

## LAST MINUTE MEMORANDUM

**DATE:** March 5, 2004

**TO:** MEMBERS, STATE BOARD OF EDUCATION

**FROM:** Sue Stickel, Deputy Superintendent  
Curriculum and Instruction Branch

**RE:** Item No. 22

**SUBJECT:** Instructional Materials: Approve Commencement of the Rulemaking Process for Amendments to Title 5, Sections 9515 and 9517, and Addition of Section 9517.1 for Follow-up Adoptions

As stated in the "Attachment" section of Item No. 22 in your March 2004 State Board of Education Meeting Agenda, attached are the Notice of Proposed Rulemaking and Fiscal Impact Statement for the proposed Follow-up Adoptions regulations.

[Attachment 1](#): Notice of Proposed Rulemaking (4 Pages).

[Attachment 2](#): Economic and Fiscal Impact Statement (2 Pages).

**CALIFORNIA STATE BOARD OF EDUCATION**

1430 N Street; Room 5111  
Sacramento, CA 95814



**TITLE 5. EDUCATION**

**CALIFORNIA STATE BOARD OF EDUCATION**

**NOTICE OF PROPOSED RULEMAKING**

**Instruction Materials Follow-Up Adoptions**

[Notice published March 26, 2004]

The State Board of Education (State Board) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

**PUBLIC HEARING**

Program staff will hold a public hearing beginning at **10:00 a.m. on Monday, May 10, 2004** at 1430 N Street, Room 1101, Sacramento, California. The room is wheelchair accessible. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The State Board requests that any person desiring to present statements or arguments orally notify the Regulations Adoption Coordinator of such intent. The State Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. No oral statements will be accepted subsequent to this public hearing.

**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Regulations Adoption Coordinator. The written comment period ends at **5:00 p.m. on Monday, May 10, 2004**. The State Board will consider only written comments received by the Regulations Adoption Coordinator by that time (in addition to those comments received at the public hearing). Written comments for the State Board's consideration should be directed to:

Debra Strain, Regulations Adoption Coordinator  
California Department of Education  
LEGAL DIVISION  
1430 N Street, Room 5319  
Sacramento, California 95814  
E-mail: [dstrain@cde.ca.gov](mailto:dstrain@cde.ca.gov)  
Telephone: (916) 319-0860  
FAX: (916) 319-0155

**AUTHORITY AND REFERENCE**

Authority cited: Sections 33031 and 60206, Education Code.

Reference: Sections 32060-32066 and Chapter 2 of Part 33 (commencing with Section 60200), Education Code.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The Board proposes to amend Sections 9515 and 9517 of and add Section 9517.1 to the *California Code of Regulations* (CCR). These sections concern the adoption of instructional materials for California public schools in grades K-8 and the implementation of follow-up adoptions.

The purpose of the regulations is to establish the process for follow-up adoptions and the fee to be paid by publishers and manufacturers for participation in follow-up adoptions of instructional materials for grades K-8.

*Education Code* Section 60200(b)(1) calls for adoptions to occur “not less than two times every six years” for language arts, mathematics, science, and social science and “not less than two times every eight years” in other subjects. The first instructional materials adoption following the State Board of Education adoption of new evaluation criteria is termed a “primary adoption” and creates a new adoption list. A “follow-up adoption” is any additional adoption conducted during the six- or eight-year time frame and is conducted using the same evaluation criteria as the primary adoption.

*Education Code* Section 60227 gives the Department the authority to collect a fee from publishers and manufacturers of instructional materials to participate in follow-up adoptions. The fee collected is to be used to offset the cost of conducting the adoption. Small publishers and small manufacturers may request a reduction in the fee from the Board.

*CCR, Title 5, Section 9515* is proposed to be amended to define “primary adoption.”

*CCR, Title 5, Section 9517* is proposed to be amended to reflect changes in practice and terminology. It also clarifies that follow-up adoptions are based on the same Invitation to Submit and evaluation criteria as the primary adoption.

