

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:

41298

Date filed:

2-9-2017

State Admin Rule Filing Id:

Time filed:

	Agency No.	Rule No.	Section No.
Utah Admin. Code Ref (R no.):	R 156	- 55c	-
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:
Steve Duncombe	801-530-6235	801-530-6511	sduncombe@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):**

Plumber Licensing Act Rule

3. **Type of notice:**

New ___; Amendment XXX; Repeal ___; Repeal and Reenact ___

4. **Purpose of the rule or reason for the change:**

With regards to amendments to Section 102: This filing is recommended by the Plumbers Licensing Board ("Board") and the Construction Services Commission ("Commission"). Its intent is to address issues the Board and Commission believe are needed to bring this rule into better alignment with the Utah Code, and to better protect public health, safety, and welfare. The first purpose of this filing is to clarify and further define certain plumbing terms, thereby ensuring consistency and proper enforcement of this rule. The second purpose of this filing is to make clear the scope of minor incidental plumbing work that may be performed by unlicensed individuals under Subsection 58-55-305(1)(k)(i). These amendments are due to Board and Commission concerns that the interpretation of what is "minor" and "incidental" has grown beyond the intent of the initial legislative exemption granted in the Utah Code. The particulars of this filing were decided after multiple meetings and revisions involving the Board, the Commission, the Division and various individuals representing the interests of the plumbing industry. In March of 2016, the Plumbers Licensing Board discussed changes that were being proposed to "minor plumbing work that is incidental," as defined in Utah Administrative Code R156-55c-102(2). The Board agreed with the proposed changes and placed the item on the Commission's agenda for the Commission to consider. In April of 2016, during the Commission meeting, discussion regarding these issues took place, and a motion was made to adopt the Incidental Plumbing Rule, as recommended by the Board. However, that motion was amended to leave the monetary amount allowed for minor plumbing work at the existing \$300 value in lieu of replacing it with the requested \$100 amount. In August of 2016, after extensive consideration, the Division's Director issued a letter to the Commission in response to these proposed Incidental Plumbing Rule changes (see attached). The Director stated that he believed Utah would be best served by leaving the rule as it is, and that should the Commission desire to modify the rule, he would welcome additional discussion. In October of 2016, association representatives met with the Division wherein the concerns relating to the proposed changes were resolved. It was ultimately determined that the Division needed to be provided with a more complete definition of "minor plumbing work that is incidental." This decision was made to assist the Division with better enforcement and regulation of those activities classified as plumbing work. A revised definition of the minor incidental plumbing rule was agreed upon and prepared for the Commission's consideration. In November of 2016, the Commission discussed the issues and the revised proposal in detail, and after weighing input received from the Division, consideration of the facts, applicable law, and input from various industry representatives, a motion was made to proceed with the proposed changes to the definition of "minor plumbing work that is incidental." Finally, in December of 2016, the Commission again reviewed and discussed the recommended changes to Section R156-55c-102, and voted to accept the proposed language as reflected in this filing.

5. This change is a response to comments from the Administrative Rules Review Committee.

No Yes

6. Summary of the rule or change:

Section 102: Subsection (2) is modified to revise the definition of "minor plumbing work that is incidental" to include installation, as well as repair or replacement, of the Plumbing Appliances listed in Subsection (2)(a). Further, Subsection (2)(b) is modified to include only the repair or replacement of certain listed residential type Plumbing Appurtenances, Fixtures, and Systems, where the cost of the repair or replacement, including all labor and material and changes or additions to the agreed-upon work, does not exceed \$300. Finally, the terms Plumbing Appliances, Appurtenances, Fixtures, and Systems, in Subsection (4), are clarified to have the same meaning and interpretation as defined by Title 15A, State Construction and Fire Codes Act. Sections 302b: Rule citation reference was updated in (2)(a). Section 302c: Rule citation reference was updated in (3).

7. Aggregate anticipated cost or savings to:

A) State budget:

Affected: No ; Yes

The Division will incur minimal costs of approximately \$75 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.)

B) Local government:

Affected: No ; Yes

The proposed amendments do not apply to local governments. The amendments only apply to individuals who are licensed as plumbers, individuals who may apply for licensure as a plumber and individuals exempt from licensure under Subsection 58-55-305(1)(k)(i).

