

Effective Date: November 1, 2018

R305. Environmental Quality, Administration.

R305-7. Administrative Procedures.

R305-7-101. Scope of Rule and Purpose of Parts.

(1) This rule governs all adjudicative procedures conducted under the authority of the Environmental Quality Code, Utah Code Ann. Title 19. This rule does not govern the proceedings that result in an initial determination by the Director, including the issuance of the initial determination itself.

(2) (a) Part 1 of this Rule (R305-7-101 through 113) applies to all adjudications before the Department. It addresses general and preliminary matters.

(b) Part 2 of this Rule (R305-7-200 through 217) applies to special adjudicative proceedings. These procedures are governed by Section 19-1-301.5.

(c) Part 3 of this Rule (R305-7-301 through 319) applies to adjudicative procedures that are not special adjudicative proceedings. These procedures are governed by Section 19-1-301.

(e) Part 4 of this Rule (R305-7-401 through 403) addresses matters initiated by notices of agency action.

(d) Part 5 of this Rule (R305-7-501 through 503) addresses declaratory orders and emergency adjudication.

(e) Part 6 of this Rule (R305-7-601 through 623) addresses matters relevant to specific statutes.

R305-7-102. Definitions.

(1) The following definitions apply to this Rule. The definitions in Part 6 of this Rule, e.g., the definition of "Director," also apply for matters governed by the statutory provisions specified in that Part. If the definition in Part 6 differs from the definition in Part 1, the definition in Part 6 controls.

(a) "Administrative Law Judge" or ALJ means the person appointed under Section 19-1-301(5) or Section 19-1-301.5(5) to conduct an adjudicative proceeding.

(b) "Administrative Proceedings Records Officer" means a person who receives a record copy of submissions on behalf of the Executive Director, as specified in R305-7-104.

(c) "Administrative Record," for purposes of Part 2 of this Rule, means the record described in Section 19-1-301.5(8)(b) and upon which a special adjudicative proceeding is conducted. See also R305-7-209.

(d) "Days" means calendar days unless otherwise specified. See also R305-7-105.

(e) "Designated Address" means the most recent address any person has filed with a Director in accordance with law.

(f) "Director" means the director of one of the divisions listed in Section 19-1-105(1)(a). The Director is defined, for each statute administered by the Department, in Part 6 of this Rule.

(g) "Executive Director" means the Executive Director of the Department of Environmental Quality.

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(h) "Initial Order" means an order that is not a Permit Order, that is issued by the Director and that is the final step in the portion of a proceeding that is exempt from the requirements of UAPA as provided in Section 63G-4-102(2)(k).

(i) "Notice of Violation" means a notice of violation issued by the Director that is exempt from the requirements of UAPA under Section 63G-4-102(2)(k).

(j) "Part" means the sections of this Rule that are grouped together by subject matter, e.g., Sections R305-7-501 through 503 are Part 5 of this Rule.

(k) "Party" is defined in R-305-7-207 for special adjudicative proceedings, and in R305-7-305 for other proceedings.

(l) "Permit" means any of the following:

(i) a permit;

(ii) a plan;

(iii) a license;

(iv) an approval order; or

(v) another administrative authorization made by a Director, including a financial assurance determination as defined by Section 19-1-301.5(1)(c).

(m)(i) "Permit order" means an order issued by the Director that:

(A) approves a permit;

(B) renews a permit;

(C) denies a permit;

(D) modifies or amends a permit; or

(E) revokes and reissues a permit.

(ii) "Permit order" does not include an order terminating a permit.

(n) "Permit review adjudicative proceeding" and "special adjudicative proceedings" and "permit special proceedings" mean an adjudicative proceeding to resolve a challenge to a Permit Order including a financial assurance determination as defined by Section 19-1-301.5 (1)(c).

(o) "Person" means an individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state. "Person" also includes, as appropriate to the matter, other entities as provided in definitions in the statutes specified in the Department of Environmental Quality Code, Title 19, and in rules promulgated thereunder.

(p) "Rule" means this Rule R305-7, Administrative Procedures for the Department of Environmental Quality, unless otherwise specified.

(q) "UAPA" means the Utah Administrative Procedures Act, Utah Code Ann. Title 63G, Chapter 4.

(r) "U.S. Postal Service Certified Mail" is a form of registered mail. It provides a U.S. Postal Service proof of mailing via a receipt to the sender that the mailing was delivered or that a delivery attempt was made. A receipt may be provided in either paper or electronic form. In either event, the receipt is generated by the U.S. Postal Service. A return receipt acknowledged by the recipient (Certified Mail with Return Receipt Requested) is also permissible but is not required by this Rule. See UAC R305-7-302(3).

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(2)(a) Ordinarily, administrative proceedings under the Environmental Quality Code are decided by the Executive Director based on a proceeding conducted by and recommended decision prepared by an Administrative Law Judge. In the event governing law specifies that another person or entity conduct a proceeding in the place of an Administrative Law Judge, the term "Administrative Law Judge" shall mean the person or entity serving in that function. In the event governing law specifies that another person or entity make final determinations regarding dispositive actions, the term "Executive Director" shall mean the person or entity who makes that final decision.

(b) Nothing in this provision R305-7-102(2) authorizes the appointment of a person or entity other than an administrative law judge to conduct an adjudicative proceeding. Nothing in this provision R305-7-102(2) authorizes the appointment of a person or entity other than the Executive Director to make a final determination regarding an adjudicative proceeding.

R305-7-103. Form of Submissions.

(1) All submissions, whether on paper copy or electronic, shall use 8-1/2 by 11 inch pages, be double-spaced, with each page numbered, and have one inch margins and 12 point font. Paper copies of documents submitted under this Rule shall ordinarily be printed on white paper; double-sided printing is encouraged but not required.

(2) Requests for Agency Action, Notices of Agency Action and Petitions for Review shall include numbered paragraphs.

(3) The first page of every filing shall contain a caption that gives the name and file number of the proceeding, the name of the ALJ if one has been appointed, and the filing date.

(4) Requirements for motions and briefs for special adjudicative proceedings are specified in R305-7-211 and R305-7-213. Requirements for motions for other proceedings are specified in R305-7-312.

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

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

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

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

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

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

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- (2) General Provisions Governing Filing and Service.
- (a) Every submission shall be filed with:
- (i) the ALJ or, if no ALJ has been appointed, the Director; and
 - (ii) the Administrative Proceedings Records Officer.
- (b) In addition, every submission shall be served upon:
- (i) the Director, if a submission is not filed with the Director under paragraph (2)(a)(i);
 - (ii) the assistant attorney general representing the Director;
 - (iii) the permittee or the person who was the recipient of the Permit Order, or other order or notice of violation being challenged;
 - (iv) any other party.
- (c) A person, other than the Director, who is represented by an attorney or other representative, as provided in R305-7-106, shall be served through the attorney or other representative.
- (d) Every submission shall include a certificate of service that shows the date and manner of filing with and service on the persons identified in R305-7-104(2)(a) and (b).
- (e) Service on a regulated person at the person's Designated Address shall be deemed to be service on that person.
- (3) Provisions governing electronic filing and service.
- (a) A submission following the initiation of an adjudicative proceeding shall be filed with the Administrative Proceedings Records Officer by emailing it to DEQAPRO@utah.gov. Initiation of adjudicative proceedings is governed by subsection (5).
- (b) Filing or service on all other parties shall be by email at addresses provided by those persons. If the person filing or serving the submission is unable, after due diligence, to determine an email address for a party, the person shall file or provide service by traditional means, as provided in R305-7-104(4).
- (c) (i) A text document served by email shall be submitted as a searchable PDF document.
- (ii) A person filing a submission may electronically file and serve a document without a signature if the person indicates that the document was signed (e.g., "signed by (name)" or "/s/ (name)").
- (d) The ALJ may order any other submission to be provided in a searchable format.
- (e) Large emails (5 Mb or more) may not be accepted by some email systems. It shall be the responsibility of a person sending a large email to ensure that it has been received by all parties, e.g., by telephoning or by sending a separate notification email and requesting a response.
- (f) Photographic or other illustration documents filed and served by email shall be submitted as:
- (i) a PDF document; or
 - (ii) a JPEG document.
- (g) Documents that are difficult to file and serve by email because of their size or form may be filed and served on a CD, DVD, USB flash drive or other commonly used digital storage medium. A document may also be provided in paper form if it is impracticable to copy the document electronically. Filing and service of such documents shall be as provided in R305-7-104(4).

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

(4) Provisions governing traditional filing and service.

(a) Filing and service shall be made:

(i) by United States mail, postage pre-paid;

(ii) by hand-delivery;

(iii) by overnight courier delivery; or

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

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

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

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

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

(d) (i) Except as provided in R305-7-104(5)(b), a document that is filed or served by U.S. Mail or overnight delivery service shall be considered filed or served on the date it is mailed or provided to the overnight delivery service. A document that is filed or served by Utah State Building Mail shall be considered filed or served on the date it is placed in a Utah State Building Mail bin.

(5)(a) Email does not constitute filing and is not adequate to initiate an adjudicative proceeding under this Rule, Section 19-1-301, or a special adjudicative proceeding under Section 19-1-301.5. A paper, signed original of any Request for Agency Action, Petition for Review, Notice of Agency Action, or Petition to Intervene shall be filed traditionally and served as provided in R305-7-104(2) and (4).

(b) To be timely, a Request for Agency Action, Petition for Review, or a Petition to Intervene must be received by the Director and the Administrative Proceedings Records Officer as provided in:

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

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

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

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

R305-7-105. Computation and Extensions of Time.

