

CHAPTER 342

**GOVERNMENT - STATE**

**SENATE BILL 94-159**

BY SENATORS Ruddick, Mares, Wattenberg, Wells, and Wham;  
also REPRESENTATIVES Kaufman, Adkins, DeGette, and Snyder.

**AN ACT**

**CONCERNING THE ADOPTION OF RULES BY EXECUTIVE DEPARTMENT AGENCIES.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** 24-4-103 (3) (a) and (12.5), Colorado Revised Statutes, 1988 Repl. Vol., are amended, and the said 24-4-103, as amended, is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**24-4-103. Rule-making - procedure.** (1.5) IF AN AGENCY REINTERPRETS AN EXISTING RULE IN A MANNER THAT IS SUBSTANTIALLY DIFFERENT THAN PREVIOUS AGENCY INTERPRETATIONS OF THE RULE OR IF THERE HAS BEEN A CHANGE IN A STATUTE THAT AFFECTS THE INTERPRETATION OR THE LEGALITY OF A RULE, THE OFFICE OF LEGISLATIVE LEGAL SERVICES SHALL REVIEW THE RULE IN THE SAME MANNER AS RULES THAT HAVE BEEN NEWLY ADOPTED OR AMENDED UNDER PARAGRAPH (d) OF SUBSECTION (8) OF THIS SECTION UPON RECEIVING A REQUEST FOR SUCH A REVIEW OF THE RULE BY ANY MEMBER OF THE GENERAL ASSEMBLY.

(3) (a) Notice of proposed rule-making shall be published as provided in subsection (11) of this section and shall state the time, place, and nature of public rule-making proceedings which shall not be held less than twenty days after such publication, the authority under which the rule is proposed, and either the terms or the substance of the proposed rule or a description of the subjects and issues involved. IF ANY MATERIAL IS TO BE INCORPORATED BY REFERENCE IN A PROPOSED RULE PURSUANT TO SUBSECTION (12.5) OF THIS SECTION, THE AGENCY SHALL IDENTIFY THE MATERIAL IN THE NOTICE BY THE NAME OF THE APPROPRIATE AGENCY, ORGANIZATION, OR ASSOCIATION AND BY THE DATE, TITLE, OR CITATION OF THE MATERIAL.

*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

(12.5) (a) Subject to the provisions of this subsection (12.5), an agency may incorporate the following by reference in its rules without publishing the incorporated material in full:

(I) Federal rules, codes, or standards published in full in the federal register or the code of federal regulations;

(I.5) FEDERAL RULES, CODES, OR STANDARDS THAT HAVE BEEN PROPERLY INCORPORATED BY REFERENCE IN THE FEDERAL REGISTER AS PART OF A DULY PROMULGATED FINAL RULE OR IN THE CODE OF FEDERAL REGULATIONS PURSUANT TO FEDERAL LEGAL REQUIREMENTS;

(II) (A) Published codes, standards, or guidelines of any nationally recognized SCIENTIFIC OR TECHNICAL association or organization.

(B) FOR THE PURPOSES OF THIS SUBPARAGRAPH (II), "NATIONALLY RECOGNIZED SCIENTIFIC OR TECHNICAL ASSOCIATION OR ORGANIZATION" MEANS AN ASSOCIATION OR ORGANIZATION THAT IS REGULARLY IN THE BUSINESS OF DEVELOPING SCIENTIFIC OR TECHNICAL STANDARDS OR GUIDELINES, IS RECOGNIZED BY THOSE IN THE RELEVANT PROFESSIONAL COMMUNITY AS HAVING A HIGH DEGREE OF EXPERTISE AND COMPETENCE IN ITS FIELD, AND WHOSE PUBLICATIONS ARE WIDELY DISTRIBUTED AND EASILY AVAILABLE THROUGHOUT THE NATION AND THE STATE OF COLORADO.

(b) (I) An agency may incorporate by reference the material set forth in paragraph (a) of this subsection (12.5) only if the issuing agency, organization, or association makes copies of the material available to the public. AN AGENCY MAY NOT INCORPORATE ANY MATERIAL BY REFERENCE UNLESS THE MATERIAL HAS BEEN PROPERLY IDENTIFIED IN THE NOTICE OF PROPOSED RULE-MAKING PURSUANT TO PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION.

(II) A FEDERAL RULE, CODE, OR STANDARD DOES NOT HAVE THE FORCE OF COLORADO LAW UNLESS THE FEDERAL RULE, CODE, OR STANDARD IS ADOPTED IN A STATE RULE IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE AND THE FEDERAL RULE, CODE, OR STANDARD IS SET FORTH IN FULL IN THE STATE RULE OR IS INCORPORATED BY REFERENCE AS REQUIRED BY THE PROVISIONS OF THIS SUBSECTION (12.5).

(c) (I) The reference to any incorporated material shall identify the incorporated material by appropriate agency, organization, or association and by date, title, or citation. The reference shall also state that the rule does not include later amendments to or editions of the incorporated material.

