

State of Utah  
Administrative Rule Analysis

## NOTICE OF PROPOSED RULE

- \* The agency identified below in box 1 provides notice of proposed rule change pursuant to Utah Code Section 63G-3-301.
- \* Please address questions regarding information on this notice to the agency.
- \* The full text of all rule filings is published in the Utah State Bulletin unless excluded because of space constraints.
- \* The full text of all rule filings may also be inspected at the Division of Administrative Rules.

DAR file no:		Date filed:	
State Admin Rule Filing Id:		Time filed:	

		Agency No.		Rule No.		Section No.
Utah Admin. Code Ref (R no.):	R	156	-	38b	-	
Changed to Admin. Code Ref. (R no.):	R		-		-	

<b>1.</b>	<b>Agency:</b>	Commerce/Division of Occupational and Professional Licensing			
	<b>Room no.:</b>				
	<b>Building:</b>	Heber M. Wells Building			
	<b>Street address 1:</b>	160 East 300 South			
	<b>Street address 2:</b>				
	<b>City, state, zip:</b>	Salt Lake City UT 84111-2316			
	<b>Mailing address 1:</b>	PO Box 146741			
	<b>Mailing address 2:</b>				
	<b>City, state, zip:</b>	Salt Lake City UT 84114-6741			
	<b>Contact person(s):</b>				
	<b>Name:</b>	<b>Phone:</b>	<b>Fax:</b>	<b>E-mail:</b>	
	Tom Harper	801-530-6288	801-530-6511	tharper@utah.gov	

(Interested persons may inspect this filing at the above address or at the Division of Administrative Rules during business hours)

<b>2.</b>	<b>Title of rule or section (catchline):</b>	State Construction Registry Rule			
<b>3.</b>	<b>Type of notice:</b>	New ___; Amendment XXX; Repeal ___; Repeal and Reenact ___			
<b>4.</b>	<b>Purpose of the rule or reason for the change:</b>	The Division is proposing this rule filing to implement changes to the State Construction Registry (SCR) in H.B. 131 which was passed during the 2012 General Legislative Session .			
<b>5.</b>	<b>This change is a response to comments from the Administrative Rules Review Committee.</b>	No XXX; Yes ___			
<b>6.</b>	<b>Summary of the rule or change:</b>	The proposed amendments clarify alternate methods for submitting an SCR filing out of the SCR website. Otherwise, the substance of the existing rule remains unchanged. The proposed amendments also make technical and clarifying changes.			
<b>7.</b>	<b>Aggregate anticipated cost or savings to:</b>				
	<b>A) State budget:</b>				
	<b>Affected:</b>	No XXX; Yes ___			

These proposed amendments are only a clarification of the statutory requirement and therefore the Division has determined the proposed amendments should not have a fiscal impact to the state budget beyond those already identified in the fiscal analysis of H.B. 131. The clarification of alternate submission methods to the SCR does not impact other state government agencies.

**B) Local government:**

**Affected:** No XXX; Yes \_\_\_\_

These proposed amendments are only a clarification of the statutory requirement and therefore the Division has determined the proposed amendments should not have a fiscal impact to local governments beyond those already identified in the fiscal analysis of H.B. 131.

**C) Small businesses ("small business" means a business employing fewer than 50 persons):**

**Affected:** No XXX; Yes \_\_\_\_

These proposed amendments are only a clarification of the statutory requirement and therefore the Division has determined the proposed amendments should not have a fiscal impact to small businesses beyond those already identified in the fiscal analysis of H.B. 131.

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

**Affected:** No XX; Yes \_\_\_\_

These proposed amendments are only a clarification of the statutory requirement and therefore the Division has determined the proposed amendments should not have a fiscal impact to other persons beyond those already identified in the fiscal analysis of H.B. 131.

