
CALIFORNIA DEPARTMENT OF JUSTICE
NOTICE OF PROPOSED RULEMAKING ACTION

TITLE 11. LAW
DIVISION 1. ATTORNEY GENERAL

(Notice to be Published on October 11, 2019)

Notice is hereby given that the Department of Justice (Attorney General) proposes to adopt sections §§ 999.300 through 999.341 of Title 11, Division 1, Chapter 20, of the California Code of Regulations (CCR) concerning the California Consumer Privacy Act (CCPA).

PUBLIC HEARING

The Attorney General will hold four public hearings to provide all interested persons with an opportunity to present statements or comments, either orally or in writing, with respect to the proposed regulations, as follows:

December 2, 2019
10:00 a.m. - 4:00 p.m.
CalEPA Building
Coastal Room, 2nd Floor
1001 I Street
Sacramento, CA 95814

December 3, 2019
10:00 a.m. - 4:00 p.m.
Ronald Reagan Building
Auditorium, 1st Floor
300 S. Spring Street
Los Angeles, CA 90013

December 4, 2019
10:00 a.m. - 4:00 p.m.
Milton Marks Conference Center
Lower Level
455 Golden Gate Ave.
San Francisco, CA 94102

December 5, 2019
10:00 a.m. - 4:00 p.m.
Fresno Hugh Burns Building
Assembly Room #1036
2550 Mariposa Mall
Fresno, CA 93721

The locations of these hearings will be wheelchair accessible. To request any additional accommodations at any of the hearings, please call (415) 510-3886 or visit our website at www.oag.ca.gov/privacy/ccpa/rsvp.

At the hearing, any person may present statements or comments orally or in writing relevant to the proposed action described in the Informative Digest. The Attorney General requests, but does not require, that persons who make oral statements or comments at the hearing also submit a written copy of the comments made at the hearing. Equal weight will be accorded to oral comments and written materials.

Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished their presentation or at 4:00 p.m., whichever is earlier. If public comment concludes before the noon recess, no afternoon session will be held.

WRITTEN COMMENT PERIOD

Any interested party, or their duly authorized representative, may submit written comments relevant to the proposed regulatory action. Comments may be submitted at the hearing, by mail, or by email. The written comment period closes on December 6, 2019 at 5:00 p.m. The Attorney General will only consider comments received by that time.

Submit comments to:

Privacy Regulations Coordinator
California Office of the Attorney General
300 South Spring Street, First Floor
Los Angeles, CA 90013
Email: PrivacyRegulations@doj.ca.gov

Please also note that under the California Public Records Act (Gov. Code, § 6250 *et seq.*), written and oral comments, attachments, and associated contact information (e.g., address, phone, email, etc.) become part of the public record and can be released to the public upon request.

AUTHORITY AND REFERENCE

Civil Code section 1798.185 authorizes the Attorney General to adopt these proposed regulations. The proposed regulations will implement, interpret, and make specific the provisions of Civil Code sections 1798.100 through 1798.196.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws (as of September 24, 2019)

On June 28, 2018, Governor Brown signed the California Consumer Privacy Act of 2018 (AB 375) (hereinafter “CCPA”) into law. Among other things, AB 375 enacted and SB 1121 subsequently amended Civil Code sections 1798.100 through 1798.198, which grant “consumers” new rights relating to the access to, deletion of, and sharing of “personal information” collected by “businesses” about them. The definition of “consumer,” “personal information,” and “business” set the scope of the CCPA.

Civil Code section 1798.140, subdivision (g) defines “consumer” as a natural person who is a California resident.

Civil Code section 1798.140, subdivision (o) defines “personal information” broadly to include any information that “identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household.” This definition includes not only common identifiers, such as a name, address, and social security number, but other information such as purchasing history or tendencies, biometric information, internet activity, geolocation data, employment information, and education information, among other things. It does not, however, include publicly available information or deidentified or aggregate consumer information.

