

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	-	3a	-	
Changed to Admin. Code Ref. (R no.):	R		-		-	

1.	Agency:	Commerce/Division of Occupational and Professional Licensing			
	Room no.:				
	Building:	Heber M. Wells Building			
	Street address 1:	160 East 300 South			
	Street address 2:				
	City, state, zip:	Salt Lake City UT 84111-2316			
	Mailing address 1:	PO Box 146741			
	Mailing address 2:				
	City, state, zip:	Salt Lake City UT 84114-6741			
	Contact person(s):				
	Name:	Phone:	Fax:	E-mail:	
	Dennis Meservy	801-530-6375	801-530-6511	dmeservy@utah.gov	

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

2.	Title of rule or section (catchline):	Architect Licensing Act Rule			
3.	Type of notice:	New ___; Amendment XX; Repeal ___; Repeal and Reenact ___			
4.	Purpose of the rule or reason for the change:	<p>The Division and the Architects Licensing Board reviewed the rule and determined that changes need to be made. The current definition of incidental practice was determined by both the Architects Licensing Board and Professional Engineers and Professional Land Surveyors Licensing Board to be too vague. Both Boards determined there was a need to further define and clarify incidental practice not only for the licensed professionals but also for building inspectors. The two Boards worked together and came up with the language in this proposed rule change. Proposed amendments also update when continuing education is due and eliminates an outdated portion of the rule that pertains to the initial implementation of continuing education. Also, an additional definition of unprofessional conduct is being added with respect to a supervising architect failing to verify work experience when so requested.</p>			
5.	This change is a response to comments from the Administrative Rules Review Committee.	No XX; Yes ___			
6.	Summary of the rule or change:				

	<p>Section 102: The definition of "incidental practice" in Paragraph (6) is being updated to restrict incidental work to an occupant load of 49 and prohibits work on occupancy category III or IV structures as defined by the 2006 International Building Code. Additionally, incidental work would be limited to 15 percent of the overall construction value of a project. Section 304: The two year continuing education reporting period is being changed from December 31 of each odd numbered year to March 31 of each even numbered year to coincide with the renewal date for the profession. Also, an outdated provision in paragraph (1)(a) that pertains to the initial implementation of continuing education is being deleted. Section 305: Rule citations are being updated. Section 502: Paragraph (5) is being added to define as unprofessional conduct the failing as a supervising architect to verify work experience when so requested to do so.</p>						
7.	<p>Aggregate anticipated cost or savings to:</p> <p>A) State budget:</p> <p>Affected: No ___; Yes XX</p> <p>The Division will incur minimal costs of approximately \$50 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.</p> <p>B) Local government:</p> <p>Affected: No ___; Yes XX</p> <p>Due to the clarification of the definition of incidental practice, there could be a cost savings to local governments in that local governments would save time and resources in determining if a licensee could actually perform work that was submitted for review.</p> <p>C) Small businesses ("small business" means a business employing fewer than 50 persons):</p> <p>Affected: No ___; Yes XX</p> <p>There may be an unknown fiscal impact to a limited number of individuals/licensees and firms, which may qualify as a small business, that may be doing work which is prohibited under the proposed rule amendments regarding incidental practice. The Division, however, is unable to determine any exact fiscal impact due to a wide range of circumstances.</p> <p>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):</p> <p>Affected: No ___; Yes XX</p> <p>The proposed amendments only apply to licensed architects and applicants for licensure in that classification. There may be an unknown fiscal impact to a limited number of licensees that may be doing work which is prohibited under the proposed rule amendments regarding incidental practice. The Division, however, is unable to determine any exact fiscal impact due to a wide range of circumstances. Also if a licensed architect failed to verify work experience if requested to do so, the licensee could be charged with unprofessional conduct against his license, which may result in some costs to the licensee to defend a possible licensure action.</p>						
8.	<p>Compliance costs for affected persons:</p> <p>The proposed amendments only apply to licensed architects and applicants for licensure in that classification. There may be an unknown fiscal impact to a limited number of licensees that may be doing work which is prohibited under the proposed rule amendments regarding incidental practice. The Division, however, is unable to determine any exact fiscal impact for affected persons due to a wide range of circumstances. Also if a licensed architect failed to verify work experience if requested to do so, the licensee could be charged with unprofessional conduct against his license, which may result in some costs to the licensee to defend a possible licensure action.</p>						
9.	<p>A) Comments by the department head on the fiscal impact the rule may have on businesses:</p> <p>This rule filing clarifies definitions, changes the continuing education deadline to coordinate with the license renewal date, removes an outdated provision, and makes it unprofessional conduct for a supervisor to fail to verify work experience of a supervisee. No fiscal impact to businesses is anticipated beyond those addressed in the rule summary.</p> <p>B) Name and title of department head commenting on the fiscal impacts:</p> <p>Francine A. Giani, Executive Director</p>						
10.	<p>This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws.</p> <p>State code or constitution citations (required) (e.g., Section 63G-3-402; Subsection 63G-3-601(3); Article IV) :</p> <table border="1"> <tr> <td>Section 58-3a-101</td> <td>Subsection 58-1-106(1)(a)</td> </tr> <tr> <td>Subsection 58-1-202(1)(a)</td> <td>Section 58-3a-303.5</td> </tr> <tr> <td></td> <td></td> </tr> </table>	Section 58-3a-101	Subsection 58-1-106(1)(a)	Subsection 58-1-202(1)(a)	Section 58-3a-303.5		
Section 58-3a-101	Subsection 58-1-106(1)(a)						
Subsection 58-1-202(1)(a)	Section 58-3a-303.5						