**8. Compliance costs for affected persons:**

These proposed amendments are only a clarification of the statutory requirement and therefore the Division has determined the proposed amendments should not have a fiscal impact to affected persons beyond those already identified in the fiscal analysis of H.B. 131.

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

As stated in the rule analysis, the proposed amendments give businesses an alternate method for submitting an SCR filing. The amendments do not impose new fees or require compliance in a manner that would create new costs. No fiscal impact to businesses is anticipated from this filing.

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

Francine A. Giani, Executive Director

**10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws.**

**State code or constitution citations (required)** (e.g., Section 63G-3-402; Subsection 63G-3-601(3); Article IV) :

Section 38-1a-101	Section 38-1b-101

**11. This rule adds, updates, or removes the following title of materials incorporated by references** (a copy of materials incorporated by reference must be submitted to the Division of Administrative Rules; *if none, leave blank*):

	First Incorporation	Second Incorporation
<b>Official Title of Materials Incorporated (from title page)</b>		
<b>Publisher</b>		
<b>Date Issued</b>		
<b>Issue, or version</b>		
<b>ISBN Number (optional)</b>		
<b>ISSN Number (optional)</b>		
<b>Cost of Incorporated Reference</b>		

<b>Action: Adds, updates, or removes</b>			
(If this rule incorporates more than two items by reference, please attach additional pages)			
<b>12.</b>	<b>The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)		
	<b>A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy):</b>	12/3/2012	
	<b>B) A public hearing (optional) will be held:</b>		
	<b>On (mm/dd/yyyy):</b>	<b>At (hh:mm AM/PM):</b>	<b>At (place):</b>
	11/08/2012	3:00 PM	160 East 300 South, Conference Room 474 (4th floor), Salt Lake City, Utah
<b>13.</b>	<b>This rule change may become effective on (mm/dd/yyyy):</b>		12/10/2012
	NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 12(A) above, the agency must submit a Notice of Effective Date to the Division of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.		
<b>14.</b>	<b>Indexing information -- keywords</b> (maximum of four, in lower case, except for acronyms (e.g., "GRAMA") or proper nouns (e.g., "Medicaid")); may not include the name of the agency:		
	electronic preliminary lien filing	notice of commencement	
	preliminary notice	notice of completion	
<b>15.</b>	<b>Attach an RTF document containing the text of this rule change</b> (filename):		R156-38b.pro
<b>To the agency:</b> Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i> , and delaying the first possible effective date.			
<b>AGENCY AUTHORIZATION</b>			
<b>Agency head or designee, and title:</b>	Mark B. Steinagel, Director	<b>Date (mm/dd/yyyy):</b>	10/09/2012

**R156. Commerce, Occupational and Professional Licensing.**

**R156-38b. State Construction Registry Rule.**

**R156-38b-102. Definitions.**

In addition to the definitions in [~~Section 38-1-27, State Construction Registry -- Form and contents of notice of commencement, preliminary notice, and notice of completion~~] Title 38, Chapter 1a, Preconstruction and Construction Liens; Title 38, Chapter 1b, Government Construction Projects; Title 58, Chapter 1, Division of Occupational and Professional Licensing Act; and Rule R156-1, General Rule of the Division of Occupational and Professional Licensing; which shall apply to these rules, as used in the referenced statutes or this rule:

(1) "Alternate [~~method or process~~]means" means transmission by telefax, by U.S. mail, or by private commercial courier.

(2) "Electronic" or "Electronically" means transmission by Internet or by electronic mail and does not mean a transmission by alternate [~~methods~~]means or process.

(3) "J2EE" means SUN Microsystem's Java 2 Platform, Enterprise Edition, for multi-tier server-oriented enterprise applications.

(4) "Merge" means to link two or more filings together under a unique project number as required by Subsection [~~38-1-31.5(3)(a)~~] 38-1b-201(3)(c).

(5) "Private project" means a construction project, commenced after July 31, 2011, that is not a government project.

