

INFORMATION MEMORANDUM

DATE: January 29, 2004

TO: MEMBERS, STATE BOARD OF EDUCATION

FROM: Sue Stickel, Deputy Superintendent
Curriculum & Instruction Branch

SUBJECT: Instructional Materials Follow-up Adoptions – Implementation of Senate Bill 1058 (Torlakson) with Proposed Regulations

Background

The State Board of Education is charged under Article IX, Section 7.5 of the *California Constitution* with the responsibility for adopting instructional materials for grades one through eight. Kindergarten was added to the adoption by *Education Code* Section 60200. In 1927, the Legislature established an advisory body, the Curriculum Development and Supplemental Materials Commission (commonly referred to as the Curriculum Commission) to assist the Board with this function.

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. A follow-up adoption adds instructional materials to the existing adoption list for the remainder of the term of adoption.

Due to significant budget cuts to the Department, the follow-up adoptions were suspended in 2002 and 2003. Because of this suspension, no follow-up adoptions have yet been conducted in history-social science, science, or visual and performing arts. Additional follow-up adoptions were scheduled for 2004 in mathematics and reading/language arts.

Senate Bill 1058 (Torlakson), Chapter 806 of the Statutes of 2003, 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. The bill includes provisions for a reduction of the fee for small publishers and manufacturers.

This bill provides greater flexibility to conduct follow-up adoptions and add materials to existing adoption lists. To the extent possible, reviews will be conducted by educators who have previously served on an Instructional Materials Advisory Panel (IMAP) during the primary adoption and who have been trained in the application of the evaluation criteria and the review process.

In March you will receive proposed regulations to implement Senate Bill 1058. The regulations clarify that follow-up adoptions use the same *Invitation to Submit* document and evaluation criteria as that used in the primary adoption, define “primary adoptions,” and include the proposed fee.

The actual cost of a follow-up adoption ranges from \$120,000-\$150,000 depending on the number of programs submitted for review. This includes estimates of the cost for travel and meeting expenses for reviewers and commissioners to attend training and deliberations. This figure does not include estimated annual staff costs of \$476,000 to conduct follow-up adoptions. We have averaged the cost of a follow-up adoption and are recommending a fee of \$5,000.00 per grade level submitted for review.

The proposed fee represents a best estimate of the cost to conduct a review. Savings will result because many of the training and deliberations activities of a primary adoption will not be necessary. This will reduce travel and meeting costs. However, reviewers will be paid a stipend for participating in the follow-up review and there will continue to be minimal travel and meeting costs. Even with modification of the process, we anticipate no reduction in the need for staff and operations costs required to conduct the follow-up adoptions.

If action is taken at the March 2004 Board meeting, the regulations could go into effect by October 2004 and follow-up adoptions could begin shortly thereafter.

The process and estimated time line for approval of these regulations includes the following steps:

- March 11, 2004 – Board action to approve proposed regulations for purposes of beginning the rule making process
- March 29, 2004 – Ten day review completed by Office of Administrative Law
- April 2, 2004 – Notice for publication in the Notice Register (published on Fridays)
- June 7, 2004 – 45-day public comment period ends
- June 2004 – Public hearing conducted, response to comments prepared
- July 8, 2004 – Board action to adopt regulations or approve changes based on comments received
- July 30, 2004 – Additional 15-day public comment period required if substantive changes are made to the proposed regulations with resubmission to the Board in September.
- Once approved by the Board, the Office of Administrative Law (OAL) has 30 working days to review and approve/disapprove the regulations.
- Once approved by OAL, the Secretary of State’s Office (SOS) has 30 working days to put the regulations into effect.

