

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

ofab-nsd-mar24item01

# California State Board of EducationMarch 2024 AgendaItem #09

## Subject

School Nutrition Programs: Approve Commencement of a 45-Day Public Comment Period for Proposed Amendments to *California Code of Regulations*, Title 5, Sections 4610, 15510 15551, 15556, 15562, 15564, 15565, 15575, 15576, 15577 and 15578, the Addition of Section 15560, and the Repeal of Sections 15530, 15531, 15532, 15533, 15534, 15535, and 15563.

## Type of Action

Action, Information, Consent

## Summary of the Issue(s)

The California Department of Education (CDE) is submitting proposed amended regulations regarding the School Nutrition Programs to align *California Code of Regulations*, Title 5 (5 *CCR*), articles 2, 3, 4, and 6 with current *California Education Code* sections 49430, 49431, 49431.2, 49431.5, and 49550, add Section 15560, and to repeal Article 3, Nutrition Education and Training Program, which is no longer federally funded.

## Recommendation

The CDE recommends that the State Board of Education (SBE) take the following actions:

* Approve the Notice of Proposed Rulemaking (Notice).
* Approve the Initial Statement of Reasons (ISOR).
* Approve the proposed amended regulations.
* Direct the CDE to commence the rulemaking process.
* Authorize the CDE to take any necessary action to respond to any direction or concern expressed by the Office of Administrative Law during its review of the Notice, ISOR, and proposed regulations.

## Brief History of Key Issues

In 1976, the SBE adopted articles 2, 3 and 4, which are found in the 5 *CCR*, Division 1, Chapter 15, Subchapter 1. Article 2 included Section 15510, provided definitions for mandatory meals for needy pupils. Article 3 sections 15530, 15531, 15532, 15533, 15534 and 15535 specified the scope, eligibility, procedures and criteria for filing and approving applications, the procedure for funding, and the procedure for project management of Nutrition Education Program grants. Article 4 sections 15551, 15556, 15562, 15563, 15564 and 15565 contained definitions, payment of reimbursement claims, kind of meals eligible for reimbursement, meal requirements for needy students, claim reimbursement procedures and notification of changes in reimbursement rates for school lunches and breakfasts. In 2008, the SBE adopted Article 6, which included sections 15575, 15576, 15577 and 15578 which provided definitions for foods and beverages, and food and beverages restrictions.

Articles 2, 3 and 4 of 5 *CCR* have not been updated since their adoption in 1976. Article 6 of 5 *CCR* has not been updated since its adoption in 2008. Therefore, upon review of these regulations in 5 *CCR*, the CDE determined that amendments were necessary to bring these regulations into alignment with the related *Code of Federal Regulations* and *California Education Code (EC)* sections and to be consistent with current practices for the school nutrition programs administered by the CDE. The CDE also determined a need for a definition of fluid milk substitutes, as the National School Lunch and School Breakfast Programs allow for the provision and reimbursement of fluid milk substitutes served to students who require this type of beverage due to a disability or medical need. Subsequently, the CDE is recommending that the SBE approve these proposed amendments to the appropriate sections in 5 *CCR*.

The CDE also determined that Article 3 should be repealed. These 6 CCR sections are related to the Nutrition Education and Training (NET) program, which was established under the Child Nutrition Act of 1966 (Child Nutrition Act), Public Law 89-642 and has been an obsolete and unfunded program since 1996. The Personal Responsibility and Work Opportunity Act categorized NET as a discretionary spending program.

Since mandatory funds cannot be used to fund a discretionary program, NET has been without a funding source since Federal Fiscal Year (FFY) 1996-1997. Due to the lack of a federal funding source since FFY 1996-1997, and the fact that NET has not been funded since FFY 1997-1998, the relevant 5 CCR sections 15530, 15531, 15532, 15533, 15534 and 15535 are proposed to be deleted.

In 1991, the SBE adopted 5 *CCR* Section 4610. This section provides the purpose and scope of the Uniform Complaint Procedures for the child nutrition programs administered by the CDE. In 2020, the SBE adopted Article 7 of 5 CCR, which included sections 15580, 15581, 15582, 15583 and 15584. These sections define the scope of the Article 7, describe the process for filing a complaint, state the requirement to refer complaints to the U.S. Department of Agriculture (USDA), and define the local education agency investigation procedures and complainant appeal rights to the CDE as well as the CDE investigation and appeal procedures. Article 7 was adopted to implement *EC* section 33315(a)(2) regarding complaints relating to child nutrition programs established pursuant to *EC* sections 49490 through 49570. In 2020, the Early Childhood Development Act of 2020 (Sen. Bill No. 98, Ch.24, Stats 2020) authorized the transfer of childcare and development programs, including the Child and Adult Care Food Program, administered by the CDE to the California Department of Social Services effective July 1, 2021. Therefore, upon review of this regulation in 5 *CCR*, the SBE determined that amendments were necessary to bring section 4610 into alignment with current state law and *Education Code*.

In 2020, the CDE concluded the most recent rulemaking process for nutrition related regulations, with amendments to 5 CCR sections 15551, 15558, 15559, and 15560 effective on January 1, 2020. The CDE had intended to build on these efforts and submit this more comprehensive update at that time, however these efforts were delayed by the pandemic.

## Summary of Previous State Board of Education Discussion and Action

In September 2018, the SBE approved the commencement of the rulemaking process for the proposed amendments to the Nutrition Services Division’s regulations (<https://www.cde.ca.gov/be/ag/ag/yr18/agenda201809.asp>).

In March 2019, the SBE adopted the changes to the proposed regulations and directed the CDE to circulate the proposed changes for a 45-day comment (<https://www.cde.ca.gov/be/ag/ag/yr19/agenda201903.asp>).

In September 2019, the SBE adopted the changes to the proposed regulations and directed the CDE to submit the final rulemaking file to the Office of Administrative Law (<https://www.cde.ca.gov/be/ag/ag/yr19/agenda201909.asp>).

## Fiscal Analysis (as appropriate)

An Economic and Fiscal Impact Statement is provided as Attachment 5.

## Attachment(s)

* Attachment 1: Notice of Proposed Rulemaking (3 pages)
* Attachment 2: ISOR (12 pages)
* Attachment 3: Proposed Regulations (15 pages)
* Attachment 4: Documents Incorporated by Reference – *USDA's Food Buying Guide for Child Nutrition Programs* sections 1-4 (41 pages)
* Attachment 5: Economic and Fiscal Impact Statement (STD 399) (5 pages)