.2.11 CONTRACTS WITH PUBLISHERS:

A. In accordance with law, the department may enter into contracts with publishers that will provide for the purchase of adopted instructional material by LEAs.

B. Contracts with publishers may last for a period of six years, unless the department determines that an amended contract is necessary.

C. The department shall only enter into a contract when the publisher agrees to:

(1) facilitate the distribution of adopted instructional material to LEAs;

(2) keep sufficient stock of adopted instructional material at the designated depository;

(3) ensure timely delivery of instructional material according to the schedule determined by the department;

(4) pay late fees for any delays in delivery according to a schedule determined by the department;

(5) bill the appropriate LEA for instructional material ordered;

(6) ensure that all instructional material adopted and sold under the contract conforms to the requirements of the Federal Consumer Product Safety Improvement Act;

(7) submit adopted instructional material to the national instructional material accessibility center repository at the American printing house for the blind at no additional cost and in accordance with applicable law; and

(8) maintain copies of all billings generated under the contract for three years after the termination or expiration of the contract or after any court proceedings involving the contract.

D. The department may grant exemption from the contracting process or may approve an alternative contract for:

(1) OER, OSC, or any instructional material for which there is not a publisher, vendor, or agent to fulfill the requirements outlined in the RfA; or

(2) instructional material developed by a school or LEA.

~~[6.75.2.11 NMAC - Rp, 6.75.2.10 NMAC, 10/30/2018]~~

6.75.2.12 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/basal and supplementary instructional materials requisitions received by the New Mexico depository or in-state distribution point prior to April 15 of each year, delivery to schools shall be made by the later of the following dates: within 30 days prior to the beginning of classes, or by July 1.

(2) Core/basal and supplementary orders received after April 15 will be delivered by the later of the following dates: within 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 April 15, delivery to schools shall be made by the later of the following dates: within 30 days prior to the beginning of classes, or by July 1.

(4) Free instructional material requisitions received after April 15 will be delivered by the later of the following dates: within 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:

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~~_____ (1) _____ financial viability adequate to ensure performance of all obligations described in Paragraphs (1) through (4) of Subsection A of 6.75.2.12 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 6.75.2.12 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.~~

~~[6.75.2.12 NMAC - Rp, 6.75.2.13 NMAC, 12/15/2016]~~

6.75.2.12 DISTRIBUTION OF FUNDS:

A. The department shall oversee the administration of the instructional material law pursuant to Section 22-15-1 NMSA 1978 and shall issue guidance through the instructional material manual posted on the department's website to outline effective, efficient, and equitable processes related to the free use of instructional material for all entities subject to 6.75.2 NMAC.

B. The department may conduct periodic audits of instructional material accounts and textbook inventories of any entities receiving instructional material funds.

~~[6.75.2.12 NMAC - Rp, 6.75.2.11 NMAC, 10/30/2018]~~

6.75.2.13 UNOBLIGATED AND UNEXPENDED INSTRUCTIONAL MATERIAL BALANCES:

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.

~~[6.75.2.13 NMAC - Rp, 6.75.2.1 NMAC, 12/15/2016]~~

6.75.2.13 SELECTION AND PURCHASE OF INSTRUCTIONAL MATERIAL:

A. Each local school board or governing body shall develop and implement a process for the selection of instructional material.

B. Each LEA purchasing instructional material through an authorized depository shall follow the timelines and requirements outlined in the instructional material manual.

C. Each public school district and state educational institution:

(1) may spend up to one hundred percent of its total instructional material allocations to purchase department-adopted instructional material posted on the department's website;

(2) shall not spend more than fifty percent of its total instructional material allocations to purchase instructional material not adopted by the department;

(3) may spend up to twenty-five percent of the funds referenced in Paragraph (2) of Subsection C of 6.75.2.13 NMAC on other classroom materials.

D. Charter schools may spend up to one hundred percent of their total instructional material allocations to purchase adopted or non-adopted instructional material, and up to twenty-five percent of this amount may be spent on other classroom materials.