(1) A business day is any day other than a Saturday, Sunday or legal State of Utah holiday.

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- (2) As provided in R305-7-102, "days" means calendar days unless otherwise specified.
- (3) Computing time.
 - (a) If a period is in calendar days:
 - (i) exclude the day of the event that triggers the period;
 - (ii) count every day, including intermediate Saturdays, Sundays, and legal holidays; and
 - (iii) include the last day of the period, but if the last day is a Saturday, Sunday, or legal State of Utah holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal State of Utah holiday.
 - (b) If a period is in business days:
 - (i) exclude the day of the event that triggers the period; and
 - (ii) count every business day.
 - (c) If a document is not filed or served by email, any time for responding to the document shall be extended by three business days. This provision does not apply to a Request for Agency Action, Petition for Review or a Petition to Intervene. See R305-7-104(5).

(4) Date of issuance.

The date of issuance of a Permit Order, a Notice of Agency Action or other order is the date the document is signed and dated.

(5) Extensions of Time.

(a) To the extent permitted by Section 19-1-301.5, the ALJ may approve extensions of any time limits established by this rule, and may extend time limits adopted in schedules established under R305-7-308. See Section 19-1-301.5(8).

(b) To the extent permitted by Section 19-1-301.5, the ALJ may postpone a deadline or, as applicable, a scheduled conference, oral argument or hearing, upon motion from the parties, or upon the ALJ's own motion. See Section 19-1-301.5(8).

(c) Notwithstanding any other provision in this section, R305-7-108(2) governs the ALJ's authority to extend time to file a Request for Agency Action, Petition for Review, or Petition to Intervene. See also the provisions cited in R305-7-108(2).

R305-7-106. Appearances and Representation.

- (1) A party may be represented:
 - (a) by an individual if the individual is the party; or
 - (b) by a designated officer or other designated employee if the party is a person other than an individual.
- (2) Any party may be represented by legal counsel. An attorney who is not currently a member in good standing of the Utah State Bar must present a written or oral motion for admission pro hac vice made by an active member in good standing of the Utah State Bar. Communication with and service on local counsel shall be deemed to be communication with and service on the party so represented.

R305-7-107. Proceeding Conducted by Teleconference or Other Electronic Means; Records of Hearings.

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(1) All parties shall be present in person, or through an authorized representative (see R305-7-106), at an evidentiary hearing, if applicable.

(2) A party may participate in oral argument on a dispositive motion or oral argument on the merits of a special adjudicative proceeding by teleconference or other electronic means if:

(a) all other parties stipulate to participation by teleconference or other electronic means; and

(b) the ALJ approves the stipulation.

(3) A party may participate in any other hearing or conference on a dispositive motion or a hearing on the merits of a permit review adjudicative proceeding by teleconference or other electronic means if all other parties stipulate to participation by teleconference or other electronic means.

(4)(a) Hearings in all adjudicative proceedings that are subject to review by the Executive Director shall be recorded in order to preserve the record.

(b) Hearings that are not subject to review by the Executive Director, such as status and scheduling conferences, need not be recorded. In such cases, the notice of hearing will indicate that the hearing is not scheduled to be of record. If a party objects, a record of the hearing will be made in accordance with subpart (c).

(c) The Director is responsible for recording hearings of record, using audio recording equipment. Audio files of such hearings will become part of the adjudicative record.

(d) Any party may request that a court reporter be employed for the hearing, which request shall be granted by the ALJ. Unless otherwise stipulated by the parties, the requesting party shall bear the cost associated with the use of a court reporter. Any such requests shall be submitted to the ALJ at least 10 business days before the scheduled hearing. In the event that a court reporter is employed, the transcript of proceedings will become a public record and part of the adjudicative record of the proceeding. As a result, the court reporter shall not be allowed to claim any copyright on the transcript. The party engaging the court reporter will be responsible for obtaining a full release of the transcript.

R305-7-108. Modifying Requirements of Rules.

(1) Except as provided in R305-7-108(2), the requirements of this Rule may be modified by order of the ALJ for good cause, provided the modification is not inconsistent with applicable statutory provisions.

(2) The following requirements may not be modified:

(a) the requirements for timely filing a Petition for Review under R305-7-203(5) and 205 for a special adjudicative proceeding;

(b) the requirements for timely filing a Request for Agency Action under R305-7-303(5) for a proceeding other than a special adjudicative proceeding;

(c) the requirements for timely filing a Petition to Intervene under R305-7-204(2) and 205 for a special adjudicative proceeding; and

(d) the requirements for timely filing a Petition to Intervene under R305-7-304 (which incorporates the requirements of R305-7-204(2)) for a proceeding other than a special adjudicative proceeding.

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R305-7-109. Default.

(1) The provision controlling default under UAPA, Section 63G-4-209, governs default under special adjudicative proceedings as well as proceedings under UAPA, including enforcement proceedings. However, a petitioner in a special adjudicative proceeding is not allowed to file a Request for Agency Action. Instead, a petitioner in a special adjudicative proceeding must file a Petition for Review. Therefore, if a petitioner in a special adjudicative proceeding improperly files a Request for Agency Action a respondent is not required to answer it. In addition, a respondent in a special adjudicative proceeding is not required to file a response to a Petition for Review under Section 63G-4-209(1)(c). However, a party in a special adjudicative proceeding who does not file a brief as required Section 19-1-301.5(8) may be held in default. See Section 19-1-301.5(10)(c).

(2) A default order shall include a statement of the grounds for default and shall be filed with the Administrative Proceedings Records Officer and shall be served on all parties.

(3) A defaulted party may seek to have the default set aside according to procedures set forth in the Utah Rules of Civil Procedure. A motion to set aside a default and any subsequent order shall be made to the ALJ.

R305-7-110. Limitation on Authority under Rule.

Nothing in this Rule constitutes a grant of authority for any person other than the recipient to challenge a Notice of Violation or to initiate an action to challenge or require a Director's enforcement either generally or in a specific situation. See UAPA, Sections 63G-4-102(8) and 63G-4-201(3).

R305-7-111. No Limitation on Authority to Bring Action.

(1) Nothing in this Rule shall be read as a limitation on a Director's statutory authority to bring an emergency proceeding or a judicial proceeding under either UAPA, Section 63G-4-502, or under the Department of Environmental Quality Code, Utah Code Ann. Title 19. It shall also not be read as a limitation on the procedures a Director may use for an emergency proceeding under those authorities.

(2) Failure in this Rule to provide administrative procedures for an administrative action that is authorized by statute shall not be read as a limitation of a Director's authority to bring that action.

R305-7-112. Procedures Not Addressed.

In the event there are situations for which procedures are not prescribed by this Rule, the ALJ shall, for a specific case, identify analogous procedures or other procedures that will apply.

R305-7-113. Applicability of UAPA.

(1) Special adjudicative proceedings are exempt from UAPA except as specifically provided in Section 19-1-301.5. See Section 19-1-301.5(3).

(2) With respect to all other orders:

(a) Initial Orders and Notices of Violation issued by the Director are exempt from the requirements of UAPA, as provided in Section 63G-4-102(2)(k).

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(b) A proceeding to challenge an Initial Order or a Notice of Violation is subject to the requirements of UAPA, except as modified pursuant to this Rule.

(3) Neither UAPA nor this Rule applies to requests for government records or requests for confidentiality of government records. Those matters are governed by the Utah Government Records Access and Management Act, Sections 63G-2-101 through 901, and by Section 19-1-306.

R305-7-114. Prosecution of Actions; Dismissal for Failure to Prosecute.

(1) The party seeking relief is responsible for prosecuting administrative proceedings under this Rule.

(2) Unless the parties otherwise agree, if no request for appointment of an ALJ under R305-7-206(2) has been filed within three months after the filing date of a Request for Agency Action or Petition for Review, the Executive Director, a party, or a putative party to the adjudicative proceeding (e.g., the permittee or licensee) may serve a written notification to the parties stating that, absent a showing of good cause by a date specified in the notification, the Executive Director shall dismiss the adjudication for lack of prosecution. A Director may also file a motion to dismiss for failure to prosecute under this subsection to the Executive Director. In either case, unless good cause is demonstrated, the Executive Director shall dismiss such Request for Agency Action or Petition for Review.

(3) In any adjudicative proceeding in any matter governed by this Rule where an ALJ has been appointed, the Director or other party or putative party to the adjudicative proceeding (e.g., the permittee or licensee) may file a motion to dismiss for failure to prosecute. Unless, after notice, the party seeking relief shows good cause for delay, the ALJ shall enter an order recommending that the Executive Director dismiss the proceeding for lack of prosecution.

R305-7-200. Retrospective Construction and Interpretation.

(1) SB 282 and SB 173 (Gen. Session 2015) modified Section 19-1-301.5 permit review adjudicative procedures effective May 12, 2015. Because the revisions are procedural, they shall be accorded retrospective construction in the sense that they will be applied to pending actions and proceedings, as well as to future actions but will not be so applied as to defeat procedural steps completed before the effective date of May 12, 2015.

(2) Because the 2018 amendments to this Rule are procedural in nature, they shall apply to all matters pending before the Executive Director, unless good cause exists to apply a former version of the Rule.

R305-7-201. Scope of Rule; Purpose of Part.

Part 2 of this Rule (R305-7-201 through 217) specifies procedures to be used in a special adjudicative proceeding, as authorized under Section 19-1-301.5.

R305-7-202. Notice and Comment and Exhaustion of Remedies.

