

# UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT  
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Nancy L. Lancaster, Managing Editor

The *Utah State Bulletin (Bulletin)* is an official noticing publication of the executive branch of Utah state government. The Office of Administrative Rules, part of the Department of Administrative Services, produces the *Bulletin* under authority of Section 63G-3-402.

The Portable Document Format (PDF) version of the *Bulletin* is the official version. The PDF version of this issue is available at <https://rules.utah.gov/>. Any discrepancy between the PDF version and other versions will be resolved in favor of the PDF version.

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Office of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-538-3003. Additional rulemaking information and electronic versions of all administrative rule publications are available at <https://rules.utah.gov/>.

The information in this *Bulletin* is summarized in the *Utah State Digest (Digest)* of the same volume and issue number. The *Digest* is available by e-mail subscription or online. Visit <https://rules.utah.gov/> for additional information.

Office of Administrative Rules, Salt Lake City 84114

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# TABLE OF CONTENTS

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<b>SPECIAL NOTICES</b> .....	<b>1</b>
Environmental Quality	
Air Quality	
Notice of Public Comment for Wildfire Exceptional Event on August 7 - September 21, 2018.....	1
Hearing for Regional Haze - Sulfur Dioxide Milestone Report.....	2
Health	
Health Care Financing, Coverage and Reimbursement Policy	
Notice for March 2019 Medicaid Rate Changes.....	2
<b>NOTICES OF PROPOSED RULES</b> .....	<b>3</b>
Insurance	
Administration	
No. 43485 (Amendment): R590-102-21 Dedicated Fees.....	4
No. 43486 (Amendment): R590-155 Utah Life and Health Insurance Guaranty Association Summary Document.....	5
Natural Resources	
Parks and Recreation	
No. 43497 (Amendment): R651-206 Carrying Passengers for Hire.....	7
Wildlife Resources	
No. 43491 (Amendment): R657-22 Commercial Hunting Areas.....	22
No. 43492 (Amendment): R657-33 Taking Bear.....	27
Transportation	
Administration	
No. 43490 (Repeal and Reenact): R907-66 Incorporation and Use of Federal Acquisition Regulations on Federal-Aid and State-Financed Transportation Projects.....	31
Operations, Maintenance	
No. 43489 (Amendment): R918-4 Using Volunteer Groups and Third Party Contractors for the Adopt-a-Highway and Sponsor-a-Highway Litter Pickup Programs.....	36
<b>NOTICES OF CHANGES IN PROPOSED RULES</b> .....	<b>39</b>
Commerce	
Occupational and Professional Licensing	
No. 43189: R156-28 Veterinary Practice Act Rule.....	40
<b>FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION</b> .....	<b>43</b>
Health	
Administration	
No. 43487: R380-70 Standards for Electronic Exchange of Clinical Health Information.....	43
Human Services	
Administration	
No. 43496: R495-882 Termination of Parental Rights.....	43
Lieutenant Governor	
Elections	
No. 43493: R623-1 Lieutenant Governor's Procedure for Regulation of Lobbyist Activities.....	44
No. 43494: R623-2 Uniform Ballot Counting Standards.....	44
No. 43495: R623-3 Utah State Plan on Election Reform.....	45

TABLE OF CONTENTS

---

**NOTICES FIVE-YEAR REVIEW EXTENSION..... 47**  
    Governor  
        Economic Development  
            No. 43488: R357-7 Utah Capital Investment Board..... 47

**NOTICES OF RULE EFFECTIVE DATES..... 49**

**RULES INDEX  
BY AGENCY (CODE NUMBER)  
AND  
BY KEYWORD (SUBJECT)..... 51**

# SPECIAL NOTICES

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## Environmental Quality Air Quality

### Notice of Public Comment for Wildfire Exceptional Event on August 7 - September 21, 2018

Federal regulations, 40 Code of Federal Regulations (CFR) Part 50, allow states to exclude air quality data that exceed or violate a National Ambient Air Quality Standard (NAAQS) if they can demonstrate that an "exceptional event" has caused the exceedance or violation. Exceptional events are unusual or naturally occurring events that can affect air quality but are not reasonably controllable or preventable using techniques implemented to attain and maintain the NAAQS.

Exceptional events may be caused by human activity that is unlikely to recur at a particular location, or may be due to a natural event. The Environmental Protection Agency (EPA) defines a "natural event" as an event in which human activity plays little or no direct causal role to the event in question. For example, a natural event could include such things as high winds, wild fires, and seismic/volcanic activity. In addition, the EPA will allow states to exclude data from regulatory determinations on a case-by-case basis for monitoring stations that measure values that exceed or violate the NAAQS due to emissions from fireworks displays from cultural events.

Federal regulations (40 CFR Part 50.14 (c)(3)(i)) require that all relevant flagged data, the reasons for the data being flagged, and a demonstration that the flagged data are caused by exceptional events be made available by the State for 30 days of public review and comment. These comments will be considered in the final demonstration of the event that is submitted to EPA. The following monitoring station air quality exceedances have been attributed to a wildfire exceptional event.

The Spanish Fork filter exceeded the PM2.5 24-hour standard (in micrograms/m<sup>3</sup>).

<u>Date</u>	<u>Value</u>	<u>Wildfire Sources</u>
8/7/2018	37.8	Coal Hollow
8/9/2018	50.8	Coal Hollow and other western state(s) fire(s)
8/10/2018	68.8	Coal Hollow and other western state(s) fire(s)
8/11/2018	49.6	Coal Hollow and other western state(s) fire(s)
8/13/2018	58.1	Coal Hollow and other western state(s) fire(s)
9/14/2018	71.5	Pole Creek and Bald Mountain
9/15/2018	42.6	Pole Creek and Bald Mountain
9/17/2018	74.5	Pole Creek and Bald Mountain
9/18/2018	57.7	Pole Creek and Bald Mountain
9/19/2018	76.3	Pole Creek and Bald Mountain
9/21/2018	39.3	Pole Creek and Bald Mountain

Additional exceedances measured by continuous monitors are provided in the documentation report.

The documentation for public review and comment to support removing these data from use in regulatory determinations will be available before February 15, 2019 at <https://deq.utah.gov/legacy/programs/air-quality/exceptional-events/> or at the Multi Agency State Office Building, 195 North 1950 West in Salt Lake City.

In compliance with the American with Disabilities Act, individuals with special needs (including auxiliary communicative aids and services) should contact Brooke Baker, Office of Human Resources at (801) 536-4412 (TDD 536-4414).