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; <i>if none, leave blank</i>):		
		First Incorporation	Second Incorporation
	Official Title of Materials Incorporated (from title page)		
	Publisher		
	Date Issued		
	Issue, or version		
	ISBN Number (optional)		
	ISSN Number (optional)		
	Cost of Incorporated Reference		
	Action: Adds, updates, or removes		
(If this rule incorporates more than two items by reference, please attach additional pages)			
12.	The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)		
	A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy):	12/01/2009	
	B) A public hearing (optional) will be held:		
	On (mm/dd/yyyy):	At (hh:mm AM/PM):	At (place):
	11/18/2009	9:00 am	160 East 300 South, Conference Room 475 (4th floor), Salt Lake City, Utah
13.	This rule change may become effective on (mm/dd/yyyy):		12/08/2009
	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.		
14.	Indexing information -- keywords (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:		
	architects	licensing	
15.	Attach an RTF document containing the text of this rule change (filename):		R156-3a.pro
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 <i>Utah State Bulletin</i> , and delaying the first possible effective date.			
AGENCY AUTHORIZATION			
Agency head or designee, and title:	Mark B. Steinagel, Division Director	Date (mm/dd/yyyy):	10/05/2009

eRules v. 2: ProposedRule.doc 09/03/2009 (<http://www.rules.utah.gov/agencyresources/forms/ProposedRule.doc>)

R156. Commerce, Occupational and Professional Licensing.

R156-3a. Architect Licensing Act Rule.

R156-3a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 3a, as used in Title 58, Chapters 1, 3a, and 22 or this rule:

(1) "ARE" means the NCARB Architectural Registration Examination.

(2) "Committee" means the IDP Committee created in Section R156-3a-201.

(3) "Complete and final" as used in Subsection 58-3a-603(1) means "complete construction plans" as defined in Subsection 58-3a-102(4).

(4) "EESA" means the Education Evaluation Services for Architects.

(5) "Employee, subordinate, associate, or drafter of an architect" as used in Subsections 58-3a-102(8), 58-3a-603(1)(b) and this rule means one or more individuals not licensed as an architect who are working for, with, or providing architectural services directly to the licensed architect under the supervision of the licensed architect.