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(1) As provided in 19-1-301.5(4), if a public comment period is provided during the permit application process, a person who challenges a Permit Order, including the permit applicant, may only raise an issue or argument during the special adjudicative proceeding that:

(a) the person raised during the public comment period; and
(b) was supported with sufficient information or documentation to enable the Director to fully consider the substance and significance of the issue.

(2) Any supporting materials which are submitted shall be included in full and may not be incorporated by reference, unless they are already part of the Administrative Record in the same proceeding, or consist of state or federal statutes, regulations or rules, EPA documents of general applicability, or other generally available reference materials.

(3) The relevance of and the relevant portions of any supporting materials included with or incorporated by reference in comments shall be described with reasonable specificity.

(4) In preparing a comment response document, the Director may request that the permit applicant provide information in response to comments received during the public comment period.

R305-7-203. Petitions for Review.

(1) Permit orders may be contested by filing and serving a written Petition for Review as provided in R305-7-104(5).

(2) Any Petition for Review shall meet all of the requirements of UAPA, Section 63G-4-201(3)(a) and (3)(b), and the requirements of Section 19-1-301.5. See Section 19-1-301.5(6)(d).

(3) A Petition for Review shall be in writing, shall be signed by the person making the Petition for Review, or by that person's representative, and shall include:

(a) the names and addresses of all persons to whom a copy of the Petition for Review is being sent;

(b) the Director's file number or other reference number, if known;

(c) the date that the Petition for Review was mailed;

(d) a statement of the legal authority and jurisdiction under which review is requested;

(e) a statement of petitioner's position, including as applicable:

(i) the legal authority under which the Petition for Review is requested;

(ii) the legal authority under which the Executive Director has jurisdiction to review the Petition for Review;

(iii) each of the petitioner's arguments in support of the petitioner's requested relief;

(iv) an explanation of how each argument described in Section 19-1-301.5(6)(d)(v)(D) was preserved;

(v) a detailed description of any permit condition to which the petitioner is objecting;

(vi) any modification or addition to a permit that the petitioner is requesting;

(vii) a demonstration that the Director's permit decision is based on a finding of fact or conclusion of law that is clearly erroneous;

(viii) if the Director addressed a finding of fact or conclusion of law described in Section 19-1-301.5(6)(d)(v)(G) in a response to public comment, a citation to the comment and response that

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relates to the finding of fact or conclusion of law and an explanation of why the Director's response was clearly erroneous or otherwise warrants review; and

(ix) a claim for relief.

(4) It is not sufficient under Section 63G-4-201(3) to file and serve a general statement of disagreement, a reservation of rights to serve a Petition for Review, or a request to have the matter heard.

(5) To be timely, a Petition for Review to contest a Permit Order shall be, within 30 days of the date the Permit Order being challenged was issued:

(a) received for filing by the Administrative Proceedings Records Officer at the address specified in R305-7-104(4)(c) of this Rule;

(b) received by the Director at the address specified in Part 6; and

(c) served as provided in R305-7-104(2), (4) and (5).

(6) Failure to file a Petition for Review within the period specified in R305-7-104(5) waives any right to contest the permit order or to seek judicial review.

R305-7-204. Intervention.

(1) A person who seeks to intervene in a special adjudicative proceeding under this section shall file and serve:

(a) a Petition to Intervene that:

(i) meets the requirements of Section 63G-4-207(1); and

(ii) demonstrates that the person is entitled to intervention under Section 19-1-301.5(7)(c)(ii); and

(b) a timely Petition for Review.

(2) To be timely, a Petition to Intervene shall, within 30 days after the day on which the Permit Order being challenged was issued, be:

(a) received by the Administrative Proceedings Records Officer at the address specified in R305-7-104(4)(c) of this Rule;

(b) received by the Director at the address specified in Part 6;

(c) served on all other parties as provided in R305-7-104(4).

R305-7-205. Extensions of Time for Filing Petitions for Review and Petitions to Intervene.

The time for filing a Petition for Review or a Petition to Intervene may be extended only by stipulation of the parties and only if such stipulation is received for filing before the expiration of the time for filing the Petition for Review or Petition to Intervene. If a person seeking an extension of time to file a Petition for Review or a Petition to Intervene is a prospective intervenor, the time for filing a Petition for Review or Petition to Intervene may be extended only by stipulation of the parties and the prospective intervenor, and only if such stipulation is received for filing before the expiration of the time for filing the Petition for Review or Petition to Intervene.

R305-7-206. Proceedings After a Petition for Review is Filed.

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(1) After a Petition for Review has been filed, the parties are encouraged to meet to attempt to resolve the matter.

(2)(a) Any party may at any time file a request for appointment of an ALJ. An ALJ will not ordinarily be appointed until requested by a party, although the Executive Director may appoint an ALJ at any time.

(b) A request for appointment of an ALJ shall be filed as provided in R305-7-104(2)(a), and served as provided in R305-7-104(2)(b).

(3) After an ALJ is appointed, the ALJ shall review and respond to the Petition for Review in accordance with Subsections 63G-4-201(3)(d) and (e).

(4) Unless the parties stipulate or the ALJ orders otherwise following a motion, the Director shall file and serve the Administrative Record, as provided in R305-7-209, within 40 days after the day on which the Executive Director issues a notice of appointment of an administrative law judge.

(5) The schedule and page limits for briefing on the merits specified in Subsection 19-1-301.5(8)(a) shall apply except as otherwise stipulated by the parties and coordinated with the ALJ in accordance with R305-7-208(6).

(6) Dispositive Motions. The schedule for submission of dispositive motions specified in Subsection 19-1-301.5(8)(a) shall apply unless otherwise stipulated by the parties. However, without stipulation or order, dispositive motions may be submitted in advance of the schedule specified in Subsection 19-1-301.5(8)(a). Any issue or argument that could be raised in a dispositive motion is not waived by failure to file such a motion, but may be raised during the briefing on the merits. See R305-7-212.

(7) Subsection 19-1-301.5(13) is explained as follows. For each issue or argument that is not dismissed or otherwise resolved under Subsection 19-1-301.5(11)(b) or (12), the ALJ shall:

(a) provide the parties an opportunity for briefing and oral argument in accordance with Subsection 19-1-301.5(8);

(b) conduct a review of the Director's order or determination, based on the record as described in Subsection 19-1-301.5(9)(b)(c), and (10)(e); and

(c) within 60 days after the day on which oral argument takes place, or, if there is no oral argument, within 60 days after the day on which the reply brief is due, the ALJ shall submit to the Executive Director a proposed dispositive action, that includes:

(i) written findings of fact;

(ii) written conclusions of law; and

(iii) a recommended order.

R305-7-207. Parties.

(1) The following are parties to a special adjudicative proceeding:

(a) the Director who issued the Permit Order being challenged in the special adjudicative proceeding;

(b)(i) the permittee; or

(ii) the person who applied for the permit, if the permit was denied; and

(c) a person granted intervention by the ALJ.

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(2) A person who has filed a Petition to Intervene that has not been denied is not a party, but will be treated as a party for purposes of this Rule (e.g., for purposes of service, making motions and settlement) unless otherwise ordered by the ALJ.

R305-7-208. Conferences, Proceedings and Order.

- (1) The ALJ may hold one or more conferences for the purposes of:
 - (a) identifying and, if possible, narrowing the issues that will be considered;
 - (b) determining whether an issue will be considered through a dispositive motion or during the briefing on the merits;
 - (c) establishing schedules for the filing of motions and briefs;
 - (d) considering stipulations of fact or law; and
 - (e) considering any other matters.
- (2) The ALJ shall promptly issue an order memorializing any determinations made about the matters considered in a conference.
- (3) The ALJ may at any time order a party to make a more clear statement of the issues the party intends to raise.
- (4) The ALJ may:
 - (a) require the parties to submit proposed schedules for the proceeding; and
 - (b) to the extent allowed by Section 19-1-301.5 and R305-7-208(6), change deadlines and page limits for submissions established by this Rule.
- (5) The parties may request the ALJ hold a conference for the purpose of addressing the matters described in R305-7-208(1).
- (6) Stipulated Scheduling Orders. The ALJ shall issue scheduling orders following Section 19-1-301.5 for the administrative record, briefing and page limits, and dispositive motions that shall apply unless the parties file stipulations for alternative scheduling and page limitations. The ALJ shall promptly adopt such timely filed stipulations in applicable scheduling orders unless the ALJ is not available on the stipulated hearing date or questions the necessity of the stipulated brief lengths.
 - (a) Stipulated Hearing Date. If the ALJ is not available on the stipulated hearing date, the ALJ shall confer with the parties to determine a mutually acceptable date and shall specify the mutually acceptable date in applicable scheduling orders.
 - (b) Stipulated Over-Length Briefs. If the ALJ questions the necessity of the stipulated over-length briefs, the ALJ may require the parties to state with specificity the issues to be briefed, the number of additional pages requested, and the good cause for allowing over-length briefs. The ALJ may promptly refuse to adopt or may promptly modify through order the parties' stipulation for over-length briefs if the parties fail to show good cause.

R305-7-209. Administrative Record.

