

CALIFORNIA PRIVACY PROTECTION AGENCY

TITLE 11. LAW

DIVISION 6. CALIFORNIA PRIVACY PROTECTION AGENCY

CHAPTER 1. CALIFORNIA CONSUMER PRIVACY ACT REGULATIONS

NOTICE OF PROPOSED RULEMAKING

Notice published July 8, 2022.

The California Privacy Protection Agency (Agency) proposes to amend sections 7000, 7001, 7010, 7011, 7012, 7013, 7016, 7020, 7021, 7022, 7024, 7026, 7028, 7050, 7060, 7061, 7062, 7063, 7070, 7071, 7072, 7080, 7081, 7100, 7101, and 7102, adopt sections 7002, 7003, 7004, 7014, 7015, 7023, 7025, 7027, 7051, 7052, 7053, 7300, 7301, 7302, 7303, and 7304, and repeal section 7031 of title 11, division 6, chapter 1 of the California Code of Regulations concerning the California Consumer Privacy Act.

PUBLIC HEARING

The Agency will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, with respect to the proposed regulations, at the following dates and time at the physical location identified below and via Zoom video and telephone conference:

Dates: August 24 and 25, 2022
Time: 9:00 a.m. Pacific Time
Location: Elihu M. Harris State Building
1515 Clay Street
Oakland, CA 94612
Auditorium (1st floor)

To join this hearing by Zoom video conference:

<https://coppa-ca-gov.zoom.us/j/89421145939>

Or Telephone:
USA (216) 706-7005 US Toll
USA (866) 434-5269 US Toll-free
Conference code: 682962

Members of the public who wish to speak at the hearing are requested to RSVP in advance on the Agency's website at <https://coppa.ca.gov/regulations/>. Speakers will be called on in the order of the RSVP. The information provided will also help the Agency plan logistics and ensure that the hearing location can accommodate all participants who plan to attend in person.

WRITTEN COMMENT PERIOD

Any interested person or their authorized representative may submit written comments relevant to the proposed regulatory action. The written comment period closes on August 23, 2022, at 5:00 p.m. Only written comments received by that time will be considered.

You may submit comments by the following means:

Electronic:

Comments may be submitted electronically to regulations@coppa.ca.gov. Please include "COPA Public Comment" in the subject line.

Mail:

California Privacy Protection Agency
Attn: Brian Soublet
2101 Arena Blvd., Sacramento, CA 95834
(279) 895-6083

NOTE: Written and oral comments, attachments, and associated contact information (e.g., address, phone, email, etc.) become part of the public record and can be released to the public upon request.

AUTHORITY AND REFERENCE

Authority: Section 1798.185, Civil Code.

Reference: Sections 1798.100, 1798.105, 1798.106, 1798.106, 1798.110, 1798.115, 1798.120, 1798.121, 1798.125, 1798.130, 1798.135, 1798.140, 1798.145, 1798.150, 1798.155, 1798.175, 1798.185, 1798.199.35, 1798.199.40, 1798.199.45, 1798.199.50, 1798.55, 1798.199.65, Civil Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations:

The Legislature enacted the California Consumer Privacy Act of 2018 (CCPA) in late 2018 and the statute became operative January 1, 2020. (Stats. 2018, c. 55 (Assem. Bill No. 375), § 3, eff. Jan. 1, 2019, operative Jan. 1, 2020.) The CCPA conferred new privacy rights for consumers and imposed corresponding obligations on businesses subject to it. The rights conferred to consumers include the right to know what personal information businesses are collecting about consumers and how that information is being used, sold, and shared, the right to delete personal information held by businesses, the right to stop the sale of personal information by businesses, and the right to non-discrimination in service and price when exercising privacy rights. (Civ. Code, §§ 1798.100-1798.199.)¹

¹ All references are to the Civil Code unless otherwise indicated.

