

March 27, 2019

California Department of Justice
ATTN: Privacy Regulations Coordinator
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VIA Electronic Mail: PrivacyRegulations@doj.ca.gov

To Whom It May Concern:

The American Property Casualty Insurance Association (APCIA)¹, Personal Insurance Federation of California (PIFC), and the National Association of Mutual Insurance Companies (NAMIC) appreciate the Attorney General's continued work and the opportunity to provide feedback on the revised California Consumer Privacy Act Regulations (revised regulations). APCIA strongly approves of the addition to Section 999.305, which clarifies that a business that collects personal information indirectly about consumers does not need to provide a notice at collection, if that business does not sell that information. There were also helpful clarifications in sections 999.313(d)(1) and 999.317(e)and(f).

Unfortunately, overall, the changes were not very substantive in nature and therefore many of our prior concerns remain. We refer to all of our earlier letters, and have attached a copy of the previous APCIA letter for your continued consideration, but emphasize the following issues: (1) While there have been some improvements, the revised regulation continues to focus on prescriptive, detailed and inflexible communication requirements; (2) The revised regulation continues to promote industry recognized standards for web content accessibility without recognition that what works for one industry may not work for another; (3) the prohibition on fees for verifications in Section 999.323(d) will prevent charging for the cost to obtain a notarized affidavit. The notary affidavit costs could be significant depending on the number of requests and may force companies to implement less robust authentication measures. We urge the Attorney General to clarify that a business cannot charge a direct fee for verification, but costs to the consumer, such as out of pocket expenses to provide required paperwork should be the consumer's responsibility; (4) continued expectations that businesses not only have to identify the category of personal information and the categories of third parties, but also to connect the

category of personal information and third parties, are beyond what the statute authorizes; (5) section 999.314(b) continues to perpetuate confusion by using “person or entity” instead of “business”; and (6) the telephonic notification and metric requirements are unworkable and not consumer friendly.

Additionally, the items identified below are new concerns raised by some of the substantive changes proposed in the revised (March 11, 2020) regulations:

999.301. Definitions

Sub-section (j) contains a change to the definition of “financial incentive.” This would expand notice of incentives obligation in the regulations well beyond the non-discrimination right in the CCPA. Both the CCPA and its non-discrimination obligation apply to sale, right to know, deletion, access and portability rights, but do not regulate or apply to waivers of or collection of personal information. We believe this change creates ambiguity and request the changes be reversed.

999.302 Guidance Regarding Interpretation of CCPA Definitions

The second draft suggests deleting this new section. We respectfully request that it be retained. This provided some of the most helpful guidance in the regulation, particularly on IP addresses and the definition of personal information.

999.308 Privacy Policy

New sub-section (e) & (f) add categories of sources and the business or commercial purpose as required disclosures under the privacy policy. These exceed the elements of the privacy policy set out in the CCPA and are particularly problematic for companies that have already rolled out their CCPA privacy policies based on the statute and early draft of the regs. Importantly, (f), which requires disclosure of the business or commercial purpose for collecting or selling personal information, is not only onerous, but raises the question of whether the business can use the information for other legitimate purposes that may not have been disclosed.

999.313 Responding to Requests to Know and Requests to Delete

Sub-section (c)(4) has been amended to add provisions regarding the request to know and sensitive data: *“The business shall, however, inform the consumer with sufficient particularity that it has collected the type of information. For example, a business shall respond that it collects “unique biometric data including a fingerprint scan” without disclosing the actual fingerprint scan data.”* This added layer of specificity is counterintuitive to the requirement to not give out the specific pieces of data. We are concerned that requiring more specificity provides more information for those seeking to commit fraudulent activities.

Since this new language adds administrative burdens and opens more doors for fraudulent activities without a sufficient argument as to its necessity, we request that it be deleted.

Thank you for the opportunity to comment. Please let us know if you have any questions or would like additional information.

Respectfully submitted,



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