- (1) To the extent they relate to the issues and arguments raised in the Petition for Review, the Administrative Record shall consist of the following items, if they exist:
 - (a) the permit application, draft permit, and final permit;

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- (b) each statement of basis, fact sheet, engineering review, or other substantive explanation designated by the Director as part of the basis for the decision relating to the Permit Order;
 - (c) the notice and record of each public comment period;
 - (d) the notice and record of each public hearing, including oral comments made during the public hearing;
 - (e) written comments submitted during the public comment period;
 - (f) responses to comments that are designated by the Director as part of the basis for the decision relating to the Permit Order;
 - (g) any information that is:
 - (i) requested by and submitted to the Director; and
 - (ii) designated by the Director as part of the basis for the decision relating to the Permit Order;
 - (h) any additional information specified by rule;
 - (i) any additional documents agreed to by the parties; and
 - (j) information supplementing the record under Section 19-1-301.5(9)(c) or R305-7-210.
- (2) If there has been no notice and comment period for a Permit Order, information that is submitted with the Petition for Review shall be deemed to be part of the Administrative Record as shall information submitted in any response to the Petition for Review.
- (3)(a) The Director shall prepare the record by compiling it in chronological order, numbering each page and preparing an index.
- (b) The Director shall, within 40 days of service of the Notice of Appointment, or as otherwise provided in R305-7-206;
- (i) file and serve an electronic copy of the record in accordance with the requirements of R305-7-104; or
 - (ii) make a paper copy of the record available for review during normal working hours, and file and serve a copy of the record's index as provided in R305-7-104.
- (4) Any challenges to the Administrative Record shall be made by motion within 10 business days of the date the record or index is served under paragraph (3)(b).

R305-7-210. Response to Supplemental Information.

If the Administrative Record is supplemented with additional information as described in R305-7-209(1)(i) or (j), the other parties may, in response, serve and file additional information specific to the supplemental information, which shall also be part of the Administrative Record. The additional information may not raise any new matters not raised in the supplemental information.

R305-7-211. Motions.

- (1) A motion shall be made in writing, and shall include the grounds upon which it is based and the relief or order sought. A separate memorandum in support of the motion is not required.
- (2) Any response to a motion shall be filed within 21 days of service of the motion.
- (3) Any reply to a response to a motion may be filed within 10 days of service of the response. A reply shall be limited to matters raised in the response.

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(4) A motion may not exceed 20 pages. If a separate memorandum in support of a motion is filed, the motion and memorandum together shall not exceed 20 pages. A response may not exceed 15 pages. A reply may not exceed ten pages.

(5) Deadlines and page limits may be modified by order of the ALJ.

(6) Any determination by the ALJ that is dispositive shall be forwarded to the Executive Director in the form of a recommended decision.

(7) See also R305-7-206(6) and R305-7-212 regarding issues and arguments not raised by motion.

R305-7-212. Challenges to a Petition to Intervene or to Failure to Preserve an Issue.

(1) A challenge to a Petition to Intervene under Section 19-1-301.5(7) or to a party's failure to preserve an issue under Section 19-1-301.5(4) and (6)(c) may be made by motion or may be made in the parties' briefs on the merits.

(2) If a challenge under paragraph (1) relies on a significant portion of the evidence or arguments that must be considered to make a determination on the merits, the party making the challenge under paragraph (1) is encouraged to do so in the brief on the merits.

(3) The ALJ may defer ruling on a motion under paragraph (1) until the ALJ makes a decision on the merits of the case if the ALJ finds that the motion relies on a significant portion of the evidence or arguments that must be considered to make a determination on the merits.

R305-7-213. Procedures for Determination on the Merits.

(1) Requirements for briefs on the merits in a special adjudicative proceeding are as follows:

(a) The schedule and page limits specified in Section 19-1-301.5(8)(a) shall apply except as otherwise stipulated by the parties and ordered by the ALJ in accordance with R305-7-208;

(b) Any page incorporated by reference from the administrative or adjudicative record shall count toward a page limitation;

(c) The table of contents, table of citations, and any addendum containing statutes, rules, regulations or portions of the administrative record cited do not count toward the page limitation;

(d) All statements of fact shall be supported by references to the pages in the administrative record in which the evidence is identified;

(e) Matters addressed in the petition but not in the opening brief shall be waived;

(f) Matters not addressed in the petition may not be raised in the opening brief.

(2) A reply or a surreply brief may not raise any issue that was not raised in the responsive brief or the reply, respectively.

(3) Briefs must be concise, presented with accuracy, logically arranged with proper headings and free from burdensome, irrelevant, or immaterial matters. A brief not meeting these criteria may fail to meet that party's burden of persuasion.

(4) In cases involving more than one petitioner or respondent, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

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(5) The ALJ shall provide an opportunity for oral argument, which shall be a hearing of record under R305-7-107(4).

(6) The parties may submit comments on the ALJ's recommended decision to the Executive Director. Comments shall not exceed 15 pages, and shall be submitted within ten business days of the service of the recommended decision. A party may file a response to another party's comments, not to exceed five pages, within five business days of the date of the service of the comments.

R305-7-214. Review and Determinations.

(1) The procedures and standards for resolving a permit review challenge are specified in Section 19-1-301.5; see in particular paragraphs (9) through (15).

(2) The standard of review for the Director's factual, technical, and scientific determinations specified in Section 19-1-301.5(14)(b) and (15)(c)(ii) is explained as follows:

(a) The petitioner has the burden of proof;

(b) Marshaling the evidence is a natural extension of the petitioner's burden of proof;

(c) For each factual, technical, and scientific determination challenged by petitioner, the petitioner is required to marshal and acknowledge the evidence in the record that supports the Director's determination. Such determination shall be overturned as clearly erroneous only if the petitioner has proven, after marshaling, that the Director's determination is not supported. See Subsections 19-1-301.5(6)(d)(v)(G) and (H) and 19-1-301.5(14); and

(d) If the petitioner fails to marshal, there is a presumption that the Director's factual, technical, and scientific determination is not clearly erroneous.

(3) The standard of review for non-factual determinations provided in Section 19-1-301.5(15)(c)(i) recognizes that the Director has been granted substantial discretion to interpret the division's governing statutes and rules.

R305-7-215. Interlocutory Orders.

(1) Interlocutory review (review by the Executive Director before a final recommendation made by the ALJ) is not favored. Ordinarily, a party may challenge an order issued by the ALJ only after the ALJ has made a final recommended decision.

(2) A party may file, in accordance with R307-7-104, a motion for interlocutory review of a non-final ALJ order only if a ruling that is alleged to be in error could not be corrected through a challenge to the final recommended decision (e.g., a ruling denying privileged status to records), or where early resolution of a material issue may materially advance the termination of the proceeding.

(3) The Executive Director's determination to consider a motion for an interlocutory review is discretionary.

R305-7-216. Settlement.

The parties may agree to settle all or any portion of an action at any time during an administrative proceeding through a settlement agreement, an administrative settlement order, or a proposed judicial consent decree. Upon notice by the Director that there is a proposed settlement that will be subject to a public comment period, the ALJ shall suspend the administrative proceeding,

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in whole or in part, until notified by the Director or another party that the suspension should be lifted. The ALJ may order an update on the status of the settlement.

R305-7-217. Stays.

The procedure and standard for obtaining a stay is specified in Section 19-1-301.5(15).

R305-7-301. Scope of Rule; Purpose of Part.

Part 3 of this Rule (R305-7-301 through 319) specifies procedures to be used in adjudicative proceedings that are not permit review adjudicative proceedings, as authorized by Section 19-1-301. For the most part, proceedings under Part 3 of this Rule will be enforcement proceedings and proceedings to terminate permits.

R305-7-302. Issuance and Service of Initial Orders and Notices of Violation.

(1) Unless otherwise stated, an Initial Order or a Notice of Violation is effective upon issuance and, even if it is contested, remains effective unless a stay is issued or the Initial Order or a Notice of Violation is rescinded, vacated or otherwise terminated.

(2) The date of issuance of an Initial Order or a Notice of Violation is the date the Initial Order or a Notice of Violation is signed and dated.

(3) Unless otherwise provided by law, Notices of Violation and Initial Orders shall be served through U.S. Postal Service Certified Mail, postage prepaid, addressed to the respondent's Designated Address. If there is no Designated Address for a respondent, service may be made through U.S. Postal Service Certified Mail, postage prepaid, addressed to the respondent's legal registered agent or, if the respondent is an individual, addressed to the respondent's dwelling or place of business. Notices of Violation and Initial Orders may also be served personally (by hand-delivery) or by Certified Mail with Return Receipt requested. Service of Initial Orders and Notices of Violation may also be made in the same manner as a summons in accordance with Rule 4 of the Utah Rules of Civil Procedure.

(4) Service of Notices of Violation and Initial Orders shall be made no more than three days after the date of issuance. If service is made more than three days after the date of issuance, the dates provided in R305-7-303 shall be extended by the same number of days that are in excess of three days.

(5) For purposes of this Rule, service is effective upon mailing, provided that the U.S. Postal Service Certified Mail receipt shows that the mailing was delivered. If the mailing is returned or if delivery is attempted but not made, service via U.S. Postal Service Certified Mail will not be deemed to be effective.

R305-7-303. Requests for Agency Action and Contesting an Initial Order or Notice of Violation; Finality.

(1) A Notice of Violation or an Initial Order may be contested by filing and serving a written Request for Agency Action as provided in R305-7-104(5).

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(2) Any Request for Agency Action is governed by and shall meet all of the requirements of UAPA, Section 63G-4-201(3)(a) and (3)(b).

(3) As provided in Section 63G-4-201(3)(a), a Request for Agency Action shall be in writing and signed by the person making the Request for Agency Action, or by that person's representative, and shall include:

(a) the names and addresses of all persons to whom a copy of the Request for Agency Action is being sent;

(b) the agency's file number or other reference number, if known;

(c) the date that the Request for Agency Action was mailed;

(d) a statement of the legal authority and jurisdiction under which agency action is requested;

(e) a statement of the relief or action sought from the agency;

(f) a statement of the facts and reasons forming the basis for relief or agency action; and

(4) A Request for Agency Action shall include the requestor's name, address and email address, if any.

