# INITIAL STATEMENT OF REASONS PHYSICAL FITNESS TEST

## INTRODUCTION

The proposed amended regulations, California Code of Regulations, Title 5 (5 *CCR*), sections 1040, 1043, 1043.4, 1043.6, 1043.8, and 1044, must be adopted in order for California to continue to fairly and properly administer the California Physical Fitness Test (PFT) while awaiting recommendations from a study pursuant to Senate Bill (SB) No. 820, Statutes 2020, chapter 10, section 68, due on or before November 1, 2022. The study will address significant concerns about the PFT relating to body image, gender identity, and students with disabilities, among other issues.

## PROBLEM AGENCY INTENDS TO ADDRESS

Education Code (EC) section 60800 requires that local educational agencies (LEAs) administer the PFT, designated by the California State Board of Education (SBE), during the month of February, March, April, or May to each student in grades five, seven, and nine. The law also requires that LEAs provide individual results to students for completed testing and report aggregate results in their annual School Accountability Report Card (SARC) and to the California Department of Education (CDE) at least every two years.

The FITNESSGRAM® was designated by the SBE in February 1996 as the PFT for California schools. The FITNESSGRAM® is a physical fitness assessment developed by the Cooper Institute and published by Human Kinetics and includes six fitness areas: Aerobic Compacity, Body Composition, Abdominal Strength and Endurance, Trunk Extensor and Strength and Flexibility, Upper Body Strength and Endurance, and Flexibility. The desired performance standard (developed by the Cooper Institute) for each fitness-area test is the Healthy Fitness Zone (HFZ).

Section 1040 of 5 CCRprovides the definitions for the physical performance test required by ECsection 60800. These proposed regulations address a concern related to body image. Specifically, the Body Composition subtest of FITNESSGRAM® commonly involves calculating Body Mass Index (BMI), which may negatively impact a student’s personal body perception. (A study published in 2021 in the *Journal of the American Medical Association Pediatrics* entitled “Effect of School-Based Body Mass Index Reporting in California Public Schools: A Randomized Clinical Trial” found that reporting BMI alone may decrease weight satisfaction.) In the interests of students’ mental and physical health, it is necessary to eliminate the Body Composition subtest and the related Body Composition HFZ now, even pending the results of the ongoing study pursuant to SB 820.

A second concern relates to nonbinary students. Based on Senate Bill No. 179, chapter 852 (Stats. 2017), relating to a nonbinary option for identification of persons, the CDE’s California Longitudinal Pupil Achievement Data System (CALPADS) addressed and then began to accommodate the option of a nonbinary gender student code for the 2019–20 academic year. On April 22, 2020, in response to the COVID-19 pandemic, Executive Order N-56-20, Section 13, waived the administration of the Physical Fitness Test (PFT) for the 2019–20 school year. Later that year, Senate Bill No. 820 (Stats. 2020) not only provided for the study and report about the PFT to be submitted to the Legislature in November 2022, it also suspended the PFT for the 2020–21 school year because of the ongoing COVID-19 pandemic (Sen. Bill No. 820, Stats. 2020, ch. 110, § 68(a)). On June 30, 2021, Senate Bill No. 98 (Stats. 2020) expired of its own terms, ending the authorization for distance learning and returning students to in-person instruction (EC, section 43511(b)). Thereafter, while continuing to participate in the ongoing Senate Bill No. 820 study about the PFT and to monitor the ongoing pandemic, the CDE pursued a legislative extension of the PFT suspension for the 2021–22 school year, pending submission of the Senate Bill No. 820 report on the PFT in November 2022. However, the CDE was ultimately unsuccessful in this request. Once it was clear that administration of the PFT for spring 2022 was expected to go forward (with a testing window beginning in February 2022), the CDE began developing a regulatory solution including both emergency regulations for the spring 2022 administration of the PFT and permanent regulations for the spring 2023 administration.

Currently, LEAs report students’ HFZ scores on each FITNESSGRAM® subtest to the student upon completion, and report aggregate results on the LEA’s School Accountability Report Card and to the CDE. However, the HFZs for the FITNESSGRAM® subtests correspond to a student’s sex at birth. There are no HFZs for a nonbinary student. While a nonbinary student may receive raw scores, the nonbinary student will not receive HFZ scores, and therefore will not be included in the LEA’s aggregate scores, and will not have the opportunity to satisfy the criteria for exemption from physical education in *EC* section 51241(b)(1), i.e., receiving a passing HFZ score on at least five of the six subtests. To ensure equity, it is necessary to add a regulatory definition of “Results” to indicate that for all students, LEAs will report **raw scores** only to the student upon completion of the test, and LEAs will report **participation scores**only on their SARC and to the CDE.

