

**CALIFORNIA PRIVACY PROTECTION AGENCY**

**TITLE 11. LAW**

**DIVISION 6. CALIFORNIA PRIVACY PROTECTION AGENCY  
CHAPTER 1. CALIFORNIA CONSUMER PRIVACY ACT REGULATIONS**

**FINAL STATEMENT OF REASONS**

**UPDATE OF INITIAL STATEMENT OF REASONS**

As authorized by Government Code section 11346.9(d), the Agency hereby incorporates the Initial Statement of Reasons (ISOR) prepared in this matter. Unless specifically discussed otherwise below, the ISOR's stated bases for the necessity of the proposed regulations continue to apply to the regulations as adopted.

All modifications from the initial proposed text of the regulations, including non-substantial changes, are summarized below. A "non-substantial change" is one that clarifies without materially altering the requirements, rights, responsibilities, conditions or prescriptions contained in the original text. Cal. Code Regs., tit. 1, § 40. All references to regulations are to Title 11 of the California Code of Regulations.

**Changes Made to Article 1. General Provisions**

**A. § 7001. Definitions.**

The purpose of this section is to define terms used through the regulations to clarify the meaning of the regulations and to eliminate any misunderstanding or confusion. The section assists businesses in implementing the law, as well as the regulations, which benefits consumers. Modifications have been made to this section and they are explained below.

**Subsection (b)** has been added to provide a definition for "Alternative Opt-Out Link" for ease of reference within the regulations. This change is necessary to make the regulations more readable and easier for consumers and businesses to understand. The term has also been capitalized throughout the regulations to make clear that it is a defined term.

**Renumbered subsection (h)** has been modified to correct citations to the federal statute and Code of Federal Regulations.

**Renumbered subsection (i)** has been modified to apply not only businesses, but also to service providers, contractors, and third parties. This change is necessary because CCPA provisions regarding "disproportionate effort" may also apply to these entities. *See, e.g.*, Civ. Code §§ 1798.100(d)(2)-(3), 1798.105(c)(3). The subsection has also been modified to explain that "disproportionate effort" is when the time and/or resources expended to respond to the request significantly outweighs the reasonably foreseeable impact to the consumer by not responding to the request. The factors to consider when making this determination include: the size of the business, service provider, contractor, or third party, the nature of the request, and the technical limitations impacting their ability to respond. The subsection further provides examples of

situations in which these factors are applied, such as when the impact to the consumer of denying a request to correct would be the denial of services or opportunities to the consumer, and notes that these entities cannot claim “disproportionate effort” when they have failed to put in place adequate processes and procedures to receive and process CCPA requests.

As stated in the ISOR, this definition is necessary to operationalize the exception to complying with certain CCPA requests when it requires “disproportionate effort.” *See* ISOR, p. 4; *see also* Civ. Code §§ 1798.105(c)(1), 1798.105(c)(3), 1798.130(a)(2)(B), 1798.185(a)(8)(A), 1798.185(a)(9). These modifications further clarify for businesses, service providers, contractors, and third parties the factors to consider when making and explaining this determination, as required under sections 7022(b)(3), 7023(f), and 7024(h). The factors and examples are beneficial to businesses, particularly small businesses that lack privacy resources, by providing them guidance on how to comply with the law. They also benefit consumers by ensuring that businesses, service providers, contractors, and third parties do not abuse the exception by claiming that everything, including setting up basic processes for receiving and responding to requests, requires “disproportionate effort.”

**Renumbered subsection (k)** has been modified to capitalize the term “Business Purpose.” This is a non-substantial change to make clear that it is a defined term in Civil Code section 1798.140(e).

**Renumbered subsection (m)** has been modified to state that a first party means “a” consumer-facing business instead of “the” consumer-facing business. This change is necessary to reflect that it is possible to have more than one consumer-facing business, such as when two businesses co-sponsor an event or promotion.

**Renumbered subsection (o)** has been added to provide a definition for “Information Practices” for ease of reference within the regulations. This change is necessary to make the regulations more readable and easier for consumers and businesses to understand. The term has also been capitalized throughout the regulations to make clear that it is a defined term.

**Renumbered subsection (p)** has been added to provide a definition for “Nonbusiness.” This change is necessary to make the regulations more readable and easier for consumers and businesses to understand. The term has also been capitalized throughout the regulations to make clear that it is a defined term.

**Renumbered subsection (q)** has been modified to capitalize the term “Notice at Collection.” This is a non-substantial change to make clear that it is a defined term in the regulations. The term has also been capitalized throughout the regulations to make clear that it is a defined term.

**Renumbered subsection (r)** has been modified to capitalize the term “Notice of Right to Limit” and to add the words “or disclosure.” These are non-substantial changes to conform the regulation more closely to Civil Code sections 1798.121(a) and 1798.135(a)(2), and to make clear that it is a defined term in the regulations. The term has also been capitalized throughout the regulations to make clear that it is a defined term.

**Renumbered subsection (s)** has been modified to capitalize the term “Notice of Right to Opt-out of Sale/Sharing.” This is a non-substantial change to make clear that it is a defined term in

the regulations. The term has also been capitalized throughout the regulations to make clear that it is a defined term.

**Renumbered subsection (t)** has been modified to capitalize the term “Notice of Financial Incentive.” This is a non-substantial change to make clear that it is a defined term in the regulations. The term has also been capitalized throughout the regulations to make clear that it is a defined term.

**Renumbered subsection (w)** has been modified to use the new term “Information Practices.” This change is necessary to make the regulations more readable and easier for consumers and businesses to understand.

**Renumbered subsection (ee)** has been modified to include “any” to the definition of “right to delete.” This change is necessary to conform the regulation more closely to Civil Code section 1798.105(a).

**Renumbered subsection (kk)** has been modified to remove the examples of text, video, and audio files and to add language to explain that “unstructured” personal information is personal information that could not be retrieved or organized in a predefined manner without disproportionate effort on behalf of the business, service provider, contractor, or third party. This change is necessary to provide a more performance-based standard because there are some instances in which text, video, and audio files can be retrieved or organized.

Subsections have been renumbered. Non-substantial grammatical changes (capitalization of terms, revising sentence syntax, using “a” instead of “the,” using a lowercase “out” in “Alternative Opt-out Link”) and other non-substantial changes (updating the statutory citations in the definitions of “Notice at Collection” and “Privacy Policy”) have been made.

## **B. § 7002. Restrictions on the Collection and Use of Personal Information.**

As stated in the ISOR, the purpose of this section is to interpret and clarify the different subdivisions of Civil Code section 1798.100. Modifications have been made in response to comments received by the Agency during the public comment period. They are explained below.

**Subsection (a)** has been modified to restate the statutory requirements in Civil Code section 1798.100(c), for a business’s collection, use, retention, and/or sharing of a consumer’s personal information. **Subsection (a)(1)** cross-references subsection 7002(b), which clarifies that the purpose(s) for which the personal information was collected or processed shall be consistent with the reasonable expectations of the consumer(s) whose personal information is collected or processed. **Subsection (a)(2)** similarly cross-references subsection 7002(c), which sets forth the factors to consider when determining whether another disclosed purpose is compatible with the context in which the personal information was collected. This regulation is necessary to identify each of the requirements within Civil Code section 1798.100(c) and to clarify how the subsections within section 7002 correspond to those requirements. It clearly sets out the framework by which one is to understand this statutory provision, which makes it easier for consumers and businesses to understand.

**Subsection (b)** has been added to further clarify that the purpose(s) for which the personal information was collected or processed shall be consistent with the reasonable expectations of the consumer(s) whose personal information is collected or processed. It also clarifies that the relevant “consumer(s)” for the reasonable expectations analysis is the consumer(s) whose personal information is collected or processed. As stated in the ISOR and further supplemented here, these clarifications are necessary to further the explicit purposes of Proposition 24, which include: providing consumers with the ability to control their personal information; placing consumers on a more equal footing with businesses when negotiating with businesses to protect their rights and how businesses use their personal information; limiting businesses’ collection of personal information to specific, explicit, and legitimate disclosed purposes; and prohibiting collection, use, or disclosure of consumers’ personal information for reasons incompatible with those purposes. Prop. 24, as approved by voters, Gen. Elec. (Nov. 3, 2020), §§ 2(H), 3(A)(2), 3(B)(2)-(3). A consumer’s control over their personal information requires that the purpose for collecting or processing that information is consistent with the consumer’s reasonable expectations. When a business’s purpose for collecting or processing personal information is inconsistent with the consumer’s reasonable expectations, consumers lose control over their personal information and are not in an informed position where they can exercise their rights or knowingly and freely negotiate with a business over the business’s use of their personal information.<sup>1</sup> In addition, subsection (b) is consistent with the explicit language in Civil Code section 1798.185(a)(10), which states that the business purposes, including other notified purposes, for which businesses may use consumers’ personal information should be “consistent with consumers’ expectations.”

**Subsections (b)(1) through (b)(5)** are the factors by which one determines the reasonable expectations of the consumer. Each of these factors is necessary to determine a consumer’s reasonable expectations and must be assessed together to determine whether the consumer(s) whose personal information was collected or processed would reasonably expect the collection or processing in a given set of the circumstances. These subsections provide objective factors that are consistent with the language, intent, and purpose of the CCPA. Subsection 7002(b) does not require an assessment of whether a particular consumer actually expected the collection or processing, but whether a reasonable consumer whose personal information is being collected or processed would expect that collection or processing.

**Subsection (b)(1)** identifies the first factor—the relationship between the consumer(s) and the business. The relationship between the consumer and the business is a necessary consideration because it establishes the level of engagement between the consumer and business, which will better inform what is reasonable in the context of the particular engagement. If a business’s relationship with a consumer is based on the provision of a specific good or service, it is more likely under this factor that the consumer would reasonably expect the purpose of collection or processing to be the provision of that good or service. The first example illustrates this point: when the relationship is driven by the consumer’s intentional interaction to purchase a good or

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<sup>1</sup> See, e.g., Consumer Reports & EPIC, *How the FTC Can Mandate Data Minimization Through a Section 5 Unfairness Ruling* (Jan. 26, 2022), <https://epic.org/documents/how-the-ftc-can-mandate-data-minimization-through-a-section-5-unfairness-rulemaking/>; Eric Null et al., Access Now, *Data Minimization: Key to Protecting Privacy and Reducing Harm* (May 2021), <https://www.accessnow.org/data-minimization-report/>; see also Hana Habib, *Evaluating the Usability of Privacy Choice Mechanisms* (Sept. 2021) (unpublished dissertation, Carnegie Mellon University), <https://doi.org/10.1184/R1/17105468.v1>.

service from the business's website, the consumer likely expects that the purpose of collecting or processing their personal information is to provide the purchased good or service. The second example further illustrates that when the consumer's relationship with a business is to obtain a specific service (e.g., provision of a mobile flashlight), the consumer is unlikely to expect that the business will collect personal information unrelated to the provision of that service. These examples are necessary to illustrate how this factor is to be applied and analyzed.

**Subsection (b)(2)** identifies the second factor—the type, nature, and amount of personal information that the business seeks to collect or process. The factor is a necessary consideration because the consumer's awareness of the type, nature, and amount of personal information the business seeks to collect or process informs the consumer's expectations about the business's use of it. The first example illustrates that the type and amount of personal information (e.g., a single contact within a consumer's contact list) that is being collected or processed affects a consumer's reasonable expectations about the purpose of collection or processing (e.g., to call the specific contact selected). The second example illustrates that the nature of the personal information (e.g., sensitive personal information, such as a fingerprint) also affects a consumer's reasonable expectations about the purpose of collection or processing (e.g., that the use of the consumer's fingerprint is limited to the purpose of unlocking the device). These examples are necessary to illustrate how this factor is to be applied and analyzed.