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

Affected: No ; Yes

The proposed amendments may apply to small business. First, the amendments may have a negative revenue impact for individuals exempt from licensure under Subsection 58-55-305(1)(k)(i) who are operating small businesses, as their ability to perform minor incidental plumbing work as defined in Subsection (2) will be limited to projects in the approved list where the repair or replacement of Plumbing Appurtenances, Fixtures and Systems does not exceed \$300 in total value. This decrease in small business revenue may be slightly offset by the expansion to the scope of work allowing exempt individuals to install as well as repair and replace the Plumbing Appliances listed in Subsection R156-55c-102 (2)(a). Similarly, small businesses who employ the services of an individual exempt from licensure under Subsection 58-55-305(1)(k)(i) may experience increased costs and a decrease in revenue if they previously could hire an individual exempt from licensure under Subsection 58-55-305(1)(k)(i) to perform any minor incidental plumbing under \$300, but now will be required to pay the costs associated with hiring a licensed plumber for minor incidental plumbing under \$300 not included in the approved list. This cost and any decrease in small business revenue may be slightly offset by the slight increase allowed in the scope of work, where exempt individuals may now install as well as repair and replace the Plumbing Appliances listed in Subsection R156-55c-102 (2)(a). Conversely, these proposed amendments may cause a corresponding increase in work and potential revenue for service plumbers that operate as small businesses, because they will be hired to do all of the plumbing work that will now fall outside of the scope of minor incidental plumbing. The aggregate impact on small business cannot be estimated as it will vary from business to business depending on circumstances.

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 ; Yes

The proposed amendments will impact (1) individuals exempt from licensure under Subsection 58-55-305(1)(k)(i); (2) individuals licensed as plumbers; (3) individuals who may apply for licensure as a plumber; and (4) consumers, including individual consumers as well as large companies who employ the services of a "handyman" individual exempt from licensure under Subsection 58-55-305(1)(k)(i). First, the amendments may have a negative revenue impact for individuals exempt from licensure under Subsection 58-55-305(1)(k)(i), as their ability to perform minor incidental plumbing work as defined in Subsection (2) will be limited to projects in the approved list where the repair or replacement of Plumbing Appurtenances, Fixtures and Systems does not exceed \$300 in total value. This decrease in revenue may be slightly offset by a slight increase in their scope of work where exempt individuals will be allowed to install as well as repair and replace the Plumbing Appliances listed in Subsection R156-55c-102 (2)(a). Second, the amendments may cause licensed plumbers to experience a corresponding increase in work and potential revenue, because they will be hired to do all of the plumbing work that will now fall outside of the revised scope of minor incidental plumbing. Third, persons exempt from licensure who will now be prohibited from doing the type of minor incidental plumbing work that they have in the past, may either decide to apply to become licensed plumbers, or else stop doing exempt "handyman" work entirely. Finally, the proposed amendments may negatively affect consumers who previously could hire an individual exempt from licensure under Subsection 58-55-305(1)(k)(i), to perform any minor incidental plumbing under \$300. The consumer will now be required to pay the costs associated with hiring a licensed plumber for minor incidental plumbing under \$300 not included in the approved list. This negative impact may similarly be experienced by large companies employing the services of an individual exempt from licensure to perform minor incidental plumbing, as that individual's ability to perform such work will now be reduced, and the company will be required to hire a licensed plumber. Again, these costs may be slightly offset by the expanded scope of work that will allow exempt individuals to install as well as repair and replace the Plumbing Appliances listed in Subsection R156-55c-102 (2)(a). The aggregate costs or savings for these persons cannot be estimated as it will vary from person to person depending on circumstances.

8. Compliance costs for affected persons:

The proposed amendments will have a negative impact on revenue for an individual exempt from licensure under Subsection 58-55-305(1)(k)(i), who cannot perform certain minor incidental plumbing work as now defined. Additionally, these amendments may result in additional costs for a company, and for any individual consumer, who will now be required to employ a licensed plumber as opposed to an exempt "handyman" for certain minor incidental plumbing work. The Division is not able to estimate these individual impacts, as they will vary from person to person depending on circumstances.

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

The proposed rule clarifies and further defines certain plumbing terms, making more clear the scope of "minor incidental plumbing work" that may be performed by unlicensed individuals under Subsection 58-55-305(1)(k)(i). This scope is reduced by adding a specific list of services that would qualify as minor incidental plumbing work and the scope is expanded by adding original installation to the previous definition that included only repair or replacement. The income of both licensed plumbers and unlicensed persons affected by these two changes to the definitions, benefiting one and restricting income of another, depending on the circumstances and the nature of the work to be performed. No specific impact to small business may be determined.

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) :

Subsection 58-1-106(1)(a)

Subsection 58-1-202(1)(a)

Section 58-55-101

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
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):

03/31/2017

B) A public hearing (optional) will be held:

On (mm/dd/yyyy):

03/29/2017

At (hh:mm AM/PM):

9:00 AM

At (place):

160 East 300 South, Conference Room
474, Salt Lake City, Utah

13 This rule change may become effective on (mm/dd/yyyy):

04/07/2017

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:

occupational licensing

licensing

plumbers

plumbing

15 Attach an RTF document containing the text of this rule change (filename):

R156-55c.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 *Utah State Bulletin*, and delaying the first possible effective date.