Civil Code section 1798.140, subdivision (c) defines “business” as a for-profit business or other legal entity that collects and determines the use of consumers’ personal information, and satisfies one or more of the following thresholds:

- (A) Has annual gross revenues in excess of twenty-five million dollars (\$25,000,000);
- (B) Buys, receives, or sells the personal information of 50,000 or more consumers, households, or devices; or
- (C) Derives 50 percent or more of its annual revenues from selling consumers’ personal information.

With this understanding of the scope, the following is a summary of the new rights that the CCPA confers on consumers, as well as the other requirements it places on businesses.

Right to Know

Civil Code sections 1798.100, 1798.110, and 1798.115 provide consumers the ability to request that a business disclose:

- (1) Specific pieces of personal information the business has collected about the consumer;
- (2) Categories of personal information it has collected or sold about that consumer;
- (3) The purpose for which it collected or sold the categories of personal information; and
- (4) Categories of third parties to whom it sold the personal information.

Civil Code section 1798.130, subdivision (a)(1) requires that the business provide two or more designated methods for submitting requests, including at least a toll-free phone number and a website (if the business has a website). The business is to disclose and deliver the required information to the consumer within 45 days of receiving a verifiable consumer request. (Civ. Code, § 1798.130, subd. (a)(2).) The disclosure must be free of charge, in writing, through the consumer's account with the business, or if the consumer does not have an account with the business, by mail or electronically. (*Ibid.*)

Prior to disclosing any information, a business must verify that the consumer making the request is the same consumer about whom the business has collected personal information. (Civ. Code, §§ 1798.100, subd. (c), 1798.110, subd. (b), 1798.115, subd. (b), and 1798.140, subd. (y).) After verifying the requestor's identity, the business must provide the information for the 12 months preceding the request. (*Id.* at § 1798.130, subs. (a)(2), (a)(3)(B), (a)(4)(B)-(C).) A business is not obligated to provide this information to the same consumer more than twice in a 12-month period. (*Id.* at § 1798.130, subd. (b).) Verification shall be in accordance with the Attorney General's regulations. (*Id.* at § 1798.185.)

If a business does not take action on a consumer's request, it must inform the consumer why and what rights the consumer has to appeal the decision, if any. (Civ. Code, § 1798.145, subd. (g)(2).) The business must do so without delay and at least within the time frame by which it must respond to the consumer's request. (*Ibid.*) If a consumer's requests are manifestly unfounded or excessive, a business may charge a reasonable fee, or refuse to act on the request. (*Id.* at § 1798.145, subd. (g)(3).)

Right to Delete

Civil Code section 1798.105 provides consumers with the ability to request deletion of personal information from businesses that have collected it from the consumer. Businesses must verify that the consumer making the request is the same consumer about whom the business has collected personal information. (Civ. Code, §§ 1798.105, subd. (c), 1798.140, subd. (y).) Upon verification, which shall be determined by the Attorney General's regulations, businesses shall delete the consumer's personal information from its records and direct any service providers to do so as well within 45 days of receiving a verifiable consumer request. (*Id.* at §§ 1798.105, subd. (c), 1798.130, subd. (a)(2).)

Civil Code section 1798.105, subdivision (d), however, provides for certain exceptions where it is necessary for the business to maintain the personal information in order to:

- (1) Complete the transaction for which the personal information was collected, provide a good or service requested by the consumer, perform actions reasonably anticipated within the context of a business's ongoing business relationship with the consumer, or otherwise perform a contract between the business and the consumer.
- (2) Detect security incidents, protect against malicious, deceptive, fraudulent, or illegal activity, or prosecute those responsible for that activity.
- (3) Debug to identify and repair errors that impair existing intended functionality.

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- (4) Exercise free speech, ensure another consumer's right to exercise free speech, or exercise another right provided for by law.
 - (5) Comply with the California Electronic Communications Privacy Act.
 - (6) Engage in public or peer-reviewed scientific, historical, or statistical research in the public interest that adheres to all other applicable ethics and privacy laws, when the businesses' deletion of the information is likely to render impossible or seriously impair the achievement of such research, if the consumer has provided informed consent.
 - (7) Enable solely internal uses reasonably aligned with the expectations of the consumer based on the consumer's relationship with the business.
 - (8) Comply with a legal obligation.
 - (9) Use the consumer's personal information, internally, in a lawful manner that is compatible with the context in which the consumer provided the information.

