



August 23, 2022

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

RE: California Consumer Privacy Act Regulations Notice of Proposed Rulemaking

Dear Mr. Soublet:

The Alliance for Automotive Innovation (“Auto Innovators”) welcomes the opportunity to provide feedback to the California Privacy Protection Agency (“Agency”) on its Notice of Proposed Rulemaking (“NPRM”) on *California Consumer Privacy Act* (“CCPA”) regulations. We certainly share your goals of protecting consumer privacy and look forward to continued engagement and collaboration with you on this important issue.

Auto Innovators is the singular, authoritative, and respected voice of the automotive industry. Focused on creating a safe and transformative path for personal mobility, Auto Innovators represents the manufacturers that produce nearly 98 percent of cars and light trucks sold in the United States. In addition to motor vehicle manufacturers, members of Auto Innovators include original equipment suppliers, technology companies, and others within the automotive ecosystem. The auto industry is the nation’s largest manufacturing sector, contributing \$1.1 trillion to the United States economy. As a significant engine for our nation’s economy, the auto sector is responsible for 10.3 million jobs and \$650 billion in paychecks annually.

The auto industry is committed to protecting consumer privacy. In fact, in 2014, the auto industry came together to develop the *Privacy Principles for Vehicle Technologies and Services*. The Principles, which are enforceable by the Federal Trade Commission, represent a proactive and unified commitment by automakers to protect identifiable information collected through in-vehicle technologies.

Our comments below build on our comments to the Agency in response to its invitation for preliminary comments on proposed rulemaking and at the May 4 pre-rulemaking stakeholder session. They are primarily focused on areas within the proposed regulations that may have inadvertent or unintended impact on the auto industry and its ability to deliver a cleaner, safer, and smarter transportation future. We welcome the opportunity to discuss these issues with you directly and to work together collaboratively to address them.

Effective Date

Auto Innovators previously requested that at least 12 months be provided between the finalization of this important and consequential rulemaking and the effective date of any new obligations or requirements. We noted that our member companies take their compliance obligations seriously and need adequate time to align their processes and mechanisms with any new regulatory requirements. We respectfully reiterate this request for sufficient lead time.

Moreover, any new obligations in the regulations should be prospective and apply only to data collected after the regulation's effective date. For example, the Agency should reconsider the provision within § 7014 of the proposed regulations that requires a business to obtain the consent of the consumer before using or disclosing sensitive personal information the business collected "during the time the business did not have a notice of right to limit posted." This appears to create an obligation with respect to data collected before the regulations and the requirement to post a "notice of right to limit" takes effect.

Providing Notice

For purposes of providing notice to opt-out of sale/sharing, § 7013 of the proposed regulations requires a business that sells or shares personal information that it collects through a connected device to provide notice "in a manner that ensures that the consumer will encounter the notice while using the device." Section 7014 similarly requires that a notice to limit the use of sensitive personal information be provided "in a manner that ensures that the consumer will encounter the notice while using the device" if the business uses or discloses sensitive personal information that it collects through a connected device.

Many auto companies do not currently have the capability of providing these sorts of consumer notices in the vehicle. In these cases, the ability to provide such in-vehicle notices will almost certainly require vehicle engineering changes that may take years to integrate into production vehicles. To address this, we urge the Agency to provide some flexibility by allowing these notices to be provided in other manners that are regularly used by consumers in connection with the connected device.

If the Agency maintains a requirement that a business provide notice in a manner that ensures that the consumer will encounter it while using the device, we request that the Agency exempt vehicles that are already in the market or have already been produced if such vehicles do not have that capability. We further request that the Agency provide sufficient lead-time (i.e., at least three years) for auto companies to develop and integrate this capability into new vehicles.

In addition, § 7013 and § 7014 indicate that, if a business provides consumers with the opportunity to exercise their right to opt-out of sale/sharing through a "Do Not Sell or Share My Personal Information" link or their right to limit through a "Limit the Use of My Sensitive Personal Information" link, the links must "immediately effectuate the consumer's right" and "have the immediate effect" of opting the consumer out of the sale or sharing or personal information or limiting the use and disclosure of the consumer's sensitive personal information. However, § 7026 and § 7027 provide businesses up to 15 business days from the date the business receives a consumer's request to cease the selling or sharing of the consumer personal information or to limit the use and disclosure of the consumer's sensitive personal information. To ensure that businesses have sufficient time to responsibly process a request to opt-out of selling/sharing or a request to limit, we urge the Agency to clarify that the business must immediately register the consumer's request following the use of "Do Not Sell or Share My Personal Information" link

or a “Limit the Use of My Sensitive Personal Information” link, but not necessarily process that request immediately. To achieve this, we suggest that the language of § 7013 be modified to read “immediately effectuate the consumer’s right to opt-out of sale/sharing in accordance with subsection 7026(f)” and that the language of § 7014 be modified to read “immediately effectuate the consumer’s right to limit in accordance with subsection 7027(g)”.

Right to Know

We appreciate changes that were made to the right to know, including language that clarifies that a business should verify a consumer making such a request. This important change appears to address some of our concerns about auto companies having to disclose sensitive vehicle information, such as vehicle location information, to consumers who may not have been using the vehicle when the sensitive vehicle information was generated.

