

REGULATIONS SUBCOMMITTEE

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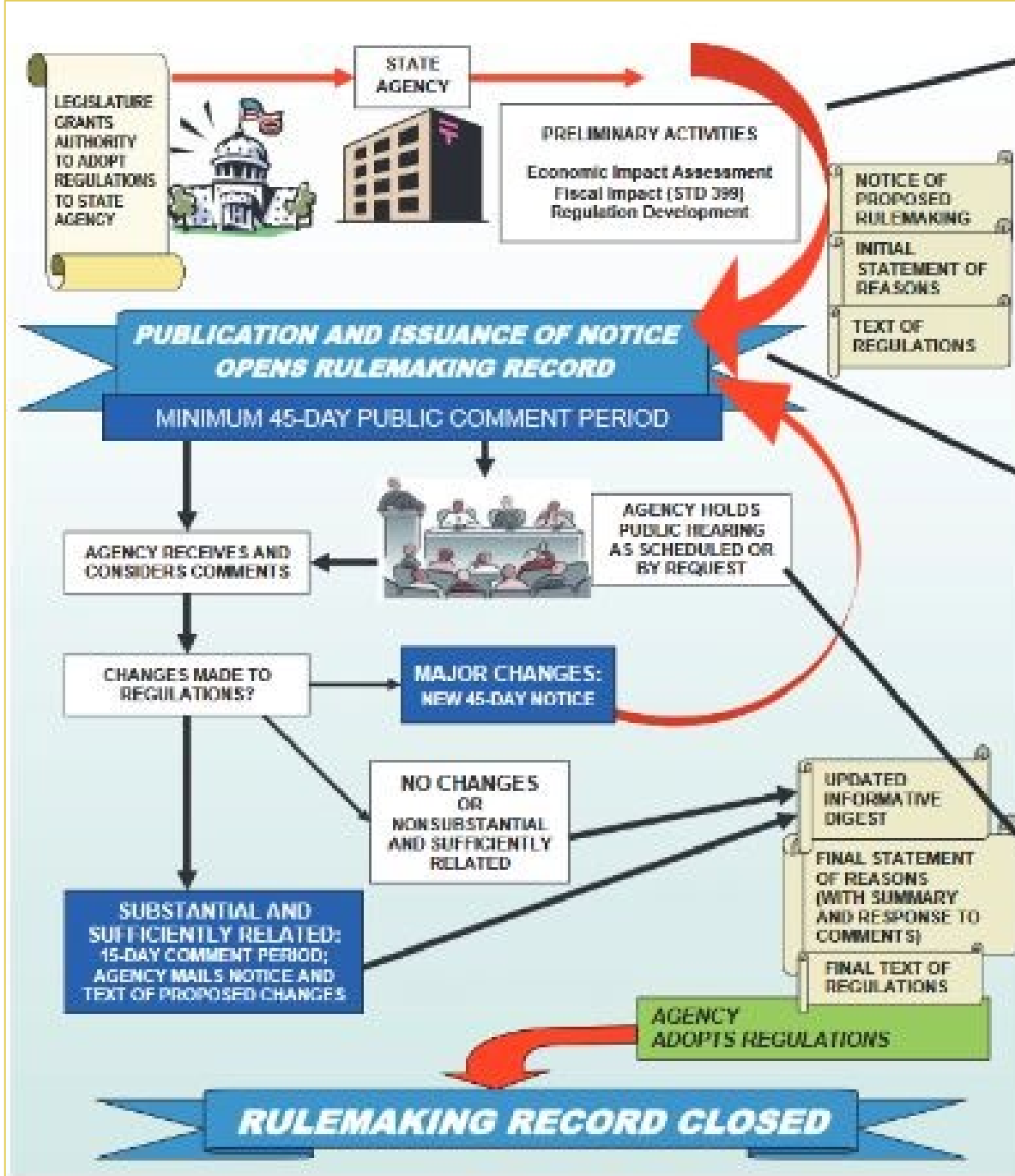


CPPA

RULEMAKING PROCESS: OVERVIEW



California Rulemaking Process



Preliminary activities can be conducted in whichever way is most productive. Our recommendation is to, at the minimum, collect written comments and hold informational hearings.

