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Consumer Protection Section

March 15, 2023

M E M O R A N D U M

TO: Administrative Record – Colorado Privacy Act Rulemaking (4 CCR 904-3)
FROM: Jill Szewczyk
RE: Affidavit of Rulemaking

AFFIDAVIT OF RULEMAKING

I, Jill Szewczyk, Assistant Attorney General, Colorado Department of Law (the “Department”), file this Affidavit of Rulemaking (this “Affidavit”) with the administrative record (the “Administrative Record”) for the Department’s Colorado Privacy Act rulemaking (the “Rulemaking”) and in relation to the resulting Colorado Privacy Act Rules, codified at 4 CCR 904-3 (the “Rules”). In doing so, I hereby declare under oath the following:

1. I served as a staff person for the Rulemaking and, with the advice, support, and counsel of others in the Department, helped to oversee the Rulemaking.
2. This Affidavit is designed to inform and document the Department’s stakeholder outreach efforts during the Rulemaking.

Pre-Rulemaking Outreach

3. The Department engaged in public outreach during the period of time prior to commencing the formal Rulemaking process (the “Pre-Rulemaking” stage). Pre-Rulemaking outreach included, but was not necessarily limited to:

- A. CPA Webpage Creation. In January of 2022, the Department published a webpage (<https://coag.gov/resources/colorado-privacy-act/>)(the “CPA Webpage”), to provide information regarding the Colorado Privacy Act, Pre-Rulemaking outreach, and the Rulemaking, and to collect stakeholder input for and about the Rulemaking. A true and correct screenshot of the webpage has been included in the Administrative Record at **CPA_Rule_Record_3409-17**.
- i. On or around March 4, 2022, the Department created a comment portal that allowed interested persons to submit written comments for the Department to consider when drafting the Rules. A true and correct screenshot of the comment portal has been included in the Administrative Record at **CPA_Rule_Record_0826-29**.
 - ii. In August of 2022 the Department created a public-facing database displaying stakeholder comments received through the comment portal described above. A true and correct screenshot of the public-facing database has been included in the Administrative Record at **CPA_Rule_Record_0832-39**.
 - iii. Throughout the Pre-Rulemaking stage, the Department collected email addresses of individuals who wished to be apprised of the Rulemaking as it progressed, creating an email listserv (the “Listserv”) of stakeholders and representative groups. As of February 15, 2023, the Listserv had eight hundred-nine (809) unique e-mail addresses. A true and correct screenshot of the webpage containing the Listserv sign-up form has been included in the Administrative Record at **CPA_Rule_Record_3435-36**.
- B. Listening Sessions. The Department held two Pre-Rulemaking listening sessions (the “Listening Sessions”) to collect input from interested stakeholders. The Listening Sessions were held on Wednesday, June 22, 2022, and Tuesday, June 28, 2022, and were open to all members of the public who signed up in advance via a link to the Zoom platform provided on the Department’s CPA webpage.
- i. The Department posted the Listening Session dates, times and locations on the CPA Webpage and informed the Listserv of the Listening Sessions via e-mail. A true and correct copy of the email provided to the Listserv regarding the Listening Sessions has

been included in the Administrative Record at **CPA_Rules_Record_3383-84**.

- ii. The June 22, 2022, Listening Session lasted approximately 33 minutes. The June 28, 2022, Listening Session lasted approximately 1 hour and 6 minutes. The Department was available for 2 hours for each session.
- iii. Approximately 165 individuals attended the Listening Sessions and ten (10) individuals provided oral comment at the Listening Sessions.
- iv. Video recordings of the Listening Sessions were made publicly available on the Department's CPA Webpage. A true and correct screenshot of the Department's CPA Webpage with links to the Listening Sessions, captured on September 21, 2022, has been included in the Administrative Record at **CPA_Rule_Record_3418-26**.