We have previously noted that much of the data that is generated and collected from vehicles is from onboard computer systems and sensors and relates to the operation and functioning of the vehicle and its systems. This data is very technical in nature and of little use to the average consumer. In addition, this information frequently contains detailed data elements related to each vehicle system and component over the life of the vehicle. Since the average life of a vehicle is nearly 12 years, the volume of the data that may be responsive to a request for specific pieces of information would be vast and likely overwhelming for the consumer.

Section 7024 of the proposed regulations allows a business to deny a consumer request for access to personal information if it involves a “disproportionate effort.” We have previously requested that the Agency deem disclosure of operational data for a device owned or used by a consumer beyond the preceding 12 months as involving a disproportionate effort. While we appreciate that the Agency has provided a definition of “disproportionate effort” in the proposed regulations, the definition does not yet provide the auto industry with the clarity that it is seeking with respect to this issue. For this reason, we respectfully reiterate our request for clarity on this specific point.

Right to Correct

We appreciate modifications that were made to the proposed regulations related to the ability of a business to deny a consumer’s request to correct if it determines that the contested information is more likely than not accurate based on the totality of circumstances, including the documentation relating to the accuracy of the information. These changes seemingly address some of our concerns about requests that auto companies may receive to correct data generated by vehicle systems and components, including sensors.

In our prior comments, we recommended that the Agency clarify that a business is not required to correct information that it has received from a third party. In these cases, we recommended that the business be permitted to refer the consumer to the third party from which it received the personal information for correction. However, in cases where the business is not the source of the information that the consumer contends is inaccurate, § 7023 of the proposed regulations unnecessarily increases the burden on a business by requiring a business to not only process the consumer’s request to correct, but to also provide the consumer with the name of the source from which the business received the alleged

inaccurate information. We reiterate our request that, when the business is not the source of the information, the business be permitted to refer the consumer to the source of the information for correction.

Moreover, the proposed regulations also require a business to note both internally and to any person with whom it discloses, shares, or sells the personal information that the accuracy of the personal information is contested by the consumer. Under the proposed regulations, this requirement does not apply to requests that are determined to be fraudulent or abusive. We suggest that requests that are denied based on “inadequacy in the required documentation” also be exempted from this requirement. With this change, the requirement to note that the accuracy has been challenged would remain for circumstances where the request was denied based on a conflict with federal or state law or on the contention that compliance proves impossible or involves a disproportionate effort.

Finally, the proposed regulations include a new provision that requires a business, upon request, to disclose all of the specific pieces of personal information that the business maintains and has collected about the consumer to allow the consumer to confirm that the business has corrected the inaccurate information that was the subject of the consumer’s request to correct. The new provision further specifies that disclosure under this provision is not considered a response to a request to know which is limited to two requests within a 12-month period. The requirements of this section are seemingly broader than is required to achieve its goals. If the goal is to allow the consumer to confirm that the business has corrected the inaccurate information that was the subject of the consumer’s request to correct, it should be sufficient for the business to disclose to the consumer only the specific pieces of personal information that were subject to the consumer’s request to correct. We suggest that the proposed regulations be modified along those lines.

Consumer Verification for Request to Opt-Out and Request to Limit

Section 7060 of the proposed regulations clarify that a business cannot require a consumer to verify their identity to make a request to opt-out of sale/sharing or to make a request to limit. We recommend that the Agency create an exception to this language where the sharing of personal information or the use of sensitive personal information is necessary to support a product or service previously requested by the consumer. For example, if the consumer has previously opted into a service through which vehicle data is shared with an insurance company or a service in which geolocation information may be collected following a collision to dispatch emergency responders to the scene of the incident and opting out of sharing or limiting the use of sensitive information would essentially void the ability of the consumer to continue to receive those requested services, it would be entirely appropriate for the business to verify that the consumer is in fact who they claim to be. This would help avoid a situation where someone other than the person who opted into those services could void those services without the person’s knowledge or consent.

Contract Requirements for Third Parties

Section 7053 of the proposed regulations require extensive new contract requirements with third parties with which a business sells or shares a consumer’s personal information. Since the development of new contracts or the renegotiation of existing contracts with third parties may take considerable time, we respectfully request sufficient time (i.e., no less than 6 months) to develop or renegotiate contracts consistent with these new requirements.

Agency Audits

Section 7304 of the proposed regulations permit the Agency to audit a business “if the subject’s collection or processing of personal information presents significant risk to consumer privacy or security.” We recommend that this basis for an audit be removed. The Agency should not have the right to audit a company for this reason alone without any other indication that there has been a possible violation of the CCPA or in the absence of a history of noncompliance with the CCPA or any other privacy protection law.

We further recommend that a reasonable statute of limitations (e.g., three years) be established with respect to the Agency’s ability to audit a business. In other words, the Agency’s ability to audit compliance should not be limitless and should instead be confined to a specified number of years prior to the initiation of the audit.

Consumer privacy remains critically important to the auto industry. We appreciate the opportunity to provide this feedback on the NPRM and look forward to continuing to work with the Agency on this and other privacy-related matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Hilary M. Cain", with a horizontal line extending to the right.

Hilary M. Cain
Vice President
Technology, Innovation, & Mobility Policy