Attachments:

1. [Proposed Title 5 Regulations to Implement Follow-up Adoptions](#) (6 Pages)
2. [Initial Statement of Reasons](#) (2 Pages)
3. [Informative Digest](#) (1 Page)
4. [Senate Bill 1058 \(Torlakson\)](#) (2 Pages)
5. [Schedule for Curriculum Framework Development and Adoption of K-8 Instructional Materials](#) (1 Page)

1 **DRAFT**

2 **CALIFORNIA CODE OF REGULATIONS**

3 **TITLE 5. EDUCATION**

4 **Division 1. State Department of Education**

5 **Chapter 9. Instructional Materials**

6 **Subchapter 1. Elementary Instructional Materials**

7 **Article 2.1. Adoption of Curriculum Frameworks and Instructional Materials –**

8 **Procedures**

9 *Amend Sections 9515 and 9517 to read:*

10 **§9515. Definitions.**

11 (a) “Board” means the State Board of Education.

12 (b) “Curriculum Commission” means the Curriculum Development and Supplemental
13 Materials Commission.

14 (c) “Department” means the California Department of Education.

15 (d) “Schedule of Significant Events” means the dates promulgated by the
16 Department in the “Invitation to Submit Basic Instructional Materials for Adoption in
17 California.”

18 (e) “Period of Adoption” means the period of time that the instructional materials
19 shall remain in adoption. This time period shall be specified in the “Schedule of
20 Significant Events.”

21 (f) “Primary Adoption” means the first instructional materials adoption following the
22 approval of new evaluation criteria by the Board.

23 NOTE: Authority cited: Sections 33031 and ~~60004~~60206, Education Code. Reference:
24 ~~Sections 33539, 60019, 60020 and 60200~~Chapter 2 of Part 33 (commencing with
25 Section 60200), Education Code.

26
27 **§9517. Invitation to Submit Basic Instructional Materials for Adoption.**

28 The Board shall ensure that a written notice of an upcoming primary and follow-up
29 adoption of instructional materials is posted on the Department Website and mailed to
30 every person or firm who has submitted a request for notice to the Department and to

1 any person or firm whom the Department, in its judgment, deems to be interested in the
2 notice. This notice shall be known as the Invitation to Submit Basic Instructional
3 Materials for Adoption in California. The failure to mail an invitation to any person as
4 provided in this section shall not invalidate any action taken by the Board, Curriculum
5 Commission, or Department.

6 With respect to the submission of instructional materials for adoption by the Board,
7 publishers and manufacturers shall comply with the following requirements:

8 (a) Instructional materials may be submitted in any language, but essential teachers'
9 materials shall be included in English.

10 (b) Publishers and manufacturers shall indicate, either in the teacher's edition or in
11 the student's edition or both, which literary works contained in the student's edition or
12 teacher's edition have been abridged, adapted, or excerpted. Publishers and
13 manufacturers shall provide detailed descriptions of these changes upon request by the
14 Department or local educational agencies.

15 (c) Publishers and manufacturers shall list, either in the teacher's edition or in the
16 student's edition or both, only authors, reviewers, consultants, advisors, field-test
17 teachers, and others who actually contributed to the development of the materials and
18 shall indicate, for those who are listed, in what capacity they served. Publishers and
19 manufacturers shall provide additional related information upon request by the
20 Department or local educational agencies.

21 (d) Education Code sections 32060-32066 prohibit the purchase of toxic art or craft
22 supplies for grades kindergarten through six and allow their purchase for grades seven
23 through twelve only if they display a warning label. Publishers and manufacturers shall
24 ensure that all art or craft materials included or suggested in their instructional materials
25 comply with the requirements of these Education Code sections.

26 (e) On or before 5:00 P.M. of the date specified in the Schedule of Significant
27 Events, which is included in the Invitation to Submit Basic Instructional Materials for
28 Adoption, publishers and manufacturers shall provide to the Department a list of all
29 instructional materials that will be submitted for adoption. Receipt of submission
30 information after this deadline shall result in disqualification of the instructional materials

1 from further consideration in the current adoption unless publishers or manufacturers
2 can show extenuating and compelling circumstances beyond their control.