**Subsection (b)(3)** identifies the third factor—the source of the personal information and the business's method for collecting or processing it. The factor is a necessary consideration because the source of the personal information, such as whether the source is the consumer or another person, affects whether the consumer reasonably expects the purpose of the collection or processing. The first example illustrates this point: when the consumer is the source of the personal information for a given product or service, the consumer likely expects that the business will use the personal information to provide that product or service. The method for collecting or processing the personal information, such as whether the business is collecting personal information from one service and processing it for that same service or for another service, also affects whether a consumer reasonably expects the purpose of collection or processing. The second example illustrates this point: if a consumer is providing their personal information for one product or service, they may not expect that the business will use that same personal information for a different product or service offered by the business or the business's subsidiary. These examples are necessary to illustrate how this factor is to be applied and analyzed.

**Subsection (b)(4)** identifies the fourth factor—the specificity, explicitness, prominence, and clarity of disclosures to the consumer(s) about the purpose for collecting or processing their personal information, such as in the Notice at Collection and in the marketing materials to the consumer(s) about the business's good or service. The factor is a necessary consideration because what a business discloses to the consumer and how the disclosure is made also affects the consumer's reasonable expectations about the purpose of collecting or processing their personal information. The first example illustrates how disclosures to consumers about the purpose of collection or processing can assist with shaping reasonable consumer expectations. In the example, the specificity, explicitness, and clarity of the disclosures in the pop-up notice (i.e., that the phone number collected would be used to verify the consumer's identity when they log in) and the prominence of the disclosure (i.e., via a pop-up notice prior to collection) affect the

consumer’s reasonable expectations about the purpose of collection or processing (i.e., limited to identity verification, and not for marketing purposes). The second example illustrates how disclosures in marketing materials can play a role in consumers’ reasonable expectations about the purpose of collection or processing: a mobile application that markets itself with specific and explicit disclosures about the services it provides (e.g., finding cheap gas close to the consumer) also affects consumers’ reasonable expectations about how their personal information will be used by the application (e.g., using geolocation information specifically to find cheap gas close to the consumer). These examples are necessary to illustrate how this factor is to be applied and analyzed.

**Subsection (b)(5)** identifies the last factor—the degree to which the involvement of service providers, contractors, third parties, or other entities in the collecting or processing of personal information is apparent to the consumer(s). The factor is a necessary consideration because the visibility of other parties’ involvement in the collection or processing of personal information also affects consumers’ reasonable expectations. The first example illustrates this point: a delivery service provider’s role in delivering a purchased product is visible to the consumer, and a consumer reasonably expects the disclosure of the consumer’s name and address to that service provider for the delivery. By contrast, where a party’s role in the collection or processing is less apparent to the consumer, the consumer may not expect the disclosure of their personal information. These examples are necessary to illustrate how this factor is to be applied and analyzed.

These factors are consistent with consumers’ understandings and expectations of how their personal information will be used for data collection and processing.<sup>2</sup> They are also necessary to address comments received by businesses seeking guidance on how to determine the expectations of a consumer. They benefit businesses by providing clear objective factors by which they can determine the consumer’s reasonable expectations and provide clarity to businesses and consumers about businesses’ responsibilities under Civil Code section 1798.100(c).

**Subsection (c)** has been added to explain how one is to determine whether another disclosed purpose is compatible with the context in which the personal information was collected, as that term is used in Civil Code section 1798.100(c). It is necessary to provide guidance to businesses on how to determine whether “another disclosed purpose” is “compatible with the context in which the personal information was collected,” as required by Civil Code section 1798.100(c), because this phrase is otherwise subject to varied interpretations. Subsection (c) therefore provides objective factors that are consistent with the language, intent, and purpose of the CCPA, including by: providing consumers with the ability to control their personal information; placing

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<sup>2</sup> See, e.g., Consumer Action and Consumer Federation of America, *Survey Report: Too Many Californians Are Still Unaware of Privacy Rights* (2022), <https://www.consumer-action.org/english/articles/CCPA-Privacy-Rights-Survey>; Ido Sivan-Sevilla et al., *Unaccounted Privacy Violation: A Comparative Analysis of Persistent Identification of Users Across Social Contexts* (2020), [https://www.ftc.gov/system/files/documents/public\\_events/1548288/privacycon-2020-ido\\_sivan-sevilla.pdf](https://www.ftc.gov/system/files/documents/public_events/1548288/privacycon-2020-ido_sivan-sevilla.pdf); Kristen Martin & Helen Nissenbaum, *Privacy Interests in Public Records: An Empirical Examination*, 31 Harv. J. L. & Tech. 111 (2017); Jacob Strahilevitz & Matthew B. Kugler, *Is Privacy Policy Language Irrelevant to Consumers?*, 45 J. Legal Stud. S69 (2016); Matthew B. Kugler, *From Identification to Identity Theft: Public Perceptions of Biometric Privacy Harms*, 10 U.C. Irvine L. Rev. 107 (2019).

consumers on a more equal footing with businesses when negotiating with businesses to protect their rights and how businesses use their personal information; limiting businesses' collection of personal information to specific, explicit, and legitimate disclosed purposes; and prohibiting collection, use, or disclosure of consumers' personal information for reasons incompatible with those purposes. Prop. 24, as approved by voters, Gen. Elec. (Nov. 3, 2020), §§ 2(H), 3(A)(2), 3(B)(2)-(3). It also provides clarity to businesses and consumers about businesses' responsibilities under Civil Code section 1798.100(c).

**Subsections (c)(1) through (c)(3)** are the specific factors to consider when assessing whether the additional purpose is compatible. As explained in greater detail below, one is to look at the strength of the link between (1) the purpose(s) that the consumer reasonably expects the business to use the personal information and (2) the “other disclosed purpose” the business seeks to use it for. The stronger the link, the more likely the other purpose is compatible.

**Subsection (c)(1)** identifies the first factor in assessing compatibility—the reasonable expectations of the consumer at the time of collection, based on the factors set forth in subsection 7002(b). The reasonable expectations of the consumer are necessary to consider because they determine the “context in which the personal information was collected” with which the “other disclosed purpose” is to be compared.

**Subsection (c)(2)** identifies the second factor in assessing compatibility—the “other disclosed purpose” for which the seeks to further collect or process the consumer's personal information. This factor is necessary because the “other disclosed purpose” is what the business must actually evaluate for compatibility. This subsection takes note of the fact that the “other disclosed purpose” may be one of the specific uses of personal information identified as a “business purpose” in Civil Code section 1798.140(e)(1) through (e)(8). This is necessary because if the “other disclosed purpose” is one of those “business purpose(s),” it may be more likely to satisfy the compatibility requirement, though it ultimately would be a context and fact-specific determination. This point is illustrated in the first example within subsection 7002(c)(3): a strong link exists between consumer's expectations that their personal information will be used to provide them with a requested service and the use of that information for the specific Business Purpose of repairing errors that impair the intended functionality of that requested service.

**Subsection (c)(3)** identifies the last factor in assessing compatibility—the strength of the link between the factors described in subsections (c)(1) and (c)(2). If there is a strong link between (c)(1) and (c)(2), this weighs in favor of compatibility. The first example illustrates this point: there is a strong link between the consumer's expectations that their personal information will be used to provide them with a requested service at the time of collection, and the use of that information for the purpose of repairing errors that impair the intended functionality of that service. By contrast, where there is a weak link between (c)(1) and (c)(2), this weighs against compatibility. The second example illustrates this point: there is a weak link between the consumer's expectations that their personal information will be collected to provide a requested cloud storage service at the time of collection, and the use of that information to research and develop a facial recognition service that is unrelated to the cloud storage service. It is necessary to include these examples to illustrate to businesses what may constitute a strong versus a weak link between the first two factors.

These factors are informed by academic scholarship about how consumers are concerned about their inability to control the use of their personal information for other purposes, particularly those purposes that are opaque or invisible to consumers.<sup>3</sup> They also work to harmonize the application of California law with other privacy frameworks. *See, e.g.*, Colorado Attorney General’s Office, Proposed Draft of Colorado Privacy Act Rules: Rule 6.08 (2022) (for secondary uses, Rule 6.08 provides for consideration of several factors, such as consumers’ reasonable expectations at the time of collection and the link between the original purpose of collection and the purpose of further processing); United Kingdom Information Commissioner’s Office, Guide to the General Data Protection Regulation: Principle (b): Purpose limitation (restricting the use of personal data for other purposes, and requiring a compatibility assessment that includes factors such as individuals’ reasonable expectations and the link between the original purpose and the new purpose).

**Subsection 7002(d)** has been added to reiterate Civil Code section 1798.100(c)’s requirement that a business’s collection, use, retention, and/or sharing of a consumer’s personal information must be “reasonably necessary and proportionate” for each identified purpose, whether it is the purpose the consumer reasonably expects (as determined by the factors set forth in subsection (b)), a compatible purpose (as determined by the factors set forth in subsection (c)), or a purpose that the consumer consents to (in accordance with subsection (e)). As explained in greater detail below, **subsections (d)(1) through (d)(3)** describes the factors that one must consider in determining whether the business’s collection, use, retention, and/or sharing of personal information is reasonably necessary and proportionate to achieve a given purpose. This guidance is necessary to ensure that the business collects, uses, retains, and/or shares only the minimum personal information necessary to achieve the purpose, and that the collection or processing does not pose unnecessary and disproportionate negative impacts to the consumer.

**Subsection (d)(1)** identifies the first factor—the minimum personal information that is necessary to achieve the purpose identified in subsection (a)(1) or (a)(2), or any purpose for which the business obtains consent. The example is necessary to illustrate this requirement: for the purpose of completing an online purchase and sending an email confirmation of the purchase to the consumer, an online retailer may need the minimum information of the consumer’s order information, payment and shipping information, and email address.

**Subsection (d)(2)** identifies the second factor—the possible negative impacts on consumers posed by the business’s collection or processing of the personal information. The example is necessary to illustrate an assessment of a possible negative impact: collection of precise geolocation information may reveal other sensitive personal information about the consumer, such as their health information based on visits to healthcare providers, which is a possible negative impact that a business is to consider before collecting this information. Businesses

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<sup>3</sup> *See, e.g.*, Ido Sivan-Sevilla et al., *Unaccounted Privacy Violation: A Comparative Analysis of Persistent Identification of Users Across Social Contexts* (2020), [https://www.ftc.gov/system/files/documents/public\\_events/1548288/privacycon-2020-ido\\_sivan-sevilla.pdf](https://www.ftc.gov/system/files/documents/public_events/1548288/privacycon-2020-ido_sivan-sevilla.pdf); Hana Habib, *Evaluating the Usability of Privacy Choice Mechanisms* (Sept. 2021), (unpublished dissertation, Carnegie Mellon University), <https://doi.org/10.1184/R1/17105468.v1>; *see also* Jacob Strahilevitz & Matthew B. Kugler, *Is Privacy Policy Language Irrelevant to Consumers?*, 45 J. Legal Stud. S69 (2016).



must identify these possible negative impacts in order to consider and implement additional safeguards.

**Subsection (d)(3)** identifies the last factor—the existence of additional safeguards for the personal information to specifically address the possible negative impacts on consumers considered by the business in subsection (d)(2). The example includes two safeguards that businesses may consider: encryption or automatic deletion of personal information within a specific window of time.

These factors are necessary to provide businesses guidance regarding what is “reasonably necessary and proportionate,” and address comments received by businesses seeking guidance on this topic. They benefit businesses by providing clear objective factors by which they can determine whether their collection or processing of personal information is reasonably necessary and proportionate and provide clarity to businesses and consumers about businesses’ responsibilities under Civil Code section 1798.100(c). Insufficient guidance would weaken consumers’ control over their personal information and the goals of CCPA to limit businesses’ collection, use, retention, and sharing of consumers’ personal information to only what is necessary. CCPA also intends for consumers to benefit from businesses’ use of personal information, which excessive data collection and processing undermines.<sup>4</sup> Moreover, the factors are consistent with the language, intent, and purpose of the CCPA, including by: providing consumers with the ability to control their personal information; limiting collection of personal information only to the extent it is relevant and limited to what is necessary to the purposes for which it is being collected, used, and shared; prohibiting collection, use, or disclosure of consumers’ personal information for reasons incompatible with those purposes; and ensuring that consumers benefit from businesses’ use of their personal information. Prop. 24, as approved by voters, Gen. Elec. (Nov. 3, 2020), §§ 2(H), 3(A)(2) and (7), 3(B)(2)-(3).

