

CALIFORNIA PRIVACY PROTECTION AGENCY

TITLE 11. LAW

DIVISION 6. CALIFORNIA PRIVACY PROTECTION AGENCY

CHAPTER 3. Data Broker Registration.

NOTICE OF PROPOSED RULEMAKING

Notice published July 5, 2024

Subject Matter of Proposed Regulations: Data Broker Registration

Sections Affected: California Code of Regulations (CCR), title 11, sections 7600, 7601, 7602, 7603, 7604, and 7605.

The California Privacy Protection Agency proposes to adopt the proposed amended regulations, described below, after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Agency will hold a virtual public hearing to provide all interested persons an opportunity to present oral or written statements or arguments with respect to the proposed regulations:

Date: August 20, 2024

Time: 1:00 – 5:00 p.m. Pacific Time

To join this hearing by Zoom video conference:

<https://coppa-ca-gov.zoom.us/j/84399355488>

Webinar ID: 843 9935 5488

Or telephone:

USA (216) 706-7005 US Toll

USA (866) 434-5269 US Toll-free

Conference code: 682962

Please contact Elizabeth Allen at regulations@coppa.ca.gov or (279) 895-1356 by 4:30 p.m. on August 15, 2024, if reasonable accommodations are necessary.

At the hearing, any person may present oral or written statements or arguments relevant to the proposed action described in the Informative Digest. Participants will be given instructions on how to provide oral comment once they have accessed the hearing. The Agency requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony at, or immediately following, the hearing via email to regulations@coppa.ca.gov.

WRITTEN COMMENT PERIOD

Any interested person, or their authorized representative, may submit written comments relevant to the proposed regulatory action. The written comment period closes on August 20, 2024, at 5:00 p.m. Pacific Time. Only written comments received by that time will be considered. Within your comment, please indicate the proposed rulemaking action to which your comment refers at the top of the page (e.g., “Data Broker Registration Regulations”).

Please submit written comments to:

EMAIL: regulations@coppa.ca.gov

Please include “Public Comment on Data Broker Registration Regulations” in the subject line.

MAIL: California Privacy Protection Agency
Attn: Elizabeth Allen
2101 Arena Boulevard
Sacramento, CA 95834

NOTE: Written and oral comments, attachments, and associated contact information (e.g., address, phone, email, etc.) become part of the public record and will be posted on our public website: <https://www.coppa.ca.gov/regulations/>.

AUTHORITY AND REFERENCE

Authority: Section 1798.99.87, Civil Code.

Reference: Sections 1798.99.80, 1798.99.81, 1798.99.82, 1798.99.85, and 1798.99.87, Civil Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations:

In 2023, the Legislature passed — and Governor Newsom signed — Senate Bill (SB) 362 (Chapter 709, Statutes of 2023, also referred to as “the Delete Act”), which, among other things, transferred the administration and enforcement of the Data Broker Registry from the Office of the Attorney General to the California Privacy Protection Agency (“Agency”) as of January 1, 2024. The Agency now maintains the Data Broker Registry and posts publicly the required information disclosed by data brokers. Under the Delete Act, the Agency was tasked with implementing and administering the statute. SB 362 established that the Agency may adopt regulations to implement and enforce the bill. (Cal. Civ. Code, § 1798.99.87.)

The Delete Act requires that:

- Businesses register to the Data Broker Registry, provide registration information when registering, and pay a registration fee. (Cal. Civ. Code, § 1798.99.82.)
- The Agency create and maintain an informational website (“Data Broker Registry”) that displays the registration information provided by data brokers. (Cal. Civ. Code, § 1798.99.84.)

Effect of the Proposed Rulemaking:

The Agency may adopt regulations to implement and enforce the Delete Act. (Cal. Civ. Code, § 1798.99.87.) A business that meets the definition of “data broker,” as defined in Civil Code section 1798.99.80, must register with the Agency on its website by January 31, following each year in which a business acts as a “data broker” and pay the applicable registration fee. For example, a business that engages in data broker activities in 2023 is required to register by January 31, 2024 – even if the business has no plans to engage in data broker activities in 2024. A data broker that fails to register by January 31 may be liable for administrative fines

and costs in an administrative action brought by the Agency. (Cal. Civ. Code, § 1798.99.82(d).)

