

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.
<b>Utah Admin. Code Ref (R no.):</b>	<b>R</b>	156	-	46b	-	
<b>Changed to Admin. Code Ref. (R no.):</b>	<b>R</b>		-		-	

<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>	
	W. Ray Walker	801-530-6256	801-530-6511	raywalker@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>
	Division Utah Administrative Procedures Act Rule
<b>3.</b>	<b>Type of notice:</b>
	New ___; Amendment XX; Repeal ___; Repeal and Reenact ___
<b>4.</b>	<b>Purpose of the rule or reason for the change:</b>
	The purpose of this filing is to reclassify certain Division of Occupational and Professional Licensing (DOPL) adjudicative proceedings from formal to informal proceedings and to make technical changes. The Division has considered the criteria for classifying adjudicative proceedings as informal as set forth in Section 63G-4-202 and has determined these proposed changes meet that statutory criteria
<b>5.</b>	<b>This change is a response to comments from the Administrative Rules Review Committee.</b>
	No XX; Yes ___
<b>6.</b>	<b>Summary of the rule or change:</b>

	<p>Section R156-46b-201: The filing changes this section by deleting existing Subsections (1)(a) through (c) thereby deleting the classification of denial of application for renewal and reinstatement of licensure adjudicative proceedings as formal proceedings, and by renumbering accordingly. Technical amendments are also made to Subsections (2)(v) and (vi).</p> <p>Section R156-46b-202: The filing changes Subsections (1)(c) and (d) by deleting (d) and classifying all denials of renewal and reinstatement of licensure adjudicative proceedings as informal proceedings, and renumbering accordingly. This filing also changes existing Subsection (2)(b) by deleting it and moving it to Subsection (1)(s) to achieve greater clarity, and by renumbering accordingly. Finally, this adds new Subsections (2)(c) and (2)(d) to reclassify as informal disciplinary proceedings first, proceedings initiated by a notice of agency action and order to show cause concerning violations of an order governing a license and second, disciplinary proceedings initiated by a notice of agency action in which the allegations of misconduct are limited to one of more of Subsection 58-1-501(2)(c) or (d), or Subsections R156-1-501(1) through (5).</p> <p>Section R156-46b-402: Section R156-46b-402 is added to provide that a written response in informal adjudicative proceedings initiated by a Notice of Agency Action may, as set forth in a Notice of Agency Action, be required to be filed within 30 days of the mailing date of the Notice of Agency Action or other date specified in the Notice of Agency Action.</p>
7.	<p><b>Aggregate anticipated cost or savings to:</b></p> <p><b>A) State budget:</b></p> <p><b>Affected:</b> <input type="checkbox"/> No XXXX; <input type="checkbox"/> Yes</p> <p>The proposed changes will bring greater efficiency, timeliness, and capacity to DOPL by reclassifying the described formal adjudicative proceedings to informal proceedings. The cost savings of the efficiencies cannot be estimated but they will hopefully help address the consistent increases in the number of licensees regulated by the Division.</p> <p><b>B) Local government:</b></p> <p><b>Affected:</b> <input type="checkbox"/> No XXXX; <input type="checkbox"/> Yes</p> <p>The proposed changes do not affect local government and thus will not have any cost or savings impact upon local governments.</p> <p><b>C) Small businesses ("small business" means a business employing fewer than 50 persons):</b></p> <p><b>Affected:</b> <input type="checkbox"/> No <input type="checkbox"/> Yes XXX</p> <p>The proposed changes should not affect small business except where we license small businesses or when small businesses employ individuals licensed by the Division. To the limited extent to which the changes impact small business, they should be cost savings as well as greater efficiency and timeliness to most adjudicative proceedings in which small business or employees of small business are involved. However, these cost savings cannot be estimated by the Division due to a wide range of circumstances.</p> <p><b>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):</b></p> <p><b>Affected:</b> <input type="checkbox"/> No XXX; <input type="checkbox"/> Yes</p> <p>The proposed changes should better protect public health, safety and welfare through the greater efficiency, timeliness and capacity they bring to the Division. This will equate to economic savings to those who avoid being negatively impacted by a licensee engaged in unprofessional or unlawful conduct who would otherwise remain in practice for a much longer period of time during cumbersome formal adjudicative proceedings. The economic impact of these savings cannot be estimated by the Division.</p>
8.	<p><b>Compliance costs for affected persons:</b></p> <p>The proposed changes should bring cost savings as well as greater efficiency and timeliness to most adjudicative proceedings in which licensees or applicants for licensure are involved. The cost savings cannot be estimated by the Division due to a wide range of circumstances.</p>
9.	<p><b>A) Comments by the department head on the fiscal impact the rule may have on businesses:</b></p> <p>The change in designation of certain matters to informal adjudicative proceedings should result in a cost savings to the Division and to those licensees affected; it is not expected to increase costs. Experience has shown that routine cases are able to be resolved informally. No fiscal impact to other businesses is anticipated by this change in procedure.</p> <p><b>B) Name and title of department head commenting on the fiscal impacts:</b></p> <p>Francine A. Giani, Executive Director</p>