*The comment period will close at 5:00 p.m. on March 18, 2019. Comments postmarked on or before that date will be accepted. Comments may be submitted by electronic mail to [jkarmazyn@utah.gov](mailto:jkarmazyn@utah.gov) or may be mailed to:*

*ATTN: Wildfire Exceptional Event  
Bryce Bird, Director  
Utah Division of Air Quality  
PO Box 144820  
Salt Lake City, UT 84114-4820*

**Environmental Quality  
Air Quality**

**Hearing for Regional Haze - Sulfur Dioxide Milestone Report**

Utah's State Implementation Plan for Regional Haze (the Plan) adopted by the Air Quality Board on April 6, 2011, requires that Utah cooperate with New Mexico, Wyoming, and Albuquerque-Bernalillo County in producing an annual report to determine if the average emissions of sulfur dioxide (SO<sub>2</sub>) from large industrial sources for the most current three-year period are less than the emissions milestone set in the Plan. The average emissions inventory for 2015 - 2017 is calculated by totaling all emissions from participating entities for each year, then averaging the three years of data. This number is then compared to the 2017 milestone set in the Plan. The draft report for calendar year 2017 is now available for public comment at <https://deq.utah.gov/air-quality/air-quality-rule-plan-changes-open-public-comment>.

The report shows that adjusted total emissions of SO<sub>2</sub> in 2017 from large sources in the participating entities--Utah, New Mexico, Wyoming, and Albuquerque-Bernalillo County--were 76,504 tons; that the average SO<sub>2</sub> emissions for 2014-2016 were 79,709 tons; and that the SO<sub>2</sub> milestone for 2017 is 155,940 tons. The report demonstrates that emissions from the participating entities are less than the milestone and have met the requirements of the Plan for 2017. Therefore, implementation of the SO<sub>2</sub> backstop trading program identified in the Plan is not triggered.

The Utah Division of Air Quality will hold a public hearing at 1:00 p.m. on March 5, 2019, in the Four Corners Conference Room, Room # 4100, at 195 North 1950 West in Salt Lake City, Utah. In compliance with the Americans with Disabilities Act, individuals with special needs (including auxiliary communicative aids and services) should contact the Office of Human Resources, at (801) 536-4412 (TDD 536-4414).

*The comment period closes at 5:00 p.m. on March 18, 2019. Comments postmarked on or before that date will be accepted. Comments may be submitted by electronic mail to [jbaker@utah.gov](mailto:jbaker@utah.gov) or may be mailed to:*

*ATTN: SO<sub>2</sub> Milestone Report  
Bryce Bird, Director  
Utah Division of Air Quality  
PO Box 144820  
Salt Lake City, UT 84114-4820*

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**Health  
Health Care Financing, Coverage and Reimbursement Policy**

**Notice for March 2019 Medicaid Rate Changes**

Effective March 1, 2019, Utah Medicaid will adjust its rates consistent with approved methodologies. Rate adjustments include new codes priced consistent with approved Medicaid methodologies as well as potential adjustments to existing codes. All rate changes are posted to the web and can be viewed at: <http://health.utah.gov/medicaid/stplan/lookup/CoverageLookup.php>.

**End of the Special Notices Section**

## NOTICES OF PROPOSED RULES

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A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between January 16, 2019, 12:00 a.m., and February 01, 2019, 11:59 p.m. are included in this, the February 15, 2019, issue of the *Utah State Bulletin*.

In this publication, each **PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **PROPOSED RULE** is usually printed. New rules or additions made to existing rules are underlined (example). Deletions made to existing rules are struck out with brackets surrounding them (~~example~~). Rules being repealed are completely struck out. A row of dots in the text between paragraphs (. . . . .) indicates that unaffected text from within a section was removed to conserve space. Unaffected sections are not usually printed. If a **PROPOSED RULE** is too long to print, the Office of Administrative Rules may include only the **RULE ANALYSIS**. A copy of each rule that is too long to print is available from the filing agency or from the Office of Administrative Rules.

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least March 18, 2019. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through June 15, 2019, the agency may notify the Office of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE OF A CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

The public, interest groups, and governmental agencies are invited to review and comment on **PROPOSED RULES**. *Comment may be directed to the contact person identified on the **RULE ANALYSIS** for each rule.*

**PROPOSED RULES** are governed by Section 63G-3-301, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5a, R15-4-9, and R15-4-10.

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**The Proposed Rules Begin on the Following Page**

**Insurance, Administration**  
**R590-102-21**  
**Dedicated Fees**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 43485

FILED: 01/18/2019

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being changed to incorporate a decrease in the fingerprinting fee charged to new individual resident licensees.

**SUMMARY OF THE RULE OR CHANGE:** The fee charged by the Bureau of Criminal Investigation (BCI) has decreased to \$15 from \$20 and the fee charged by the Federal Bureau of Investigation (FBI) has increased to \$13.25 from \$12. This represents a net \$3.75 decrease in the Department of Insurance's (Department) fingerprinting fee for new individual resident licensees.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 31A-3-103

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget. The funds collected through the BCI and FBI fees are pass-through monies that are collected by the Department and forwarded on to the respective bureaus.

◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings for local governments. The fee is part of the licensing procedure for new individual resident licensees and does not involve local governments.

◆ **SMALL BUSINESSES:** If an individual is considered to be a small business when they are are classified as a sole proprietorship, then there is a one-time cost to those small businesses. All new individual resident licensees are required to pay both the BCI and FBI fees as part of the process for obtaining an insurance license. The total one-time fee after this rule change will be reduced from the current fee of \$32 to \$28.25.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** All new individual resident licensees are required to pay both the BCI and FBI fees as part of the process for obtaining an insurance license. The total one-time fee after this rule change will be reduced from the current fee of \$32 to \$28.25.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Affected persons will still be required to pay both the BCI and FBI fees as part of the insurance licensing process. However, after these rule changes are made effective, the

cost of that fee will be decreased from the current fee of \$32 to \$28.25.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:**

**I. WHETHER A FISCAL IMPACT TO BUSINESS IS EXPECTED AS A RESULT OF THE PROPOSED RULE AND, IF SO, A DESCRIPTION OF WHY:** If an individual is considered to be a small business when they are are classified as a sole proprietorship, then there is a one-time cost to those small businesses. All new individual resident licensees are required to pay the fingerprint fee and be fingerprinted as part of the process for obtaining an insurance license. The total one-time fee after these rule changes will be \$28.25.

**II. AN ESTIMATE OF THE TOTAL NUMBER OF BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED:** This number varies from year to year because it depends on the number of resident individuals (sole proprietors) that choose to become licensed in Utah. Based on current growth trends, the Department expects a 4% year over year growth rate, which will result in an estimated 4,229 affected businesses in fiscal year 2019.

**III. AN ESTIMATE OF THE SMALL BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED:** Impacted small businesses in Utah are individuals and sole proprietors.