The publication of the notice of proposed rulemaking, ISOR and text of regulations opens the rulemaking record. After the record is opened, a strict process is followed.

Holding public hearings is a required step during the initial public comment period and if major changes are incorporated.

CURRENT STATUS UPDATE



PROPOSED COURSE OF ACTION



PROPOSED COURSE OF ACTION

- Authorize the commencement of pre-rulemaking activities
 - ↪ Issue an invitation for Comments
 - ↪ Identify topics for informational hearings
 - ↓ Discuss suggested topics
- Create three rulemaking subcommittees
 - ↪ CCPA rules update subcommittee: Update existing rules to include CPRA requirements.
 - ↪ New CPRA rules subcommittee: Draft new rules on items not addressed in CCPA rules.
 - ↪ Rulemaking process subcommittee: Responsible for rulemaking process.

Note: Current Regulations Subcommittee is proposed to be dissolved on 9/17/2021
- Hire staff: Implemented by Administration and Start-up Subcommittee and/or Executive Director



PROPOSED DIVISION OF WORK BY SUBCOMMITTEE

NEW CPRA RULES SUBCOMMITTEE

Topics:

Cybersecurity Audits
Risk assessments
Automated decision making
Agency audit authority

Suggested members: Vinhcent Le &
Lydia F de la Torre

UPDATE OF CCPA RULES SUBCOMMITTEE

Topics:

Opt-out requests (including
preference signal)
Accessibility
Rights to erase, correct, & know
(look-back period, definition of
“specific pieces of information
obtained from the consumer” etc.)
Use of PI by contractors/service
providers

Suggested members: Jennifer M. Urban & Angela
Sierra

RULEMAKING PROCESS SUBCOMMITTEE

Topics:

- Coordinate pre-rulemaking and rulemaking activities (e.g. informational hearings, collection of comments, etc.)
- Make recommendations as to whether rules are needed for certain topics
- Coordinate report on scope of privacy rules that currently apply to insurance corporations.
- Suggest additional topics for rulemaking and secure resources.

Suggested members: John Christopher Thompson & Lydia
F de la Torre

**PRE-RULEMAKING ACTIVITIES: INVITATION FOR
COMMENTS AND INFORMATIONAL HEARINGS**



PRE-RULEMAKING ACTIVITIES

- Issue an Invitation for Comments
- Identify topics for informational hearings. Suggested topics:
 - ↳ How Can the New Regulations Further Protect Californians' Right to Privacy?
 - ↳ Cybersecurity Audits and Risk Assessments
 - ↳ Automated Decisionmaking
 - Right to Correction
 - Opt-Out Preference Signal
 - Sensitive Personal Information
 - ↳ Look-back Period and Record Keeping
 - ↳ Definitions (e.g., Precise Geolocation and Dark Patterns)

