

MAJOR REGULATIONS STANDARDIZED REGULATORY IMPACT ASSESSMENT SUMMARY

DF-131 (NEW 11/13)

STANDARDIZED REGULATORY IMPACT ASSESSMENT SUMMARY

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1. Statement of the need for the proposed major regulation.

The California Consumer Privacy Act (CCPA), enacted in 2018 and going into effect on January 2020, confers new privacy rights on individuals and imposes corresponding obligations on businesses subject to it. It tasks the Attorney General with adopting regulations in furtherance of the Act and sets forth specific areas that require immediate rulemaking by July 1, 2020. (See Civ. Code, § 1798.185, subd. (a)). The proposed regulations are intended to operationalize the CCPA and to further its purposes, providing clarity and specificity to assist both consumers and businesses in the implementation of the law.

2. The categories of individuals and business enterprises who will be impacted by the proposed major regulation and the amount of the economic impact on each such category.

The CCPA and proposed regulations are expected to have economic impacts for both consumers and businesses in California. Businesses will incur compliance costs if any of the following thresholds are met: (1) business's gross revenues exceed \$25 million per year, (2) business buys, sells, or shares personal information (PI) of more than 50,000 consumers, households, or devices per year; and (3) business derives 50% or more of its annual revenue from selling PI. Businesses across most sectors of the California economy will likely be affected by the CCPA. Preliminary estimates suggest a total of \$463-\$16,454 million in costs from 2020-2030 for affected businesses.

The statutory objective of the CCPA is to provide new privacy rights to all California consumers, including minors. In theory, any of the 40 million Californians could exercise new privacy rights under the CCPA and thus the implementing regulations assessed here potentially affect all Californians. Due to the novel nature of this regulation, the benefits accrued by California consumers were not directly quantified. The SRIA contains a detailed qualitative description of the potential benefits to consumers of both the CCPA and DOJ's implementing regulations.

3. Description of all costs and all benefits due to the proposed regulatory change (calculated on an annual basis from estimated date of filing with the Secretary of State through 12 months after the estimated date the proposed major regulation will be fully implemented as estimated by the agency).

In terms of measurable direct costs, the most consequential aspect of the CCPA will be investments in compliance activity by businesses operating in California. CCPA compliance will, in general, require upfront and ongoing investments in operational capacity and technology necessary to respond to consumer requests based on rights conferred by the CCPA. All firms that are subject to the CCPA, based on criteria set forth in the statute, will likely incur these costs. The incremental costs due to DOJ's regulations are primarily around (1) employee training, (2) record-keeping, (3) request verification, and (4) additional notification requirements. These costs and assumptions for estimating them are set forth in detail in the SRIA.

The CCPA's benefits to consumers derive from the privacy protections granted by the law. These protections give consumers the right to know and assert control over the use of their personal information. The economic value to consumers of these protections can be measured as the total value of consumers' personal information, which they can choose to delete or prevent the sale of. While difficult to quantify, the proposed regulations have an effect on how easily these rights can be exercised. This is discussed in detail in the SRIA.

4. Description of the 12-month period in which the agency estimates the economic impact of the proposed major regulation will exceed \$50 million.

Consumers may exercise their rights under the CCPA immediately after the statute takes effect. Thus, it is reasonable to believe that the benefits to consumers will likely be uniform over time. Compliance costs, however, will likely be highest in the first 12 months after the CCPA and implementing regulations take effect. This is because establishing technological and operational systems necessary to respond to consumer requests make up most of the costs associated with CCPA compliance. While ongoing compliance costs may be in excess of the \$50 million impact threshold (discussed in detail in the SRIA), the first 12 months of implementation will likely have the highest compliance costs and should therefore be used for the major regulation determination.

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5. Description of the agency's baseline:

While the CCPA gives the DOJ broad authority to adopt regulations in furtherance of the Act, consumers and businesses will likely incur the benefits and costs of the law regardless of the specific regulations. Some of these economic impacts, whether compliance costs to businesses or benefits to California consumers, are part of the regulatory baseline and not directly attributable to the proposed regulations. This interpretation is supported by evidence that businesses are making large up-front investments in CCPA compliance strategies, based on their review of the statutory text, ahead of the issuance of these regulations. For consumers, the law, not the regulations, establishes the privacy rights and benefits, and thus, those benefits are assumed to largely be part of the regulatory baseline. A detailed discussion of the issues associated with the agency's baseline is set forth in the SRIA.

6. For each alternative that the agency considered (including those provided by the public or another governmental agency), please describe:

- a. All costs and all benefits of the alternative
- b. The reason for rejecting alternative

Alternative 1 - 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. DOJ 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.

Alternative 2 - 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. DOJ 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).

7. A description of the methods by which the agency sought public input. (Please include documentation of that public outreach).

DOJ held seven public forums statewide to solicit broad public participation as part of its preliminary rulemaking activities. DOJ also set up a website (www.oag.ca.gov/privacy/ccpa) to keep the public informed of its various CCPA rulemaking activities and posted transcripts of each of the public forums and all the written comments it received. In total, DOJ received input from over 110 speakers at the public forums and over 300 written comments.

8. A description of the economic impact method and approach (including the underlying assumptions the agency used and the rationale and basis for those assumptions).

Direct compliance costs were calculated by first identifying the number of businesses (by 2-digit NAICS) that are likely subject to the CCPA. There is considerable uncertainty over how many firms are subject to CCPA compliance and we therefore considered a range of plausible scenarios. Incremental costs per firm were then calculated, where feasible, based on reasonable assumptions or public compliance cost data. The total compliance cost for businesses is the number of businesses subject to the CCPA multiplied by the incremental compliance costs per business.

Direct benefits could not be directly quantified due to limited data availability. Benefits are discussed qualitatively but not quantified as part of the economic impact methodology.

Economy-wide impacts of the proposed regulation were estimated using the BEAR computable general equilibrium model of the California economy.

Agency Signature



Date

8/14/19

Agency Head (Printed)

Sean McCluskie, Chief Deputy to the Attorney General