**IV. A DESCRIPTION OF THE SOURCES OF COST OR SAVINGS AS WELL AS THE EXPECTED NET SAVINGS OR COST TO BUSINESS ESTABLISHMENTS AND SMALL BUSINESS ESTABLISHMENTS AS A RESULT OF THE PROPOSED RULE OVER A ONE-YEAR PERIOD, IDENTIFYING ONE-TIME AND ONGOING COSTS:** The fingerprint fee charged by BCI and the FBI is decreasing by \$3.75 per new individual resident licensee. The fingerprint fee is a one-time cost that is only collected when individual residents first become licensed. In fiscal year 2019, the projected savings are estimated to be \$15,858.75 for the estimated 4,229 Utahns that will become licensed.

**V. DEPARTMENT HEAD'S COMMENTS ON THE ANALYSIS:** The above analysis represents the Department's best estimate of the fiscal impact these rule amendments will have on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

INSURANCE  
 ADMINISTRATION  
 ROOM 3110 STATE OFFICE BLDG  
 450 N MAIN ST  
 SALT LAKE CITY, UT 84114-1201  
 or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at [sgooch@utah.gov](mailto:sgooch@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/18/2019

THIS RULE MAY BECOME EFFECTIVE ON: 03/25/2019

AUTHORIZED BY: Steve Gooch, Information Specialist

**Appendix 1: Regulatory Impact Summary Table\***

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$15,858.75	\$16,496.25	\$17,156.25
<b>Total Fiscal Benefits:</b>	<b>\$15,858.75</b>	<b>\$16,496.25</b>	<b>\$17,156.25</b>
<b>Net Fiscal Benefits:</b>	<b>\$15,858.75</b>	<b>\$16,496.25</b>	<b>\$17,156.25</b>

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**

These rule changes are not expected to have any fiscal impact on non-small businesses revenues or expenditures, because they deal with the fingerprinting fee charged to individuals when they first obtain their resident license to sell insurance.

The head of the Insurance Department, Commissioner Todd E. Kiser, has reviewed and approved this fiscal analysis.

**R590. Insurance, Administration.**

**R590-102. Insurance Department Fee Payment Rule.**

**R590-102-21. Dedicated Fees.**

The following are fees dedicated to specific uses:

(1)(a) annual fraud assessment fee as calculated under Section 31A-31-108 and stated in the invoice - due by the due date on the invoice;

(b) late fee - due for any fraud assessment fee paid after the due date on the invoice: \$50;

(2) annual title insurance regulation assessment fee as calculated under Section 31A-23a-415 and Rule R592-10 and stated in the invoice - due by the due date on the invoice;

(3) annual title assessment for the Title Recovery, Education, and Research Fund fee:

(a) individual title licensee applicant for initial license or renewal license - due with the initial application or the renewal application: \$15;

(b) agency title licensee applicant - due with the initial application: \$1,000;

(c) annual agency title licensee assessment based on annual written title insurance premium - due by the due date on the invoice:

(i) Band A: \$0 to \$1 million: \$125;

(ii) Band B: more than \$1 million to \$10 million: \$250;

(iii) Band C: more than \$10 million to \$20 million: \$375;

(iv) Band D: more than \$20 million: \$500;

(4)(a) relative value study book fee - due when book purchased or by invoice due date: \$10;

(b) annual health insurance actuarial review assessment fee as calculated under Section 31A-30-115 and stated in the invoice - due by the due date on the invoice;

(5)(a) code book - due when book purchased or by invoice due date: \$57;

(b) mailing fee for books - due if book is to be mailed to purchaser: \$3;

(6) fingerprint fee - due with application for individual license:

(a) Bureau of Criminal Investigation (BCI): \$[20]15; and

(b) Federal Bureau of Investigation (FBI): \$[42]13.25;

(7) annual health insurance actuarial review assessment fee as calculated under Section 31A-30-115 and stated in the invoice - due by the due date on the invoice.

**KEY: insurance fees**

**Date of Enactment or Last Substantive Amendment: [February 8, 2018]2019**

**Notice of Continuation: December 12, 2016**

**Authorizing, and Implemented or Interpreted Law: 31A-3-103**

**Insurance, Administration**  
**R590-155**  
**Utah Life and Health Insurance**  
**Guaranty Association Summary**  
**Document**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 43486

FILED: 01/18/2019

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These changes are being made to update the location of the a disclaimer, clarify the term "policy or contract holders", make some formatting changes, and update a clause.

SUMMARY OF THE RULE OR CHANGE: The Utah Life and Health Insurance Guaranty Association (ULHIGA) Disclaimer is available at the Insurance Department (Department) and on its website, and this rule is being updated to reflect this availability. The definition of the term "policy or contract holders" is being clarified to include "subscribers". Several formatting and clerical changes are being made, and the rule's severability clause is being updated. These changes to this rule are necessary due to H.B. 409, Utah Life and Health Insurance Guaranty Association Amendments, which was passed during the 2018 General Session.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 31A-2-201(3)(a) and Subsection 31A-28-119(3)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: There is no anticipated cost or savings to the state budget. None of these rule changes include any financial component whatsoever. The ULHIGA Disclaimer is already hosted on the Department's website, so there will be no change to the Department's technology costs, and the other changes are largely clerical.

◆ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local governments. This rule governs the relationship between insurers and their insureds, and does not involve local governments.

◆ SMALL BUSINESSES: There is no anticipated cost or savings to small businesses. This rule governs the relationship between insurers and their insureds, and has no required action on the part of small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings to any other persons. Insurers that are required to send out the ULHIGA Disclaimer already do so, and the other changes are largely clerical.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any affected persons. Insurers that are required to send out the ULHIGA Disclaimer already do so, and the other changes are largely clerical.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that these proposed rule changes will not result in fiscal impact to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

INSURANCE  
ADMINISTRATION  
ROOM 3110 STATE OFFICE BLDG  
450 N MAIN ST  
SALT LAKE CITY, UT 84114-1201  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

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THIS RULE MAY BECOME EFFECTIVE ON: 03/25/2019

AUTHORIZED BY: Steve Gooch, Information Specialist

Appendix 1: Regulatory Impact Summary Table\*

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Net Fiscal Benefits:	\$0	\$0	\$0
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\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**

These rule changes are not expected to have any fiscal impact on non-small businesses revenues or expenditures, because non-small businesses that are required to send out the Utah Life and Health Insurance Guaranty Association Disclaimer to their policy and contract holders already do so. There is no additional action required by this rule.

The head of the Insurance Department, Commissioner Todd E. Kiser, has reviewed and approved this fiscal analysis.