If a business does not take action on a consumer's request, it must inform the consumer why and what rights the consumer has to appeal the decision, if any. (Civ. Code, § 1798.145, subd. (g)(2).) The business must do so without delay and at least within the time frame by which it must respond to the consumer's request. (*Ibid.*) If a consumer's requests are manifestly unfounded or excessive, a business may charge a reasonable fee, or refuse to act on the request. (*Id.* at § 1798.145, subd. (g)(3).)

Right to Opt-Out of Sale

Civil Code section 1798.120 provides consumers with the ability to direct businesses not to sell their personal information. Civil Code section 1798.140, subdivision (t) defines "sell" broadly to include selling, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or other means, a consumer's personal information by the business to another business or a third party for monetary or other valuable consideration. There is no requirement that a business verify the consumer's identity regarding a request to opt-out.

For consumers under 16 years of age, businesses cannot sell their personal information unless they have opted-in to the sale of their personal information. (Civ. Code, § 1798.120, subd. (c).) For consumers under 13 years of age, a parent or guardian must opt-in on behalf of the child. (*Ibid.*) A business that has received direction from a consumer not to sell the consumer's personal information or, in the case of a consumer under 16 years of age, has not received consent to sell the information, must not sell the personal information unless the consumer subsequently provides express authorization for its sale. (*Id.* at § 1798.120, subd. (d).)

Right to Non-Discrimination

Civil Code section 1798.125 prohibits a business from discriminating against a consumer because they have exercised any of their rights under the CCPA. Discrimination includes, but is not limited to, denying goods or services to the consumer, charging different prices or rates for goods or services, providing a different level or quality of goods or services to the consumer, or suggesting that the consumer will receive a different price or quality of goods or services. (Civ. Code, § 1798.125, subd. (a)(1).) The business, however, may charge the consumer a different

price or rate, provide a different level or quality of goods or services, or offer financial incentives if that difference is reasonably related to the value provided to the business by the consumer's data. (*Id.* at § 1798.125, subds. (a)(2) and (b)(1).) The business shall not use financial incentive practices that are unjust, unreasonable, coercive, or usurious in nature. (*Id.* at § 1798.125, subd. (b)(4).)

Other Requirements

The CCPA also requires businesses to make certain disclosures regarding their practices for collecting, using, and selling consumer personal information.

Notice at or before the point of collection: Civil Code section 1798.100, subdivision (b) requires a business to inform consumers, at or before the point of collection, of the categories of personal information that it collects from them and the purposes for which they will be used. A business shall not collect additional categories of personal information or use personal information collected for additional purposes without providing the consumer with notice at or before the point of collection. (Civ. Code, § 1798.100, subd. (b).)

Notice of the right to opt-out of the sale of personal information: Civil Code section 1798.120, subdivision (b) requires a business that sells consumers' personal information to third parties to provide notice that their personal information may be sold and that they have the "right to opt-out" of the sale of their personal information. Civil Code section 1798.135, subdivision (a) also requires businesses to provide a clear and conspicuous link on their website titled "Do Not Sell My Personal Information," where the consumer, or their agent, can opt-out of the sale of the consumer's personal information.

Notice regarding incentives: Civil Code section 1798.125, subdivision (b)(2) requires a business that offers any financial incentives to provide notice to consumers of the financial incentive.

Privacy policy: Civil Code section 1798.130, subdivision (a)(5) requires businesses to disclose in a privacy policy a description of a consumer's rights under the CCPA, how they can submit requests for disclosure, deletion, and opting-out of the sale of personal information, and additional information regarding their data collection and sharing practices. (Civ. Code, § 1798.130, subd. (a)(5).)

Training: Civil Code section 1798.130, subdivision (a)(6) requires businesses to ensure that all individuals responsible for handling consumer requests are informed of the requirements in the CCPA and how to direct consumers to exercise their rights under the CCPA.

