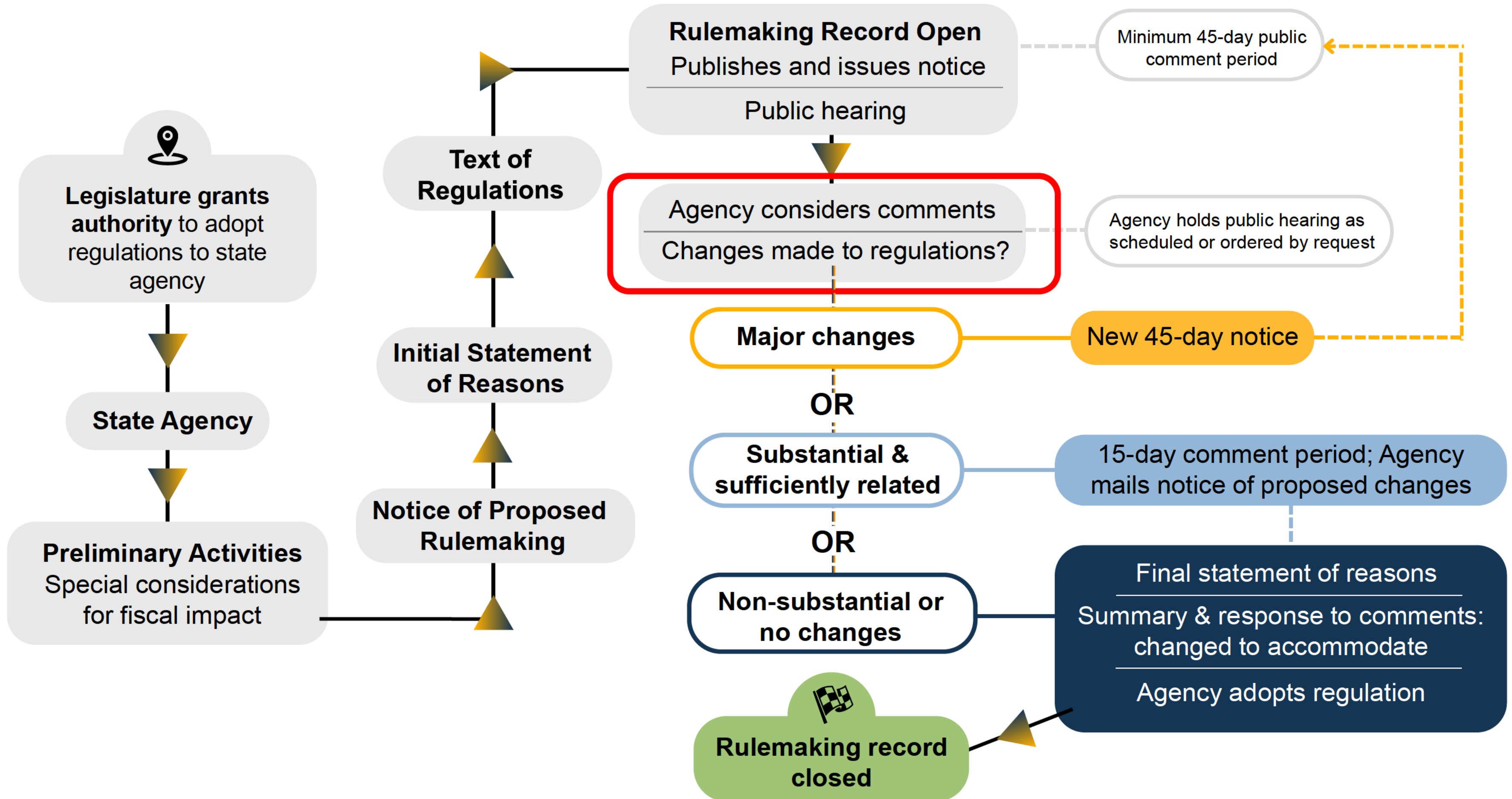# Potential Modifications to Proposed Regulations

April 4, 2025 Board Meeting

CALIFORNIA RULEMAKING PROCESS

For Board Discussion

1. Definition of "automated decisionmaking technology" (ADMT)

2. Definition of "significant decision"

3. "Behavioral advertising" Threshold

4. "Work or educational profiling" and "public profiling" Thresholds

5. "Training" Threshold

6. Risk Assessment Submissions to Agency

NOTE: Potential alternatives in this presentation are based upon comments, are intended to facilitate board discussion, and are not exhaustive.