Subsequently, in November 2020, voters approved the Consumer Privacy Rights Act of 2020 (CPRA), amending and building on the CCPA. The CPRA amendments to the CCPA endow California residents with new rights of control over the personal information that covered businesses hold about them.² California consumers now have:

- The right to delete the personal information that a business collects from them (with specified exceptions for operational and legal necessity). (§ 1798.105.)
- The right to correct inaccurate personal information the business maintains about them. (§ 1798.106.)
- The right to know what personal information a business has collected about them, and how the business uses, sells, and shares that information. (§§ 1798.110, 1798.115, 1798.140, subds. (ad), (ah).)
- The right to opt out of the sale or sharing of their personal information. (§ 1798.120.)
- The right to limit a business's use and disclosure of sensitive personal information about them to certain business purposes. (§ 1798.121.)
- The right to non-discrimination, meaning that consumers who exercise their rights under the CCPA are entitled receive the same service and price as consumers who do not. (§ 1798.125.)

Businesses have corresponding duties. First, businesses are required to provide consumers with a number of disclosures about their business practices as it relates to their collection and use of consumers' personal information. Businesses must provide timely notice, at or before the point of collection, about the categories of personal information it will collect about the consumer, including categories of sensitive personal information; the purposes for which that information will be used; whether that information is sold or shared; and the length of time the business intends to retain that information. (§ 1798.100, subd. (a).) The business must not collect additional categories of personal information or use the personal information for purposes that are incompatible with the disclosed purpose for which the personal information was collected. (§ 1798.100, subd. (a)(1).) The businesses collection, use, retention, and sharing of the personal information must also be reasonably necessary and proportionate to achieve the purposes for which the personal information was collected or processes, or for another disclosed purpose that is compatible with the context in which the personal information was collected, and not further processed in a manner that is incompatible with those purposes. (§ 1798.100, subd. (c).)

A business must also post a privacy policy that provides consumers with a comprehensive description of a business's online and offline practices regarding the collection, use, sale,

² As amended by the CPRA, the CCPA now applies to businesses that collect personal information about California residents and that either (1) have gross revenues exceeding \$25 million a year; (2) buy, sell, or share the information of 100,000 or more consumers or households; or (3) derive 50 percent or more of their annual revenue from selling or sharing consumers' personal information. (§ 1798.140, subd. (d)(1)(A)-(C).)

sharing, and retention of personal information, as well as a description of a consumer's CCPA rights. (§ 1798.130, subd. (a)(5); see also Cal. Code Regs., tit. 11, § 7011.) If a business sells or shares personal information or uses or discloses sensitive personal information for certain purposes, the business must provide a "Do Not Sell or Share My Personal Information" link and/or "Limit the Use of My Sensitive Personal Information" link on its internet homepage, or an alternative opt-out link that allows consumers to exercise both their right to opt-out of the sale/sharing of their personal information and their right to limit the use of their sensitive personal information. (§ 1798.130, subd. (a).)

Businesses are required to make available to consumers two or more methods for submitting CCPA requests. (§ 1798.130, subd. (a)(1).) In obtaining consent from consumers, businesses are prohibited from using dark patterns, which is defined to mean a user interface designed or manipulated with the substantial effect of subverting or impairing user autonomy, decisionmaking, or choice. (§ 1798.140, subds. (h), (l).) Businesses must respond to verifiable consumer requests within 45 to 90 days. (§ 1798.130, subd. (a)(2); see also Cal. Code Regs., tit. 11, §§ 7060-7062 (discussing verification of requests).) If a business is unable to comply completely with a request, it is still obliged to comply with the request as much as possible. For instance, if a business denies a consumer's request to know "in whole or in part, because of a conflict with federal or state law, or an exception to the CCPA," the business must explain the basis for its denial and disclose information that is not subject to the exception. (Cal. Code Regs., tit. 11, § 7024, subd. (e).) Similarly, if a business denies a request to delete because of an exception to the CCPA, the business must still delete the consumer's personal information that is not subject to the exception and must not use the information retained for any other purpose than provided for by the exception. (*Id.*, § 7022, subd. (f).) Businesses must also ensure that individuals responsible for handling consumer requests about the businesses' privacy practices or the businesses' compliance with the CCPA are informed of all the requirements under the law and how to direct consumers to exercise their CCPA rights. (§ 1798.130, subd. (a)(6).)

There are a number of significant exceptions to the CCPA. First, the CCPA does not apply to government entities or nonprofit organizations, and excludes information that is lawfully made available to the general public, such as government records, widely distributed media, and information made available by a consumer if the consumer has not restricted the information to a specific audience. (§ 1798.140, subd. (d)(1), (v)(2).) The CCPA also contains a set of nuanced exceptions for certain categories of information—such as medical records, credit reporting, banking, and vehicle safety records—that apply when the information is governed by another privacy-protecting statute. (§ 1798.145, subds. (c), (d), (e), (g).)