Rulemaking

Civil Code section 1798.185, subdivision (a) requires the Attorney General to solicit broad public participation and adopt regulations to further the purposes of the CCPA, including, but not limited to, the following areas:

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- (1) Updating as needed additional categories of “personal information” in order to address changes in technology, data collection practices, obstacles to implementation, and privacy concerns.
 - (2) Updating as needed the definition of unique identifiers to address changes in technology, data collection, obstacles to implementation, and privacy concerns, and additional categories to the definition of designated methods for submitting requests to facilitate a consumer’s ability to obtain information from a business.
 - (3) Establishing any exceptions necessary to comply with state or federal law.
 - (4) Establishing rules and procedures to facilitate and govern the submission of a request by a consumer to opt out of the sale of personal information and a business’s compliance with a consumer’s opt-out request, and the development and use of a recognizable and uniform opt-out logo or button to promote consumer awareness of the opportunity to opt out of the sale of personal information.
 - (5) Adjusting the monetary threshold for the annual gross revenue included in the definition of “business.”
 - (6) Establishing rules, procedures, and any exceptions necessary to ensure that businesses provide the notices and information required by the CCPA in a manner that may be easily understood by the average consumer, accessible to consumers with disabilities, and available in the language primarily used to interact with the consumer.
 - (7) Establishing rules and guidelines regarding financial incentive offerings.
 - (8) Establishing rules and procedures to further the purposes of Sections 1798.110 and 1798.115.
 - (9) Establishing rules and procedures to facilitate a consumer’s or the consumer’s authorized agent’s ability to obtain information, with the goal of minimizing the administrative burden on consumers, taking into account available technology, security concerns, and the burden on the business.
 - (10) Establishing rules and procedures to govern a business’ determination that a request for information received by a consumer is a verifiable request, including situations where the consumer has a password-protected account with the business and when they do not.

Civil Code section 1798.185, subdivision (b), further provides that the Attorney General may adopt additional regulations as necessary to further the purposes of the CCPA.

Accordingly, the Office of the Attorney General submits these proposed regulations to fulfill this mandate, and to provide clarity and guidance to the public regarding the CCPA.

Effect of the Proposed Rulemaking

These proposed regulations provide specific guidance regarding: (1) the notices businesses must provide to consumers under the CCPA; (2) the businesses’ practices for handling consumer requests made pursuant to the CCPA; (3) the businesses’ practices for verifying the identity of the consumer making those requests; (4) the businesses’ practices regarding the personal

information of minors; and (5) the businesses' offering of financial incentives. Below is a summary of key provisions of the proposed regulations.

Notices to Consumers

The regulations establish the rules regarding how businesses must notify consumers about their rights under the CCPA. Specifically, the regulations address four notices required under the CCPA: (1) notice at or before collection of personal information; (2) notice of the right to opt-out of sale of personal information; (3) notice of financial incentive; and (4) the privacy policy. The regulations require businesses to design and present the various notices in a way that is easy to read and understandable to an average consumer, which includes using plain, straightforward language, a format that draws the consumer's attention to the notice, and providing the notice in the languages in which the business provides consumer contracts, among other things. The regulations identify the information that must be included in the specific notices, restrictions on the collection of personal information when notice cannot be given, and situations in which certain notices need not be given.

Business Practices for Handling Consumer Requests

The regulations establish rules and procedures about how businesses must handle consumer requests made pursuant to the CCPA. They set forth different methods the businesses are to provide for consumers to submit requests, how businesses are to respond to requests, what factors need to be considered when fulfilling requests, how businesses can seek additional time to respond, and how businesses are to demonstrate compliance with the CCPA. For example, businesses must designate two or more methods for consumers to submit requests to know and request to delete, with at least one method reflecting the manner in which the business primarily interacts with the consumer. Businesses are to confirm receipt of the request and process the request within 45 days of receiving the request. Businesses must utilize a two-step process for online requests to delete personal information where consumers must clearly confirm their intent to do so, and businesses must use reasonable security measures when transmitting personal information.

The regulations clarify sections of the CCPA, such as whether a business can seek a 45-day extension of time to respond to a request once or twice, whether a business must verify a request to opt-out of the sale of personal information, what information must be maintained for record-keeping purposes, and whether service providers to a business must respond to requests to know and requests to delete. They also set forth circumstances when a business may deny a request, such as when a business cannot verify the identity of the requestor, and when a business can request that a consumer opt back into the sale of personal information. The regulations also address requests made by a consumer's authorized agent and requests pertaining to household information.

