

CALIFORNIA PRIVACY PROTECTION AGENCY

Board Meeting – December 8, 2023

Agenda Item 3

EXPLANATION OF PROPOSED MODIFICATIONS TO REGULATIONS

This chart explains the proposed changes to the CCPA regulations, specifically the items in blue underline for proposed additions and ~~red strikethrough~~ for proposed deletions. Non-substantive changes (e.g., grammatical changes, changes in numbering/lettering, and corrections to section numbers) are not explained.

Staff-recommended items for discussion are noted with an asterisk (*) before the section number and highlighted in gray.

SECTION	REASON
7001(p)	Added “many” before non-profits because the definition of business includes non-profits that control or are controlled by a business that shares common branding with the business and with whom the business shares consumer’s personal information.
7001(z)(4)-(6)	Made changes to these subsections to explain a business’s disclosure obligations under Civil Code §§ 1798.110 and 1798.115 more precisely. Included “sharing” in subsections (z)(4)-(6) as required by Civil Code §§ 1798.110(c)(3) and 1798.115(c)(2) and deleted “for a business purpose” because third parties are persons to whom personal information is sold or share, not disclosed “for a business purpose.”
*7001(ii)	Added a new category to the statutory definition of sensitive personal information, i.e., “the personal information of consumers less than 16 years of age.” The rest of the definition is a reiteration of Civ. Code § 1798.140(ae)) and included for readability and ease of reference. This proposed change is to made under 1798.185(a)(1) to update and harmonize the definition of sensitive personal information with the definition of sensitive data used by other jurisdictions (e.g., Connecticut, Delaware, Indiana, Iowa, Montana, Oregon, Tennessee, Texas, and Virginia). These other jurisdictions include within their definition of sensitive data language such as: “personal data of a known child,” “personal data collected from a known child,” or “a child’s personal data.”
7002(e)	Added language to clarify that a consumer shall be able to withdraw consent at any time. The regulation notes where some statutory exceptions apply. This change was identified as a BLUE item in the chart presented to the Board during the May meeting.
7003(d)	Modified subsection to require mobile applications to include a conspicuous link within the application itself, such as through the application’s settings

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	menu, in addition to being accessible through the mobile application platform or download page. This was previously guidance given to businesses, but with this change, it is now mandatory. This change allows consumers who are already using mobile applications to access required information more easily.
7004(a)(2)(A)	Modified subsection to provide a simpler example that demonstrates the symmetry principle. This change was identified as a GREEN item in the chart presented to the Board during the May meeting.
7004(a)(2)(D), (E)	Added these subsections to provide further examples of how choices presented to the consumer would not be symmetrical. These examples are being reintroduced to provide further clarity. This change was identified as a GREEN item in the chart presented to the Board during the May meeting.
7004(a)(3), (4)	Strengthened language throughout the subsections to make clear that businesses shall not use language or interactive elements that are confusing to the consumer or use choice architecture that impairs or interferes with the consumer’s ability to make a choice. Also added language and examples that further illustrate these principles and harmonize the subsections with Colorado’s regulations regarding user interface design, choice architecture, and dark patterns. These changes were identified as a GREEN item in the chart presented to the Board during the May meeting.
7004(a)(5)	Strengthened language within this subsection to make clear that methods shall be tested to ensure that they are functional and do not undermine the consumer’s choice to submit the request. Also added language to clarify that this principle also applies to methods for providing and withdrawing consent. These changes were identified as a GREEN item in the chart presented to the Board during the May meeting.
7004(b)	Modified subsection to take out unnecessary words and to make clear that the illustrative examples in subsection (a) were a non-exhaustive list of dark patterns.
7004(c)	Modified subsection to make clear that a user interface that has the effect of subverting or impairing consumer choice was a dark pattern even if the business did not intend to do so. Deleted the last sentence as unnecessary.
*7005	Added this regulation to address the increases to monetary thresholds for various items in the CCPA based on the Consumer Price Index. The CCPA does not specify which CPI to use, and thus, a regulation is necessary to identify