(5) To be timely, a paper copy of a Request for Agency Action to contest an Initial Order or a Notice of Violation shall be received for filing by the Director and the Administrative Proceedings Records Officer as specified in R305-7-104(2), (4) and (5) within 30 days of the date the Initial Order or a Notice of Violation was issued. This time may be extended only by stipulation of the parties and only if such stipulation is received for filing before the expiration of the time for filing the Request for Agency Action. The requester shall also send an electronic copy (searchable pdf) of the Request for Agency Action to deqapro@utah.gov.

(6) If a Request for Agency Action is made by a person other than the recipient of an Initial Order, the Request for Agency Action shall also include a Petition to Intervene that meets the requirements of Section 63G-4-207 and R305-7-304. See R305-7-110, however (limitations on the ability of third persons to challenge enforcement proceedings).

(7) (a) It is not sufficient under Section 63G-4-201(3)(a) or this rule to file a general statement of disagreement, a reservation of rights to file a Request for Agency Action, or a request to have the matter heard.

(b) If a person files a document challenging a notice of violation or an order under this Part 3 that does not meet the requirements of this rule, a party may file a dispositive motion addressing that inadequacy. The notice of violation or order will be final if the Executive Director approves or approves with modifications the ALJ's recommended order of dismissal.

(8) A Notice of Violation or Initial Order will become final, for purposes of enforcement under Section 63G-4-501(1), upon the expiration of 30 days from the date of issuance, unless a Request for Agency Action is received as provided above. Failure to file a Request for Agency Action within the period specified above waives any right to contest the Initial Order or to seek judicial review.

R305-7-304. Intervention.

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Proceedings that are not permit review adjudicative proceedings will not ordinarily be subject to intervention. See R305-7-110 regarding intervention in enforcement proceedings. In the event intervention is appropriate under the specific facts of the case, the procedures for intervention specified in Part 2, including the deadlines for filing intervention specified in R305-7-204(2), shall govern. This time may be extended only by stipulation of the parties and the prospective intervenor and only if such stipulation is received for filing before the expiration of the time for filing the Petition to Intervene. The status and treatment of prospective intervenors in R305-7-207(2), shall also govern.

R305-7-305. Parties.

The following persons are parties to an adjudicative proceeding to resolve a challenge to an Initial Order or Notice of Violation:

- (1) the person to whom the Initial Order or Notice of Violation was directed;
- (2) the Director who issued an Initial Order or Notice of Violation; and
- (3) any person to whom the ALJ has granted intervention under R305-7-304.

R305-7-306. Proceedings After a Request for Agency Action is Filed.

(1) After a Request for Agency Action has been filed, the parties are encouraged to meet to attempt to resolve the matter.

(2) No response to a Request for Agency Action under Section 63G-4-204 is required, but the Director may elect to file a response. No reply to the Director's response is permitted.

(3)(a) Any party may at any time file a request for appointment of an ALJ. An ALJ will not ordinarily be appointed until requested by a party, although the Executive Director may appoint an ALJ at any time.

(b) A request for appointment of an ALJ shall be filed as provided in R305-7-104(2)(a), and served as provided in R305-7-104(2)(b).

(4) The parties are encouraged to meet and confer regarding the nature and scope of discovery, scheduling, and other pre-hearing matters and to file, within 10 days of the appointment of the ALJ, a Joint Status Report that addresses the following subjects: (a) a brief statement of the case; (b) an indication as to the parties' position as to the need for further proceedings and, if such further proceedings are needed, the anticipated scope of such proceedings; (c) whether reasonable formal discovery is warranted as provided in R305-7-310, and, if such formal discovery is warranted, the general nature and scope of the requested discovery. If the parties are not able to reach agreement on a Joint Status Report, the Director shall file and serve, within 10 days after the appointment of an ALJ, a Status Report that includes the subjects described above. Within 10 days after service of the Director's Status Report, the other party or parties may file and serve a response to the Director's Status Report.

(5) Within 10 days after receipt of the Joint Status Report or the Response to the Director's Status Report, pursuant to subpart (4) or such other time deemed reasonable by the ALJ, the ALJ shall issue a Notice of Further Proceedings in accordance with Section 63G-4-201(3)(d) and (e). Unless otherwise ordered by the ALJ for good cause (such as a situation involving the need for emergency

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relief), until the ALJ has issued a Notice of Further Proceedings, no responses to motions filed before that date are due. If motions are pending in the matter, the Notice of Further Proceedings shall set the schedule for briefing and, if warranted, hearing and resolution of such pending motions.

R305-7-307. Designation of Proceedings as Formal or Informal; Procedures for Informal Proceedings.

(1) All proceedings to contest an order that is not a Permit Order, including proceedings to challenge a Notice of Violation or compliance order, shall be conducted as formal proceedings except as specifically provided in Part 6 of this Rule.

(2) The ALJ in accordance with Section 63G-4-202(3) may convert proceedings that are designated to be formal to informal and proceedings which are designated as informal to formal if conversion is in the public interest and rights of all parties are not unfairly prejudiced. A decision to use informal procedures must be approved by the Executive Director.

(a) Procedures for Informal Proceedings are governed by Section 63G-4-203 and, except as provided in R305-7-307(2)(d), this Rule.

(b) No hearing or other conference is required for an informal proceeding. If a hearing is held, the parties shall be permitted to testify, present evidence and comment on issues. A hearing may be conducted as a meeting rather than using trial-type procedures.

(c) Discovery and intervention are not available in an informal proceeding. The ALJ may issue a subpoena or other order to compel the production of necessary evidence.

(d) The procedures specified in R305-7-310, 313, 314 and 315 do not apply to informal procedures.

R305-7-308. Conferences, Proceedings and Order.

(1) The ALJ may hold one or more conferences for the purposes of:

(a) identifying and, if possible, narrowing the issues that will be considered;

(b) determining whether an issue will be considered at a dispositive motion hearing or an evidentiary hearing;

(c) establishing schedules for disclosures, exchange of witness lists, and the filing of motions, testimony and pre-hearing memoranda;

(d) determining the status of the litigation;

(e) considering stipulations of fact or law; and

(f) considering any other pre-hearing matters.

(2) The ALJ shall issue an order memorializing any determinations made about the matters considered in a conference.

(3) The ALJ may at any time order a party to make a more clear statement of the issues the party intends to raise at a hearing.

(4) The ALJ may:

(a) require the parties to submit proposed schedules for the proceeding; and

(b) change deadlines and page limits for submissions established by this Rule.

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(5) Any party may request the ALJ conduct a hearing for the purpose of addressing the matters described in R305-7-308(1).

R305-7-309. Agency Record.

(1) The final agency record shall consist of an Initial Record and an Adjudicative Record.

(2)(a) The Initial Record shall be prepared by the Director and shall consist of background documents for the matter that shall be deemed to be authenticated for purposes of the hearing and motions, and may be introduced as evidence by any party. The Initial Record is not intended to take the place of discovery or of the proffer by parties of documentary evidence.

(b) The Initial Record shall be indexed and compiled in chronological order. Each page of the Initial Record shall be numbered for ease of reference. An electronic copy of the Initial Record shall be filed with the ALJ. An electronic copy of the Initial Record shall be filed and served as provided in R305-7-104(3). Electronic records shall meet the requirements for electronic filing and service in R305-7-104(3).

(3) The Initial Record document index shall include, to the extent they exist and are relevant to the issues raised in the Request for Agency Action, any documentation designated by the Director as part of the basis for issuing the Notice of Violation or Initial Order.

(4) Documents other than those specified in R305-7-309(3) may be included in the Initial Record only upon the agreement of the parties. Documents that the parties cannot agree upon may be submitted in the course of the proceeding. Failure of a party to object to inclusion of a document in the Initial Record shall be deemed to be agreement to its inclusion in the initial record and to its authenticity.

(5) If many of the documents or large parts of the documents that would ordinarily constitute the Initial Record are irrelevant to the issues raised in the proceeding, the Director may propose a more limited Initial Record. If a matter involves a multi-volume document, for example, the Director may propose to exclude the parts of the permit that are unrelated, e.g., emergency response requirements if the dispute is about waste sampling.

(6) Results of analyses of samples documented in the Initial Record are deemed to be accurate unless specifically objected to no later than 15 days before the date the Director's preliminary witness lists are due.

(7) Procedure for preparing the Initial Record.

(a) Unless the ALJ directs otherwise or the parties otherwise agree, the Director shall compile and provide a draft index of documents in the Initial Record to the other parties no sooner than 60 days after entry of the Notice of Further Proceedings. The Director shall allow reasonable time for the other parties to comment on the draft index.

(b) After consideration of the comments, the Director shall prepare the Initial Record by compiling it in chronological order, numbering each page and preparing an index. The Director shall:

(i) file and serve an electronic copy of the record in accordance with the requirements of R305-7-104(3); or

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(ii) make a paper copy of the record available for review during normal working hours, and file and serve a copy of the record's index as provided in R305-7-104.

(8) Any challenges to the Initial Record shall be made by motion within 10 business days of the date the record or index is served under paragraph (7)(b).

(9) The Adjudicatory Record consists of all documents filed or issued in the proceeding beginning with the contested Notice of Violation and/or Initial Order, followed by the Request for Agency Action.

R305-7-310. Disclosures and Discovery.