3 (f) On or before 5:00 P.M. of the date specified in the Schedule of Significant Events,
4 publishers and manufacturers shall deliver samples of instructional materials to the
5 evaluators and locations specified by the Department. Failure to meet the deadline for
6 delivery of samples shall result in disqualification of the instructional materials from
7 further consideration in the current adoption unless the publisher or manufacturer can
8 show extenuating and compelling circumstances involving natural disasters or
9 independent carriers beyond the control of the publishers and manufacturers. In
10 addition:

11 (1) Publishers and manufacturers shall deliver all samples in final form (i.e., a form
12 that will be offered for purchase over the period of adoption) unless written permission
13 to submit a sample in other than final form is obtained from the Department before any
14 samples are shipped.

15 (2) Publishers and manufacturers shall deliver all samples free of shipping, handling,
16 sampling, or other charges.

17 (3) After the final date for delivery of samples, changes or modifications to
18 instructional materials during the adoption review period by the publisher or
19 manufacturer shall result in disqualification of the materials from the adoption unless
20 those changes or modifications are made pursuant to the Board's social content review
21 or educational content review.

22 (4) Publishers and manufacturers shall retrieve samples of nonadopted instructional
23 materials from display centers during the first thirty (30) days following the date of Board
24 adoption. The deadline for retrieval shall be specified in the Schedule of Significant
25 Events in the invitation. All materials shall be retrieved without any cost to the display
26 center or its staff. Display center directors may dispose of or donate for educational use
27 any samples of instructional materials not retrieved within the 30-day period. Board and
28 Curriculum Commission members, instructional materials reviewers, and Department
29 staff may offer their samples back to publishers and manufacturers, retain their

1 samples, or donate them, provided that the materials are used to benefit public
2 education in California.

3 (g) On or before 5:00 P.M. of the date specified in the Schedule of Significant
4 Events, publishers and manufacturers shall submit to the Department price quotations
5 (bids) for the sale of completed materials, including all transportation costs.

6 (h) Publishers and manufacturers are discouraged from withdrawing from a state
7 adoption after the submission of their materials. No publisher or manufacturer may
8 withdraw their submitted instructional materials from a state adoption within seven
9 working days prior to the beginning of the ~~Instructional Resources Evaluation~~ Materials
10 Advisory Panel educational content deliberations, which date(s) shall be specified in the
11 Schedule of Significant Events. Publishers and manufacturers withdrawing prior to this
12 date shall be so noted in the Curriculum Commission's report of adoption
13 recommendations.

14 (i) Other than during the times specified in the Schedule of Significant Events,
15 publishers and manufacturers shall not contact ~~Instructional Resources Evaluation~~
16 Materials Advisory Panel members during their tenure to discuss anything related to the
17 state evaluation or state adoption of materials. Contact initiated by publishers or
18 manufacturers regarding the evaluation or adoption of materials may lead to
19 disqualification of the publisher's or manufacturer's materials from further consideration
20 in the current adoption, legal action, or both. ~~Instructional Resources Evaluation~~
21 Materials Advisory Panel members shall not discuss materials under adoption
22 consideration with publishers or manufacturers or their spokespeople or
23 representatives.

24 (j) Publishers and manufacturers shall not publicize in printed marketing materials
25 any part of the ~~Instructional Resources Evaluation~~ Materials Advisory Panel Report.

26 (k) Follow-up adoptions shall be based on the Invitation to Submit Basic Instructional
27 Materials and evaluation criteria issued for the primary adoption. A new Schedule of
28 Significant Events shall be approved prior to implementing a follow-up adoption.

1 NOTE: Authority cited: Sections 33031 and ~~60004~~60206, Education Code. Reference:
2 Sections 32060-32066, ~~60071 and 60200-60222~~and Chapter 2 of Part 33 (commencing
3 with Section 60200), Education Code.