(6) "SCR" means the State Construction Registry established in Sections [~~38-1-27 and 38-1-30~~] 38-1a-201 through [~~38-1-36~~] 38-1a-211.

**R156-38b-103. Authority - Purpose.**

This rule is adopted by the Division under the authority of [~~Sections 38-1-27 and 38-1-30 through 38-1-36~~] Subsection 38-1a-202(3)(a) to administer the SCR.

**R156-38b-201. Duties, Functions, and Responsibilities of the Division.**

In accordance with [~~Section 38-1-30(3)(a)~~] Subsection 38-1a-202(3)(a), the duties, functions, and responsibilities of the Division are oversight and enforcement of the Act, and include:

(1) establishing rules to implement the SCR;

(2) providing oversight of the design, operation, and maintenance of the SCR; and

(3) auditing the functionality and integrity of the SCR.

**R156-38b-301. Duties, Functions, and Responsibilities of the Designated Agent.**

In accordance with Subsections [~~38-1-30(3)(b)~~] 38-1a-202(2) and (4) through (7), the duties, functions, and responsibilities of the designated agent include:

(1) designing, developing, hosting, operating, and maintaining the SCR;

(2) providing training, marketing, and technical support for the SCR;

(3) performing other duties, functions, and responsibilities provided by statute, rule, or contract; and

(4) obtaining and maintaining insurance coverage as follows:

(a) general liability insurance [~~as required by Subsection 38-1-35(2)(b),~~] which at a minimum shall be the amount established for the designated agent's master contract with the State of Utah; and

(b) errors and omissions insurance as required by Subsection 38-1-30(5), may be satisfied by the designated agent's current policy that insures its parent company and all subsidiaries in the amount of \$5 Million.

### **R156-38b-401. Reliability, Availability and Security Standards.**

The designated agent shall provide a reliable hosting environment which shall contain the following elements:

(1) Operating Standard. The [~~SCR~~]designated agent shall initially adhere to the J2EE standard and such standard in the future as the Division shall designate in cooperation with the designated agent.

(2) System Upgrades. The designated agent shall notify the Division when the SCR requires an update that may cause significant service interruption. Functional or structural changes that impact the system requirements shall require prior approval from the Division.

(3) Security. The designated agent shall take commercially reasonable steps to provide that the information contained in the SCR is secure and protected from unauthorized entry.

(4) System Backup. The designated agent shall provide adequate backup of the system and its data, including the following:

(a) Redundant Servers. There shall be multiple servers running the SCR and Internet environments, but no more than two sets of servers.

(b) Data Backup Environment. There shall be facilities to continuously back up data contained in the SCR. This backed-up data must be easily retrieved and either viewed or placed back into the SCR if required.

(c) Redundant Power Supply. [~~Provide~~]There shall be a single reliable redundant power supply for the entire environment.

(5) System Recovery. In the event of a system failure, the designated agent shall provide system recovery and re-deployment to meet a standard that will result in restoration into full production within a maximum of three business days which are defined as Mondays through Fridays with legal holidays excluded. In the event of destruction of the designated agent's primary hosting facility, the designated agent shall meet a standard whereby complete service restoration could be implemented within two weeks provided the telecommunications and data center vendor can meet this schedule.

(6) Software Licensing. The designated agent shall maintain [~~legitimate~~]valid software licenses for all purchased software used for

the SCR.

(7) System Monitoring. [~~Provide~~]The designated agent shall provide continuous monitoring of SCR environment.

(8) System Support. [~~Provide~~]The designated agent shall provide appropriate personnel to continuously maintain the SCR environment.

(9) Continuity of Operations. In the event that, for whatever reason, operation and maintenance of the SCR is transferred to the state or another designated agent, continuity of the SCR shall be maintained in accordance with the governing contractual provisions with the designated agent.

(10) In the event that the Division elects to provide some of the services listed in (1) through (8) above, the designated agent will be relieved of the responsibilities for the services so assumed. Such election by the Division shall be in writing.