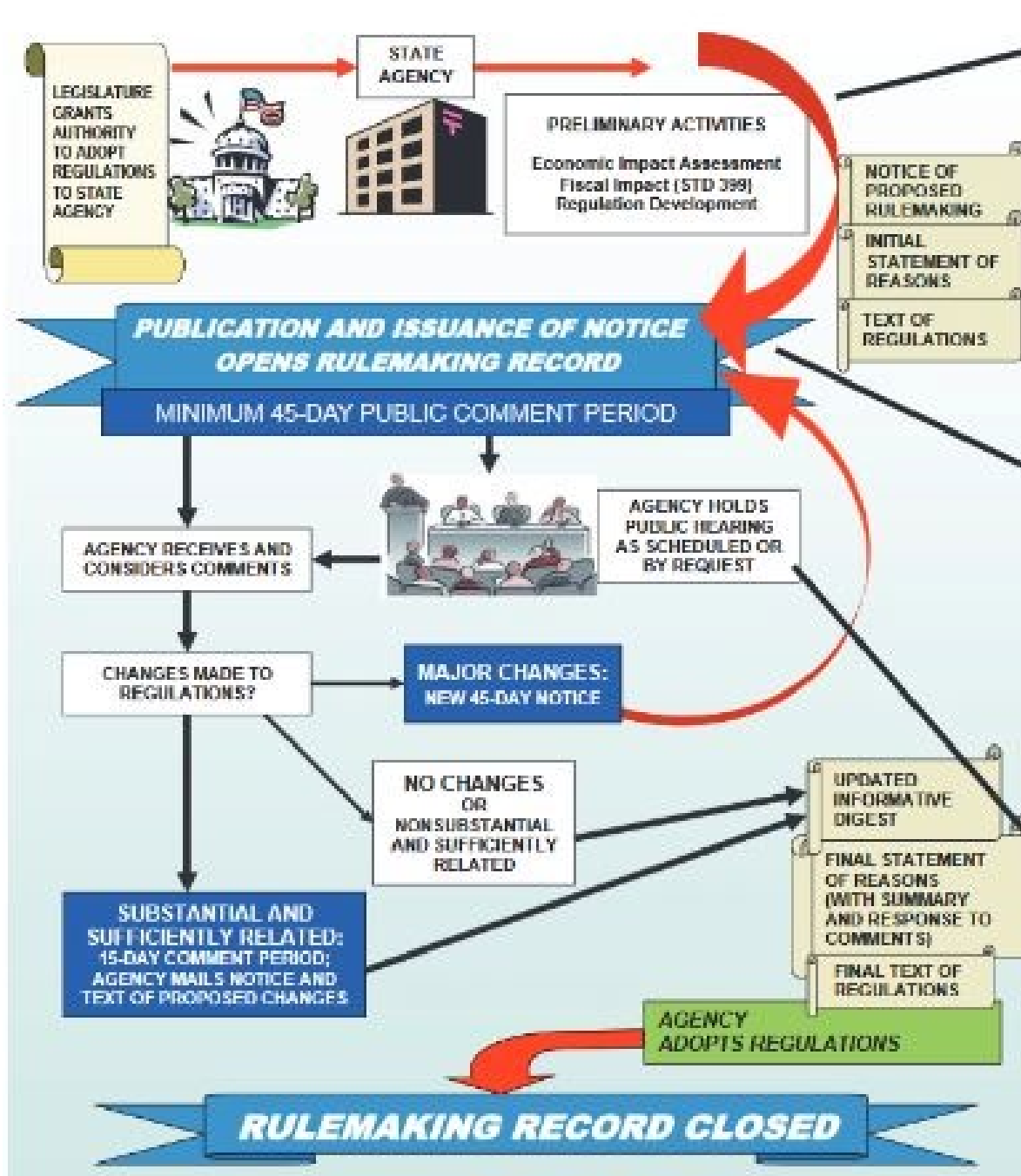


SUMMARY OF RECOMMENDATIONS



California Rulemaking Process

Summary of recommendations



IMMEDIATELY:

- (1) Creation of subcommittees
- (2) Start pre-rulemaking activities (comments and informational hearings)
- (3) Hire personnel

WINTER 2021-2022:

- (1) Publish notice of proposed rulemaking, ISOR and text of regulations.

WINTER/SPRING 2021-2022:

- (1) Hold public hearings

END OF PRESENTATION



SUPPLEMENTAL MATERIALS



Topics Assigned to New CPRA Rules Subcommittee



NEW CPRA RULES SUBCOMMITTEE 1/2

Section	Topic	Description
1798.185(a)(15)(A)	Cybersecurity audits	Regulations governing annual cybersecurity audit of high-risk businesses defining <i>“the scope of the audit and establishing a process to ensure that audits are thorough and independent.”</i>
1798.185(a)(15)(B)	Risk assessments	Regulations governing risk assessments. The risk assessment goal is to “restrict[] or prohibit[] the processing [of personal information] if the risks to privacy of the consumer” outweigh the benefits to various parties.



