State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Office of the Governor

April 13, 2020

Gregory Sopkin, Regional Administrator
US EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

Dear Mr. Sopkin,

On March 4, 2020, the Utah Air Quality Board adopted revisions to R307-401. *Permit: New and Modified Sources.* The Division of Air Quality worked with the Environmental Protection Agency throughout the rulemaking process.

Enclosed for your approval are the rule revisions described above. Supporting documentation is being submitted by the Utah Division of Air Quality. If you have questions about this request, please call Bryce Bird, Director of the Utah Division of Air Quality, at (801) 536-4064.

Sincerely,

Gary R. Herbert
Governor

Enclosures

UTAH

Administrative Documentation

R307-401. Permit: New and Modified Sources.

State of Utah
Department of Environmental Quality
Division of Air Quality
195 N. 1950 West
P.O. Box 144820
Salt Lake City, Utah 84114-4820
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May 21, 2020

UTAH

ADMINISTRATIVE DOCUMENTATION May 2020

R307-401. Permit: New and Modified Sources.

ADMINISTRATIVE DOCUMENTATION
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Codes

Chapter 2
Air Conservation Act

Part 1
General Provisions

19-2-101 Short title -- Policy of state and purpose of chapter -- Support of local and regional programs -- Provision of coordinated statewide program.

(1) This chapter is known as the "Air Conservation Act."

(2) It is the policy of this state and the purpose of this chapter to achieve and maintain levels of air quality which will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state, and facilitate the enjoyment of the natural attractions of this state.

(3) Local and regional air pollution control programs shall be supported to the extent practicable as essential instruments to secure and maintain appropriate levels of air quality.

(4) The purpose of this chapter is to:

(a) provide for a coordinated statewide program of air pollution prevention, abatement, and control;

(b) provide for an appropriate distribution of responsibilities among the state and local units of government;

(c) facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions; and

(d) provide a framework within which air quality may be protected and consideration given to the public interest at all levels of planning and development within the state.

Renumbered and Amended by Chapter 112, 1991 General Session

19-2-102 Definitions.

As used in this chapter:

(1) "Air pollutant" means a substance that qualifies as an air pollutant as defined in 42 U.S.C. Sec. 7602.

(2) "Air pollutant source" means private and public sources of emissions of air pollutants.

(3) "Air pollution" means the presence of an air pollutant in the ambient air in the quantities, for a duration, and under the conditions and circumstances that are injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or use of property, as determined by the rules adopted by the board.

(4) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(5) "Asbestos" means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite, actinolite-tremolite, and libby amphibole.

(6) "Asbestos-containing material" means a material containing more than 1% asbestos, as determined using the method adopted in 40 C.F.R. Part 61, Subpart M, National Emission Standard for Asbestos.

(7) "Asbestos inspection" means an activity undertaken to determine the presence or location, or to assess the condition of, asbestos-containing material or suspected asbestos-containing

material, whether by visual or physical examination, or by taking samples of the material.
(8) “Board” means the Air Quality Board.
(9) “Clean school bus” means the same as that term is defined in 42 U.S.C. Sec. 16091.
(10) “Director” means the director of the Division of Air Quality.
(11) “Division” means the Division of Air Quality created in Section 19-1-105.
(12) “Friable asbestos-containing material” means a material containing more than 1% asbestos, as determined using the method adopted in 40 C.F.R. Part 61, Subpart M, National Emission Standard for Asbestos, that hand pressure can crumble, pulverize, or reduce to powder when dry.
(13) “Indirect source” means a facility, building, structure, or installation which attracts or may attract mobile source activity that results in emissions of a pollutant for which there is a national standard.

Amended by Chapter 154, 2015 General Session

19-2-103 Members of board -- Appointment -- Terms -- Organization -- Per diem and expenses.

(1) The board consists of the following nine members:
(a) the following non-voting member, except that the member may vote to break a tie vote between the voting members:
(i) the executive director; or
(ii) an employee of the department designated by the executive director; and
(b) the following eight voting members, who shall be appointed by the governor with the consent of the Senate:
(i) one representative who:
(A) is not connected with industry;
(B) is an expert in air quality matters; and
(C) is a Utah-licensed physician, a Utah-licensed professional engineer, or a scientist with relevant training and experience;
(ii) two government representatives who do not represent the federal government;
(iii) one representative from the mining industry;
(iv) one representative from the fuels industry;
(v) one representative from the manufacturing industry;
(vi) one representative from the public who represents:
(A) an environmental nongovernmental organization; or
(B) a nongovernmental organization that represents community interests and does not represent industry interests; and
(vii) one representative from the public who is trained and experienced in public health.
(2) A member of the board shall:
(a) be knowledgeable about air pollution matters, as evidenced by a professional degree, a professional accreditation, or documented experience;
(b) be a resident of Utah;
(c) attend board meetings in accordance with the attendance rules made by the department under Subsection 19-1-201(1)(d)(i)(A); and
(d) comply with all applicable statutes, rules, and policies, including the conflict of interest rules made by the department under Subsection 19-1-201(1)(d)(i)(B).
(3) No more than five of the appointed members of the board shall belong to the same political

party.
(4) A majority of the members of the board may not derive any significant portion of their income from persons subject to permits or orders under this chapter.
(5)
(a) Members shall be appointed for a term of four years.
(b) Notwithstanding the requirements of Subsection (5)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that half of the appointed board is appointed every two years.
(6) A member may serve more than one term.
(7) A member shall hold office until the expiration of the member's term and until the member's successor is appointed, but not more than 90 days after the expiration of the member's term.
(8) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
(9) The board shall elect annually a chair and a vice chair from its members.
(10)
(a) The board shall meet at least quarterly.
(b) Special meetings may be called by the chair upon the chair's own initiative, upon the request of the director, or upon the request of three members of the board.
(c) Three days' notice shall be given to each member of the board before a meeting.
(11) Five members constitute a quorum at a meeting, and the action of a majority of members present is the action of the board.
(12) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
(a) Section 63A-3-106;
(b) Section 63A-3-107; and
(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 154, 2015 General Session

19-2-104 Powers of board.
(1) The board may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
(a) regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air pollutants that may be emitted by an air pollutant source;
(b) establishing air quality standards;
(c) requiring persons engaged in operations that result in air pollution to:
(i) install, maintain, and use emission monitoring devices, as the board finds necessary;
(ii) file periodic reports containing information relating to the rate, period of emission, and composition of the air pollutant; and
(iii) provide access to records relating to emissions which cause or contribute to air pollution;
(d)
(i) implementing:
(A) Toxic Substances Control Act, Subchapter II, Asbestos Hazard Emergency Response, 15 U.S.C. 2601 et seq.;

(B) 40 C.F.R. Part 763, Asbestos; and
(C) 40 C.F.R. Part 61, National Emission Standards for Hazardous Air Pollutants, Subpart M, National Emission Standard for Asbestos; and
(ii) reviewing and approving asbestos management plans submitted by local education agencies under the Toxic Substances Control Act, Subchapter II, Asbestos Hazard Emergency Response, 15 U.S.C. 2601 et seq.;
(e) establishing a requirement for a diesel emission opacity inspection and maintenance program for diesel-powered motor vehicles;
(f) implementing an operating permit program as required by and in conformity with Titles IV and V of the federal Clean Air Act Amendments of 1990;
(g) establishing requirements for county emissions inspection and maintenance programs after obtaining agreement from the counties that would be affected by the requirements;
(h) with the approval of the governor, implementing in air quality nonattainment areas employer-based trip reduction programs applicable to businesses having more than 100 employees at a single location and applicable to federal, state, and local governments to the extent necessary to attain and maintain ambient air quality standards consistent with the state implementation plan and federal requirements under the standards set forth in Subsection (2);
(i) implementing lead-based paint training, certification, and performance requirements in accordance with 15 U.S.C. 2601 et seq., Toxic Substances Control Act, Subchapter IV -- Lead Exposure Reduction, Sections 402 and 406; and
(j) to implement the requirements of Section 19-2-107.5.
(2) When implementing Subsection (1)(h) the board shall take into consideration:
(a) the impact of the business on overall air quality; and
(b) the need of the business to use automobiles in order to carry out its business purposes.
(3)
(a) The board may:
(i) hold a hearing that is not an adjudicative proceeding relating to any aspect of, or matter in, the administration of this chapter;
(ii) recommend that the director:
(A) issue orders necessary to enforce the provisions of this chapter;
(B) enforce the orders by appropriate administrative and judicial proceedings;
(C) institute judicial proceedings to secure compliance with this chapter; or
(D) advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, interstate or interlocal agencies, the federal government, or interested persons or groups; and
(iii) establish certification requirements for asbestos project monitors, which shall provide for experience-based certification of a person who:
(A) receives relevant asbestos training, as defined by rule; and
(B) has acquired a minimum of 1,000 hours of asbestos project monitoring related work experience.
(b) The board shall:
(i) to ensure compliance with applicable statutes and regulations:
(A) review a settlement negotiated by the director in accordance with Subsection 19-2-107(2)(b)(viii) that requires a civil penalty of $25,000 or more; and
(B) approve or disapprove the settlement;
(ii) encourage voluntary cooperation by persons and affected groups to achieve the purposes

of this chapter;
(iii) meet the requirements of federal air pollution laws;
(iv) by rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establish work practice and certification requirements for persons who:
(A) contract for hire to conduct demolition, renovation, salvage, encapsulation work involving friable asbestos-containing materials, or asbestos inspections if:
(I) the contract work is done on a site other than a residential property with four or fewer units; or
(II) the contract work is done on a residential property with four or fewer units where a tested sample contained greater than 1% of asbestos;
(B) conduct work described in Subsection (3)(b)(iv)(A) in areas to which the general public has unrestrained access or in school buildings that are subject to the federal Asbestos Hazard Emergency Response Act of 1986;
(C) conduct asbestos inspections in facilities subject to 15 U.S.C. 2601 et seq., Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response; or
(D) conduct lead-based paint inspections in facilities subject to 15 U.S.C. 2601 et seq., Toxic Substances Control Act, Subchapter IV -- Lead Exposure Reduction;
(v) establish certification requirements for a person required under 15 U.S.C. 2601 et seq., Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response, to be accredited as an inspector, management planner, abatement project designer, asbestos abatement contractor and supervisor, or an asbestos abatement worker;
(vi) establish certification procedures and requirements for certification of the conversion of a motor vehicle to a clean-fuel vehicle, certifying the vehicle is eligible for the tax credit granted in Section 59-7-605 or 59-10-1009;
(vii) establish certification requirements for a person required under 15 U.S.C. 2601 et seq., Toxic Control Act, Subchapter IV - Lead Exposure Reduction, to be accredited as an inspector, risk assessor, supervisor, project designer, abatement worker, renovator, or dust sampling technician; and
(viii) assist the State Board of Education in adopting school bus idling reduction standards and implementing an idling reduction program in accordance with Section 41-6a-1308.
(4) A rule adopted under this chapter shall be consistent with provisions of federal laws, if any, relating to control of motor vehicles or motor vehicle emissions.
(5) Nothing in this chapter authorizes the board to require installation of or payment for any monitoring equipment by the owner or operator of a source if the owner or operator has installed or is operating monitoring equipment that is equivalent to equipment which the board would require under this section.
(6)
(a) The board may not require testing for asbestos or related materials on a residential property with four or fewer units, unless:
(i) the property's construction was completed before January 1, 1981; or
(ii) the testing is for:
(A) a sprayed-on or painted on ceiling treatment that contained or may contain asbestos fiber;
(B) asbestos cement siding or roofing materials;
(C) resilient flooring products including vinyl asbestos tile, sheet vinyl products, resilient flooring backing material, whether attached or unattached, and mastic;

(D) thermal-system insulation or tape on a duct or furnace; or
(E) vermiculite type insulation materials.
(b) A residential property with four or fewer units is subject to an abatement rule made under Subsection (1) or (3)(b)(iv) if:
(i) a sample from the property is tested for asbestos; and
(ii) the sample contains asbestos measuring greater than 1%.
(7) The board may not issue, amend, renew, modify, revoke, or terminate any of the following that are subject to the authority granted to the director under Section 19-2-107 or 19-2-108:
(a) a permit;
(b) a license;
(c) a registration;
(d) a certification; or
(e) another administrative authorization made by the director.
(8) A board member may not speak or act for the board unless the board member is authorized by a majority of a quorum of the board in a vote taken at a meeting of the board.
(9) Notwithstanding Subsection (7), the board may exercise all authority granted to the board by a federally enforceable state implementation plan.

Amended by Chapter 154, 2015 General Session

19-2-105 Duties of board.

The board, in conjunction with the governing body of each county identified in Section 41-6a-1643 and other interested parties, shall order the director to perform an evaluation of the inspection and maintenance program developed under Section 41-6a-1643 including issues relating to:
(1) the implementation of a standardized inspection and maintenance program;
(2) out-of-state registration of vehicles used in Utah;
(3) out-of-county registration of vehicles used within the areas required to have an inspection and maintenance program;
(4) use of the farm truck exemption;
(5) mechanic training programs;
(6) emissions standards; and
(7) emissions waivers.

Amended by Chapter 360, 2012 General Session

19-2-105.3 Clean fuel requirements for fleets.
(1) As used in this section:
(a) "1990 Clean Air Act" means the federal Clean Air Act as amended in 1990.
(b) "Clean fuel" means:
(i) propane, compressed natural gas, or electricity;
(ii) other fuel the board determines annually on or before July 1 is at least as effective as fuels under Subsection (1)(b)(i) in reducing air pollution; and
(iii) other fuel that meets the clean fuel vehicle standards in the 1990 Clean Air Act.
(c) "Fleet" means 10 or more vehicles:
(i) owned or operated by a single entity as defined by board rule; and

(ii) capable of being fueled or that are fueled at a central location.

(d) "Fleet" does not include motor vehicles that are:

(i) held for lease or rental to the general public;

(ii) held for sale or used as demonstration vehicles by motor vehicle dealers;

(iii) used by motor vehicle manufacturers for product evaluations or tests;

(iv) authorized emergency vehicles as defined in Section 41-6a-102;

(v) registered under Title 41, Chapter 1a, Part 2, Registration, as farm vehicles;

(vi) special mobile equipment as defined in Section 41-1a-102;

(vii) heavy duty trucks with a gross vehicle weight rating of more than 26,000 pounds;

(viii) regularly used by employees to drive to and from work, parked at the employees' personal residences when they are not at their employment, and not practicably fueled at a central location;

(ix) owned, operated, or leased by public transit districts; or

(x) exempted by board rule.

(2)

(a) After evaluation of reasonably available pollution control strategies, and as part of the state implementation plan demonstrating attainment of the national ambient air quality standards, the board may by rule require fleets in specified geographical areas to use clean fuels if the board determines fleet use of clean fuels is:

(i) necessary to demonstrate attainment of the national ambient air quality standards in an area where they are required; and

(ii) reasonably cost effective when compared to other similarly beneficial control strategies for demonstrating attainment of the national ambient air quality standards.

(b) A vehicle retrofit to operate on compressed natural gas in accordance with Section 19-1-406 qualifies as a clean fuel vehicle under this section.

(3) After evaluation of reasonably available pollution control strategies, and as part of a state implementation plan demonstrating only maintenance of the national ambient air quality standards, the board may by rule require fleets in specified geographical areas to use clean fuels if the board determines fleet use of clean fuels is:

(a) necessary to demonstrate maintenance of the national ambient air quality standards in an area where they are required; and

(b) reasonably cost effective as compared with other similarly beneficial control strategies for demonstrating maintenance of the national ambient air quality standards.

(4) Rules the board makes under this section may include:

(a) dates by which fleets are required to convert to clean fuels under the provisions of this section;

(b) definitions of fleet owners or operators;

(c) definitions of vehicles exempted from this section by rule;

(d) certification requirements for persons who install clean fuel conversion equipment, including testing and certification standards regarding installers; and

(e) certification fees for installers, established under Section 63J-1-504.

(5) Implementation of this section and rules made under this section are subject to the reasonable availability of clean fuel in the local market as determined by the board.

Amended by Chapter 154, 2015 General Session

19-2-106 Rulemaking authority and procedure.

(1)

(a) In carrying out the duties of Section 19-2-104, the board may make rules for the purpose of administering a program under the federal Clean Air Act different than the corresponding federal regulations which address the same circumstances if:

(i) the board holds a public comment period, as described in Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and a public hearing; and

(ii) the board finds that the different rule will provide reasonable added protections to public health or the environment of the state or a particular region of the state.

(b) The board shall consider the differences between an industry that continuously produces emissions and an industry that episodically produces emissions, and make rules that reflect those differences.

(2) The findings described in Subsection (1)(a)(ii) shall be:

(a) in writing; and

(b) based on evidence, studies, or other information contained in the record that relates to the state of Utah and type of source involved.

(3) In making rules, the board may incorporate by reference corresponding federal regulations.

Amended by Chapter 80, 2015 General Session

19-2-107 Director -- Appointment -- Powers.

(1) The executive director shall appoint the director. The director shall serve under the administrative direction of the executive director.

(2)

(a) The director shall:

(i) prepare and develop comprehensive plans for the prevention, abatement, and control of air pollution in Utah;

(ii) advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, and affected groups, political subdivisions, and industries in furtherance of the purposes of this chapter;

(iii) review plans, specifications, or other data relative to air pollution control equipment or any part of the air pollution control equipment;

(iv) under the direction of the executive director, represent the state in all matters relating to interstate air pollution, including interstate compacts and similar agreements;

(v) secure necessary scientific, technical, administrative, and operational services, including laboratory facilities, by contract or otherwise;

(vi) encourage voluntary cooperation by persons and affected groups to achieve the purposes of this chapter;

(vii) encourage local units of government to handle air pollution within their respective jurisdictions on a cooperative basis and provide technical and consulting assistance to them;

(viii) determine by means of field studies and sampling the degree of air contamination and air pollution in all parts of the state;

(ix) monitor the effects of the emission of air pollutants from motor vehicles on the quality of the outdoor atmosphere in all parts of Utah and take appropriate responsive action;

(x) collect and disseminate information relating to air contamination and air pollution and conduct educational and training programs relating to air contamination and air pollution;

(xi) assess and collect noncompliance penalties as required in Section 120 of the federal Clean Air Act, 42 U.S.C. Section 7420;
(xii) comply with the requirements of federal air pollution laws;
(xiii) subject to the provisions of this chapter, enforce rules through the issuance of orders, including:
(A) prohibiting or abating discharges of wastes affecting ambient air;
(B) requiring the construction of new control facilities or any parts of new control facilities or the modification, extension, or alteration of existing control facilities or any parts of new control facilities; or
(C) adopting other remedial measures to prevent, control, or abate air pollution; and
(xiv) as authorized by the board and subject to the provisions of this chapter, act as executive secretary of the board under the direction of the chairman of the board.
(b) The director may:
(i) employ full-time, temporary, part-time, and contract employees necessary to carry out this chapter;
(ii) subject to the provisions of this chapter, authorize an employee or representative of the department to enter at reasonable time and upon reasonable notice in or upon public or private property for the purposes of inspecting and investigating conditions and plant records concerning possible air pollution;
(iii) encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to air pollution and its causes, effects, prevention, abatement, and control, as advisable and necessary for the discharge of duties assigned under this chapter, including the establishment of inventories of pollution sources;
(iv) collect and disseminate information relating to air pollution and the prevention, control, and abatement of it;
(v) cooperate with studies and research relating to air pollution and its control, abatement, and prevention;
(vi) subject to Subsection (3), upon request, consult concerning the following with a person proposing to construct, install, or otherwise acquire an air pollutant source in Utah:
(A) the efficacy of proposed air pollution control equipment for the source; or
(B) the air pollution problem that may be related to the source;
(vii) accept, receive, and administer grants or other funds or gifts from public and private agencies, including the federal government, for the purpose of carrying out any of the functions of this chapter;
(viii) subject to Subsection 19-2-104(3)(b)(i), settle or compromise a civil action initiated by the division to compel compliance with this chapter or the rules made under this chapter; or
(ix) subject to the provisions of this chapter, exercise all incidental powers necessary to carry out the purposes of this chapter, including certification to state or federal authorities for tax purposes that air pollution control equipment has been certified in conformity with Title 19, Chapter 12, Pollution Control Act.
(3) A consultation described in Subsection (2)(b)(vi) does not relieve a person from the requirements of this chapter, the rules adopted under this chapter, or any other provision of law.

Amended by Chapter 154, 2015 General Session

19-2-107.5 Solid fuel burning.

(1) The division shall create a:

(a) public awareness campaign, in consultation with representatives of the solid fuel burning industry, the healthcare industry, and members of the clean air community, on best wood burning practices and the effects of wood burning on air quality, specifically targeting nonattainment areas; and

(b) program to assist an individual to convert a dwelling to a natural gas, propane, or wood pellet heating source or a wood burning stove certified by the United States Environmental Protection Agency, as funding allows, if the individual:

(i) lives in a dwelling where a wood burning stove is the sole source of heat; and

(ii) is on the list of registered sole heating source homes.

(2)

(a) The division may not impose a burning ban prohibiting burning during a specified seasonal period of time.

(b) Notwithstanding Subsection (2)(a), the division shall:

(i) allow burning:

(A) during local emergencies and utility outages; or

(B) if the primary purpose of the burning is to cook food; and

(ii) provide for exemptions, through registration with the division, for:

(A) devices that are sole sources of heat; or

(B) locations where natural gas service is limited or unavailable.

(3) The division may seek private donations and federal sources of funding to supplement any funds appropriated by the Legislature to fulfill Subsection (1)(b).

Amended by Chapter 320, 2017 General Session

19-2-107.7 Water heater regulations.

(1) As used in this section:

(a) "Natural gas-fired water heater" means a device that heats water by the combustion of natural gas to a thermostatically-controlled temperature not exceeding 210 degrees Fahrenheit for use external to the vessel at pressures not exceeding 160 pounds per square inch gauge.

(b) "Recreational vehicle" means a motor home, travel trailer, truck camper, or camping trailer, with or without motive power, designed for human habitation for recreational, emergency, or other occupancy.

(2) A person may not sell or purchase a natural gas-fired water heater that is manufactured after July 1, 2018 with the intent to install it in Utah if the natural gas-fired water heater exceeds the applicable nitrogen oxide emission rate limit set in Title 15A, State Construction and Fire Codes Act.

(3) A manufacturer in Utah shall display the model number and nitrogen oxide emission rate of a water heater complying with this section on:

(a) the shipping carton for the water heater; and

(b) the permanent rating plate of each water heater unit.

(4) This section does not apply to a water heater unit that:

(a) uses a fuel other than natural gas;

(b) is used in a recreational vehicle; or

(c) is manufactured in Utah for shipment and use outside of Utah.

Enacted by Chapter 247, 2016 General Session

19-2-108 Notice of construction or modification of installations required -- Authority of director to prohibit construction -- Hearings -- Limitations on authority of director -- Inspections authorized.

(1) Notice shall be given to the director by a person planning to construct a new installation which will or might reasonably be expected to be a source or indirect source of air pollution or to make modifications to an existing installation which will or might reasonably be expected to increase the amount of or change the character or effect of air pollutants discharged, so that the installation may be expected to be a source or indirect source of air pollution, or by a person planning to install an air cleaning device or other equipment intended to control emission of air pollutants.

(2)

(a) The director may require, as a condition precedent to the construction, modification, installation, or establishment of the air pollutant source or indirect source, the submission of plans, specifications, and other information as he finds necessary to determine whether the proposed construction, modification, installation, or establishment will be in accord with applicable rules in force under this chapter.

(b) If within 90 days after the receipt of plans, specifications, or other information required under this subsection, the director determines that the proposed construction, installation, or establishment or any part of it will not be in accord with the requirements of this chapter or applicable rules or that further time, not exceeding three extensions of 30 days each, is required by the director to adequately review the plans, specifications, or other information, he shall issue an order prohibiting the construction, installation, or establishment of the air pollutant source or sources in whole or in part.

(3) In addition to any other remedies but prior to invoking any such other remedies, a person aggrieved by the issuance of an order either granting or denying a request for the construction of a new installation, shall, upon request, in accordance with the rules of the department, be entitled to a special adjudicative proceeding conducted by an administrative law judge as provided by Section 19-1-301.5.

(4) Any features, machines, and devices constituting parts of or called for by plans, specifications, or other information submitted under Subsection (1) shall be maintained in good working order.

(5) This section does not authorize the director to require the use of machinery, devices, or equipment from a particular supplier or produced by a particular manufacturer if the required performance standards may be met by machinery, devices, or equipment otherwise available.

(6)

(a) An authorized officer, employee, or representative of the director may enter and inspect any property, premise, or place on or at which an air pollutant source is located or is being constructed, modified, installed, or established at any reasonable time for the purpose of ascertaining the state of compliance with this chapter and the rules adopted under it.

(b)

(i) A person may not refuse entry or access to an authorized representative of the director who requests entry for purposes of inspection and who presents appropriate credentials.

(ii) A person may not obstruct, hamper, or interfere with an inspection.

(c) If requested, the owner or operator of the premises shall receive a report setting forth all

facts found which relate to compliance status.

