

RULEMAKING PROCESS SUBCOMMITTEE

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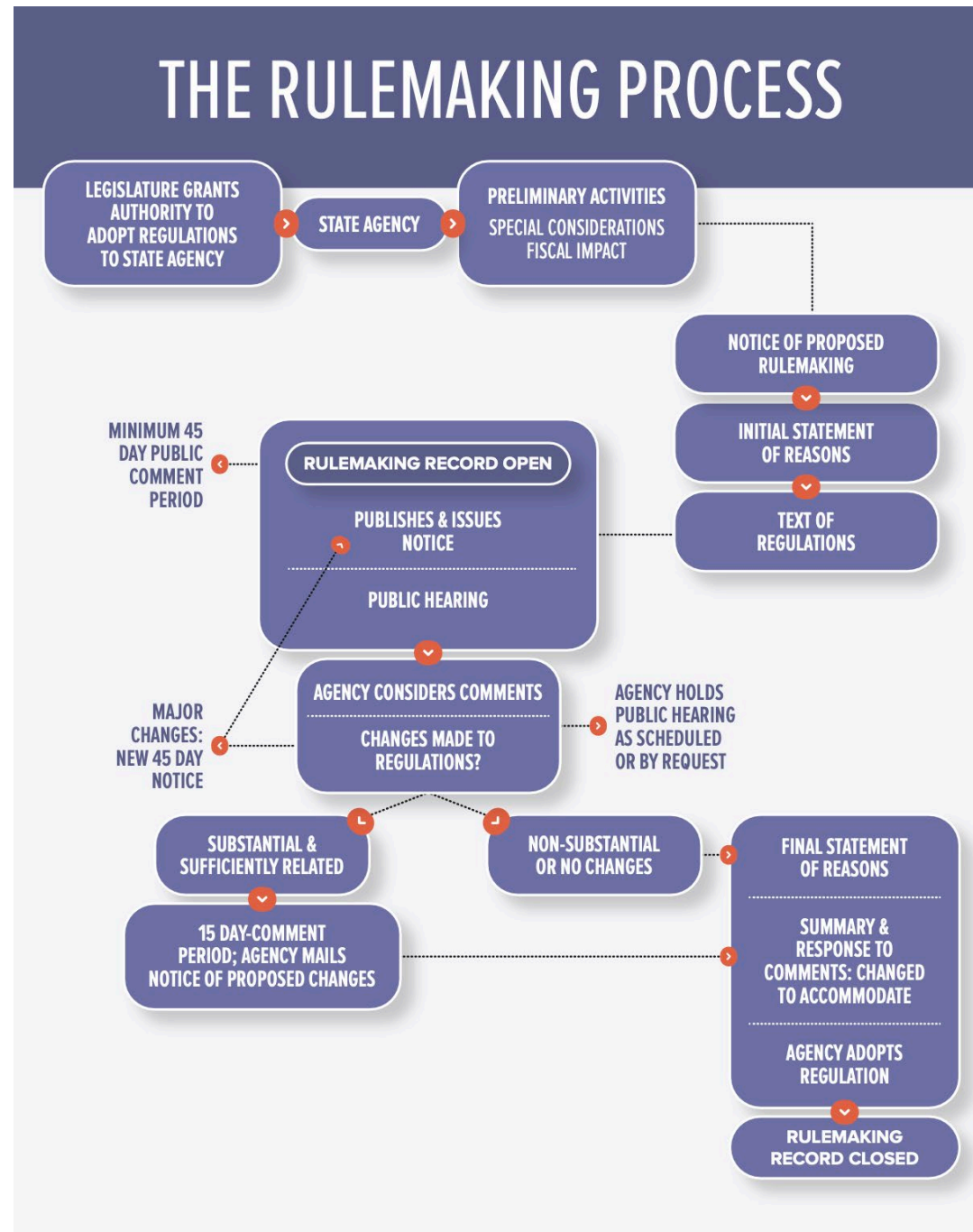
CPPA