4. Pre-Rulemaking Written Comments. The Department closed its Pre-Rulemaking comment portal on August 5, 2022. The Department received a total of forty-four (44) pre-Rulemaking written comments. An approximate breakdown of the persons/entities who commented is as follows:

Category	Number of Written Comments
Academia	2
Business/Industry Advocates	12
Colorado/Small Businesses	3
National Businesses	3
Consumer/Privacy Advocates	4
Government	1
Non-Profit	13
Other	5
Non-Described	1

5. Considerations. The Department published a document called "Pre-Rulemaking Considerations for the Colorado Privacy Act," which contained a series of targeted questions about potential Rulemaking topics to encourage additional stakeholder involvement. A true and correct copy of the Pre-

Rulemaking Considerations document containing those targeted questions has been included in the Administrative Record at **CPA_Rules_Record_3392-98**.

The Rulemaking Process

6. **Notice of Proposed Rulemaking**. The Notice of Proposed Rulemaking was filed with the Colorado Secretary of State and the Colorado Department of Regulatory Agencies (“DORA”) on September 29, 2022, published by DORA on September 30, 2022, and published by the Colorado Secretary of State in the Colorado Register on October 10, 2022. The Department e-mailed notice of DORA publication to the Listserv on September 30, 2022. A true and correct copy of the Listserv email providing notice of DORA publication has been included in the Administrative Record at **CPA_Rules_Record_3387**. The Department emailed a copy of the Notice of Proposed Rulemaking along with the draft Rules as available on the Secretary of State website to the Listserv on October 10, 2022. A true and correct copy of the Listserv email providing the initial set of proposed draft Rules has been included in the Administrative Record at **CPA_Rules_Record_3388-89**.
7. **Press Releases**. During the Rulemaking, the Department issued a press release concerning the CPA, the Rulemaking, and the draft Rules. The press release was issued on October 10, 2022. A true and correct copy of the press release has been included in the Administrative Record at **CPA_Rules_Record_3368-69**.
8. **Targeted Outreach**. The Department engaged in targeted outreach to groups and persons who had expressed an interest in the Rulemaking. For instance, the Department produced and distributed business cards that directed interested persons to the website so that they could sign-up for the Listserv and participate in the Rulemaking. A true and correct copy of the business card has been included in the Administrative Record at **CPA_Rules_Record_3489**.
9. **CPA Webpage Updates**. Once Rulemaking began, the Department updated the CPA Webpage several times. The updates included, but were not limited to, re-opening the comment portal for formal written public comment, and posting the Notice of Proposed Rulemaking, Statement of Basis and Purpose and Proposed Draft Rules, and providing additional information about the Rulemaking process. True and correct screenshots of updates to the CPA Webpage have been included in the Administrative Record at **CPA_Rules_Record_3418-33**.

10. CPA Webpage Views. As of February 15, 2023, the CPA Webpage had approximately 10,246 total page views which came from approximately 8,545 different unique users.

11. Written Public Comments. The Department received formal written public comment about the draft Rules through the CPA Webpage’s public comment portal.
 - A. The Department opened the CPA Webpage for formal written public comment on October 10, 2022. The Department closed the CPA Webpage public comment portal on February 3, 2023.

 - B. The Department received a total of 93 written public comments between October 10, 2022, and February 3, 2023.

 - C. The written public comments came from approximately 87 unique stakeholders, representing approximately 78 unique organizations. True and correct copies of the Rulemaking comments received have been included in the Administrative Record at **CPA_Rules_Record_0841-1941**.

 - D. An approximate break-down of the categories of stakeholders who submitted written public Rulemaking comments is as follows:

Category	Number of Written Comments
Academia	3
Business/Industry Advocates	28
Colorado/Small Businesses	1
National Businesses	12
Colorado Residents	2
Consumer/Privacy Advocates	4
Government	9
Non-Profit	30
Other	4

12. Stakeholder Sessions. The Department held three (3) stakeholder sessions (the “Stakeholder Sessions”) to hear oral comment on the Rules. The Stakeholder Sessions were held on November 10, 2022, November 15, 2022, and November 17, 2022.