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	which one will be used. The CPI selected is recommended by the Department of Finance and the one used by the Agency for changes to its annual budget. This change should allow us to do a Section 100 change to update numbers every other year.
7011(d)	Modified subsection to require mobile applications to include a link to its privacy policy within the application’s settings menu, in addition to being accessible through the mobile application platform or download page. This was previously guidance given to businesses, but with this change, it is now mandatory. This change allows consumers who are already using mobile applications to access the privacy policy more easily.
7011(e)(1)(B), (E)	Added language to these subsections to require businesses to describe categories of sources and categories of third parties in a manner that provides consumers a meaningful understanding of those things. This language ensures that the requirement that businesses make meaningful disclosures applies to all the things that businesses are required to disclose.
7011(e)(1)(H), (I)	Modified these subsections to explain businesses’ disclosure obligations more precisely. Used “service provider or contractor” instead of “third parties” in subsection (e)(1)(H) because disclosures for a business purpose are made to those entities, not third parties. Correspondingly deleted subsection (e)(1)(I) as unnecessary.
7013(e)(3)(C), (D)	Modified the subsection to include two examples regarding connected devices and augmented or virtual reality that had been removed previously to simplify implementation. This change was identified as a GREEN item in the chart presented to the Board during the May meeting.
7014(e)(3)	Added this subsection to require businesses to provide the Notice of Right to Limit in the same manner in which it collects the sensitive personal information that it uses or discloses for purposes other than those specified in the law. Illustrative examples and requirements are also provided. This subsection mirrors the requirements for the Notice of Right to Opt-Out of Sale/Sharing and was removed previously to simplify implementation.
7020(e)	Added this subsection to require businesses to provide a means by which the consumer can request that the business, in response to a request to know, provide personal information collected prior to the 12-month period preceding the business’s receipt of the request. This subsection ensures that

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	consumers can fully exercise their right to know. This change was identified as a GREEN item in the chart presented to the Board during the May meeting.
7022(b)(1), (c)(1), (f)	Added language within these subsections to make clear that businesses, service providers, and contractors are to implement measures to ensure that information subject to a request to delete remains deleted, deidentified, or aggregated. Whether a business, service provider, or contractor has implemented these measures factors into whether they have complied with the consumer’s request to delete. These obligations are consistent with proposed requirements that businesses implement measures to ensure that personal information subject to a request to correct remain corrected.
7022(g)(5)	Included the requirement that when a business denies a request to delete in whole or in part, it must also inform the consumer that they can file a complaint with the Agency and the Attorney General’s office. This change was identified as a GREEN item in the chart presented to the Board during the May meeting.
7023(c)	Added language and examples within the subsection to make clear that businesses, service providers, and contractors are to implement measures to ensure that information subject to a request to correct remains corrected. These requirements were removed previously to simplify implementation.
7023(f)(3)	Included a requirement that the business inform the consumer that, upon the consumer’s request, it will note both internally and to any person with whom it discloses, shares, or sells the personal information that the accuracy of the personal information is contested by the consumer. This requirement was removed previously to simplify implementation.
7023(f)(4)	Included the requirement that, upon the consumer’s request, the business must make the written statement the consumer submits available to any person with whom it discloses, shares, or sells the personal information subject to the request to correct health information.
7023(f)(6)	Included the requirement that when a business denies a request to correct in whole or in part, it must also inform the consumer that they can file a complaint with the Agency and the Attorney General’s office. This change was identified as a GREEN item in the chart presented to the Board during the May meeting.