Amended by Chapter 154, 2015 General Session
Amended by Chapter 441, 2015 General Session

19-2-109 Air quality standards -- Hearings on adoption -- Orders of director -- Adoption of emission control requirements.

(1)

(a) The board, in adopting standards of quality for ambient air, shall conduct public hearings.

(b) Notice of any public hearing for the consideration, adoption, or amendment of air quality standards shall specify the locations to which the proposed standards apply and the time, date, and place of the hearing.

(c) The notice shall be:

(i)

(A) published at least twice in any newspaper of general circulation in the area affected; and

(B) published on the Utah Public Notice Website created in Section 63F-1-701, at least 20 days before the public hearing; and

(ii) mailed at least 20 days before the public hearing to the chief executive of each political subdivision of the area affected and to other persons the director has reason to believe will be affected by the standards.

(d) The adoption of air quality standards or any modification or changes to air quality standards shall be by order of the director following formal action of the board with respect to the standards.

(e) The order shall be published:

(i) in a newspaper of general circulation in the area affected; and

(ii) as required in Section 45-1-101.

(2)

(a) The board may establish emission control requirements by rule that in its judgment may be necessary to prevent, abate, or control air pollution that may be statewide or may vary from area to area, taking into account varying local conditions.

(b) In adopting these requirements, the board shall give notice and conduct public hearings in accordance with the requirements in Subsection (1).

Amended by Chapter 360, 2012 General Session

19-2-109.1 Operating permit required -- Emissions fee -- Implementation.

(1) As used in this section and Sections 19-2-109.2 and 19-2-109.3:

(a) "1990 Clean Air Act" means the federal Clean Air Act as amended in 1990.

(b) "EPA" means the federal Environmental Protection Agency.

(c) "Operating permit" means a permit issued by the director to sources of air pollution that meet the requirements of Titles IV and V of the 1990 Clean Air Act.

(d) "Program" means the air pollution operating permit program established under this section to comply with Title V of the 1990 Clean Air Act.

(e) "Regulated pollutant" means the same as that term is defined in Title V of the 1990 Clean Air Act and implementing federal regulations.

(2) A person may not operate a source of air pollution required to have a permit under Title V of the 1990 Clean Air Act without having obtained an operating permit from the director under procedures the board establishes by rule.

(3)

(a) Operating permits issued under this section shall be for a period of five years unless the director makes a written finding, after public comment and hearing, and based on substantial evidence in the record, that an operating permit term of less than five years is necessary to protect the public health and the environment of the state.

(b) The director may issue, modify, or renew an operating permit only after providing public notice, an opportunity for public comment, and an opportunity for a public hearing.

(c) The director shall, in conformity with the 1990 Clean Air Act and implementing federal regulations, revise the conditions of issued operating permits to incorporate applicable federal regulations in conformity with Section 502(b)(9) of the 1990 Clean Air Act, if the remaining period of the permit is three or more years.

(d) The director may terminate, modify, revoke, or reissue an operating permit for cause.

(4)

(a) The board shall establish a proposed annual emissions fee that conforms with Title V of the 1990 Clean Air Act for each ton of regulated pollutant, applicable to all sources required to obtain a permit. The emissions fee established under this section is in addition to fees assessed under Section 19-2-108 for issuance of an approval order.

(b) In establishing the fee the board shall comply with the provisions of Section 63J-1-504 that require a public hearing and require the established fee to be submitted to the Legislature for its approval as part of the department's annual appropriations request.

(c) The fee shall cover all reasonable direct and indirect costs required to develop and administer the program and the small business assistance program established under Section 19-2-109.2. The director shall prepare an annual report of the emissions fees collected and the costs covered by those fees under this Subsection (4).

(d) The fee shall be established uniformly for all sources required to obtain an operating permit under the program and for all regulated pollutants.

(e) The fee may not be assessed for emissions of any regulated pollutant if the emissions are already accounted for within the emissions of another regulated pollutant.

(f) An emissions fee may not be assessed for any amount of a regulated pollutant emitted by any source in excess of 4,000 tons per year of that regulated pollutant.

(5) Emissions fees shall be based on actual emissions for a regulated pollutant unless a source elects, prior to the issuance or renewal of a permit, to base the fee during the period of the permit on allowable emissions for that regulated pollutant.

(6) If the owner or operator of a source subject to this section fails to timely pay an annual emissions fee, the director may:

(a) impose a penalty of not more than 50% of the fee, in addition to the fee, plus interest on the fee computed at 12% annually; or

(b) revoke the operating permit.

(7) The owner or operator of a source subject to this section may contest an emissions fee assessment or associated penalty in an adjudicative hearing under the Title 63G, Chapter 4, Administrative Procedures Act, and Section 19-1-301, as provided in this Subsection (7).

(a) The owner or operator shall pay the fee under protest prior to being entitled to a hearing. Payment of an emissions fee or penalty under protest is not a waiver of the right to contest the

fee or penalty under this section.

(b) A request for a hearing under this Subsection (7) shall be made after payment of the emissions fee and within six months after the emissions fee was due.

(8) To reinstate an operating permit revoked under Subsection (6) the owner or operator shall pay all outstanding emissions fees, a penalty of not more than 50% of all outstanding fees, and interest on the outstanding emissions fees computed at 12% annually.

(9) All emissions fees and penalties collected by the department under this section shall be deposited in the General Fund as the Air Pollution Operating Permit Program dedicated credit to be used solely to pay for the reasonable direct and indirect costs incurred by the department in developing and administering the program and the small business assistance program under Section 19-2-109.2.

(10) Failure of the director to act on an operating permit application or renewal is a final administrative action only for the purpose of obtaining judicial review by any of the following persons to require the director to take action on the permit or its renewal without additional delay:

(a) the applicant;

(b) a person who participated in the public comment process; or

(c) a person who could obtain judicial review of that action under applicable law.

Amended by Chapter 154, 2015 General Session

19-2-109.2 Small business assistance program.

(1) The division shall establish a small business stationary source technical and environmental compliance assistance program that conforms with Title V of the 1990 Clean Air Act to assist small businesses to comply with state and federal air pollution laws.

(2) There is created the Compliance Advisory Panel to advise and monitor the program created in Subsection (1). The seven panel members are:

(a) two members who are not owners or representatives of owners of small business stationary air pollution sources, selected by the governor to represent the general public;

(b) four members who are owners or who represent owners of small business stationary sources selected by leadership of the Utah Legislature as follows:

(i) one member selected by the majority leader of the Senate;

(ii) one member selected by the minority leader of the Senate;

(iii) one member selected by the majority leader of the House of Representatives; and

(iv) one member selected by the minority leader of the House of Representatives; and

(c) one member selected by the executive director to represent the Division of Air Quality, Department of Environmental Quality.

(3)

(a) Except as required by Subsection (3)(b), as terms of current panel members expire, the department shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (3)(a), the department shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of panel members are staggered so that approximately half of the panel is appointed every two years.

(4) Members may serve more than one term.

(5) Members shall hold office until the expiration of their terms and until their successors are appointed, but not more than 90 days after the expiration of their terms.

(6) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
(7) Every two years, the panel shall elect a chair from its members.
(8)
(a) The panel shall meet as necessary to carry out its duties. Meetings may be called by the chair, the director, or upon written request of three of the members of the panel.
(b) Three days' notice shall be given to each member of the panel prior to a meeting.
(9) Four members constitute a quorum at a meeting, and the action of the majority of members present is the action of the panel.
(10) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
(a) Section 63A-3-106;
(b) Section 63A-3-107; and
(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 154, 2015 General Session

19-2-109.3 Public access to information.

A copy of each permit application, compliance plan, emissions or compliance monitoring report, certification, and each operating permit issued under this chapter shall be made available to the public in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

Amended by Chapter 382, 2008 General Session

19-2-110 Violations -- Notice to violator -- Corrective action orders -- Conference, conciliation, and persuasion by director -- Hearings.
(1) Whenever the director has reason to believe that a violation of any provision of this chapter or any rule issued under it has occurred, the director may serve written notice of the violation upon the alleged violator. The notice shall specify the provision of this chapter or rule alleged to be violated, the facts alleged to constitute the violation, and may include an order that necessary corrective action be taken within a reasonable time.
(2) Nothing in this chapter prevents the director from making efforts to obtain voluntary compliance through warning, conference, conciliation, persuasion, or other appropriate means.
(3) Hearings may be held before an administrative law judge as provided by Section 19-1-301.

Amended by Chapter 360, 2012 General Session

19-2-112 Generalized condition of air pollution creating emergency -- Sources causing imminent danger to health -- Powers of executive director -- Declaration of emergency.
(1)
(a)Title 63G, Chapter 4, Administrative Procedures Act, and any other provision of law to the contrary notwithstanding, if the executive director finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, the executive director, with the concurrence of the governor, shall order

persons causing or contributing to the air pollution to reduce or discontinue immediately the emission of air pollutants.

(b) The order shall fix a place and time, not later than 24 hours after its issuance, for a hearing to be held before the governor.

(c) Not more than 24 hours after the commencement of this hearing, and without adjournment of it, the governor shall affirm, modify, or set aside the order of the executive director.

(2)

(a) In the absence of a generalized condition of air pollution referred to in Subsection (1), but if the executive director finds that emissions from the operation of one or more air pollutant sources is causing imminent danger to human health or safety, the executive director may commence adjudicative proceedings under Section 63G-4-502.

(b) Notwithstanding Section 19-1-301 or 19-1-301.5, the executive director may conduct the emergency adjudicative proceeding in place of an administrative law judge.

(3) Nothing in this section limits any power that the governor or any other officer has to declare an emergency and act on the basis of that declaration.

Amended by Chapter 154, 2015 General Session

19-2-113 Variances -- Judicial review.

(1)

(a) A person who owns or is in control of a plant, building, structure, establishment, process, or equipment may apply to the board for a variance from its rules.

(b) The board may grant the requested variance following an announced public meeting, if it finds, after considering the endangerment to human health and safety and other relevant factors, that compliance with the rules from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(2) A variance may not be granted under this section until the board has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public.

(3) A variance or renewal of a variance shall be granted within the requirements of Subsection (1) and for time periods and under conditions consistent with the reasons for it, and within the following limitations:

(a) if the variance is granted on the grounds that there are no practicable means known or available for the adequate prevention, abatement, or control of the air pollution involved, it shall be only until the necessary means for prevention, abatement, or control become known and available, and subject to the taking of any substitute or alternate measures that the board may prescribe;

(b)

(i) if the variance is granted on the grounds that compliance with the requirements from which variance is sought will require that measures, because of their extent or cost, must be spread over a long period of time, the variance shall be granted for a reasonable time that, in the view of the board, is required for implementation of the necessary measures; and

(ii) a variance granted on this ground shall contain a timetable for the implementation of remedial measures in an expeditious manner and shall be conditioned on adherence to the timetable; or

(c) if the variance is granted on the ground that it is necessary to relieve or prevent hardship of

a kind other than that provided for in Subsection (3)(a) or (b), it may not be granted for more than one year.

(4)

(a) A variance granted under this section may be renewed on terms and conditions and for periods that would be appropriate for initially granting a variance.

(b) If a complaint is made to the board because of the variance, a renewal may not be granted unless, following an announced public meeting, the board finds that renewal is justified.

(c) To receive a renewal, an applicant shall submit a request for agency action to the board requesting a renewal.

(d) Immediately upon receipt of an application for renewal, the board shall give public notice of the application as required by its rules.

(5)

(a) A variance or renewal is not a right of the applicant or holder but may be granted at the board's discretion.

(b) A person aggrieved by the board's decision may obtain judicial review.

(c) Venue for judicial review of informal adjudicative proceedings is in the district court in which the air pollutant source is situated.

(6)

(a) The board may review a variance during the term for which it was granted.

(b) The review procedure is the same as that for an original application.

(c) The variance may be revoked upon a finding that:

(i) the nature or amount of emission has changed or increased; or

(ii) if facts existing at the date of the review had existed at the time of the original application, the variance would not have been granted.

(7) Nothing in this section and no variance or renewal granted pursuant to it shall be construed to prevent or limit the application of the emergency provisions and procedures of Section 19-2-112 to a person or property.

Amended by Chapter 154, 2015 General Session

19-2-114 Activities not in violation of chapter or rules.

The following are not a violation of this chapter or of a rule made under it:

(1) burning incident to horticultural or agricultural operations of:

(a) prunings from trees, bushes, and plants; or

(b) dead or diseased trees, bushes, and plants, including stubble;

(2) burning of weed growth along ditch banks incident to clearing these ditches for irrigation purposes;

(3) controlled heating of orchards or other crops to lessen the chances of their being frozen so long as the emissions from this heating do not violate minimum standards set by the board; and

(4) the controlled burning of not more than two structures per year by an organized and operating fire department for the purpose of training fire service personnel when the United States Weather Service clearing index for the area where the burn is to occur is above 500.

Amended by Chapter 154, 2015 General Session

19-2-115 Violations -- Penalties -- Reimbursement for expenses.

(1) As used in this section, the terms "knowingly," "willfully," and "criminal negligence" shall mean as defined in Section 76-2-103.

(2)

(a) A person who violates this chapter, or any rule, order, or permit issued or made under this chapter is subject in a civil proceeding to a penalty not to exceed $10,000 per day for each violation.

(b) Subsection (2)(a) also applies to rules made under the authority of Section 19-2-104, for implementation of 15 U.S.C.A. 2601 et seq., Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response.

(c) Penalties assessed for violations described in 15 U.S.C.A. 2647, Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response, may not exceed the amounts specified in that section and shall be used in accordance with that section.

(3) A person is guilty of a class A misdemeanor and is subject to imprisonment under Section 76-3-204 and a fine of not more than $25,000 per day of violation if that person knowingly violates any of the following under this chapter:

(a) an applicable standard or limitation;

(b) a permit condition; or

(c) a fee or filing requirement.

(4) A person is guilty of a third degree felony and is subject to imprisonment under Section 76-3-203 and a fine of not more than $25,000 per day of violation who knowingly:

(a) makes any false material statement, representation, or certification, in any notice or report required by permit; or

(b) renders inaccurate any monitoring device or method required to be maintained by this chapter or applicable rules made under this chapter.

(5) Any fine or penalty assessed under Subsections (2) or (3) is in lieu of any penalty under Section 19-2-109.1.

(6) A person who willfully violates Section 19-2-120 is guilty of a class A misdemeanor.

(7) A person who knowingly violates any requirement of an applicable implementation plan adopted by the board, more than 30 days after having been notified in writing by the director that the person is violating the requirement, knowingly violates an order issued under Subsection 19-2-110(1), or knowingly handles or disposes of asbestos in violation of a rule made under this chapter is guilty of a third degree felony and subject to imprisonment under Section 76-3-203 and a fine of not more than $25,000 per day of violation in the case of the first offense, and not more than $50,000 per day of violation in the case of subsequent offenses.

(8)

(a) As used in this section:

(i) "Hazardous air pollutant" means any hazardous air pollutant listed under 42 U.S.C. Sec. 7412 or any extremely hazardous substance listed under 42 U.S.C. Sec. 11002(a)(2).

(ii) "Organization" means a legal entity, other than a government, established or organized for any purpose, and includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

(iii) "Serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(b)

(i) A person is guilty of a class A misdemeanor and subject to imprisonment under Section 76-3-204 and a fine of not more than $25,000 per day of violation if that person with criminal negligence:

(A) releases into the ambient air any hazardous air pollutant; and

(B) places another person in imminent danger of death or serious bodily injury.

(ii) As used in this Subsection (8)(b), "person" does not include an employee who is carrying out the employee's normal activities and who is not a part of senior management personnel or a corporate officer.

(c) A person is guilty of a second degree felony and is subject to imprisonment under Section 76-3-203 and a fine of not more than $50,000 per day of violation if that person:

(i) knowingly releases into the ambient air any hazardous air pollutant; and

(ii) knows at the time that the person is placing another person in imminent danger of death or serious bodily injury.

(d) If a person is an organization, it shall, upon conviction of violating Subsection (8)(c), be subject to a fine of not more than $1,000,000.

(e)

(i) A defendant who is an individual is considered to have acted knowingly under Subsections (8)(c) and (d), if:

(A) the defendant's conduct placed another person in imminent danger of death or serious bodily injury; and

(B) the defendant was aware of or believed that there was an imminent danger of death or serious bodily injury to another person.

(ii) Knowledge possessed by a person other than the defendant may not be attributed to the defendant.

(iii) Circumstantial evidence may be used to prove that the defendant possessed actual knowledge, including evidence that the defendant took affirmative steps to be shielded from receiving relevant information.

(f)

(i) It is an affirmative defense to prosecution under this Subsection (8) that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of:

(A) an occupation, a business, a profession; or

(B) medical treatment or medical or scientific experimentation conducted by professionally approved methods and the other person was aware of the risks involved prior to giving consent.

(ii) The defendant has the burden of proof to establish any affirmative defense under this Subsection (8)(f) and shall prove that defense by a preponderance of the evidence.

(9)

(a) Except as provided in Subsection (9)(b), and unless prohibited by federal law, all penalties assessed and collected under the authority of this section shall be deposited in the General Fund.

(b) The department may reimburse itself and local governments from money collected from civil penalties for extraordinary expenses incurred in environmental enforcement activities.

(c) The department shall regulate reimbursements by making rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

(i) define qualifying environmental enforcement activities; and
(ii) define qualifying extraordinary expenses.

Amended by Chapter 360, 2012 General Session

19-2-116 Injunction or other remedies to prevent violations -- Civil actions not abridged.
(1) Action under Section 19-2-115 does not bar enforcement of this chapter, or any of the rules adopted under it or any orders made under it by injunction or other appropriate remedy. The director has the power to institute and maintain in the name of the state any and all enforcement proceedings.
(2) This chapter does not abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of any person to damages or other relief on account of injury to persons or property and to maintain any action or other appropriate proceeding for this purpose.
(3)
(a) In addition to any other remedy created in this chapter, the director may initiate an action for appropriate injunctive relief:
(i) upon failure of any person to comply with:
(A) any provision of this chapter;
(B) any rule adopted under this chapter; or
(C) any final order made by the board, the director, or the executive director; and
(ii) when it appears necessary for the protection of health and welfare.
(b) The attorney general shall bring injunctive relief actions on request.
(c) A bond is not required.

Amended by Chapter 360, 2012 General Session

19-2-117 Attorney general as legal advisor to board -- Duties of attorney general and county attorneys.
(1) Except as provided in Section 63G-7-902, the attorney general is the legal advisor to the board and the director and shall defend them or any of them in all actions or proceedings brought against them or any of them.
(2) The county attorney in the county in which a cause of action arises may, upon request of the board or the director, bring an action, civil or criminal, to abate a condition which exists in violation of, or to prosecute for the violation of or to enforce, this chapter or the standards, orders, or rules of the board or the director issued under this chapter.
(3) The director may bring an action and be represented by the attorney general.
(4) In the event a person fails to comply with a cease and desist order of the board or the director that is not subject to a stay pending administrative or judicial review, the director may initiate an action for, and is entitled to, injunctive relief to prevent any further or continued violation of the order.

Amended by Chapter 154, 2015 General Session

19-2-118 Violation of injunction evidence of contempt.
Failure to comply with the terms of any injunction issued under this chapter is prima facie evidence of contempt which is punishable as for other civil contempts.

Renumbered and Amended by Chapter 112, 1991 General Session

19-2-119 Civil or criminal remedies not excluded -- Actionable rights under chapter -- No liability for acts of God or other catastrophes.
(1) Existing civil or criminal remedies for a wrongful action that is a violation of the law are not excluded by this chapter.
(2) Except as provided in Sections 19-1-301 and 19-1-301.5, and rules implementing those provisions, persons other than the state or the board do not acquire actionable rights by virtue of this chapter.
(3) The liabilities imposed for violation of this chapter are not imposed for a violation caused by an act of God, war, strike, riot, or other catastrophe.

Amended by Chapter 154, 2015 General Session

19-2-120 Information required of owners or operators of air pollutant sources.
The owner or operator of a stationary air pollutant source in the state shall furnish to the director the reports required by rules made in accordance with Section 19-2-104 and any other information the director finds necessary to determine whether the source is in compliance with state and federal regulations and standards. The information shall be correlated with applicable emission standards or limitations and shall be available to the public during normal business hours at the office of the division.

Amended by Chapter 154, 2015 General Session

19-2-121 Ordinances of political subdivisions authorized.
Any political subdivision of the state may enact and enforce ordinances to control air pollution that are consistent with this chapter.

Renumbered and Amended by Chapter 112, 1991 General Session

19-2-122 Cooperative agreements between political subdivisions and department.
(1) A political subdivision of the state may enter into and perform, with other political subdivisions of the state or with the department, contracts and agreements as they find proper for establishing, planning, operating, and financing air pollution programs.
(2) The agreements may provide for an agency to:
(a) supervise and operate an air pollution program;
(b) prescribe the agency's powers and duties; and
(c) fix the compensation of the agency's members and employees.

Amended by Chapter 154, 2015 General Session

19-2-128 Air Quality Policy Advisory Board created -- Composition -- Responsibility -- Terms of office -- Compensation.
(1) There is created the Air Quality Policy Advisory Board consisting of the following 10 voting members:

(a) two members of the Senate, appointed by the president of the Senate;
(b) three members of the House of Representatives, appointed by the speaker of the House of Representatives;
(c) the director;
(d) one representative of industry interests, appointed by the president of the Senate;
(e) one representative of business or economic development interests, appointed by the speaker of the House of Representatives, who has expertise in air quality matters;
(f) one representative of the academic community, appointed by the governor, who has expertise in air quality matters; and
(g) one representative of a nongovernmental organization, appointed by the governor, who:
(i) represents community interests;
(ii) does not represent industry or business interests; and
(iii) has expertise in air quality matters.

(2) The Air Quality Policy Advisory Board shall:
(a) seek the best available science to identify legislative actions to improve air quality;
(b) identify and prioritize potential legislation and funding that will improve air quality; and
(c) make recommendations to the Legislature on how to improve air quality in the state.

(3)
(a) Except as required by Subsection (3)(b), members appointed under Subsections (1)(d), (e), (f), and (g) are appointed to serve four-year terms.
(b) Notwithstanding the requirements of Subsection (3)(a), the governor, president of the Senate, and speaker of the House of Representatives shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of members are staggered so that approximately half of the advisory board is appointed every two years.
(c) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(4) The advisory board shall elect one member to serve as chair of the advisory board for a term of one year.

(5) Compensation for a member of the advisory board who is a legislator shall be paid in accordance with Section 36-2-2 and Legislative Joint Rules, Title 5, Chapter 3, Legislator Compensation.

(6) A member of the advisory board who is not a legislator may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
(a) Section 63A-3-106;
(b) Section 63A-3-107; and
(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(7) The department shall provide staff support for the advisory board.

Enacted by Chapter 140, 2017 General Session

19-2-129 Gasoline vapor recovery -- Penalties.

(1) As used in this section:
(a) "Gasoline cargo tank" means a tank that:
(i) is intended to hold gasoline;
(ii) has a capacity of 1,000 gallons or more; and

(iii) is attached to or intended to be drawn by a motor vehicle.

(b) "Operator" means an individual who controls a motor vehicle:

(i) to which a gasoline cargo tank is attached; or

(ii) that draws a gasoline cargo tank.

(c) "Underground storage tank" means the same as that term is defined in Section 19-6-102.

(2) The operator of a gasoline cargo tank shall comply with requirements of this section if the operator:

(a) permits the loading of gasoline into the gasoline cargo tank; or

(b) loads an underground storage tank with gasoline from the gasoline cargo tank.

(3) Except as provided in Subsection (6), the operator of a gasoline cargo tank may permit the loading of gasoline into a tank described in Subsection (2) or load an underground storage tank with gasoline from the gasoline cargo tank described in Subsection (1) only if:

(a) emissions from the tank that dispenses 10,000 gallons or more in any one calendar month are controlled by the use of:

(i) a properly installed and maintained vapor collection and control system that is equipped with fittings that:

(A) make a vapor-tight connection; and

(B) prevent the release of gasoline vapors by automatically closing upon disconnection; and

(ii) submerged filling or bottom filling methods; and

(b) the resulting vapor emitted into the air does not exceed the levels described in Subsection (4).

(4) Vapor emitted into the air as a result of the loading of a tank under Subsection (3) may not exceed 0.640 pounds per 1,000 gallons transferred.

(5)

(a) The department may fine an operator who violates this section:

(i) up to $1,000 for a first offense; or

(ii) up to $2,000 for a second offense.

(b) An operator who violates this section is guilty of a class C misdemeanor for a third or subsequent offense.

(6) If a facility at which an underground storage tank is located does not have the equipment necessary for an operator of a gasoline cargo tank to comply with Subsection (3), the operator is excused from the requirements of Subsections (3) and (4) and may not be fined or penalized under Subsection (5).

Enacted by Chapter 395, 2017 General Session

Part 2
Clean Air Retrofit, Replacement, and Off-road Technology Program

19-2-201 Title.

This part is known as the "Clean Air Retrofit, Replacement, and Off-road Technology Program."

Enacted by Chapter 295, 2014 General Session

19-2-202 Definitions.

As used in this part:

(1) "Board" means the Air Quality Board.