**Subsection 7002(e)** was formerly part of subsection (a) and has been modified in three ways. First, the word “explicit” has been removed to avoid confusion about what “explicit” requires. As made clear with this modification, any “consent” must comply with the statutory definition of “consent” under Civil Code section 1798.140(h), and the requirements in section 7004 of these regulations. Second, “or processing” has replaced “using, retaining, and/or sharing the consumer’s.” This change aligns the language of the regulation with Civil Code section 1798.100(c), which prohibits “further process[ing]” of personal information in a manner that is incompatible with the purposes for which the personal information was collected or processed, or for another disclosed purpose that is compatible with the context in which the personal information was collected. Lastly, “does not meet the requirements set forth in subsection (a)” has replaced “is unrelated or incompatible with the purpose(s) for which the personal information collected or processed” to simplify the language within subsection 7002(e) and explain how subsections 7002(a) and 7002(e) relate to each other.

As stated in the ISOR and further supplemented here, subsection (e) is necessary to provide clarity to businesses and consumers about businesses’ responsibilities under Civil Code section 1798.100(c), and harmonize the operational mechanisms of the CCPA, such as by clarifying

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<sup>4</sup> See, e.g., Eric Null et al., *Access Now, Data Minimization: Key to Protecting Privacy and Reducing Harm* (May 2021), <https://www.accessnow.org/data-minimization-report/>.

when and how consent must be obtained. The regulation is consistent with the language, intent, and purpose of the CCPA, including by providing consumers with the ability to control their personal information and placing consumers on a more equal footing with businesses when negotiating with businesses to protect their rights and how businesses use their personal information. Prop. 24, as approved by voters, Gen. Elec. (Nov. 3, 2020), §§ 2(H), 3(A)(2), 3(B)(2)-(3). It furthers the purposes of the CCPA because consent ensures that consumers can control their personal information (i.e., by providing consent for a given collection or processing activity, consumers can then reasonably expect that collection or processing). Consent also places consumers on more equal footing with businesses when negotiating with businesses to protect their rights and to control how businesses use their personal information. Because bundled consent (e.g., where consumers must consent to all of a business’s data practices to use a given product or service) is prohibited under Civil Code section 1798.140(h), and the requirements in section 7004, concerns about businesses forcing consumers to consent to all the businesses’ data practices, even those inconsistent with the consumer’s reasonable expectations, are mitigated. *See, e.g.,* Jacob Strahilevitz & Matthew B. Kugler, *Is Privacy Policy Language Irrelevant to Consumers?*, 45 J. Legal Stud. S69 (2016).

The Agency considered the “notice at collection”-based approach raised in public comments, which would only require businesses to provide a new notice at collection for processing that is incompatible with the purposes for which the personal information was collected or processed or for another disclosed purpose that is compatible with the context in which the personal information was collected.

The Agency rejected this alternative on two grounds. First, a notice-only requirement does not comply with the statutory requirements of Civil Code section 1798.100(c). Civil Code section 1798.100(c), prohibits incompatible processing and does not provide a notice-at-collection exception to this requirement. For processing that does not meet the requirements of subsection 7002(a), consent (which must be a “freely given, specific, informed, and unambiguous indication of the consumer’s wishes”) is the appropriate mechanism to render that processing compatible, because consent ensures that consumers reasonably expect and agree to the processing. Although a new notice at collection would also be required under Civil Code section 1798.100(a), a new notice is insufficient by itself to comply with Civil Code section 1798.100(c)’s statutory requirements for collection and processing.

Second, a notice-only requirement is inconsistent with the language, intent, and purpose of the CCPA. A notice-only approach would undermine consumers’ control over their personal information and would place them on unequal footing with businesses when negotiating with businesses over the use of their personal information. Research has shown that consumers are concerned with their personal information being used outside of the product or service they requested without their consent, and that notices by themselves are insufficient to provide consumers with an understanding of and control over the purposes of collection and processing of their personal information.<sup>5</sup>

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<sup>5</sup> *See, e.g.,* Jacob Strahilevitz & Matthew B. Kugler, *Is Privacy Policy Language Irrelevant to Consumers?*, 45 J. Legal Stud. S69 (2016); Hana Habib, *Evaluating the Usability of Privacy Choice Mechanisms* (Sept. 2021),

**Subsection 7002(f)**, formerly subsection (c), has been modified in two ways. First, “Notice at Collection” has been capitalized, to align with how this phrase is now capitalized in subsection 7001(q). Second, “use” has been replaced with “processing” in the last sentence. This change aligns the language of subsection 7002(f) with Civil Code section 1798.100(c), which prohibits “further process[ing]” of personal information in a manner that is incompatible with the purposes for which the personal information was collected or processed or for another disclosed purpose that is compatible with the context in which the personal information was collected. As stated in the ISOR and further supplemented here, this regulation is necessary to clarify how the requirements set forth in Civil Code section 1798.100(a) and (c) work together. A new notice at collection is required by Civil Code section 1798.100(a), but a new notice by itself does not satisfy the statutory requirements for collection and processing under Civil Code section 1798.100(c), which must be addressed separately through compliance with section 7002’s requirements.

A non-substantial change (adding “reasonable” in subsection (c)(3) to match the corresponding language in subsection (c)(1)) has also been made.

### **C. § 7003. Requirements for Disclosures and Communications to Consumers.**

The purpose of section 7003 is to provide guidance regarding how businesses are to provide information to consumers. A few modifications have been made to this section in response to public comments received. They are explained below.

**Subsection (c)** has been modified to clarify that conspicuous links for websites are to appear in a similar manner as other “similarly-posted” links used by the business on its Homepage(s), and to update the example to note that the font size and color should be at least the approximate size or color as other links next to it. These changes are necessary to address situations in which a business may use a variety of different links that may be different sizes on its Homepage(s). These modifications clarify that the points of reference for a conspicuous link are links and font sizes that are similarly situated, such as those next to or close to it. Homepage(s) is capitalized to make clear that this is a defined term. *See* Civ. Code § 1798.140(p). This change is necessary to make clear that the rule applies to all web pages where personal information is collected, not just the introductory page. *Id.*

**Subsection (d)** has been modified to reflect that a conspicuous link for a mobile application shall be included in the business’s privacy policy, which must be accessible through the mobile application’s platform page or download page, but that it also may be accessible through a link within the application, such as through the application’s settings menu, to conform the regulation to the definition of “Homepage.” This change is necessary to provide flexibility in how to provide the required disclosures in a mobile environment.

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(unpublished dissertation, Carnegie Mellon University), <https://doi.org/10.1184/R1/17105468.v1>; Ido Sivan-Sevilla et al., *Unaccounted Privacy Violation: A Comparative Analysis of Persistent Identification of Users Across Social Contexts* (2020), [https://www.ftc.gov/system/files/documents/public\\_events/1548288/privacycon-2020-ido\\_sivan-sevilla.pdf](https://www.ftc.gov/system/files/documents/public_events/1548288/privacycon-2020-ido_sivan-sevilla.pdf).

#### **D. § 7004. Requirements for Methods for Submitting CCPA Requests and Obtaining Consumer Consent.**

As stated in the ISOR, the purpose of section 7004 is to provide guidance to businesses regarding how to craft methods for submitting CCPA requests and obtaining consumer consent to ensure that the consumer's choice is freely made and not manipulated, subverted, or impaired by dark patterns. Modifications have been made to the section in response to comments received by the Agency during the public comment period. They are explained below.

**Subsection (a)(2)** has been modified to clarify that the symmetry in choice principle also considers whether a path to a more privacy-protective option is more difficult or time-consuming than the path to exercise a less privacy-protective option. It explains that a more difficult or time-consuming path would impair or interfere with the consumer's ability to make a choice. This change is necessary to address situations where the number of steps may be equal, but the length of time or burden of completing the steps may be different.<sup>6</sup>

**Subsection (a)(2)(A)** has been modified slightly and is necessary to clarify how this example illustrates the symmetry in choice principle. **Subsections (a)(2)(B) and (a)(2)(C)** have been modified to clarify that the examples included in these subsections impair the consumer's ability to make a choice, and thus, would fail to meet the definition of consent under Civil Code § 1798.140(h). They have also been modified to use the word "could" instead of "would" to indicate that the symmetrical choice suggested is one possible way, not the only way, to correct the method. The example in **subsection (a)(2)(C)** has also been modified to illustrate the symmetry in choice principle more clearly when applied to methods for obtaining consumer consent.

Subsections (a)(2)(D) and (E) have been deleted.

**Subsection (a)(3)(C)** has been modified to simplify the example provided. The example now focuses on how a confusing choice would contravene the consumer's expectation. This aligns the example more closely to the CCPA definitions of "dark pattern" and "consent," which focus on whether the consumer's agreement is freely given and not whether the consumer's choice benefits the business.

**Subsection (a)(4)** has been modified to clarify that businesses are to avoid choice architecture that impairs or interferes with the consumer's ability to make a choice. Businesses should not design their methods in a manner that would impair the consumer's ability to exercise their choice because consent must be freely given, specific, informed, and unambiguous in accordance

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<sup>6</sup> See, e.g., Letter from Katie McInnis, Policy Counsel, Consumers Union, to Maneesha Mithal, Division of Privacy and Identity Protection, Federal Trade Commission (June 27, 2018), <https://advocacy.consumerreports.org/wp-content/uploads/2018/06/CU-to-the-FTC-Facebook-Dark-Patterns-6.27.18-1-1.pdf>; Federal Trade Commission, FTC Bringing Dark Patterns to Light (2022), <https://www.ftc.gov/reports/bringing-dark-patterns-light>; Org. for Econ. Co-operation & Dev., Dark Commercial Patterns, OECD Digital Economy Papers (2022), [https://www.oecd-ilibrary.org/science-and-technology/dark-commercial-patterns\\_44f5e846-en](https://www.oecd-ilibrary.org/science-and-technology/dark-commercial-patterns_44f5e846-en); Stanford Digital Civil Society Lab, Dark Patterns Tip Line, <https://darkpatternstipline.org/> (last visited Jan. 17, 2023) (identifies patterns that waste time).

with the CCPA definition of “consent.” *See* Civ. Code § 1798.140(h). This change is necessary to explain how this principle relates to and implements the statutory definition of “consent.” *Id.*

The example in subsection (a)(4)(A) has been deleted, and the remaining two examples have been renumbered accordingly. **Subsection (a)(4)(A)**, formerly subsection (a)(4)(B), has been modified to clarify how clicking through disruptive screens is a choice architecture that impairs or interferes with the consumer’s ability to exercise their choice. **Subsection (a)(4)(B)**, formerly subsection (a)(4)(C), has been modified to reference the restrictions on the collection and use of personal information in section 7002. The example in this subsection has been modified to illustrate how bundling certain types of choices together is a choice architecture that impairs or interferes with the consumer’s ability to make a choice. It is necessary to explain how this type of choice architecture does not allow consent to be freely given, specific, informed, or unambiguous.

**Subsection (a)(5)** has been modified to clarify that a business that knows of, but does not remedy, circular or broken links and nonfunctional email addresses may be in violation of this regulation. This change is necessary to address concerns that the example creates a strict liability standard, which it does not.

**Subsection (c)** has been modified to clarify that the statutory definition of a “dark pattern” does not require the business to intend to design a user interface to have the substantial effect of subverting or impairing consumer choice. *See* Civ. Code § 1798.140(l). The subsection is necessary to clarify how intent factors into assessments of violations of the CCPA and this subsection and to address comments raised during the public comment period.

## **Changes Made to Article 2. Required Disclosures to Consumers**

Article 2 provides guidance regarding the different disclosures that the CCPA requires businesses to give to consumers. Modifications have been made to this section, which are explained below.

### **E. § 7010. Overview of Required Disclosures.**

**Subsection (b)** has been modified to include “from a consumer.” This change is necessary to clarify that the Notice at Collection is a requirement for businesses that are collecting information from the consumer. This modification conforms this subsection to the language in subsection 7012(a).