Verification of Requests

The regulations establish rules and procedures about how businesses are to verify the identity of consumers making requests to know and requests to delete. All businesses are to establish,

document, and comply with a reasonable method of verification that takes into consideration the sensitivity of the personal information at issue and the risk of harm to the consumer posed by any unauthorized access or deletion. For consumers that have a password-protected account with a business, the regulations provide businesses with the ability to utilize their existing password authentication processes if they implement reasonable security measures to detect fraud.

In the case of non-accountholders, the regulations set forth the verification standards for different kinds of requests. Requests for disclosure of categories of personal information must be verified to a reasonable degree of certainty, which may be demonstrated by matching at least two data points provided by the consumer to information maintained by the business. Requests for specific pieces of personal information must be verified to a reasonably high degree of certainty, a higher bar that requires matching at least three pieces of personal information provided by the consumer with information maintained by the business and a signed declaration under penalty of perjury. The verification standard for requests to delete may vary between the two standards depending on the sensitivity of the personal information and the risk of harm to the consumer posed by unauthorized deletion.

Special Rules Regarding Minors

The regulations establish the rules and procedures for businesses to obtain affirmative authorization for the sale of the personal information of minors under 16 years of age. They set forth methods by which a business can verify that the person affirmatively authorizing the sale of the personal information of a consumer under 13 years of age is the parent or guardian of that child.

Non-Discrimination

The regulations establish the rules and guidelines regarding discriminatory practices and financial incentive offerings. They explain what kinds of business practices constitute discrimination as set forth in the CCPA. They also provide guidance regarding how to calculate the value of consumer's data in designing financial incentives and require the business to publicly disclose the estimated value of the consumer's data and the method by which the amount was calculated.

Comparable Federal Regulations

There are no existing federal regulations or statutes comparable to the proposed regulations.

Policy Statement Overview and Anticipated Benefits of Proposed Regulations

The California Legislature, in its legislative findings regarding the CCPA, explained that an individual's ability to control the use and sale of their personal information was fundamental to the "inalienable" right of privacy set forth in the California Constitution. The CCPA furthers this right to privacy by giving consumers: (1) the right to know what personal information is being collected about them and how it is being used and shared; (2) the right to delete personal information collected from them; (3) the right to opt-out of the sale of their personal information;

and (4) the right to equal service and price, even if they exercise their privacy rights. (Civ. Code, §§ 1798.100-1798.199.)

The regulations will benefit the welfare of California residents because they will facilitate the implementation of many components of the CCPA. By providing clear direction to businesses on how to inform consumers of their rights and how to handle their requests, the regulations will make it easier for consumers to exercise their new rights. The regulations on notice, for example, will also promote greater transparency to the public regarding how businesses collect, use, and share their personal information and on what businesses must do to comply with the CCPA. The regulations on timing and record-keeping will encourage businesses to provide full and timely responses to consumer requests. The increased individual control over personal information granted by the law and specified in the regulations can also protect consumers from some abuses of that information, such as discrimination, harassment, and fraud.

Determination of Inconsistency/Incompatibility with Existing State Regulations

Government Code section 11346.5, subdivision (a)(3)(D) requires the Attorney General to evaluate whether the proposed regulations are inconsistent or incompatible with existing state regulations. After conducting a review for any regulations that would relate to or affect this area, the Attorney General has concluded that these are the only regulations that concern the CCPA. The Attorney General has determined these proposed regulations are not inconsistent or incompatible with any existing state regulations, because there are no existing regulations that address the specific subject matter of the proposed regulations.

Other Statutory Requirements

Civil Code section 1798.185, subdivision (a) requires the Attorney General to solicit broad public participation and adopt regulations to further the purposes of the CCPA. During its pre-rulemaking process, the Department scheduled seven public forums in communities throughout the state to solicit public comments. Transcripts of the public forums are posted on www.oag.ca.gov/privacy/ccpa.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Attorney General has made the following initial determinations:

Mandate on Local Agencies and School Districts: The proposed regulations do not impose a mandate on local agencies or school districts.