(2) "Certified" means certified by the United States Environmental Protection Agency or the California Air Resources Board to meet appropriate emission standards.

(3) "Cost" means the total reasonable cost of a project eligible for a grant under the fund, including the cost of labor.

(4) "Director" means the director of the Division of Air Quality.

(5) "Division" means the Division of Air Quality, created in Subsection 19-1-105(1)(a).

(6) "Eligible equipment" means equipment with engines, including stationary generators and pumps, operated and, if applicable, permitted in Utah.

(7) "Eligible vehicle" means a vehicle operated and, if applicable, registered in Utah that is:

(a) a medium-duty or heavy-duty transit bus;

(b) a school bus as defined in Section 53-3-102;

(c) a medium-duty or heavy-duty truck with a gross vehicle weight rating of at least 16,001 GVWR;

(d) a locomotive; or

(e) another type of vehicle identified by the board in rule as being a significant potential source of air pollution, as defined in Section 19-2-102.

(8) "Verified" means verified by the United States Environmental Protection Agency or the California Air Resources Board to reduce air emissions and meet durability requirements.

Amended by Chapter 321, 2016 General Session

19-2-203 Grants and programs -- Conditions.

(1) The director may make grants for implementing:

(a) verified technologies for eligible vehicles or equipment; and

(b) certified vehicles, engines, or equipment.

(2)

(a) The division may develop programs, including exchange, rebate, or low-cost purchase programs, to encourage replacement of:

(i) landscaping and maintenance equipment with equipment that is lower in emissions; and

(ii) other equipment or products identified by the board in rule as being a significant potential source of air pollution, as defined in Subsection 19-2-102(3).

(b) The division may enter into agreements with local health departments to administer the programs described in Subsection (2)(a).

(3) As a condition for receiving the grant, a person receiving a grant under Subsection (1) or receiving a grant under this Subsection (3) shall agree to:

(a) provide information to the division about the vehicles, equipment, or technology acquired with the grant proceeds;

(b) allow inspections by the division to ensure compliance with the terms of the grant;

(c) permanently disable replaced vehicles, engines, and equipment from use; and

(d) comply with the conditions for the grant.

(4) Grants and programs under Subsections (1) and (2) may be administered using a rebate program.

(5) Grants issued under this section may not exceed the actual cost of the project.

Enacted by Chapter 295, 2014 General Session

19-2-204 Duties and authorities -- Rulemaking.
(1) The board may, by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules:
(a) specifying the amount of money to be dedicated annually for grants;
(b) specifying criteria the director shall consider in prioritizing and awarding grants, including:
(i) a preference for awarding a grant to an individual who has already secured some other source of funding; and
(ii) a limitation on the types of vehicles that are eligible for funds;
(c) specifying the terms of a grant or exchange under Subsections 19-2-203(2), (3), and (4);
(d) specifying the procedures to be used in the grant and exchange programs authorized in Subsections 19-2-203(2), (3), and (5); and
(e) requiring all grant applicants to apply on forms provided by the division.
(2) The division shall:
(a) administer funds to encourage vehicle and equipment owners and operators to reduce emissions from vehicles and equipment;
(b) provide forms for application for a grant or exchange under Subsection 19-2-203(2) or (3); and
(c) provide information about which vehicles, engines, or equipment are certified and which technology is verified as provided in this part.
(3) The division may inspect vehicles, equipment, or technology for which a grant was made to ensure compliance with the terms of the grant.

Enacted by Chapter 295, 2014 General Session

Part 3
Conversion to Alternative Fuel Grant Program

19-2-301 Title.
This part is known as the "Conversion to Alternative Fuel Grant Program."

Enacted by Chapter 381, 2015 General Session

19-2-302 Definitions.
As used in this part:
(1) "Air quality standards" means vehicle emission standards equal to or greater than the standards established in bin 4 in Table S04-1 of 40 C.F.R. 86.1811-04(c)(6).
(2) "Alternative fuel" means:
(a) propane, natural gas, or electricity; or
(b) other fuel that the board determines, by rule, to be:
(i) at least as effective in reducing air pollution as the fuels listed in Subsection (2)(a); or

(ii) substantially more effective in reducing air pollution as the fuel for which the engine was originally designed.

(3) "Board" means the Air Quality Board.

(4) "Clean fuel grant" means a grant awarded under this part from the Conversion to Alternative Fuel Grant Program Fund created in Section 19-1-403.3 for reimbursement for a portion of the incremental cost of an OEM vehicle or the cost of conversion equipment.

(5) "Conversion equipment" means equipment designed to:

(a) allow an eligible vehicle to operate on an alternative fuel; and

(b) reduce an eligible vehicle's emissions of regulated pollutants, as demonstrated by:

(i) certification of the conversion equipment by the Environmental Protection Agency or by a state or country that has certification standards that are recognized, by rule, by the board;

(ii) testing the eligible vehicle, before and after the installation of the equipment, in accordance with 40 C.F.R. Part 86, Control of Emissions from New and In-Use Highway Vehicles and Engines, using all fuel the motor vehicle is capable of using;

(iii) for a retrofit natural gas vehicle that is retrofit in accordance with Section 19-1-406, satisfying the emission standards described in Section 19-1-406; or

(iv) any other test or standard recognized by board rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(6) "Cost" means the total reasonable cost of a conversion kit and the paid labor, if any, required to install it.

(7) "Director" means the director of the Division of Air Quality.

(8) "Division" means the Division of Air Quality, created in Subsection 19-1-105(1)(a).

(9) "Eligible vehicle" means a:

(a) commercial vehicle, as defined in Section 41-1a-102;

(b) farm tractor, as defined in Section 41-1a-102; or

(c) motor vehicle, as defined in Section 41-1a-102.

Amended by Chapter 369, 2016 General Session

19-2-303 Grants and programs -- Conditions.

(1) The director may make grants from the Conversion to Alternative Fuel Grant Program Fund created in Section 19-1-403.3 to a person who installs conversion equipment on an eligible vehicle as described in this part.

(2) A person who installs conversion equipment on an eligible vehicle:

(a) may apply to the division for a grant to offset the cost of installation; and

(b) shall pass along any savings on the cost of conversion equipment to the owner of the eligible vehicle being converted in the amount of grant money received.

(3) As a condition for receiving the grant, a person who installs conversion equipment shall agree to:

(a) provide information to the division about the eligible vehicle to be converted with the grant proceeds;

(b) allow inspections by the division to ensure compliance with the terms of the grant; and

(c) comply with the conditions for the grant.

(4) A grant issued under this section may not exceed the lesser of 50% of the cost of the conversion system and associated labor, or $2,500, per converted eligible vehicle.

Amended by Chapter 369, 2016 General Session

19-2-304 Duties and authorities -- Rulemaking.

(1) The board may, by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules:

(a) specifying the amount of money to be dedicated annually for grants under this part;

(b) specifying criteria the director shall consider in prioritizing and awarding grants, including a limitation on the types of vehicles that are eligible for funds;

(c) specifying the minimum qualifications of a person who:

(i) installs conversion equipment on an eligible vehicle; and

(ii) receives a grant from the division;

(d) specifying the terms of a grant; and

(e) requiring all grant applicants to apply on forms provided by the division.

(2) The division shall:

(a) administer the Conversion to Alternative Fuel Grant Program Fund to encourage eligible vehicle owners to reduce emissions from eligible vehicles; and

(b) provide information about which conversion technology meets the requirements of this part.

(3) The division may inspect vehicles for which a grant was made to ensure compliance with the terms of the grant.

Amended by Chapter 369, 2016 General Session

19-2-305 Limitation on applying for a tax credit.

An owner of an eligible vehicle who receives the savings on the cost of conversion equipment, as described in Subsection 19-2-303(2)(b), may not claim a tax credit for the conversion under Section 59-7-605 or 59-10-1009 unless the savings are less than the tax credit authorized by those sections, in which case the owner may claim a tax credit in the amount of the difference.

Enacted by Chapter 381, 2015 General Session

Chapter 3
Utah Administrative Rulemaking Act

Part 1
General Provisions

63G-3-101 Title.

This chapter is known as the "Utah Administrative Rulemaking Act."

Renumbered and Amended by Chapter 382, 2008 General Session

63G-3-102 Definitions.

As used in this chapter:

(1) "Administrative record" means information an agency relies upon when making a rule under this chapter including:

(a) the proposed rule, change in the proposed rule, and the rule analysis form;

(b) the public comment received and recorded by the agency during the public comment period;

(c) the agency's response to the public comment;

(d) the agency's analysis of the public comment; and

(e) the agency's report of its decision-making process.

(2) "Agency" means each state board, authority, commission, institution, department, division, officer, or other state government entity other than the Legislature, its committees, the political subdivisions of the state, or the courts, which is authorized or required by law to make rules, adjudicate, grant or withhold licenses, grant or withhold relief from legal obligations, or perform other similar actions or duties delegated by law.

(3) "Bulletin" means the Utah State Bulletin.

(4) "Catchline" means a short summary of each section, part, rule, or title of the code that follows the section, part, rule, or title reference placed before the text of the rule and serves the same function as boldface in legislation as described in Section 68-3-13.

(5) "Code" means the body of all effective rules as compiled and organized by the division and entitled "Utah Administrative Code."

(6) "Department" means the Department of Administrative Services created in Section 63A-1-104.

(7) "Effective" means operative and enforceable.

(8) "Executive director" means the executive director of the department.

(9)

(a) "File" means to submit a document to the office as prescribed by the department.

(b) "Filing date" means the day and time the document is recorded as received by the office.

(10) "Interested person" means any person affected by or interested in a proposed rule, amendment to an existing rule, or a nonsubstantive change made under Section 63G-3-402.

(11) "Office" means the Office of Administrative Rules created in Section 63G-3-401.

(12) "Order" means an agency action that determines the legal rights, duties, privileges, immunities, or other interests of one or more specific persons, but not a class of persons.

(13) "Person" means any individual, partnership, corporation, association, governmental entity,

or public or private organization of any character other than an agency.
(14) "Publication" or "publish" means making a rule available to the public by including the rule or a summary of the rule in the bulletin.
(15) "Publication date" means the inscribed date of the bulletin.
(16) "Register" may include an electronic database.
(17)
(a) "Rule" means an agency's written statement that:
(i) is explicitly or implicitly required by state or federal statute or other applicable law;
(ii) implements or interprets a state or federal legal mandate; and
(iii) applies to a class of persons or another agency.
(b) "Rule" includes the amendment or repeal of an existing rule.
(c) "Rule" does not mean:
(i) orders;
(ii) an agency's written statement that applies only to internal management and that does not restrict the legal rights of a public class of persons or another agency;
(iii) the governor's executive orders or proclamations;
(iv) opinions issued by the attorney general's office;
(v) declaratory rulings issued by the agency according to Section 63G-4-503 except as required by Section 63G-3-201;
(vi) rulings by an agency in adjudicative proceedings, except as required by Subsection 63G-3-201(6); or
(vii) an agency written statement that is in violation of any state or federal law.
(18) "Rule analysis" means the format prescribed by the department to summarize and analyze rules.
(19) "Small business" means a business employing fewer than 50 persons.
(20) "Substantive change" means a change in a rule that affects the application or results of agency actions.

Amended by Chapter 193, 2016 General Session

Part 2
Circumstances Requiring Rulemaking - Status of Administrative Rules

63G-3-201 When rulemaking is required.
(1) Each agency shall:
(a) maintain a current version of its rules; and
(b) make it available to the public for inspection during its regular business hours.
(2) In addition to other rulemaking required by law, each agency shall make rules when agency action:
(a) authorizes, requires, or prohibits an action;
(b) provides or prohibits a material benefit;
(c) applies to a class of persons or another agency; and
(d) is explicitly or implicitly authorized by statute.
(3) Rulemaking is also required when an agency issues a written interpretation of a state or federal legal mandate.

(4) Rulemaking is not required when:

(a) agency action applies only to internal agency management, inmates or residents of a state correctional, diagnostic, or detention facility, persons under state legal custody, patients admitted to a state hospital, members of the state retirement system, or students enrolled in a state education institution;

(b) a standardized agency manual applies only to internal fiscal or administrative details of governmental entities supervised under statute;

(c) an agency issues policy or other statements that are advisory, informative, or descriptive, and do not conform to the requirements of Subsections (2) and (3); or

(d) an agency makes nonsubstantive changes in a rule, except that the agency shall file all nonsubstantive changes in a rule with the office.

(5)

(a) A rule shall enumerate any penalty authorized by statute that may result from its violation, subject to Subsections (5)(b) and (c).

(b) A violation of a rule may not be subject to the criminal penalty of a class C misdemeanor or greater offense, except as provided under Subsection (5)(c).

(c) A violation of a rule may be subject to a class C misdemeanor or greater criminal penalty under Subsection (5)(a) when:

(i) authorized by a specific state statute;

(ii) a state law and programs under that law are established in order for the state to obtain or maintain primacy over a federal program; or

(iii) state civil or criminal penalties established by state statute regarding the program are equivalent to or less than corresponding federal civil or criminal penalties.

(6) Each agency shall enact rules incorporating the principles of law not already in its rules that are established by final adjudicative decisions within 120 days after the decision is announced in its cases.

(7)

(a) Each agency may enact a rule that incorporates by reference:

(i) all or any part of another code, rule, or regulation that has been adopted by a federal agency, an agency or political subdivision of this state, an agency of another state, or by a nationally recognized organization or association;

(ii) state agency implementation plans mandated by the federal government for participation in the federal program;

(iii) lists, tables, illustrations, or similar materials that are subject to frequent change, fully described in the rule, and are available for public inspection; or

(iv) lists, tables, illustrations, or similar materials that the executive director or the executive director’s designee determines are too expensive to reproduce in the administrative code.

(b) Rules incorporating materials by reference shall:

(i) be enacted according to the procedures outlined in this chapter;

(ii) state that the referenced material is incorporated by reference;

(iii) state the date, issue, or version of the material being incorporated; and

(iv) define specifically what material is incorporated by reference and identify any agency deviations from it.

(c) The agency shall identify any substantive changes in the material incorporated by reference by following the rulemaking procedures of this chapter.

(d) The agency shall maintain a complete and current copy of the referenced material

available for public review at the agency and at the office.

(8)

(a) This chapter is not intended to inhibit the exercise of agency discretion within the limits prescribed by statute or agency rule.

(b) An agency may enact a rule creating a justified exception to a rule.

(9) An agency may obtain assistance from the attorney general to ensure that its rules meet legal and constitutional requirements.

Amended by Chapter 181, 2017 General Session

63G-3-202 Rules having the effect of law.

(1) An agency's written statement is a rule if it conforms to the definition of a rule under Section 63G-3-102, but the written statement is not enforceable unless it is made as a rule in accordance with the requirements of this chapter.

(2) An agency's written statement that is made as a rule in accordance with the requirements of this chapter is enforceable and has the effect of law.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 3
Rulemaking Procedures

63G-3-301 Rulemaking procedure.

(1) An agency authorized to make rules is also authorized to amend or repeal those rules.

(2) Except as provided in Sections 63G-3-303 and 63G-3-304, when making, amending, or repealing a rule agencies shall comply with:

(a) the requirements of this section;

(b) consistent procedures required by other statutes;

(c) applicable federal mandates; and

(d) rules made by the department to implement this chapter.

(3) Subject to the requirements of this chapter, each agency shall develop and use flexible approaches in drafting rules that meet the needs of the agency and that involve persons affected by the agency's rules.

(4)

(a) Each agency shall file its proposed rule and rule analysis with the office.

(b) Rule amendments shall be marked with new language underlined and deleted language struck out.

(c)

(i) The office shall publish the information required under Subsection (8) on the rule analysis and the text of the proposed rule in the next issue of the bulletin.

(ii) For rule amendments, only the section or subsection of the rule being amended need be printed.

(iii) If the executive director or the executive director's designee determines that the rule is too long to publish, the office shall publish the rule analysis and shall publish the rule by reference to a copy on file with the office.

(5) Before filing a rule with the office, the agency shall conduct a thorough analysis, consistent with the criteria established by the Governor's Office of Management and Budget, of the fiscal impact a rule may have on businesses, which criteria may include:

(a) the type of industries that will be impacted by the rule, and for each identified industry, an estimate of the total number of businesses within the industry, and an estimate of the number of those businesses that are small businesses;

(b) the individual fiscal impact that would incur to a typical business for a one-year period;

(c) the aggregated total fiscal impact that would incur to all businesses within the state for a one-year period;

(d) the total cost that would incur to all impacted entities over a five-year period; and

(e) the department head's comments on the analysis.

(6) If the agency reasonably expects that a proposed rule will have a measurable negative fiscal impact on small businesses, the agency shall consider, as allowed by federal law, each of the following methods of reducing the impact of the rule on small businesses:

(a) establishing less stringent compliance or reporting requirements for small businesses;

(b) establishing less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

(c) consolidating or simplifying compliance or reporting requirements for small businesses;

(d) establishing performance standards for small businesses to replace design or operational standards required in the proposed rule; and

(e) exempting small businesses from all or any part of the requirements contained in the proposed rule.

(7) If during the public comment period an agency receives comment that the proposed rule will cost small business more than one day's annual average gross receipts, and the agency had not previously performed the analysis in Subsection (6), the agency shall perform the analysis described in Subsection (6).

(8) The rule analysis shall contain:

(a) a summary of the rule or change;

(b) the purpose of the rule or reason for the change;

(c) the statutory authority or federal requirement for the rule;

(d) the anticipated cost or savings to:

(i) the state budget;

(ii) local governments;

(iii) small businesses; and

(iv) persons other than small businesses, businesses, or local governmental entities;

(e) the compliance cost for affected persons;

(f) how interested persons may review the full text of the rule;

(g) how interested persons may present their views on the rule;

(h) the time and place of any scheduled public hearing;

(i) the name and telephone number of an agency employee who may be contacted about the rule;

(j) the name of the agency head or designee who authorized the rule;

(k) the date on which the rule may become effective following the public comment period;

(l) the agency's analysis on the fiscal impact of the rule as required under Subsection (5);

(m) any additional comments the department head may choose to submit regarding the fiscal impact the rule may have on businesses; and

(n) if applicable, a summary of the agency's efforts to comply with the requirements of Subsection (6).

(9)

(a) For a rule being repealed and reenacted, the rule analysis shall contain a summary that generally includes the following:

(i) a summary of substantive provisions in the repealed rule which are eliminated from the enacted rule; and

(ii) a summary of new substantive provisions appearing only in the enacted rule.

(b) The summary required under this Subsection (9) is to aid in review and may not be used to contest any rule on the ground of noncompliance with the procedural requirements of this chapter.

(10) A copy of the rule analysis shall be mailed to all persons who have made timely request of the agency for advance notice of its rulemaking proceedings and to any other person who, by statutory or federal mandate or in the judgment of the agency, should also receive notice.

(11)

(a) Following the publication date, the agency shall allow at least 30 days for public comment on the rule.

(b) The agency shall review and evaluate all public comments submitted in writing within the time period under Subsection (11)(a) or presented at public hearings conducted by the agency within the time period under Subsection (11)(a).

(12)

(a) Except as provided in Sections 63G-3-303 and 63G-3-304, a proposed rule becomes effective on any date specified by the agency that is no fewer than seven calendar days after the close of the public comment period under Subsection (11), nor more than 120 days after the publication date.

(b) The agency shall provide notice of the rule's effective date to the office in the form required by the department.

(c) The notice of effective date may not provide for an effective date prior to the date it is received by the office.

(d) The office shall publish notice of the effective date of the rule in the next issue of the bulletin.

(e) A proposed rule lapses if a notice of effective date or a change to a proposed rule is not filed with the office within 120 days of publication.

(13)

(a) As used in this Subsection (13), "initiate rulemaking proceedings" means the filing, for the purposes of publication in accordance with Subsection (4), of an agency's proposed rule that is required by state statute.

(b) A state agency shall initiate rulemaking proceedings no later than 180 days after the effective date of the statutory provision that specifically requires the rulemaking, except under Subsection (13)(c).

(c) When a statute is enacted that requires agency rulemaking and the affected agency already has rules in place that meet the statutory requirement, the agency shall submit the rules to the Administrative Rules Review Committee for review within 60 days after the statute requiring the rulemaking takes effect.

(d) If a state agency does not initiate rulemaking proceedings in accordance with the time requirements in Subsection (13)(b), the state agency shall appear before the legislative

Administrative Rules Review Committee and provide the reasons for the delay.

Amended by Chapter 255, 2017 General Session

63G-3-302 Public hearings.

(1) Each agency may hold a public hearing on a proposed rule, amendment to a rule, or repeal of a rule during the public comment period.

(2) Each agency shall hold a public hearing on a proposed rule, amendment to a rule, or repeal of a rule if:

(a) a public hearing is required by state or federal mandate;

(b)

(i) another state agency, 10 interested persons, or an interested association having not fewer than 10 members request a public hearing; and

(ii) the agency receives the request in writing not more than 15 days after the publication date of the proposed rule.

(3) The agency shall hold the hearing:

(a) before the rule becomes effective; and

(b) no less than seven days nor more than 30 days after receipt of the request for hearing.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-3-303 Changes in rules.

(1)

(a) To change a proposed rule already published in the bulletin, an agency shall file with the office:

(i) the text of the changed rule; and

(ii) a rule analysis containing a description of the change and the information required by Section 63G-3-301.

(b) A change to a proposed rule may not be filed more than 120 days after publication of the rule being changed.

(c) The office shall publish the rule analysis for the changed rule in the bulletin.

(d) The changed proposed rule and its associated proposed rule will become effective on a date specified by the agency, not less than 30 days or more than 120 days after publication of the last change in proposed rule.

(e) A changed proposed rule and its associated proposed rule lapse if a notice of effective date or another change to a proposed rule is not filed with the office within 120 days of publication of the last change in proposed rule.

(2) If the rule change is nonsubstantive:

(a) the agency need not comply with the requirements of Subsection (1); and

(b) the agency shall notify the office of the change in writing.

(3) If the rule is effective, the agency shall amend the rule according to the procedures specified in Section 63G-3-301.

Amended by Chapter 193, 2016 General Session

63G-3-304 Emergency rulemaking procedure.

(1) All agencies shall comply with the rulemaking procedures of Section 63G-3-301 unless an agency finds that these procedures would:

(a) cause an imminent peril to the public health, safety, or welfare;

(b) cause an imminent budget reduction because of budget restraints or federal requirements; or

(c) place the agency in violation of federal or state law.

(2)

(a) When finding that its rule is excepted from regular rulemaking procedures by this section, the agency shall file with the office:

(i) the text of the rule; and

(ii) a rule analysis that includes the specific reasons and justifications for its findings.

(b) The office shall publish the rule in the bulletin as provided in Subsection 63G-3-301(4).

(c) The agency shall notify interested persons as provided in Subsection 63G-3-301(10).

(d) The rule becomes effective for a period not exceeding 120 days on the date of filing or any later date designated in the rule.

(3) If the agency intends the rule to be effective beyond 120 days, the agency shall also comply with the procedures of Section 63G-3-301.

Amended by Chapter 193, 2016 General Session

63G-3-305 Agency review of rules -- Schedule of filings -- Limited exemption for certain rules.

(1) Each agency shall review each of its rules within five years after the rule's original effective date or within five years after the filing of the last five-year review, whichever is later.

(2) An agency may consider any substantial review of a rule to be a five-year review if the agency also meets the requirements described in Subsection (3).

(3) At the conclusion of its review, and no later than the deadline described in Subsection (1), the agency shall decide whether to continue, repeal, or amend and continue the rule and comply with Subsections (3)(a) through (c), as applicable.

(a) If the agency continues the rule, the agency shall file with the office a five-year notice of review and statement of continuation that includes:

(i) a concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require the rule;

(ii) a summary of written comments received during and since the last five-year review of the rule from interested persons supporting or opposing the rule; and

(iii) a reasoned justification for continuation of the rule, including reasons why the agency disagrees with comments in opposition to the rule, if any.

(b) If the agency repeals the rule, the agency shall:

(i) comply with Section 63G-3-301; and

(ii) in the rule analysis described in Section 63G-3-301, state that the repeal is the result of the agency's five-year review under this section.

(c) If the agency amends and continues the rule, the agency shall comply with the requirements described in Section 63G-3-301 and file with the office the five-year notice of review and statement of continuation required in Subsection (3)(a).

(4) The office shall publish a five-year notice of review and statement of continuation in the

bulletin no later than one year after the deadline described in Subsection (1).
(5)
(a) The office shall make a reasonable effort to notify an agency that a rule is due for review at least 180 days before the deadline described in Subsection (1).
(b) The office's failure to comply with the requirement described in Subsection (5)(a) does not exempt an agency from complying with any provision of this section.
(6) If an agency finds that it will not meet the deadline established in Subsection (1):
(a) before the deadline described in Subsection (1), the agency may file one extension with the office indicating the reason for the extension; and
(b) the office shall publish notice of the extension in the bulletin in accordance with the office's publication schedule established by rule under Section 63G-3-402.
(7) An extension permits the agency to comply with the requirements described in Subsections (1) and (3) up to 120 days after the deadline described in Subsection (1).
(8)
(a) If an agency does not comply with the requirements described in Subsection (3), and does not file an extension under Subsection (6), the rule expires automatically on the day immediately after the date of the missed deadline.
(b) If an agency files an extension under Subsection (6) and does not comply with the requirements described in Subsection (3) within 120 days after the day on which the deadline described in Subsection (1) expires, the rule expires automatically on the day immediately after the date of the missed deadline.
(9) After a rule expires under Subsection (8), the office shall:
(a) publish a notice in the next issue of the bulletin that the rule has expired and is no longer enforceable;
(b) remove the rule from the code; and
(c) notify the agency that the rule has expired.
(10) After a rule expires, an agency must comply with the requirements of Section 63G-3-301 to reenact the rule.