Non-substantial grammatical changes (capitalization of terms) have been made. References to section 7027 have also been updated.

### **F. § 7011. Privacy Policy.**

**Subsection (d)** has been modified to include the words “and accessible.” This change is necessary to clarify that the privacy policy shall be accessible through a conspicuous link that complies with section 7003, subsections (c) and (d).

Non-substantial grammatical changes (capitalization of terms, adding “what”) and other non-substantial changes (updating the statutory citation in subsection (e)(1)(A)) have been made. References to the Civil Code and section 7027 have also been corrected and/or updated.

#### **G. § 7012. Notice at Collection of Personal Information.**

**Subsection (a)** has been modified to clarify that the Notice at Collection can be a tool for consumers to exercise meaningful control over the business’s use of their personal information. This change is necessary to describe the purpose of the notice more precisely and to explain how the Notice at Collection can work together with the other factors in section 7002(b) to shape consumer’s reasonable expectations regarding the purpose(s) for which their personal information will be collected or processed. *See* Civ. Code § 1798.100(c); Cal. Code Regs., tit. 11, § 7002(b)(1)-(b)(5) (proposed).

**Subsection (e)(6), part of subsection (g), subsection (g)(2), and parts of subsection (g)(3)** have been deleted.

**Subsection (g)(1)** has been modified to add that a first party and third party may provide a single Notice at Collection that includes the required information about their collective information practices. This change is necessary to clarify that this is a lawful option available for first and third parties in providing their Notices at Collection.

**Subsection (g)(2)** has been modified to add the word “physical” before premises and to delete the word “also.” This change is necessary to clarify that the regulation refers to physical premises, such as a retail store or in a vehicle, and to conform the regulation to the requirements in Civil Code section 1798.100(b), which states that in this circumstance, the third party “may” provide the Notice at Collection on the third party’s website, but that it “shall” provide it “at the location.”

**Subsection (g)(3)(A)** has been modified to replace “analytics business” with “third party ad network.” This change is necessary to clarify that the example involves a third party ad network and not an ad network or analytics business that is a service provider. **Subsection (g)(3)(A)** has also been modified to include that Business G could provide the Notice at Collection by including the required information about its information practices within Business F’s Notice at Collection. This change is necessary to illustrate the new language included in subsection (g)(1).

**Subsection (g)(3)(C)** has been corrected to replace Business M with Business K and J. This is a non-substantial change to fix a typographical error. The last sentence of **subsection (g)(3)(C)** has also been deleted to clarify that the business is required to provide its privacy policy on its Homepage, but not necessarily a Notice at Collection on its Homepage.

**Subsection (i)** has been modified to remove the double negative and to clarify that a data broker does not need to provide a Notice at Collection in instances when it collects personal information from a source other than the consumer. This is non-substantial grammatical change.

**Subsections (j) and (k)** have been deleted to conform the regulations to the law following the expiration of the exceptions in Civil Code section 1798.145(m) and (n).

Non-substantial grammatical changes (capitalization of terms, replacing “the” with “each”) have been made.

**H. § 7013. Notice of Right to Opt-out of Sale/Sharing and the “Do Not Sell or Share My Personal Information” Link.**

Subsections (e)(C) and (D) have been deleted.

Non-substantial grammatical changes (capitalization of terms, using a lowercase “out” in “Opt-out,” italicization of “e.g.”) and other non-substantial changes (updating the relevant cross-reference in subsection (e)(2) to section 7003) have been made.

**I. § 7014. Notice of Right to Limit and the “Limit the Use of My Sensitive Personal Information” Link.**

**Subsection (e)(3)** has been deleted.

**Subsection (g)** has been modified to include that a business that only collects or processes sensitive personal information without the purpose of inferring characteristics about a consumer does not need to provide a Notice of Right to Limit or the “Limit the Use of My Sensitive Personal Information” link. This change is necessary to conform the regulation to Civil Code sections 1798.121(d), and 1798.185(a)(19)(C)(iv).

Non-substantial grammatical changes (capitalization of terms) have been made. References to section 7027 have also been updated.

**J. § 7015. Alternative Opt-out Link.**

**Subsection (b)** has been modified to state that the opt-out icon shall be included adjacent to the title of the Alternative Opt-out Link and that the icon shall be approximately the same size as other icons used by the business in the header or footer of its webpage. These changes are necessary to provide more clarity regarding where the icon is to be placed and to account for situations where a business uses icons of all different sizes on its webpage.

Non-substantial grammatical changes (capitalization of terms, using a lowercase “out” in “Alternative Opt-out Link”) have been made.

**K. § 7016. Notice of Financial Incentive.**

Non-substantial grammatical changes (capitalization of terms) have been made.

**Changes Made to Article 3. Business Practices for Handling Consumer Requests**

Article 3 provides guidance regarding how businesses are to handle consumer requests that exercise their various CCPA rights. Modifications have been made to this section, which are explained below.

#### L. § 7022. Requests to Delete.

**Subsections (b) and (c)** have been modified to clarify that the service provider and contractor may utilize self-service methods that enable the business to delete the personal information that the service provider or contractor has collected pursuant to the written contract that it has with the business. This change is necessary to conform the regulations to the language in Civil Code sections 1798.105(a), (c)(3) and 1798.130(a)(3)(A).

Consistent with the language change in section 7050, **subsections (b) and (c)** have also been modified to be more precise about how a service provider's or contractor's obligations apply to the personal information collected pursuant to its written contract with the business. The language "Collected pursuant to their written contract" and similar revisions have replaced the phrase "obtained in the course of providing services" to be consistent with other sections. These changes also align the regulation with the statutory language in the definitions of "service provider" and "contractor." The terms "Collect" and "Business Purpose" have also been capitalized throughout this section to make clear that they are defined terms.

The last two sentences of **subsection (c)(4)** have been deleted.

**Subsection (g)** has been modified to add "or shares." This change is necessary to conform the regulation to language in Civil Code section 1798.120.

**Subsection (h)** has been modified to delete the requirement that the single option to delete all personal information be more prominently presented than other choices. This change is necessary to make the regulation consistent with the requirement in subsection 7004(a)(2) that consumer choices be symmetrical. An example has also been included in the subsection. This change is necessary to clarify that a business can provide consumers with a link to a support page or other resource that explains how they can delete specific pieces of personal information when the business offers that functionality.

Non-substantial grammatical changes (capitalization of terms, deleting "or not," deleting an extraneous "or," italicizing "e.g.") have been made.

#### M. § 7023. Requests to Correct.

**Subsection (c)** has been modified to replace "in the course of providing services to" with "pursuant to their written contract with." As explained more thoroughly in section 7050 below, this change is necessary to be more precise about how the service provider's or contractor's obligations apply to the personal information it collected pursuant to the written contract with the business.

**Subsection (c)** has also been modified to add language that enables businesses, service providers, and contractors to delay compliance with requests to correct, with respect to information stored on archived or backup systems until the archived or backup system relating to that data is restored to an active system or is next accessed or used. This is necessary to balance the interests of consumers with the potentially burdensome cost of correcting information from backup systems that may never be used.



**Subsection (c)** has also been modified to delete language regarding businesses implementing measures to ensure that the information remains corrected and service providers and contractors ensuring that the information at issue remains corrected. The illustrative examples in subsections (c)(1) and (2) have also been deleted.

**Subsection (d)** has been modified to add that consumers are to make a good-faith effort to provide businesses with all necessary information available at the time of the request. This is necessary to address concerns raised by public comments that businesses would receive multiple requests to correct with consumers offering different pieces of documentation each time.

**Subsection (d)(2)(D)** has been modified to replace “high” with “negative.” This change is necessary to clarify that when the inaccurate information has a “negative” impact on the consumer, the business may require less documentation. The term negative is more precise than high, and thus, easier for businesses and consumers to understand.

**Subsection (f)(3)** has been deleted. Part of **subsection (f)(4), now subsection (f)(3)**, has also been deleted.

**Subsection (i)** has been modified to replace “shall” with “may.” This change is necessary to provide flexibility and discretion to the business regarding whether it will provide the consumer with the name of the source from which the business received the alleged inaccurate information.

**Subsection (j)** has been modified to delete “all the” in the first line. This change is necessary to clarify that a business does not have to disclose all specific pieces of personal information that the business maintains and has collected about the consumer, but rather the personal information that would confirm that the business has corrected the inaccurate information that was the subject of the consumer’s request to know.

**Subsection (j)** has also been modified to include language to clarify that a business shall not disclose sensitive personal information that it is not allowed to disclose in response to a request to know under subsection 7024(d), but that it may provide a way to confirm that the personal information it maintains is the same as what the consumer has provided. This change is necessary to balance interests of consumers with the risk of harms that can result from the unauthorized disclosure of this information.

**Subsection (k)** has been added to clarify that implementing measures to ensure that personal information that is the subject of a request to correct remains corrected factors into whether a business, service provider, or contractor has complied with a consumer’s request to correct in accordance with the CCPA and these regulations. This considers how the CCPA applies to a wide range of industries and enables businesses, service providers, and contractors to tailor their compliance efforts to their information practices and systems. This change is necessary to ensure that the right to correct is meaningful. Failure to implement measures to ensure that corrected information remains corrected could result in continued use and/or dissemination of inaccurate information, which would harm consumers and undermine the right to correct.

Subsections have been renumbered. Non-substantial grammatical changes (capitalization of terms, replacing “to” with “in,” deleting “or not”) have been made.

## N. § 7024. Requests to Know.

**Subsection (b)** has been modified to replace “general business practices regarding the collection, maintenance, and sale of personal information” with “Information Practices,” which is the defined term that is synonymous with the deleted language.

**Subsection (h)** has been modified to specify that the consumer can request that the business disclose their personal information for a specific time period. This change is necessary to provide greater flexibility regarding the scope of the response to the request to know. The change also conforms the regulation more closely to the language in Civil Code section 1798.130, subdivision (a)(2)(B).

**Subsections (h) and (i)** have been modified to use the term “Collected pursuant to their written contract” instead of “obtained as a result of providing services to the business.” Again, as explained more thoroughly in section 7050 below, this change is necessary to be more precise about how the service provider’s or contractor’s obligations apply to the personal information it collected pursuant to the written contract with the business.

**Subsection (i)** has also been modified to clarify that the service provider and contractor may utilize self-service methods that enable the business to access the personal information that the service provider or contractor has collected pursuant to the written contract that it has with the business. This change is necessary to conform the regulations to the language in Civil Code section 1798.130(a)(3)(A).

Non-substantial grammatical changes (use of capitalized defined terms) have been made.

## O. § 7025. Opt-out Preference Signals.

**Subsections (b) and (c)(1)** have been modified to clarify that the requirement to process opt-out preference signals applies to businesses that sell or share personal information. This change is necessary to address comments received that expressed confusion regarding whether businesses that do not sell or share personal information must process opt-out preference signals. The additional language makes clear that they do not.

**Subsection (b)(1)** has been modified to add an additional example of a format that is commonly used and recognized by businesses, i.e., JavaScript object. This addition is necessary to provide further guidance and flexibility for businesses that do not have access to HTTP header fields. This change also takes into consideration existing standards and implementation in other jurisdictions.

**Subsection (c)(1)** has been modified to add language that the opt-out preference signal shall be treated as a valid request to opt-out of sale/sharing for any consumer profile, including pseudonymous profiles, that are associated with the browser or device for which the opt-out preference signal is given. Additional language has also been included to further clarify that, if known, a business is also required to treat the opt-out preference signal as a valid request to opt-out of sale/sharing for the consumer. This change is necessary to address the realities of how the internet works, i.e., sometimes the business may only know the consumer pseudonymously and

other times they may match the online actions with an offline consumer. This modification ensures that the opt-out preference signal applies to both situations.

