

State of Utah
Administrative Rule Analysis
 Revised December 2019

NOTICE OF EMERGENCY (120-DAY) RULE		
	Title No. - Rule No. - Section No.	
Utah Admin. Code Ref (R no.):	R305-7-104	Filing No. 52677

Agency Information

1. Department:	Environmental Quality	
Agency:	Administration	
Room no.:	Fourth Floor, South	
Building:	Multi-Agency State Office Building	
Street address:	195 North 1950 West	
City, state, zip:	Salt Lake City, UT 84116	
Mailing address:	P.O. Box 144810	
City, state, zip:	Salt Lake City, UT 84114-4810	
Contact person(s):		
Name:	Phone:	Email:
Becky Larsen	(801) 536-0095	beckylarsen@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:	R305-7-104. Filing and Service of Notices, Orders, Motions, and Other Papers	
3. Effective Date (mm/dd/yyyy):	4/20/2020	
4. Purpose of the new rule or reason for the change:	<p>The Utah Department of Environmental Quality (UDEQ) has rulemaking authority under Subsection 19-1-201(1)(d)(ii) to make procedural rules that govern adjudicative proceedings under Section 19-1-301, and special adjudicative proceedings under Section 19-1-301.5. UDEQ has promulgated those rules, codified at Utah Administrative Code R305-7. Among these rules is R305-7-104(5), which in part governs the form and timeliness of filings to initiate adjudicative proceedings regarding agency actions. Filing to initiate an adjudication on an agency decision must occur within 30 days of that decision. See R305-7-203(5) (for petitions for review); R305-7-303(5) (for requests for agency action). The current rule expressly states that email submission is insufficient to initiate an adjudicative proceeding. Utah Admin. Code R305-7-104(5)(a). Therefore, paper submissions that must be filed in person or by mail are currently the only filing option to initiate new adjudicative proceedings.</p> <p>The UDEQ offices are located in the Multi-Agency State Office Building (MASOB). The MASOB is now closed to the public due to the COVID-19 Pandemic. Few agency employees currently staff the agency offices. Consequently, although the current rule requires that those wishing to initiate an adjudicative proceeding must file a paper copy in person, or via an overnight courier service, at MASOB, they cannot do so at this time because the building is closed to the public. Although filing by U.S. Mail is still an option under the rule, processing of mail may be delayed due to reduced on-site staffing. Nothing in the rule requires a filer to use mail if personal filing is not available and hand-delivery, either in person or via an overnight courier service, are still allowed under the rule.</p> <p>The closing of the MASOB to the public and both Salt Lake City and Salt Lake County shelter in place orders suggest that allowing people to enter the MASOB and have contact with the limited staff onsite is a threat to public health, safety, or welfare as it might contribute to further spreading of COVID-19. The reason for this closing is to prevent the spread of the virus. Even if the MASOB were open to the public for the limited purposes of complying with the filing requirements of Section R305-7-105 raises the risk that, for example, an asymptomatic carrier of COVID-19 could unwittingly spread the virus to others in MASOB.</p> <p>UDEQ divisions continue to function and make final agency actions through limited on-site staff and telework. Those final agency decisions trigger the right to seek a legal remedy by initiating adjudicative proceedings. Because the MASOB is currently closed and agency actions issued by DEQ must provide notice as to how appeals are to be filed, a standard 120-day rulemaking process to allow for electronic submission would be too long and may impair the right of interested members of the public or industry to initiate adjudicative proceedings based on agency decisions made in the interim. Because such decisions are made routinely by all divisions of UDEQ, the lack of an immediate ability to file to initiate adjudicative proceedings presents an imminent threat to public health, safety, and welfare that must be addressed immediately. Therefore, an</p>	

emergency rule is necessary to allow, on a temporary basis, electronic filing of Requests for Agency Action and Petitions for Review to avoid impairing the ability to initiate an adjudicative proceeding.

5. Summary of the new rule or change:

The new rule would allow temporary electronic filing of requests for agency action and petitions for review to initiate adjudicative proceedings contesting UDEQ actions.