Cost to any Local Agency or School District: None.

Cost or Savings to any State Agency: The enactment of the CCPA resulted in an additional regulatory cost to State government, specifically the Attorney General's office, of approximately \$4,739,000 for the fiscal year (FY) 2019-2020 and \$4,554,000 for fiscal year (FY) 2020-2021 and ongoing. This amount reflects the cost of hiring an additional 23 full-time positions and

expert consultants to enforce and defend the CCPA. The anticipated costs are not associated specifically to the proposed regulations, but rather, the law itself. The incremental costs directly attributable to the regulations are negligible.

Other Non-Discretionary Cost or Savings Imposed on Local Agencies: None.

Cost or Savings in Federal Funding to the State: None.

Significant Effect on Housing Costs: None.

Significant Statewide Adverse Economic Impact Directly Affecting Businesses: The Attorney General has made an initial determination that the adoption of these regulations may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Attorney General has considered alternatives that would lessen any adverse economic impact on business and invites the public to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

The types of businesses affected include: (1) businesses with an annual gross revenues of more than \$25 million; (2) businesses that buy, sell, or share the personal information of more than 50,000 consumers, households, or devices per year; and (3) businesses that derives 50% of more of their annual revenue from selling consumer's personal information. These businesses fall within most sectors of the California economy, including agriculture, mining, utilities, construction, manufacturing, wholesale trade, retail trade, transportation and warehousing, information, finance and insurance, real estate, professional services, management of companies and enterprises, administrative services, educational services, healthcare, arts, accommodation and food services, among others. The Attorney General estimates that 15,000 to 400,000 businesses will be affected by the CCPA, and consequently, the proposed regulations.

The proposed regulations impose a number of reporting, recordkeeping, and other compliance requirements. The proposed regulations specify how businesses are to: (1) provide to consumers the various notices required by the CCPA; (2) handle consumer requests made pursuant to the CCPA; (3) verify the identity of the consumers making requests to know and requests to delete; (4) obtain affirmative authorization for the sale of minors' personal information; and (5) offer financial incentives. Businesses subject to the CCPA must comply with these rules.

Businesses are also required to maintain records of consumer requests made pursuant to the CCPA and how the business responded to said requests for at least 24 months. Businesses that handle the personal information of 4,000,000 or more consumers will be required to track and

post online the number of requests to know, requests to delete, and requests to opt-out that they received in the previous calendar year, and the median number of days within which they substantively responded to those requests. Those businesses are also required to establish, document, and comply with training policies to ensure that all individuals responsible for handling consumer requests or the business's compliance with the CCPA are informed of all the requirements in the CCPA and these proposed regulations.

Statement of the Results of the Standardized Regulatory Impact Analysis: The Attorney General determined that the proposed regulations are major regulations requiring a Standardized Regulatory Impact Analysis (SRIA). The Attorney General collaborated with Berkeley Economic Advising and Research, LLC to prepare the SRIA, which was submitted to the California Department of Finance on August 15, 2019.

The SRIA explains that while the CCPA gives the Attorney General broad authority to adopt regulations, consumers and businesses will likely incur the benefits and costs of the CCPA regardless of these specific regulations. The compliance costs associated with the CCPA (legal, operational, technical and other business costs) will likely vary considerably depending on the type and size of business and on how it uses personal information. The majority of these compliance costs are attributable to the CCPA, not to the regulations, and thus part of the regulatory baseline.

The SRIA focuses on estimating the incremental impacts of the regulations, beyond the impacts of the CCPA. It estimates that the cost businesses may collectively incur to comply with the regulations over the ten-year period of 2020 to 2030 is \$467 million to \$16,454 million. Compliance costs will likely be highest in the first 12 months after the CCPA and implementing regulations take effect because establishing technological and operational systems necessary to respond to consumer requests comprise most of the costs associated with CCPA compliance.