**R590. Insurance, Administration.**

**R590-155. Utah Life and Health Insurance Guaranty Association Summary Document.**

**R590-155-1. Authority.**

This rule is promulgated pursuant to:

(1) Subsection 31A-2-201(3)(a), in which the commissioner is empowered to administer and enforce this title and to make rules to implement the provisions of this title; and

(2) Subsection 31A-28-119(3), to provide guidelines for the Utah Life and Health Insurance Guaranty Association summary and disclaimer document.

**R590-155-2. Purpose and Scope.**

[1-](1) The purpose of this rule is to specify the form and content of the summary and disclaimer document for insurers to disclose to policy or contract holders the extent that contractual guarantees are not covered or have limited coverage by the Utah Life and Health Insurance Guaranty Association as required by Section 31A-28-119.

[2-](2) The rule shall apply to all insurance transactions in this state involving life and health insurance policies and annuity contracts as specified in [Subsection]Section 31A-28-103[2-].

**R590-155-3. Rule.**

[1-](1) An insurer authorized to do business in this state, which is subject to the Utah Life and Health Insurance Guaranty Association Act, shall disclose to its policy or contract holders that its contractual guarantees may not be covered by the Utah Life and Health Insurance Guaranty Association.

[2-](2) For the purpose of this rule, the term "policy or contract holders" shall also mean insureds, subscribers, or certificate holders of group policies.

[3-](3) Disclosure shall be made in writing using the text in the [attachment to this Rule]Utah Life and Health Insurance Guaranty Association Disclaimer, which is available on the department website, <https://insurance.utah.gov>.

[4-](4) Disclosure shall be given before or at the time of delivery of the policy, contract, or certificate. The summary and disclaimer document shall also be available upon request by a policy or contract holder.

[5-](5) Each insurer shall [submit]file with the commissioner a copy of the summary and disclaimer document[ to the commissioner for approval].

**R590-155-4. [Enforcement Date.**

~~The commissioner will begin enforcing this rule 45 days from the effective date of this rule.~~

**R590-155-5. [Penalties.**

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

**R590-155-[6]5. Severability.**

If any provision [or clause]of this rule or [the]its application [of it]to any person or situation is [for any reason]held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable[ the remainder of the rule and the application of any provisions to other persons or circumstances shall not be affected].

**KEY: insurance**

**Date of Enactment or Last Substantive Amendment: [June 21, 2010]2019**

**Notice of Continuation: December 8, 2017**

**Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-28-119**

Natural Resources, Parks and Recreation  
**R651-206**  
Carrying Passengers for Hire

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 43497

FILED: 02/01/2019

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Carrying Passengers for Hire (CPFH) program is administered by the Division of Parks and Recreation (Division) and the Division is mandated to create rules to provide safety to the commercial side of boating in Utah. The Division strives to ensure the safety and enjoyment of paying customers gaining access to Utah's waterways by providing professional licensing for commercial outfitters and guides. In the past five years, the Division has made small but significant changes to commercial boating, specifically regarding the licensing of on the water guides. The shift of responsibility in verifying a guides experience on the water, their first aid, and CPR credentials has been transitioning slowly over to the outfitters; they hire; they train; and they

verify. Currently, the Division tests the guides on Utah's commercial boating rules through a proctored test and issue a card. The Division issues 500 - 700 licenses annually. These licenses expire every five years or when a guide makes a change to the endorsement on their license. The Division has a redundancy in entering application information two - three times before a licensed guide receives their card in the mail. This process has become very costly and time consuming. The Division's outdated database is in dire need of an expensive face lift.

**SUMMARY OF THE RULE OR CHANGE:** The Division's proctored guide tests are located at every college campus in Utah and several outside the state are frequently failing to be administered due to database crashes. The Division has resorted to sending paper copies in order to keep the process limping along. The Division has become less efficient and has been asked for years by the Department of Natural Resources and constituents to simplify the way the Division does business in the commercial boating world without losing the commercial standard of safety on the water. The rule amendment transfers the responsibility of guide authorizations onto the outfitter and removes the obligation of issuing a guides license and administered proctored test from the Division. It also includes a requirement for referencing national advanced first aid and CPR course educational standards.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 73-18-7(18)(d)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** In FY 2018, the Division was at a net loss of approximately \$4,418.60. Guide licensing revenue generated approximately \$29,500. Expenses totaled approximately \$33,918.66.  $\$33,918.66 - \$29,500 = \$4,418.60$  loss. The elimination of state issued testing and guide licensing altogether should provide a net gain of approximately \$4,418.60. This is an estimate based on the number of new and existing guides seeking additional endorsements, or renewals to their guide license. These rule changes will eliminate guide licensing and is expected to decrease the cost of maintaining the CPFH program by an estimated \$2,209.30 for half of FY 2019, and \$4,418.60 for FY 2020 and FY 2021.

◆ **LOCAL GOVERNMENTS:** No local governments costs are known. This is for guides licensed by the state of Utah and does not affect local governments.

◆ **SMALL BUSINESSES:** In FY 2018, there were 581 guides that applied for a guide license. Licenses cost \$50 per applicant.  $\$50 \times 581 = \$29,050$ . The Division estimates 50% of companies pay the fee for the guide license.  $\$29,050$  divided by 2 = \$14,525. Prior to this rule change, the fiscal cost was \$14,525. With these rule changes, the anticipated fiscal benefit will be approximately \$7,262.50 for half of FY 2019, and \$14,525 for FY 2020 and FY 2021.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** In FY 2018, there were 581 guides that applied for a guide license. Licenses cost \$50 per applicant. 581 guides applied.  $\$50 \times 581 = \$29,050$ . The Division estimate 50% of companies pay the fee for the guide license.  $\$29,050$  divided by 2 = \$14,525. Also, on average, a guide will spend 30 minutes and travel 20 miles to test at a testing center at 0.37 cents a mile.  $20 \times 0.37 = 7.40 \times 581 = \$4,299.40 + \$14,525 = \$18,824.40$ . 25% of guides spend \$10 on an additional endorsement.  $581$  divided by 4 =  $145.25 \times \$10 = \$1,452.50 + \$18,824.40 = \$20,276.90$ . With these rule changes, the anticipated fiscal benefit will be approximately \$10,138.45 for FY 2019, and \$20,276.90 for FY 2020 and 2021. With these rule changes, the anticipated total fiscal benefit will be approximately \$19,610.25 for half of FY 2019, and \$39,220.25 for FY2020 and FY 2021.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Compliance costs for affected persons could be as follows: In FY 2018, there were 581 guides that applied for a guide license. Licenses cost \$50 per applicant. 581 guides applied.  $\$50 \times 581 = \$29,050$ . The Division estimates 50% of companies pay the fee for the guide license.  $\$29,050$  divided by 2 = \$14,525. Also, on average, a guide will spend 30 minutes and travel 20 miles to test at a testing center at 0.37 cents a mile.  $20 \times 0.37 = 7.40 \times 581 = \$4,299.40 + \$14,525 = \$18,824.40$ . 25% of guides spend \$10 on an additional endorsement.  $581$  divided by 4 =  $145.25 \times \$10 = \$1,452.50 + \$18,824.40 = \$20,276.90$ .