The Agency administered the data broker registration process for the first time in January of this year. Through that effort, Agency staff encountered a variety of common questions and occasional obstacles that indicated a need for clarification of SB 362's registration requirements. Notably, data brokers reached out with questions about their registration requirements and expressed confusion due to a lack of clarity in the statute around undefined terms. In addition, a multitude of responses failed to give information that promotes the statute's goals of consumer protection through transparency and informed decision-making around exercising California Consumer Privacy Act (CCPA) rights. The Agency also is mandated by statute to host a website providing the data brokers' registration information and thus is authorized to charge data brokers a registration fee to support the costs of establishing and maintaining the informational website.

These proposed regulations address common questions and obstacles that surfaced for data brokers in the most recent registration period. To that end, the proposed regulations: (1) detail what is included in, and how to pay the registration fee; (2) define terms included in SB 362; and (3) clarify requirements for registration, updates to the registry, and website disclosures.

Specifically, the proposed regulations:

- Clarify that the registration fee includes \$400 plus any fees for processing electronic payments. (Proposed § 7600 (a).)
- Establish a standardized electronic payment method for registration fees. (Proposed § 7600 (b).)
- Establish a rule allowing payment by debit card, check, or wire transfer if a business cannot pay by credit card and the process for such. (Proposed § 7600 (c).)
- Establish a rule stating that registration fees will not be prorated or refunded. (Proposed § 7600 (d).)
- Define the term "direct relationship" to provide clarity on what businesses are data brokers and ensure the definition is consistent with that contemplated in Civil Code Section 1798.99.80 subdivision (c). (Proposed § 7601 (a).)

- Define the term “minor” as persons under 16 years of age and establish when a business is considered to have knowledge of a person’s age. (Proposed § 7601 (b).)
- Define the term “register” to provide clarity on the requirements for completion of registration. (Proposed § 7601 (c).)
- Define the term “registration period” to provide clarity on the start date for data broker registration. (Proposed § 7601 (d).)
- Define the term “reproductive health care data” and provide examples to add clarity on data broker’s disclosure requirements pursuant to Civil Code section 1798.99.82 subdivision (b)(2)(E). (Proposed § 7602 (e)(1).)
- Clarify that each data broker business, regardless of its status as a subsidiary or parent company to another business, is required to uniquely register. (Proposed § 7602 (a).)
- Establish a rule requiring employee or agent for the data broker to register on behalf of the data broker and to have sufficient knowledge of their practices to provide accurate information under penalty of perjury. (Proposed § 7602 (b).)
- Establish a rule preventing amendments or withdrawals to registration information after the registration period, subject to exceptions. (Proposed § 7602 (c).)
- Establish a rule requiring true and correct responses be submitted by the data broker. (Proposed § 7603 (a).)
- Establish a rule requiring accurate and functional website links and email addresses be provided to the Agency. (Proposed § 7603 (b).)
- Establish a rule requiring disclosure of business’s alternative names and requiring contact information to facilitate communication from the Agency as necessary. (Proposed § 7603.)
- Establish a rule requiring disclosure of the types of personal information, products and services, and the proportion of data collected and sold that are subject to other laws. (Proposed § 7603 (d).)
- Establish a rule preventing data brokers from removing themselves from the registry absent erroneous registration. (Proposed § 7604 (a).)
- Establish a rule allowing updates to certain types of registration information. (Proposed § 7604 (b).)

- Establish a rule that a data broker's disclosure of metrics must comply with section 7330, where applicable and technically feasible. (Proposed § 7605.)

The Agency does not propose in this rulemaking regulations to implement requirements pertaining to the accessible deletion mechanism. (Cal. Civ. Code, § 1798.99.86.)

Anticipated Benefits of the Proposed Regulations:

The proposed regulations provide several benefits to Californians by furthering the state's interest in providing transparency into an industry that collects a massive amount of data about consumers, while consumers know very little about what information data brokers collect and sell about them. By making additional, uniform information available to consumers, they will have a better understanding of which data brokers may collect their data, thus, enabling consumers to be more informed when determining whether to exercise any of their privacy rights, including the right to delete personal information or opt-out of the sale or sharing of their personal information.

The proposed regulations also facilitate increased compliance with CCPA by providing clarity to data brokers about how to register as required by SB 362, providing the ability to pay the registration fee by credit card as requested by current data brokers, and defining critical terms. The clarification of requirements in the proposed regulations will strengthen the Agency's ability to address noncompliance by businesses acting as data brokers. Increased compliance with the CCPA advances the state's goal of transparency, supports the consumer's ability to make informed choices about their personal information, and provides the consumer with realistic expectations regarding the extent to which they can expect their personal information to be deleted.