The Attorney General submitted proposed regulations and supporting materials to the Office of Administrative Law for its consideration in June 2020, and the regulations became operative on August 14, 2020. (Cal. Code Regs., tit. 11, § 7000, et seq.) A set of amendments to the regulations went into effect March 15, 2021. (*Id.*, §§ 7013, 7026, 7063, 7072.)

On October 21, 2021, the Agency provided notice to the Attorney General that it was prepared to assume rulemaking responsibilities. Rulemaking authority transferred from the Attorney General to the Agency six months after that notice. (§§ 1798.185, subd. (d), 1798.199.40, subd. (b).) On May 5, 2022, the Office of Administrative Law (OAL), pursuant to Section 100 of OAL's regulations, approved the transfer of the existing CCPA regulations to Title 11, Division 6, a new

division of the California Code of Regulations that is under the jurisdiction of the Agency. (See OAL Matter No. 2022-0325-02, available at https://coppa.ca.gov/regulations/pdf/2022032_02nr_approval.pdf.)

Effect of the Proposed Rulemaking:

The CPRA established a new agency, the California Privacy Protection Agency, to implement and enforce the CCPA. (§ 1798.199.10.) The Agency is directed to adopt regulations to further the purposes of the Act, including promulgating regulations on 22 specific topics. (§ 1798.185.) The proposed regulations primarily do three things: (1) update existing CCPA regulations to harmonize them with CPRA amendments to the CCPA; (2) operationalize new rights and concepts introduced by the CPRA to provide clarity and specificity to implement the law; and (3) reorganize and consolidate requirements set forth in the law to make the regulations easier to follow and understand.

More specifically, the proposed regulations:

- Establish rules defining the notified purposes for which a business can collect, use, retain, and share consumer personal information consistent with consumers' expectations. (§ 1798.185, subd. (a)(10).)
- Establish rules, procedures, and any exceptions necessary to ensure that the notices and information that businesses are required to provide under the CCPA are provided in a manner that may be easily understood by the average consumer, are accessible to consumers with disabilities, and are available in the language primarily used to interact with the consumer. (§ 1798.185, subd. (a)(6).)
- Establish rules and procedures to facilitate and govern the submission of a consumer's request to opt-out of sale/sharing and request to limit and a business's compliance with the request, to ensure that consumers have the ability to exercise their choices without undue burden and to prevent businesses from engaging in deceptive or harassing conduct, including in retaliation against consumers for exercising their rights, while allowing businesses to inform consumers of the consequences of their decision. (§ 1798.185, subd. (a)(4).)
- Establish rules and procedures to facilitate a consumer's right to delete, correct, or obtain personal information. (§ 1798.185, subd. (a)(7).)
- Establish rules on how often and under what circumstances a consumer can request a correction; how a business responds to the request; how concerns regarding accuracy are resolved; the steps taken to prevent fraud; and the right to submit an addendum when a request to correct health information has been rejected. (§ 1798.185, subd. (a)(8).)
- Establish procedures to extend the 12-month period of disclosure of information after a verifiable consumer request pursuant to section 1798.130, subdivision (a)(2)(B). (§ 1798.185, subd. (a)(9).)

- Define the requirements and specifications for an opt-out preference signal. (§ 1798.185, subd. (a)(19)(A) & (B).)
- Establish regulations governing how businesses respond to an opt-out preference signal where the business has elected to comply with section 1798.135, subdivision (b). (§ 1798.185, subd. (a)(20).)
- Establish regulations governing the use or disclosure of a consumer's sensitive personal information. (§ 1798.185, subd. (a)(19)(C).)
- Further define and add to the business purposes for which businesses, service providers, and contractors may use personal information consistent with consumer expectations, and further define the business purposes for which service providers and contractors may combine personal information. (§ 1798.185, subd. (a)(10).)
- Identify the business purposes for which service providers and contractors may use consumers' personal information pursuant to a written contract with a business, for the service provider or contractor's own business purpose. (§ 1798.185, subd. (a)(11).)
- Establish procedures for filing complaints with the Agency (§ 1798.199.45) and procedures necessary for the Agency's administrative enforcement of the CPRA. (§ 1798.199.50).
- Define the scope and process for the exercise of the Agency's audit authority as well as the criteria for selecting those that would be subject to an audit. (§ 1798.185, subd. (a)(18).)
- Harmonize regulations governing opt-out mechanisms, notices, and other operational mechanisms to promote clarity and functionality. (§ 1798.185, subd. (a)(22).)