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Businesses have asked for these changes in this rule and are supportive.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**

NATURAL RESOURCES  
PARKS AND RECREATION  
ROOM 116  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Tammy Wright by phone at 801-538-7359, by FAX at 801-538-7378, or by Internet E-mail at [tammywright@utah.gov](mailto:tammywright@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/18/2019**

**THIS RULE MAY BECOME EFFECTIVE ON: 03/25/2019**

**AUTHORIZED BY: Jeff Rasmussen, Acting Director**

**Appendix 1: Regulatory Impact Summary Table\***

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$16,959.33	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$7,262.50	\$0	\$0
Non-Small Business	\$0	\$0	\$0
Other Person	\$10,138.45	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$34,360.28</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$19,168.63	\$4,418.60	\$4,418.60
Local Government	\$0	\$0	\$0
Small Businesses	\$14,525	\$14,525	\$14,525
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$20,276.90	\$20,276.90	\$20,276.90
<b>Total Fiscal Benefits:</b>	<b>\$19,610.25</b>	<b>\$39,220.50</b>	<b>\$39,220.50</b>
<b>Net Fiscal Benefits:</b>	<b>\$19,610.25</b>	<b>\$39,220.50</b>	<b>\$39,220.50</b>

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described above. Inestimable impacts for Non-Small Businesses are described below.

**Appendix 2: Regulatory Impact to Non-Small Businesses**

These proposed changes to Rule R651-206 are not expected to have any fiscal impact on non-small businesses' revenues or expenditures, because there are no services required from them in order to implement this rule.

The Executive Director of the Department of Natural Resources, Michael Styler, has reviewed and approved this fiscal analysis.

**R651. Natural Resources, Parks and Recreation.**

**R651-206. Carrying Passengers for Hire.**

**[R651-206-1. Definitions:**

(1) "Agent" means a person(s) designated by an outfitting company to act in behalf of that company in certifying:

(a) The verification of a license or permit applicant's vessel operation experience, appropriate first aid and CPR certificates and identifying information.

(b) The verification of an annual dockside or a five-year dry dock inspection of a vessel.

(2) "Certificate of maintenance and inspection" means a document produced by the Division and signed by a marine or vessel inspector and an agent of the outfitting company that a vessel has met the requirements of a required inspection. For river trip vessels, the certificate of maintenance and inspection will be issued to the outfitting company and not an individual vessel.

(3) "Certificate of outfitting company registration" means a document produced by the Division annually, indicating that an outfitting company is registered and in good standing with the Division.

(4) "Certifying experience" means vessel operation or river running experience obtained within ten years of the date of application for the license or permit.

(5) "CFR" means U.S. Code of Federal Regulations.

(6) "Deck rail" means a guard structure at the outer edge of a vessel deck consisting of vertical solid or tubular posts and horizontal courses made of metal tubing, wood, cable, rope or suitable material.

(7) "Dockside inspection" means an annual examination of a vessel when the vessel is afloat in the water so that all of the exterior of the vessel above the waterline and the interior of the vessel may be examined. For river trip vessels, the annual dockside inspection may be performed at the company's place of business.

(8) "Dry dock inspection" means an examination of a vessel, conducted once every five years, when the vessel is out of the water and supported so all the exterior and interior of the vessel may be examined. For float trip vessels, the five-year dry dock inspection may be performed at the company's place of business.

(9) "Flatwater River Area" means all river sections defined in R651-215-10.

(10) "Good marine practices and standards" means those methods and ways of maintaining, operating, equipping, repairing and restructuring a vessel according to commonly accepted standards, including 46 CFR, the American Boat and Yacht Council, the American Bureau of Shipping, the National Marine Manufacturers Association, and other appropriate generally accepted standards as sources of reference.

(11) "License" means a Utah Carrying Passengers for Hire (CPFH) License or a U.S. Coast Guard Master's License.

(12) "Low capacity vessel" means a manually propelled vessel designed or intended to carry no more than two occupants.

(13) "Marine inspector" means a person who has been trained to perform a dry dock inspection and is registered with the Division as a person who is eligible to perform a dry dock inspection of a vessel.

(14) "Permit" means a Utah Carrying Passengers for Hire (CPFH) Crew Permit.

(15) "River trip vessel" means a vessel, or the components and equipment used to configure such a vessel that is designed to be operated on a whitewater river or section of river. A river trip vessel may be a raft with inflatable chambers or a configuration of metal and/or wood frames, straps or chains, and inflatable pontoon tubes that are integral in maintaining the flotation, structural integrity and general seaworthiness of the vessel.

(16) "Racing shell" means a long, narrow watercraft outfitted with long oars and sliding seats; and specifically designed for racing or exercise.

~~(17) "Sole state waters," means all waters of this state, except for the waters of Bear Lake, Flaming Gorge and Lake Powell.~~

~~(18) "Towing for hire" means the activity of towing vessels or providing on-the-water assistance to vessels for consideration.~~

~~(a) Towing for hire is considered carrying passengers for hire~~

~~(b) Towing for hire does not include a person or entity performing salvage or abandoned vessel retrieval operations.~~

~~(19) "Vessel inspector" means a person who has been trained to perform a dockside inspection and is registered with the Division as a person who is eligible to perform a dockside inspection on a vessel.~~

~~(20) "Whitewater river" all rivers not designated as a flatwater river area or other Division recognized whitewater rivers in other states.~~

### **R651-206-2. Outfitting Company Responsibilities:**

~~(1) Each outfitting company carrying passengers for hire on waters of this state shall register with the Division annually, prior to commencement of operation. Outfitting companies include, but are not limited to, fishing guides, waterski or sailing schools, river trip companies and tour boat operators.~~

~~(a) Outfitting company registration with the Division requires the completion of the prescribed application form and providing the following:~~

~~(i) Evidence of a current and valid business license;~~

~~(ii) Evidence of a current and valid river trip authorization(s), Special Use Permit(s), or performance contract(s) issued by an appropriate federal or state land managing agency;~~

~~(iii) Evidence of general liability insurance coverage; and~~

~~(iv) Payment of a \$150 fee for an outfitting company whose place of business is physically located within the State of Utah, or~~