(II) (A) IF AN AGENCY PROPOSES TO INCORPORATE ANY MATERIAL BY REFERENCE IN A STATE RULE, THE AGENCY SHALL ALLOW PUBLIC INSPECTION OF ANY NONCOPYRIGHTED MATERIAL AND PROVIDE COPIES OF THE MATERIAL TO THE PUBLIC AT COST UPON REQUEST BEGINNING NO LATER THAN THE DATE OF PUBLICATION OF THE NOTICE OF PROPOSED RULE-MAKING. IF ANY MATERIAL TO BE INCORPORATED BY REFERENCE HAS BEEN COPYRIGHTED, THE AGENCY SHALL UPON REQUEST PROVIDE INFORMATION ABOUT THE PUBLISHER AND THE CITATION TO THE MATERIAL.

(B) IF ANY AGENCY WITHIN THE DEPARTMENT OF PUBLIC HEALTH AND

ENVIRONMENT PROPOSES TO INCORPORATE MATERIAL BY REFERENCE IN ANY REGULATION PROMULGATED PURSUANT TO ARTICLE 7, 8, OR 15 OF TITLE 25, C.R.S., AND THE VERSION OR EDITION OF THE MATERIAL TO BE INCORPORATED BY REFERENCE HAS NOT PREVIOUSLY BEEN DISTRIBUTED TO THE STATE PUBLICATIONS DEPOSITORY LIBRARIES, THE AGENCY SHALL PROVIDE A SUFFICIENT NUMBER OF COPIES OF THE MATERIAL TO THE STATE PUBLICATIONS DEPOSITORY AND DISTRIBUTION CENTER NO LATER THAN THE DATE OF THE NOTICE. THE STATE LIBRARIAN SHALL RETAIN ONE COPY OF THE MATERIAL AND SHALL PROVIDE ONE COPY OF THE MATERIAL TO EACH STATE PUBLICATIONS DEPOSITORY LIBRARY PURSUANT TO SECTION 24-90-206 (2).

(C) EXCEPT AS PROVIDED IN SUB-SUBPARAGRAPH (B) OF THIS SUBPARAGRAPH (II), IF ANY AGENCY PROPOSES TO INCORPORATE ANY MATERIAL BY REFERENCE IN A REGULATION AND THE VERSION OR EDITION OF THE MATERIAL TO BE INCORPORATED HAS NOT PREVIOUSLY BEEN PROVIDED TO THE STATE PUBLICATIONS DEPOSITORY AND DISTRIBUTION CENTER, THE AGENCY SHALL PROVIDE ONE COPY OF THE MATERIAL TO THE STATE PUBLICATIONS DEPOSITORY AND DISTRIBUTION CENTER NO LATER THAN THE DATE OF THE NOTICE. THE STATE LIBRARIAN SHALL RETAIN THE COPY OF THE MATERIAL AND SHALL MAKE THE COPY AVAILABLE FOR INTERLIBRARY LOANS.

(III) ~~AN~~ AFTER ANY MATERIAL IS INCORPORATED BY REFERENCE IN A STATE RULE, THE agency incorporating THE material by reference shall maintain certified copies of the complete text of the material incorporated, which copies shall be available for public inspection during regular business hours. Certified copies of the material incorporated shall be provided at cost upon request.

(d) The agency shall include in any rule which incorporates material by reference the title and address of an employee of the agency who will provide information regarding how the incorporated material may be obtained or examined AND A STATEMENT INDICATING THAT ANY MATERIAL THAT HAS BEEN INCORPORATED BY REFERENCE IN THE RULE MAY BE EXAMINED AT ANY STATE PUBLICATIONS DEPOSITORY LIBRARY.

**SECTION 2.** 24-90-206, Colorado Revised Statutes, 1988 Repl. Vol., is amended to read:

**24-90-206. Depository library agreements - requirements.** (1) The center may enter into depository agreements with any state agency or public library or with out-of-state research libraries and other state libraries. The number of depository libraries shall not exceed thirty. The requirements for eligibility to become and continue as a depository shall be established by the state library. The standards shall include and take into consideration population, the type of library or agency, ability to preserve such publications and to make them available for public use, and such geographic locations as will make the publications conveniently accessible to residents in all areas of the state.

(2) IN ADDITION TO ANY OTHER MATERIAL DISTRIBUTED TO STATE PUBLICATIONS DEPOSITORY LIBRARIES, THE STATE LIBRARIAN SHALL DISTRIBUTE ANY MATERIALS TO BE INCORPORATED BY REFERENCE IN STATE RULES THAT ARE PROVIDED TO THE STATE PUBLICATIONS DEPOSITORY AND DISTRIBUTION CENTER PURSUANT TO SECTION 24-4-103 (12.5) (c) (II) (B). THE STATE LIBRARIAN AND ANY STATE PUBLICATIONS DEPOSITORY LIBRARY SHALL MAKE MATERIALS DISTRIBUTED PURSUANT TO THIS

SUBSECTION (2) AVAILABLE TO THE PUBLIC AS SOON AS POSSIBLE.

**SECTION 3. Effective date - applicability.** This act shall take effect July 1, 1994, and shall apply to notices of proposed rule-making published on or after said date.

**SECTION 4. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 3, 1994