E. The department may consider waiver requests from school districts and state-supported schools to use instructional material funds for purchases that fall outside the spending limits enumerated in Paragraph (2) of Subsection C of 6.75.2.13 NMAC. Waiver requests shall be submitted on forms provided by the department.

F. Instructional material funds allocated to an LEA during any fiscal year that are not obligated or expended prior to the close of that fiscal year shall be available to that public school district, charter school, or state-supported school for expenditure in subsequent fiscal years, consistent with the requirements of Subsections C and F of Section 22-15-9 NMSA 1978.

G. Annually, at a time and in a format specified by the department, each LEA receiving instructional material allocations shall file a report with the department. The report shall include:

(1) the total instructional material allocation received;

(2) the average cost per pupil based on the instructional material allocation;

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- (3) year-end cash balances of the instructional material fund; and
(4) other documentation specified by the department.
H. Each local school board or governing body shall keep an itemized list of instructional material purchased in a format prescribed by the department.
I. Guidance pertaining to obtaining funds, ordering instructional materials, receiving funds, returning funds for sold or lost materials, and completing the annual report shall be included in the instructional material manual.
 [6.75.2.13 NMAC - Rp, 6.75.2.13 NMAC, 10/30/2018]

6.75.2.14 DISTRIBUTION OF INSTRUCTIONAL MATERIALS BY DEPOSITORIES: Depositories shall distribute instructional material to LEAs according to a schedule outlined by the department in the instructional material manual.

- A. Depositories shall:
(1) demonstrate that the financial viability is adequate to ensure performance of all obligations outlined in a contract between the publisher and the depository for the purpose of distributing instructional material to LEAs;
(2) maintain warehouse facilities, with location(s), equipment, and staffing adequate to ensure performance of all obligations under the contract between the publisher and the depository for the purpose of distributing instructional material to LEAs;
(3) demonstrate capacity to generate and electronically submit reports to the department;
(4) provide training to all LEAs on the process for ordering instructional materials;
(5) implement procedures and systems with the capacity to run department-approved online ordering systems, and inventory and reporting systems to receive and process instructional material orders; and
(6) maintain sufficient inventory of instructional material to fill requisitions in accordance with the timelines set forth by the department.
B. The department may disapprove depositories that fail to meet all requirements necessary for the successful and timely distribution of instructional material.
 [6.75.2.14 NMAC - N, 10/30/2018]

6.75.2.15 DISPOSAL OF INSTRUCTIONAL MATERIAL:

- A. Out-of-adoption instructional material deemed unusable or obsolete by LEAs may be disposed of at the LEA's discretion and shall not require department approval.
B. An LEA wishing to discard in-adoption instructional material listed on the current multiple list shall obtain prior department approval. Request for approval shall:
(1) be in writing;
(2) include justification for the request; and
(3) include a list of the materials to which the request pertains.
C. An LEA wishing to sell in-adoption instructional material listed on the current multiple list shall obtain prior approval to do so from the department. The selling price may be determined by the LEA; however, it shall not exceed the original cost of the instructional material. All funds received from the sale of such instructional material shall be remitted to the department for redeposit into the LEA's instructional material account.
 [6.75.2.14 NMAC - N, 10/30/2018]

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 6/4/1975.

SDE 77-2, Regulation Relating to the State Department of Education Instructional Materials Division, filed 2/7/1977.

SBE 79-12, Relating to the State Department of Education Instructional Material Division, Procedures for the Adoption, Purchase and Delivery of Instructional Material, filed 9/21/1979.

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 8/31/1983.

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 10/19/1993.

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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.

6.75.2 NMAC, Relating to the Public Education Department Instructional Material Bureau, filed 9/28/2010, Repealed effective 12/15/2016.

6.75.2 NMAC, Relating to the Public Education Department Instructional Material Bureau, filed 12/15/2016, Repealed effective 10/30/2018.

Other History:

6.75.2 NMAC, Relating to the Public Education Department Instructional Material Bureau, filed 12/15/2016, was repealed and replaced by 6.75.2 NMAC, Relating to the Public Education Department Instructional Material Bureau, effective 10/30/2018.

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