4

5 *Add Section 9517.1 to read:*

6 **§9517.1 Follow-up adoptions: notice to publishers and manufacturers, intent to**
7 **submit, fee, list of adopted materials.**

8 Follow-up adoptions shall be conducted according to the following requirements:

9 (a) The Board shall ensure that a written notice of an upcoming follow-up adoption in
10 a given subject is posted on the Department Website and mailed to all publishers or
11 manufacturers known to produce instructional materials in that subject. The notice shall
12 include:

13 (1) A “Schedule of Significant Events.”

14 (2) Specifications for “Intent to Submit.”

15 (b) Each publisher or manufacturer shall provide an “Intent to Submit” that specifies
16 the following:

17 (1) Number of programs that the publisher or manufacturer will submit.

18 (2) Number of grade levels covered by each program.

19 (c) Based on the specifications in subdivision (b) as reported in the “Intent to
20 Submit,” the Department shall assess a fee of \$5,000 per grade level submitted for
21 review.

22 (d) A “small publisher” or “small manufacturer,” as defined in Education Code
23 Section 60227(f)(3), may request a reduction of the fee by submitting documentation
24 that includes, but is not limited to, the following:

25 (1) A statement of earnings for the most recent three fiscal years.

26 (2) Number of full-time employees excluding contracted employees.

27 (3) A statement verifying that the small publisher or small manufacturer is not
28 dominant in its field for the subject matter being submitted for follow-up adoption.

1 (e) Instructional materials approved by the Board in a follow-up adoption shall be
2 added to the existing adoption list for that subject and remain on the list until the
3 established expiration date for that list.

4 NOTE: Authority cited: Section 33031 and 60206, Education Code. Reference: Chapter
5 2 of Part 33 (commencing with Section 60200), Education Code.

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INITIAL STATEMENT OF REASONS

SECTIONS 9515, 9517 and 9517.1

SPECIFIC PURPOSE OF THE AMENDED REGULATIONS

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 the publishers and manufacturers to participate in a follow-up adoption.

NECESSITY/RATIONALE

The existing regulations in the *California Code of Regulations* sections 9515 and 9517 were last amended in 1994. Since that time there have been changes in practice that were not reflected in the existing regulations. *Education Code* Section 60227, recently enacted into law, specifically provides for payment of fees by publishers and manufacturers to participate in follow-up adoptions. The revisions proposed include changes to reflect current practice, definition of primary adoptions, clarification of the process to be used and the fee to be assessed for the follow-up adoptions.

Section 9515. Definitions

The amendments include the definition of “primary adoption.”

Section 9517. Invitation to Submit Basic Instructional Materials for Adoption

The amendments reflect changes in practice and terminology including that notices of upcoming adoptions are posted on the Department Web site and the review panels are now called Instructional Materials Advisory Panels (IMAP).

The amendments clarify that the follow-up adoptions are based on the same Invitation to Submit and evaluation criteria as the primary adoption.

Section 9517.1. Follow-up adoptions

The regulations specify the distribution of a notice of an upcoming follow-up adoption by the Department and the requirements for publishers and manufacturers to participate in the follow-up adoption.

The regulations establish a fee for publisher and manufacturer participation in the follow-up adoption and requirements to qualify for a reduction in fee for a “small publisher” or “small manufacturer.”

The regulations clarify that materials are added to an existing adoption list through the follow-up adoption process and do not create a new adoption list or a new expiration date.

Note: Authority cited: Sections 33031 and 60206, *Education Code*. Reference: Chapter 2 of Part 33 (commencing with Section 60200), *Education Code*.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The State Board did not rely on any other technical, theoretical, or empirical studies, reports, or documents in proposing the adoption of this regulation.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

There are no other reasonable alternatives to the creation of rules of general application. *Education Code* Section 60206 empowers the State Board of Education to adopt appropriate regulations concerning the adoption of instructional materials.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The statute requires payment of a fee by a publisher or manufacturer for participation in the follow-up adoption. However, it also provides for a reduction of the fee for small publishers and manufacturers. This reduction of the fee lessens the impact on small business.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The proposed regulations reflect the requirements of the statute, *Education Code* Section 60227, and would not have a significant adverse impact on any business.