(1) The ALJ shall allow reasonable formal discovery if requested by any party. The ALJ may limit the scope of formal discovery for the reasons stated in Rule 37(a)(7) of the Utah Rules of Civil Procedure. The ALJ may also enter an order imposing sanctions provided in Rule 37(b) of the Utah Rules of Civil Procedure, except that the ALJ has no power of contempt and may not impose financial sanctions under Rule 37. By stipulation or upon motion, the ALJ may enter a protective order imposing protections and limitations governing records of information produced in the adjudicative proceeding. The ALJ is encouraged to use a form of Standard Protective Order typically used in Utah state or federal court proceedings.

(2)(a) Except as otherwise provided in this Section R305-7-310, the time periods, limitations and other requirements for discovery in the Utah Rules of Civil Procedure shall apply unless otherwise ordered by the ALJ after consideration of the specific formal discovery proposed.

(b) Initial disclosures shall be required as provided in Utah Rules of Civil Procedure Rule 26(a)(1)(B) through (D), except that the Director's preparation of the Initial Record as provided in R305-7-309 will be deemed to be adequate to satisfy the Director's duty to provide initial disclosure of records under Rule 26. Unless otherwise ordered by the ALJ, initial disclosures must be filed within twenty-eight (28) days of the date of service of the Director's Initial Disclosures.

(3) If applicable, expert disclosures, as defined under Rule 26, Utah Rules of Civil Procedure, will also be required in connection with an evidentiary hearing on the merits. The due dates as provided in Rule 26 shall apply, unless otherwise ordered by the ALJ.

(4) Prehearing disclosures and related matters will be governed by R305-7-313, or by order of the ALJ, and not by Rule 26, Utah Rules of Civil Procedure.

R305-7-311. Subpoenas.

(1) A party requesting an administrative subpoena must prepare it and submit it to the Administrative Proceedings Records Officer for the signature of the ALJ. Each administrative subpoena form shall have the following statement prominently displayed on the form: This Administrative Subpoena is issued under the authority of the Utah Administrative Procedures Act, Section 63G-4-205(2). If you believe that this subpoena is inappropriate, you may object. The standards of Rule 45 of the Utah Rules of Civil Procedure will be used to determine whether a subpoena is appropriate. File any objection with insert name and email address of ALJ. See also Utah Admin. Code R305-7-311.

This is an unofficial version of R305-7. An official version of the rule will be published by the Office of Administrative Rules at a future date. After publication, the official version will be available at <https://rules.utah.gov/publicat/code/r305/r305.htm>.

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(2) Service of the subpoena shall be made by the party requesting it in a manner consistent with Rule 45(b) of the Utah Rules of Civil Procedure.

(3) A party or other person served with a subpoena may file an objection for the reasons specified in the Utah Rules of Civil Procedure, Rule 45. In response, the party that served the subpoena may file a Motion to Compel. The ALJ shall consider the Motion to Compel and require compliance with the existing subpoena, issue a new subpoena on specified conditions, or quash the subpoena.

R305-7-312. Motions.

(1) Motions may be made in writing at or before a hearing, or orally during a hearing. Each motion shall include the grounds upon which it is based and the relief or order sought. Copies of motions that are not made orally shall be filed and served in accordance with R305-7-104. A separate memorandum in support of the motion is not required.

(2) A response to a motion, if any, shall be filed within 21 days of service of the motion.

(3) A reply, if any, may be filed within 10 days of service of the response. A reply shall be limited to matters raised in the response.

(4) A motion may not exceed 20 pages. If a separate memorandum in support of a motion is filed, the motion and memorandum together shall not exceed 20 pages. A response may not exceed 15 pages. A reply may not exceed 10 pages.

(5) Deadlines and page limits may be modified by order of the ALJ.

(6) When appropriate, parties are encouraged to file dispositive motions, such as a Motion for Judgment on the Pleadings, a Motion to Dismiss or a Motion for Summary Judgment. Parties are encouraged to file dispositive motions no later than 45 days prior to the scheduled hearing. Dispositive motions shall be prepared in accordance with requirements of Rule 12 or Rule 56 of the Utah Rules of Civil Procedure, as appropriate.

R305-7-313. Pre-hearing Briefs and other Pre-hearing Submissions.

(1) At least 30 days before a scheduled hearing on the merits, the parties shall exchange proposed exhibits and thereafter shall meet to attempt to stipulate to the admission of exhibits.

(2) At least 14 days before a scheduled hearing on the merits, the parties shall jointly file any stipulation regarding admission of exhibits and shall file copies of all of its exhibits that are subject to a stipulation. Electronic copies of the exhibits, as described in R305-7-104(3), shall be filed with the ALJ and the Administrative Proceedings Records Officer, and served on all other parties. Electronic and paper copies of the exhibits shall be served on the Administrative Proceedings Records Officer.

(3) Unless otherwise ordered by the ALJ, each party may, but is not required to file, at least 14 days before a scheduled hearing on the merits:

(a) A pre-hearing brief, limited to 25 pages, not including exhibits or any statement of facts; and

(b) Any motions related to the way the hearing will be conducted, or to the admission of exhibits and other evidence that will be presented at the hearing.

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(4) A party may object to an exhibit when it is introduced in a hearing, except that no party may object to:

(a) the authenticity of a record included in the Initial Record;

(b) the accuracy of analytical analysis of samples documented in the Initial Record, except as provided in R305-7-309(6).

(5)(a) Any party may file testimony and evidence using pre-filed testimony of a witness, unless otherwise ordered by the ALJ.

(b) For lengthy or complex proceedings, pre-filed testimony is preferred and may be required by the ALJ.

(c) Pre-filed testimony shall be submitted at least 13 business days before a scheduled hearing.

R305-7-314. Hearings.

(1) The ALJ shall govern the conduct of a hearing, and may establish reasonable limits on the length of witness testimony, cross-examination, oral arguments or opening and closing statements while affording to all parties the opportunity to present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence. The ALJ shall also establish the order of presentation at the hearing.

(2) The provisions of R305-7-107(4) govern recordings and transcripts of hearings.

(3) Evidence.

(a) Every party to an adjudicative proceeding has the right to introduce evidence, subject to Section 63G-4-206 and the Utah Rules of Evidence, to the extent those rules are not inconsistent with Section 63G-4-206 or this Rule. The evidence may be oral or written, real or demonstrative, direct or circumstantial.

(i) The ALJ may admit any reliable evidence possessing probative value that would be accepted by a reasonably prudent person in the conduct of his affairs.

(ii) The ALJ may admit hearsay evidence. However, no finding of fact may be based solely on hearsay evidence unless that evidence is admissible under Section 63G-4-206 and, to the extent it is not inconsistent with that section, the Utah Rules of Evidence.

(iii) If a party attempts to introduce evidence into a hearing, and it is excluded, the party may proffer the excluded testimony or evidence to allow any reviewing authority to pass on the correctness of the ruling of exclusion.

(b) Except as provided in R305-7-314(3)(d), all witnesses who have provided pre-filed testimony shall be present at the hearing unless:

(i) otherwise agreed to by the parties; and

(ii) ordered by the ALJ.

(c) A witness for whom pre-filed testimony has been submitted shall be allowed to give a brief summary of that testimony, and shall then be made available for cross-examination.

(d) Except as otherwise agreed to by the parties and ordered by the ALJ, the pre-filed testimony of any witness who is not present at the hearing will be treated as other hearsay evidence as provided in Utah Code Ann. Subsections 63G-4-206(1)(c) and 63G-4-208(3).

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(e) Oral testimony at a formal hearing will be sworn. The oath will be administered by the reporter or the ALJ. Anyone testifying falsely under oath may be subject to prosecution for perjury in accordance with the provisions of Sections 76-8-502 and 76-8-503.

R305-7-315. Post-hearing Findings and Conclusions.

Unless otherwise ordered by the ALJ, not later than 14 days after a hearing, each party may, but is not required to submit proposed findings of fact, identifying with specificity supporting evidence in the record, and proposed conclusions of law.

R305-7-316. Executive Director's Decision on the Merits.

(1) The parties may submit comments on the ALJ's recommended decision to the Executive Director. Comments shall not exceed 15 pages, and shall be submitted within ten business days of the service of the recommended decision. A party may file a response to another party's comments, not to exceed five pages, within five business days of the date of the service of the comments.

(2) The Executive Director shall issue an order that meets the requirements of Section 63G-4-208.

R305-7-317. Interlocutory Orders.

(1) Interlocutory review is not favored. Ordinarily, a party may challenge an order issued by the ALJ only after the ALJ has made a final recommended decision.

(2) A party may file, in accordance with R305-7-104, a motion for interlocutory review of a non-final ALJ order only if a ruling that is alleged to be in error could not be corrected through a challenge to the final recommended decision (e.g., a ruling denying privileged status to records), where early resolution of a material issue may materially advance the termination of the proceeding, where multiple evidentiary hearings may be avoided through resolution of issues through an interlocutory appeal, or where the interests of judicial economy are otherwise served.

(3) The Executive Director's determination to consider a motion for an interlocutory review is discretionary.

R305-7-318. Stays of Orders Pending Hearing.

(1) The filing of a Request for Agency Action does not stay a director's enforcement orders. A party seeking a stay of an Initial Order during an adjudicative proceeding may file a motion with the ALJ.

(a) An ALJ shall grant a stay if the party seeking the stay demonstrates all of the following elements:

- (i) The party seeking the stay will suffer irreparable harm unless the stay is issued;
- (ii) The threatened injury to the party seeking the stay outweighs whatever damage the proposed stay is likely to cause the party restrained or enjoined;
- (iii) The stay, if issued, would not be adverse to the public interest; and

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(iv) There is a substantial likelihood that the party seeking the stay will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further adjudication.