(6) "Incidental practice" means "architecture work as is incidental to the practice of engineering" as used in Subsection 58-22-102(9) and "engineering work as is incidental to the practice of architecture" as used in Subsection 58-3a-102(6) which:

(a) can be safely and competently performed by the licensee without jeopardizing the life, health, property and welfare of the public;

~~(b) [is in an area where the licensee has demonstrated competence by adequate education, training and experience;~~

~~(c) arises from and is directly related to work performed in the licensed profession;~~

~~(d) [is secondary and substantially less in scope and magnitude when compared to the work performed or to be performed by the licensee in the licensed profession; [and]~~

~~(e) [is work in which the licensee is fully responsible for the incidental practice performed as provided in Subsection 58-3a-603(1) or Subsection 58-22-603(1);~~

~~(d) is work that affects not greater than 49 occupants as determined in Section 1004 of the 2006 International Building Code;~~

~~(e) is work included on a project with a construction value not greater than 15 percent of the overall construction value for the project including all changes or additions to the contracted or agreed upon work; and~~

~~(f) shall not include work on a building or related structure in an occupancy category of III or IV as defined in Section 1604.5 of the 2006 International Building Code.~~

(7) "Intern Development Program" or "IDP" as used in Subsection R156-3a-302(2) means a NCARB approved training program.

(8) "NAAB" means the National Architectural Accrediting Board.

(9) "NCARB" means the National Council of Architectural Registration Boards.

(10) "Program of diversified practical experience" as used in

Subsection 58-3a-302(1)(e) means:

(a) current licensure in a recognized jurisdiction; or

(b) the training standards and requirements set forth in the Intern Development Program.

(11) "Recognized jurisdiction" as used in Subsections 58-3a-302(2)(d)(i) and (iii), for licensure by endorsement, means any state, district, territory of the United States, or any foreign country who issues licenses for architects, and whose licensure requirements include:

(a) a bachelors or post graduate degree in architecture or equivalent education as set forth in Subsection R156-3a-301(2);

(b) a program of diversified practical experience as set forth in Subsection R156-3a-102(10), or an equivalent training program; and

(c) passing the ARE or passing a professional architecture examination that is equivalent to the ARE.

(12) "Responsible charge" as used in Subsections 58-3a-102(7), 58-3a-302(2)(d)(iv) and 58-3a-304(6) means direct control and management by a principal over the practice of architecture by an organization.

(13) "Under the direction of the architect" as used in Subsection 58-3a-102(8), as part of the definition of "supervision of an employee, subordinate, associate, or drafter of an architect" means that the unlicensed employee, subordinate, associate, or drafter of the architect engages in the practice of architecture only on work initiated by the architect, and only under the administration, charge, control, command, authority, oversight, guidance, jurisdiction, regulation, management, and authorization of the architect.

(14) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 3a, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-3a-502.

R156-3a-304. Continuing Professional Education for Architects.

In accordance with Section 58-3a-303.5, the qualifying continuing professional education standards for architects are established as follows:

(1) During each two year period ending on ~~[December]~~March 31 of each ~~[odd]~~even numbered year, a licensed architect shall be required to complete not less than 16 hours of qualified professional education directly related to the licensee's professional practice. [

~~—(a) Transition requirement. During the two year period ending on December 31, 2007, an architect shall be required to complete five hours of qualifying continuing professional education.]~~

(2) The required number of hours of professional education for an individual who first becomes licensed during the two year period shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first

became licensed.

(3) Qualified continuing professional education under this section shall:

(a) have an identifiable, clear statement of purpose and defined objective for the educational program directly related to the practice of an architect and directly related to topics involving the public health, safety, and welfare of architectural practice and the ethical standards of architectural practice;

(i) health, safety, welfare and ethical standards as used in this subsection are defined to include the following:

(A) The definition of "health" shall include, but not be limited to, aspects of architecture that have salutary effects among users of buildings or sites and that address environmental issues. Examples include all aspects of air quality, provisions of personal hygiene, and use of non-toxic materials and finishes.