*CCR, Title 5, Section 9517.1* is proposed to be added to clarify the procedures for the follow-up adoption, including the distribution of a notice to publishers and manufacturers and the establishment of a fee for the review.

## **DISCLOSURES REGARDING THE PROPOSED ACTION**

Mandate on local agencies and school districts: None

Cost or savings to any state agency: Minor. Amount not covered by fee is absorbable within existing resources.

Costs to any local agency or school district that must be reimbursed in accordance with Government Code Section 17561: None

Other non-discretionary cost or savings imposed on local educational agencies: None

Cost or savings in federal funding to the state: None

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None

Cost impacts on a representative private person or businesses: None. The imposition of fees assessed on publishers and manufacturers is attributable to statute; therefore the regulations do not impose a fiscal impact on the private sector.

Adoption of this regulation will not:

- (1) create or eliminate jobs within California;
- (2) create new businesses or eliminate existing businesses within California; or
- (3) affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None

Effect on small businesses: None

### **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code Section 11346.5(a)(13), the State Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the State Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The State Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

### **CONTACT PERSONS**

Inquiries concerning the substance of the proposed regulations should be directed to:

Patrice Roseboom, Associate Governmental Program Analyst  
California Department of Education  
Curriculum Frameworks and Instructional Resources  
1430 N Street, 3<sup>rd</sup> Floor  
Sacramento, CA 95814  
E-mail: [proseboo@cde.ca.gov](mailto:proseboo@cde.ca.gov)  
Telephone: (916) 319-0881  
FAX: (916) 319-0172

Requests for a copy of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other technical information upon which the rulemaking is based or questions on the proposed administrative action may be directed to the Regulations Adoption Coordinator, or to the backup contact person, Najia Rosales, at (916) 319-0860.

### **AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

The Regulations Adoption Coordinator will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at her office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the Initial Statement of Reasons. A copy may be obtained by contacting the Regulations Adoption Coordinator at the above address.

### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

Following the public hearing and considering all timely and relevant comments received, the State Board may adopt the proposed regulations substantially as described in this notice. If the State Board makes modifications that are sufficiently related to the originally proposed text, the modified text (with changes clearly indicated) will be available to the public for at least 15 days before the State Board adopts the regulation as revised. Requests for copies of any modified regulations should be sent to the attention of the Regulations Adoption Coordinator at the address indicated above. The State Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, a copy of the Final Statement of Reasons may be obtained by contacting the Regulations Adoption Coordinator at the above address.

### **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, the text of the regulations in underline and strikeout, and the Final Statement of Reasons, can be accessed through the California Department of Education's Website at <http://www.cde.ca.gov/regulations>.

### **REASONABLE ACCOMMODATION FOR ANY INDIVIDUAL WITH A DISABILITY**

Pursuant to the *Rehabilitation Act of 1973*, the *Americans with Disabilities Act of 1990*, and the *Unruh Civil Rights Act*, any individual with a disability who requires reasonable accommodation to attend or participate in a public hearing on proposed regulations, may request assistance by contacting Patrice Roseboom, Curriculum Frameworks and Instructional Resources, 1430 N Street, Sacramento, CA, 95814; telephone, (916) 319-0881; fax, (916) 319-0172. It is recommended that assistance be requested at least two weeks prior to the hearing.

**Economic and Fiscal Impact Analysis  
Proposed Amendment of Title 5, CCR, Regulations  
Relating to the Instructional Materials – Procedures**

The Fiscal Policy Office has reviewed for economic and fiscal impact the proposed regulations adding sections 9517.1 and amending Sections 9515 and 9517, to Article 2.1, of Subchapter 1, of Chapter 9, of Division 1, of Title 5, California Code of Regulations, relating to Instructional Materials – Procedures.