AGENCY AUTHORIZATION

Agency head or designee, and title:



Date

(mm/dd/yyyy)

: feb 9, 2011

R156. Commerce, Occupational and Professional Licensing.

R156-55c. Plumber Licensing Act Rule.

R156-55c-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 55, as used in Title 58, Chapters 1 and 55 or this rule:

(1) "Immediate supervision", as used in Subsections 58-55-102(5) and 58-55-102(23) and this rule, means the apprentice and the supervising plumber are physically present on the same project or job site but are not required to be within sight of one another.

(2) "Minor plumbing work that is incidental", as used in Subsection 58-55-305(1)(k)(i) and this rule, means:

(a) installation, repair or replacement of the following residential type Plumbing Appliances [~~appliances~~]:

- (i) dishwashers;
- (ii) refrigerators;
- (iii) freezers;
- (iv) ice makers;
- (v) stoves;
- (vi) ranges;
- (vii) clothes washers; [~~and~~]
- (viii) clothes dryers; and

(b) repair or replacement of [~~other plumbing fixtures and appliances inside the occupied space of a structure~~]the following residential type Plumbing Appurtenances, Fixtures and Systems, when the cost of the repair or replacement does not exceed \$300 in total value, including all labor and materials, and including all changes or additions to the contracted or agreed upon work [~~-~~]:

- (i) tub or shower trim;
- (ii) tub or shower valve;
- (iii) toilet flush valve;
- (iv) toilet removal and reset;
- (v) garbage disposal;
- (vi) kitchen or lavatory sink P-trap;
- (vii) kitchen or lavatory faucet rebuild and install;
- (viii) supply line replacement after the fixture valve; and

(3) "Minor plumbing work that is incidental", as used in Subsection 58-55-305(1)(k)(i), does not include installation or replacement of a water heater, or work to include the initial installation of Plumbing Appurtenances, Fixtures and Systems.

(4) Plumbing Appliances, Appurtenances, Fixtures, and Systems, as used in this rule, shall have the same meaning as defined by Title 15A, State Construction and Fire Codes Act.

(~~4~~5) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 55, is further defined in accordance with Subsection 58-1-203(1)(e), in Subsection R156-55c-501.

R156-55c-302b. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the examination requirements for licensure in Subsection 58-55-302(1)(c)(i) are as follows:

- (1) The applicant shall obtain a minimum score of 70% on the Utah Plumbers Licensing Examination that shall consist of a written section and practical section.
- (2) Admission to the examinations is permitted after:
 - (a) the applicant has completed all requirements for licensure set forth in this section and in Sections R156-55c-302a and R156-55c-302[b]c; or
 - (b) the applicant has completed:
 - (i) the first semester of the fourth year of the apprentice education program set forth in Subsection R156-55c-302a(1)(a)(ii); and
 - (ii) not less than 6,000 hours of the experience required under Subsection R156-55c-302a(1)(a)(i).
- (3) (a) If an applicant fails any section of the examination, the applicant shall retake that section.
 - (b) An applicant shall wait at least 25 days for the first two retakes, and thereafter shall wait 120 days between retakes.
- (4) If an applicant passes any section of the examination but does not pass the entire examination, the passing score for that section shall be valid for one year from the pass date. After one year the applicant shall retake any previously passed section to support any subsequent application for licensure.

R156-55c-302c. Qualifications for Licensure - Master Supervisory Experience and Education Requirements.

In accordance with Subsections 58-55-302(3)(a)(i)(A) and 58-55-302(3)(b)(i), the minimum supervisory experience qualifications for licensure as a master plumber and residential master plumber are established as follows:

- (1) An applicant shall demonstrate successful completion of 4000 hours of supervisory experience that includes each of the following categories and minimum number of hours:
 - (a) supervising employees: 700 hours;
 - (b) supervising construction projects: 700 hours;
 - (c) cost/price management: 300 hours; and
 - (d) miscellaneous construction experience: 300 hours in any one or more of the following: accounting/financial principles, contract negotiations, conflict resolutions, marketing, human resources and government regulation pertaining to business and the construction trades.
- (2) The following, or the substantial equivalent thereof, as determined by the Board in collaboration with the Commission, shall apply to the minimum supervisory experience qualifications established in Subsection (1):
 - (a) supervisory experience shall be obtained while licensed in the

proper license classification as either a journeyman plumber or a residential journeyman plumber;

(b) supervisory experience shall be obtained as an employee of a licensed plumbing contractor, whose employer covers the applicant with workers compensation and unemployment insurances and deducts federal and state taxes from the applicant's compensation;

(c) all supervisory experience shall be under the immediate supervision of the applicant's employer; and

(d) no more than 2000 hours of experience may be earned during any 12-month period.

