FACT SHEET
DRAFT AUTOMATED DECISIONMAKING TECNOLOGY (ADMT) REGULATIONS

ADMT

The California Consumer Privacy Act (CCPA) directs the Agency to make rules about access and opt-out rights relating to businesses' use of automated decisionmaking technology (ADMT). The Agency has drafted ADMT regulations but has not yet started the formal rulemaking process. This fact sheet explains the draft regulations to help people understand and participate in the rulemaking process. These draft rules are *not* in effect and are subject to change.

WHAT is ADMT?

ADMT is technology that makes decisions, or that a person relies upon to make a decision. It includes "profiling," which generally refers to evaluating consumers by automated means (e.g., using technology to analyze their personality, interests, behavior, or location). Artificial intelligence (AI) can be ADMT, but not all AI is ADMT.

Examples of ADMT include:

- Resume-screening tools that businesses use to decide which applicants they will hire;
- Facial-recognition technology that businesses use to verify the identity of consumers as they enter a workplace; and
- Tools that place consumers into audience groups to target ads to them.

WHO would need to comply with the ADMT requirements?

A "business" that must comply with the CCPA[1] and does any of the following:

1 Uses ADMT to make a **"significant decision"** concerning a consumer.

"Significant decisions" are decisions that have important consequences for consumers (e.g., decisions to provide or deny financial services, housing, insurance, educational or employment opportunities, healthcare services, or essential goods or services like groceries, medicine, or fuel).

2 Uses ADMT for **"extensive profiling."**

"Extensive profiling" includes analyzing consumers' personality, interests, behavior, or location in their workplace, at school ("work/educational profiling"), or in public places (e.g., using facial-recognition technology in a store to identify potential shoplifters) ("public profiling"), or to target ads to them ("profiling for behavioral advertising").

3 Uses personal information to **train ADMT** that could be used in the following ways:

- To identify people (e.g., facial-recognition technology);
- For physical or biological identification or profiling (e.g., analyzing people's facial expressions or gestures to infer their emotional state);
- To make significant decisions; or
- To generate deepfakes (e.g., fake images of real people that are presented as truthful or authentic).

WHAT would a business have to do if it uses ADMT in one of the ways above?

The business would have to provide the consumer with:

1 A **Pre-use Notice** about its use of ADMT.

> A Pre-use Notice would have to include:
> - Why the business wants to use the ADMT;
> - How the ADMT would work (such as the key factors that affect its output, and how the business would use the output to make a decision about the consumer); and
> - That the consumer has CCPA rights (to opt-out of ADMT and to access information about the ADMT), how they could exercise them, and that the business cannot retaliate against them for exercising those rights.

2 An easy way for the consumer to **opt-out** of the business's use of ADMT, unless an exception applies.

3 If a consumer did not opt-out, the business also would have to give them an easy way to access information about how the business used the ADMT with respect to them. (This requirement wouldn't apply to a business's use of personal information for training ADMT.)

A business's response to a consumer's access request would have to include:

- Why the business used the ADMT;

- How the ADMT worked with respect to that consumer, such as the key factors that affected the ADMT's output and what the output was; and how the business used the output to make a decision about that consumer.

  - *For example, if a business used emotion-assessment technology during a job applicant's interview to score their predicted performance at work and then used that score to decide whether to hire that applicant, the business would give that consumer's score and explain how the score factored into the business's decision to hire them; and*

- How the consumer could exercise their other CCPA rights (e.g., their right to correct inaccurate information), and that the business cannot retaliate against them for exercising their rights.

WHAT would a business have to do if a consumer opted out of its use of ADMT?

If a consumer opted out, the business would not collect, use, disclose, retain, or otherwise process the consumer's personal information using that ADMT.

Exceptions to providing opt out: A business would not have to provide an opt-out of its use of ADMT under certain circumstances:

Security, fraud prevention, and safety exception: The business uses the ADMT solely for necessary security, fraud prevention, or safety.
- This would only apply to a business's use of ADMT for two kinds of extensive profiling: work/educational profiling