(2) The potential imposition of civil penalties does not constitute "harm" or "injury" within the meaning of this Rule. The standards specified in R305-7-318(1)(a) shall apply to any interlocutory review of an order regarding a requested stay of an Initial Order.

(3) Stay of Executive Director's Order Pending Judicial Review.

(a) A party seeking a stay of a final order by the Executive Director may file a motion with the Executive Director.

(b) The standards specified in R305-7-318(1)(a) shall apply to any such request.

R305-7-319. Settlement.

The parties may agree to settle all or any portion of an action at any time during an administrative proceeding through a settlement agreement, an administrative settlement order, or a proposed judicial consent decree. Upon notice by the Director that there is a proposed settlement that will be subject to a public comment period, the ALJ shall suspend the administrative proceeding, in whole or in part, until notified by the Director or another party that the suspension should be lifted. The ALJ may order an update on the status of the settlement.

R305-7-401. Purpose of Part.

Part 4 of this Rule (R305-7-401 through 403) governs proceedings initiated by a Director through a Notice of Agency Action.

R305-7-402. Notices of Agency Action to Impose a Penalty.

Before issuing a Notice of Agency Action assessing penalties, the Director shall provide at least 30 days' notice of the proposed penalty, and shall provide the recipient with an opportunity to comment on the proposed penalty.

R305-7-403. Procedures following a Notice of Agency Action.

If the recipient of a Notice of Agency Action filed by a Director does not file a written response within 30 days of the date the Notice of Agency Action is issued, the Director may issue a final order under Section 63G-4-209(1)(c) and R305-7-109. If the recipient does file a timely written response, an ALJ will conduct a formal proceeding on the matter using, as appropriate, the procedures specified in UAPA and Parts 1, 2 (for Permit Orders), 3 (for all other orders) and 6 of this Rule.

R305-7-501. Purpose of Part.

Part 5 of this Rule (R305-7-501 through 503) governs requests for declaratory and emergency actions.

R305-7-502. Declaratory Orders.

This is an unofficial version of R305-7. An official version of the rule will be published by the Office of Administrative Rules at a future date. After publication, the official version will be available at <https://rules.utah.gov/publicat/code/r305/r305.htm>.

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(1) Any Request for a Declaratory Order shall be addressed first to the Director specified in Part 6 of this Rule,

(2) Any person who seeks to obtain a declaratory order shall file a Request for Declaratory Order that meets these requirements. The request shall:

(a) Clearly designate the Request for Agency Action as one requesting a declaratory order;

(b) Identify the statute, department or division rule or order to be reviewed;

(c) Describe in detail the situation or circumstances in which the applicability of the statute, rule or order is to be reviewed;

(d) Describe the Requestor's reason or need for the order;

(e) Set out a proposed order;

(f) As appropriate, address with specificity each of the circumstances described in R305-7-502(4) and demonstrate that the condition does not apply.

(3) Failure to submit a complete Request for Declaratory Order is grounds for denying the Request.

(4) The following classes of circumstances are exempt from declaratory order, as provided in Section 63G-4-503(3)(b):

(a) Circumstances in which a declaratory order would substantially prejudice the rights of a person who would be a necessary party under the Utah Rules of Civil Procedure, unless the Petitioner has that person's consent in writing;

(b) Circumstances in which the person requesting the declaratory order does not have standing;

(c) Circumstances in which informal agency opinion or other agency action is sufficient to meet the need described in the Petition;

(d) Circumstances in which questions have already been adequately addressed by the agency in an order or in informal advice;

(e) Circumstances that raise questions that are clear and do not warrant an order;

(f) Circumstances that are more properly addressed by a statutory change or rulemaking proceedings;

(g) Circumstances that arise out of pending or anticipated litigation in a civil, criminal or administrative forum and that are more properly addressed by that forum;

(h) Circumstances under which the critical facts are not clear and may be altered by subsequent events, or the issues are otherwise not yet ripe for consideration;

(i) Circumstances under which the person making the request is unable to show that real risk to that person will be confronted if the intended course of conduct is taken; and

(j) Circumstances involving use of the agency's emergency authority.

(5) If no declaratory order or order setting the matter for hearing is issued within 60 days of the Request, the Request shall be deemed denied.

(6) An Initial Order of the Director on a Request for Declaratory Action may be challenged by filing a request for agency action under this Rule.

R305-7-503. Emergency Actions.

This is an unofficial version of R305-7. An official version of the rule will be published by the Office of Administrative Rules at a future date. After publication, the official version will be available at <https://rules.utah.gov/publicat/code/r305/r305.htm>.

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Emergency orders may be issued as provided in Section 63G-4-502. See R305-7-111.

R305-7-601. Purpose of Part.

(1) Part 6 of this Rule (R305-7-601 through 623) provides definitions and other provisions that will govern the way the procedures specified in Parts 2 through 5 of this Rule will apply to adjudicative procedures brought under specific statutes.

(2) For all statutes, Parts 1, 2 and 6 of this Rule apply to a proceeding to challenge a Permit Order.

(3) For all statutes, Parts 1, 3 and 6 of this Rule apply to a proceeding to challenge a Notice of Violation or other Initial Order.

R305-7-602. Addresses for Filing.

(1) Documents submitted to the Executive Director of the Department of Environmental Quality shall be sent to:

Executive Director
Department of Environmental Quality
P.O. Box 144810
Salt Lake City, Utah 84114-4810

Alternatively, these documents may be delivered by courier or hand delivery to:

Executive Director
Department of Environmental Quality
195 North 1950 West, 4th Floor
Salt Lake City, Utah 84116-3097

(2) Documents submitted to the Director of the Division of Air Quality shall be sent to:

Director, Division of Air Quality
P.O. Box 144820
Salt Lake City, Utah 84114-4820

Alternatively, these documents may be delivered by courier or hand delivery to:

Director, Division of Air Quality
195 North 1950 West, 4th Floor
Salt Lake City, Utah 84116-3097

(3) Documents submitted to the Director of the Division of Drinking Water shall be sent to:

Director, Division of Drinking Water
P.O. Box 144830
Salt Lake City, Utah 84114-4830

Alternatively, these documents may be delivered by courier or hand delivery to:

Director, Division of Drinking Water
195 North 1950 West, 3rd Floor
Salt Lake City, Utah 84116-3097

(4) Documents submitted to the Director of the Division of Waste Management and Radiation Control shall be sent to:

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Director, Division of Waste Management and Radiation Control
P.O. Box 144880
Salt Lake City, Utah 84114-4880

Alternatively, these documents may be delivered by courier or hand delivery to:
Director, Division of Waste Management and Radiation Control
195 North 1950 West, 2nd Floor
Salt Lake City, Utah 84116-3097

(5) Documents submitted to the Director of the Division of Environmental Response and Remediation shall be sent to:

Director, Division of Environmental Response and Remediation
P.O. Box 144840
Salt Lake City, Utah 84114-4840

Alternatively, these documents may be delivered by courier or hand delivery to:
Director, Division of Environmental Response and Remediation
195 North 1950 West, 1st Floor
Salt Lake City, Utah 84116-3097

(6) Documents submitted to the Director of the Division of Water Quality shall be sent to:

Director, Division of Water Quality
P.O. Box 144870
Salt Lake City, Utah 84114-4870

Alternatively, these documents may be delivered by courier or hand delivery to:
Director
Division of Water Quality
195 North 1950 West, 3rd Floor
Salt Lake City, Utah 84116-3097

R305-7-603. Matters Governed by Title 19, Chapter 1 of the Environmental Quality Code, but not Including Title 19, Chapter 1, Part 4.

(1) Scope. This subsection R305-7-603 applies to all matters governed by Title 19, Chapter 1, of the Environmental Quality Code.

(2) Definitions.

"Director" shall refer to the Executive Director.

(3) Orders and notices issued under the authority of Title 19, Chapter 1 of the Environmental Quality Code are not exempt from the requirements of UAPA. The provisions of UAPA and of Parts 1, 4 and 6 of this Rule shall apply to proceedings initiated under the authority of Title 19, Chapter 1, the "Environmental Quality Code."

(4) Initiating and intervening in a proceeding. Nothing in this Rule constitutes authority for any person other than the agency to initiate adjudicative proceedings under Title 19, Chapter 1. Nothing in this Rule constitutes authority for any person to intervene in an action commenced under Title 19, Chapter 1.

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Effective Date: November 1, 2018

(5) Proceedings under Title 19, Chapter 1 of the Environmental Quality Code, and specifically under Section 19-1-202(2)(a), will be conducted formally under UAPA.

(6) Agency review under Section 63G-4-301 is not available. A request for reconsideration may be filed under Section 63G-4-302.

R305-7-604. Matters Governed by the Air Conservation Act, Title 19, Chapter 2, but not Including Sections 19-2-112 or 19-2-123 through 19-2-126.

(1) This subsection R305-7-604 applies to all matters governed by the Air Conservation Act, Title 19, Chapter 2, but not including Sections 19-2-112 or 19-2-123 through 19-2-126.

(2) "Director" means the Director of the Division of Air Quality.

R305-7-605. Matters Governed by Section 19-2-112 of the Air Conservation Act.

(1) This subsection R305-7-605 describes matters governed by Section 19-2-112(1) of the Air Conservation Act, and applies to matters governed by Section 19-2-112(2) of that Act.

(2) Actions taken under the authority of Section 19-2-112(1) are subject to the procedures specified in that subsection only; neither this Rule nor UAPA applies.