A third concern relates to students with physical disabilities. While ECsection 60800 states that students with physical disabilities shall participate in the PFT to the extent they are able, and the regulations confirm in 5 CCRsections 1041(e) and1047(a) that a student’s Individualized Education Program or Section 504 plan may exempt the student from a subtest or subtests, the PFT does not offer a student with a physical disability an alternative way of satisfying the HFZ for any subtest in which the student cannot participate. Thus, a student with a physical disability will not receive a HFZ score for any subtest from which the student is exempted, and therefore will not be included in the LEA’s aggregate scores for that subtest, and will not have an alternative way of satisfying the criteria for exemption from physical education in ECsection 51241(b)(1).

Lastly, while the lack of HFZ [Healthy Fitness Zone] performance standards will eliminate all students’ ability to satisfy the criteria for the exemption from physical education in ECsection 51241(b)(1), it must be clarified that there remains the possibility that a LEA with the consent of a pupil could grant an exemption from physical education under that permissive section in a specific set of circumstances. That is, a student could volunteer (or a LEA could collect from a willing student) the student’s height and weight and, together with the raw scores from the aerobic capacity subtest, do the necessary computation to determine whether the student met the HFZ standard for that subtest. Then, if the student passed that subtest, and it was determined that the student’s raw scores also met the HFZ standard for the remaining four subtests, a student could apply for and be granted the exemption in ECsection 51241(b) if the LEA chose to exercise that option. Although this regulatory action thus does not completely eliminate the potential equity issues that have been identified, it is not expected that many LEAs will offer or many students will seek exemptions under ECsection 51241(b)(1) following the spring 2022 administration of the PFT. Therefore, this regulatory action takes a substantial step towards reducing inequities and maintaining students’ mental and physical health.

Addressing the above concerns requires the amendments to amend or repeal some or all of 5 *CCR* sections 1043, 1043.4, 1043.6, 1043.8, and 1044. These sections are no longer relevant due to the amendments in Section 1040.

## BENEFITS ANTICIPATED FROM REGULATORY ACTION

The benefits anticipated from regulatory action are various and will positively impact the mental and physical health of students. Removing the Body Composition fitness area prevents the embarrassment students endure when they are provided with a score that is based on their weight. Removing gender options creates a test that is equitable for all students, including those who identify as non-binary. The removal of gender does not allow for the use of the HFZs as the HFZs are based upon the student’s age and gender. Lastly, removing HFZs allows the test to be more accessible for all students, regardless of mental or physical restrictions.

The specific purpose of each adoption or amendment, and the rationale for the determination that each adoption or amendment is reasonably necessary to carry out the purpose of which it is proposed, together with a description of the public problem, administrative requirement, or other condition or circumstance that each adoption or amendment is intended to address, is as follows:

General changes were made to the proposed regulations to include grammatical edits, and renumbering and/or relettering to reflect deletions or additions.

## SECTION 1040. Definitions

**Section 1040(e)** is amended to remove the Body Composition component and all HFZ performance standards from the “FITNESSGRAM®”so the PFT is more inclusive of today’s dynamic student population. Students will no longer have to answer questions concerning their biological sex at birth. Much has changed since the inception of the test and the PFT should reflect our evolving society. Removing the Body Composition fitness component of the test prevents student embarrassment and shame as they will no longer be required to publicly score their bodies based on height and weight.In addition, eliminating the HFZ performance standards creates a test that is more inclusive as HFZ scores are based on biological sex at birth.

**Section 1040(h)** is amended to provide the correct Education Code section.

**Proposed Section 1040(i)** Is added to include the definition of “Results” as student participation. This enables test coordinators to be less restrictive with disabled students. Students who are physically or mentally unable to perform a component of the test will not be penalized since the test will no longer be administered using HFZs as a passing or no passing standard. It also creates a test that is more inclusive as HFZ scores are based on biological sex at birth.

**Section 1040(k)** is amended to change "Standards and Assessment Division” to the current name, “Assessment Development Administrative Division.”

**SECTION 1040 NOTE** is amended to include EC section 60800 because the section specifically addresses the administration of the PFT.

## SECTION 1043. Methods of Administration

**Section 1043(a)** is amended to delete “The scoring thereof shall be in compliance with the instructions of the publisher or developer for scoring, and the scores shall be submitted to the governing board of the school district on the dates required by, and on forms prescribed or approved by, such governing board.” This deletion is necessary because the proposed addition of section 1040(i) eliminates the collection of performance scores and requires only reporting participation data in the School Accountability Report Card (SARC).

