

## CHAPTER 76

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**GOVERNMENT - STATE**


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**HOUSE BILL 10-1235**

BY REPRESENTATIVE(S) Levy, Gardner B., Kagan, Labuda, Roberts, Court, Frangas, McCann, Merrifield, Middleton, Pace, Pommer, Scanlan;  
also SENATOR(S) Brophy, Carroll M., Mitchell, Morse, Schwartz, Newell.

**AN ACT**

**CONCERNING THE REQUIREMENTS IN THE "STATE ADMINISTRATIVE PROCEDURE ACT" FOR INCORPORATION BY REFERENCE OF RULE-MAKING MATERIALS BY EXECUTIVE BRANCH AGENCIES.**

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

**SECTION 1.** 24-4-103 (3) (a), (8.1) (a), and (12.5), Colorado Revised Statutes, are amended to read:

**24-4-103. Rule-making - procedure - repeal.** (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 that 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.~~

(8.1) (a) An agency shall maintain an official rule-making record for each proposed rule for which a notice of proposed rule-making has been published in the Colorado register. Such rule-making record shall be maintained by the agency until all administrative and judicial review procedures have been completed pursuant to the provisions of this article. ~~The rule-making record and any materials incorporated by reference in the record shall be available for public inspection.~~

~~(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~~ A RULE MAY INCORPORATE BY REFERENCE ALL OR ANY

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

PART OF A CODE, STANDARD, GUIDELINE, OR RULE THAT HAS BEEN ADOPTED BY AN AGENCY OF THE UNITED STATES, THIS STATE, OR ANOTHER STATE, OR ADOPTED OR PUBLISHED BY A NATIONALLY RECOGNIZED ORGANIZATION OR ASSOCIATION, IF:

~~(I) Federal rules, codes, or standards published in full in the federal register or the code of federal regulations~~ REPEATING VERBATIM THE TEXT OF THE CODE, STANDARD, GUIDELINE, OR RULE IN THE RULE WOULD BE UNDULY CUMBERSOME, EXPENSIVE, OR OTHERWISE INEXPEDIENT;

~~(f.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:~~ THE REFERENCE FULLY IDENTIFIES THE INCORPORATED CODE, STANDARD, GUIDELINE, OR RULE BY CITATION AND DATE, IDENTIFIES THE ADDRESS OF THE AGENCY WHERE THE CODE, STANDARD, GUIDELINE, OR RULE IS AVAILABLE FOR PUBLIC INSPECTION, AND STATES THAT THE RULE DOES NOT INCLUDE ANY LATER AMENDMENTS OR EDITIONS OF THE CODE, STANDARD, GUIDELINE, OR RULE;

~~(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.~~

~~(III) THE CODE, STANDARD, GUIDELINE, OR RULE IS READILY AVAILABLE TO THE PUBLIC IN WRITTEN OR ELECTRONIC FORM;~~

~~(IV) THE RULE STATES WHERE COPIES OF THE CODE, STANDARD, GUIDELINE, OR RULE ARE AVAILABLE FOR A REASONABLE CHARGE FROM THE AGENCY ADOPTING THE RULE AND WHERE COPIES ARE AVAILABLE FROM THE AGENCY OF THE UNITED STATES, THIS STATE, ANOTHER STATE, OR THE ORGANIZATION OR ASSOCIATION ORIGINALLY ISSUING THE CODE, STANDARD, GUIDELINE, OR RULE; AND~~

~~(V) THE AGENCY MAINTAINS A COPY OF THE CODE, STANDARD, GUIDELINE, OR RULE READILY AVAILABLE FOR PUBLIC INSPECTION AT THE AGENCY OFFICE DURING REGULAR BUSINESS HOURS.~~

~~(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~~ THE AGENCY SHALL PROVIDE CERTIFIED COPIES OF THE MATERIAL INCORPORATED AT COST UPON REQUEST OR SHALL PROVIDE THE REQUESTOR WITH INFORMATION ON HOW TO OBTAIN A CERTIFIED COPY OF THE MATERIAL INCORPORATED BY REFERENCE FROM THE AGENCY OF THE UNITED STATES, THIS

STATE, ANOTHER STATE, OR THE ORGANIZATION OR ASSOCIATION ORIGINALLY ISSUING THE CODE, STANDARD, GUIDELINE, OR RULE.

~~(H) 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) (f) 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. IF ANY AGENCY INCORPORATES OR PROPOSES TO INCORPORATE ANY MATERIAL BY REFERENCE IN A RULE AND THE VERSION OR EDITION OF THE MATERIAL TO BE INCORPORATED HAS NOT PREVIOUSLY BEEN PROVIDED TO THE STATE PUBLICATIONS DEPOSITORY AND DISTRIBUTION CENTER, AND IF THE RULE OR PROPOSED RULE DOES NOT IDENTIFY WHERE THE INCORPORATED MATERIAL IS AVAILABLE TO THE PUBLIC ON THE INTERNET AT NO COST, THEN THE AGENCY SHALL PROVIDE ONE COPY OF THE MATERIAL IN EITHER PAPER OR ELECTRONIC FORMAT TO THE STATE PUBLICATIONS DEPOSITORY AND DISTRIBUTION CENTER. THE STATE LIBRARIAN SHALL RETAIN THE COPY OF THE MATERIAL AND SHALL MAKE THE COPY AVAILABLE TO THE PUBLIC.~~

~~(H) (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 (H), 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.~~

~~(H) 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 (2), Colorado Revised Statutes, is amended to read:

**24-90-206. Depository library agreements - requirements.** (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) ~~(H)(B)~~ (I). 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. Applicability.** This act shall apply to rules adopted or amended on or after the effective date of this act.

**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: April 5, 2010