#### **R156-38b-402. User Identification and Password.**

(1) All users are required to register with the [~~SCR~~]designated agent.

(2) The [~~Division~~]designated agent shall issue a unique user ID and password to each user who successfully registers to use the SCR.

(3) The information gathered in the registration process shall be maintained in the SCR as the user profile.

(4) The registration process shall include the following information and any other information established by the Division in collaboration with the designated agent:

- (a) first and last name of the individual registering; and
- (b) email address, if any.

(5) The [~~SCR~~]designated agent shall provide the ability for a user to view and modify the user's profile.

(6) The [~~SCR~~]designated agent shall provide an industry accepted secure method for a user to recover a forgotten user ID or password.

(7) The [~~SCR~~]designated agent shall pre-populate filings with any information available in the user's profile.

#### **R156-38b-403. Transaction Log.**

The designated agent shall maintain a transaction log of the SCR that includes a transaction [~~trail~~]record of completed transactions by registered user.

#### **R156-38b-501. Required Information for SCR Filing Notices.**

(1) Electronic notice filings shall be input into the SCR entry screen by the person making the filing but shall not be accepted by the [~~SCR~~]designated agent unless the person complies with the content requirements for the SCR filing[~~a preliminary notice~~].

(2) The [~~SCR~~]designated agent shall verify that data is submitted for each of the content requirements, but it is not responsible for the accuracy, suitability, or coherence of the data.

**R156-38b-502. Merging Notices of Commencement.**

(1) Checking for Existing Notices. In order to prevent duplicate filings of notices of commencement~~[on government projects]~~, the [SCR] designated agent shall search ~~[its database]~~ the SCR for any existing notices of commencement before allowing a user to create a new notice of commencement.

(a) If an existing notice of commencement is identified the following procedures apply:

(i) For an electronic filing:

(A) the [SCR] designated agent shall indicate that a notice of commencement may have already been filed for the project and display the possible notice or notices of commencement that may match the existing project filing.

(B) The [SCR] designated agent shall allow the user to review the content of any existing notices to determine whether a notice has already been filed for the project before allowing a new notice to be filed.

(ii) For an alternate ~~[method]~~ means filing, the designated agent shall notify the filer by electronic or alternate ~~[method]~~ means as specified by the filer, that a notice of commencement has already been filed for the particular project and include a copy of the existing notice of commencement.

(b) As part of the process described in Subsection R156-38b-502(1), the SCR search for an existing notice of commencement shall display, for review by the person who submitted the search parameters, all notice of commencement filings that fit the search parameters indicated by the submission that prompted the search.

(c) If no existing notice of commencement is identified for the particular project, the [SCR] designated agent shall allow the person who submitted the filing to file a new notice of commencement.

(2) Merging of Duplicate Filings. Duplicate filings shall be avoided to the extent possible in accordance with the procedure outlined in this Subsection. The SCR shall include functionality to allow a person who has successfully filed a notice of commencement which duplicates another notice of commencement already in the SCR to merge the notice of commencement with the existing notice of commencement filing.

(a) The affected SCR filings shall reflect the effective date of the merger.

(b) The [SCR] designated agent shall provide notification of the merger to all persons who are associated with either notice of commencement filing, including those who have filed preliminary notices.

(c) The effective date of a merger reflects the date the unique merger number was cross-referenced to duplicate notice of commencement filings. A merger does not dissolve or affect the filing dates, or the consequences of the filing dates, of the notices being combined.

(3) The person making a notice filing shall be responsible for correctly identifying a project, and for the consequences of failing to

correctly identify a project. Neither the Division nor the designated agent shall be responsible for the consequences of a person making a notice of commencement filing that identifies a project in such a way that the [SCR]designated agent is unable to identify an existing notice of commencement for the project, according to the search criteria established by the Division in collaboration with the designated agent, nor for the [SCR]designated agent allowing the person to make a successful duplicate notice of commencement filing with a different description of the project.