Amended by Chapter 193, 2016 General Session

Part 4
Office of Administrative Rules

63G-3-401 Office of Administrative Rules created -- Coordinator.
(1) There is created within the Department of Administrative Services the Office of Administrative Rules, to be administered by a coordinator.
(2) The coordinator shall hire, train, and supervise staff necessary for the office to carry out the provisions of this chapter.

Amended by Chapter 193, 2016 General Session

63G-3-402 Office of Administrative Rules -- Duties generally.
(1) The office shall:
(a) record in a register the receipt of all agency rules, rule analysis forms, and notices of

effective dates;
(b) make the register, copies of all proposed rules, and rulemaking documents available for public inspection;
(c) publish all proposed rules, rule analyses, notices of effective dates, and review notices in the bulletin at least monthly, except that the office may publish the complete text of any proposed rule that the executive director or the executive director's designee determines is too long to print or too expensive to publish by reference to the text maintained by the office;
(d) compile, format, number, and index all effective rules in an administrative code, and periodically publish that code and supplements or revisions to it;
(e) publish a digest of all rules and notices contained in the most recent bulletin;
(f) publish at least annually an index of all changes to the administrative code and the effective date of each change;
(g) print, or contract to print, all rulemaking publications the executive director determines necessary to implement this chapter;
(h) distribute without charge the bulletin and administrative code to state-designated repositories, the Administrative Rules Review Committee, the Office of Legislative Research and General Counsel, and the two houses of the Legislature;
(i) distribute without charge the digest and index to state legislators, agencies, political subdivisions on request, and the Office of Legislative Research and General Counsel;
(j) distribute, at prices covering publication costs, all paper rulemaking publications to all other requesting persons and agencies;
(k) provide agencies assistance in rulemaking;
(l) if the department operates the office as an internal service fund agency in accordance with Section 63A-1-109.5, submit to the Rate Committee established in Section 63A-1-114:
(i) the proposed rate and fee schedule as required by Section 63A-1-114; and
(ii) other information or analysis requested by the Rate Committee;
(m) administer this chapter and require state agencies to comply with filing, publication, and hearing procedures; and
(n) make technological improvements to the rulemaking process, including improvements to automation and digital accessibility.

(2) The department shall establish by rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, all filing, publication, and hearing procedures necessary to make rules under this chapter.

(3) The office may after notifying the agency make nonsubstantive changes to rules filed with the office or published in the bulletin or code by:
(a) implementing a uniform system of formatting, punctuation, capitalization, organization, numbering, and wording;
(b) correcting obvious errors and inconsistencies in punctuation, capitalization, numbering, referencing, and wording;
(c) changing a catchline to more accurately reflect the substance of each section, part, rule, or title;
(d) updating or correcting annotations associated with a section, part, rule, or title; and
(e) merging or determining priority of any amendment, enactment, or repeal to the same rule or section made effective by an agency.

(4) In addition, the office may make the following nonsubstantive changes with the concurrence of the agency:

(a) eliminate duplication within rules;
(b) eliminate obsolete and redundant words; and
(c) correct defective or inconsistent section and paragraph structure in arrangement of the subject matter of rules.

(5) For nonsubstantive changes made in accordance with Subsection (3) or (4) after publication of the rule in the bulletin, the office shall publish a list of nonsubstantive changes in the bulletin. For each nonsubstantive change, the list shall include:
(a) the affected code citation;
(b) a brief description of the change; and
(c) the date the change was made.

(6) All funds appropriated or collected for publishing the office's publications shall be nonlapsing.

Amended by Chapter 193, 2016 General Session

63G-3-403 Repeal and reenactment of Utah Administrative Code.

(1) When the executive director determines that the Utah Administrative Code requires extensive revision and reorganization, the office may repeal the code and reenact a new code according to the requirements of this section.

(2) The office may:
(a) reorganize, reformat, and renumber the code;
(b) require each agency to review its rules and make any organizational or substantive changes according to the requirements of Section 63G-3-303; and
(c) require each agency to prepare a brief summary of all substantive changes made by the agency.

(3) The office may make nonsubstantive changes in the code by:
(a) adopting a uniform system of punctuation, capitalization, numbering, and wording;
(b) eliminating duplication;
(c) correcting defective or inconsistent section and paragraph structure in arrangement of the subject matter of rules;
(d) eliminating all obsolete or redundant words;
(e) correcting obvious errors and inconsistencies in punctuation, capitalization, numbering, referencing, and wording;
(f) changing a catchline to more accurately reflect the substance of each section, part, rule, or title;
(g) updating or correcting annotations associated with a section, part, rule, or title; and
(h) merging or determining priority of any amendment, enactment, or repeal to the same rule or section made effective by an agency.

(4)
(a) To inform the public about the proposed code reenactment, the office shall publish in the bulletin:
(i) notice of the code reenactment;
(ii) the date, time, and place of a public hearing where members of the public may comment on the proposed reenactment of the code;
(iii) locations where the proposed reenactment of the code may be reviewed; and
(iv) agency summaries of substantive changes in the reenacted code.

(b) To inform the public about substantive changes in agency rules contained in the proposed reenactment, each agency shall:

(i) make the text of their reenacted rules available:

(A) for public review during regular business hours; and

(B) in an electronic version; and

(ii) comply with the requirements of Subsection 63G-3-301(10).

(5) The office shall hold a public hearing on the proposed code reenactment no fewer than 30 days nor more than 45 days after the publication required by Subsection (4)(a).

(6) The office shall distribute complete text of the proposed code reenactment without charge to:

(a) state-designated repositories in Utah;

(b) the Administrative Rules Review Committee; and

(c) the Office of Legislative Research and General Counsel.

(7) The former code is repealed and the reenacted code is effective at noon on a date designated by the office that is not fewer than 45 days nor more than 90 days after the publication date required by this section.

(8) Repeal and reenactment of the code meets the requirements of Section 63G-3-305 for a review of all agency rules.

Amended by Chapter 193, 2016 General Session

Part 5
Legislative Oversight

63G-3-501 Administrative Rules Review Committee.

(1)

(a) There is created an Administrative Rules Review Committee of the following 10 permanent members:

(i) five members of the Senate appointed by the president of the Senate, no more than three of whom may be from the same political party; and

(ii) five members of the House of Representatives appointed by the speaker of the House of Representatives, no more than three of whom may be from the same political party.

(b) Each permanent member shall serve:

(i) for a two-year term; or

(ii) until the permanent member's successor is appointed.

(c)

(i) A vacancy exists when a permanent member ceases to be a member of the Legislature, or when a permanent member resigns from the committee.

(ii) When a vacancy exists:

(A) if the departing member is a member of the Senate, the president of the Senate shall appoint a member of the Senate to fill the vacancy; or

(B) if the departing member is a member of the House of Representatives, the speaker of the House of Representatives shall appoint a member of the House of Representatives to fill the vacancy.

(iii) The newly appointed member shall serve the remainder of the departing member's unexpired term.

(d)

(i) The president of the Senate shall designate a member of the Senate appointed under Subsection (1)(a)(i) as a cochair of the committee.

(ii) The speaker of the House of Representatives shall designate a member of the House of Representatives appointed under Subsection (1)(a)(ii) as a cochair of the committee.

(e) Three representatives and three senators from the permanent members are a quorum for the transaction of business at any meeting.

(f)

(i) Subject to Subsection (1)(f)(ii), the committee shall meet at least once each month to review new agency rules, amendments to existing agency rules, and repeals of existing agency rules.

(ii) The committee chairs may suspend the meeting requirement described in Subsection (1)(f)(i) at the committee chairs' discretion.

(2) The office shall submit a copy of each issue of the bulletin to the committee.

(3)

(a) The committee shall exercise continuous oversight of the rulemaking process.

(b) The committee shall examine each rule submitted by an agency to determine:

(i) whether the rule is authorized by statute;

(ii) whether the rule complies with legislative intent;

(iii) the rule's impact on the economy and the government operations of the state and local political subdivisions; and

(iv) the rule's impact on affected persons.

(c) To carry out these duties, the committee may examine any other issues that the committee considers necessary. The committee may also notify and refer rules to the chairs of the interim committee that has jurisdiction over a particular agency when the committee determines that an issue involved in an agency's rules may be more appropriately addressed by that committee.

(d) In reviewing a rule, the committee shall follow generally accepted principles of statutory construction.

(4) When the committee reviews existing rules, the committee chairs shall invite the Senate and House chairs of the standing committee and of the appropriation subcommittee that have jurisdiction over the agency whose existing rules are being reviewed to participate as nonvoting, ex officio members with the committee.

(5) The committee may request that the Office of the Legislative Fiscal Analyst prepare a fiscal note on any rule.

(6) In order to accomplish the committee's functions described in this chapter, the committee has all the powers granted to legislative interim committees under Section 36-12-11.

(7)

(a) The committee may prepare written findings of the committee's review of a rule and may include any recommendations, including legislative action.

(b) When the committee reviews a rule, the committee shall provide to the agency that enacted the rule:

(i) the committee's findings, if any; and

(ii) a request that the agency notify the committee of any changes the agency makes to the rule.

(c) The committee shall provide a copy of the committee's findings, if any, to:

(i) any member of the Legislature, upon request;
(ii) any person affected by the rule, upon request;
(iii) the president of the Senate;
(iv) the speaker of the House of Representatives;
(v) the Senate and House chairs of the standing committee that has jurisdiction over the agency that made the rule; and
(vi) the Senate and House chairs of the appropriation subcommittee that has jurisdiction over the agency that made the rule.

(8)
(a) The committee may submit a report on its review of state agency rules to each member of the Legislature at each regular session.
(b) The report shall include:
(i) any findings and recommendations the committee made under Subsection (7);
(ii) any action an agency took in response to committee recommendations; and
(iii) any recommendations by the committee for legislation.

Amended by Chapter 193, 2016 General Session

63G-3-502 Legislative reauthorization of agency rules -- Extension of rules by governor.
(1) All grants of rulemaking power from the Legislature to a state agency in any statute are made subject to the provisions of this section.
(2)
(a) Except as provided in Subsection (2)(b), every agency rule that is in effect on February 28 of any calendar year expires on May 1 of that year unless it has been reauthorized by the Legislature.
(b) Notwithstanding the provisions of Subsection (2)(a), an agency's rules do not expire if:
(i) the rule is explicitly mandated by a federal law or regulation; or
(ii) a provision of Utah's constitution vests the agency with specific constitutional authority to regulate.
(3)
(a) The Administrative Rules Review Committee shall have omnibus legislation prepared for consideration by the Legislature during its annual general session.
(b) The omnibus legislation shall be substantially in the following form: "All rules of Utah state agencies are reauthorized except for the following:".
(c) Before sending the legislation to the governor for the governor's action, the Administrative Rules Review Committee may send a letter to the governor and to the agency explaining specifically why the committee believes any rule should not be reauthorized.
(d) For the purpose of this section, the entire rule, a single section, or any complete paragraph of a rule may be excepted for reauthorization in the omnibus legislation considered by the Legislature.
(4) The Legislature's reauthorization of a rule by legislation does not constitute legislative approval of the rule, nor is it admissible in any proceeding as evidence of legislative intent.
(5)
(a) If an agency believes that a rule that has not been reauthorized by the Legislature or that will be allowed to expire should continue in full force and effect and is a rule within their authorized rulemaking power, the agency may seek the governor's declaration extending the

rule beyond the expiration date.

(b) In seeking the extension, the agency shall submit a petition to the governor that affirmatively states:

(i) that the rule is necessary; and

(ii) a citation to the source of its authority to make the rule.

(c)

(i) If the governor finds that the necessity does exist, and that the agency has the authority to make the rule, the governor may declare the rule to be extended by publishing that declaration in the Administrative Rules Bulletin on or before April 15 of that year.

(ii) The declaration shall set forth the rule to be extended, the reasons the extension is necessary, and a citation to the source of the agency's authority to make the rule.

(d) If the omnibus bill required by Subsection (3) fails to pass both houses of the Legislature or is found to have a technical legal defect preventing reauthorization of administrative rules intended to be reauthorized by the Legislature, the governor may declare all rules to be extended by publishing a single declaration in the Administrative Rules Bulletin on or before June 15 without meeting requirements of Subsections (5)(b) and (c).

Renumbered and Amended by Chapter 382, 2008 General Session

Part 6
Judicial Review

63G-3-601 Interested parties -- Petition for agency action.

(1) As used in this section, "initiate rulemaking proceedings" means the filing, for the purposes of publication in accordance with Subsection 63G-3-301(4), of an agency's proposed rule to implement a petition for the making, amendment, or repeal of a rule as provided in this section.

(2) An interested person may petition an agency to request the making, amendment, or repeal of a rule.

(3) The department shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition.

(4) A statement shall accompany the proposed rule, or proposed amendment or repeal of a rule, demonstrating that the proposed action is within the jurisdiction of the agency and appropriate to the powers of the agency.

(5) Within 60 days after submission of a petition, the agency shall either deny the petition in writing, stating its reasons for the denial, or initiate rulemaking proceedings.

(6)

(a) If the petition is submitted to a board that has been granted rulemaking authority by the Legislature, the board shall, within 45 days of the submission of the petition, place the petition on its agenda for review.

(b) Within 80 days of the submission of the petition, the board shall either:

(i) deny the petition in writing stating its reasons for denial; or

(ii) initiate rulemaking proceedings.

(7) If the agency or board has not provided the petitioner written notice that the agency has denied the petition or initiated rulemaking proceedings within the time limitations specified in Subsection (5) or (6) respectively, the petitioner may seek a writ of mandamus in state district

court.

Amended by Chapter 181, 2017 General Session

63G-3-602 Judicial challenge to administrative rules.

(1)

(a) Any person aggrieved by a rule may obtain judicial review of the rule by filing a complaint with the county clerk in the district court where the person resides or in the district court in Salt Lake County.

(b) Any person aggrieved by an agency's failure to comply with Section 63G-3-201 may obtain judicial review of the agency's failure to comply by filing a complaint with the clerk of the district court where the person resides or in the district court in Salt Lake County.

(2)

(a) Except as provided in Subsection (2)(b), a person seeking judicial review under this section shall exhaust that person's administrative remedies by complying with the requirements of Section 63G-3-601 before filing the complaint.

(b) When seeking judicial review of a rule, the person need not exhaust that person's administrative remedies if:

(i) less than six months has passed since the date that the rule became effective and the person had submitted verbal or written comments on the rule to the agency during the public comment period;

(ii) a statute granting rulemaking authority expressly exempts rules made under authority of that statute from compliance with Section 63G-3-601; or

(iii) compliance with Section 63G-3-601 would cause the person irreparable harm.

(3)

(a) In addition to the information required by the Utah Rules of Civil Procedure, a complaint filed under this section shall contain:

(i) the name and mailing address of the plaintiff;

(ii) the name and mailing address of the defendant agency;

(iii) the name and mailing address of any other party joined in the action as a defendant;

(iv) the text of the rule or proposed rule, if any;

(v) an allegation that the person filing the complaint has either exhausted the administrative remedies by complying with Section 63G-3-601 or met the requirements for waiver of exhaustion of administrative remedies established by Subsection (2)(b);

(vi) the relief sought; and

(vii) factual and legal allegations supporting the relief sought.

(b)

(i) The plaintiff shall serve a summons and a copy of the complaint as required by the Utah Rules of Civil Procedure.

(ii) The defendants shall file a responsive pleading as required by the Utah Rules of Civil Procedures.

(iii) The agency shall file the administrative record of the rule, if any, with its responsive pleading.

(4) The district court may grant relief to the petitioner by:

(a) declaring the rule invalid, if the court finds that:

(i) the rule violates constitutional or statutory law or the agency does not have legal

authority to make the rule;
(ii) the rule is not supported by substantial evidence when viewed in light of the whole administrative record; or
(iii) the agency did not follow proper rulemaking procedure;
(b) declaring the rule nonapplicable to the petitioner;
(c) remanding the matter to the agency for compliance with proper rulemaking procedures or further fact-finding;
(d) ordering the agency to comply with Section 63G-3-201;
(e) issuing a judicial stay or injunction to enjoin the agency from illegal action or action that would cause irreparable harm to the petitioner; or
(f) any combination of Subsections (4)(a) through (e).
(5) If the plaintiff meets the requirements of Subsection (2)(b), the district court may review and act on a complaint under this section whether or not the plaintiff has requested the agency review under Section 63G-3-601.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-3-603 Time for contesting a rule -- Statute of limitations.
(1) A proceeding to contest any rule on the ground of noncompliance with the procedural requirements of this chapter shall commence within two years of the effective date of the rule.
(2) A proceeding to contest any rule on the ground of not being supported by substantial evidence when viewed in light of the whole administrative record shall commence within four years of the effective date of the challenged action.
(3) A proceeding to contest any rule on the basis that a change to the rule made under Subsection 63G-3-402(2) or (3) substantively changed the rule shall be commenced within two years of the date the change was made.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 7
Official Compilation of Administrative Rules

63G-3-701 Utah Administrative Code as official compilation of rules -- Judicial notice.
The code shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the administrative law of the state of Utah and as an authorized compilation of the administrative law of Utah. All courts shall take judicial notice of the code and its provisions.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-3-702 Utah Administrative Code -- Organization -- Official compilation.
(1) The Utah Administrative Code shall be divided into three parts:
(a) titles, whose number shall begin with "R";
(b) rules; and

(c) sections.
(2) All sections contained in the code are referenced by a three-part number indicating its location in the code.
(3) The office shall maintain the official compilation of the code and is the state-designated repository for administrative rules. If a dispute arises in which there is more than one version of a rule, the latest effective version on file with the office is considered the correct, current version.

Amended by Chapter 193, 2016 General Session

R15. Administrative Services, Administrative Rules (Office of).
R15-1. Administrative Rule Hearings.

R15-1-1. Authority.

(1) This rule establishes procedures and standards for administrative rule hearings as required by Subsection 63G-3-402(1)(a).

(2) The procedures of this rule constitute the minimum requirements for mandatory administrative rule hearings. Additional procedures may be required to comply with any other governing statute, federal law, or federal regulation.

R15-1-2. Definitions.

(1) Terms used in this rule are defined in Section 63G-3-102.

(2) In addition:

(a) "coordinator" means the coordinator of the Office of Administrative Rules;

(b) "hearing" means an administrative rule hearing; and

(c) "officer" means an administrative rule hearing officer.

R15-1-3. Purpose.

(1) The purpose of this rule is to provide:

(a) procedures for agency hearings on proposed administrative rules or rules changes, or on the need for a rule or change;

(b) opportunity for public comment on rules; and

(c) opportunity for agency response to public concerns about rules.

R15-1-4. When Agencies Hold Hearings.

(1) Agencies shall hold hearings as required by Subsection 63G-3-302(2).

(2) Agencies may hold hearings:

(a) during the public comment period on a proposed rule, after its publication in the bulletin and prior to its effective date;

(b) before initiating rulemaking procedures under Title 63G, Chapter 3, to promote public input prior to a rule's publication;

(c) during a regular or extraordinary meeting of a state board, council, or commission, in order to avoid separate and additional meetings; or

(d) to hear any public petition for a rule change as provided by Section 63G-3-601.

(3) Voluntary hearings, as described in this section, follow the procedures prescribed by this rule or any other procedures the agency may provide by rule.

(4) Mandatory hearings, as described in this section, follow the procedures prescribed by this rule and any additional requirements of state or federal law.

(5) If an agency holds a mandatory hearing under the procedures of this rule during the public comment period described in Subsection 63G-3-301(6), no second hearing is required for the purpose of comment on the same rule or change considered at the first hearing.

R15-1-5. Hearing Procedures.

(1) Notice.

(a) An agency shall provide notice of a hearing by:

(i) publishing the hearing date, time, place, and subject in the bulletin;

(ii) mailing copies of the notice directly to persons who have petitioned for a hearing or rule changes under Section 63G-3-302 or 63G-3-601, respectively; and

(iii) posting for at least 24 hours in a place in the agency's offices which is frequented by the public.

(b) If a hearing becomes mandatory after the agency has published the proposed rule in the bulletin, the agency shall notify in writing persons requesting the hearing of the time and place.

(c) An agency may provide additional notice of a hearing, and shall give further notice as may otherwise be required by law.

(2) Hearing Officer.

(a) The agency head shall appoint as hearing officer a person qualified to conduct fairly the hearing.

(b) No restrictions apply to this appointment except the officer shall know rulemaking procedure.

(c) If a state board, council, or commission is responsible for agency rulemaking, and holds a hearing, a member or the body's designee may be the hearing officer.

(3) Time. The officer shall open the hearing at the announced time and place and permit comment for a minimum of one hour. The hearing may be extended or continued to another day as necessary in the judgment of the officer.

(4) Comment.

(a) At the opening of the hearing, the officer shall explain the subject and purpose of the hearing and invite orderly, germane comment from all persons in attendance. The officer may set time limits for speakers and shall ensure equitable use of time.

(b) The agency shall have a representative at the hearing, other than the officer, who is familiar with the rule at issue and who can respond to requests for information by those in attendance.

(c) The officer shall invite written comment to be submitted at the hearing or after the hearing, within a reasonable time. Written comment shall be attached to the hearing minutes.

(d) The officer shall conduct the hearing as an open, informal, orderly, and informative meeting. Oaths, cross-examination, and rules of evidence are not required.

(5) The Hearing Record.

(a) The officer shall cause to be recorded the name, address, and relevant affiliation of all persons speaking at the hearing, and cause an electronic or mechanical verbatim recording of the hearing to be made, or make a brief summary, of their remarks.
(b) The hearing record consists of a copy of the proposed rule or rule change, submitted written comment, the hearing recording or summary, the list of persons speaking at the hearing, and other pertinent documents as determined by the agency.
(c) The hearing officer shall, as soon as practicable, assemble the hearing record and transmit it to the agency for consideration.
(d) The hearing record shall be kept with and as part of the rule's administrative record in a file available at the agency offices for public inspection.

R15-1-8. Decision on an Issue Regarding Rulemaking Procedure.
(1) When a hearing issue requires a decision regarding rulemaking procedure, the officer shall submit a written request for a decision to the coordinator as soon as practicable after, or after recessing, the hearing, as provided in Section R15-5-6. The coordinator shall reply to the agency head as provided in Subsection R15-5-6(2). The coordinator's decision shall be included in the hearing record.

R15-1-9. Appeal and Judicial Review.
(1) Persons may appeal the decision of the agency head or the coordinator by petitioning the district court for judicial review as provided by law.

KEY: administrative law, government hearings
Date of Enactment or Last Substantive Amendment: June 1, 1996
Notice of Continuation: September 11, 2015
Authorizing, and Implemented or Interpreted Law: 63G-3-402

R15. Administrative Services, Administrative Rules (Office of).
R15-2. Public Petitioning for Rulemaking.

R15-2-1. Authority.
As required by Subsection 63G-3-601(3), this rule prescribes the form and procedures for submission, consideration, and disposition of petitions requesting the making, amendment, or repeal of an administrative rule.

R15-2-2. Definitions.
(1) Terms used in this rule are defined in Section 63G-3-102.
(2) Other terms are defined as follows:
(a) "rule change" means:
(i) making a new rule;
(ii) amending, repealing, or repealing and reenacting an existing rule;
(iii) amending a proposed rule further by filing a change in proposed rule under the provisions of Section 63G-3-303;
(iv) allowing a proposed (new, amended, repealed, or repealed and reenacted) rule or change in proposed rule to lapse; or
(v) any combination of the above.
(b) "petitioner" means an interested person who submits a petition to an agency pursuant to Section 63G-3-601 and this rule.

R15-2-3. Petition Procedure.
(1) The petitioner shall send the petition to the head of the agency authorized by law to make the rule change requested.
(2) The agency receiving the petition shall record the date it received the petition.

R15-2-4. Petition Form.
The petition shall:
(a) be clearly designated "petition for a rule change";
(b) state the petitioner's name;
(c) state the petitioner's interest in the rule, including relevant affiliation, if any;
(d) include a statement as required by Subsection 63G-3-601(4) regarding the requested rule change;
(e) state the approximate wording of the requested rule change;
(f) describe the reason for the rule change;

(g) include an address, an e-mail address when available, and telephone where the petitioner can be reached during regular business hours; and

(h) be signed by the petitioner.

R15-2-5. Petition Consideration and Disposition.

(1) The agency head or designee shall:

(a) review and consider the petition;

(b) write a response to the petition stating:

(i) that the petition is denied and reasons for denial; or

(ii) the date when the agency is initiating a rule change consistent with the intent of the petition; and

(c) send the response to the petitioner within the time frame provided by Section 63G-3-601.

