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MEMORANDUM

TO: Interested Persons

FROM: Office of Legislative Legal Services

DATE: February 3, 2017

SUBJECT: Explanation of S.B. 17- 083, the Rule Review Bill

Explanation of the Rule Review Process

Since 1976, executive agencies have been required by section 24-4-103 (8) (d), C.R.S., of the Administrative Procedure Act to submit their rules and regulations to the General Assembly for review.

Under section 24-4-103 (8) (c) (I), C.R.S., all rules adopted or amended during any one-year period that begins each November 1 and continues through the following October 31 shall expire on the May 15 that follows such one-year period, unless the General Assembly by bill acts to postpone such expiration.

Every newly adopted or amended rule is submitted by the adopting agency to the Office of Legislative Legal Services, where it is reviewed by an attorney to determine if the rule is within the agency's rule-making authority and consistent with law. If a possible problem is found, and if the attorney is unable to resolve the problem with the agency, the attorney will take the issue before the Committee on Legal Services after notice to the affected agency. The attorney prepares a memo on the issue and makes a presentation to the Committee at a public meeting explaining why the rule lacks statutory authority or conflicts with the law. At the same meeting, the agency is given an opportunity to present its position about whether the rule is within its statutory authority or is consistent with the law. Occasionally testimony is taken from members of the public or other interested parties. After hearing all the testimony and asking

require a prosecution for 3 times before imposing a disqualification on participation in the program.

2. Rules of the Director of the Division of Oil and Public Safety, Department of Labor and Employment, concerning underground storage tanks and aboveground storage tanks, 7 CCR 1101-14 (LLS Docket No. 160373; SOS Tracking No. 2016-00307). S.B. 17-083: Subsection (1) (g).

Staff: Thomas Morris

Explanation: Section 24-4-103 (12.5), C.R.S., of the State Administrative Procedure Act (APA) requires that a rule must comply with several requirements in order to incorporate a standard by reference in the rule without having to reprint the incorporated material in the rule. Several of the rules failed to meet the incorporation by reference requirements of the APA.

Agency Position: The Department agreed with the staff recommendation.

3. Rules of the Water Quality Control Commission, Department of Public Health and Environment, concerning the Colorado discharge permit system, 5 CCR 1002-61 (LLS Docket No. 160425; SOS Tracking No. 2016-00302) S.B. 17-083: Subsection (1)(m).

Staff: Thomas Morris

Explanation: Section 25-8-502 (1.1)(a) and (1.6), C.R.S., specify that all fees attributable to the animal agriculture sector are to be credited to the animal feeding operations fund. Rule 61.15 (c) purports to determine how all annual permit fees are to be credited to various funds. Rule 61.15 (c) does not include the animal feeding operations fund in the rule. Because the Commission failed to promulgate rules addressing the crediting of fees to the animal feeding operations fund, the rule fails to comply with the statute.

Agency Position: The agency agreed with the staff recommendation.

4. Rules of the Taxpayer Service Division, Department of Revenue, concerning mandatory electronic funds transfer, 1 CCR 201-4 (LLS Docket No. 160055; SOS Tracking No. 2015-00333). S.B. 17-083: Subsection (1)(p)(I).

Staff: Esther van Mourik

Explanation: Section 39-26-105.5., C.R.S., requires any vendor whose annual liability for state sales tax is more than \$75,000 to remit all state and local sales taxes via

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Agency Position: The Department agreed with the staff recommendation and stated that the requirements should not apply to RSD sites.