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7023(i)	Added the requirement that the business must provide the name of the source from which it received the alleged inaccurate information, or in the alternative, inform the source that the information provided was incorrect and must be corrected. Naming the source was previously guidance given to businesses, but with this change, the business must either provide the name or inform the source of the incorrect information. The alternative option of telling the source instead of providing the source’s name provides flexibility to businesses in responding to consumers while ensuring that a consumer’s exercise of their right to correct is meaningfully effectuated.
7023(j)	Modified the subsection to require businesses to provide a way to confirm that certain personal information the business maintains is the same as what the consumer has provided. This was previously guidance given to businesses, but with this change, it is now mandatory.
7023(k)	Modified language within the subsection to make clear that failing to consider and address the possibility that corrected information may be overridden by inaccurate information subsequently received factors into whether the business, service provider, or contractor has adequately complied with a consumer’s request to correct.
7024(d)	Included the requirement that businesses provide a way for consumers to confirm that certain sensitive personal information the business maintains is the same as what the consumer believes it should be. This harmonizes how businesses are to handle requests to know certain sensitive pieces of personal information with how they are to handle requests to correct regarding those same pieces of personal information.
7024(e)	Reorganized this subsection to include the requirement that when a business denies a request to know in whole or in part, it must also inform the consumer that they can file a complaint with the Agency and the Attorney General’s office. This change was identified as a GREEN item in the chart presented to the Board during the May meeting.
7024(k)	Made changes to this subsection to explain a business’s disclosure obligations under Civil Code §§ 1798.110 and 1798.115 more precisely. Included “sharing” in subsections (k)(3) and (k)(5) as required by Civil Code §§ 1798.110(c)(3) and 1798.115(c)(2); used “discloses” instead of “shares” in subsection (k)(4) to mirror the language in Civil Code § 1798.110(c)(4); and

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	added “service providers or contractors” to subsection (k)(6) because disclosures for a business purpose are made to those entities.
7024(l)	Included language to clarify that businesses must identify categories of service providers and contractors in a manner that provides consumers a meaningful understanding of the categories listed. The addition ensures that the requirement that businesses describe categories meaningfully applies to all categories that businesses are required to disclose.
7025(c)(3), (4), (6)	Added language to these subsections to reflect the business’s new requirement to display the status of the consumer’s choice. This requirement was removed previously to simplify implementation.
7026(e)	Included the requirement that when a business denies a request to opt-out of sale/sharing, it must also inform the consumer that they can file a complaint with the Agency and the Attorney General’s office. This change was identified as a GREEN item in the chart presented to the Board during the May meeting.
7026(f)(3)	Added examples to further explain the timing requirements for requests to opt-out of sale/sharing. The first example explains what is meant by “as soon as feasibly possible” within the context of programmatic advertising technology on a website, and the second example illustrates the requirement in 7026(b)(2). This change addresses a BLUE item in the chart presented to the Board during the May meeting.
7026(g)	Modified subsection to require businesses to provide a means by which the consumer can confirm that their request to limit has been processed by the business. This was previously guidance given to businesses, but with this change, it is now mandatory.
7027(f)	Included the requirement that when a business denies a request to limit, it must also inform the consumer that they can file a complaint with the Agency and the Attorney General’s office. This change was identified as a GREEN item during the May Board meeting.
7027(g)(3)	Replaced the term “shared” with “made available” because “shared” is defined in the statute to apply to cross-context behavioral advertising and this regulation applies to a broader range of contexts. Using the term “made available” is more precise.

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7027(h)	Modified subsection to require businesses to provide a means by which the consumer can confirm that their request to limit has been processed by the business. This was previously guidance given to businesses, but with this change, it is now mandatory.
7028(a), (c)	Modified these subsections to include references to requests to opt-in to the use and disclosure of sensitive personal information. These references were removed previously to simplify implementation. This change was identified as a GREEN item during the May Board meeting.
7051(a)(4)	Deleted because it is duplicative of subsection (a)(3).
7060(e)	Strengthened language within the subsection to make clear that a business shall not require a consumer to provide a notarized affidavit to verify their identity unless the business compensates the consumer for the cost of notarization.
7060(h)	Strengthened language within the subsection to make clear that a business shall not verify the consumer based on the personal information that is the subject of the request to correct.
7300(a)	Replaced “may” with “shall” to clarify how consumers are to submit sworn complaints to the Agency.
7302(c)(1)	Modified this subsection to clarify that a probable cause proceeding can be conducted in whole or in part by telephone or videoconference unless the alleged violator requests an in-person or public proceeding. This change was identified as a GREEN item during the May Board meeting.
7302(c)(3)	Replaced “participate or appear at” with “attend” because the word “attend” is broader in meaning and inclusive of both attending via telephone or videoconference and attending in person.
7302(e)	Deleted this subsection to avoid the misimpression that these regulations amend the rules of evidence.