Summary Chart of Requirements for ADMT Use Cases

Use of ADMT for:	Risk Assessment	Pre-use Notice	Access	Opt-out	Exceptions to Opt-out
The following significant decisions: • Admission, acceptance, or hiring • Allocation/assignment of work and compensation	YES	YES	YES	YES	• Human appeal exception; or • Evaluation exception
All other significant decisions	YES	YES	YES	YES	• Human appeal exception
Work or educational profiling	YES	YES	YES	YES	• Safety, security, & fraud prevention exception; or • Evaluation exception
Public profiling	YES	YES	YES	YES	• Safety, security, and fraud prevention exception
Profiling for behavioral advertising	YES	YES	YES	YES	
Training uses of ADMT	YES	YES	—	YES	

Issue 1: Current Definition of ADMT § 7001(f)

ADMT means any technology that processes personal information and uses computation to execute a decision, replace human decisionmaking or substantially facilitate human decisionmaking.

- "**Technology**" includes software or programs, including those derived from machine learning, statistics, other data-processing techniques, or artificial intelligence.

- "**Substantially facilitate human decisionmaking**" means using the output of the technology as a key factor in a human's decisionmaking. This includes, for example, using ADMT to generate a score about a consumer that the human reviewer uses as a primary factor to make a significant decision about them.

- **ADMT includes profiling.**

- **ADMT does not include the following technologies, provided that the technologies do not execute a decision, replace human decisionmaking, or substantially facilitate human decisionmaking**: web hosting, domain registration, networking, caching, website-loading, data storage, firewalls, anti-virus, anti-malware, spam- and robocall-filtering, spellchecking, calculators, databases, spreadsheets, or similar technologies. A business must not use these technologies to circumvent the requirements for ADMT.

Definition of ADMT

Alternative 1	Alternative 2	Alternative 3
ADMT means ~~any technology~~ a computational process derived from machine learning, statistical modeling, data analytics, or artificial intelligence that issues simplified output, including a score, classification, or recommendation, that processes personal information and ~~uses computation to execute a decision,~~ that is used to assist or replace discretionary human decisionmaking ~~or substantially facilitate human decisionmaking~~ and materially impacts consumers.	ADMT means any technology that processes personal information and uses computation to ~~execute a decision,~~ replace human decisionmaking or substantially replace ~~facilitate~~ human decisionmaking. **"Substantially replace human decisionmaking"** means a business uses the technology's output to make a decision without human involvement. Human involvement requires the human reviewer to: 1. Know how to interpret and use the technology's output to make the decision; 2. Analyze the output of the technology, and any other information that is relevant to make or change the decision; and 3. Have the authority to make or change the decision based on their analysis in subsection (2).	ADMT means any technology that processes personal information and uses computation to ~~execute a decision,~~ replace human decisionmaking ~~or substantially facilitate human decisionmaking~~ for the purpose of making a solely-automated significant decision about a consumer.

Issue 2: Current Definition of Significant Decision, §§ 7150(b)(3)(A), 7200(a)(1)

Definition of "Significant Decision"
[for purposes of Risk Assessment and ADMT]

For purposes of this Article, "significant decision" means a decision using information that is not subject to the exceptions set forth in Civil Code sections 1798.145, subdivisions (c)-(g), or 1798.146, subdivisions (a)(1), (4), and (5), that results in access to, or the provision or denial of:

- Financial or lending services

- Housing

- Insurance

- Education enrollment or opportunity

- Criminal justice (e.g., posting of bail bonds)

- Employment or independent contracting opportunities or compensation

- Healthcare services, or

- Essential goods or services (e.g., groceries, medicine, hygiene products, or fuel)

Definition of Significant Decision

"Significant decision" is a decision . . . that results in access to, **[Alternative #1: Delete "access to" OR replace "access to" with "selection of the consumer for"]** or the provision or denial of:

- Financial or lending services

- Housing

- Insurance **[Alternative #2: Delete "insurance"]**

- Education enrollment or opportunity: admission, acceptance into programs, educational credentials, suspension and expulsion

- Criminal justice (e.g., posting of bail bonds) **[Alternative #3: Delete "criminal justice (e.g., posting of bail bonds)"]**

- Employment or independent contracting opportunities or compensation: hiring, allocation or assignment of work or compensation, promotion, demotion, suspension, and termination **[Alternative #4: Delete "allocation or assignment of work"]**

- Healthcare services

- Essential goods or services (e.g., groceries, medicine, hygiene products, or fuel) **[Alternative #5: Delete or narrow "essential goods or services (e.g., groceries, medicine, hygiene products, or fuel)"]**

Issue 3: "Behavioral Advertising" Threshold §§ 7150(b)(3)(B)(iii), 7200(a)(2)(C)

"Profiling a consumer for behavioral advertising" triggers:

- Risk assessment

- ADMT obligations (Pre-use Notice and Opt-out)

"Behavioral advertising" is defined in § 7001(g):

- Targeting advertising to a consumer based on the consumer's personal information (PI) obtained from consumer's activity—both across businesses, distinctly-branded websites, applications, or services, and within the business's own distinctly-branded websites, applications, or services.

- Includes cross-context behavioral advertising.

- Does not include non-personalized advertising, provided that the consumer's PI is not used to build a profile about the consumer or alter their experience outside the current interaction with the business, and is not disclosed to a third party.