(3) Orders and notices issued under the authority of 19-2-112(2) are subject to the requirements of and procedure specified in 63G-4-502. There is no administrative review available for orders issued under this provision. Any request for reconsideration shall be addressed to the Executive Director at the address specified in R305-7-602(1).

(4) Initiating and intervening in a proceeding. Nothing in this Rule constitutes authority for:

(a) any person other than a Director to initiate adjudicative proceedings under 19-2-112(2);

or

(b) any person to intervene in an action commenced under 19-2-112(2).

R305-7-606. Matters Governed by Sections 19-2-123 through 19-2-126 of the Air Conservation Act.

(1) This subsection R305-7-606 applies to matters governed by Sections 19-2-123 through 19-2-126 of the Air Conservation Act. Sections 59-7-605 and 59-10-1009 of the Utah Tax Code also apply to these matters.

(2) Definitions.

"Director" means the Director of the Division of Air Quality for Requests relating to air pollution control equipment, or the Director of the Division of Water Quality for requests relating to water pollution control equipment.

R305-7-607. Matters Governed by the Radiation Control Act, Title 19, Chapter 3, but not Including Section 19-3-109.

(1) This subsection R305-7-607 applies to all matters governed by the Radiation Control Act, Title 19, Chapter 3, but not including Section 19-3-109.

(2) Definitions.

This is an unofficial version of R305-7. An official version of the rule will be published by the Office of Administrative Rules at a future date. After publication, the official version will be available at <https://rules.utah.gov/publicat/code/r305/r305.htm>.

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"Director" means the Director of the Division of Waste Management and Radiation Control.

R305-7-608. Matters Governed by the Radiation Control Act, Title 19, Chapter 3, Section 19-3-109.

(1) This subsection R305-7-608 applies to all matters governed by Section 19-3-109 of the Radiation Control Act.

(2) Definitions.

"Director" means the Director of the Division of Waste Management and Radiation Control.

(3) The provisions of UAPA and of Parts 1, 4 and 6 of this Rule shall apply to proceedings initiated by filing a notice of agency action under the authority of Section 19-3-109.

R305-7-609. Matters Governed by the Safe Drinking Water Act, Title 19, Chapter 4, but not Including Section 19-4-109(1).

(1) This subsection R305-7-609 applies to all matters governed by the Safe Drinking Water Act, Title 19, Chapter 4, but not included Section 19-4-109(1).

(2) Definitions.

"Director" means the Director of the Division of Drinking Water.

R305-7-610. Matters Governed by the Safe Drinking Water Act, Title 19, Chapter 4, Section 19-4-109(1).

(1) This subsection R305-7-610 applies to all matters governed by Section 19-4-109(1) of the Safe Drinking Water Act.

(2) Definitions.

"Director" means the Director of the Drinking Water Division.

(3) The provisions of UAPA and of Parts 1, 4 and 6 of this Rule shall apply to proceedings initiated by filing a notice of agency action under the authority of Section 19-4-109(1).

R305-7-611. Matters Governed by the Water Quality Act, Title 19, Chapter 5.

(1) This subsection R305-7-611 applies to all matters governed by the Water Quality Act, Title 19, Chapter 5.

(2) Definitions.

"Director" means the Director of the Division of Water Quality or, for purposes of groundwater quality at a facility licensed by and under the jurisdiction of the Division of Radiation Control, the Director of the Division of Radiation Control.

R305-7-612. Matters Governed by the Solid and Hazardous Waste Act, Title 19, Chapter 6, Part 1.

(1) This subsection R305-7-612 applies to all matters governed by Solid and Hazardous Waste Act, Title 19, Chapter 6, Part 1.

(2) Definitions.

"Director" means the Director of the Division of Waste Management and Radiation Control.

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R305-7-613. Matters Governed by the Hazardous Substances Mitigation Act, Title 19, Chapter 6, Part 3.

(1) This subsection R305-7-613 applies to all matters governed by the Hazardous Substances Mitigation Act, Title 19, Chapter 6, Part 3.

(2) Definitions.

"Director" means the Executive Director.

R305-7-614. Matters Governed by the Underground Storage Tank Act, Title 19, Chapter 6, Part 4, but not Including Sections 19-6-405.3, 19-6-407, 19-6-408, 19-6-416 and 19-6-416.5.

(1) This subsection R305-7-614 applies to all matters governed by the Underground Storage Tank Act, Title 19, Chapter 6, Part 4, but not including Sections 19-6-405.3, 19-6-407, 19-6-408, 19-6-416 and 19-6-416.5.

(2) Definitions.

"Director" means the Director of the Division of Environmental Response and Remediation.

R305-7-615. Matters Governed by the Underground Storage Tank Act, Title 19, Chapter 6, Sections 19-6-407, 19-6-408, 19-6-416 and 19-6-416.5.

(1) This subsection R305-7-615 applies to all matters governed by Sections 19-6-407, 19-6-408, 19-6-416, and 19-6-416.5 of the Underground Storage Tank Act.

(2) Definitions.

"Director" means the Director of the Division of Environmental Response and Remediation.

(3) The provisions of UAPA and of Parts 1, 4 and 6 of this Rule shall apply to proceedings initiated by filing a notice of agency action under the authority of Sections 19-6-407, 19-6-408, 19-6-416 and 19-6-416.5.

R305-7-616. Matters Governed by the Used Oil Management Act, Title 19, Chapter 6, Part 7.

(1) This subsection R305-7-616 applies to all matters governed by the Used Oil Management Act, Title 19, Chapter 6, Part 7.

(2) Definitions.

"Director" means the Director of the Division of Waste Management and Radiation Control.

R305-7-617. Matters Governed by the Waste Tire Recycling Act, Title 19, Chapter 6, Part 8.

(1) This subsection R305-7-617 applies to all matters governed by Waste Tire Recycling Act, Title 19, Chapter 6, Part 8.

(2) Definitions.

"Director" means the Director of the Division of Waste Management and Radiation Control.

(3) The provisions of UAPA and of Parts 1, 4 and 6 of this Rule shall apply to proceedings initiated by filing a notice of agency action under the authority of the Waste Tire Recycling Act, Title 19, Chapter 6, Part 8.

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R305-7-618. Matters Governed by the Illegal Drug Operations Site Reporting and Decontamination Act, Title 19, Chapter 6, Part 9.

(1) This subsection R305-7-618 applies to all matters over which the Director has authority under the Illegal Drug Operations Site Reporting and Decontamination Act, Title 19, Chapter 6, Part 9, and under the authority of the Board.

(2) Definitions.

"Director" means the Director of the Division of Environmental Response and Remediation.

(3) The provisions of UAPA and of Parts 1, 4 and 6 of this Rule shall apply to proceedings initiated by filing a notice of agency action under the authority of the Illegal Drug Operations Site Reporting and Decontamination Act, Title 19, Chapter 6, Part 9.

R305-7-619. Matters Governed by the Mercury Switch Removal Act, Title 19, Chapter 6, Part 10.

(1) This subsection R305-7-619 applies to all matters governed by the Mercury Switch Removal Act, Title 19, Chapter 6, Part 10.

(2) Definitions.

"Director" means the Director of the Division of Waste Management and Radiation Control.

(3) The provisions of UAPA and of Parts 1, 4 and 6 of this Rule shall apply to proceedings initiated by filing a notice of agency action under the authority of the Mercury Switch Removal Act, Title 19, Chapter 6, Part 10.

R305-7-620. Matters Governed by the Industrial Byproduct Reuse Act, Title 19, Chapter 6, Part 11.

(1) Scope. This subsection R305-7-620 applies to all matters governed by the Industrial Byproduct Reuse Act, Title 19, Chapter 6, Part 11.

(2) Definitions.

"Director" means the Director of the Division of Waste Management and Radiation Control.

R305-7-621. Matters Governed by the Voluntary Cleanup Program Statute, Title 19, Chapter 8.

(1) This subsection R305-7-621 applies to all matters governed by the Voluntary Cleanup Program statute, Title 19, Chapter 8.

(2) Determinations about whether to enter into an agreement under this program lie within the sole discretion of the Executive Director or a person appointed by the Executive Director.

(3) The Executive Director delegates to the Director of the Division of Environmental Response and Remediation authority to issue orders and other Notices of Agency Action regarding:

(a) proposed determinations regarding approvals, disapprovals or modifications of work plans and reports;

(b) approvals, denials or modifications of certificates of completion; and

(c) declaratory orders under Section 63G-4-503 and R305-7-502.

This is an unofficial version of R305-7. An official version of the rule will be published by the Office of Administrative Rules at a future date. After publication, the official version will be available at <https://rules.utah.gov/publicat/code/r305/r305.htm>.

Effective Date: November 1, 2018

R305-7-622. Matters Governed by the Environmental Institutional Control Act, Title 19, Chapter 10.

(1) This subsection R305-7-622 applies to all matters governed by the Environmental Institutional Control Act, Title 19, Chapter 10.

(2) A request to approve a proposed termination or modification of an environmental institutional control adopted under this act shall be considered a Request for Agency Action and Parts 1, 2 and 6 of this Rule shall apply.

R305-7-623. Matters Governed by the Uniform Environmental Covenants Act, Title 57, Chapter 25.

(1) This subsection R305-7-623 applies to all matters governed by the Uniform Environmental Covenants Act, Title 57, Chapter 25.

(2) A request to approve a proposed agreement, modification of an agreement, or termination of an agreement shall be considered to be a Request for Agency Action and Parts 1, 2 and 6 of this Rule shall apply.

KEY: administrative procedures, adjudicative procedures, hearings

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

Notice of Continuation: October 26, 2017

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

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