Creation or Elimination of Jobs in California

The SRIA estimates that the regulations (compared to baseline scenario) would result in 9,520 fewer jobs in California by 2030, with the employment impact consisting mainly of skill-switching turnover within information-intensive sectors. The loss would have a negligible effect on continued annual growth of employment across the state.

Creation or Elimination of Businesses in California

The Attorney General does not have reliable estimates on the creation or elimination of businesses as a result of the regulations because of the very large number of businesses impacted by the CCPA across many different sectors.

Competitive Advantages or Disadvantages for Existing Businesses in California

While compliance costs for businesses operating within California will put them at some competitive disadvantage relative to businesses that operate only outside the state, that

disadvantage is likely to be small. This is due to a couple of factors. First, California standards often become national standards because, given the size of the California economy, companies find it easier to adopt a uniform approach rather than differentiating their offerings. Second, direct competition between businesses subject to the regulations and those not subject to them is likely to be limited. Either the business is small and localized and therefore not in direct competition with out-of-state companies or it is large enough that its out-of-state competitors would also be subject to the CCPA and the regulations for their California customers.

Increase or Decrease in Investment in California

The CCPA will impose small but consistently positive net costs on the economy. It is estimated that by 2030, the largest potential impact to California's Gross State Product (GSP) would be less than one tenth of one percent of GSP. Although the relative magnitude of adjustment costs could be substantially higher for some groups and individual businesses, the expected net total cost of CCPA is negligible in relation to the economy as a whole.

Incentives for Innovation

The CCPA and its implementing regulations will generate incentives for innovation in privacy products and services to assist both consumers and businesses. For consumers, the granting of new privacy rights provide an incentive to create new privacy features, products, or services that assist consumers in accessing, managing, or deleting their personal information. For businesses, their obligation to respond to consumer requests creates a demand for new products or services that will assist them in complying with the CCPA.

Benefits of the Regulations

The CCPA and its implementing regulations will benefit the health and welfare of all California consumers by providing them with increased control over how businesses use, share, and sell their personal information. By providing clear direction to businesses on how to inform consumers of their rights and how to handle their requests, the regulations make it easier for consumers to exercise their rights. They also provide greater transparency to consumers on businesses' data practices and protect both consumers and businesses from fraudulent requests for personal information.

Summary of Department of Finance's comments on SRIA and Response: The Department of Finance (DOF) provided comments on the SRIA in a letter dated September 16, 2019.

DOF generally agreed with the methodology used to estimate impacts of proposed regulations and acknowledged that some benefits may be difficult to quantify before implementation of the law and attendant regulations. DOF further commented that the impact of privacy protections will depend on changing consumer awareness and preferences, and stated that they expect that these issues will be addressed in impact assessments of future regulatory packages.

The Attorney General agrees with DOF's comments on the SRIA.

Cost Impacts on Representative Person or Business: The compliance costs associated with the regulations will vary considerably depending on the type and size of business, the maturity of the business's privacy compliance system, the number of California consumers it services, and how it uses personal information. For a small business, initial costs are estimated at \$25,000, with ongoing annual costs of \$1,500. For a larger business, initial costs are estimated at \$75,000, with ongoing costs of \$2,500 annually. The Attorney General found no cost impact on consumers.

Business Report: Section 999.317, subdivision (g) requires a business that alone or in combination, annually buys, collects for the business's commercial purposes, sells, or shares for commercial purposes, the personal information of four million or more consumers, to compile and report on its website or in its privacy policy, the following metrics for the previous calendar year: (a) the number of requests to know that the business received, complied with in whole or in part, and denied; (b) the number of requests to delete that the business received, complied with in whole or in part, and denied; (c) the number of requests to opt-out that the business received, complied with in whole or in part, and denied; and (d) the median number of days within which the business substantively responded to requests to know, requests to delete, and requests to opt-out.

The Attorney General finds that the report is necessary for the health, safety or welfare of the people of the state because it will allow the Attorney General, policymakers, academics, and members of the public to monitor compliance with the CCPA. This reporting obligation is limited to those businesses that handle a large amount of personal information, specifically, the personal information of approximately 10 percent of California's total population or more.