## SECTION 1043.4. District Physical Fitness Test Coordinator

**Renumbered Section 1043.4(b)(4), formerly Section 1043.4(b)(5),** is amended to read “Ensuring that all test participation data are received from school test sites within the school district in sufficient time to satisfy the reporting requirements according to the School Accountability Report Card.” This edit is necessary to clarify to LEAs the type of data that is to be reported according to the SARC.

**Section 1043.4(b)(4) and (6)** are deleted to be in alignment with Education Code 60800(b) that states the results of the PFT shall be reported to the department and not the contractor.

## SECTION 1043.6. Data for Analysis of Pupil Proficiency

**Section 1043.6** is deleted to be in alignment to the proposed change in section 1040(i) because performance scores, i.e., pupil proficiency, are no longer required to be reported. Therefore, data analysis cannot be performed.

## SECTION 1043.8. Reporting Test Scores

**Section 1043.8** is deleted to be in alignment to the proposed change in section 1040(i), as the California Department of Education is no longer collecting individual student results. The deletion of this section regulations will be aligned with the new definition of results as provided in section 1040(i).

## SECTION 1044. Recording Test Scores

**Section 1044** is deleted to be in alignment to the proposed change in section 1040(i), LEAs are no longer required to store students’ PFT results in their cumulative file.

## ECONOMIC IMPACT ASSESSMENT PER GOV. CODE SECTION 11346.3(b)

The proposed regulations will not result in any additional costs or savings to state agencies, or federal funding to the state. These proposed regulations will not result in any additional cost to any local agency or school district that is required to be reimbursed under GC section 17500 et seq. These regulations will not result in any additional non-discretionary costs or savings upon local agencies

### Purpose:

The current guidelines to administer the PFT do not always provide alternative options for students with disabilities nor do they provide an option for non-binary students. Requesting teachers to calculate a student’s body composition can cause embarrassment and shame for a student who is struggling with their weight. The intended purpose of the proposed amendments is to ensure the accessibility and equitability of the PFT, and to avoid inflicting harm to a student’s mental and physical health.

### Creation or Elimination of Jobs within the State of California:

The proposed regulations are designed to address students’ body image perception and mental and physical well-being and will not create or eliminate jobs within the state of California. These regulations only impact LEAs and how they administer the PFT and do not apply to or impact jobs within the state of California.

### Creation of New or Elimination of Existing Businesses within the State of California:

The proposed regulations are designed to address students’ body image perception or gender identity and will not create or eliminate any new businesses within the state of California. These regulations only impact LEAs and how they administer the PFT and do not apply to or impact businesses.

### Expansion of Businesses or Elimination of Businesses Currently Doing Business within the State of California:

The proposed regulations are designed to address students’ body image perception or gender identity and will not expand or eliminate businesses currently doing business within the state of California. These regulations only impact LEAs and how they administer the PFT and do not apply to or impact businesses.

### Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State’s Environment – Gov. Code Section 11346.1(b)(1):

These proposed regulations are designed to address students’ body image perception or gender identity and will positively affect the mental health of California students. However, they do not apply to or impact worker safety or the State’s environment.

### Reasonable Alternatives that Would Lessen the Impact on Small Businesses – Gov. Code Section 11346.2(b)(4)(B):

These proposed regulations only impact LEAs and how they administer the PFT and do not apply to or impact small businesses.

### Evidence Relied Upon to Support the Initial Determination that the Regulations Will Not Have a Significant Adverse Economic Impact on Business – Gov. Code Section 11346.2(b)(5):

The proposed regulations would not have a significant adverse economic impact on any business because the proposed regulations are designed to address students’ body image perception or gender identity. These proposed regulations only impact LEAs and how they administer the PFT and do not apply to or impact businesses.

## OTHER REQUIRED SHOWINGS

### Studies, Reports or Documents Relied Upon – Gov. Code. Section 11346.2(b)(3):

The SBE did not rely upon any technical, theoretical, or empirical studies, reports, or documents in proposing the adoption, amendment, or repeal of these regulations.

### Reasonable Alternatives Considered or Agency’s Reasons for Rejecting Those Alternatives – Gov. Code Section 11346.2(b)(4)(A):

No other alternatives were presented to or considered by the SBE.

### Analysis of Whether the Regulations are an Efficient and Effective Means of Implementing the Law in the Least Burdensome Manner – Gov. Code Section 11346.3(e):

The proposed regulations have been determined to be the most efficient and effective means of implementing the law in the least burdensome manner.

### Determination of Inconsistent/Incompatible Existing Regulations – Gov. Code Section 11346.5(a)(3)(D):

An evaluation of the proposed regulations has determined they are not inconsistent/incompatible with existing regulations, pursuant to Government Code section 11346.5(a)(3)(D).

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