(2) The petitioned agency may, within the time frame provided by Section 63G-3-601, interview the petitioner, hold a public hearing on the petition, or take any action the agency, in its judgment, deems necessary to provide the petition due consideration.

(3) The agency shall retain the petition and a copy of the agency's response as part of the administrative record.

(4) The agency shall mail copies of its decision to all persons who petitioned for a rule change.

KEY: administrative law, open government, transparency
Date of Enactment or Last Substantive Amendment: December 25, 2006
Notice of Continuation: September 11, 2015
Authorizing, and Implemented or Interpreted Law: 63G-3-601

R15. Administrative Services, Administrative Rules (Office of).
R15-3. Administrative Rules: Scope, Content, and When Required,

R15-3-1. Authority, Purpose, and Definitions.

(1) This rule is authorized under Subsection 63G-3-402(1) and (2).

(2) This rule clarifies when rulemaking is required, and requirements for incorporation by reference within rules.

(3) Terms used in this rule are defined in Section 63G-3-102.

R15-3-2. Agency Discretion.

(1) A rule may restrict agency discretion to prevent agency personnel from exceeding their scope of employment, or committing arbitrary action or application of standards, or to provide due process for persons affected by agency actions.

(2) A rule may authorize agency discretion that sets limits, standards, and scope of employment within which a range of actions may be applied by agency personnel. A rule may also establish criteria for granting exceptions to the standards or procedures of the rule when, in the judgment of authorized personnel, documented circumstances warrant.

(3) An agency may have written policies which broadly prescribe goals and guidelines. Policies are not rules unless they meet the criteria for rules set forth under Section 63G-3-201(2).

(4) Within the limits prescribed by Sections 63G-3-201 and 63G-3-602, an agency has full discretion regarding the substantive content of its rules. The office has authority over nonsubstantive content under Subsections 63G-3-402(3) and (4), and 63G-3-403(2) and (3), rulemaking procedures, and the physical format of rules for compilation in the Utah Administrative Code.

R15-3-3. Use of Incorporation by Reference in Rules.

(1) An agency incorporating materials by reference as permitted under Subsection 63G-3-201(7) shall comply with the following standards:

(a) The rule shall state specifically that the cited material is "incorporated by reference."

(b) If the material contains options, or is modified in its application, the options selected and modifications made shall be stated in the rule.

(c) If the incorporated material is substantively changed at a later time, and the agency intends to enforce the revised material, the agency shall amend its rule through rulemaking procedures to incorporate by reference any applicable changes as soon as practicable.

(d) In accordance with Subsection 63G-3-201(7)(c), an agency shall describe substantive changes that appear in the materials incorporated by reference as part of the "summary of rule or change" in the rule analysis.

(2) An agency shall comply with copyright requirements when providing the office a copy of material incorporated by reference.

R15-3-4. Computer-Prohibited Material.

(1) All rules shall be in a format that permits their compatibility with the office's computer system and compilation into the Utah Administrative Code.

(2) Rules may not contain maps, charts, graphs, diagrams, illustrations, forms, or similar material.

(3) The office shall issue and provide to agencies instructions and standards for formatting rules.

R15-3-5. Statutory Provisions that Require Rulemaking Pursuant to Subsection 63G-3-301(13).

For the purposes of Subsection 63G-3-301(13), the phrase "statutory provision that requires the rulemaking" means a state statutory provision that explicitly mandates rulemaking.

KEY: administrative law
Date of Enactment or Last Substantive Amendment: April 30, 2007
Notice of Continuation: September 11, 2015
Authorizing, and Implemented or Interpreted Law: 63G-3-201; 63G-3-301; 63G-3-402

R15. Administrative Services, Administrative Rules (Office of).
R15-4. Administrative Rulemaking Procedures.

R15-4-1. Authority and Purpose.

(1) This rule establishes procedures for filing and publication of agency rules under Sections 63G-3-301, 63G-3-303, and 63G-3-304, as authorized under Subsection 63G-3-402(2).

(2) The procedures of this rule constitute minimum requirements for rule filing and publication. Other governing statutes, federal laws, or federal regulations may require additional rule filing and publication procedures.

R15-4-2. Definitions.

(1) Terms used in this rule are defined in Section 63G-3-102.

(2) Other terms are defined as follows:

(a) "Anniversary date" means the date that is five years from the original effective date of the rule, or the date that is five years from the date the agency filed with the office the most recent five-year review required under Subsection 63G-3-305(3), whichever is sooner.

(b) "Digest" means the Utah State Digest that summarizes the content of the bulletin as required by Subsection 63G-3-402(1)(e);

(c) "Codify" means the process of collecting and arranging administrative rules systematically in the Utah Administrative Code, and includes the process of verifying that each amendment was marked as required under Subsection 63G-3-301(4)(b);

(d) "Compliance cost" means expenditures a regulated person will incur if a rule or change is made effective;

(e) "coordinator" means the coordinator of the Office of Administrative Rules;

(f) "Cost" means the aggregated expenses persons as a class affected by a rule will incur if a rule or change is made effective;

(g) "eRules" means the administrative rule filing application that agencies use to file rules and notices;

(h) "Savings" means:

(i) an aggregated monetary amount that will no longer be incurred by persons as a class if a rule or change is made effective;

(ii) an aggregated monetary amount that will be refunded or rebated if a rule or change is made effective;

(iii) an aggregated monetary amount of anticipated revenues to be generated for state budgets, local governments, or both if a rule or change is made effective; or

(iv) any combination of these aggregated monetary amounts.

(i) "Unmarked change" means a change made to rule text that was not marked as required by Subsection 63G-3-301(4)(b).

R15-4-3. Publication Dates and Deadlines.

(1) For the purposes of Subsections 63G-3-301(4) and 63G-3-303(1), an agency shall file its rule and rule analysis by 11:59:59 p.m. on the fifteenth day of the month for publication in the bulletin and digest issued on the first of the next month, and by 11:59:59 p.m. on the first day of the month for publication on the fifteenth of the same month.

(a) If the first or fifteenth day is a Saturday, or a Tuesday, Wednesday, Thursday, or Friday holiday, the agency shall file the rule and rule analysis by 11:59:59 p.m. on the previous regular business day.

(b) If the first or fifteenth day is a Sunday or Monday holiday, the agency shall file the rule and rule analysis by 11:59:59 p.m. on the next regular business day.

(2) For all purposes, the official date of publication for the bulletin and digest shall be the first and fifteenth days of each month.

R15-4-4. Thirty-Day Comment Period for a Proposed Rule and a Change in Proposed Rule.

(1) For the purposes of Sections 63G-3-301 and 63G-3-303, "30 days" shall be computed by:

(a) counting the day after publication of the rule as the first day; and

(b) counting the thirtieth consecutive day after the day of publication as the thirtieth day, unless

(c) the thirtieth consecutive day is a Saturday, Sunday, or holiday, in which event the thirtieth day is the next regular business day.

R15-4-5a. Notice of the Effective Date for a Proposed Rule.

(1)(a) Pursuant to Subsection 63G-3-301(12), upon expiration of the comment period designated on the rule analysis and filed with the rule, and before expiration of 120 days after publication of a proposed rule, the agency proposing the rule shall notify the office of the date the rule is to become effective and enforceable.

(b) The agency shall notify the office after determining that the proposed rule, in the form published, shall be the final form of the rule, and after informing the office of any nonsubstantive changes in the rule as provided for in Section R15-4-6.

(2)(a) The agency shall notify the office by filing with the office a Notice of Effective Date form using eRules.

(b) If the eRules Notice of Effective Date form is unavailable to the agency, the agency may notify the office by any other form of written communication clearly identifying the proposed rule, stating the date the rule was filed with the office or published in the bulletin, and stating its effective date.

(3) The date designated as the effective date shall be:

(a) at least seven days after the comment period specified on the rule analysis; or

(b) if the agency formally extends the comment period for a proposed rule by publishing a subsequent notice in an issue of the bulletin, at least seven days after the extended comment period.

(4) The office shall publish notice of the effective date in the next issue of the bulletin. There is no publication deadline for a notice of effective date for a proposed rule, nor requirement that it be published prior to the effective date.

R15-4-5b. Notice of the Effective Date for a Change in Proposed Rule.

(1)(a) Upon expiration of the 30-day period required by Section 63G-3-303, and before expiration of the 120th day after publication of a change in proposed rule, the agency promulgating the rule shall notify the office of the date the rule is to become effective and enforceable.

(b) The agency shall notify the office after determining that the rule text as published is the final form of the rule, and after informing the office of any nonsubstantive changes in the rule as provided for in Section R15-4-6.

(2)(a) The agency shall notify the office by filing with the office a Notice of Effective Date form using eRules.

(b) If the eRules Notice of Effective Date form is unavailable to the agency, the agency may notify the office by any other form of written communication clearly identifying the change in proposed rule and any rules upon which the change in proposed rule is dependent, stating the date the rules were filed with the office or published in the bulletin, and stating the effective date.

(3) The date designated as the effective date shall be:

(a) at least 30 days after the publication date of the rule in the bulletin, or

(b) if the agency designated a comment period, at least seven days after a comment period designated by the agency on the rule analysis or formally extended by publication of a subsequent notice in the bulletin.

(4) The office shall publish notice of the effective date in the next issue of the bulletin. There is no publication deadline for the notice of effective date for a change in proposed rule, nor requirement that it be published prior to the effective date.

R15-4-6. Nonsubstantive Changes in Rules.

(1) Pursuant to Subsections 63G-3-201(4)(d) and 63G-3-303(2), for the purpose of making rule changes that are grammatical or do not materially affect the application or outcome of agency procedures and standards, agencies shall comply with the procedures of this section.
(2) The agency proposing a change shall determine if the change is substantive or nonsubstantive according to the criteria cited in Subsection R15-4-6(1).
(a) The agency may seek the advice of the attorney general or the office, but the agency is responsible for compliance with the cited criteria.
(3) Without complying with regular rulemaking procedures, an agency may make nonsubstantive changes in:
(a) proposed rules already published in the bulletin and digest but not made effective; or
(b) rules already effective.
(4) To make a nonsubstantive change in a rule, the agency shall:
(a) notify the office by filing with the office the form designated for nonsubstantive changes;
(b) include with the notice the rule text to be changed, with changes marked as required by Section R15-4-9; and
(c) include with the notice the name of the agency head or designee authorizing the change.
(5) A nonsubstantive change becomes effective on the date the office makes the change in the Utah Administrative Code.
(6) The office shall record the nonsubstantive change and its effective date in the administrative rules register.

R15-4-7. Substantive Changes in Proposed Rules.
(1) Pursuant to Section 63G-3-303, agencies shall comply with the procedures of this section when making a substantive change in a proposed rule.
(a) The procedures of this section apply if:
(i) the agency determines a change in the rule is necessary;
(ii) the change is substantive under the criteria of Subsection 63G-3-102(20);
(iii) the rule was published as a proposal in the bulletin and digest; and
(iv) the rule has not been made effective under the procedures of Subsection 63G-3-301(12) and Section R15-4-5a.
(b) If the rule is already effective, the agency shall comply with regular rulemaking procedures.
(2) To make a substantive change in a proposed rule, the agency shall file with the office:
(a) a rule analysis, marked to indicate the agency intends to change a rule already published, and describing the change and reasons for it; and
(b) a copy of the proposed rule previously published in the bulletin marked to show only those changes made since the proposed rule was previously published.
(3) The office shall publish the rule analysis in the next issue of the bulletin, subject to the publication deadlines of Section R15-4-3. The office may also publish the changed text of the rule.

(4) The agency may make a change in proposed rule effective by following the requirements of Section R15-4-5b, or may further amend the rule by following the procedures of Sections R15-4-6 or R15-4-7.

R15-4-8. Temporary 120-Day Rules.

(1) Pursuant to Section 63G-3-304, for the purpose of filing a temporary rule, an agency shall comply with the procedures of this section.

(2) The agency proposing a temporary rule shall determine if the need for the rule complies with the criteria of Subsection 63G-3-304(1).

(a) The office interprets the criteria of Subsection 63G-3-304(1) to include under "welfare" any substantial material loss to the classes of persons or agencies the agency is mandated to regulate, serve, or protect.

(3) The agency shall use the same procedures for filing and publishing a temporary rule as for a permanent rule, except:

(a) the rule shall become effective and enforceable on the day and hour it is recorded by the office unless the agency designates a later effective date on the rule analysis;

(b) no comment period is necessary;

(c) no public hearing is necessary; and

(d) the rule shall expire 120 days after the rule's effective date unless the filing agency notifies the office, on the form or by memorandum, of an earlier expiration date.

(4) A temporary rule is separate and distinct from a rule filed under regular rulemaking procedures, though the language of the two rules may be identical. To make a temporary rule permanent, the agency shall propose a separate rule for regular rulemaking.

(5) When a temporary rule and a similar regular rule are in effect at the same time, any conflict between the provisions of the two are resolved in favor of the rule with the most recent effective date, unless the agency designates otherwise as part of the rule analysis.

(6) A temporary rule has the full force and effect of a permanent rule while in effect, but a temporary rule is not codified in the Utah Administrative Code.

R15-4-9. Underscoring and Striking Out.

(1)(a) Pursuant to Subsection 63G-3-301(4)(b), an agency shall underscore language to be added and strike out language to be deleted in proposed rules.

(b) Consistent with Subsection 63G-3-301(4)(b), an agency shall underscore language to be added and strike out language to be deleted in changes in proposed rules, 120-day rules, and nonsubstantive changes.

(c) The struck out language shall be surrounded by brackets.

(2) When an agency proposes to make a new rule or section, the entire proposed text shall be underscored.

(3)(a) When an agency proposes to repeal a complete rule it shall include as part of the information provided in the rule analysis a brief summary of the deleted language and a brief explanation of why the rule is being repealed.

(b) The agency shall include with the rule analysis a copy of the text to be deleted in one of the following formats:

(i) each page annotated "repealed in its entirety" or

(ii) the entire text struck out in its entirety and surrounded by one set of brackets.

(c) The office shall not publish repealed rules unless space is available within the page limits of the bulletin.

(4) When an agency fails to mark a change as described in this section, the coordinator may refuse to codify the change. When determining whether or not to codify an unmarked change, the coordinator shall consider:

(a) whether the unmarked change is substantive or nonsubstantive; and

(b) if the purpose of public notification has been adequately served.

(5) The coordinator's refusal to codify an unmarked change means that the change is not operative for the purposes of Section 63G-3-701 and that the agency must comply with regular rulemaking procedures to make the change.

R15-4-10. Estimates of Anticipated Cost or Savings, and Compliance Cost.

(1) Pursuant to Subsections 63G-3-301(8)(d), 63G-3-303(1)(a), 63G-3-304(2), and 53C-1-201(3), when an agency files a proposed rule, change in proposed rule, 120-day (emergency) rule, or expedited rule and provides anticipated cost or savings, and compliance cost information in the rule analysis, the agency shall:

(a) estimate the incremental cost or savings and incremental compliance cost associated with the changes proposed by the rule or change;

(b) estimate the incremental cost or savings and incremental compliance cost in dollars, except as otherwise provided in Subsections R15-4-10(4) and (5);

(c) indicate that the amount is either a cost or a savings; and

(d) estimate the incremental cost or savings expected to accrue to "state budgets," "local governments," "small businesses," and "persons other than small businesses, businesses, or local governmental entities" as aggregated cost or savings;

(2) In addition, an agency may:

(a) provide a narrative description of anticipated cost or savings, and compliance cost;

(b) compare anticipated cost or savings, and compliance cost figures, for the rule or change to:

(i) current budgeted costs associated with the existing rule,

(ii) figures reported on a fiscal note attached to a related legislative bill, or

(iii) both (i) and (ii).

(3) If an agency chooses to provide comparison figures, it shall clearly distinguish comparison figures from the anticipated cost or savings, and compliance cost figures.

(4) If dollar estimates are unknown or not available, or the obtaining thereof would impose a substantial unbudgeted hardship on the agency, the agency may substitute a reasoned narrative description of cost-related actions required by the rule or change, and explain the reason or reasons for the substitution.
(5) If no cost, savings, or compliance cost is associated with the rule or change, an agency may enter "none," "no impact," or similar words in the rule analysis followed by a written explanation of how the agency estimated that there would be no impact, or how the proposed rule, or changes made to an existing rule does not apply to "state budgets," "local government," "small businesses," "persons other than small businesses, businesses, or local governmental entities," or any combination of these.
(6) If an agency does not provide an estimate of cost, savings, compliance cost, or a reasoned narrative description of cost information; or a written explanation as part of the rule analysis in compliance with this section, the office may, after making an attempt to obtain the required information, refuse to register and publish the rule or change. If the office refuses to register and publish a rule or change, it shall:

(a) return the rule or change to the agency with a notice indicating that the office has refused to register and publish the rule or change;

(b) identify the reason or reasons why the office refused to register and publish the rule or change; and

(c) indicate the filing deadlines for the next issue of the bulletin.

KEY: administrative law
Date of Enactment or Last Substantive Amendment: August 24, 2007
Notice of Continuation: September 11, 2015
Authorizing, and Implemented or Interpreted Law: 63G-3-301; 63G-3-303; 63G-3-304; 63G-3-402

R15. Administrative Services, Administrative Rules (Office of).
R15-5. Administrative Rules Adjudicative Proceedings.

R15-5-1. Purpose.

(1) This rule provides the procedures for informal adjudicative proceedings governing:

(a) appeal and review of a decision by the office not to publish an agency's proposed rule or rule change or not to register an agency's notice of effective date; and

(b) a determination by the office whether an agency rule meets the procedural requirements of Title 63G, Chapter 3, the Utah Administrative Rulemaking Act.

(2) The informal procedures of this rule apply to all other division actions for which an adjudicative proceeding may be required.

R15-5-2. Authority.

This rule is required by Sections 63G-4-202 and 63G-4-203, and is enacted under the authority of Subsection 63G-3-402(1)(m) and Sections 63G-4-202, 63G-4-203, and 63G-4-503.

R15-5-3. Definitions.

(1) The terms used in this rule are defined in Section 63G-4-103.

(2) In addition:

(a) "coordinator" means the coordinator of the Office of Administrative Rules; and

(b) "digest" means the Utah State Digest which summarizes the content of the bulletin as required under Subsection 63G-3-402(1)(f).

R15-5-4. Refusal to Publish or Register a Rule or Rule Change.

(1) The office shall not publish a proposed rule or rule change when the office determines the agency has not met the requirements of Title 63G, Chapter 3, or of Rules R15-3 or R15-4.

(2) The office shall not register an agency's notice of effective date, nor codify the rule or rule change in the Utah Administrative Code, if the agency exceeds the 120-day limit required by Subsection 63G-3-301(6)(a) as interpreted in Section R15-4-5.

(3) The office shall notify the agency of a refusal to publish or register a rule or rule change, and shall advise and assist the agency in correcting any error or omission, and in re-filing to meet statutory and regulatory criteria.

R15-5-5. Appeal of a Refusal to Publish or Register a Rule or Rule Change.

(1) An agency may request a review of an office refusal to publish or register a rule or rule change by filing a written petition for review with the coordinator.

(2) The coordinator shall grant or deny the petition within 20 days, and respond in writing giving the reasons for any denial.

(3) The agency may appeal the decision of the coordinator by filing a written appeal to the executive director of the Department of Administrative Services within 20 days of receipt of the coordinator's decision. The executive director shall respond within 20 days affirming or reversing the coordinator's decision.

R15-5-6. Determining the Procedural Validity of a Rule.

(1) A person may contest the procedural validity, or request a determination of whether a rule meets the requirements of Title 63G, Chapter 3, by filing a written petition with the office.

(a) The rule at issue may be a proposed rule or an effective rule.

(b) The petition must be received by the office within the two-year limit set by Section 63G-3-603.

(c) The petition may emanate from a rulemaking hearing as in Section R15-1-8.

(d) The petition shall specify the rule or rule change at issue and reasons why the petitioner deems it procedurally flawed or invalid.

(e) The petition shall be accompanied by any documents the office should consider in reaching its decision.

(f) The petition shall be signed and designate a telephone number where the petitioner can be contacted during regular business hours.

(2) The office shall respond to the petition in writing within 20 days of its receipt.

(a) The office shall research all records pertaining to the rule or rule change at issue.

(b) The response of the office shall state whether the rule is procedurally valid or invalid and how the agency may remedy any defect.

(c) The office shall send a copy of the petition and its response to the pertinent agency.

(3) The petitioner may request reconsideration of the office's findings by filing a written request for reconsideration with the coordinator.

(a) The coordinator may respond to the request in writing.

(b) If the petitioner receives no response within 20 days, the request is denied.

R15-5-7. Remedies Resulting from an Adjudicative Proceeding.

(1) A rule the office determines is procedurally invalid shall be stricken from the Utah Administrative Code and notice of its deletion published in the next issues of the bulletin and digest.

(2) The office shall notify the pertinent agency and assist the agency in re-filing or otherwise remedying the procedural omission or error in the rule.

(3) A rule the office determines is procedurally valid shall be published and registered promptly.

KEY: administrative procedures, administrative law
Date of Enactment or Last Substantive Amendment: June 1, 1996
Notice of Continuation: September 11, 2015
Authorizing, and Implemented or Interpreted Law: 63G-3-402; 63G-4-202; 63G-4-203; 63G-4-503

Proposed Rule

MEMORANDUM

TO: Air Quality Board

THROUGH: Bryce C. Bird, Executive Secretary

FROM: Alan Humpherys, Minor New Source Review Section Manager

DATE: November 20, 2019

SUBJECT: PROPOSE FOR PUBLIC COMMENT: Amend R307-401. Permit: New and Modified Sources.

On August 7, 2019, the Air Quality Board (Board) proposed for public comment amendments to Utah Administrative Code R307-401 related to soil vapor extraction (SVE), air stripper systems, and sub-slab vapor mitigation systems (VMS). The public comment period was held from September 1 – 31, 2019, and staff received three comments regarding definitions and organization of the rule. The comments can be found as an attachment to this memo. Staff generally agreed with the comments related to definitions and revised the rule accordingly. Staff also made changes in response to comments received from the Board on August 7, 2019.

However, due to the Office of Administrative Rules moving to a new system for online filings, staff is unable to submit a Change in Proposed Rule (CPR). For that reason, staff has decided to allow the original filing to lapse and create a new filing which incorporates the changes from the first filing along with the changes mentioned below. The proposed changes to Utah Administrative Code R307-401 will require another public comment period. The public comment period will run from December 15 to January 14.

The original public comment period was held from September 1 – 31, 2019. **Background and Summary of Changes**

Utah Administrative Codes R307-401-15 and -16 apply to SVE or air stripper systems and soil aeration projects. These rules exempt an owner or operator of a soil or groundwater remediation site from the new source review (NSR) permitting process as long as volatile organic compound (VOC) emissions are under five tons per year and hazardous air pollutants are less than their threshold values in R307-410-5(1)(c)(i)(c). The rules require the owner or operator to test to demonstrate compliance with the exemption levels.

R307-401 was proposed for amendments to include new and updated definitions and updated testing requirements. In addition, staff added an exemption for sub-slab VMS, which are systems designed to mitigate vapor intrusion into an occupied or occupiable structure. These systems are not designed to

remediate contaminated soil or groundwater. The amended rule exempts these systems from the NSR permitting process and from the requirements of R307-401-15. This exemption is included in R307-401-10(7).

Additional Information

In addition to the public comments received, staff has also prepared responses to questions posed by the Board on August 7, 2019, when this rule was proposed for public comment. Specifically, the Board requested additional information on the testing requirements and on the impact of SVE and air stripper systems in the Wasatch Front Ozone Nonattainment Area.

Testing Requirements

The rule was updated to allow sources to discontinue testing after three years of operation if testing demonstrates the emissions have remained below exemption levels. The option to discontinue testing is included in R307-401-15(3)(e).

The basis for this change is that the majority of contamination is removed during the few months of operation of SVE and air stripper systems and mass removal rates typically decline over time. The intent of this update is to give owners/operators the option to discontinue sampling if the owner/operator can demonstrate that emissions from these systems have remained below the exemption levels since the beginning of the project.

The Board asked if there is a threshold for determining when sampling can be discontinued. DAQ believes that the exemption levels in R307-401-15(1)(a) and (b) should be the threshold when making this determination. However, DAQ also recognizes that there are several other factors that could affect the emissions from these systems, such as contaminant concentrations, plume migration, soil properties, system design, etc. Because of these potential uncertainties, DAQ proposed to do a case-by-case evaluation to determine if sampling can be discontinued. The case-by-case evaluation will include coordination with other regulatory agencies involved in the remediation project, such as Division of Environmental Response and Remediation or Division of Waste Management and Radiation Control. DAQ will seek input from these agencies on factors that could affect emissions prior to approving a request to discontinue sampling.

Impact to Airshed

The Board asked staff about the impact of SVE and air stripper systems on the airshed, specifically in the Wasatch Front Ozone Nonattainment Area.