The Agency will not be promulgating rules on cybersecurity audits (§ 1798.185, subd. (a)(15)(A)), risk assessments (§ 1798.185, subd. (a)(15)(B)), or automated decisionmaking technology (§ 1798.185, subd. (a)(16)) at this time. These areas will be the subject of a future rulemaking and are not within the scope of this Notice of Proposed Rulemaking.

Anticipated Benefits of the Proposed Regulations:

The proposed regulations provide a number of significant benefits to Californians. Building off of the existing CCPA regulations, the proposed regulations provide comprehensive guidance to consumers, businesses, service providers, and third parties, on how to implement and operationalize new consumer privacy rights and other changes to the law introduced by the CPRA amendments to the CCPA. (Prop. 24, as approved by voters, Gen. Elec. (Nov. 3, 2020), § 3(C)(2).) They set forth clear requirements for how businesses are to craft their methods for submitting consumer requests and obtaining consumer consent so that the consumer's choice is freely made and not manipulated, subverted, or impaired through the use of dark patterns. (*Ibid.*) They also clearly explain that the CPRA amendments now restrict businesses from collecting, using, retaining, and sharing consumer personal information in a manner that is inconsistent with

consumer expectations, unless they obtain the consumer's explicit consent. In doing so, the regulations place the consumer in a position where they can knowingly and freely negotiate with a business over the business's use of the consumer's personal information. (*Id.*, § 3(C)(3).)

In addition, the proposed regulations set forth the requirements for an opt-out preference signal that consumers may use to easily opt-out of the sale or sharing of their personal information with all businesses that they interact with online. With the goal of strengthening consumer privacy, the regulations support innovation in pro-consumer and privacy-aware products and services and help businesses efficiently implement privacy-aware goods and services. (*Id.*, § 3(C)(1) & (5).) They take into consideration how privacy rights are being implemented in the marketplace presently and build upon the development of privacy-forward products and services.

Finally, the proposed regulations take into consideration privacy laws in other jurisdictions and implement compliance with the CCPA in such a way that it would not contravene a business's compliance with other privacy laws, such as the General Data Protection Regulation (GDPR) in Europe and consumer privacy laws recently passed in Colorado, Virginia, Connecticut, and Utah. In doing so, it simplifies compliance for businesses operating across jurisdictions and avoids unnecessary confusion for consumers who may not understand which laws apply to them.

Comparable Federal Regulations:

There are no existing federal regulations or statutes comparable to these proposed regulations.

Determination of Inconsistency/Incompatibility with Existing State Regulations:

The Agency has determined that these proposed regulations are not inconsistent or incompatible with existing State regulations. After conducting a review for any regulations that would relate to or affect this area, the Agency has concluded that these are the only regulations that concern the California Consumer Privacy Act.

Forms Incorporated by Reference:

None.

Other Statutory Requirements:

Section 1798.185, subdivision (a), requires the Agency to solicit broad public participation and adopt regulations to further the purposes of the CCPA. During its pre-rulemaking process, the Agency published an invitation for written comments, held informational sessions, and held stakeholder sessions to solicit public participation in the rulemaking process.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Agency's Initial Determinations:

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: No fiscal impact is anticipated on the Agency. The Agency's enforcement responsibilities are a result of the statute, and cannot commence prior to July 1, 2023. (§ 1798.185, subd. (d).) The proposed regulations do not create additional workload for the Agency.

The proposed regulations may impact the Department of Justice's (DOJ) expenditures for enforcement because DOJ is currently enforcing CCPA and maintains civil enforcement authority.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other non-discretionary costs or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impacts on representative person or business:

The Agency estimates that the proposed regulations will have a cost impact of \$127.50 per business. This represents the labor cost of updating certain website information to comply with the proposed regulations.

Significant effect on housing costs: None.