<b>10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws.</b> <b>State code or constitution citations (required)</b> (e.g., Section 63G-3-402; Subsection 63G-3-601(3); Article IV) :	Subsection 63G-4-102(6)		Subsection 58-1-106(1)(a)	

<b>11. This rule adds, updates, or removes the following title of materials incorporated by references</b> (a copy of materials incorporated by reference must be submitted to the Division of Administrative Rules; <i>if none, leave blank</i> ):		<b>First Incorporation</b>	<b>Second Incorporation</b>	
	<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. 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>			10/01/2012
	<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>	

<b>13. This rule change may become effective on (mm/dd/yyyy):</b>	10/08/2012
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. 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:	administrative procedure	government hearings
	occupational licensing	

<b>15. Attach an RTF document containing the text of this rule change (filename):</b>	R156-46b.pro
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**To the agency:** 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 *Utah State Bulletin*, and delaying the first possible effective date.

### AGENCY AUTHORIZATION

<b>Agency head or designee, and title:</b>	Mark B. Steinagel, Director	<b>Date</b> (mm/dd/yyyy):	08/06/2012
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eRules v. 2: ProposedRule.doc 09/03/2009 (<http://www.rules.utah.gov/agencyresources/forms/ProposedRule.doc>)

**R156. Commerce, Occupational and Professional Licensing.**  
**R156-46b. Division Utah Administrative Procedures Act Rule.**  
**R156-46b-201. Formal Adjudicative Proceedings.**

(1) The following adjudicative proceedings initiated by a request for agency action are classified as formal adjudicative proceedings:

~~[(a) denial of application for renewal of licensure, except denial of an application for renewal of a contractor, plumber or electrician license under Title 58, Chapter 55;~~

~~[(b) denial of application for reinstatement of licensure submitted pursuant to Subsection 58-1-308(5), except denial of an application for reinstatement of a contractor, plumber or electrician license under Title 58, Chapter 55;~~

~~[(c) denial of application for reinstatement of licensure submitted pursuant to Subsection 58-1-308(6)(b), except denial of an application for reinstatement of a contractor, plumber or electrician license under Title 58, Chapter 55;]~~

~~[(d)a] special appeals board held in accordance with Section 58-1-402;~~

~~[(e)b] declaratory order determining the applicability of statute, rule or order to specified circumstances, when determined by the director to be conducted as a formal adjudicative proceeding; and~~

~~[(f)c] board of appeal held in accordance with Subsection 15A-1-207(3).~~

(2) The following adjudicative proceedings initiated by a Notice of Agency Action are classified as formal adjudicative proceedings:

(a) disciplinary proceedings, except those classified as informal proceedings under Section R156-46b-202, that result in the following sanctions:

(i) revocation of licensure;

(ii) suspension of licensure;

(iii) restricted licensure;

(iv) probationary licensure;

(v) issuance of a cease and desist order except when imposed ~~[by] through a citation~~ ~~[or by an order in a contested citation hearing];~~

(vi) administrative fine except when imposed ~~[by] through a citation~~ ~~[or by an order in a contested citation hearing]; and~~

(vii) issuance of a public reprimand;

(b) unilateral modification of a disciplinary order; and

(c) termination of diversion agreements.

