



State of Utah

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Governor

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Lieutenant Governor

Department of
Environmental Quality

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Executive Director

DIVISION OF AIR QUALITY
Bryce C. Bird
Director

DAQ-092-14

MEMORANDUM

TO: Air Quality Board

THROUGH: Bryce C. Bird, Executive Secretary

FROM: Alan Humpherys, Minor New Source Review Section Manager

DATE: November 21, 2014

SUBJECT: PROPOSE FOR PUBLIC COMMENT: Amend R307-120. General Requirements: Tax Exemption for Air Pollution Control Equipment.

During the 2014 legislative session, the Utah Legislature revised the statute governing the state's certification for sales tax exemption for pollution control equipment. House Bill 31 repealed the old statute and enacted a new statute. The old and new statutes are similar but do contain differences.

We are proposing changes to R307-120 to be consistent with House Bill 31.

- A section will be added for rule applicability and rule definitions.
- The requirements for an application will be expanded to be consistent with the statute.
- The sections of "Review Period" and "Duty to Issue Certification" will be combined under a new section "Issuance of Certification."
- The old sections of "Eligibility for Certification," "Conditions of Eligibility," and "Limitations on Certification" will be removed from the rule.
- The language of the sections on "Exemptions from Certifications" and "Appeal and Revocation" will be updated to be consistent with the statute.

Staff Recommendation: Staff recommends the Board propose R307-120 for public comment.

1 **R307. Environmental Quality, Air Quality.**

2 **R307-120. General Requirements: Tax Exemption for Air Pollution**
3 **Control Equipment.**

4 **R307-120-1. Applicability.**

5 This rule shall apply to purchases described in Section
6 19-12-201.

7
8 **R307-120-2. Definitions.**

9 The following definitions apply to R307-120:

10 "Freestanding pollution control property" means freestanding
11 pollution control property as defined in Section 19-12-102.

12 "Pollution control facility" means pollution control facility
13 as defined in Section 19-12-102.

14
15 **R307-120-[1]3. Application for Certification.**

16 (1) An [A]application for certification shall be made on the
17 form provided by the director. [~~Division of Air Quality, and~~]

18 (2) The application shall include all information requested
19 thereon and such additional [~~reasonably necessary~~]information as
20 is requested by the director [~~executive secretary of the Air Quality~~
21 Board]. At a minimum, the application shall contain:

22 (a) a description of the pollution control facility or the
23 freestanding pollution control property;

24 (b) a description of the property, part, product, or service
25 for a purchase or lease of property, a part, a product or a service
26 for which a person seeks to claim a sales and use tax exemption under
27 Section 19-12-201;

28 (c) the existing or proposed operation procedure for the
29 pollution control facility or freestanding pollution control
30 property; and

31 (d) a statement of the purpose served or to be served by the
32 pollution control facility or freestanding pollution control
33 property.

34 (3) Applications for certification shall include:

35 (a) a reference to the approval order issued under R307-401-8
36 that requires the pollution control facility or the freestanding
37 pollution control property; or

38 (b) a reference to the section of the State Implementation Plan
39 that requires the pollution control facility or the freestanding
40 pollution control property; or

41 (c) an estimate of emission reductions (in tons per year)
42 resulting from the use of the pollution control facility or the
43 freestanding pollution control property.

44 (4) The director may require an application to contain
45 additional information that the director finds necessary to determine
46 whether to grant certification under Section 19-12-303.

47
48 **~~[R307-120-2. Eligibility for Certification.~~**

49 ~~_____ Certification shall be made only for taxpayers who are owners,~~
50 ~~operators (under a lease) or contract purchasers of a trade or business~~
51 ~~that utilizes Utah property with a pollution control facility to~~

1 ~~prevent or minimize air pollution.]~~
2

3 **R307-120-[3]4. [Review Period] Issuance of Certification.**

4 ~~(1) [Date of filing shall be date of receipt of the final item~~
5 ~~of information requested and this filing date shall initiate the~~
6 ~~120 day review period.]~~The filing date of the application shall be
7 the date the director receives a complete application with all of
8 the information as described in R307-120-3. Within 120 days of the
9 filing date of the application, the director will:

10 (a) issue a written certification of the pollution control
11 facility or the freestanding pollution control property; or

12 (b) provide a written statement of the reason for the denial
13 of certification.

14 (2) The director shall issue a certification of a pollution
15 control facility or a freestanding pollution control property to the
16 applicant if the director determines that:

17 (a) the application meets the requirements of Section
18 19-12-301(3) or 19-12-302(2);

19 (b) the facility or property that is the subject of the
20 application is a pollution control facility or a freestanding
21 pollution control property.