REGULAR V. EMERGENCY RULEMAKING



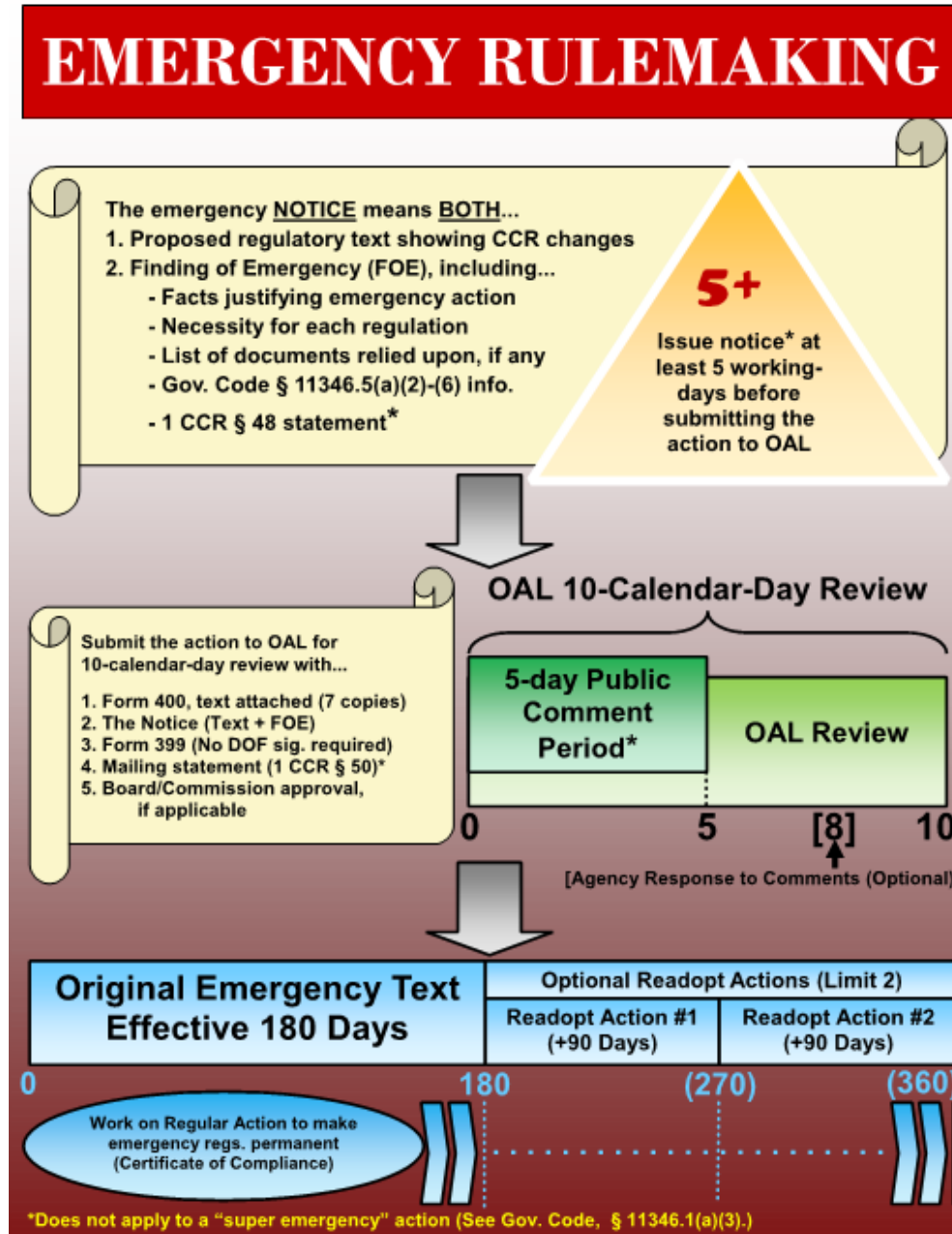
California Rulemaking Process

Regular process



California Rulemaking Process

Emergency process



EMERGENCY RULEMAKING

Pros:

- Rules would be enforceable upon publication.

Cons:

- Requires authorization by OAL/legislative amendment
- Minimal public input
- 180 days to make permanent (if approved)

KEY DIFFERENCE:

Under typical process, once an agency publishes a proposed rule, have one year to finalize.

Under Emergency Rulemaking, an Agency gives five days notice.

- Office of Administrative Law has ten days to review.
- Then the rule goes into effect for 180 days, during which additional rule making activity can occur.

**RULEMAKING: NEXT STEPS AND
RECOMMENDATIONS**



NEXT STEPS

(1) Comments received through Public Comment period on Initial Rulemaking to be reviewed by staff and published.