**R156-46b-202. Informal Adjudicative Proceedings.**

(1) The following adjudicative proceedings initiated by a request for agency action are classified as informal adjudicative proceedings:

(a) approval of application for initial licensure, renewal or reinstatement of licensure, or relicensure;

(b) denial of application for initial licensure or relicensure;

(c) denial of application for renewal or reinstatement of licensure ~~[submitted pursuant to Subsection 58-1-308(6)(a)];~~

~~— (d) denial of application for reinstatement of restricted, suspended, or probationary licensure during the term of the restriction, suspension, or probation];~~

(~~e~~)d) approval or denial of application for inactive or emeritus licensure status;

(~~f~~)e) board of appeal under Subsection 15A-1-207(3);

(~~g~~)f) approval or denial of claims against the Residence Lien Recovery Fund created under Title 38, Chapter 11;

(~~h~~)g) payment of approved claims against the Residence Lien Recovery Fund described in Subparagraph (g);

(~~i~~)h) approval or denial of request to surrender licensure;

(~~j~~)i) approval or denial of request for entry into diversion program under Section 58-1-404;

(~~k~~)j) matters relating to diversion program;

(~~l~~)k) citation hearings held in accordance with citation authority established under Title 58;

(~~m~~)l) approval or denial of request for modification of disciplinary order;

(~~n~~)m) declaratory order determining the applicability of statute, rule or order to specified circumstances, when determined by the director to be conducted as an informal adjudicative proceeding;

(~~o~~)n) approval or denial of request for correction of procedural or clerical mistakes;

(~~p~~)o) approval or denial of request for correction of other than procedural or clerical mistakes;

(~~q~~)p) denial of application for renewal of:

(i) a contractor, plumber, electrician, or alarm company licensed under Title 58, Chapter 55;

(ii) a controlled substance licensee under Subsection 58-37-6(4) (g); and

(iii) a contract security company or armored car company for failure to replace a qualifier as required under Section 58-63-306;

(~~r~~)q) denial of application for reinstatement of:

(i) a contractor, plumber, electrician, or alarm company licensed under Title 58, Chapter 55;

(ii) a controlled substance licensee under Subsection 58-37-6(4) (g); and

(iii) a contract security company or armored car company for failure to replace a qualifier as required under Section 58-63-306;

(~~s~~)r) disciplinary proceedings against:

(i) a contractor, plumber, electrician, or alarm company licensed under Title 58, Chapter 55;

(ii) a controlled substance licensee under Subsection 58-37-6(4) (g); and

(iii) a contract security company or armored car company for failure to replace a qualifier as required under Section 58-63-306; [~~and~~]

(s) disciplinary sanctions imposed in a memorandum of understanding with an applicant for licensure; and

(t) all other requests for agency action permitted by

statute or rule governing the Division not specifically classified as formal adjudicative proceedings in Subsection R156-46b-201(1).

(2) The following adjudicative proceedings initiated by a notice of agency action [~~or request for agency action~~] are classified as informal adjudicative proceedings:

(a) nondisciplinary proceeding which results in cancellation of licensure;

(b) [~~disciplinary sanctions imposed in a memorandum of understanding with an applicant for licensure; and~~

~~(c)~~] disciplinary proceedings against:

(i) a contractor, plumber, electrician, or alarm company licensed under Title 58, Chapter 55;

(ii) a controlled substance licensee under Subsection 58-37-6(4)(g); and

(iii) a contract security company or armored car company for failure to replace a qualifier as required under Section 58-63-306.

(c) disciplinary proceedings initiated by a notice of agency action and order to show cause concerning violations of an order governing a license;

(d) disciplinary proceedings initiated by a notice of agency action in which the allegations of misconduct are limited to one or more of the following:

(i) Subsection 58-1-501(2)(c) or (d); or

(ii) Subsections R156-1-501(1) through (5).

**R156-46b-402. Response to Notice of Agency Action in an Informal Proceeding.**

A written response or answer to the allegations in a notice of agency action or incorporated by reference into a notice of agency action that initiates an informal adjudicative proceeding may, as set forth in a notice of agency action, be required to be filed within 30 days of the mailing date of the notice of agency action or other date specified in the notice of agency action.

**KEY: administrative procedure, government hearings, occupational licensing**

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

**Notice of Continuation: January 31, 2011**

**Authorizing, and Implemented or Interpreted Law: 63G-4-102(6); 58-1-106(1)(a)**