(B) The definition of "safety" shall include, but not be limited to, aspects of architecture intended to limit or prevent accidental injury or death among users of buildings or construction sites. Examples include fire-rated egress enclosures, automatic sprinkler systems, stairs with correct rise-to-run proportions, and accommodations for users with disabilities.

(C) The definition of "welfare" shall include, but not be limited to, aspects of architecture that consist of values that may be spiritual, physical, aesthetic and monetary in nature. Examples include spaces that afford natural light or views of nature or whose proportions, color or materials engender positive emotional responses from its users.

(D) The definition of "ethical standards of architectural practice" shall include, but not be limited to the NCARB rules of conduct specified in Subsection R156-3a-502(4).

(b) be relevant to the licensee's professional practice;

(c) be presented in a competent, well organized and sequential manner consistent with the stated purpose and objective of the program;

(d) be prepared and presented by individuals who are qualified by education, training and experience; and

(e) have associated with it a competent method of registration of individuals who actually completed the professional education program and records of that registration and completion are available for review.

(4) Credit for qualified continuing professional education shall be recognized in accordance with the following:

(a) unlimited hours shall be recognized for professional education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences;

(b) a maximum of eight hours per two year period may be recognized for teaching in a college or university or for teaching qualified continuing professional education courses in the field of architecture, provided it is the first time the material has been

taught during the preceding 12 months;

(c) a maximum of three hours per two year period may be recognized for preparation of papers, articles, or books directly related to the practice of architecture and submitted for publication; and

(d) unlimited hours may be recognized for continuing professional education that is provided via the Internet or through home study courses provided the course verifies registration and participation in the course by means of a test which demonstrates that the participant has learned the material presented.

(5) A licensee shall be responsible for maintaining records of completed qualified continuing professional education for a period of four years after the two year period to which the records pertain. It is the responsibility of the licensee to maintain information with respect to qualified continuing professional education to demonstrate it meets the requirements under this section.

(6) If a licensee exceeds the 16 hours of qualified continuing professional education during the two year period, the licensee may carry forward a maximum of 8 hours of qualified continuing professional education into the next two year period.

(7) A licensee who is unable to complete the continuing professional education requirement for reasons such as a medical or related condition, humanitarian or ecclesiastical services, or extended presence in a geographical area where continuing professional education is not available, may be excused from the requirement for a period of up to three years as provided in Section R156-1-308d.

(8) Any licensee who fails to timely complete the continuing professional education hours required by this rule shall be required to complete double the number of hours missed to be eligible for renewal or reinstatement of licensure.

(9) Any applicant for reinstatement shall be required to complete 16 hours of continuing professional education complying with this rule within two years prior to the date of application for reinstatement of licensure.

R156-3a-305. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 3a is established by rule in Section R156-1-308a(1).

(2) Renewal procedures shall be in accordance with Section R156-1-308c.

R156-3a-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) submitting an incomplete final plan, specification, report, or set of construction plans to:

(a) a client, when the licensee represents, or could reasonably expect the client to consider, the plan, specification, report, or set of construction plans to be complete and final; or

(b) a building official for the purpose of obtaining a building permit;

(2) failing as a principal to exercise reasonable charge;

(3) failing as a supervisor to exercise supervision of an employee, subordinate, associate or drafter; [~~or~~]

(4) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established in the July 2007 edition of the NCARB "Rules of Conduct", which is hereby incorporated by reference; or

(5) failing as a supervising architect to verify actual work experience when requested by a subordinate, associate or drafter of an architect who is or has been an employee.

KEY: architects, licensing

**Date of Enactment or Last Substantive Amendment: [~~March 27,~~
2008]2009**

Notice of Continuation: April 10, 2006

Authorizing, and Implemented or Interpreted Law: 58-3a-101; 58-1-106(1)(a); 58-1-202(1)(a), 58-3a-303.5