22 (c) the person who files the application is a person described
23 in Section 19-12-301(1) or 19-12-302(1); and

24 (d) the purchases or leases for which the person seeks to claim
25 a sales and use tax exemption are exempt under Section 19-12-201.

26 (3) The director may issue one certification for one or more
27 pollution control facilities or freestanding pollution control
28 properties that constitute an operational unit.

29 (4) If the director does not issue or deny a certification within
30 120 days after the date a person files an application, the director
31 shall issue a certification to the person at the person's request.
32

33 **[R307-120-4. Conditions for Eligibility.**

34 ~~_____ (1) All materials, equipment and structures (or part thereof)~~
35 ~~purchased, leased or otherwise procured and services utilized for~~
36 ~~construction or installation in an air pollution control facility~~
37 ~~shall be eligible for certification, provided:~~

38 ~~_____ (a) such materials, equipment, structures (or part thereof),~~
39 ~~and services installed, constructed, or acquired result in a~~
40 ~~demonstrated reduction of pollutant discharges or emission pollutant~~
41 ~~levels, and~~

42 ~~_____ (b) the primary purpose of such materials, equipment,~~
43 ~~structures (or part thereof), and services is preventing, controlling,~~
44 ~~reducing, or disposing of air pollution.~~

45 ~~_____ (2) The above includes expenditures that reduce the amount of~~
46 ~~pollutants produced as well as expenditures that result in removal~~
47 ~~of pollutants from waste streams. The materials, equipment,~~
48 ~~structures (or part thereof), and services that are necessary for~~
49 ~~the proper functioning of air pollution control facilities meeting~~
50 ~~the requirements of (1)(a) and (b) above, including equipment required~~
51 ~~for compliance monitoring, shall be eligible for certification.~~

1
2 ~~**R307-120-5. Limitations on Certification.**~~

3 ~~Applications for certification shall be certified by the~~
4 ~~executive secretary of the Board after consultation with the State~~
5 ~~Tax Commission and only if:~~

6 ~~(1) the air pollution control facility in question has been~~
7 ~~reviewed and approved by the executive secretary of the Board for~~
8 ~~those air pollution sources needing review in accordance with~~
9 ~~R307-401, or~~

10 ~~(2) the air pollution control facilities installed,~~
11 ~~constructed, or acquired are the result of the requirements of these~~
12 ~~rules (permits by rule) or the State Implementation Plan.]~~

13
14 **R307-120-[6]5. Exemptions from Certification.**

15 The director shall not issue a certification for the following:

16 (1) a replacement of freestanding pollution control property;
17 or

18 (2) property, a part, a product, or a service described in
19 Sections 19-12-201(1)(b) through (e) used or performed in a repair
20 or replacement related to:

21 (a) a pollution control facility; or

22 (b) a freestanding pollution control property.

23 (3) a pollution control facility or a freestanding pollution
24 control property that has already received a certification under
25 R307-120-5.

26 ~~[The following items are specifically not eligible for certification:~~

27 ~~(1) materials and supplies used in the normal operation or~~
28 ~~maintenance of the air pollution control facilities;~~

29 ~~(2) materials, equipment, and services used to monitor ambient~~
30 ~~air, unless required for a permit or approval from the Board;~~

31 ~~(3) air conditioners.~~

32
33 ~~**R307-120-7. Duty to Issue Certification.**~~

34 ~~Upon determination that facilities described in any application~~
35 ~~under R307-120-1 satisfy the requirements of these rules and Sections~~
36 ~~19-2-123 through 19-2-127 the executive secretary of the Board shall~~
37 ~~issue a certification of pollution control facility to the applicant.]~~

38
39 **R307-120-[8]6. Appeal and Revocation.**

40 (1) A decision of the ~~[executive secretary of the Board]~~director
41 may be reviewed by filing a Request for Agency Action as provided
42 in ~~[R307-103]~~R305-7.

43 (2) ~~[Revocation of prior certification shall be made for any~~
44 ~~of the circumstances prescribed in Section 19-2-126, after~~
45 ~~consultation with the State Tax Commission.]~~The director may revoke
46 a certification issued under Section 19-12-303 if the director makes
47 a determination as contained in Section 19-12-304.

48
49 **KEY: air pollution, tax exemptions, equipment**

50 **Date of Enactment or Last Substantive Amendment: August 29, 2011**

51 **Notice of Continuation: February 1, 2012**

1 **Authorizing, and Implemented or Interpreted Law: [~~19-2-123;~~**
2 **~~19-2-124; 19-2-125; 19-2-126; 19-2-127]~~19-12-101; 19-12-102;**
3 **19-12-201; 19-12-202; 19-12-203; 19-12-301; 19-12-302; 19-12-303;**
4 **19-12-304; 19-12-305**
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