In response to this comment, staff assessed the SVE and air stripper systems in the Wasatch Front Ozone Nonattainment area. There are currently eight active remediation projects in Salt Lake County and eight active remediation projects in Davis County. If each project has the potential to emit 5 tons per year of VOCs, the total potential contribution to the Wasatch Front Ozone Nonattainment Area could be up to 80 tons per year. This potential contribution accounts for approximately 2.5% of the total VOC emissions from point sources in Salt Lake and Davis counties, based on the 2017 emission inventory. It should be noted that this is a conservative estimate. Actual VOC emissions reported from these projects range from <0.1 tons/yr to 1.1 tons/year, significantly lower than the 5 tons/year threshold in this rule. Therefore, staff does not anticipate that these systems will be a significant source of VOC emissions in the Wasatch Front Ozone Nonattainment Area.

Recommendation: Staff recommends that the Board propose the amended R307-401 for public comment.

Liam Thrailkill <lthrailkill@utah.gov>

Comments on Proposed R307-401 changes

[redacted]

[redacted] Thu, Sep 12, 2019 at 1:25 PM
To: "lthrailkill@utah.gov" <lthrailkill@utah.gov>, "mberger@utah.gov" <mberger@utah.gov>
Cc: Sarah Foran <sforan@utah.gov>, "martygray@utah.gov" <martygray@utah.gov>

Liam/Mark,

My apologies for sending this to both of you, but Liam's name was listed on the DAQ website as the contact and Mark's name was listed in the Board Memo, so I wanted to make sure I got it to the appropriate person.

[redacted] and I met with Marty Gray and Alan Humpherys on April 19, 2018 and requested vapor mitigation systems be exempted from the permitting and monitoring requirements. We very much appreciate DAQ taking this request and modifying the rule to make this exemption possible. I have some comments on the proposed rule changes and request some changes be made before the rule is finalized.

1. Our preference [redacted] and I submitted it this way originally) would be for a standalone section in the Rule for the VMS exemption (e.g., R307-401-20). As it is in the redline rule change it is hidden under the Air Strippers and SVE section (R307-401-15), which is not intuitive or appropriate as they are not related. I recommend a standalone section for the VMS exemption so that it is not implied that there is a connection between VMS and either air strippers or SVE.

2. The term air sparging is not defined, but it is used in two areas of the redline. I recommend a definition be added to clarify it is different than air stripping (i.e., air sparging is in situ where air stripping is ex situ).

3. I recommend the following revisions to the VMS definition to improve on its clarity.

   "Vapor Mitigation System", or VMS, is a sub-slab system whose primary purpose is mitigating vapor intrusion into an occupied, or occupiable, structure and is not intended or designed for the remediation of contaminated soil or groundwater. This definition includes both ~~active and~~ passive and active systems. ~~Active systems use a blower or fan to extract vapors from within or beneath a structure.~~ Passive systems generally consist of a vapor barrier either below the building slab (new construction) or above (retrofit in existing structures) and a venting ~~layer~~ system installed under a structure to divert vapors from beneath the structure ~~to the sides of a structure~~ and vent the vapors outdoors, typically above the building's roofline. Active systems generally are constructed similar to passive systems, but are supplemented with a blower or fan to actively move air in the sub-slab venting system and enhance movement of the vapors away from beneath the building.

[redacted]

[redacted]

[redacted]

P-003

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	$0	$0	$0

***This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.**

Appendix 2: Regulatory Impact to Non-Small Businesses

These amendments will result in an unknown savings to non-small businesses. Information on how many instances the exemption will apply to an owner or operator of sub-slab vapor mitigation systems is not readily available. However, it is estimated that the savings will range between $2,800 and $3,500 per sampling event for each vent riser. Each system will have a specific vent riser count requirement. Stacks can range from four to 10 per project. As currently written, the rule requires each stack to be tested five times in the first year and twice a year after the first year for the life of the project. At a four stack site this could cost up to $70,000 in the first year, and up to $28,000 each subsequent year. Testing would be required for the life of the project.

The Interim Executive Director of the Department of Environmental Quality, L. Scott Baird, has reviewed and approved this fiscal analysis.

****"Non-small business" means a business employing 50 or more persons; "small business" means a business employing fewer than 50 persons.**

R307. Environmental Quality, Air Quality.
R307-401. Permit: New and Modified Sources.

R307-401-2. Definitions.

"Actual emissions" (a) means the actual rate of emissions of

an air pollutant from an emissions unit, as determined in accordance with R307-401-2(b) through R307-401-2(d).

(b) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the air pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(c) The director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(d) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each air pollutant which would be emitted from any proposed stationary source or modification which the director, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR parts 60 and 61. If the director determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

Air Strippers" are systems designed to pump groundwater to the surface for treatment, usually by aeration.

"Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same Major Group (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any air pollutant.

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Indirect source" means a building, structure, facility, or installation which attracts or may attract mobile source activity that results in emission of a pollutant for which there is a national standard.

"Potential to emit" means the maximum capacity of a stationary source to emit an air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Soil Aeration" is an ex-situ treatment process where excavated soil from a remediation project is spread in a thin layer to encourage biodegradation of soil contamination. Biodegradation may be stimulated through aeration or the addition of minerals, nutrients, and/or moisture.

"Soil Vapor Extraction", or SVE, is a system designed to extract vapor phase contaminants from the subsurface. SVE systems are often combined with other technologies, such as air sparging or vacuum-enhanced recovery systems.

"Stationary source" means any building, structure, facility, or installation which emits or may emit an air pollutant.

"Vapor Mitigation System", or VMS, is a sub-slab system whose primary purpose is mitigating vapor intrusion into an occupied, or occupiable, structure and is not intended or designed for the remediation of contaminated soil or groundwater. This definition includes both active and passive systems. Passive systems consist of a vapor barrier either below or above the slab of a structure and a venting system installed under a structure to divert vapor from beneath the structure to the sides or roofline of a structure. Active systems are similar to passive systems but incorporate a blower or fan to actively extract air from beneath the structure.

R307-401-10. Source Category Exemptions.

The source categories described in R307-401-10 are exempt from the requirement to obtain an approval order found in R307-401-5 through R307-401-8. The general provisions in R307-401-4 shall apply to these sources.

(1) Fuel-burning equipment in which combustion takes place at no greater pressure than one inch of mercury above ambient pressure with a rated capacity of less than five million BTU per hour using no other fuel than natural gas or LPG or other mixed gas that meets the standards of gas distributed by a utility in accordance with the rules of the Public Service Commission of the State of Utah, unless there are emissions other than combustion products.

(2) Comfort heating equipment such as boilers, water heaters, air heaters and steam generators with a rated capacity of less than one million BTU per hour if fueled only by fuel oil numbers 1 - 6,

(3) Emergency heating equipment, using coal or wood for fuel, with a rated capacity less than 50,000 BTU per hour.

(4) Exhaust systems for controlling steam and heat that do not contain combustion products.

(5) A well site as defined in 40 CFR 60.5430a, including centralized tank batteries, that is not a major source as defined in R307-101-2, and is registered with the Division as required by R307-505.

(6) A gasoline dispensing facility as defined in 40 CFR 63.11132 that is not a major source as defined in R307-101-2. These sources shall comply with the applicable requirements of R307-328 and 40 CFR 63 Subpart CCCCCC: National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities.

(7) A Vapor Mitigation System as defined in R307-401-2.

R307-401-15. Air Strippers and Soil Vapor Extraction Systems[~~Venting Projects~~].

R307-401-15 applies to remediation systems with the potential to generate air emissions, such as air strippers and soil vapor extraction (SVE) as defined in R307-401-2.

(1) The owner or operator of an air stripper or SVE remediation system[~~soil venting system that is used to remediate contaminated groundwater or soil~~] is exempt from the notice of intent and approval order requirements of R307-401-5 through R307-401-8 if the following conditions are met:

(a) [~~the estimated total air~~]actual emissions of volatile organic compounds from a given project are less than 5 tons per year; and[~~the de minimis emissions listed in R307-401-9(1)(a), and~~]

(b) emission rates of[~~the level of any one hazardous air pollutant or any combination of~~] hazardous air pollutants are[~~is~~] below their respective threshold values contained[~~the levels listed~~] in R307-410-5(1)(c)(i)(C).

(2) The owner or operator shall submit documentation to the director that demonstrates the project meets the exemption criteria[~~requirements~~] in R307-401-15(1)[~~to the director prior to beginning the remediation project~~]. Required documentation includes, but is not limited to:

(a) project summary, including location, system description, operational schedule, and schedule for construction;

(b) emission calculations and any laboratory sampling data used in calculations; and

(c) plans and specifications for the system and equipment.

(3) After beginning the soil remediation project, the owner [~~or operator shall submit emissions information to the director to verify that the emission rates of the volatile organic compounds and hazardous air pollutants in R307-401-15(1) are not exceeded.~~]or operator shall conduct testing to demonstrate compliance with the exemption levels in R307-401-15(1)(1) and (b). Monitoring and reporting shall be conducted as follows:

(a) [~~Emissions estimates of volatile organic compounds shall be based on test data obtained in accordance with the test method in the EPA document SW-846, Test #8260c or 8261a, or the most recent EPA revision of either test method if approved by the director.~~]Emissions for air strippers shall be based on the following:

(i) influent and effluent water samples analyzed for volatile organic compounds and hazardous air pollutants using the most recent version of USEPA Test Method 8260, Method 8021, or other EPA approved testing methods acceptable to the director; and

(ii) design water flow rate of the system or the water flow rates measured during the sample period.

(b) [~~Emissions estimates of hazardous air pollutants shall be based on test data obtained in accordance with the test method in EPA document SW-846, Test #8021B or the most recent EPA revision of the test method if approved by the director.~~]Emissions for SVE systems shall be based on the following:

(i) Air samples collected from a sample port in the exhaust stack of the SVE system and analyzed for volatile organic compounds and hazardous air pollutants using USEPA test method TO-15, or other EPA approved testing methods acceptable to the director.

(ii) Design air flow rate of the system or the air flow rates measured at the outlet of the SVE system during the sample period. Flow rates should be measured and reported at actual conditions.

(c) [~~Results of the test and calculated annual quantity of emissions of volatile organic compounds and hazardous air pollutants shall be submitted to the director within one month of sampling.~~]Within one month of sampling, the owner or operator shall submit to the director the sample results, estimated emissions of volatile organic compounds, and estimated emission rates of hazardous air pollutants.

(d) [~~The test samples shall be drawn on intervals of no less than twenty-eight days and no more than thirty-one days (i.e., monthly) for the first quarter, quarterly for the first year, and semi-annually thereafter or as determined necessary by the director.~~]Samples shall be collected at the following frequencies or more frequently as determined necessary by the director:

(i) no less than twenty-eight days and no more than thirty-one days (i.e., monthly) after startup for the first quarter;

(ii) quarterly for the remainder of the first year; and

(iii)semi-annually thereafter for the life of the project or as allowed in R307-401-15(3)(f).

(e) If an SVE or air stripper system is restarted after rehabilitation or an extended period of shutdown, the owner or operator shall recommence the sampling schedule in R307-415(3)(d), unless

otherwise approved by the director.

(f) The owner or operator may request to discontinue sampling after three years of operation. To discontinue sampling, the owner or operator must submit to the director a request to discontinue monitoring.

(i) The request must include documentation demonstrating emissions have remained below the exemption levels in R307-401-15(1)(a) and (b) since startup of the system.

(ii) The request is subject to approval from the director upon consultation with other regulatory agencies involved in the project, such as Division of Environmental Response and Remediation or Division of Waste Management and Radiation Control.

(4) The following control devices do not require a notice of intent or approval order when used in relation to an air stripper or soil vapor extraction system that is[~~venting project~~] exempted under R307-401-15:

(a) thermodestruction unit with a rated input capacity of less than five million BTU per hour using no other auxiliary fuel than natural gas or LPG, or

(b) carbon adsorption unit.

R307-401-16. [~~De minimis Emissions From~~]Soil Aeration Projects.

R307-401-16 applies to soil aeration projects used to conduct soil remediation.[~~An owner or operator of a soil remediation project is not subject to the notice of intent and approval order requirements of R307-401-5 through R307-401-8 when soil aeration or land farming is used to conduct a soil remediation, if the owner or operator submits the following information to the director prior to beginning the remediation project:~~]

(1) [~~documentation that the estimated total air emissions of volatile organic compounds, using an appropriate sampling method, from the project are less than the de minimis emissions listed in R307-401-9(1)(a);~~]The owner or operator of a soil aeration project is not subject to the notice of intent and approval order requirements of R307-401-5 through R307-401-8, if the following conditions are met:

(a) emissions of volatile organic compounds from a given soil aeration project are less than 5 tons per year; and

(b) emission rates of hazardous air pollutants are below their respective threshold values contained in R307-410-(1)(c)(i)(C).

(2) [~~documentation that the levels of any one hazardous air pollutant or any combination of hazardous air pollutants are less than the levels in R307-410-5(1)(d); and~~]The owner or operator shall submit documentation to the director demonstrating the project meets the exemption criteria in R307-401-16(1). The owner or operator shall receive approval from the director for the exemption prior to beginning the remediation project. Required documentation includes, but is not limited to:

(a) calculated emissions of volatile organic compounds and estimated emission rates of hazardous air pollutants from all soils to be treated from the soil aeration project.

(b) Emission calculations shall be based on soil samples of the soils to be remediated. Samples shall be analyzed for volatile organic compounds and hazardous air pollutants using the most recent

version of USEPA Test Method 8260, Method 8021, or other EPA approved testing methods acceptable to the director. Emission calculations should be based on the methodology in EPA guidance *"Air Emissions from the Treatment of Soils Contaminated with Petroleum Fuels and Other Substances"* (EPA-600/R-92-124) or other methodology acceptable to the director.

(c) Location where soil aeration will occur and where the remediated material originated.

(3) [~~the location of the remediation and where the remediated material originated.~~]The owner or operator is exempt from the reporting requirements in R307-401-16(2) if excavated soils are disposed of at a disposal or treatment facility, such as a landfill, solid waste management facility, or a landfarm facility, that is owned or operated by a third party and operates under an existing approval order.

KEY: air pollution, permits, approval orders, greenhouse gases
Date of Enactment or Last Substantive Amendment: June 6, 2019
Notice of Continuation: May 15, 2017
Authorizing, and Implemented or Interpreted Law: 19-2-104(3)(q); 19-2-108

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
Filed November 16, 2019, 12:00 a.m. through December 02, 2019, 11:59 p.m.

Number 2019-24
December 15, 2019

Nancy L. Lancaster, Managing Editor

The *Utah State Bulletin (Bulletin)* is an official noticing publication of the executive branch of Utah state government. The Office of Administrative Rules, part of the Department of Administrative Services, produces the *Bulletin* under authority of Section 63G-3-402.

The Portable Document Format (PDF) version of the *Bulletin* is the official version. The PDF version of this issue is available at https://rules.utah.gov/. Any discrepancy between the PDF version and other versions will be resolved in favor of the PDF version.

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Office of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-538-3003. Additional rulemaking information and electronic versions of all administrative rule publications are available at https://rules.utah.gov/.

The information in this *Bulletin* is summarized in the *Utah State Digest (Digest)* of the same volume and issue number. The *Digest* is available by e-mail subscription or online. Visit https://rules.utah.gov/ for additional information.

Office of Administrative Rules, Salt Lake City 84114

Utah state bulletin.
Semimonthly.
1. Delegated legislation--Utah--Periodicals. 2. Administrative procedure--Utah--Periodicals.
I. Utah. Office of Administrative Rules.

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EXECUTIVE DOCUMENTS

Under authority granted by the Utah Constitution and various federal and state statutes, the Governor periodically issues **EXECUTIVE DOCUMENTS**, which can be categorized as either Executive Orders, Proclamations, and Declarations. Executive Orders set policy for the executive branch; create boards and commissions; provide for the transfer of authority; or otherwise interpret, implement, or give administrative effect to a provision of the Constitution, state law or executive policy. Proclamations call special or extraordinary legislative sessions; designate classes of cities; publish states-of-emergency; promulgate other official formal public announcements or functions; or publicly avow or cause certain matters of state government to be made generally known. Declarations designate special days, weeks or other time periods; call attention to or recognize people, groups, organizations, functions, or similar actions having a public purpose; or invoke specific legislative purposes (such as the declaration of an agricultural disaster).

The Governor's Office staff files **EXECUTIVE DOCUMENTS** that have legal effect with the Office of Administrative Rules for publication and distribution.

P R O C L A M A T I O N

Calling the Sixty-Third Legislature Into the Second Special Session, Utah Proclamation No. 2019-2S

WHEREAS, since the adjournment of the 2019 General Session of the Sixty-third Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention; and

WHEREAS, Article VII, Section 6 of the Constitution of the State of Utah provides that the Governor may, by proclamation, convene the Legislature into Special Session;

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and the laws of the State of Utah, do by this Proclamation call the Sixty-third Legislature of the State of Utah into a Second Special Session at the Utah State Capitol, in Salt Lake City, Utah, on the 12th day of December 2019, at 5:00 pm, to consider the following:

1. Amendments to state law related to state and local taxes and revenue; and
2. One-time appropriations for behavioral health.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, this 10th day of December 2019.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

2019/2/S

End of the Executive Documents Section

NOTICES OF
PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between November 16, 2019, 12:00 a.m., and December 02, 2019, 11:59 p.m. are included in this, the December 15, 2019, issue of the *Utah State Bulletin*.

In this publication, each **PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **PROPOSED RULE** is usually printed. New rules or additions made to existing rules are underlined (example). Deletions made to existing rules are struck out with brackets surrounding them ([~~example~~]). Rules being repealed are completely struck out. A row of dots in the text between paragraphs (**. . . . . .**) indicates that unaffected text from within a section was removed to conserve space. Unaffected sections are not usually printed. If a **PROPOSED RULE** is too long to print, the Office of Administrative Rules may include only the **RULE ANALYSIS**. A copy of each rule that is too long to print is available from the filing agency or from the Office of Administrative Rules.

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least January 14, 2020. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through April 13, 2020, the agency may notify the Office of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

The public, interest groups, and governmental agencies are invited to review and comment on **PROPOSED RULES**. *Comment may be directed to the contact person identified on the* **RULE ANALYSIS** *for each rule.*

PROPOSED RULES are governed by Section 63G-3-301, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5a, R15-4-9, and R15-4-10.

The Proposed Rules Begin on the Following Page

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-501(3); 53E-3-401(4)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R307-401**	**Filing No. 52316**

Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Room no.:	Fourth Floor	
Street address:	195 N 1950 W	
City, state:	Salt Lake City, UT84116-3085	
Mailing address:	PO Box 144820	
City, state, zip:	Salt Lake City, UT 84116-3085	
Contact person(s):		
Name:	**Phone:**	**Email:**
Liam Thrailkill	801-536-4419	lthrailkill@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

Permit: New and Modified Sources

3. Purpose of the new rule or reason for the change:

These amendments add and update definitions and testing requirements. These changes will allow sources to discontinue testing after three years of operation if testing demonstrates the emissions have consistently remained below exemption levels. Changes have also been made to clarify that sub-slab vapor mitigation systems are exempt from this rule's testing requirements.

4. Summary of the new rule or change:

Section R307-401-2 is amended to add definitions for "air strippers," "soil aeration," "soil vapor extraction," and "vapor mitigation system." Section R307-401-10 adds "Vapor Mitigation System" to Source Category Exemptions. Sections R307-401-15 and R307-401-16 are being amended to update testing requirements, which will allow sources to discontinue testing after three years of operation if testing demonstrates the emissions have consistently remained below exemption levels.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

These rule changes are expected to have an unknown savings to the state budget as it will limit the need for Division of Air Quality staff to review testing submissions. The savings is unknown because information regarding how many of these would be submitted is unavailable.

B) Local governments:

These rule changes are not expected to have a fiscal impact on local governments.

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

These rule changes could result in a cost savings to small businesses that operate or own sub-slab vapor extraction systems, as this rule exempts them from certain notice of intent and approval order requirements. The aggregate savings is not possible to calculate as the number of soil vapor extractions (SVEs) operating at any given time is not readily available. However, the savings are estimated to range between $2,800 and $3,500 per sampling event per stack.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

These amendments will result in an unknown savings to non-small businesses. Information on how many instances the exemption will apply to an owner or operator of sub-slab vapor mitigation systems is not readily available. However, it is estimated that the savings will range between $2,800 and $3,500 per sampling event for each vent riser. Each system will have a specific vent riser count requirement. Stacks can range from 4 to 10 per project. As currently written, the rule requires each stack to be tested five times in the first year and twice a year after the first year for the life of the project. At a four-stack site this could cost up to $70,000 in the first year, and up to $28,000 each subsequent year. Testing would be required for the life of the project.

E) 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***)**:**

These rule changes are not expected to have a fiscal impact on persons other than small businesses, non-small businesses, state, or local government entities.

F) Compliance costs for affected persons:

There are no additional compliance requirements added to this rule through amendments; therefore, there are no compliance costs for affected persons.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	**$0**	**$0**	**$0**

H) Department head sign-off on regulatory impact:

The interim executive director of the Department of Environmental Quality, L. Scott Baird, has reviewed and approved this fiscal analysis.

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

These amendments will result in an unknown savings to non-small businesses, and could result in savings to small businesses. Information on how many instances the exemption will apply to an owner or operator of sub-slab vapor mitigation systems is not readily available. However, it is estimated that the savings will range between $2,800 and $3,500 per sampling event for each vent riser. Each system will have a specific vent riser count requirement. Stacks can range from four to 10 per project. As currently written, this rule requires each stack to be tested five times in the first year and twice a year after the first year for the life of the project. At a four-stack site this could cost up to $70,000 in the first year, and up to $28,000 each subsequent year. Testing would be required for the life of the project.

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

L. Scott Baird, Interim Executive Director

Citation Information

7. 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):

Section 19-2-108	Section 19-2-104	

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	01/15/2020

B) A public hearing (optional) will be held:

On:	**At:**	**At:**
01/15/2020	01:00 PM	Multi Agency State Office Building 195 N 1950 W, Fourth Floor, Salt Lake City, UT 84116

10. This rule change MAY become effective on:	03/04/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Bryce Bird, Director	**Date:**	11/02/2019

R307. Environmental Quality, Air Quality.
R307-401. Permit: New and Modified Sources.
R307-401-2. Definitions.

"Actual emissions" (a) means the actual rate of emissions of an air pollutant from an emissions unit, as determined in accordance with R307-401-2(b) through R307-401-2(d).

(b) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the air pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(c) The director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(d) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each air pollutant which would be emitted from any proposed stationary source or modification which the director, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR parts 60 and 61. If the director determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

Air Strippers" are systems designed to pump groundwater to the surface for treatment, usually by aeration.

"Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same Major Group (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any air pollutant.

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Indirect source" means a building, structure, facility, or installation which attracts or may attract mobile source activity that results in emission of a pollutant for which there is a national standard.

"Potential to emit" means the maximum capacity of a stationary source to emit an air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

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The source categories described in R307-401-10 are exempt from the requirement to obtain an approval order found in R307-401-5 through R307-401-8. The general provisions in R307-401-4 shall apply to these sources.

(1) Fuel-burning equipment in which combustion takes place at no greater pressure than one inch of mercury above ambient pressure with a rated capacity of less than five million BTU per hour using no other fuel than natural gas or LPG or other mixed gas that meets the standards of gas distributed by a utility in accordance with the rules of the Public Service Commission of the State of Utah, unless there are emissions other than combustion products.

(2) Comfort heating equipment such as boilers, water heaters, air heaters and steam generators with a rated capacity of less than one million BTU per hour if fueled only by fuel oil numbers 1 - 6,

(3) Emergency heating equipment, using coal or wood for fuel, with a rated capacity less than 50,000 BTU per hour.

(4) Exhaust systems for controlling steam and heat that do not contain combustion products.

(5) A well site as defined in 40 CFR 60.5430a, including centralized tank batteries, that is not a major source as defined in R307-101-2, and is registered with the Division as required by R307-505.

(6) A gasoline dispensing facility as defined in 40 CFR 63.11132 that is not a major source as defined in R307-101-2. These sources shall comply with the applicable requirements of R307-328 and 40 CFR 63 Subpart CCCCCC: National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities.

(7) A Vapor Mitigation System as defined in R307-401-2.

R307-401-15. Air Strippers and Soil Vapor Extraction Systems[~~Venting Projects~~].

R307-401-15 applies to remediation systems with the potential to generate air emissions, such as air strippers and soil vapor extraction (SVE) as defined in R307-401-2.

(1) The owner or operator of an air stripper or SVE remediation system[~~soil venting system that is used to remediate contaminated groundwater or soil~~] is exempt from the notice of intent and approval order requirements of R307-401-5 through R307-401-8 if the following conditions are met:

(a) [~~the estimated total air~~]actual emissions of volatile organic compounds from a given project are less than 5 tons per year; and[~~the de minimis emissions listed in R307-401-9(1)(a), and~~]

(b) emission rates of[~~the level of any one hazardous air pollutant or any combination of~~] hazardous air pollutants are[~~is~~] below their respective threshold values contained[~~the levels listed~~] in R307-410-5(1)(c)(i)(C).