INFORMATIVE DIGEST

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 fees from publishers and manufacturers of instructional materials to participate in follow-up adoptions. The fees collected are to be used to offset the cost of conducting the adoption. Small publishers and small manufacturers may request a reduction in fees from the Board.

Education Code Section 9515 is amended to define “primary adoption.”

Education Code Section 9517 is 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.

Education Code Section 9517.1 clarifies 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.

BILL NUMBER: SB 1058 CHAPTERED
BILL TEXT

CHAPTER 806
FILED WITH SECRETARY OF STATE OCTOBER 11, 2003
INTRODUCED BY Senator Torlakson

FEBRUARY 27, 2003

An act to add and repeal Section 60227 to the Education Code, relating to children, and making an appropriation therefor.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 60227 is added to the Education Code, to read:

60227. (a) For purposes of this section, a followup adoption is any adoption other than the primary adoption that occurs within a six- or eight-year cycle established pursuant to subdivision (b) of Section 60200.

(b) Before conducting a followup adoption in a given subject, the department shall provide notice, pursuant to subdivision (c), to all publishers or manufacturers known to produce basic instructional materials in that subject, post an appropriate notice on the department's Internet site, and take other reasonable measures to ensure that appropriate notice is widely circulated to potentially interested publishers and manufacturers.

(c) The notice shall specify that each publisher or manufacturer choosing to participate in the followup adoption shall be assessed a fee based upon the number of programs the publisher or manufacturer indicates will be submitted for review and the number of grade levels proposed to be covered by each program.

(d) The fee shall offset the cost of conducting the followup adoption process and shall reflect the department's best estimate of the cost. The department shall take reasonable steps to limit costs of the followup adoption and to keep the fee modest, recognizing that some of the work necessary for the primary adoption need not be duplicated.

(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.

(g) Notwithstanding subdivision (b) of Section 60200, if the department determines that there is little or no interest in participating in a followup adoption by publishers and manufacturers, it shall recommend to the State Board of Education that the followup adoption not be conducted, and the State Board of Education may choose not to conduct the followup adoption.

(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.

(i) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 2. Notwithstanding any other provision of law, funds appropriated pursuant to Provision 17 of Item 6110-161-0890 of the Budget Act of 2003 (Ch. 157, Stats. 2001) shall not be used by the Controller for recoupment of prior year audit findings.

Schedule for Curriculum Framework Development and Adoption of K-8 Instructional Materials															
Calendar Year		99	00	01	02	03	04	05	06	07	08	09	10	11	12
Have Content Standards and SBE-adopted Instructional Resources	History-Social Science	A		F		a* c		A			F a			A	
	Science	c	A		F	a*	c					F a			
	Mathematics	c (A)		A			a F c	A		A			F a	A	
	Reading/Language Arts/ELD	c (A)			A		a	F c					a	F	
No standards but have SBE-adopted Instructional Resources	Visual & Performing Arts					a* F c			A	A		a		F	
	Foreign Language			F c		A			a			F c			A
	Health				F c		A			a			F		
No standards or SBE-adopted Instructional Resources	Physical Education						F								F

(A) = AB 2519 Additional Adoptions Process*

A = Primary adoption

a = Follow-up adoption, prior to enactment of SB 1058 (Chapter 806, Statutes of 2003). Follow-up adoption scheduled will be revised once implementing regulations for SB 1058 are operative.

F = Framework

f = Framework update

c = Evaluation criteria

SBE = State Board of Education

ELD = English Language Development

* The AB 2519 Adoptions were appended to existing timelines; the AB 2519 Mathematics list expired in 2003, while the AB 2519 Reading/Language Arts expires in 2005.