NEW CPRA RULES SUBCOMMITTEE 2/2

Section	Topic	Description
1798.185(a)(16); 1798.140(z)	Automated decision making	Regulations governing opt-out rights in the context of “automated decisionmaking technology, including profiling.” The language contemplates regulations “requiring” businesses to respond to access requests with “meaningful information about the logic involved in . . . decision making processes” and a “description of the likely outcome” with respect to the requesting consumer.
1798.185(a)(18)	Agency’s audit authority	Issue regulations addressing the “scope and process” of the agency’s audit authority, in part to protect consumers’ information from disclosure in the absence of a warrant or other authorization.
TBD	TBD	Other rulemaking as assigned by the Board

Topics Assigned to CPRA Rules Update Subcommittee



CCPA RULE UPDATE SUBCOMMITTEE 1/6

Section	Topic	Description
1798.185 (a)(7)	Rules and procedures on right to delete, right to correct, and right to know.	“Rules and procedures” ensuring consumers’ right to delete, or obtain personal information, as provided by statute. (See Civ. Code, §§ 1798.105, 1798.106, 1798.110, 1798.115, and 1798.130.) Existing CCPA rules at Code Regs., tit. 11, Chapter 20 Articles 2-5
1798.185 (a)(8)	Right to correction	Provides for regulations placing a limit on “how often, and under what circumstances, a consumer may request a correction” of PI.



CCPA RULE UPDATE SUBCOMMITTEE 2/6

Section	Topic	Description
1798.185 (a)(4)(A)	Submission of opt-out requests	Rules “[t]o facilitate and govern the submission of a request by a consumer to opt-out of the sale or sharing of personal information” or “to limit the use of . . . sensitive personal information.” Existing CCPA rules at Code Regs., tit. 11, § 999.315 [Requests to Opt-Out of Sale].)
1798.185 (a)(4)(B)	Compliance with opt-out requests	Business compliance regarding a consumer’s opt-out rights discussed above
1798.185 (a)(4)(C)	Opt-out logo or button	Creation of a “recognizable and uniform opt-out logo or button” to be used by all businesses. Existing CCPA rules at Code Regs., tit. 11, § 999.306(f)

CCPA RULE UPDATE SUBCOMMITTEE 3/6

Section	Topic	Description
1798.185 (a)(19)(A) & 1798.121 (a) & (d)	Opt-out preference signal (requirements and specifications.)	Define requirements and technical specifications which should meet specific parameters as set in the section.
1798.185 (a)(19)(B) & 1798.121 (a) & (d)	Opt-out preference signal (minors - 13 year old or younger.)	Regulations indicating, via opt-out preference signal, that the consumer is a minor.
1798.185 (a)(20)	Opt-out preference signal (processing consumer rights)	Regulations governing how businesses should process consumer rights that are expressed through opt-out preference signals

CCPA RULE UPDATE SUBCOMMITTEE 4/6

Section	Topic	Description
1798.185 (a)(19)(C); 1798.121 (a) & (d); &1798.135(c)(4)	Sensitive Personal Information ("SPI")	Regulations "to govern the use or disclosure of a consumer's sensitive personal information" while taking into account legitimate business purposes.
1798.185 (a)(9)	Look-back period	This subdivision provides for regulations establishing the "impossible" or "disproportionate effort" standards a business may cite in denying a consumer's request for information beyond the preceding 12 months.