As explained in the ISOR and further expanded on here, this regulation supports and builds on existing technical mechanisms, such as the Global Privacy Control, which businesses are already required to honor as a valid request to opt-out of the sale of personal information under the current CCPA regulations. Cal. Code Regs., tit. 11, § 7026(c); *see also* Final J. & Permanent Inj., *California v. Sephora USA, Inc.*, No. CGC-22-601380 (S.F. Super. Ct. Aug. 24, 2022), <https://oag.ca.gov/system/files/media/pea-sephora-filed-judgment.pdf>. In requiring the business to treat the opt-out preference signal as a valid request to opt-out of sale/sharing for that browser or device, the regulation reflects that the definition of personal information is broad and includes persistent identifiers that could be used to recognize a device linked to a consumer or family information. *See* Civ. Code § 1798.140(v) (defining personal information); *id.* § 1798.140(aj) (defining unique identifier). The requirement to apply the request to opt-out of sale/sharing to pseudonymous profiles associated with that browser or device also appreciates how businesses may currently use probabilistic identifiers to identify a particular consumer or device linked to a consumer or family. *See* Civ. Code § 1798.140(aj) (defining unique personal identifier to include “persistent or probabilistic identifiers that can be used to identify a particular consumer or device that is linked to a consumer or family”). As demonstrated by LiveRamp’s Subject Access Request Explanatory Information Document, businesses use a myriad of different online identifiers for devices that they can associate with pseudonymous profiles. *See* LiveRamp, Subject Access Request Explanatory Information Document, [https://cppa.ca.gov/regulations/pdf/liveramp\\_sar\\_info.pdf](https://cppa.ca.gov/regulations/pdf/liveramp_sar_info.pdf).

This subsection also explains that when the consumer is known, the business is to treat the opt-out preference signal as a valid request to opt-out of sale/sharing for the consumer. In other words, if the business has associated the browser or device with an identified known consumer, such as when the browser or device is associated to a logged-in consumer account, the business is also required to opt-out that consumer from the sale or sharing of their personal information. Again, this is what the CCPA regulations currently in effect require of businesses.

As stated in the ISOR and supplemented here, this regulation, including these modifications, are necessary to operationalize the opt-out preference signal and provide clarity regarding a business’s obligations in responding to an opt-out preference signal. The regulation provides consumers with a tool to exercise their right to opt-out of sale/sharing globally instead of having to go website by website to make individual requests. It promotes innovation and the development of pro-privacy tools that consumers can use to exercise meaningful control over their personal information. Prop. 24, as approved by voters, Gen. Elec. (Nov. 3, 2020), §§ 2(I), 3(C)(1).

**Subsection (c)(2)** has been modified to add language to clarify that if a consumer does not respond to provide additional information to facilitate their request to opt-out of sale/sharing, the business must still process the opt-out preference signal as a valid request to opt-out of sale/sharing for that browser or device and any consumer profile the business associates with that browser or device, including pseudonymous profiles. This change is necessary to clarify how a business is to respond if the consumer does not respond to the business’s request for more information. Clarifying that the business must still process the request to opt-out of sale/sharing

even when the consumer does not respond ensures that a business's request for more information is not a dark pattern that subverts consumer's choice. It ensures that the ask for more information is solely for the consumer's benefit and not a means to create friction in the opt-out process.

**Subsections (c)(3) and (c)(4)** have been modified to delete the requirement to display the status of the consumer's choice.

**Subsection (c)(4)** has also been modified to address the different scenarios in which an opt-out preference signal may conflict with the consumer's participation in a financial incentive program. In such a situation, the regulation clarifies that the business has the option of notifying the consumer of the conflict and asking whether they intended to withdraw from the financial incentive program. If the consumer affirms their intent to withdraw, the business is to process the opt-out preference signal as a valid request to opt-out of sale/sharing. If the consumer does not affirm their intent to withdraw, the business may ignore the opt-out preference signal with respect to the consumer's participation in the financial incentive program for as long as the consumer is known to the business. Finally, if the business chooses not to notify and ask the consumer what they would like to do, the business is to still process the opt-out preference signal as valid request to opt-out of sale/sharing for that browser or device and any consumer profile associated with that browser or device.

This level of detail is necessary to provide clear guidance to businesses regarding how to handle the different scenarios they may find themselves in. The regulation gives the business flexibility to ask about the conflict but does not require it. However, it also requires the business to honor the opt-out signal if they choose not to ask because otherwise the business will be incentivized to stay silent. The consumer may also be otherwise confused because they may assume that the business will comply with their opt-out preference signal when the business is not in fact doing so. When the business does ask and the consumer does not respond by affirming their intent to withdraw from the financial incentive program, the business may ignore the opt-out preference signal. The reasoning behind this policy decision is that participation in a financial incentive program requires the consumer's consent (which must be freely given, specific, informed, and unambiguous). Presumably, the consumer took an affirmative action to join such a program and was told that their participation would involve the sale or sharing of their personal information. Although the consumer also has a statutory right to withdraw at any time, the Agency believes that a reminder that their opt-out preference signal would withdraw them from the program would be in the consumer's interests.

**Subsection (c)(5)** has been modified to clarify that, where the consumer is known to the business, the business shall not interpret the absence of an opt-out preference signal as consent to opt-in to the sale or sharing of personal information. This is necessary to clarify that the absence of such a signal would not meet the requirements of Civil Code sections 1798.120(d) and 1798.140(h).

**Subsection (c)(6)** has been modified to make it optional for the business to display the status of whether the business has processed the opt-out preference signal as a valid request to opt-out of sale/sharing on its website. This change reverts the regulation to how businesses are presently required to treat user-enabled global privacy controls.

The examples in **subsection (c)(7)** have been modified to more clearly illustrate how businesses are to respond to an opt-out preference signal in various factual scenarios. More specifically, **subsection (c)(7)(A)** has been modified to illustrate more clearly how a business is to apply the opt-out preference signal to the consumer's browser. **Subsection (c)(7)(B)** has been modified to explain that, when a consumer is known to the business, the business may not repeatedly ask the consumer to opt-in to the sale or sharing of personal information in response to an opt-out preference signal. Civil Code section 1798.135(c)(4)'s prohibition on how often the business can ask the consumer to opt-in to the sale/sharing, which is reiterated in subsection 7026(k), would still apply. Additional language has also been added to the example to explain that asking the consumer to opt-in would not allow the business to use the exception set forth in Civil Code section 1798.135(b)(1) because its response to the signal would not be frictionless in accordance with the requirements in subsection 7025(f). **Subsection (c)(7)(C)** has been modified to be more precise in its illustration of section 7025(c)(5). **Subsection (c)(7)(D)** has been updated to illustrate that notifying the consumer of a conflict in participating in a financial incentive program and opting out of the sale and sharing of personal information is optional, not mandatory. *See* 7025(c)(4). Finally, **subsection (c)(7)(E)** has been updated to conform the example to the new language in subsection (c)(1) that the opt-out preference signal should also apply to any consumer profile the business associates with the browser or device. These changes are necessary to provide businesses with clear guidance on how to respond to opt-out preference signals.

**Subsection (f)(3)** has been modified to delete “as required by subsection (c)(3)” because it is no longer a requirement.

The example in **subsection (g)(3)** has been modified to clarify that if a business needs additional information from the consumer in order to apply the opt-out request to offline sales and sharing of personal information, the business has not fully effectuated the consumer's request to opt-out of sale/sharing. This change is necessary to clarify that whether the business is fully effectuating the opt-out is contingent on the need for additional information from the consumer. An opt-out preference signal may need additional information from different sources, such as an identity or onboarding service provider, but that would not require the user to take any additional action and thus prevent the business from meeting the requirements set forth in subsection (g).

Non-substantial grammatical changes (language clarifying that “processing” an opt-out request means treating it as a valid request to opt-out of sale/sharing, deleting “or not,” rearranging already existing language for readability, and using a lowercase “out” in “Opt-out Preference Signals”) have been made.

#### **P. § 7026. Requests to Opt-out of Sale/Sharing.**

Consistent with the language changes in sections 7052 and 7053, **subsection (a)** has been modified to use the phrase “makes available to,” which includes both a business's sale and sharing of personal information with a third party and is consistent with Civil Code section 1798.100(d). The change is necessary to use consistent language throughout the regulations, and to make the regulation easier to read and understandable for businesses and consumers.

**Subsection (a)(1)** has been modified to clarify that, at a minimum, a business shall allow consumers to submit requests to opt-out of sale/sharing through an opt-out preference signal and through at least one of the following methods—an interactive form accessible via the “Do No Sell or Share My Personal Information” link, the Alternative Opt-out Link, or the business’s privacy policy if the business processes an opt-out preference signal in a frictionless manner. This change is necessary to clarify how this section works together with section 7025(e), (f), and (g), which operationalizes Civil Code section 1798.135(b)(1).

Consistent with the language changes in sections 7050 and 7051, **subsection (f)(1)** has been modified to use the phrase “Collecting personal information pursuant to the written contract” instead of “providing personal information.” As explained in section 7050, this change is necessary to be more precise about how a service provider’s or contractor’s obligations apply to the personal information collected pursuant to its written contract with the business. The language “pursuant to the written contract with the business” ties the service provider’s and contractor’s obligations to the contract they have with the business and acknowledges that service providers and contractors may not be obtaining personal information directly from the business.

**Subsection (f)(2)** has been modified to use the language of making personal information available instead of disclosing or sharing. The change is necessary to use consistent language throughout the regulations, and to make the regulation easier to read and understandable for businesses and consumers.

**Subsection (f)(3)** has been deleted in light of sections 7052 and 7053, which reiterate the contractual and statutory requirements of third parties under Civil Code sections 1798.100(d)(2), (3) and 1798.135(f).

**Subsection (g)**, formerly subsection (f)(4), has been modified to make it optional for the business to provide a means by which the consumer can confirm that their request to opt-out of sale/sharing has been processed. This change lessens requirements for businesses to simplify the implementation of these regulations at this time.

**Subsection (h)** has been modified to remove the requirement that the single option to opt-out of the sale or sharing of all personal information be more prominently presented than other choices. This change is necessary to make the regulation consistent with the requirement in subsection 7004(a)(2) that consumer choices be symmetrical.

Subsections have been renumbered throughout the section. Non-substantial grammatical changes (use of capitalized defined terms) and other non-substantial changes (adding “/sharing” in subsection (g) to match the sample display language and using a lowercase for “out” in “Requests to Opt-out of Sale/Sharing”) have been made.

#### **Q. § 7027. Requests to Limit Use and Disclosure of Sensitive Personal Information.**

**Subsection (a)** has been modified to clarify that sensitive personal information that is collected or processed without the purpose of inferring characteristics about a consumer is not subject to

requests to limit. This change is necessary to align the regulation with Civil Code sections 1798.121(d) and 1798.185(a)(19)(C)(iv).

**Subsection (b)(1)** has been modified to delete “or the business’s privacy policy” to clarify that a business that collects sensitive personal information from consumers online shall, at a minimum, allows consumers to submit requests to limit through an interactive form accessible via the “Limit the Use of My Sensitive Personal Information” link or the Alternative Opt-out Link. This change is necessary to align the regulation to Civil Code section 1798.135(a).

**Subsection (g)(4)** has been deleted in light of sections 7052 and 7053, which reiterate the contractual and statutory requirements of third parties under Civil Code sections 1798.100(d)(2), (3) and 1798.135(f).

**Subsection (h)**, formerly subsection (g)(5), has been modified to make it optional for the business to provide a means by which the consumer can confirm that their request to limit has been processed. This change lessens requirements for businesses to simplify the implementation of these regulations at this time.

**Subsection (i)**, formerly subsection (h), has been modified to remove the requirement that the single option to limit the use of all sensitive personal information be more prominently presented than other choices. This change is necessary to make the regulation consistent with the requirement in subsection 7004(a)(2) that consumer choices be symmetrical.

**Subsection (m)** has been modified to reference Civil Code section 1798.121(a) as the source of authority identifying the purposes for which a business may use or disclose sensitive personal information without being required to offer consumers a right to limit. The subsection has also been modified to clarify that a business that only uses or discloses the sensitive personal information for the purposes listed in this subsection is not required to post a Notice of Right to Limit or to provide a method for submitting a request to limit. These changes are necessary to direct businesses directly to the statutory authority for this provision and to explain more explicitly what is meant by a business not being required to offer consumers a right to limit.