"Behavioral Advertising" Threshold

Leave as-is	Alternative Remove for risk assessments and ADMT
Profiling a consumer for behavioral advertising	~~Profiling a consumer for behavioral advertising~~
"Behavioral advertising" defined in § 7001(g): • Targeting advertising to a consumer based on the consumer's personal information (PI) obtained from consumer's activity—both across businesses, distinctly-branded websites, applications, or services, and within the business's own distinctly-branded websites, applications, or services. • Includes cross-context behavioral advertising. • Does not include nonpersonalized advertising, provided that the consumer's PI is not used to build a profile about the consumer or alter their experience outside the current interaction with the business, and is not disclosed to a third party	~~**"Behavioral advertising"** defined in § 7001(g):~~ ~~• Targeting advertising to a consumer based on the consumer's personal information (PI) obtained from consumer's activity—both across businesses, distinctly-branded websites, applications, or services, and within the business's own distinctly-branded websites, applications, or services.~~ ~~• Includes cross-context behavioral advertising.~~ ~~• Does not include nonpersonalized advertising, provided that the consumer's PI is not used to build a profile about the consumer or alter their experience outside the current interaction with the business, and is not disclosed to a third party~~

Issue 4: "Work or Educational Profiling" Threshold §§ 7150(b)(3)(B)(i), 7200(a)(2)(A)

"**Work or educational profiling**" triggers:

- Risk assessment

- ADMT obligations (Pre-use Notice, Opt-out, and Access)

"**Work or educational profiling**" defined in §§ 7150(b)(3)(B)(i), 7200(a)(2)(A):
- Profiling a consumer through systematic observation when they are acting in their capacity as an applicant to an educational program, job applicant, student, employee, or independent contractor

Issue 4: "Public Profiling" Threshold
§§ 7150(b)(3)(B)(ii), 7200(a)(2)(B)

"**Public profiling**" triggers:

- Risk assessment

- ADMT obligations (Pre-use Notice, Opt-out, and Access)

"**Public profiling**" defined in §§ 7150(b)(3)(B)(ii), 7200(a)(2)(B):
- Profiling a consumer through systematic observation of a publicly accessible place

"Work or Educational Profiling" and "Public Profiling" Thresholds

Leave as-is	**Alternative** Remove for risk assessments and/or ADMT
Profiling a consumer through systematic observation when they are acting in their capacity as an applicant to an educational program, job applicant, student, employee, or independent contractor Profiling a consumer through systematic observation of a publicly accessible place	~~Profiling a consumer through systematic observation when they are acting in their capacity as an applicant to an educational program, job applicant, student, employee, or independent contractor~~ ~~Profiling a consumer through systematic observation of a publicly accessible place~~

Issue 5: "Training" Threshold
§§ 7150(b)(4), 7200(a)(3)

(4) Processing the personal information of consumers to train automated decisionmaking technology or artificial intelligence that is capable of being used for any of the following:

(A) For a significant decision concerning a consumer;

(B) To establish individual identity;

(C) For physical or biological identification or profiling;

(D) For the generation of a deepfake; or

(E) For the operation of generative models, such as large language models

Green font = applicable only for risk assessment requirements

"Training" Threshold

Leave as-is	Alternative 1 Revise threshold	Alternative 2 Remove for risk assessments and/or ADMT
Processing personal information to train automated decisionmaking technology or artificial intelligence that is capable of being used for any of the following: (A) For a significant decision concerning a consumer; (B) To establish individual identity; (C) For physical or biological identification or profiling; (D) For the generation of a deepfake; or (E) For the operation of generative models, such as large language models **Green font** = applicable only for risk assessment requirements	Processing personal information to train automated decisionmaking technology or artificial intelligence that ~~is capable of being~~ the business knows or should know will be used for any of the following: (A) For significant decision concerning consumer; (B) To establish individual identity; (C) For physical or biological identification or profiling; (D) For generation of a deepfake; or (E) For the operation of generative models, such as large language models **Green font** = applicable only for risk assessment requirements	~~Processing the personal information of consumers to train automated decisionmaking technology or artificial intelligence that is capable of being used for any of the following:~~ ~~(A) For a significant decision concerning a consumer;~~ ~~(B) To establish individual identity;~~ ~~(C) For physical or biological identification or profiling;~~ ~~(D) For the generation of a deepfake; or~~ ~~(E) For the operation of generative models, such as large language models~~

Issue 6: Risk Assessment Submissions to Agency, § 7157

1. Business's name and contact information

2. Time period covered by the submission

3. Number of risk assessments ("RAs") the business conducted or updated during the time period covered by the submission, in total and by processing-activity threshold

4. Which categories of personal information were subject to RAs

5. Attestation that the business completed the risk assessment, provided by the highest-ranking executive responsible for, and with knowledge of, the business's RAs

6. Signature/certification under penalty of perjury that that the information provided is true and correct, including the business title of signatory and date of signature

Full risk assessments must be provided upon request by the Agency or Attorney General