CCPA RULE UPDATE SUBCOMMITTEE 5/6

Section	Topic	Description
1798.185 (a)(14)	Definition of “specific pieces of information obtained from the consumer.”	Define "specific pieces of information obtained from the consumer." The term is not defined in section 1798.140. This subdivision also provides specific instructions for minimizing delivery of superfluous information to the requesting consumer (section 1798.130(a)(3)(B)(iii) already excludes “data generated to help ensure security and integrity” from the phrase “specific pieces of information”)
1798.185 (a)(11)	Use of PI by contractors and service providers business purposes	This subdivision provides for regulations outlining the “business purposes” for which a service provider or contractor—as opposed to the business that collected the information—may use consumers’ personal information. Existing CCPA rules at Code Regs., tit. 11, §§ 999.314(c)

CCPA RULE UPDATE SUBCOMMITTEE 6/6

Section	Topic	Description
1798.185 (a)(6)	Accessibility.	<p><i>“Rules, procedures, and any exceptions ”</i> notices are accessible to the average consumer, to consumers with disabilities, and in the language used to interact with the customer (including rules on financial incentives).</p> <p>Existing CCPA rules at Code Regs., tit. 11, §§ 999.305(a)(2); 999.306(a)(2); and 999.307(a)(2); and 999.308(a)(2).</p>
TBD	TBD	Other rulemaking as assigned by the Board



Topics Assigned to Rulemaking Process Subcommittee



RULEMAKING PROCESS SUBCOMMITTEE 1/6

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

RULEMAKING PROCESS SUBCOMMITTEE 2/6

Section	Task	Description
1798.185 (a)(5)	Make recommendations re: need for rules on update of monetary thresholds	Biannual adjustments monetary thresholds in 1798.140(d)(1)(A), 1798.150(a)(1)(A), 1798.155(a), 1798.199.25, and 1798.199.90. Adjustments to be made January 1, 2025 & every two years thereafter.
1798.185 (a)(10)	Make recommendations re: need for rules on business purposes	Further defining “business purpose ”including defining purposes for which ”service providers and contractors may combine consumers’ personal information obtained from different sources.” NOTE: Key topic to enable application of CPRA to employee data. Existing CCPA rules at Code Regs., tit. 11, §§ 999.314(c).

RULEMAKING PROCESS SUBCOMMITTEE 3/6

Section	Task	Description
1798.185 (a)(12)	Make recommendations re: need for rules on definition of “intentionally interacts”	This subdivision contemplates refinements to the definition of “intentionally interacts” as supplied by section 1798.140(s).
1798.185 (a)(13)	Make recommendations re: need for rules on definition of “precise geolocation”	This subdivision contemplates refinements to the definition of “precise geolocation” as supplied by pending section 1798.140(w).
1798.185(a)(17)	Make recommendations re: need for rules on definition of “law enforcement agency-approved investigation”	This subdivision provides for refinements to the definition of “law enforcement agency-approved investigation” for purposes of an exception in pending section 1798.145(a)(2).

RULEMAKING PROCESS SUBCOMMITTEE 4/6

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

RULEMAKING PROCESS SUBCOMMITTEE 5/6

Section	Task	Description
1798.199.40(b)	Make recommendations re: need for rules on record-keeping requirements	The agency shall give notice of assuming rulemaking responsibilities <i>“including regulations specifying record keeping requirements for businesses to ensure compliance with this title.”</i>
1798.185(a)(21)	Insurance companies * Logistics subcommittee to coordinate the generation of a report comparing CPRA with existing regulations applicable to Insurance Companies	This subdivision contemplates (i) a comparison of the CPRA with provisions and regulations of the Insurance Code related to consumer privacy and (ii) if the CPRA is <i>more</i> protective than existing insurance law, issuance of regulation on how CPRA applies to insurance companies.

RULEMAKING PROCESS SUBCOMMITTEE 6/6

Section	Task	Description
1798.185 (a)(13)	Make recommendations on need for other rules	This subdivision permits the adoption of regulations “as necessary to further the purposes of this title.”
N/A	N/A	Other tasks as assigned by Board