**Subsection (m)** has also been modified to clarify that, for each of the identified purposes, the use and disclosure must still be reasonably necessary and proportionate in accordance with Civil Code sections 1798.100 and section 7002 of these regulations. Previously, the reference to reasonably necessary and proportionate were included in the specific examples. This change is necessary because the collection and use restrictions set forth in Civil Code sections 1798.100, 1798.140(e) and further explained in section 7002 apply to all purposes for which personal information is collected or used by the business.

**Subsection (m)(2)** has been modified to clarify that sensitive personal information may be used to “prevent” and “investigate” security incidents, in addition to “detecting” them. This change is necessary because “preventing” and “investigating” security incidents helps ensure that businesses can better detect future security incidents. **Subsection (m)(2)** has also been modified to replace the word “and” with “or” to clarify that the security incidents to be prevented, detected, or investigated do not need to meet all the descriptive qualifications (i.e., they do not

need to compromise the availability, authenticity, integrity, *and* confidentiality of personal information).

These modifications are consistent with the language of the CCPA because Civil Code section 1798.121(a) references Civil Code section 1798.140(e)(2) as one of the purposes for which a business may use sensitive personal information without providing a right to limit. Civil Code section 1798.140(e)(2) states that a business purpose is “helping to ensure security and integrity to the extent the use of the consumer’s personal information is reasonably necessary and proportionate for these purposes.” “Security and integrity” is further defined to include the ability of businesses to detect security incidents that compromise the availability, authenticity, integrity, and confidentiality of stored or transmitted personal information. *Id.*

§ 1798.140(ac)(1). Accordingly, preventing, investigating, and detecting security incidents that compromise any of those aspects of personal information is consistent with these definitions.

The example in **subsection (m)(5)** has been modified to illustrate more precisely how a business can use sensitive personal information in short-term, transient ways, provided that the personal information is not disclosed to another third party or used to build profiles about the consumer.

**Subsection (m)(7)** has been modified to include the word “product” to clarify that a service or device may also be characterized as a “product.”

**Subsection (m)(8)** has been added to clarify that sensitive personal information that is collected or processed without the purpose of inferring characteristics about a consumer is not subject to requests to limit. This change is necessary to align the regulation with Civil Code sections 1798.121(d) and 1798.185(a)(19)(C)(iv). Although this subsection is not a permitted “purpose” for using sensitive personal information, it is an exception under which businesses are not required to provide a right to limit. Including this exception within this subsection makes the regulations regarding the right to limit easier to read because it allows for all the exceptions to be in one place.

Subsections have been renumbered. Non-substantial grammatical changes (capitalization of terms, using “for example” instead of “such as,” deleting “the,” adding “information” in subsection (g)(3)) and other non-substantial changes (changing the term “sale” to “disclosure” in subsection (h)’s illustrative example to match the corresponding language in subsections (b) and (g)) have been made. References to subsections have also been updated.

#### **R. § 7028. Requests to Opt-in After Opting-out of the Sale or Sharing of Personal Information.**

This section has been modified to remove references to the request to limit in its title and **subsection (a)** to simplify implementation of these regulations at this time. **Subsection (c)** has also been deleted for the same reason.

Non-substantial grammatical changes (replacing “/” with “or,” replacing “of” with “or,” deleting an extraneous space) and other non-substantial changes (adding “or sharing” in subsection (b) to match the corresponding text within the sentence and using a lowercase “in” and “out” for “Requests to Opt-in After Opting-out of the Sale or Sharing of Personal Information”) have been made.



## **Changes Made to Article 4. Service Providers, Contractors, and Third Parties**

Article 4 addresses the different relationships that a business has with the different entities to whom it sells, shares, discloses, or makes available consumers' personal information. The CCPA defines "service providers," "contractors," and "third parties," Civ. Code § 1798.140(ag), (j), (ai), and imposes requirements and restrictions upon them in several different places. As explained in the ISOR and supplemented here, the sections within Article 4 consolidate and reorganize these requirements and restrictions to make the regulations easier to follow and understand and to provide clarity and specificity to implement the law. Sections 7050 and 7052 consolidate and explain the different CCPA requirements with which service providers, contractors, and third parties must comply. Sections 7051 and 7053 consolidate all the different provisions that must be included in the contract that the business must have with these entities.

### **S. § 7050. Service Providers and Contractors.**

As stated in the ISOR, the purpose of section 7050 is to set forth the regulations that apply specifically to "service providers" and "contractors," a new category of persons to whom a business makes available personal information for a business purpose without it being considered a "sale" or "sharing." See ISOR, p. 48. This section consolidates and harmonizes different sections of the CCPA that apply to service providers and contractors. Specifically, it clarifies statutory restrictions on the retention, use, and disclosure of personal information collected by service providers and contractors, clarifies how service providers and contractors are to handle CCPA requests received directly from the consumer, clarifies that a service provider or contractor must have a written contract with the business that complies with the CCPA and these regulations, explains the consequences of failing to have the requisite contract in place and failing to comply with the contract, and addresses entities that provide services to Nonbusinesses. Modifications have been made to this section in response to comments received by the Agency. The specific changes are explained below.

First, the language throughout **section 7050** has been modified to be more precise about how a service provider's or contractor's obligations apply to the personal information collected pursuant to its written contract with the business. In many instances, clauses including "obtained in the course of providing services" and "receives from, or on behalf of, the business" have been replaced with "pursuant to the written contract with the business." These changes take into account that a contractor does not necessarily process personal information "on behalf of a business" but is "a person to whom the business makes available a consumer's personal information for a business purpose, pursuant to a written contract with the business..." subject to statutory restrictions. See Civ. Code § 1798.140(j). In contrast, a service provider is "a person that processes personal information *on behalf of* a business and that receives from or on behalf of the business consumer's personal information for a business purpose pursuant to a written contract" subject to statutory restrictions. *Id.* § 1798.140(ag) (emphasis added).

The CCPA requires both service providers and contractors to have a written contract with the business that governs how they process the personal information that is the subject of that agreement, and thus, the phrase "Collected pursuant to the written contract with the business" more precisely covers how both contractors' and service providers' obligations apply to the personal information collected pursuant to their written contracts with the business. It

acknowledges situations in which the service provider or contractor may have collected personal information when acting in a different capacity (for example, as a business or as a third party) and clarifies how its obligations as a service provider or contractor specifically apply to the personal information collected pursuant to its contract with the business.

The terms “Collect” and “Business Purpose” have also been capitalized throughout this section to make clear that they are defined terms and to align the regulation with the statutory language in the definitions of “service provider” and “contractor.”

These changes are necessary to clarify how service providers’ and contractors’ obligations apply to the personal information they collect or process pursuant to their written contract with the business, to make the regulation more precise, and to make it easier for businesses and consumers to read and understand. These changes are also necessary because Civil Code section 1798.185(a)(10) and (11), require the Agency to issue regulations identifying the business purposes and circumstances under which a service provider or contractor may use and/or combine consumers’ personal information.

**Subsection (a)** has been deleted.

**Subsection 7050(a)**, formerly subsection (b), has been modified in the following ways.

Former subsection (b)(1) has been deleted.

**Subsection (a)(1)**, formerly subsection (b)(2), has been modified to use more precise language identifying the written contract between the business and the service provider or contractor. This change has been made to align the regulation more closely to the statute, and to make the regulation easier to read and understandable for businesses and consumers.

**Subsection (a)(3)**, formerly subsection (b)(4), has been modified to clarify that a service provider or contractor may use personal information collected pursuant to its written contract with the business to build and improve the quality of the services it is providing to the business, even if this business purpose is not specified in the written contract, provided that it is not using the personal information to perform services on behalf of another person. This revision does not affect the CCPA’s prohibition on a service provider or contractor retaining, using, or disclosing the personal information for any commercial purpose other than the business purposes specified in the contract, unless expressly permitted by the CCPA or these regulations. *See* Civ. Code § 1798.140(j)(1)(A)(ii), (ag)(1)(B).

**Subsection (a)(4)**, formerly subsection (b)(5), has also been modified to clarify that a service provider or contractor may use personal information collected pursuant to its contract with the business to “prevent” and “investigate” security incidents, in addition to “detecting” them, even if this business purpose is not specified in the written contract required by the CCPA and these regulations. Civil Code section 1798.140(e)(2) states that a business purpose is “helping to ensure security and integrity to the extent the use of the consumer’s personal information is reasonably necessary and proportionate for these purposes.” “Security and integrity” is further defined to include the ability of businesses to detect security incidents that compromise the availability, authenticity, integrity, and confidentiality of stored or transmitted personal information. *Id.* § 1798.140(ac)(1). Accordingly, preventing, investigating, and detecting

security incidents that compromise any of those aspects of personal information is consistent with these definitions.

These modifications are also necessary to address comments received by the Agency during the 45-day comment period expressing confusion regarding the purposes for which service providers and contractors may use personal information collected pursuant to their written contracts with the business, including when they may combine personal information received from multiple sources. These modifications are consistent with the definitions of “service provider,” “contractor,” and “business purpose” within the CCPA. *See* Civ. Code § 1798.140(e), (j), (ag). They clarify the limited circumstances in which service providers and contractors are allowed to combine personal information, and thus, ensure that they are not using the personal information collected pursuant to the written contract for a commercial purpose other than for a business purpose specified in the contract or for a purpose permitted by the CCPA and these regulations. *Id.* § 1798.140(j)(1)(A)(ii), (ag)(1)(B); *id.* § 1798.185(a)(10) and (11).

**Subsection (b)**, formerly subsection (c), has been modified to take into account situations where a person can be a third party in one context and a service provider or contractor in another. The change from “those services” to “service provider or contractor” is to clarify that the prohibition against combining personal information in this context is on service providers and contractors. The addition of “collects” is to align with the language of Civil Code section 1798.140(e)(6), (j)(1)(A)(iv), (ag)(1)(D). The addition of “with respect to cross-contextual behavioral advertising services” has been added to clarify that a person can only be a third party when it contracts with a business to provide cross-contextual behavioral advertising. This subsection, as modified, is necessary to explain Civil Code section 1798.140(e)(6).

**Subsection (c) and (d)**, formerly subsections (e) and (f), respectively, have been renumbered.

**Subsections (e) and (f)**, formerly section 7051(c) and (d) respectively, have been moved to section 7050 because they are requirements of service providers and contractors rather than required elements of a contract between businesses and service providers and contractors. The movement of these subsections and the revision to subsection (e), described below, are necessary to make the regulation easier to read and understandable for businesses and consumers.

**Subsection (e)** has been modified to change “these requirements” to “section 7051, subsection (a),” in light of this move from 7051 to 7050. Subsection (e) explains that the effect of not having a contract in place that complies with subsection 7051(a) is that the person to whom the business is disclosing personal information is not a “service provider” or a “contractor.” By definition under the CCPA, a service provider or contractor must act “pursuant to a written contract” that complies with the requirements set forth in the statute. *See* Civil Code § 1798.140(j)(1), (ag). If a person does not have an agreement in place that meets the requirements set forth in Civil Code section 1798.140(j), (ag), that person cannot, by definition, be a contractor or service provider. They are a “third party,” according to Civil Code section 1798.140(ai), and thus, a business’s disclosure of personal information to that third party may be considered a “sale” or “sharing” of personal information for which the business must provide the consumer a right to opt-out of sale/sharing. *See* Civ. Code § 1798.140(ad), (ah). This subsection is necessary to ensure compliance with the CCPA and inform businesses of the consequences of failing to have a required contract in place.

**Subsection (f)** has been added to make clear that a service provider and contractor must comply with the terms of the contract required by the CCPA and these regulations. This subsection is necessary to make clear that a failure to comply with the required contract is a violation of the CCPA enforceable by the Agency and the Attorney General's office.