(2) CPPA Rules Update Subcommittee and New CPRA Rules Subcommittee to review comments received.

(3) CPPA Rules Update Subcommittee and New CPRA Rules Subcommittee to work with ED/staff in re:

- Informational Hearings
- Text of regulations + ISOR to be presented to Board.

Main challenges:

- Resources for rulemaking.
- Resources for informational hearings.
- Complexity of the topics involved.
- Potential need for SRIA.

Potential solutions:

- Seeking/onboarding rulemaking-specific resources.
- Consider staggering rulemaking.
- Consider emergency rulemaking.
- Consider delaying enforcement deadlines.

RECOMMENDATIONS

- Continue to explore all options (emergency rule-making / delayed enforcement)
- To the extent additional clarity is needed in re: topics, resources, and timeline for rule-making packages allow for determinations to be made based on recommendations from staff.
 - Be open to the possibility of multiple rule-making packages
- Approve additional allocation of work as follows:
 - Allocate additional topics as per next section.
 - Process Subcommittee to work on identifying rulemaking-specific staff resources
 - Public Engagement/Outreach SC to work on organizing hearings/outreach efforts
- CCPA Rule Updated SC and CPRA New Rules SC to continue to:
 - Work with ED/staff on feasibility/timelines for informational hearings
 - Work on generating text of regulations + ISOR to be presented to Board

ALLOCATION/ASSIGNMENTS OF ADDITIONAL
TOPICS TO SUBCOMMITTEES



DISTRIBUTION OF ASSIGNMENTS AFTER NEW ALLOCATION OF TOPICS

NEW CPRA RULES SC

- Issue rules on topics allocated during September Board Meeting.
- [If needed] propose definition for “law enforcement agency approved investigation.”
- [If needed] issue rules in re: enforcement process/work with legislator to harmonize requirements.
- [If needed] issue rules on record keeping requirements in re: cybersecurity audits, risk assessments and automated decision making

CPPA RULES UPDATE SC

- Issue rules on topics allocated during September Board Meeting.
- [If needed] issue rules in re: update of definition of “business purposes” (as allocated during October Board Meeting)
- [If needed] issue rules in re: additional topics as per supplemental materials.
- [If needed] issue rules in re: record keeping requirements on all topics except for those assigned to New CPRA Rules SC.

RULEMAKING PROCESS SC

- Coordinate the generation of a report comparing CPRA with existing regulations applicable to Insurance Companies
- Supervise/coordinate rulemaking effort until staff can take over.
- Provide recommendations as to how to best organize future rulemaking efforts.
- Consider/make recommendations on any need for additional rules

NOT RECOMMENDED FOR RULEMAKING

Topics currently assigned to Process SC where the recommendation to NOT include the topic in this rulemaking effort:

- Biannual adjustments monetary thresholds in 1798.140(d)(1)(A), 1798.150(a)(1)(A), 1798.155(a), 1798.199.25, and 1798.199.90.
 - Recommendation: This topic should not be part of the current rulemaking process
 - Adjustments should be made January 1, 2025 & every two years thereafter.

END OF PRESENTATION



**Topic not recommended for rulemaking during 2022/23
(November 2021 Board Meeting)**





TOPICS WHERE RULEMAKING DURING 2021/22 IS NOT RECOMMENDED

Section	Task	Description
1798.185 (a)(5)	Update of monetary thresholds	Biannual adjustments monetary thresholds in 1798.140(d)(1)(A), 1798.150(a)(1)(A), 1798.155(a), 1798.199.25, and 1798.199.90. NOTE: Adjustments should be made January 1, 2025 & every two years thereafter.

**Topics recommended for assignment for potential rulemaking
(November 2021 Board Meeting)**



TOPICS RECOMMENDED FOR ASSIGNMENT TO BOTH SUB-COMMITTEES

Section	Task	Description
1798.199.40(b) + 1798.185(a)(13)	Rules on record-keeping requirements	<p>The agency shall give notice of assuming rulemaking responsibilities <i>“including regulations specifying record keeping requirements for businesses to ensure compliance with this title.”</i></p> <p>NOTE:</p> <ul style="list-style-type: none">• New CPRA Rules SC to address record-keeping requirements that may relate to cybersecurity audits, risk assessments and automated decision making.• CCPA Rules SC to address record-keeping requirements as it may relate to obligations other than the ones listed in bullet point above.