(3) An associate of applied science or similar or higher educational degree, in accordance with Subsection 58-55-302(3)(a)(i)(B), shall fulfill 2000 hours of the 4000 hour supervisory experience requirement. Such an applicant shall complete the remaining minimum 2000 hour supervisory experience listed above in Subsection R156-55c-302[d]c(1).

(a) The degree shall be accredited by one of the following:

- (i) Middle States Association of Colleges and Schools;
- (ii) New England Association of Colleges and Schools;
- (iii) North Central Association of Colleges and Schools;
- (iv) Northwest Commission on Colleges and Universities;
- (v) Southern Association of Colleges and Schools; or
- (vi) Western Association of Schools and Colleges.

(b) The degree shall be in one of the following courses of study:

- (i) accounting;
- (ii) apprenticeship;
- (iii) business management;
- (iv) communications;
- (v) computer systems and computer information systems;
- (vi) construction management;
- (vii) engineering;
- (viii) environmental technology;
- (ix) finance;
- (x) human resources; or
- (xi) marketing.

KEY: occupational licensing, licensing, plumbers, plumbing

Date of Enactment or Last Substantive Amendment: [~~December 22, 2016~~] 2017

Notice of Continuation: August 8, 2016

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-55-101



GARY R. HERBERT
Governor
SPENCER J. COX
Lieutenant Governor

State of Utah
Department of Commerce
Division of Occupational and Professional Licensing

FRANCINE A. GIANI
Executive Director MARK B. STEINAGEL
Division Director

August 24, 2016

Utah Construction Services Commission

Subject: DOPL Response to Incidental Plumbing Rule

Dear Commissioners,

Earlier this year you considered a rule to modify the definition of “minor plumbing work that is incidental to the replacement or repair of a fixture or an appliance in a residential or small commercial building.” After significant discussion by the Commission, DOPL, and industry members in more than one commission meeting, you determined to advance a scaled back version of the rule. It eliminated the proposed reduction in project value (from \$300 to \$100) and instead advanced a limitation on any minor plumbing work that is incidental if the work requires a building permit. I participated in the discussion and viewed the proposal as a good compromise.

After your recommendation, I have spent the past few months considering the rule change. New issues have come to my mind or have been shared by my staff as we have discussed the rule. I believe Utah is best served by leaving the rule as it is. However, if the Commission desires to modify the rule, I would be happy to discuss my concerns below in a future meeting:

Incidental Plumbing Rule is Only Five Years Old. The Commission and Division adopted an extensive change to the minor plumbing work rule in 2011. The rule was negotiated over numerous meetings between the Commission and Plumber Licensing Board, as the Commission was concerned about the extent of the Board’s recommendation. The two most important policies adopted by the Commission and DOPL in the rule were to exclude water heaters and limit the size of projects to \$300. Since the rule was adopted, not much has changed, except the value of \$300 in 2011 is now \$280. (Reduced value of \$300 because of CPI increases) I haven’t seen enough reason to further restrict the exemption created by the Legislature.

Careful Consideration of Licensing Laws. Licensing laws are under intense scrutiny now, especially in light of the US Supreme Court case *North Carolina Board of Dental Examiners v FTC* and President Obama’s White House Report, “Occupational Licensing: A Framework for Policymakers.” Public scrutiny on licensing has appropriately increased as states are considering new licensing regulations. This proposed change appears to me to be an instance when the cost to the public appears more clearly than the benefit.

Proposal Appears to Contradict the Statute. The statutory language at question exempts from plumbing licensure “minor plumbing work that is incidental to the replacement or repair of a fixture or an appliance in a residential or small commercial building.” The proposed rule then states that the exemption does not include “work to repair or replace plumbing appliances, appurtenances, fixtures and systems which require a building permit.” In other words, the

statutory exemption allows minor plumbing work when fixing or replacing a fixture or appliance. Then the rule limits the fixtures and appliances that are included. I believe the proposed rule may contradict both the plain language and the intent of the Legislature.

Jurisdictional Differences – Impact on Plumbing Contractors. Evidence was provided by plumbers in the Commission meetings that some jurisdictions “laugh” at you when you try to obtain a building permit for certain projects that currently require a building permit under the Plumbing Code. The statement was made to explain why the permitting process wasn’t enough oversight for incidental, minor plumbing work by unlicensed individuals. However, the flip side of that argument is that licensed plumbers and unlicensed plumbers are both failing to obtain permits on projects that require permits under the Code.

DOPL should not become the quasi-local government agency to enforce building permit standards. If local jurisdictions are not adequately enforcing permitting laws, per the discussion above, DOPL’s ability to determine those who should and should not have a license will be very difficult.

For the reasons above, I choose to not concur with the proposed amendments to the administrative rules governing minor plumbing work. However, if the Commission still desires to modify the rule after reviewing my concerns, I would be happy to discuss my concerns and the rule further in another meeting.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Steinagel', written over a horizontal line.

Mark Steinagel