Human appeal exception: The business gives consumers the ability to appeal the significant decision to a qualified human decisionmaker.
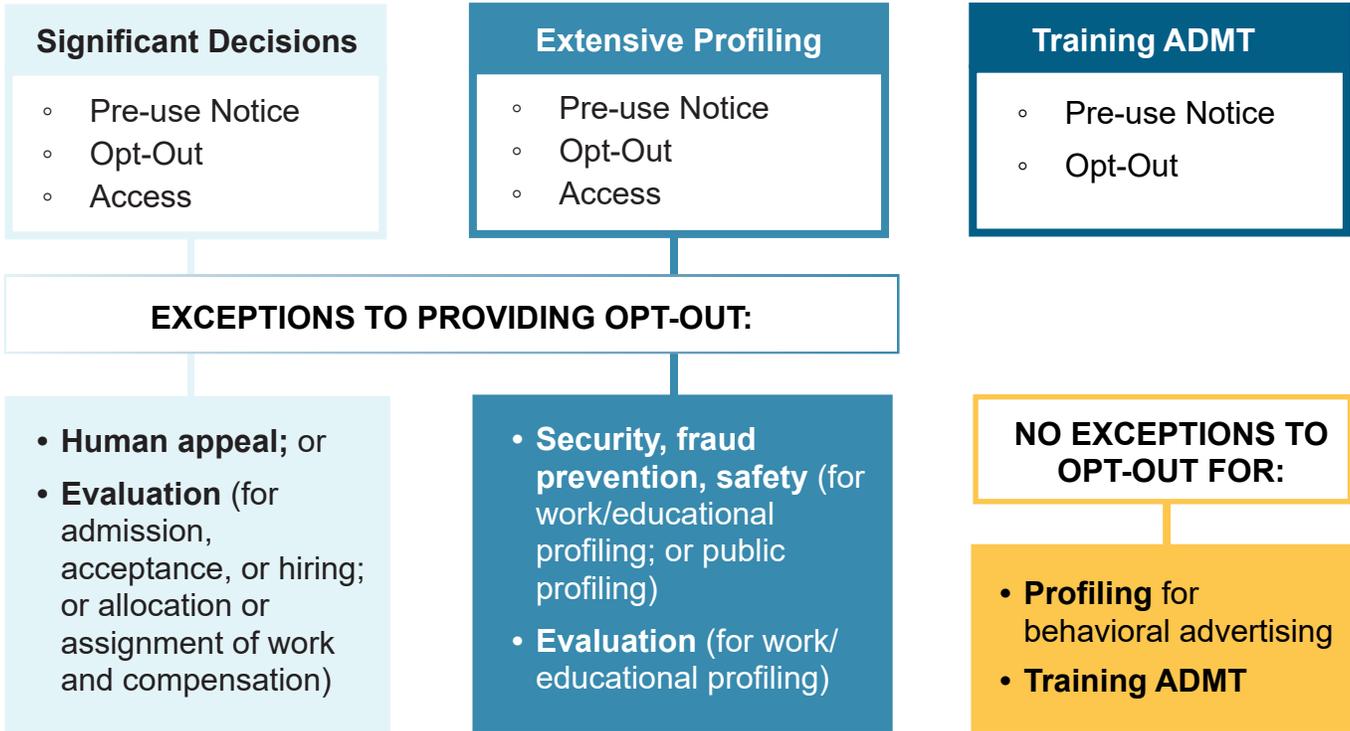- This would only apply to a business's use of ADMT for significant decisions.

Evaluation exception: The business (1) evaluated the ADMT to ensure it worked as intended and was not discriminatory, and (2) implemented safeguards to ensure that the ADMT worked as intended and was not discriminatory.
- This would only apply to a business's use of ADMT for certain kinds of significant decisions (admission/acceptance/hiring, allocation/assignment of work); or work/educational profiling.

These exceptions would not apply to the use of ADMT for profiling for behavioral advertising, nor to the use of consumers' personal information for training ADMT (*see* top of page 2).

To summarize, a business that uses ADMT for significant decisions, extensive profiling, or training ADMT would have to comply with the ADMT requirements:

Significant Decisions	Extensive Profiling	Training ADMT
◦ Pre-use Notice ◦ Opt-Out ◦ Access	◦ Pre-use Notice ◦ Opt-Out ◦ Access	◦ Pre-use Notice ◦ Opt-Out

EXCEPTIONS TO PROVIDING OPT-OUT:

		NO EXCEPTIONS TO OPT-OUT FOR:
• **Human appeal;** or • **Evaluation** (for admission, acceptance, or hiring; or allocation or assignment of work and compensation)	• **Security, fraud prevention, safety** (for work/educational profiling; or public profiling) • **Evaluation** (for work/educational profiling)	• **Profiling** for behavioral advertising • **Training ADMT**

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[1] The CCPA generally does not apply to nonprofit organizations or government agencies. For more information, *see* "Does My Business Need To Comply With The CCPA?" fact sheet at https://cppa.ca.gov/resources.html.

Supporting Resources: Civil Code § 1798.185(a)(16); Draft Risk Assessment and Automated Decisionmaking Technology Regulations, March 2024, available at https://cppa.ca.gov/meetings/materials/20240308_item4_draft_risk.pdf.