

R156. Commerce, Occupational and Professional Licensing.

R156-38b. State Construction Registry Rule.

R156-38b-101. Title.

This rule is known as the "State Construction Registry Rule."

R156-38b-102. Definitions.

In addition to the definitions in 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 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 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 38-1b-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 38-1a-201 through 38-1a-211.

R156-38b-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 38-1a-202(3)(a) to administer the SCR.

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

In accordance with 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 38-1a-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, 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 38-1a-202(5), which 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 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. 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 valid software licenses for all purchased software used for the SCR.

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

(8) System Support. 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 designated agent.

(2) The 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 designated agent shall provide the ability for a user to view and modify the user's profile.

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

(7) The 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 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 designated agent unless the person complies with the content requirements for the SCR filing.

(2) The 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, the designated agent shall search 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 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 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 means filing, the designated agent shall notify the filer by electronic or alternate 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 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 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 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 designated agent allowing the person to make a successful duplicate notice of commencement filing with a different description of the project.

R156-38b-503. Alternate Filings.

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

(2) Content Requirements. The content requirements for alternate means filings shall be the same as for electronic filings as set forth for Notices in Title 38, Chapters 1a and 1b or this rule.

(3) Format Requirements. Alternate 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 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 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 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) 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;

(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-504. 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 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 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-505. Status of and Process for Filings Not Accepted by the Designated Agent.

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

(2) The 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 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 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 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 designated agent shall maintain a record of all processing fees received with filings submitted by alternate means that are not accepted.

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 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 38-1a-201(1)(g), the 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 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 means that is accepted.

R156-38b-603. Fee Payment Accounting.

The designated agent shall keep accurate records to account for all fee payments, including filing fee payments and registration payments for access to SCR data. The designated agent shall make its accounting records available to the Division upon notification for auditing purposes.

R156-38b-604. Fee Payment Collection.

The designated agent shall conduct or contract for all fee payment collection activities and shall document or require to be documented such activities. The designated agent shall make its collection

activity records available to the Division upon notification, for auditing purposes.

R156-38b-702. Archiving Requirements.

(1) In accordance with Subsection 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 38-1a-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; or

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

(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-703. SCR Record Classification.

With the exception of any data that is subclassified as a private record, the SCR shall be classified by the Division under Title 63G, Chapter 2, Government Records Access and Management Act (GRAMA), as a public record series.

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

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

R156-38b-705. Public Access to SCR Data.

Requests for public access to SCR data shall be handled in accordance with Subsection 38-1-27(5).

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

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