**Subsection (g)** has been added to provide guidance to entities that service Nonbusinesses (e.g., often non-profits and government entities) regarding whether they must comply with consumers' CCPA requests received with respect to the personal information they process when providing services to the Nonbusiness. Subsection (g) concisely explains that whether an entity that provides services to a Nonbusiness must comply with a consumer's CCPA request depends upon whether that entity is a "business," as defined by Civil Code section 1798.140(d). The regulation is necessary to clarify the obligations of entities that service Nonbusinesses in accordance with the statutory definitions of service provider, contractor, and business, *see* Civ. Code § 1798.140(d), (j), (ag), and the definition of Nonbusiness, *see* section 7001(p)).

#### **T. § 7051. Contract Requirements for Service Providers and Contractors.**

As stated in the ISOR, the purpose of section 7051 is to consolidate all the provisions that must be included in a service provider's or contractor's contract with the business and to clarify the duties of a service provider, contractor, and business as it relates to the contract. Modifications have been made to this section in response to comments received by the Agency. The specific changes are explained below.

Consistent with the language change in section 7050, the language throughout **section 7051** has been modified to be more precise about how a service provider's or contractor's obligations apply to the personal information collected pursuant to its written contract with the business. The language "pursuant to the written contract with the business" and similar revisions that tie the service provider's and contractor's obligations to the contract they have with the business have replaced the phrase "received from, or on behalf of." These changes align the regulation with the statutory language in the definitions of "service provider" and "contractor." The terms "Collect" and "Business Purpose" have also been capitalized throughout this section to make clear that they are defined terms.

The changes made to this section are necessary to clarify how service providers' and contractors' obligations apply to the personal information they collect or process pursuant to their written contract with the business, to make the regulation more precise, and to make it easier for businesses and consumers to read and understand. These changes are also necessary because Civil Code section 1798.185(a)(10) and (11), requires the Agency to issue regulations identifying the business purposes and circumstances under which a service provider or contractor may use and/or combine consumers' personal information.

**Subsection (a)(2)** has been modified to change "business purpose(s) and service(s)" and "business purpose or service" to "Business Purpose(s)" and "Business Purpose," respectively. This change is necessary to clarify and align the regulations more closely to the statute, and to make the regulation easier to read and understandable for businesses and consumers.

**Subsection (a)(3)** has been modified to delete the sentence, “This section shall list the specific business purpose(s) and service(s) identified in subsection (a)(2),” because it is unnecessary in light of the requirement in subsection (a)(2). Comments contended that the requirements of section 7051 were overly prescriptive, and while the Agency does not agree with these contentions, this change streamlines the requirements while retaining the requirement that the business purposes be specified in the contract.

**Subsection (a)(4)** has been modified to delete “including in the servicing of a different business” because it is unnecessary in light of subsection (a)(5)’s prohibition on the retention, use, or disclosure of personal information outside of the direct business relationship between the service provider or contractor and the business.

**Subsection (a)(5)** has been modified to add “or Collected from its own interaction with the consumer,” which is necessary to clarify and align the regulations more closely to the statute, Civ. Code § 1798.140(e)(6), (ag)(1)(D), (j)(1)(A)(iv), and to make the regulation easier to read and understandable for businesses and consumers. This addition clarifies that, with respect to the personal information a service provider or contractor collects pursuant to its written contract with the business, the contract must prohibit a service provider or contractor from combining or updating personal information that it collects pursuant to its written contract with the business with personal information that it received from another source “or collected from its own interaction with the consumer,” unless expressly permitted by the CCPA or these regulations.

**Subsection (a)(6)** has been modified to clarify that, with respect to the personal information collected pursuant to the written contract with the business, businesses must contractually require service providers and contractors to provide the same level of privacy protection as is required of businesses by the CCPA and these regulations. This modification is necessary to more precisely tie service providers’ and contractors’ obligations to the personal information they collect pursuant to their written contracts with the business and align the regulation with, and operationalize the requirements of, Civil Code section 1798.100(d)(2), (3). Civil Code section 1798.100(d) requires a business that collects a consumer’s personal information and discloses it to a service provider or contractor for a business purpose to enter into an agreement with that service provider or contractor. That agreement must obligate the service provider or contractor to “provide the same level of privacy protection as is required by this title” and to “grant[] the business rights to take reasonable and appropriate steps to help ensure that the...service provider[] or contractor uses the personal information transferred in a manner consistent with the business’ obligations under this title.” *Id.* Taken together, the consumer should receive the same privacy protections, regardless of whether their personal information is processed by the business or a service provider or contractor. *See id.*

**Subsection (a)(7)** has been modified to add “internal or third-party.” The change was made in response to public comments seeking clarification on whether assessments, audits, and other technical and operational testing could be performed internally or by a third-party vendor. This modification clarifies that they may be performed internally or by a third party.

**Subsection (a)(8)** has been modified to delete “no later than five business days” to provide businesses flexibility in implementing this new statutory requirement.

**Subsection (a)(10)** has been modified to reflect that a service provider or contractor may enable the business to comply with consumer requests directly, such as through self-service methods, with respect to the personal information that the service provider or contractor has collected pursuant to their written contract with the business. This revision was made in response to comments and is necessary to clarify and align the regulation to the language in the CCPA. *See* Civ. Code §§ 1798.105(a), (c)(3), 1798.130(a)(3)(A).

As noted above, former subsections (c) and (d) have been moved and are now **sections 7050(e) and (f)**. Former subsection (e) is now **subsection (c)**.

A non-substantial grammatical change (adding “the”) has been made.

#### **U. § 7052. Third Parties.**

The purpose of section 7052 is to clarify the requirements of third parties with respect to the personal information sold to or shared with them by the business and to make clear that they must comply with the terms of the contract required by the CCPA and the regulations. This section benefits businesses and third parties by providing them with concise guidance about what is required of them and helps ensure their compliance with the CCPA, which benefits consumers. Modifications have been made to this section and are explained below.

As an initial matter, former subsections (a), (b), and (c) have been deleted in light of the contractual requirements set forth in section 7053.

**Subsections (a) and (b)**, formerly section 7053(c) and (d) respectively, have been moved to section 7052 because they are requirements of third parties rather than required elements of a contract between businesses and third parties. **Subsection (a)** has also been modified to change “these requirements” to “section 7053, subsection (a),” in light of this move from 7053 to 7052. The movement of these subsections and the revision to subsection (a) are necessary to make the regulation easier to read and understandable for businesses and consumers.

**Subsections (a) and (b)** use the phrase “personal information made available to it” to be more precise about how the third party’s contractual obligations apply to the personal information that the business sold to or shared with them and makes the regulations easier to read and understandable for businesses and consumers. The definition of “sale” and “sharing” both include the phrase “make available,” and thus, using this phrase is consistent with the statute. *See* Civ. Code § 1798.140(ad), (ah).

**Subsection (a)** explains that the consequence of a third party that does not have a contract with the business that complies with section 7053 is that the third party shall not collect, use, process, retain sell, or share the personal information that the business sold or shared with it. This subsection is necessary to ensure compliance with Civil Code section 1798.100(d).

**Subsection (b)** makes clear that the third party must comply with the terms of the contract required under section 7053, which include treating the personal information at issue in a manner consistent with the business’s obligations under the CCPA and these regulations. This subsection is necessary to make clear that a failure to comply with the contract is a violation of the CCPA enforceable by the Agency and the Attorney General’s office.

## V. § 7053. Contract Requirements for Third Parties.

As explained in the ISOR, the purpose of section 7053 is to clearly set forth all the provisions that must be included in the business's contract with a third party to whom the business sells or shares personal information, to explain the consequence if the provisions are not included in the contract, and to clarify the duties of the third party and the business as it relates to the contract. Modifications have been made to this section and are explained below. These changes are necessary to clarify and more closely align the regulation with Civil Code section 1798.100(d), which requires a business to have a written contract with the third party that governs how the third party processes the personal information that is the subject of that agreement.

First, language throughout the section has been modified to be more precise about how a third party's obligations apply to the personal information sold to or shared with the third party by the business. Phrases including "received from the business," "disclosing," and "sold or disclosed to" have been replaced with "made available to" or similar language because "made available to" includes both a business's sale and sharing of personal information to the third party. *See* Civ. Code § 1798.140(ad), (ah) (defining "sale" and "sharing" both to include "make available"). These changes make the regulation easier to read and understandable for businesses, third parties, and consumers because it uses consistent language throughout the section.

**Subsection (a)(1)** requires the contract to identify the limited and specified purpose(s) for which the personal information is made available to the third party and makes clear that the contract shall not generally refer to the entire contract. **Subsection (a)(2)** relatedly requires the contract to state that the third party can use personal information only for those limited and specified purposes. As explained in the ISOR, these requirements are necessary to address observations in the marketplace and comments received by the Agency during preliminary rulemaking activities that businesses' contracts do not clearly identify the business purpose in service provider contracts. The Agency anticipates that general statements will also be used in third party agreements unless businesses and third parties are expressly required to do otherwise. They also ensure compliance with Civil Code section 1798.100(d)(1).

**Subsection (a)(3)** has been modified to clarify that, with respect to the personal information that businesses make available to them, businesses must contractually require third parties to provide the same level of privacy protection as is required of businesses by the CCPA and these regulations. This subsection is necessary to ensure compliance with Civil Code section 1798.100(d)(2) and (3). Modifications have also been made to the examples to simplify how a third party may provide the same level of privacy protection as is required of the business.

**Subsection (a)(4)** has been modified to "require the third party to attest that it treats the personal information the business made available to it in the same manner that the business is obligated to treat it under the CCPA and these regulations." This change is necessary to clarify and align the regulations more closely to Civil Code section 1798.100(d)(2) and (3). The change also makes the regulation easier to read and understandable for businesses and consumers.

**Subsection (a)(5)** continues to require the contract to include that the business has the right, upon notice, to take reasonable and appropriate steps to stop and remediate unauthorized use of

personal information made available to the third party. This is necessary to ensure compliance with Civil Code section 1798.100(d)(5).

**Subsection (a)(6)** has been modified to delete “no later than five business days,” which is necessary to provide businesses flexibility in implementing this new statutory requirement.

Former subsection (b) has been deleted. As noted above, former subsections (c) and (d) are now sections 7052(a) and (b).

**Subsection (b)**, formerly section 7053(e), clarifies that whether a business conducts due diligence of its third parties factors into whether the business can rely on the defense set forth in Civil Code section 1798.145(i). The subsection explains that a business that never enforces the terms of the contract may not be able to claim that it did not know or have reason to believe that the third party intended to use the personal information in violation of the CCPA. This subsection is necessary to ensure that the provisions required to be in the contract have real meaning and that businesses do not shirk their duties to ensure that personal information disclosed to third parties is used in a lawful manner.

Non-substantial grammatical changes (rephrasing “to only use it for” to “to use it only for”; using “it” instead of “they” and “them”; deleting an extraneous “of”) have been made.

#### **Changes Made to Article 5. Verification of Requests**

##### **W. § 7062. Verification for Non-Accountholders.**

**Subsection (d)** has been modified to use the correction of marital status as an example. This is necessary because the correction of marital status more clearly demonstrates a situation where the business may verify the identity of the consumer to a reasonable degree of certainty.

##### **X. § 7063. Authorized Agents.**

A non-substantial grammatical change (deleting “a”) has been made.

#### **Changes Made to Article 6. Special Rules Regarding Consumers Under 16 Years of Age**

##### **Y. § 7070. Consumers Less Than 13 Years of Age.**

The title to this section and the reference to the consumer’s age within **subsection (a)(1)** have been modified to conform to the language in Civil Code section 1798.120(c).

##### **Z. § 7071. Consumers at Least 13 Years of Age and Less Than 16 Years of Age.**

The title to this section has been modified to conform to the language in Civil Code section 1798.120(c).

**Subsection (b)** has been modified to clarify that businesses do not need to notify, at a later date, consumers at least 13 years of age and less than 16 years of age of their right to opt-out of sale/sharing but rather that businesses must notify consumers, at the moment the opt-in request is



received, that the consumer has an ongoing right to opt-out of sale/sharing at any point in the future. This change is necessary because, as previously written, some have expressed confusion as to what is required of a business in this situation.

**AA. § 7072. Notices to Consumers Less Than 16 Years of Age.**

The title to this section has been modified to conform to the language in Civil Code section 1798.120(c).