- A. The Stakeholder Sessions were announced on the Department's CPA Webpage, via the Listserv, and through the Notice of Proposed Rulemaking, and were open to the public. Persons interested in speaking were able to sign up via a link the to the Zoom platform provided on the Department's CPA Webpage.
 - B. Each Stakeholder Session lasted approximately three (3) hours. The combined aggregate time for these meetings was approximately nine (9) hours of meeting time.
 - C. For the November 10, 2022, Stakeholder Session, approximately one hundred twenty-six (126) individuals attended and approximately fifteen (15) stakeholders provided oral comment. For the November 15, 2022, Stakeholder Session, approximately one hundred twenty-one 121 individuals attended and approximately fourteen (14) stakeholders provided oral comment. For the November 17, 2022, Stakeholder Session, approximately ninety (90) individuals attended and approximately nineteen (19) stakeholders provided oral comment.
 - D. Video recordings of the Stakeholder Sessions were made publicly available on the CPA Webpage. A true and correct screenshot of the updated CPA Webpage containing links to the Stakeholder Sessions has been included in the Administrative Record at **CPA_Rules_Record_3438**. Links to recordings of the Stakeholder Sessions have been included in the Administrative Record at **CPA_Rules_Record_0298** (1/10 Stakeholder Session); **CPA_Rules_Record_0428** (11/15 Stakeholder Session); and **CPA_Rules_Record_0539** (11/17 Stakeholder Session).
13. During the Rulemaking, the Department discussed and implemented revisions in response to public comment. The Department published two sets of revised draft rules, which it distributed to the Listserv in the form of redlined documents on December 21, 2022, and January 27, 2023. A true and correct copy of the revised draft rules published on December 21, 2022 has been included in the Administrative Record at **CPA_Rules_Record_0740-85**. A true and correct copy of the revised draft rules published on January 27, 2023 has been included in the Administrative Record at **CPA_Rules_Record_0692-739**.
 14. Rulemaking Hearing. The Department held a Rulemaking Hearing on February 1, 2023 (the "Hearing").

- A. The Hearing was announced on the Department's CPA Webpage, via the Listserv, and through the Notice of Proposed Rulemaking. A true and correct screenshot of the updated CPA Webpage containing information about the hearing has been included in the Administrative Record at **CPA_Rules_Record_3438**. A true and correct copy of emails sent to the Listserv containing information about the hearing have been included in the Administrative Record at **CPA_Rules_Record_3388-89**, **CPA_Rules_Record_3405-06**, and **CPA_Rules_Record_3407-08**.
- B. The Hearing was open to all individuals of the public. Persons interested in speaking could sign up via a link to the Zoom platform, provided on the Department's CPA Webpage.
- C. Approximately two hundred fifty-five (255) persons attended the Hearing and twenty-seven (27) individuals provided oral comment.
- D. The Hearing lasted approximately four (4) hours.

Summary of Results

- 15. **Total Comments.** In total, combining both the Pre-Rulemaking Outreach and the formal Rulemaking stakeholder involvement, the Department received one hundred thirty-seven (137) written comments, and eighty-five (85) oral comments.
- 16. **Commenters.** The Department received public comments – whether written or oral – in some form from a diverse and representative array of stakeholders. In addition to comments from concerned consumers, the Department received comments from persons associated with a variety of organizations of divergent viewpoints.

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SWORN AND SUBSCRIBED TO AS OF THE DATE BELOW BY JILL
SZEWCZYK:

Jill Szewczyk
Signature

3/15/23
Date

Subscribed and affirmed, or sworn to before me in the County of
Denver, State of Colorado, this 15th day of
March, 20 23.

Witness my hand and official seal.

My commission expires: 4/28/2025

Laura Seeger
Notary Public

Laura Seeger
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID# 20214016872
MY COMMISSION EXPIRES 4/28/2025