**R156-38b-505. Alternate Filings.**

(1) Alternate [Methods]Means of Filing. The alternate [methods]means of filing are those established by Subsection ~~[s 38-1-27(2)(e)(ii)]~~ 38-1a-201(1)(e)(ii), including U.S. Mail and telefax. Private commercial courier is established as an additional alternate [method]means of receipt by the designated agent, but not dispatch from the designated agent.

(2) Content Requirements. The content requirements for alternate [method]means filings shall be the same as for electronic filings as set forth for Notices in ~~[Sections 38-1-30.5, 30-1-30.7, 38-1-31, 38-1-31.5, 38-1-32, 38-1-32.7, 38-1-33, and 38-1-40]~~ Title 38, Chapters 1a and 1b or this rule.

(3) Format Requirements. Alternate [method]means filings shall be submitted in a standard format adopted by the Division in collaboration with the designated agent. Filings not submitted in the standard format, in the sole judgment of the designated agent, shall be rejected and dispatched to the submitter. The filing fee shall be retained by the designated agent as a processing fee for rejecting and dispatching the filing. An additional filing fee shall be due upon resubmission.

(4) Methodology.

(a) U.S. Mail. An alternate [method]means filing by U.S. Mail shall be submitted to the designated agent's mailing address by any method of U.S. Mail.

(b) Express Mail. An alternate [method]means filing by commercial private courier shall be submitted to the designated agent's mailing address by any commercially available method of express mail.

(c) Telefax. An alternate [method]means filing by telefax shall be submitted to the designated agent's toll-free unique SCR fax number.

(5) Processing Requirements.

(a) Transaction Receipt. The designated agent shall confirm a successful alternate method filing and fee payment receipt by sending a transaction receipt as specified in Section R156-38b-602.

(b) Creation of Electronic Image. The designated agent shall create and maintain an electronic image of alternate method filings that are accepted into the SCR. Once an electronic image has been created and the accepted alternate method filing has been entered into the SCR, the original version of the accepted alternate method filing may be destroyed. The electronic image shall remain accessible for audit purposes.

(6) Data Entry Standards.

(a) ~~[The]~~In accordance with Subsection 38-1a-202(6), the designated agent shall meet or exceed the following data entry standards for alternate means filings:

(i) a primary operator shall manually input information filed by alternate means~~[required by Subsection 38-1-31(1)(a)(i)]~~;

(ii) a secondary operator shall independently input the construction project permit number and original contractor name;

(iii) the designated agent shall automatically compare all entries from the primary and secondary operators for consistency;

(iv) following the above procedures, the designated agent shall visually inspect at least 5% of all notices created by alternate means filing; and

(v) these standards are to be met prior to Internet publication.

#### **R156-38b-506. Dates of Filings.**

The official filing date of a particular filing shall be determined as follows:

(1) In the case of an electronic filing, it shall be the date the [SCR]designated agent accepts a filing input by the person making the filing and makes available a payment receipt to the person making the filing.

(2) In the case of an alternate ~~[method]~~means filing, it shall be the date upon which the designated agent received a filing that was ultimately accepted into the SCR including content requirements and payment.

#### **R156-38b-507. Status of and Process for Filings Not Accepted by the [SCR]Designated Agent.**

(1) A filing that is not accepted by the [SCR]designated agent shall not be considered to be filed.

(2) The [SCR]designated agent shall electronically indicate to a person whose electronic filing is not accepted that the filing is not accepted and the reason or reasons why it is not accepted. The [SCR]designated agent shall allow the person making the electronic filing to attempt to correct any defects, if possible.

(3) The designated agent shall notify a person whose alternate ~~[method]~~means filing is not accepted that the filing is not accepted and the reason or reasons why it is not accepted. The designated agent shall allow the person making the alternate means filing to correct the defect or defects.