(2) The owner or operator shall submit documentation to the director that demonstrates the project meets the exemption criteria[~~requirements~~] in R307-401-15(1)[~~to the director prior to beginning the remediation project~~]. Required documentation includes, but is not limited to:

(a) project summary, including location, system description, operational schedule, and schedule for construction;

(b) emission calculations and any laboratory sampling data used in calculations; and

(c) plans and specifications for the system and equipment.

(3) After beginning the soil remediation project, the owner [~~or operator shall submit emissions information to the director to verify that the emission rates of the volatile organic compounds and hazardous air pollutants in R307-401-15(1) are not exceeded.~~]or operator shall conduct testing to demonstrate compliance with the exemption levels in R307-401-15(1)(1) and (b). Monitoring and reporting shall be conducted as follows:

(a) [~~Emissions estimates of volatile organic compounds shall be based on test data obtained in accordance with the test method in the EPA document SW-846, Test #8260c or 8261a, or the most recent EPA revision of either test method if approved by the director.~~]Emissions for air strippers shall be based on the following:

(i) influent and effluent water samples analyzed for volatile organic compounds and hazardous air pollutants using the most recent version of USEPA Test Method 8260, Method 8021, or other EPA approved testing methods acceptable to the director; and

(ii) design water flow rate of the system or the water flow rates measured during the sample period.

(b) [~~Emissions estimates of hazardous air pollutants shall be based on test data obtained in accordance with the test method in EPA document SW-846, Test #8021B or the most recent EPA revision of the test method if approved by the director.~~]Emissions for SVE systems shall be based on the following:

(i) Air samples collected from a sample port in the exhaust stack of the SVE system and analyzed for volatile organic compounds and hazardous air pollutants using USEPA test method TO-15, or other EPA approved testing methods acceptable to the director.

(ii) Design air flow rate of the system or the air flow rates measured at the outlet of the SVE system during the sample period. Flow rates should be measured and reported at actual conditions.

(c) [~~Results of the test and calculated annual quantity of emissions of volatile organic compounds and hazardous air pollutants shall be submitted to the director within one month of sampling.~~]Within one month of sampling, the owner or operator shall submit to the director the sample results, estimated emissions of volatile organic compounds, and estimated emission rates of hazardous air pollutants.

(d) [~~The test samples shall be drawn on intervals of no less than twenty-eight days and no more than thirty-one days (i.e., monthly) for the first quarter, quarterly for the first year, and semi-annually thereafter or as determined necessary by the director.~~]Samples shall be collected at the following frequencies or more frequently as determined necessary by the director:

(i) no less than twenty-eight days and no more than thirty-one days (i.e., monthly) after startup for the first quarter;

(ii) quarterly for the remainder of the first year; and

(iii) semi-annually thereafter for the life of the project or as allowed in R307-401-15(3)(f).

(e) If an SVE or air stripper system is restarted after rehabilitation or an extended period of shutdown, the owner or operator shall recommence the sampling schedule in R307-415(3)(d), unless otherwise approved by the director.

(f) The owner or operator may request to discontinue sampling after three years of operation. To discontinue sampling, the owner or operator must submit to the director a request to discontinue monitoring.

(i) The request must include documentation demonstrating emissions have remained below the exemption levels in R307-401-15(1)(a) and (b) since startup of the system.

(ii) The request is subject to approval from the director upon consultation with other regulatory agencies involved in the project, such as Division of Environmental Response and Remediation or Division of Waste Management and Radiation Control.

(4) The following control devices do not require a notice of intent or approval order when used in relation to an air stripper or soil vapor extraction system that is[~~venting project~~] exempted under R307-401-15:

(a) thermodestruction unit with a rated input capacity of less than five million BTU per hour using no other auxiliary fuel than natural gas or LPG, or

(b) carbon adsorption unit.

R307-401-16. [~~De minimis Emissions From~~]Soil Aeration Projects.

R307-401-16 applies to soil aeration projects used to conduct soil remediation.[~~An owner or operator of a soil remediation project is not subject to the notice of intent and approval order requirements of R307-401-5 through R307-401-8 when soil aeration or land farming is used to conduct a soil remediation, if the owner or~~

~~operator submits the following information to the director prior to beginning the remediation project:~~]

(1) [~~documentation that the estimated total air emissions of volatile organic compounds, using an appropriate sampling method, from the project are less than the de minimis emissions listed in R307-401-9(1)(a);~~]The owner or operator of a soil aeration project is not subject to the notice of intent and approval order requirements of R307-401-5 through R307-401-8, if the following conditions are met:

(a) emissions of volatile organic compounds from a given soil aeration project are less than 5 tons per year; and

(b) emission rates of hazardous air pollutants are below their respective threshold values contained in R307-410-(1)(c)(i)(C).

(2) [~~documentation that the levels of any one hazardous air pollutant or any combination of hazardous air pollutants are less than the levels in R307-410-5(1)(d); and~~]The owner or operator shall submit documentation to the director demonstrating the project meets the exemption criteria in R307-401-16(1). The owner or operator shall receive approval from the director for the exemption prior to beginning the remediation project. Required documentation includes, but is not limited to:

(a) calculated emissions of volatile organic compounds and estimated emission rates of hazardous air pollutants from all soils to be treated from the soil aeration project.

(b) Emission calculations shall be based on soil samples of the soils to be remediated. Samples shall be analyzed for volatile organic compounds and hazardous air pollutants using the most recent version of USEPA Test Method 8260, Method 8021, or other EPA approved testing methods acceptable to the director. Emission calculations should be based on the methodology in EPA guidance "Air Emissions from the Treatment of Soils Contaminated with Petroleum Fuels and Other Substances" (EPA-600/R-92-124) or other methodology acceptable to the director.

(c) Location where soil aeration will occur and where the remediated material originated.

(3) [~~the location of the remediation and where the remediated material originated.~~]The owner or operator is exempt from the reporting requirements in R307-401-16(2) if excavated soils are disposed of at a disposal or treatment facility, such as a landfill, solid waste management facility, or a landfarm facility, that is owned or operated by a third party and operates under an existing approval order.

KEY: air pollution, permits, approval orders, greenhouse gases
Date of Enactment or Last Substantive Amendment: [~~June 6, 2019~~]2020
Notice of Continuation: May 15, 2017
Authorizing, and Implemented or Interpreted Law: 19-2-104(3)(q); 19-2-108

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R381-60**	**Filing No. 52369**

Agency Information

1. Department:	Health
Agency:	Child Care Center Licensing Committee
Building:	Highland
Street address:	3760 S Highland Drive
City, state:	Salt Lake City, UT 84106
Mailing address:	PO Box 142003
City, state, zip:	Salt Lake City, UT 84114

Contact person(s):

Name:	Phone:	Email:
Simon Bolivar	801-803-4618	sbolivar@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

Hourly Child Care Centers

3. Purpose of the new rule or reason for the change:

The Department of Health (Department) and the Center Licensing Committee (Division) have collected suggested amendments to this rule throughout the year. These amendments are necessary to clarify language and to simplify processes, so interpretation of and compliance with the rules are even more consistent.

4. Summary of the new rule or change:

These proposed amendments include new and clarification of definitions, simplification of language, deletion of small unnecessary parts of the rules, needed renumbering, and a better and simplified language for the current background check process.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

The Division does not anticipate any additional costs or savings due to these proposed rule changes.

B) Local governments:

These proposed amendments are not expected to have any fiscal impact on local governments' revenues or expenditures because there are no licensed centers operated by local governments to whom these changes will affect.

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

The Division expects some savings associated with these proposed amendments to the background check rules that will benefit all child care providers. Since the Department uses the FBI Rap Back system, it is no longer required for providers to resubmit background check information for their covered individuals once every year. By not doing so, child care providers will not have

Public Comment

MEMORANDUM

TO: Air Quality Board

THROUGH: Bryce C. Bird, Executive Secretary

FROM: Alan Humpherys, Minor New Source Review Section Manager

DATE: March 4, 2020

SUBJECT: FINAL ADOPTION: Amend R307-401. Permit: New and Modified Sources.

Staff is proposing the final adoption of amendments to R307-401 related to soil vapor extraction (SVE), air stripper systems, and sub-slab vapor mitigation systems (VMS). A public comment period ran from December 15, 2019 to January 14, 2020. Staff also conducted a public hearing on January 15, 2020. No comments were received.

Background and Summary of Changes

Rules R307-401-15 and 16 apply to SVE or air stripper systems and soil aeration projects. These rules exempt an owner or operator of a soil or groundwater remediation site from the new source review (NSR) permitting process as long as volatile organic compound (VOC) emissions are under five tons per year and hazardous air pollutants are less than their threshold values contained in R307-410-5(1)(c)(i)(c). The rules require the owner or operator to test to demonstrate compliance with the exemption levels.

R307-401 was modified to include new and updated definitions and updated testing and reporting requirements. In addition, staff added an exemption for sub-slab VMS, which are systems designed to mitigate vapor intrusion into an occupied or occupiable structure. These systems are not designed to remediate contaminated soil or groundwater. The amended rule exempts these systems from the NSR permitting process and from the requirements of R307-401-15. This exemption is included in R307-401-10(7).

On August 7, 2019, the Air Quality Board (Board) proposed for public comment amendments to R307-401 related to SVE, air stripper systems, and VMS. The public comment period was held from September 1 – 31, 2019, and staff received three comments regarding definitions and organization of the rule. The comments were attached to the Board memo in November. Staff generally agreed with the comments related to definitions and revised the rule accordingly.

However, due to the Office of Administrative Rules moving to a new system for online filings, staff was unable to submit a Change in Proposed Rule (CPR) after the September 2019 public comment period. For that reason, staff decided to allow the original filing to lapse and created a new filing which incorporated the changes resulting from our proposed responses to the comments received during the September 2019 public comment period.

On November 20, 2019, the Board proposed the amended R307-401 for public comment. This public comment period ran from December 15, 2019, to January 14, 2020. No comments were received during this second public comment period. Staff also conducted a public hearing on January 15, 2020. There were no attendees at the public hearing.

Recommendation: Staff recommends that the Board adopt R307-401 as proposed.

Effective Rule

R307-401
File number 52316 AMD
Effective March 5, 2020

R307. Environmental Quality, Air Quality.
R307-401. Permit: New and Modified Sources.
R307-401-2. Definitions.

"Actual emissions" (a) means the actual rate of emissions of an air pollutant from an emissions unit, as determined in accordance with R307-401-2(b) through R307-401-2(d).

(b) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the air pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(c) The director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(d) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each air pollutant which would be emitted from any proposed stationary source or modification which the director, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR parts 60 and 61. If the director determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

Air Strippers" are systems designed to pump groundwater to the surface for treatment, usually by aeration.

"Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same Major Group (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any air pollutant.

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Indirect source" means a building, structure, facility, or installation which attracts or may attract mobile source activity that results in emission of a pollutant for which there is a national standard.

"Potential to emit" means the maximum capacity of a stationary source to emit an air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Soil Aeration" is an ex-situ treatment process where excavated soil from a remediation project is spread in a thin layer to encourage biodegradation of soil contamination. Biodegradation may be stimulated through aeration or the addition of minerals, nutrients, and/or moisture.

"Soil Vapor Extraction", or SVE, is a system designed to extract vapor phase contaminants from the subsurface. SVE systems are often combined with other technologies, such as air sparging or vacuum-enhanced recovery systems.

"Stationary source" means any building, structure, facility, or installation which emits or may emit an air pollutant.

"Vapor Mitigation System", or VMS, is a sub-slab system whose primary purpose is mitigating vapor intrusion into an occupied, or occupiable, structure and is not intended or designed for the remediation of contaminated soil or groundwater. This definition includes both active and passive systems. Passive systems consist of a vapor barrier either below or above the slab of a structure and a venting system installed under a structure to divert vapor from beneath the structure to the sides or roofline of a structure. Active systems are similar to passive systems but incorporate a blower or fan to actively extract air from beneath the structure.

R307-401-10. Source Category Exemptions.

The source categories described in R307-401-10 are exempt from the requirement to obtain an approval order found

in R307-401-5 through R307-401-8. The general provisions in R307-401-4 shall apply to these sources.

(1) Fuel-burning equipment in which combustion takes place at no greater pressure than one inch of mercury above ambient pressure with a rated capacity of less than five million BTU per hour using no other fuel than natural gas or LPG or other mixed gas that meets the standards of gas distributed by a utility in accordance with the rules of the Public Service Commission of the State of Utah, unless there are emissions other than combustion products.

(2) Comfort heating equipment such as boilers, water heaters, air heaters and steam generators with a rated capacity of less than one million BTU per hour if fueled only by fuel oil numbers 1 - 6,

(3) Emergency heating equipment, using coal or wood for fuel, with a rated capacity less than 50,000 BTU per hour.

(4) Exhaust systems for controlling steam and heat that do not contain combustion products.

(5) A well site as defined in 40 CFR 60.5430a, including centralized tank batteries, that is not a major source as defined in R307-101-2, and is registered with the Division as required by R307-505.

(6) A gasoline dispensing facility as defined in 40 CFR 63.11132 that is not a major source as defined in R307-101-2. These sources shall comply with the applicable requirements of R307-328 and 40 CFR 63 Subpart CCCCCC: National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities.

(7) A Vapor Mitigation System as defined in R307-401-2.

R307-401-15. Air Strippers and Soil Vapor Extraction Systems.

R307-401-15 applies to remediation systems with the potential to generate air emissions, such as air strippers and soil vapor extraction (SVE) as defined in R307-401-2.

(1) The owner or operator of an air stripper or SVE remediation system is exempt from the notice of intent and approval order requirements of R307-401-5 through R307-401-8 if the following conditions are met:

(a) actual emissions of volatile organic compounds from a given project are less than 5 tons per year; and

(b) emission rates of hazardous air pollutants are below their respective threshold values contained in R307-410-5(1)(c)(i)(C).

(2) The owner or operator shall submit documentation to the director that demonstrates the project meets the exemption criteria in R307-401-15(1). Required documentation includes, but is not limited to:

(a) project summary, including location, system description, operational schedule, and schedule for construction;

(b) emission calculations and any laboratory sampling data used in calculations; and

(c) plans and specifications for the system and equipment.

(3) After beginning the soil remediation project, the owner or operator shall conduct testing to demonstrate compliance with the exemption levels in R307-401-15(1)(1) and (b). Monitoring and reporting shall be conducted as follows:

(a) Emissions for air strippers shall be based on the following:

(i) influent and effluent water samples analyzed for volatile organic compounds and hazardous air pollutants using the most recent version of USEPA Test Method 8260, Method 8021, or other EPA approved testing methods acceptable to the director; and

(ii) design water flow rate of the system or the water flow rates measured during the sample period.

(b) Emissions for SVE systems shall be based on the following:

(i) Air samples collected from a sample port in the exhaust stack of the SVE system and analyzed for volatile organic compounds and hazardous air pollutants using USEPA test method TO-15, or other EPA approved testing methods acceptable to the director.

(ii) Design air flow rate of the system or the air flow rates measured at the outlet of the SVE system during the sample period. Flow rates should be measured and reported at actual conditions.

(c) Within one month of sampling, the owner or operator shall submit to the director the sample results, estimated emissions of volatile organic compounds, and estimated emission rates of hazardous air pollutants.

(d) Samples shall be collected at the following frequencies or more frequently as determined necessary by the director:

(i) no less than twenty-eight days and no more than thirty-one days (i.e., monthly) after startup for the first quarter;

(ii) quarterly for the remainder of the first year; and

(iii) semi-annually thereafter for the life of the project or as allowed in R307-401-15(3)(f).

(e) If an SVE or air stripper system is restarted after rehabilitation or an extended period of shutdown, the owner or operator shall recommence the sampling schedule in R307-415(3)(d), unless otherwise approved by the director.

(f) The owner or operator may request to discontinue sampling after three years of operation. To discontinue sampling, the owner or operator must submit to the director a request to discontinue monitoring.

(i) The request must include documentation demonstrating emissions have remained below the exemption levels in R307-401-15(1)(a) and (b) since startup of the system.

(ii) The request is subject to approval from the director upon consultation with other regulatory agencies involved in the project, such as Division of Environmental Response and Remediation or Division of Waste Management and Radiation Control.

(4) The following control devices do not require a notice of intent or approval order when used in relation to an air stripper or soil vapor extraction system that is exempted under R307-401-15:

(a) thermodestruction unit with a rated input capacity of less than five million BTU per hour using no other auxiliary fuel than natural gas or LPG, or

(b) carbon adsorption unit.

R307-401-16. Soil Aeration Projects.

R307-401-16 applies to soil aeration projects used to conduct soil remediation.

(1) The owner or operator of a soil aeration project is not subject to the notice of intent and approval order

requirements of R307-401-5 through R307-401-8, if the following conditions are met:

(a) emissions of volatile organic compounds from a given soil aeration project are less than 5 tons per year; and

(b) emission rates of hazardous air pollutants are below their respective threshold values contained in R307-410-(1)(c)(i)(C).

(2) The owner or operator shall submit documentation to the director demonstrating the project meets the exemption criteria in R307-401-16(1). The owner or operator shall receive approval from the director for the exemption prior to beginning the remediation project. Required documentation includes, but is not limited to:

(a) calculated emissions of volatile organic compounds and estimated emission rates of hazardous air pollutants from all soils to be treated from the soil aeration project.

(b) Emission calculations shall be based on soil samples of the soils to be remediated. Samples shall be analyzed for volatile organic compounds and hazardous air pollutants using the most recent version of USEPA Test Method 8260, Method 8021, or other EPA approved testing methods acceptable to the director. Emission calculations should be based on the methodology in EPA guidance "Air Emissions from the Treatment of Soils Contaminated with Petroleum Fuels and Other Substances" (EPA-600/R-92-124) or other methodology acceptable to the director.

(c) Location where soil aeration will occur and where the remediated material originated.

(3) The owner or operator is exempt from the reporting requirements in R307-401-16(2) if excavated soils are disposed of at a disposal or treatment facility, such as a landfill, solid waste management facility, or a landfarm facility, that is owned or operated by a third party and operates under an existing approval order.

KEY: air pollution, permits, approval orders, greenhouse gases
Date of Enactment or Last Substantive Amendment: March 5, 2020
Notice of Continuation: May 15, 2017
Authorizing, and Implemented or Interpreted Law: 19-2-104(3)(q); 19-2-108

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UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
Filed March 03, 2020, 12:00 a.m. through March 16, 2020, 11:59 p.m.

Number 2020-07
April 01, 2020

Nancy L. Lancaster, Managing Editor

The *Utah State Bulletin (Bulletin)* is an official noticing publication of the executive branch of Utah state government. The Office of Administrative Rules, part of the Department of Administrative Services, produces the *Bulletin* under authority of Section 63G-3-402.

The Portable Document Format (PDF) version of the *Bulletin* is the official version. The PDF version of this issue is available at https://rules.utah.gov/. Any discrepancy between the PDF version and other versions will be resolved in favor of the PDF version.

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Office of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-957-7110. Additional rulemaking information and electronic versions of all administrative rule publications are available at https://rules.utah.gov/.

The information in this *Bulletin* is summarized in the *Utah State Digest (Digest)* of the same volume and issue number. The *Digest* is available by e-mail subscription or online. Visit https://rules.utah.gov/ for additional information.

Office of Administrative Rules, Salt Lake City 84114

Utah state bulletin.
Semimonthly.
1. Delegated legislation--Utah--Periodicals. 2. Administrative procedure--Utah--Periodicals.
I. Utah. Office of Administrative Rules.

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EXECUTIVE DOCUMENTS

Under authority granted by the Utah Constitution and various federal and state statutes, the Governor periodically issues **EXECUTIVE DOCUMENTS**, which can be categorized as either Executive Orders, Proclamations, and Declarations. Executive Orders set policy for the executive branch; create boards and commissions; provide for the transfer of authority; or otherwise interpret, implement, or give administrative effect to a provision of the Constitution, state law or executive policy. Proclamations call special or extraordinary legislative sessions; designate classes of cities; publish states-of-emergency; promulgate other official formal public announcements or functions; or publicly avow or cause certain matters of state government to be made generally known. Declarations designate special days, weeks or other time periods; call attention to or recognize people, groups, organizations, functions, or similar actions having a public purpose; or invoke specific legislative purposes (such as the declaration of an agricultural disaster).

The Governor's Office staff files **EXECUTIVE DOCUMENTS** that have legal effect with the Office of Administrative Rules for publication and distribution.

EXECUTIVE ORDER

Suspending the Enforcement of Utah Code §§ 20A-9-407(3)(a) and 20A-9-408(3)(b) Due to Infectious Disease COVID-19 Novel Coronavirus

WHEREAS, On March 6, 2020, a state of emergency was declared in response to the evolving outbreak of novel coronavirus disease 2019 (COVID-19);

WHEREAS, State and local authorities have recommended that individuals experiencing symptoms of COVID-19 self-isolate themselves as necessary to prevent further transmission of the disease;

WHEREAS, Utah Code §§ 20A-9-407(3)(a) and 20A-9-408(3)(b), subject to certain exceptions, require a member of a qualified political party who is seeking the nomination of the qualified political party for an elective office that is to be filled at the next general election (hereinafter, a “potential candidate”) to file a declaration of candidacy in person with the filing officer at the Utah State Elections Office;

WHEREAS, A potential candidate may experience symptoms of COVID-19 and choose to self-isolate as recommended by state and local authorities;

WHEREAS, To require a potential candidate to file a declaration of candidacy in person may directly conflict with the recommendation of state and local authorities that individuals experiencing symptoms of COVID-19 self-isolate as necessary to prevent further transmission of the disease;

WHEREAS, Utah Code § 53-2a-209(4) authorizes the governor to suspend by executive order enforcement of a statute that is directly related to and necessary to address a state of emergency;

WHEREAS, Utah Code § 53-2a-204(1)(b) authorizes the governor to employ measures and give direction to state and local officers and agencies that are reasonable and necessary to secure compliance with orders made pursuant to part 2 of the Emergency Management Act;

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, hereby order the suspension of enforcement of Utah Code §§ 20A-9-407(3)(a) and 20A-9-408(3)(b) to the extent that the provisions require a potential candidate to file a declaration of candidacy in person.

I hereby also direct the Director of Elections to permit a potential candidate to file a declaration of candidacy as though the potential candidate is an individual qualified to use the procedures provided in Utah Code § 20A-9-202(1)(c).

IN TESTIMONY, WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah this 12th day of March 2020.

(State Seal)

Gary R. Herbert
Governor

Attest:

Spencer J. Cox
Lieutenant Governor

2020/002/EO

EXECUTIVE ORDER

Temporarily Suspending Utah Administrative Code R671-302 Regarding Public Access to Board of Pardons and Parole Hearings

WHEREAS, On March 6, 2020, Governor Gary R. Herbert issued an Executive Order declaring a state of emergency due to novel coronavirus disease 2019 (COVID-19);

WHEREAS, On March 11, 2020, the World Health Organization characterized the COVID-19 outbreak as a pandemic;

WHEREAS, On March 12, 2020, the Utah Department of Corrections suspended access to the Utah State Prison in Draper and the Central Utah Correctional Facility in Gunnison by visitors and volunteers in order to prevent the spread of COVID-19;

WHEREAS, On March 13, 2020, President Donald J. Trump declared a national state of emergency based on the continuing spread of COVID-19;

WHEREAS, Strict adherence to Utah Administrative Code R671-302, News Media and Public Access to Hearings, will substantially hinder necessary action by the Utah Department of Corrections in coping with and preventing the continuing spread of COVID-19;

WHEREAS, Utah Code § 53-2a-209(3) authorizes the governor to suspend by executive order the provisions of any order, rule, or regulation of any state agency, if the strict compliance with the provisions of the order, rule, or regulation would substantially prevent, hinder, or delay necessary action in coping with an emergency or disaster;

WHEREAS, Utah Code § 53-2a-204(1)(b) authorizes the governor to employ measures and give direction to state and local officers and agencies that are reasonable and necessary to secure compliance with orders made pursuant to part 2 of the Emergency Management Act;

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, hereby order the suspension of Utah Administrative Code R671-302, News Media and Public Access to Hearings. Effective immediately, the Utah Board of Pardons and Parole ("Board") shall restrict in-person access to Board hearings as follows:

A. At a parole revocation hearing, including an evidentiary hearing, in-person access shall be limited to: (1) a Board member; (2) a hearing officer; (3) a prison staff member; (4) an offender; (5) legal counsel for the offender; (6) an Adult Probation and Parole agent; (7) legal counsel for Adult Probation and Parole; (8) a witness; (9) a victim; (10) one representative of each victim; and (11) up to two family members of each victim.

B. At an original hearing, rehearing, special attention review hearing, and redetermination hearing, in-person access shall be limited to: (1) a Board member; (2) a hearing officer; (3) a prison staff member; (4) an offender; (5) a victim; (6) one representative of each victim; and (7) up to two family members of each victim.

C. At a pardon hearing, in-person access shall be limited to: (1) a Board member; (2) a prison staff member; (3) a pardon applicant; (4) legal counsel for the pardon applicant; (5) a victim; (6) one representative of each victim; (7) up to two family members of each victim; and (8) an authorized representative of the arresting or investigative agency, sentencing court, or prosecutor's office for each conviction being addressed.