A non-substantial grammatical change (capitalization of a term) has been made.

**Changes Made to Article 7. Non-Discrimination**

**BB. § 7080. Discriminatory Practices.**

**Subsection (f)** has been modified to correct the citation to Civil Code.

**CC. § 7081. Calculating the Value of Consumer Data.**

Non-substantial grammatical changes (adding a period to the end of the title, hyphenating “good faith”) have been made.

**Changes Made to Article 8. Training and Record-Keeping**

**DD. § 7100. Training.**

**Subsection (a)** has been modified to use the newly defined term “Information Practices.”

**EE. § 7102. Requirements for Businesses Collecting Large Amounts of Personal Information.**

**Subsection (a)(2)** has been modified to remove the reference to subsection (a)(2). This is a non-substantial change.

**Changes Made to Article 9. Investigations and Enforcement**

**FF. § 7300. Sworn Complaints Filed with the Agency.**

A non-substantial grammatical change (adding “the” before Agency) has been made.

**GG. § 7301. Investigations.**

**Subsection (a)** has been modified to clarify how the Agency may initiate investigations. This modification is necessary to make the regulation easier to read for businesses and consumers.

**Subsection (b)** has been added to clarify that the Agency may consider all relevant facts as part of its decision to pursue investigations of possible or alleged violations of the CCPA. This modification is necessary to clarify what the Agency may consider in pursuing investigations,

such as the effective dates of the statutory and regulatory requirements of the CCPA and good-faith efforts to comply with those requirements.

A non-substantial grammatical change (hyphenating “good faith”) has been made.

#### **HH. § 7302. Probable Cause Proceedings.**

**Subsections (c) and (d)** have been modified to delete the word “staff” because it is unnecessary. This is non-substantial change because the term Agency includes its staff.

Non-substantial grammatical changes (use of “its” instead of “their,” adding “the,” adding “s” to make “argument” plural) have been made.

#### **II. § 7303. Stipulated Orders.**

**Subsections (a), (b), and (c)** have been modified to clarify that the order referred to throughout the section is the “final” order. This change clarifies that it is only the “final order” that the Board must approve, not all orders. This change is necessary to conform the regulation to the language in Civil Code section 1798.199.35.

**Subsection (a)** has also been modified to use the term “alleged violator” instead of “person who is the subject of the investigation.” This is a non-substantial change made for consistency of terms.

### **SUMMARY OF COMMENTS AND AGENCY RESPONSES**

The Agency received 102 timely comment letters during the 45-day comment period and 55 comment letters during the 15-day comment period. In addition, 31 people spoke during two days of public hearings regarding this rulemaking. The summary of the comments and the Agency’s responses are attached as the following appendices.

- Appendix A. Summary and Response to Comments Submitted during 45-Day Period
- Appendix B. List of Commenters from 45-Day Period
- Appendix C. Summary and Response to Comments Submitted during 1st 15-Day Period
- Appendix D. List of Commenters from 1st 15-Day Period

For ease of reference, the Agency assigned a number to each written and oral comment submission received. Because most comment letters contained multiple substantive comments that needed to be addressed, for each substantive comment, the Agency assigned sub-numbers to the comment submission number. The Agency also added a prefix to denote whether the submission was a written or oral comment, “W” for written and “O” for oral. Accordingly, in the Agency’s summary and response to comments, the comment number “W15-3” refers to the third substantive comment included in the 15th written comment letter received, and “O14-1” refers to the first substantive point of the 14th commenter at the public hearing.

The “Summary and Response to Comments” is generally organized according to the chronological order of the proposed regulations that they address. Comments relating to multiple sections of the regulations are grouped together at the beginning of each Article number.

Comments generally about the regulations, but not regarding a particular section or subsection of the regulations, are grouped together at the end under the heading of “Other.” Subheadings have been included where comments are related to similar topics. Page numbers and transcript references have also been included for ease of reference.

The “List of Commenters” identifies the person and/or entity that submitted the comment during a particular comment period and provides the response number(s) that correspond(s) to the commenter’s substantive point(s). It is essentially an index that assists the commenter in locating the Agency’s response to their comment, given the extensive number of substantive comments received. In some instances, the commenter’s substantive point may have been responded to by multiple response numbers.

### **LOCAL MANDATE DETERMINATION**

These proposed regulations do not impose a mandate on local agencies or school districts.

### **ALTERNATIVES DETERMINATIONS, INCLUDING ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES**

In accordance with Government Code section 11346.9, subdivision (a)(4), the Agency has determined that no alternative it considered, or that it otherwise identified, or was brought to its attention, would be more effective in carrying out the purpose for which the action is proposed, 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. *See also* ISOR, pp. 62-66.

The Agency considered several alternatives in drafting the proposed regulations. In considering them, the Agency sought to balance the benefits to consumers, the burden to businesses, and the purpose and intent of the CCPA. As described in Form 399, and as set forth in more detail in the ISOR, the Agency considered but rejected a performance standard in several instances because it determined that the standard would not provide sufficient guidance for businesses. *See* Form 399, p. 1; ISOR, p. 66. The Agency also considered many alternatives raised in public comments. Those alternatives, and the Agency’s determinations relating to each of them, are set forth within FSOR Appendix A: Summary and Response to Comments Submitted During 45-Day Period and FSOR Appendix C: Summary and Response to Comments Submitted During 15-Day Period. *See also* ISOR, pp. 62-66.

Below, the Agency addresses six alternatives considered and rejected:

#### **Section 7002**

***Alternative:*** The Agency considered and rejected the disclosure-based approach for determining what is incompatible with the purposes for which the personal information was collected or processed or for another disclosed purpose that is compatible with the context in which the personal information was collected.

***Reasoning:*** The Agency rejected this alternative because basing the purpose for which personal information was collected and processed entirely on what a business discloses in its Notice at

Collection or privacy policy does not comply with Civil Code section 1798.100(c)'s prohibition against incompatible processing, and is inconsistent with the language, intent, and purpose of the CCPA. It also undermines consumers' control over their personal information and places them on unequal footing with businesses when negotiating with businesses over the use their personal information. Moreover, for processing that would not meet the requirements of subsection 7002(a), a new notice at collection is insufficient by itself to comply with Civil Code section 1798.100(c)'s requirements for collection and processing. Consent, which must be a "freely given, specific, informed, and unambiguous indication of the consumer's wishes," is the appropriate mechanism to render that processing compatible, because it ensures that consumers reasonably expect and agree to the processing. Civ. Code § 1798.140(h); *see also* Section B. above.

#### **Section 7004, subsection (a)(1)-(5)**

**Alternative:** The Agency considered and rejected a solely performance-based approach to the requirements for methods for submitting CCPA requests and obtaining consumer consent.

**Reasoning:** The Agency rejected this alternative because it does not provide sufficient guidance for businesses, especially for small businesses that lack privacy resources. The regulations strike the appropriate balance by setting performance-based standards for methods for submitting CCPA requests and obtaining consumer consent (e.g., they must be easy to understand, symmetrical in choice, not confusing, easy to execute, etc.), alongside prescriptive illustrative examples, informed by scholarship as well as public comments. *See* ISOR, pp. 10-13; Section D., above. These examples benefit businesses—particularly small businesses that lack privacy resources—by providing them with clear and extensive guidance on how to comply with the law, including by clarifying the factors they should consider in crafting their methods, and including guidance on best practices for obtaining consent. They identify widespread practices that impair or interfere with the consumer's ability to make a choice, and thereby benefit consumers by ensuring that the consumer's choice is freely made and not subject to undue burden or manipulated, subverted, or impaired by dark patterns. *See id.*

#### **Section 7025, subsection (b)**

**Alternative:** The Agency considered and rejected the alternative of requiring opt-out preference signals to be explicitly turned on by the consumer after they have taken affirmative steps to download and use the signals.

**Reasoning:** The Agency rejected this alternative because it would hinder the consumer's intention to maximize their privacy by using privacy-by-design products and services and would create an additional obstacle to exercising their right to opt-out of sale/sharing when the consumer has already made their intention clear by selecting and using the opt-out preference signal. To address any concerns that the consumer is unaware of the effect of using a privacy-by-design product, the regulation instead requires that the opt-out preference signal make clear to the consumer, whether in its configuration or in disclosures to the public, that the use of the signal is meant to have the effect of opting the consumer out of the sale and sharing of their personal information. *See* § 7025(b)(2).

**Alternative:** The Agency also considered and rejected the alternative of requiring the technical specifications for the opt-out preference signal to include a reference to California.

**Reasoning:** Requiring the signal to explicitly reference California would reduce the interoperability of a universal signal and require state-specific implementation, which is unnecessary given that the sale or sharing of personal information is not unique to any individual state or jurisdiction. If a business treats consumers differently depending on their state of residence, the business can seek this information in response to the signal. The signal itself is not required to include this information. The approach adopted by the Agency allows opt-out preference signals recognized in California to be compatible with signals recognized in other jurisdictions, which is in line with the purpose and intent of the CCPA. ISOR, p. 34. Moreover, the suggested alternative would invalidate already existing technical mechanisms, such as the Global Privacy Control, which businesses are required to honor as a valid request to opt-out of sale under the current CCPA regulations. *See* Cal. Code Regs, tit. 11 § 7026(c). Doing so would be unnecessarily disruptive to consumers' expectations and existing business practices.

### **Sections 7051, subsection (a)(2), 7053, subsection (a)(1)**

**Alternative:** The Agency considered proposals raised in public comments to delete or modify Section 7051, subsection (a)(2); and 7053, subsection (a)(1). With respect to Section 7051, subsection (a)(2), the proposals would eliminate the requirement for agreements between a business and its service provider or contactor to have the description of the business purpose be "specific," rather than "described in generic terms, such as referencing the entire contract generally." With respect to Section 7053, subsection (a)(1), the proposals would eliminate the requirement for agreements between a business and a third party to whom it sells or shares personal information to have the description of the limited and specified purposes be "specific," rather than "described in generic terms, such as referencing the entire contract generally."

**Reasoning:** The Agency rejected these alternatives because they do not provide clear guidance about the responsibilities of businesses, service providers, contractors, and third parties; and do not address concerns raised in comments received by the Agency during preliminary rulemaking activities. The proposed regulations consolidate provisions that the CCPA requires be included in a business's contract with its service provider or contractor or third party, and clarify the duties of service providers, contractors, third parties, and businesses as they relate to the contract. *See* ISOR, pp. 50-51, 53. They are necessary to address observations in the marketplace and comments received by the Agency during preliminary rulemaking activities that businesses' contracts do not clearly identify the business purpose for which the service provider is processing personal information. ISOR, pp. 51, 54. The suggested alternatives would likely result in contracts that fail to clearly identify the specific business purposes for which businesses disclose consumers' personal information to their service providers or contractors and the limited and specified purposes for which businesses make personal information available to their third parties. Such failures and resulting vagueness negatively impacts the parties' understanding of what is required of them, which negatively impacts compliance with the CCPA and, therefore, negatively impacts consumers' privacy. Such vagueness likely would also impede efforts to hold businesses accountable and would therefore be inconsistent with the purpose and intent of the law, including the Agency's mandate to vigorously enforce the law. *See* Prop. 24, as approved by voters, Gen. Elec. (Nov. 3, 2020), § 3 (C)(7).

**Section 7302, subsection (c)(1)**

*Alternative:* The Agency considered but rejected the alternative of requiring probable cause hearings to be conducted in person.

*Reasoning:* Requiring that all probable cause hearings be conducted in person would be more burdensome on businesses, including small businesses, because they would have to expend more resources for travel and lodging. The regulations allow for in-person hearings, but also provide the option of conducting the proceeding in whole or in part by telephone or videoconference. This provides flexibility for both businesses and the Agency, and thus, minimizes costs. *See* ISOR, p. 59.

**NON-DUPLICATION**

Some of the regulations may repeat or rephrase in whole or in part a state or federal statute or regulation. This was necessary to satisfy the clarity standard set forth in Government Code section 11349.1(a)(3).