~~(v) Payment of a \$200 fee for an outfitting company whose place of business is physically located outside of the State of Utah.~~

~~(b) Owners and employees of a migratory bird production area created under Title 23, Chapter 28, Migratory Bird Production Area and operating within that Migratory Bird Production Area shall not be considered an outfitting company.~~

~~(2) Upon successful registration with the Division, the Division shall issue a certificate of outfitting company registration in the name of the outfitting company. An outfitting company shall display its certificate of outfitting company registration at its place of business in a prominent location, visible to persons and passengers who enter the place of business.~~

~~(3) An agent of an outfitting company shall certify that each license or permit applicant sponsored by the outfitting company has:~~

~~(a) Obtained the minimum levels of required vessel operation experience corresponding to the type of license or permit applied for;~~

~~(b) Obtained the appropriate first aid and CPR certificates; and~~

~~(c) Completed the prescribed application form with true and correct identifying information.~~

~~(4) An outfitting company's annual registration with the Division may be suspended, denied, or revoked for a length of time determined by the Division director, or an individual designated by the Division director, if one of the following occurs:~~

~~(a) The outfitting company's, or agent's negligence caused personal injury or death as determined by due process of law;~~

~~(b) The outfitting company or agent is convicted of three violations of Title 73, Chapter 18, or rules promulgated thereunder during a calendar year period;~~

~~(c) False or fictitious statements were certified or false qualifications were used to qualify a person to obtain a license or permit for an employee or others;~~

~~(d) The Division determines that the outfitting company intentionally provided false or fictitious statements or qualifications when registering with the Division;~~

~~(e) The outfitting company has utilized a private trip permit for carrying passengers for hire and has been prosecuted by the issuing agency and found guilty of the violation;~~

~~(f) The outfitting company used a vessel operator without a valid license or permit or without the appropriate license or permit while engaging in carrying passengers for hire; or~~

~~(g) The outfitting company is convicted of violating a resource protection regulation or public safety regulation in effect by the respective land managing and/or access permitting agency.~~

~~(5) An outfitting company shall have a written policy describing a program for a drug free workplace.~~

~~(6) An outfitting company shall maintain a training log for each of its vessel operators.~~

~~(7) An outfitting company shall maintain a voyage plan and a passenger manifest, on shore, for each trip or excursion the company conducts.~~

~~(8) An outfitting company shall maintain a daily or trip operations log for each of its vessels.~~

~~(9) An outfitting company shall ensure that each of its vessel operators conducts a check of the vessel he or she will be operating. The vessel check shall include:~~

~~(a) Passenger count;~~

~~(b) A discussion of safety protocols and emergency operations with passengers on-board the vessel;~~

~~(c) A check of the vessel's required carriage of safety equipment;~~

~~(d) A check of the vessel's communication systems;~~

~~(e) A check of the operation and control of the vessel's steering controls and propulsion system; and~~

~~(f) A check of the vessel's navigation lights, if the vessel will be operating between sunset and sunrise.~~

~~(10) An outfitting company shall ensure that each vessel in its fleet is equipped with the required safety equipment.~~

~~(11) An outfitting company shall maintain each vessel in its fleet according to good marine practices and standards.~~

~~(a) The outfitting company shall ensure that each vessel used in the service of carrying passengers for hire meets the maintenance and inspection requirements, if such inspections are required of a vessel.~~

~~(b) The outfitting company shall maintain a file of its maintenance and inspections for each vessel, or the components and equipment that configure a river trip vessel, that is required to be inspected in its fleet. Maintenance and inspection files shall be maintained for the duration in which the vessel is in the service of carrying passengers for hire, plus one additional year.~~

~~(12) The owner of a vessel carrying passengers for hire, shall carry general liability insurance. The insurance coverage shall be determined by the permitting agency.~~

\_\_\_\_\_ (13) Upon request of an agent of the Division, an outfitting company shall provide the Division with a copy of the company's:

- \_\_\_\_\_ (a) Drug free workplace policy;
- \_\_\_\_\_ (b) A passenger manifest and trip voyage plan;
- \_\_\_\_\_ (c) Trip Authorization permit;
- \_\_\_\_\_ (d) A vessel's maintenance and inspection files; or
- \_\_\_\_\_ (e) A vessel operator's training log.

\_\_\_\_\_ (14) An outfitting company that is registered to carry passengers for hire in another state and possesses a state-issued certificate of outfitting company registration, or similar license, permit or registration accepted and recognized by the Division, where the state has similar outfitting company registration provisions, shall not be required to obtain and display a Utah certificate of outfitting company registration as required by this section when:

\_\_\_\_\_ (a) Operating vessels on Bear Lake, Flaming Gorge, and Lake Powell where a trip embarks and disembarks from the out-of-state portion of the lake and less than 25 percent of a trip is conducted on the Utah portion of the lake.

\_\_\_\_\_ (b) Operating vessels on rivers flowing into Utah where the river trip originates out-of-state and terminates at the first available launch ramp/take-out.

\_\_\_\_\_ (i) For vessels operating on the Colorado River, the first available take-out is the Westwater Ranger Station launch ramp/take-out.

\_\_\_\_\_ (ii) For vessels operating on the Dolores River, the first available take-out is the Dewey Bridge launch ramp/take-out on the Colorado River.

\_\_\_\_\_ (iii) For vessels operating on the Green River, the first available take-out is the Split Mountain launch ramp/take-out.

\_\_\_\_\_ (iv) For vessels operating on the San Juan River, the first available take-out is the Montezuma Creek launch ramp/take-out.

**8651-206-3. Utah Carrying Passengers for Hire (CPFH) License and Utah Crew Permit.**

\_\_\_\_\_ (1) No person shall operate a vessel engaged in carrying passengers for hire on sole state waters unless that person has in his possession a valid and appropriately endorsed Utah CPFH License or Utah Crew Permit issued by the Division, or a valid and appropriately endorsed U.S. Coast Guard Master's License:

\_\_\_\_\_ (a) When carrying passengers for hire on a motorboat on the waters of Bear Lake, Flaming Gorge or Lake Powell, the operator must have a valid and appropriately endorsed U.S. Coast Guard Master's License.