Significant, statewide adverse economic impact directly affecting businesses, including ability to compete: The Agency has made an initial determination that that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Results of the Economic Impact Assessment (EIA):

The Agency concludes that it is (1) unlikely that the proposal will create or eliminate jobs within the state, (2) unlikely that the proposal will create new businesses or eliminate existing businesses within the state, (3) unlikely that the proposal will result in the expansion of businesses currently doing business within the state.

The Agency also concludes that:

(1) The proposed regulations would benefit the health and welfare of California residents by operationalizing the CPRA amendments to the CCPA, thus ensuring California residents are afforded greater privacy protections.

(2) The proposal would not benefit worker safety because it does not regulate worker safety standards.

(3) The proposal would not benefit the state's environment because it does not change any applicable environmental standards.

Business report requirement: Section 7102 requires businesses collecting large amounts of personal information to annually compile and disclose certain metrics. The Agency proposes to amend section 7102 to require these businesses to additionally disclose information about requests to correct and requests to limit.

The Agency finds it is necessary for the health, safety or welfare of the people of this state that proposed section 7102, which requires a report, applies to businesses.

Small business determination: The Agency has determined that the proposed action affects small businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Agency must determine that no reasonable alternative considered by the Agency or that has otherwise been identified and brought to the attention of the Agency 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 or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Agency has determined that the proposed regulations are the most effective way to operationalize the CPRA amendments to the CCPA. The regulations balance the benefits to consumers, the burden to businesses, and the purposes of the CCPA. The Agency considered two alternative approaches to the regulations and determined that they would be less effective in carrying out the purposes for which the regulations are proposed. Specific alternatives to individual regulations are discussed in detail in the Initial Statement of Reasons.

More stringent regulatory requirement. A more stringent regulatory alternative considers mandating more prescriptive compliance requirements, such as prescriptive methods for submitting, tracking, and responding to CCPA requests, and detailed training programs and record-keeping practices for all businesses subject to the CCPA. This requirement would be an additional requirement (beyond the proposed regulations) for potentially hundreds of thousands of California businesses and would impose substantial costs. The Agency rejects this regulatory alternative to allow flexibility to businesses in crafting their own processes in handling CCPA requests in order to ease the compliance burden for smaller businesses subject to the CCPA. Smaller businesses may not have the resources to devote additional staff to handle CCPA-related tasks and may not receive a substantial amount of CCPA requests requiring an extensive compliance program.

Less stringent regulatory requirement. A less stringent regulatory alternative would, among other things, allow limited exemption for GDPR-compliant firms. Limitations would be specific to areas where GDPR and CCPA conform in both standards and enforcement, subject to auditing as needed. This approach could achieve significant economies of scale in both private compliance and public regulatory costs. The Agency rejects this regulatory alternative because of key differences between the GDPR and CCPA, especially in terms of how personal information

is defined and the consumer's right to opt-out of the sale or sharing of personal information (which is not required in the GDPR).

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

California Privacy Protection Agency
Attn: Brian Soublet
2101 Arena Blvd., Sacramento, CA 95834
(279) 895-6083
regulations@coppa.ca.gov

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. In the event the contact person is unavailable, inquiries regarding the proposed action may be directed to the following backup contact person:

California Privacy Protection Agency
Attn: Von Chitambira
2101 Arena Blvd., Sacramento, CA 95834
(279) 895-1412
regulations@coppa.ca.gov

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Agency will have the entire rulemaking file available for inspection and copying throughout the rulemaking process upon request to the contact person above. As of the date this Notice of Proposed Rulemaking (Notice) is published in the Notice Register, the rulemaking file consists of this Notice, the Text of Proposed Regulations (the "express terms" of the regulations), the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based. The text of this Notice, the express terms, the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based are available on the Agency's website at <https://coppa.ca.gov/regulations/>. Please refer to the contact information listed above to obtain copies of these documents.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the Agency analyzes all timely and relevant comments received during the 45-day public comment period, the Agency will either adopt these regulations substantially as described in this notice or make modifications based on the comments. If the Agency makes modifications which are sufficiently related to the originally-proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Agency adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of the name and address indicated above. The Agency 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 will be available on the Agency's website at <https://cppa.ca.gov/regulations/>. Please refer to the contact information included above to obtain a written copy of the Final Statement of Reasons.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the express terms, the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based are available on the Agency's website at <https://cppa.ca.gov/regulations/>.