TOPICS RECOMMENDED FOR ASSIGNMENT TO NEW CPRA RULES SUBCOMMITTEE

Section	Task	Description
1798.185(a)(17)	[If needed] Provide definition of “law enforcement agency-approved investigation”	This subdivision provides for refinements to the definition of “law enforcement agency-approved investigation” for purposes of an exception in section 1798.145(a)(2).
1798.185 (b)	[If needed] issue rules as to enforcement process / harmonize requirements.	The APA and sections 1798.199.45 et. Sec. would apply to the enforcement processes to be followed by the Agency. The New CPRA Rules SC would (if needed) propose rules on this topic and/or work with the legislative to pursue any potential amendments to the CPRA beneficial to harmonize requirements/facilitate effective enforcement.

TOPICS RECOMMENDED FOR ASSIGNMENT TO CPPA RULES UPDATE SUBCOMMITTEE

Section	Task	Description
1798.140(l) + 1798.185(a)(13)	[If needed] issue rules on definition of “dark patterns”	This definition contemplates refinements “ <i>as further defined by regulation.</i> ”
1798.185 (a)(2)	[If needed] Issue rules on deidentified & unique identifier definitions	Update “ <i>as needed</i> ” “ <i>to address changes in technology, data collection, obstacles to implementation, and privacy concerns.</i> ”
1798.185 (a)(2)	[If needed] Issue rules on methods of submitting requests	Modifying the “ <i>definition of designated methods for submitting requests</i> ” under section 1798.130 as needed..

TOPICS RECOMMENDED FOR ASSIGNMENT TO CPPA RULES UPDATE SUBCOMMITTEE

Section	Task	Description
1798.185 (a)(1)	[If needed] Issue rules in re: categories of PI and/or SPI	<i>“Updating or adding categories”</i> of either PI or SPI currently listed in 1798.140(v) and (ae) See also section 1798.130(c)
1798.185 (a)(3)	[If needed] Issue rules on exceptions to comply with law (including trade secrets and intellectual property)	Regulatory exceptions must be established <i>“as necessary”</i> in order <i>“to comply with state or federal law”</i> such as <i>“trade secrets and intellectual property rights.”</i> Exceptions must be established <i>“within one year of passage of this title,”</i> but additional exceptions may be established <i>“as needed.”</i> See related CCPA rules at Code Regs tit. 11, § 999.313(c)(5) and § 999.313(d)(6).

TOPICS RECOMMENDED FOR ASSIGNMENT TO CPPA RULES UPDATE SUBCOMMITTEE

Section	Task	Description
1798.185 (a)(12)	[If needed] Issue rules in re: definition of “intentionally interacts”	This subdivision contemplates refinements to the definition of “intentionally interacts” as supplied by section 1798.140(s).
1798.140(w) + 1798.185 (a)(13)	[If needed] Issue rules in re: definition of “precise geolocation”	This subdivision contemplates refinements to the definition of “precise geolocation” as supplied by pending section 1798.140(w).

Topics assigned during October Board Meeting



ASSIGNED TO CPPA RULES UPDATE SUBCOMMITTEE ON OCT 18

Section	Task	Description
1798.185 (a)(10)	[If needed] issue/update rules in re: business purposes	Further defining “business purpose ”including defining purposes for which ”service providers and contractors may combine consumers’ personal information obtained from different sources.” ^[L] _[SEP] Existing CCPA rules at Code Regs., tit. 11, §§ 999.314(c).

Topics to remain assigned to Rulemaking Process Subcommittee



TOPICS TO REMAIN WITH RULEMAKING PROCESS SUBCOMMITTEE

Section	Task	Description
1798.185(a)(21)	Insurance companies * Logistics subcommittee to coordinate the generation of a report comparing CPRA with existing regulations applicable to Insurance Companies	This subdivision contemplates (i) a comparison of the CPRA with provisions and regulations of the Insurance Code related to consumer privacy and (ii) if the CPRA is <i>more</i> protective than existing insurance law, issuance of regulation on how CPRA applies to insurance companies.
1798.185 (a)(13)	Make recommendations on need for other rules	This subdivision permits the adoption of regulations “as necessary to further the purposes of this title.”
N/A	N/A	Other tasks as assigned by Board