6. Regular rulemaking would:

- | | |
|-------------------------------------|---|
| <input checked="" type="checkbox"/> | cause an imminent peril to the public health, safety, or welfare; |
| <input type="checkbox"/> | cause an imminent budget reduction because of budget restraints or federal requirements; or |
| <input type="checkbox"/> | place the agency in violation of federal or state law. |

Specific reason and justification:

The MASOB is closed to the public due to the COVID-19 Pandemic, which is currently the only place allowed by rule to file contests to agency decisions. The legal right to contest agency decisions is provided under the Utah Administrative Procedures Act and Title 19 of the Environmental Quality Code, and impairment of the ability to exercise that right is an imminent peril to the public welfare. Therefore, a rule amendment that allows for electronic filing of new administrative adjudications, in lieu of personal filing at the MOSAB, is necessary. As agency decisions are currently being made daily or weekly and the standard 120-day rulemaking would exceed the standard 30-day deadline for filing to initiate an adjudicative proceeding, an emergency rule is necessary to temporarily address this situation until the pandemic ends and MASOB reopens to the public.

Fiscal Information

7. Aggregate anticipated cost or savings to:

A) State budget:

There is no anticipated cost or savings to the State budget, as the State will simply be receiving electronically-filed requests for agency action or petitions for review.

B) Local governments:

None anticipated, as the state is the governmental entity that receives petitions for review or requests for agency action. Should a local government seek to initiate an adjudication, it will result in the marginal savings of not having to send an employee to file in person.

C) Small businesses ("small business" means a business employing 1-49 persons):

Any savings to small businesses will be to those who do not have to incur expenses to travel to MASOB to file to initiate an adjudicative proceeding.

D) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an *agency*):

Any savings will be to those who do not have to incur expenses to travel to MASOB to file to initiate an adjudicative proceeding.

8. Compliance costs for affected persons:

No anticipated costs because these regulations exist in another form.

9. A) Comments by the department head on the fiscal impact this rule may have on businesses:

This will have no impact on businesses based on our fiscal analysis.

B) Name and title of department head commenting on the fiscal impacts:

L. Scott Baird, Executive Director

Citation Information

10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

U.C.A. 19-1-201(1)(d)(ii)	U.C.A. 63G-3-304
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Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 304, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date and publication in the *Utah State Bulletin*.

Agency head or designee, and title:

L. Scott Baird, Executive Director

Date
(mm/dd/yyyy):

04/20/2020

R305. Environmental Quality, Administration.

R305-7. Administrative Procedures.

R305-7-104. Filing and Service of Notices, Orders, Motions, and Other Papers.

(1) (a) The rules governing service of Initial Orders and Notices of Violation are provided in R305-7-302.

(b) Filing and service of all papers in adjudicative proceedings shall be made by email except as otherwise provided in this R305-7-104 and in R305-7-309(2)(b), R305-7-309(7)(b)(ii), and R305-7-313. Adjudicative proceedings ~~may~~shall not be initiated by U.S. Mail or by email, in accordance with~~Initiation of adjudicative proceedings through traditional (paper) filing is governed by~~ subsection (5), below.

(c) In the event the ALJ determines that it is inappropriate in a specific case to file and serve all papers by email, the requirements of R305-7-104(4) will govern. Those requirements may be modified by the ALJ.

(d) The provisions of R305-7-104(2) will also apply regardless of whether filing and service are done by email (R305-7-104(3)) or by traditional service methods (R305-7-104(4)).

(e) A party seeking to have filing and service requirements governed by R305-7-104(4), such as a person who does not have access to email, shall file and serve that request as provided in R305-7-104(4). Once a request to proceed under R305-7-104(4) is filed and served, the provisions of that section shall apply to all future filing and service unless otherwise ordered by the ALJ.

(2) General Provisions Governing Filing and Service.

(a) Every submission shall be filed with:

- (i) the ALJ or, if no ALJ has been appointed, the Director; and
- (ii) the Administrative Proceedings Records Officer.

(b) In addition, every submission shall be served upon:

- (i) the Director, if a submission is not filed with the Director under paragraph (2)(a)(i);
- (ii) the assistant attorney general representing the Director;
- (iii) the permittee or the person who was the recipient of the Permit Order, or other order or notice of violation being challenged;
- (iv) any other party.

(c) A person, other than the Director, who is represented by an attorney or other representative, as provided in R305-7-106, shall be served through the attorney or other representative.

(d) Every submission shall include a certificate of service that shows the date and manner of filing with and service on the persons identified in R305-7-104(2)(a) and (b).

(e) Service on a regulated person at the person's Designated Address shall be deemed to be service on that person.

(3) Provisions governing electronic filing and service.

(a) A submission following the initiation of an adjudicative proceeding shall be filed with the Administrative Proceedings Records Officer by emailing it to DEQAPRO@utah.gov. Initiation of adjudicative proceedings is governed by subsection (5).

(b) Filing or service on all other parties shall be by email at addresses provided by those persons. If the person filing or serving the submission is unable, after due diligence, to determine an email address for a party, the person shall file or provide service by traditional means, as provided in R305-7-104(4).