\_\_\_\_\_ (b) A Utah CPFH License is valid on the waters of Bear Lake, Flaming Gorge, and Lake Powell when the holder is carrying or leading persons for hire on non-motorized vessels:

\_\_\_\_\_ (c) A Utah CPFH License or Utah Crew Permit, with the appropriate river endorsement, is valid when operating a vessel exiting from a river to the first appropriate and usable take-out or launch ramp on a lake or reservoir:

\_\_\_\_\_ (d) A boat operator, carrying passengers within a migratory bird production area created under Title 23, Chapter 28, Migratory Bird Production Area shall comply with the guidelines for safe boat operation adopted by the management of the Migratory Bird Production Area:

\_\_\_\_\_ (2) License and Permit Requirements:

\_\_\_\_\_ (a) The license or permit must be accompanied by current and appropriate first aid and CPR certificates. A photocopy of both

sides of the first aid and CPR certificates is allowed when carrying passengers for hire on rivers:

\_\_\_\_\_ (b) A license with a "Lake and Reservoir Captain" or instructor endorsement is required when carrying passengers for hire on any lake or reservoir.

\_\_\_\_\_ (c) A license with a "Tow Vessel Captain" endorsement is required when towing or assisting other vessels for hire on waters of this state.

\_\_\_\_\_ (d) A license with a "Whitewater River guide" endorsement is required when carrying passengers for hire on any river section, including "whitewater," and "flatwater" river designations:

\_\_\_\_\_ (e) A license with a "Flatwater River Guide" endorsement is required when carrying passengers for hire on any Flatwater river area.

\_\_\_\_\_ (f) A permit with a "Lake and Reservoir Crew" endorsement is valid only when the holder is accompanied, on board the vessel, by a qualified license holder with a "Lake and Reservoir Captain" endorsement.

\_\_\_\_\_ (g) A permit with a "Tow Vessel Crew" endorsement is valid only when the holder is accompanied, on board the vessel, by a qualified license holder with a "Tow Vessel Captain" endorsement.

\_\_\_\_\_ (h) A permit with a "Whitewater River Crew" endorsement is valid only when the holder is accompanied on the river trip, by a qualified license holder with a "Whitewater River Guide" endorsement.

\_\_\_\_\_ (i) A permit with an "Flatwater River Crew" endorsement is valid only when the holder is accompanied on the river trip, by a qualified license holder with either a "Whitewater River Guide" or "Flatwater River Guide" endorsement.

\_\_\_\_\_ (j) All Boatman Permits issued by the Division are expired.

\_\_\_\_\_ (3) Requirements to obtain a CPFH License:

\_\_\_\_\_ (a) The applicant shall be at least 18 years of age as of the date the application is received by the Division.

\_\_\_\_\_ (b) The applicant shall complete the prescribed application form:

\_\_\_\_\_ (i) Information on the application form must be verified by an agent of the employing/sponsoring outfitting company.

\_\_\_\_\_ (ii) The completed application form must be signed by the applicant and by an agent of the employing/sponsoring outfitting company:

\_\_\_\_\_ (iii) For persons who are applying for their first license, the application, testing, and issuance of the license shall be done in a manner accepted by the Division:

\_\_\_\_\_ (e) The applicant shall pay a \$50 application fee for the license and first endorsement. A fee of \$10 will be charged for each additional license endorsement:

\_\_\_\_\_ (d) The applicant shall choose from the five types of license endorsements:

\_\_\_\_\_ (i) Lake and Reservoir Captain LRC

\_\_\_\_\_ (ii) Lake and Reservoir Instructor (LRI)

\_\_\_\_\_ (iii) Tow Vessel Captain TVC

\_\_\_\_\_ (iv) Whitewater River Guide (WRG)

\_\_\_\_\_ (v) Flatwater River Guide FRG

\_\_\_\_\_ (c) The applicant shall provide an original proof of current and valid first aid and CPR certifications:

\_\_\_\_\_ (i) The first aid certificate must be issued for an "Emergency Response" course or an equivalent course from a reputable provider whose curriculum is in accordance with the USDOT First Responder Guidelines or the Wilderness Medical Society Guidelines for Wilderness First Responder.

~~(ii) The CPR certificate must be issued for an American Red Cross, American Heart Association, American Safety and Health Institute, National Safety Council CPR or BLS course, or an equivalent course from a reputable provider whose curriculum is in accordance with the most current Consensus on Science for Cardiopulmonary Resuscitation (CPR) and Emergency Cardiovascular Care (ECC).~~

~~(iii) First aid and CPR certificates must include the following information: name, or title of the course; course provider; length of certification; name of the person certified and legible name of the course instructor.~~

~~(f) A Utah Vessel Operator Permit holder, whose permit was issued prior to January 1, 2008, and who is renewing and converting their permit to a Utah CPFH License, is exempt from showing proof of completion of a National Association of State Boating Law Administrators (NASBLA) approved boating safety course.~~

~~(g) The applicant shall complete a multiple-choice, written examination administered by an agent of the Division:~~

~~(i) 80 percent correct is required to pass.~~

~~(ii) In relation to the respective endorsement, the examination will have a specific focus on the carrying passengers for hire laws and rules along with general safety, etiquette and courtesy.~~

~~(iii) If an applicant fails to pass the exam, there is a seven-day waiting period to re-test, and~~

~~(iv) Pay a \$15 fee for each re-test.~~

~~(h) The applicant shall provide documentation of vessel operation experience that has been obtained within 10 years previous to the date of application.~~

~~(i) Lake and Reservoir Captain LRC – a minimum of at least 80 hours of actual vessel operation experience. At least 40 of these hours must be obtained while operating the vessel, or a similar vessel, that will be carrying passengers for hire on the specific lake or reservoir on which the operator will be carrying passengers for hire. The applicant shall provide proof of successful completion of a NASBLA approved boating safety course.~~

~~(ii) Lake and Reservoir Instructor (LRI) – a minimum of at least 40 hours of actual vessel operation experience. At least 10 of these hours must be obtained through mentored coaching while operating the vessel, or a similar vessel, that will be carrying passengers for hire on the specific lake or reservoir on which the instructor will be carrying passengers for hire.~~

~~(iii) Tow Vessel Captain (TVC) – A minimum of at least 80 hours of actual vessel operation experience. At least 40 of these hours must be obtained while operating the vessel, or a similar vessel, that will be towing for hire on the specific lake or reservoir on which the operator will be towing vessels for hire. The applicant shall provide proof of successful completion of a NASBLA approved boating safety course.~~

~~(iv) Whitewater River Guide (WRG) – A minimum of nine river trips on whitewater river sections. At least one of these trips must be obtained while operating the vessel, or similar vessel, on the respective river section on which the operator will be carrying passengers for hire. A Whitewater River Guide endorsement meets the requirements for an Flatwater River Guide endorsement.~~

~~Flatwater River Guide (FRG) – A minimum of six river trips on any river section. At least one of these trips must be obtained while operating the vessel or similar vessel, on the respective river section on which the operator will be carrying passengers for hire.~~

~~(4) A Utah CPFH License is valid for a term of five years. The license will expire five years from the date of issue, unless suspended or revoked.~~

~~(a) A Utah CPFH License may be renewed within the six months prior to its expiration.~~

