



November 21, 2022

California Privacy Protection Agency
Attn: Brian Soublet
2101 Arena Blvd.
Sacramento, CA 95834

Via email to regulations@cpha.ca.gov

**Subject: Public Comment on Notice of Modifications to Text of Proposed Regulations
(Nov. 3, 2022)**

Dear California Privacy Protection Agency:

Biocom California¹, California Life Sciences (“CLS”)², and the International Pharmaceutical & Medical Device Privacy Consortium (“IPMPC”) welcome the opportunity to provide comments on the Agency’s modifications to the proposed regulations implementing the Consumer Privacy Rights Act of 2020 (“CPRA”) and revising the regulations issued previously under the California Consumer Privacy Act of 2018 (“CCPA”).³

The IPMPC is comprised of chief privacy officers and other data privacy and security professionals from a number of research-based, global pharmaceutical and medical-device manufacturers. The IPMPC is the leading voice in the global pharmaceutical and medical device industry to advance innovative privacy solutions to protect patients, enhance healthcare, and support business enablement.⁴

We thank the Agency for considering the comments we submitted on the text of the proposed regulations published on July 8, 2022, and we have taken note of those modifications to the proposed regulations that address some of our prior comments. We also continue to encourage the Agency to add further examples to illustrate key concepts. With the sunset on January 1, 2023 of the exemptions contained in Civil Code §§ 1798.145(m) and (n), it would be particularly helpful to add practical, real-world illustrations showing how the proposed regulations apply to personal information concerning employees, job applicants, and independent contractors to a business, as well as to business-to-business contacts. Moreover, we ask that the Agency delay the effective date of the revised regulations to provide at least six months for businesses to implement necessary compliance measures.

Additional comments on specific provisions follow below:

§ 7025(e). Opt-Out Preference Signals, processing choices.

¹ More information about Biocom California is available at <https://www.biocom.org>.

² More information about CLS is available at <https://www.califesciences.org>.

³ These comments reflect the positions of Biocom California, CLS, and IPMPC as organizations and should not be necessarily construed as the positions of any individual member.

⁴ More information about the IPMPC is available at <https://www.ipmpc.org>.

We have previously commented that the Agency’s statement that 1798.135(b) “does not give the business a choice between posting the above-referenced links or honoring opt-out preference signals” conflicts with the plain language of 1798.135(b) and (c). 1798.135 sets up two approaches for facilitating opt-out requests – a business can choose to either post the links or to honor consumer opt-out “signals.” Doing both is expressly not required. 1798.135(b)(3) makes it very clear that “a business may elect whether to comply with subdivision (a) [posting links] or (b) [honoring opt-out signals].”

The Agency’s proposed approach requires businesses to allow consumers to opt-out via a preference signal, and the Agency states that the only choice a business is allowed is whether to process opt-out signals on a “frictionless” or “non-frictionless” basis. However, neither of these terms appear in the CPRA. The CPRA does not contemplate two different kinds of responses to opt-out signals – it just describes two options for receiving such signals.

§ 7051(e). Contract Requirements for Service Providers and Contractors. Contractual due diligence.

Section 1798.145(i)(1) states that “[a] business that discloses personal information to a service provider or contractor in compliance with this title shall not be liable under this title if the service provider or contractor receiving the personal information uses it in violation of the restrictions set forth in the title, provided that, at the time of disclosing the personal information, the business does not have actual knowledge, or reason to believe, that the service provider or contractor intends to commit such a violation.” This section thereby establishes a misconduct or gross negligence standard for a business’s loss of liability protection. However, in the proposed regulations, the Agency states that “[w]hether a business conducts due diligence of its service providers and contractors factors into whether the business has reason to believe that a service provider or contractor is using personal information in violation of the CCPA and these regulations.” The Agency further states that a business that “never enforces the terms of the contract nor exercises its rights to audit” a service provider may not claim it did not know and should not have known of a service provider’s violation. The Agency’s proposed approach follows a mere “negligence” standard for loss of liability protection. This conflicts with the express language of Section 1798.145(i)(1).

Conclusion and contact information.

Thank you for considering our comments and recommendations. If you have any questions, you may contact Fielding Greaves at fgreaves@biocom.org, Sam Chung at schung@califesciences.org, or Peter Blenkinsop at peter.blenkinsop@faegredrinker.com.

Sincerely,



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