(c) (i) A text document served by email shall be submitted as a searchable PDF document.

(ii) A person filing a submission may electronically file and serve a document without a signature if the person indicates that the document was signed (e.g., "signed by (name)" or "/s/ (name)").

(d) The ALJ may order any other submission to be provided in a searchable format.

(e) Large emails (5 Mb or more) may not be accepted by some email systems. It shall be the responsibility of a person sending a large email to ensure that it has been received by all parties, e.g., by telephoning or by sending a separate notification email and requesting a response.

(f) Photographic or other illustration documents filed and served by email shall be submitted as:

- (i) a PDF document; or
- (ii) a JPEG document.

(g) Documents that are difficult to file and serve by email because of their size or form may be filed and served on a CD, DVD, USB flash drive or other commonly used digital storage medium. A document may also be provided in paper form if it is impracticable to copy the document electronically. Filing and service of such documents shall be as provided in R305-7-104(4).

(h) A party shall provide a paper copy of any document, including signed documents, upon request by the ALJ.

(4) Provisions governing traditional filing and service of paper documents to the extent that filing and service of paper documents is allowed or required by this Rule.

(a) Filing and service of paper documents shall be made:

- (i) by United States mail, postage pre-paid;
- (ii) by hand-delivery; ~~or~~
- (iii) by overnight courier delivery; ~~or~~

~~[(iv) by the Utah State Building Mail system, if the sender and receiver are both state employees.]~~

(b) Documents to be filed with or served on the Director shall be filed and served at the address specified in Part 6.

(c) Documents to be filed with the Administrative Proceedings Records Officer shall be submitted to one of these addresses:

(i) By U.S. Mail: Administrative Proceedings Records Officer, Environment Division, Utah Attorney General's Office, PO Box 140873, Salt Lake City Utah 84114-0873; or

(ii) By hand or commercial delivery: Administrative Proceedings Records Officer, Environment Division, Utah Attorney General's Office, 195 North 1950 West, Second Floor, Salt Lake City Utah 84116.

(d) ~~[(i) Except as provided in R305-7-104(5)(b), a] A document that is filed or served by U.S. Mail or overnight delivery service shall be considered filed or served on the date it is mailed or picked up by the overnight delivery service. A document that is filed or served by email shall be considered filed or served on the date that it is sent, subject to the service requirements set forth in subsection (5)(a) ~~or provided to the overnight delivery~~~~

service].~~—A document that is filed or served by Utah State Building Mail shall be considered filed or served on the date it is placed in a Utah State Building Mailbin.~~

(5)(a) After April 1, 2020, adjudicative proceedings before the Department may be initiated by service upon the Administrative Proceedings Hearing Officer via email at DEQAPRO@utah.gov, or by service of paper documents upon the applicable Director and the Administrative Proceedings Hearing Officer, in accordance with subsection (4)(c)(i) or (ii). If an adjudicative proceeding~~Email does not constitute filing and is not adequate to initiate an adjudicative proceeding~~ under this Rule, Section 19-1-301, or a special adjudicative proceeding under Section 19-1-301.5 is initiated via email at DEQAPRO@utah.gov, a ~~paper copy~~ paper, signed original of any Request for Agency Action, Petition for Review, Notice of Agency Action, or Petition to Intervene that is filed by email shall be ~~filed traditionally and~~ served as provided in R305-7-104(2) and (4).

(b) The filing of~~To be timely,~~ a Request for Agency Action, Petition for Review, or a Petition to Intervene in accordance with subsection (5)(a) shall be deemed to be timely~~must be received by the Director and the Administrative Proceedings Records Officer~~ as provided in:

(i) R305-7-203(5) and R305-7-205 (for a Petition for Review, filed and served in a special adjudicative proceeding);

(ii) R305-7-303(5) (for a Request for Agency Action filed and served in a proceeding other than a special adjudicative proceeding);

(iii) R305-7-204(2) and R305-7-205 (for a Petition to Intervene filed and served in a special adjudicative proceeding); and

(iv) R305-7-304 (which incorporates the requirements of R305-7-204(2)) for a Petition to Intervene filed and served in a proceeding other than a special adjudicative proceeding).

KEY: administrative procedures, adjudicative procedures, hearings

Date of Enactment or Last Substantive Amendment: 2020~~November 1, 2018~~

Notice of Continuation: October 26, 2017

Authorizing, and Implemented or Interpreted Law: 19-1-301; 19-1-301.5; 63G-4-102; 63G-4-201; 63G-4-202; 63G-4-203; 63G-4-205; 63G-4-503

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