**What would the proposed regulations do?**

The proposed amendments provide clarification regarding primary and follow-up adoptions and minor revisions that reflect current practice. The new section provides for the implementation of Education Code Section 60227. Specifically, the regulations clarify the steps and requirements for conducting a follow-up adoption, including the fee to be assessed on the publishers and manufacturers that participate in a follow-up adoption.

**Do the proposed regulations impose a local cost mandate?**

*No.* The proposed amendments to the regulations would not create a new program or higher level of service in an existing program.

**Do the proposed regulations impose costs upon the state?**

*Yes.* Though the proposed amendments to the regulations are not attributable to statute or initiative, the regulations do impose a fiscal impact on the state; however, the state using their existing budget and resources, along with the fees provided in Education Code Sections 60227(e), (f), and (h) and the added amendments, shall absorb the additional minor cost.

EC §60227(e) The department, prior to incurring substantial costs for the followup adoption, shall require that a publisher or manufacturer who wishes to participate in the followup adoption first declare the intent to submit one or more specific programs for the followup adoption and specify the specific grade levels to be covered by each program. After a publisher or manufacturer has declared the intent to submit one or more programs and the grade levels to be covered by each program, a fee shall be assessed by the department. The fee shall be payable by the publisher or manufacturer even if the publisher subsequently chooses to withdraw a program or reduce the number of grade levels covered. A submission by a publisher or manufacturer may not be reviewed for purposes of adoption, either in a followup adoption or in any other primary or followup adoption conducted thereafter, until the fee assessed has been paid in full.

(f) (1) It is the intent of the Legislature that the fee not be so substantial that it prevents small publishers or manufacturers from participating in a followup adoption.

(2) Upon the request of a small publisher or manufacturer, the State Board of Education may reduce the fee for participation in the followup adoption.

(3) For purposes of this section, "small publisher" and "small manufacturer" mean an independently owned or operated publisher or manufacturer who is not dominant in its field of operation, and who, together with its affiliates, has 100 or fewer employees, and has average annual gross receipts of ten million dollars (\$10,000,000) or less over the previous three years.

(h) Notwithstanding Section 13340 of the Government Code, revenue derived from fees charged pursuant to subdivision (c) is hereby continuously appropriated and available to the department from year to year until expended. Revenue derived from fees charged pursuant to subdivision (c) may be used to pay costs associated with any followup adoption and any costs associated with the review of instructional materials.

**Do the proposed regulations impact local business?**

*No.* The proposed amendments to the regulations should have no impact on local business.

**Do the proposed regulations impact private sector businesses and/or employees or small businesses?**

*No.* The imposition of fees assessed on publishers and manufacturers is attributable to statute (see above); therefore the regulations do not impose a fiscal impact on the private sector.

This analysis reflects the attached Economic and Fiscal Impact Statement.

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Donald E. Killmer, Consultant  
Fiscal and Administrative Services Division

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Date

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General Counsel, Director  
Fiscal and Administrative Services Division

\_\_\_\_\_  
Date

Note: The purpose of the Department's review of regulations for Economic or Fiscal Impact is in part to, determine prior to the Department's submission of the Notice of Proposed Rulemaking to the Office of Administrative Law (OAL), if the regulations impose a mandate upon the locals and if so if there is a cost or savings. Additionally, the review may make a determination of what the cost or savings "may" be and if there is precedence in the determination of the potential costs through previous claims reimbursable through the mandate process authorized in state statute and set forth by the CSM.

If the Department determines that a potential mandate and an additional cost exists, the Department is required to forward that information (via the STD. 399 and this analysis) to the Department of Finance (DOF) for their review. The review by DOF does not need to be completed prior to the Department's submission of the Notice of Proposed Rulemaking to OAL but must be completed prior to the closing of the "Rulemaking Record" and prior to OAL forwarding of the "Record" to the Secretary of State. The DOF review contains an approval or disapproval; typically regulations that impose or could potentially impose an additional cost upon the state are disapproved and the department is required to amend the regulation to eliminate the cost or pull the "Record".