Moreover, the proposed regulations will result in efficiencies and consistency in the data broker registration process and the information made available to the public.

Comparable Federal Regulations:

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

Determination of Inconsistency/Incompatibility with Existing State Regulations:

The Agency has determined that these proposed regulations are not inconsistent or incompatible with existing state regulations. After conducting a review for any regulations that would relate to or affect this area, the Agency has concluded these are the only regulations that concern the data broker registration requirements of SB 362.

Forms or Documents Incorporated by Reference:

None.

Other Statutory Requirements:

None.

DISCLOSURES REGARDING THE PROPOSED ACTION**The Agency's Initial Determinations:****Mandate on local agencies or school districts:**

None.

Cost or savings to any state agency:

No fiscal impact is anticipated on the Agency.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630:

None.

Other non-discretionary costs or savings imposed on local agencies:

None.

Cost or savings in federal funding to the state:

None.

Cost impacts on representative person or business:

The Agency is not aware of any costs impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs:

None.

Significant, statewide adverse economic impact directly affecting businesses, including ability to compete:

The Agency has made an initial determination that the proposed action would not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Results of the Economic Impact Assessment:

The Agency concludes:

- (1) It is unlikely that the proposal would create or eliminate jobs within the state because these regulations merely clarify existing registration requirements mandated by statute and make registration easier for businesses.
- (2) It is unlikely that the proposal would create new businesses or eliminate existing businesses within the state because these regulations merely clarify existing registration requirements mandated by statute and make registration easier for businesses.
- (3) It is unlikely that the proposal would result in the expansion of businesses currently doing business within the state because regulations merely clarify existing registration requirements mandated by statute and make registration easier for businesses.

The Agency also concludes:

- (1) The proposal would benefit the health and welfare of California residents by promoting transparency about what data brokers maintain and increasing compliance with the information statutorily required to be provided by data brokers; ultimately allowing consumers to be more informed when exercising their privacy rights.
- (2) The proposal would not benefit worker safety as the provisions do not pertain to, nor impact, worker safety.
- (3) The proposal would not benefit the state's environment as the provisions do not pertain to, nor will impact, the state's environment.

Business report requirement:

The proposed regulations implement the statutory requirements for data brokers to register with the Agency and provide certain information to be included in the registry.

Small business determination:

The Agency has made an initial determination that the proposed action may affect small businesses to the extent that they qualify as data brokers.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5 subdivision (a)(13), the Agency must determine that no reasonable alternative considered by the Agency or has otherwise been identified and brought to the attention of the Agency would be more effective in carrying out the purpose for which the action is proposed or 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 Agency has determined that the proposed regulations are the most effective way to operationalize the data broker registry requirement of SB 362 to balance the benefits to consumers, burdens to data brokers, and the purpose of the law itself.

CONTACT PERSON

Inquiries concerning the proposed administrative action may be directed to:

Elizabeth Allen
California Privacy Protection Agency
2101 Arena Boulevard
Sacramento, CA 95834
(279) 895-1356
databrokers@coppa.ca.gov

In the event the contact person is unavailable, inquiries regarding the proposed action may be directed to the following backup contact person:

Tamara Colson
California Privacy Protection Agency
2101 Arena Boulevard
Sacramento, CA 95834
(916) 244-6652
Tamara.Colson@coppa.ca.gov

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Agency will have the entire rulemaking file available for inspection and copying throughout the rulemaking process upon request to the contact person above. As of the date this Notice of Proposed Rulemaking is published in the Notice Register, the rulemaking file consists of this Notice, the Text of Proposed Regulations (the “express terms” of the regulations), the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based. The text of this Notice, the express terms, the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based are available on the Agency’s website at <https://www.coppa.ca.gov/regulations/>. Please refer to the contact information listed above to obtain copies of these documents.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments, the Agency may adopt these regulations substantially as described in this Notice. If the Agency makes modifications which 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 Agency adopts the regulations, as modified. Please send requests for copies of any modified regulations to the attention of the name and address indicated above. The Agency 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, a copy of the Final Statement of Reasons will be available on the Agency's website at <https://www.cppa.ca.gov/regulations/>. Please refer to the contact information listed above to obtain a written copy of the Final Statement of Reasons.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of this Notice, the express terms, the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based are available in the Agency's website at <https://www.cppa.ca.gov/regulations/>.