(4) A fee payment received with a filing submitted by alternate ~~[process]~~means that is not accepted shall be retained by the designated agent as the processing fee for handling the incomplete filing.

(5) For auditing purposes, the [SCR]designated agent shall maintain a record of all processing fees received with filings submitted by alternate ~~[process]~~means that are not accepted.

**R156-38b-509. Withdrawal of Filings.**

(1) In accordance with Subsections [~~38-1-32(6) and 38-1-33(2)~~]38-1a-307(3) and 38-1a-501(5), the [~~SCR~~]designated agent shall, upon request of a person who filed an accepted notice filing allow the person to designate the filing as withdrawn.

(2) Notification of a filing withdrawal shall be provided to the same persons as required for the original successful filing.

(3) A withdrawn filing shall indicate that the filing is no longer given effect.

(4) A withdrawn filing may not be restored, but must be filed as a new filing in accordance with Sections [~~38-1-32 or 38-1-33~~]38-1a-401, 38-1a-501, or 38-1a-506.

**R156-38b-601. Fee Payment Methods.**

(1) Pay-as-you-go Account. Payments may be made online by a credit card transaction in the amount established by the Division in collaboration with the designated agent. For alternate [~~method~~]means filings, users will have the option of sending in a check or credit card information with their filing.

(2) Monthly Accounts. Payments may be made by a monthly account as specified by the Division in collaboration with the designated agent, as follows:

(a) an account in which the designated agent charges monthly fees to a credit card or bank account designated and authorized by the registered user; or

(b) an account, guaranteed by a credit card, in which the designated agent sends a monthly invoice to be paid by the registered user within 30 days.

**R156-38b-602. Transaction Receipts.**

(1) In accordance with Subsection [~~38-1-27(2)(g)~~]38-1a-201(1)(g), the [~~SCR~~]designated agent shall make available a transaction receipt upon acceptance of a filing into the SCR. The receipt shall indicate:

(a) the amount of any fee payment being processed;

(b) that the filing is accepted by the [~~SCR~~]designated agent;

(c) the date and time of the filing's acceptance; and

(d) the content of the accepted filing.

(2) The designated agent shall send a transaction receipt to a person who submits a filing by alternate [~~method~~]means that is accepted.

**R156-38b-702. Archiving Requirements.**

(1) In accordance with Subsection [~~38-1-30~~]38-1a-202(4)(a), the designated agent shall archive the SCR computer data files semi-annually for auditing purposes.

(2) In accordance with Subsection [~~38-1-30~~]38-1a-202(4)(c), filings shall be archived as follows:

(a) one year after the day on which a notice of completion is

accepted into the SCR;

(b) if no notice of completion is filed, two years after the last filing activity for a project; or

(c) one year after the day on which a filing is withdrawn under Subsection [~~38-1-32(6)(c) or 38-1-33(2)(c)~~] 38-1a-307(3) or 38-1a-501(5).

(3) For purposes of this section, "archive" means to preserve an original or a copy of computer data files and filings separate from the active SCR.

(4) The designated agent shall maintain a transaction log of archived filings and make it available to the Division upon request for auditing purposes.

**R156-38b-704. Registered User Access to SCR Data.**

In accordance with Subsection [~~s 38-1-27(2) and (3), and 38-1-30(3)~~] 38-1a-207(5), construction projects in the SCR shall be accessible to an interested person who has registered with the [~~SCR~~] designated agent and has been assigned a unique user ID and password to gain access to the SCR.

**KEY: electronic preliminary lien filing, notice of commencement, preliminary notice, notice of completion**

**Date of Enactment or Last Substantive Amendment: [~~September 26, 2011~~] 2012**

**Notice of Continuation: February 8, 2010**

**Authorizing, and Implemented or Interpreted Law: [~~38-1-30(3)~~] 38-1a-101, 38-1b-101**