

UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

NOTICE OF EMERGENCY RULEMAKING REGARDING THE INITIATION OF
ADJUDICATIVE PROCEEDINGS BEFORE THE DEPARTMENT OF ENVIRONMENTAL
QUALITY - COVID-19 PANDEMIC

Until further notice, email and U.S. Mail are the only options available to file and serve documents in pending and new administrative proceedings before the Department.

Due to the COVID-19 pandemic, the Department's office is closed to the public by operation of state law. During the period of closure, it will not be possible to hand-deliver, either in person or by courier service, any documents to the Department in connection any new or pending adjudicative proceeding. However, U.S. Mail is still being received, but processing traditional mail is delayed.

Among other things, the Department's procedural Rule now in effect requires physical delivery of a traditional, signed, paper copy of any new petition for review, request for agency action, or petition to intervene. This requirement could place the agency in violation of federal or state law, due to the closure of the Department's building. Hand-delivery and overnight courier service are not currently allowed.

Based on Utah Code Section 63G-3-304(c), emergency rulemaking procedure, the Department has adopted the following amendment to R305-7-104. It will remain in effect for 120 days from April 1, 2020. This emergency rulemaking modifies the filing requirements relating to the initiation of new adjudicative proceedings, together with related provisions. The revised rule now allows the initiation of new adjudicative proceedings via email to the Administrative Proceedings Record Officer at DEQAPRO@utah.gov, provide that paper copies are also served via U.S. Mail. The options of hand-delivery and overnight courier service are retained in the new rule. However, these options are not available, until further notice.

In coordination with the Office of the Attorney General, Directors should provide a copy of this Notice in all pending adjudicative proceedings as well as all agency actions wherein a response falls due on or after April 1, 2020.

R305. Environmental Quality, Administration.
R305-7. Administrative Procedures.

[Emergency Rule Text]

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 be initiated by U.S. Mail or by email, in accordance with 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.

(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) 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).

(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 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 of any Request for Agency Action, Petition for Review, Notice of Agency Action, or Petition to Intervene that is filed by email shall be served as provided in R305-7-104(2) and (4).

(b) The filing of 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 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).

[Emergency Rule - Redline Text]

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 Mail bin.]~~

(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 [—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).