D. At a commutation hearing, in-person access shall be limited by the Board as the Board reasonably determines is necessary to prevent or control the spread of COVID-19.

Notwithstanding the foregoing restrictions, the Board shall simultaneously transmit by electronic means hearings for public viewing and listening.

This Order shall remain in effect until the date of termination of the state of emergency declared in Executive Order 2020-1 unless terminated earlier by the Governor.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 17th day of March, 2020.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

2020/003/EO

EXECUTIVE ORDER

Temporarily Suspending Utah Administrative Code R82-2-201 Regarding Liquor Returns, Refunds and Exchanges

WHEREAS, On March 6, 2020, Governor Gary R. Herbert issued an Executive Order declaring a state of emergency due to novel coronavirus disease 2019 (COVID-19);

WHEREAS, On March 11, 2020, the World Health Organization characterized the COVID-19 outbreak as a pandemic;

WHEREAS, On March 13, 2020, President Donald J. Trump declared a national state of emergency based on the continuing spread of COVID-19;

WHEREAS, On March 15, 2020, the Summit County Health Officer issued a Public Health Order requiring all restaurants, coffee shops, tea shops, employee cafeterias, self-serve buffets, salad bars, unpackaged self-serve food services, bars, taverns, nightclubs, private liquor clubs, and saloons in Summit County to cease all dine-in food service, effective at 5:00 p.m. on March 15, 2020;

WHEREAS, On March 16, 2020, the Salt Lake County Mayor and the Salt Lake County Health Department Executive Director issued a Public Health Order requiring all food service, restaurants, self-serve buffets, salad bars, unpackaged self-serve food services, bars, taverns, nightclubs, private liquor clubs, and saloons in Salt Lake County to close to members, guests, patrons, customers, and the general public, and to cease all dine-in food service effective at 11:00 p.m. on March 16, 2020;

WHEREAS, on March 17, 2020, the Executive Director of the Utah Department of Health issued a State Public Health Order requiring all food service, restaurants, self-serve buffets, salad bars, unpackaged self-serve food services, bars, taverns, nightclubs, private liquor clubs, and saloons in the state of Utah to close to members, guests, patrons, customers, and the general public, and to cease all dine-in food service effective at 11:59 p.m. on March 18, 2020;

WHEREAS, Utah Administrative Code R82-2-201 governs all liquor returns, refunds, and exchanges, and mandates that wine and beer, due to their perishable nature and susceptibility to temperature changes, should be accepted at a DABC store with caution;

WHEREAS, Utah Administrative Code R82-2-201(2)(b)(iv) requires returns of more than $500 to be processed via check, which may take several weeks;

WHEREAS, The aforementioned businesses will not be permitted to sell liquor for consumption on their premises while the public health orders are effective;

WHEREAS, Strict compliance with Utah Administrative Code R82-2-201 would substantially prevent, hinder, or delay necessary action in coping with the economic impact of the emergency;

WHEREAS, Returning liquor to the Department of Alcoholic Beverage Control (DABC) is necessary for businesses to cope with the economic impact of COVID-19;

WHEREAS, Utah Code § 53-2a-209(3) authorizes the governor to suspend by executive order the provisions of any order, rule, or regulation of any state agency, if the strict compliance with the provisions of the order, rule, or regulation would substantially prevent, hinder, or delay necessary action in coping with an emergency or disaster;

WHEREAS, Utah Code § 53-2a-204(1)(b) authorizes the governor to employ measures and give direction to state and local officers and agencies that are reasonable and necessary to secure compliance with orders made pursuant to part 2 of the Emergency Management Act;

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, hereby order the suspension and enforcement of Utah Administrative Code R82-2-201, to the extent that the provisions prohibit or strongly discourage the DABC from accepting returns of wine, heavy beer, cream-based spirits or liqueurs, and other distilled spirits.

The DABC shall accept a return by a DABC licensee of distilled spirits, wine, heavy beer, cream-based spirits or liqueurs, and other distilled spirits not acquired through the DABC's special order program (hereinafter, a "product") and shall waive the restocking fee for the return of the product if the licensee:

1. provides for each product a purchase receipt dated no earlier than March 2, 2020 and no later than March 18, 2020;

2. returns each product in an unopened and sealed condition;

3. schedules an appointment with a DABC store and returns the product to the DABC store (product purchased at a package agency may be returned only to a DABC store); and

4. complies with any other return processes, such as filling out required forms, implemented by the DABC.

I further suspend Utah Administrative Code R82-2-201(2)(b)(iv), which provides that returns exceeding $500 will be processed via check mailed to the customer. DABC shall provide refunds in the manner it determines best serves the interests of the Department and the licensee.

This Order shall remain in effect through April 1, 2020.

IN TESTIMONY, WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah this 18th day of March 2020.

(State Seal)

Gary R. Herbert
Governor

Attest:

Spencer J. Cox
Lieutenant Governor

2020/004/EO

EXECUTIVE ORDER

Suspending the Enforcement of Provisions of Utah Code §§ 52-4-202 and 52-4-207, and Related State Agency Orders, Rules, and Regulations, Due to Infectious Disease COVID-19 Novel Coronavirus

WHEREAS, On March 6, 2020, Governor Gary R. Herbert issued an Executive Order declaring a state of emergency due to novel coronavirus disease 2019 (COVID-19);

WHEREAS, On March 11, 2020, the World Health Organization characterized the COVID-19 outbreak as a pandemic;

WHEREAS, On March 13, 2020, President Donald J. Trump declared a national state of emergency based on the continuing spread of COVID-19;

WHEREAS, Federal, state, and local authorities have recommended that individuals limit public gatherings and that individuals experiencing symptoms of COVID-19 self-isolate to prevent and control the continuing spread of COVID-19;

WHEREAS, The public monitoring and participation requirements in the Open and Public Meetings Act, Utah Code § 52-4-101 et seq. (OPMA), will gather interested persons, members of the public, and members of a public body in a single, confined location where the risks of further spreading COVID-19 are far greater;

WHEREAS, Utah Code § 52-4-207(2) prohibits a public body from holding an electronic meeting unless the public body has adopted a resolution, rule, or ordinance governing the use of electronic meetings;

WHEREAS, Utah Code §§ 52-4-207(3)(a)(ii), (c), (d), and (e) require a public body to take certain actions regarding anchor locations associated with an electronic meeting where members of the public body, interested persons, or the public are required or permitted to gather;

WHEREAS, Utah Code § 52-4-202(3)(a)(i)(A), requires a public body to give public notice of a meeting by posting written notice at the principal office of the public body or specified body, or if no principal office exists, at the building where the meeting is to be held;

WHEREAS, Utah Code §§ 52-4-202(3)(a)(i)(A), 207(2), 207(3)(a)(ii), 207(3)(c), 207(3)(d), and 207(3)(e) limit the ability of public bodies to hold electronic meetings and thereby implement the recommendations of federal, state, and local authorities to limit gatherings and encourage self-isolation in order to prevent and control the continuing spread of COVID-19;

WHEREAS, Strict compliance with the provisions of any order, rule, or regulation of any state agency implementing or conforming with Utah Code §§ 52-4-202(3)(a)(i)(A), 207(2), 207(3)(a)(ii), 207(3)(c), 207(3)(d), and 207(3)(e) would substantially prevent, hinder, or delay necessary action in coping with the continuing spread of COVID-19;

WHEREAS, Suspending the enforcement of Utah Code §§ 52-4-202(3)(a)(i)(A), 207(2), 207(3)(a)(ii), 207(3)(c), 207(3)(d), 207(3)(e), and any provision of any order, rule, or regulation of any state agency to the extent that the order, rule, or regulation implements or conforms with these subsections is directly related to and necessary to address the state of emergency declared due to COVID-19;

WHEREAS, Utah Code § 53-2a-209(4) authorizes the governor to suspend by executive order enforcement of a statute that is directly related to and necessary to address a state of emergency;

WHEREAS, Utah Code § 53-2a-209(3) authorizes the governor to suspend the provisions of any order, rule, or regulation of any state agency, if the strict compliance with the provisions of the order, rule, or regulation would substantially prevent, hinder, or delay necessary action in coping with the emergency or disaster;

WHEREAS, Utah Code § 53-2a-204(1)(b) authorizes the governor to employ measures and give direction to state and local officers and agencies that are reasonable and necessary to secure compliance with orders made pursuant to part 2 of the Emergency Management Act;

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, hereby order the suspension of enforcement of Utah Code §§ 52-4-202(3)(a)(i)(A), 207(2), 207(3)(a)(ii), 207(3)(c), 207(3)(d), and 207(3)(e), and the suspension of any provision of any order, rule, or regulation of any state agency to the extent that the order, rule, or regulation implements or conforms with these subsections.

Accordingly, a public body governed by OPMA may hold an electronic meeting even if the public body has not adopted a resolution, rule, or ordinance governing the use of electronic meetings. Furthermore, a public body that convenes or conducts an electronic meeting is not required to:

1. post written notice at the principal office of the public body or specified body, or if no principal office exists, at the building where the meeting is to be held;

2. post written notice at an anchor location;

3. establish one or more anchor locations for the public meeting, at least one of which is in the building and political subdivision where the public body would normally meet if they were not holding an electronic meeting;

4. provide space and facilities at an anchor location so that interested persons and the public may physically attend and monitor the open portions of the meeting; or

5. if comments from the public will be accepted during the electronic meeting, provide space and facilities at an anchor location so that interested persons and the public may physically attend, monitor, and participate in the open portions of the meeting.

Notwithstanding the foregoing, a public body that holds an electronic meeting shall:

1. provide a means by which interested persons and the public may remotely hear or observe, live, by audio or video transmission the open portions of the meeting;

2. if comments from the public will be accepted during the electronic meeting, provide a means by which interested persons and the public participating remotely may ask questions and make comments by electronic means in the open portions of the meeting; and

3. if the public body has not adopted a resolution, rule, or ordinance governing the use of electronic meetings, adopt as soon as practicable a resolution, rule, or ordinance, which may be adopted at an electronic meeting pursuant to this Order, governing the use of electronic meetings in accordance with Utah Code § 52-4-207.

A public hearing governed by OPMA may be conducted electronically according to the exemptions and conditions in this Order.

Except for provisions specifically suspended above, nothing in this Order shall be construed to exempt or excuse a public body from giving public notice of an electronic meeting as otherwise required by Utah Code §§ 52-4-207(3)(a)(i) and (3)(b).

This Order shall remain in effect until the termination of the state of emergency declared in Executive Order 2020-1.

IN TESTIMONY, WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah this 18th day of March 2020.

(State Seal)

Gary R. Herbert
Governor

Attest:

Spencer J. Cox
Lieutenant Governor

2020/005/EO

EXECUTIVE ORDER

Declaring a State of Emergency Due to Magnitude 5.7 Earthquake

WHEREAS, On March 18, 2020, a magnitude 5.7 earthquake and nearly 50 aftershocks (hereinafter, the "earthquake") struck Utah, centered near the township of Magna, Salt Lake County;

WHEREAS, The earthquake caused significant damage in multiple counties along the Wasatch Front;

WHEREAS, Impacts from earthquakes are a threat to public safety and property;

WHEREAS, Many of the communities affected by the earthquake are also responding to the novel coronavirus disease 2019 (COVID-19) pandemic, limiting resources;

WHEREAS, Numerous local communities have declared or are declaring local states of emergency due to COVID-19, are now declaring for the earthquake, and have requested resources and support from state departments and agencies to assist them in dealing with these emergencies;

WHEREAS, The Utah Division of Emergency Management has temporarily activated the State Emergency Operations Center to a Level 1;

WHEREAS, The Utah National Guard, Utah Department of Transportation, and Utah Geological Survey, among others, have deployed resources in response to the earthquake;

WHEREAS, The American Red Cross has opened a disaster shelter in West Valley City to aid individuals displaced by the earthquake;

WHEREAS, Declaring a state of emergency will facilitate the protection of persons and property from the impacts of the earthquake and will expedite the use of state resources and the deployment of federal and interstate resources, if required;

WHEREAS, Declaring a state of emergency will also permit the State to request and receive mutual aid assistance from other states through the Emergency Management Assistance Compact, if required;

WHEREAS, The conditions of extreme peril to the safety of persons and property due to the earthquake create a state of emergency within the intent of the Utah Disaster Response and Recovery Act, Utah Code § 53-2a-101 et seq.;

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, declare a "State of Emergency" due to the aforesaid circumstances requiring aid, assistance, and relief available from state resources and hereby order:

1. The continued execution of the State Emergency Operations Plan;

2. Assistance from state government to political subdivisions as needed;

3. Coordination with local authorities and the private sector to maximize response and recovery; and

4. The Division of Emergency Management to ensure adequate state staffing to expedite disaster response and recovery efforts.

5. This State of Emergency is declared and effective immediately and shall remain in effect until I find the threat or danger has passed or the disaster reduced to the extent that emergency conditions no longer exist.

IN TESTIMONY, WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah this 20th day of March 2020.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

2020/006/EO

EXECUTIVE ORDER

Suspending Enforcement of Statutes Relating to Telehealth Services

WHEREAS, on March 6, 2020, I issued Executive Order 2020-1, declaring a state of emergency due to coronavirus disease 2019 (COVID-19);

WHEREAS, Executive Order 2020-1 recognizes the need for state and local authorities, and the private sector to cooperate to slow the spread of COVID-19;

WHEREAS, COVID-19 is caused by a virus that spreads easily from person to person, may result in serious illness or death, and has been characterized by the World Health Organization as a worldwide pandemic;

WHEREAS, on March 22, 2020, the Utah Department of Health and Mountainstar HCA announced Utah's first COVID-19-related death;

WHEREAS, the number of diagnosed COVID-19 cases in Utah continues to rise;

WHEREAS, the Centers for Disease Control and Prevention has issued guidelines encouraging healthcare facilities to use telehealth services to reduce unnecessary healthcare visits and to prevent transmission of COVID-19 and other respiratory viruses;

WHEREAS, state and local health authorities have encouraged patients with symptoms of illness consistent with COVID-19 to use telehealth services rather than go to a healthcare facility or doctor's office;

WHEREAS, the use of telehealth services is critical to ensure that the healthcare system is not overwhelmed during this state of emergency and to prevent the continuing spread of COVID-19;

WHEREAS, Utah Code Title 26, Chapter 60, Telehealth Act governs the use of telehealth services in Utah;

WHEREAS, Utah Code §§ 26-60-102(8)(b)(ii) and 26-60-103(2)(a) may limit the ability of a healthcare provider to offer telehealth services during this state of emergency;

WHEREAS, Utah Code § 53-2a-209(4) authorizes the governor to suspend by executive order enforcement of a statute that is directly related and necessary to address a state of emergency;

WHEREAS, Utah Code § 53-2a-204(1)(b) authorizes the governor to employ measures and give direction to state and local officers and agencies that are reasonable and necessary to secure compliance with orders made pursuant to Utah Code Title 53, Chapter 2a, Part 2, Disaster Response and Recovery Act.

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, hereby order the suspension of enforcement of:

1. Utah Code § 26-60-102(8)(b)(ii); and
2. Utah Code § 26-60-103(2)(a) to the extent that it interferes with a medical provider's ability to offer telehealth services.

A medical provider that pursuant to this Order offers telehealth services that do not comply with the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936, as amended, or the federal Health Information Technology for Economic and Clinical Health Act, Pub. L. No. 111-5, 123 Stat. 226, 467, as amended, shall:

1. inform the patient the the telehealth service does not comply with those federal acts;
2. give the patient an opportunity to decline use of the telehealth service; and
3. take reasonable care to ensure security and privacy of the telehealth service.

This Order shall remain in effect until the date the state of emergency declared in Executive Order 2020-1 is terminated, or until otherwise modified, amended, rescinded, or superseded by me or by a succeeding governor.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 25th day of March, 2020.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

2020/007/EO

EXECUTIVE ORDER

Suspending Certain Provisions of the Utah Election Code Regarding Signature Gathering

WHEREAS, on March 6, 2020, I issued Executive Order 2020-1, declaring a state of emergency due to novel coronavirus disease 2019 (COVID-19);

WHEREAS, COVID-19 is caused by a virus that spreads easily from person to person, may result in serious illness or death, and has been characterized by the World Health Organization as a worldwide pandemic;

WHEREAS, on March 22, 2020, the Utah Department of Health and Mountainstar HCA announced Utah's first COVID-19-related death;

WHEREAS, the number of diagnosed COVID-19 cases in Utah continues to rise;

WHEREAS, on March 16, 2020, President Trump and the White House Coronavirus Task Force issued the President's Coronavirus Guidelines for America to help protect Americans during the global COVID-19 outbreak;

WHEREAS, consistent with the President's Coronavirus Guidelines for America, state and local health authorities have encouraged individuals and businesses to limit in-person contact in order to prevent the continued spread of COVID-19;

WHEREAS, a primary election will be held in Utah on June 30, 2020;

WHEREAS, Utah Code Title 20A, Chapter 9, Part 4, Primary Elections governs the administration of primary elections, including requirements for an individual to appear as a candidate for elective office on the regular primary election ballot of the registered political party listed on the individual's declaration of candidacy;

WHEREAS, Utah Code § 20A-9-408 provides requirements for a member of a qualified political party who is seeking the nomination of the qualified political party for an elective office (hereinafter, a "candidate") through a signature-gathering process;

WHEREAS, Utah Code § 20A-9-408(9)(a)(ii) requires a candidate to submit signatures to the election officer no later than 5 p.m. 14 days before the day on which the qualified political party holds the party's convention to select candidates for the elective office;

WHEREAS, Utah Code § 20A-9-408(9)(a)(i) requires a candidate to collect signatures using the same circulation and verification requirements described in Utah Code §§ 20A-7-204 and 20A-7-205;

WHEREAS, Utah Code § 20A-7-204(4)(b), as made applicable to a candidate's signature packets by Utah Code § 20A-

9-408(9)(a)(i), requires a candidate to create signature packets prior to circulation by "binding" a copy of a form approved by the lieutenant governor to signature sheets;

WHEREAS, Utah Code § 20A-7-205(2), as made applicable to a candidate's signature packets by Utah Code § 20A-9-408(9)(a)(i), requires a candidate to ensure that any signature sheet is signed in the presence of and verified by an individual meeting certain qualifications by completing a verification printed on the last page of each signature packet;

WHEREAS, Utah Code §§ 20A-9-408(9)(d)(i) and (ii) require the election officer to check and take certain actions regarding any individual who completes a verification for a signature packet;

WHEREAS, Utah Code §§ 20A-7-204(4)(b) and 205(2), as made applicable to a candidate's signature packets by Utah Code § 20A-9-408(9)(a)(i), necessitate a candidate or petition circulator to deliver a nomination petition to the public for signatures in person or by physical mail, a process that conflicts with recommendations by state and local leaders to limit in-person contact to prevent the continued spread of COVID-19, and limits the ability of candidates to gather and submit signatures during the state of emergency;

WHEREAS, the signature-gathering period for the June 30, 2020 general primary began on January 2, 2020, and ends at 5 p.m. on April 13, 2020;

WHEREAS, the State maintains a compelling interest in preserving the integrity of the signature-gathering process;

WHEREAS, Utah Code §§ 20A-9-408(9)(d)(iii) and (iv) require the election officer to determine whether each signer is a registered voter who is qualified to sign the petition, using the same method, described in Utah Code § 20A-7-206.3, used to verify a signature on a petition, and to certify whether each name is that of a registered voter who is qualified to sign the signature packet;

WHEREAS, the Utah Elections Office and I have consulted with, and have been advised by, the Utah Office of the Attorney General;

WHEREAS, in May 2019 Lieutenant Governor Cox retained Gayle McKeachnie, as an independent third-party advisor, to review and advise on all elections questions related to the gubernatorial campaign before the Lieutenant Governor makes a decision on those questions;

WHEREAS, the Utah Elections Office and I have consulted with, and have been advised by, Gayle McKeachnie regarding preserving candidates' access to the regular primary ballot while maintaining the integrity of the signature-gathering process;

WHEREAS, Utah Code § 53-2a-209(4) authorizes the governor to suspend by executive order enforcement of a statute that is directly related and necessary to address a state of emergency;

WHEREAS, Utah Code § 53-2a-204(1)(b) authorizes the governor to employ measures and give direction to state and local officers and agencies that are reasonable and necessary to secure compliance with orders made pursuant to Utah Code Title 53, Chapter 2a, Part 2, Disaster Response and Recovery Act.

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, hereby order the suspension of enforcement of:

1. Utah Code § 20A-7-204(4)(b), as made applicable to a candidate's signature packets by Utah Code § 20A-9-408(9)(a)(i), to the extent that it requires a candidate to create signature packets prior to circulation by "binding" a copy of a form approved by the lieutenant governor to signature sheets;
2. Utah Code § 20A-7-205(2), as made applicable to a candidate's signature packets by Utah Code § 20A-9-408(9)(a)(i), to the extent that it requires a candidate to ensure that any signature sheet is signed in the presence of and verified by an individual meeting certain qualifications by completing a verification printed on the last page of each signature packet;
3. Utah Code § 20A-9-408(9)(d)(i); and
4. Utah Code § 20A-9-408(9)(d)(ii).

This Order shall remain in effect until the date the state of emergency declared in Executive Order 2020-1 is terminated, or until otherwise modified, amended, rescinded, or superseded by me or by a succeeding governor.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 26th day of March, 2020.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

2020/008/EO

End of the Executive Documents Section

NOTICES OF
PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between March 03, 2020, 12:00 a.m., and March 16, 2020, 11:59 p.m. are included in this, the April 01, 2020, issue of the *Utah State Bulletin*.

In this publication, each **PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **PROPOSED RULE** is usually printed. New rules or additions made to existing rules are underlined (example). Deletions made to existing rules are struck out with brackets surrounding them ([~~example~~]). Rules being repealed are completely struck out. A row of dots in the text between paragraphs (**. . . . . .**) indicates that unaffected text from within a section was removed to conserve space. Unaffected sections are not usually printed. If a **PROPOSED RULE** is too long to print, the Office of Administrative Rules may include only the **RULE ANALYSIS**. A copy of each rule that is too long to print is available from the filing agency or from the Office of Administrative Rules.

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least May 01, 2020. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through July 30, 2020, the agency may notify the Office of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

The public, interest groups, and governmental agencies are invited to review and comment on **PROPOSED RULES**. *Comment may be directed to the contact person identified on the* **RULE ANALYSIS** *for each rule.*

PROPOSED RULES are governed by Section 63G-3-301, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5a, R15-4-9, and R15-4-10.

The Proposed Rules Begin on the Following Page

Environmental Quality
Air Quality
No. 52414 (Amendment): R307-110. General Requirements: State Implementation Plan
Published: 01/01/2020
Effective: 03/05/2020

No. 52415 (Amendment): R307-110. General Requirements: State Implementation Plan
Published: 01/01/2020
Effective: 03/05/2020

No. 52316 (Amendment): R307-401. Permit: New and Modified Sources
Published: 12/15/2019
Effective: 03/05/2020

Governor
Economic Development
No. 52343 (New Rule): R357-16b. Utah Children's Outdoor Recreation and Education Grant Program Rule
Published: 02/01/2020
Effective: 03/11/2020

Health
Health Care Financing, Coverage and Reimbursement Policy
No. 52389 (Amendment): R414-49. Dental, Oral and Maxillofacial Surgeons and Orthodontia
Published: 12/15/2019
Effective: 03/01/2020

Family Health and Preparedness, Licensing
No. 52375 (Amendment): R432-35. Background Screening -- Health Facilities
Published: 12/15/2019
Effective: 03/01/2020

Insurance
Administration
No. 52500 (Amendment): R590-102. Insurance Department Fee Payment Rule
Published: 02/01/2020
Effective: 03/10/2020

No. 52490 (Amendment): R590-160. Adjudicative Proceedings
Published: 02/01/2020
Effective: 03/10/2020

No. 52489 (New Rule): R590-284. Corporate Governance Annual Disclosure Rule
Published: 02/01/2020
Effective: 03/10/2020

Natural Resources
Wildlife Resources
No. 52522 (Amendment): R657-10. Taking Cougar
Published: 02/15/2020
Effective: 03/24/2020

No. 52523 (Amendment): R657-33. Taking Bear
Published: 02/15/2020
Effective: 03/24/2020

Transportation
Operations, Construction
No. 52484 (New Rule): R916-5. R916-5. Health Reform -- Health Insurance Coverage in State Contracts -- Implementation.
Published: 02/01/2020
Effective: 03/10/2020

End of the Notices of Rule Effective Dates Section

Certification

I, Liam O. Thrailkill, Rules Coordinator for the Utah Division of Air Quality, do hereby certify that the public comment periods held to receive comments regarding R307-304 (DAR #41809) was held in accordance with the information provided in the published public notices and as defined in Utah Code 19-2-109. The changes regarding R307-304 were adopted by the Utah Air Quality Board.

Signed this __21___ day of May 2020.

Liam O. Thrailkill

Digitally signed by Liam O. Thrailkill
DN: cn=Liam O. Thrailkill, o=Division of Air Quality, ou, email=lthrailkill@utah.gov, c=US
Date: 2020.05.21 16:10:05 -06'00'