Small Business Determination: The regulations will affect small businesses, which are likely to face a disproportionately higher share of compliance costs compared to larger enterprises, at least in the short term. In the longer term, however, the differential impacts will be smaller as third-party service providers enter the market to offer small business low-cost compliance solutions. As competition in this new market increases, overall compliance costs are expected to fall.

CONSIDERATION OF ALTERNATIVES

Government Code section 11346.5, subdivision (a)(13) requires the Attorney General to determine that no reasonable alternative 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.

The Attorney General considered two alternative approaches to the regulations, described in the SRIA and presented below, and determined that they would be less effective in carrying out the purposes for which the regulations are proposed. Specific alternatives to individual regulations are discussed in detail in the Initial Statement of Reasons.

More stringent regulatory requirement. A more stringent regulatory alternative considers mandating more prescriptive compliance requirements, such as detailed training programs and record-keeping practices for all businesses subject to the CCPA. This requirement would be an additional requirement (beyond the proposed regulations) for potentially hundreds of thousands of California businesses and would impose substantial costs. The Attorney General rejects this regulatory alternative in order to ease the compliance burden for smaller businesses subject to the CCPA that do not necessarily have the resources to devote additional staff to handle CCPA-related tasks.

Less stringent regulatory requirement. A less stringent regulatory alternative would, among other things, allow limited exemption for GDPR-compliant firms. Limitations would be specific to areas where GDPR and CCPA conform in both standards and enforcement, subject to auditing as needed. This approach could achieve significant economies of scale in both private compliance and public regulatory costs. The Attorney General rejects this regulatory alternative because of key differences between the GDPR and CCPA, especially in terms of how personal information is defined and the consumer's right to opt-out of the sale of personal information (which is not required in the GDPR).

The Attorney General invites all interested parties to present statements or arguments with respect to any alternatives to the proposed regulations during the public comment period.

CONTACT PERSONS

General or substantive comments concerning this proposed rulemaking, including requests for copies of documents associated with this action such as the text of the proposed regulations, initial statement of reasons, and related forms, should be directed to:

Lisa B. Kim
Deputy Attorney General
Consumer Law Section – Privacy Unit
California Office of the Attorney General
300 South Spring Street, First Floor
Los Angeles, CA 90013
Phone: (213) 269-6000
Email: PrivacyRegulations@doj.ca.gov

or

Stacey Schesser
Supervising Deputy Attorney General
California Department of Justice
Consumer Law Section – Privacy Unit
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102
Phone: (415) 510-4400
Email: PrivacyRegulations@doj.ca.gov

AVAILABILITY OF INITIAL STATEMENT OF REASONS, PROPOSED TEXT, RELATED FORMS, AND RULEMAKING FILE

The Attorney General will make the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office located at California Department of Justice, Consumer Law Section – Privacy Unit, 300 S. Spring St., Suite 1702, Los Angeles, CA 90013, and on the Attorney General’s website at www.oag.ca.gov/privacy/ccpa. The rulemaking file consists of this notice, the text of proposed regulations, the initial statement of reasons, the economic and fiscal impact statement (STD 399) and addendum, and any information upon which the Attorney General is basing this proposal. Copies of these documents are also available upon request by contacting Lisa B. Kim, Deputy Attorney General, at the above listed address.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments, OAL may adopt the proposed regulations substantially as described in this notice. If the Attorney General makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Attorney General adopts the proposed regulations, as revised. Copies of any modified text will be available on the Attorney General’s website at www.oag.ca.gov/privacy/ccpa. Please send requests for copies of any modified regulations to Lisa B. Kim, Deputy Attorney General, or Stacey Schesser, Supervising Deputy Attorney General, at the contact information above (Contact Persons). The Attorney General will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the final statement of reasons may be obtained by contacting Lisa B. Kim, Deputy Attorney General, or Stacey Schesser, Supervising Deputy Attorney General, at the contact information above (Contact Persons), or by visiting the Attorney General’s website at www.oag.ca.gov/privacy/ccpa.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of this Notice, the Initial Statement of Reasons, the text of the proposed regulations, and related forms will be posted and available for downloading on the Attorney General’s website at: www.oag.ca.gov/privacy/ccpa.