~~(b) To renew a Utah CPFH License, the applicant must complete the prescribed application form along with adhering to the requirements described above. A current license holder may renew his license in a manner accepted by the Division~~

~~(c) The renewed license will have the same month and day expiration as the original license.~~

~~(d) A Utah License that has expired shall not be renewed and the applicant shall be required to apply for a new license.~~

~~(5) Requirements to obtain a Utah Crew Permit.~~

~~(a) The applicant shall be at least 18 years of age as of the date the application is received by the Division.~~

~~(b) The applicant shall complete the prescribed application form.~~

~~(i) Information on the application form must be verified by an agent of the employing/sponsoring outfitting company.~~

~~(ii) The completed application form must be signed by the applicant and by an agent of the employing/sponsoring outfitting company.~~

~~(iii) For persons who are applying for their first Crew Permit, the application and issuance of the Crew Permit shall be done in a manner accepted by the Division.~~

~~(c) The applicant shall pay a \$50 application fee for the original permit and first endorsement. A \$10 fee shall be charged for each additional crew permit endorsement.~~

~~(d) The applicant shall choose from the four types of permit endorsements:~~

~~(i) Lake and Reservoir Crew (LRCP)~~

~~(ii) Tow Vessel Crew TVCP~~

~~(iii) Whitewater River Crew (WRCP)~~

~~(iv) Flatwater River Crew FRCP~~

~~(e) The applicant shall provide original proof of current and valid first aid and CPR certifications:~~

~~(i) The first aid certificate must be issued from a reputable provider whose curriculum is in accordance with the USDOT "Standard" First Aid.~~

~~(ii) The CPR certificate must be issued for an American Red Cross, American Heart Association, American Safety and Health Institute, National Safety Council CPR or BLS course, or an equivalent course from a reputable provider whose curriculum is in accordance with the most current Consensus on Science for Cardiopulmonary Resuscitation (CPR) and Emergency Cardiovascular Care (ECC).~~

~~(iii) First aid and CPR certificates must include the following information: name, or title of the course; course provider; length of certification; name of the person certified and legible name of the course instructor.~~

~~(f) The applicant shall provide documentation of vessel operation experience that has been obtained within the 10 years previous to the date of application.~~

~~(i) Lake and Reservoir Crew (LRCP) – A minimum of at least 20 hours of actual vessel operation experience. At least 10 of these hours must be obtained while operating the vessel, or a similar vessel, on which the operator will be carrying passengers for hire. The applicant shall provide proof of successful completion of a NASBLA approved boating safety course.~~

~~(ii) Tow Vessel Crew (TVCP) – A minimum of at least 20 hours of actual vessel operation experience. At least 10 of these hours must be obtained while operating the vessel, or a similar vessel, that will be towing for hire on the specific lake or reservoir on which the operator will be towing vessels for hire. The applicant shall provide proof of successful completion of a NASBLA approved boating safety course.~~

~~(iii) Whitewater River Crew (WRCP) – A minimum of three river trips on "whitewater" rivers or river sections similar to those they will be guiding on. At least one of these trips must be obtained while operating the vessel, or similar vessel, on the respective river or river section on which the operator will be carrying passengers for hire. A Whitewater River Crew endorsement meets the requirements for an Flatwater River Crew endorsement.~~

~~(iv) Flatwater River Crew (FRCP) – A minimum of three river trips on any river or river section. At least one of these trips must be obtained while operating the vessel on a respective river or river section on which the operator will be carrying passengers for hire.~~

~~(6) A Utah Crew Permit is valid for a term of five years. The permit will expire five years from the date of issue, unless suspended or revoked.~~

~~(a) A Utah Crew Permit may be renewed within the six months prior to its expiration.~~

~~(b) To renew a Utah Crew Permit, the applicant must complete the prescribed application form along with the requirements described above. A current permit holder may renew his license in a manner accepted by the Division.~~

~~(c) The renewed permit will have the same month and day expiration as the original permit.~~

~~(d) A Utah Crew Permit that has expired shall not be renewed and the applicant shall be required to apply for a new permit.~~

~~(e) A Utah Crew Permit holder who upgrades to a Utah License, within one year of when the permit was issued, shall receive a \$25 discount on the fee for the Utah License.~~

~~(7) In the event a Utah CPFH License or a Utah Crew permit is lost or stolen, a duplicate license or permit may be issued with the same expiration date as the original license or permit.~~

~~(a) The applicant must complete the prescribed application form.~~

~~(b) The fee for a duplicate license or permit is \$15.~~

~~(8) Current Utah CPFH License and Utah Crew Permit holders shall notify the Division within 30 days of any change of address.~~

~~(9) A Utah CPFH License or Utah Crew Permit may be suspended, revoked, or denied for a length of time determined by the Division director, or individual designated by the Division director, if one of the following occurs:~~

~~(a) The license or permit holder is convicted of three violations of the Utah Boating Act, Title 73, Chapter 18, or rules promulgated thereunder during a three-year period.~~

~~(b) The license or permit holder is convicted of driving under the influence of alcohol or any drug while carrying passengers for hire, or refuses to submit to any chemical test that determines blood or breath alcohol content resulting from an incident while carrying passengers for hire;~~

~~(c) The license or permit holder's negligence or recklessness causes personal injury or death as determined by due process of the law;~~

~~(d) The license or permit holder is convicted of utilizing a private trip permit to carry passengers for hire;~~

~~(e) The license or permit holder is convicted of violating a resource protection regulation or public safety regulation in effect by the respective land managing and/or access permitting agency.~~

~~(f) The Division determines that the license or permit holder intentionally provided false or fictitious statements or qualifications to obtain the license or permit.~~

~~(10) A Utah CPFH License or Utah Crew Permit holder shall not carry passengers for hire while operating an unfamiliar vessel or operating on an unfamiliar lake, reservoir, or river section, unless there is a license holder aboard who is familiar with the vessel and the lake, reservoir, or river section. An exception to this rule allows a license or permit holder to lead passengers for hire on a lake, reservoir, or a flatwater river area, as long as there is a license holder who is familiar with the vessel and the lake, reservoir, or river section and remains within sight of the rest of the group.~~

~~(11) Number of passengers carried for each license or permit holder.~~

~~(a) On a vessel that is carrying more than 49 passengers for hire, there shall be at least one license holder and one permit holder or two license holders on board.~~

~~(b) On a vessel carrying more than 24 passengers for hire, and operating more than one mile from shore, there shall be an additional license or permit holder on board.~~

~~(c) On a vessel carrying passengers for hire, there shall be a minimum of one license or permit holder on board for each passenger deck on the vessel.~~

~~(12) Low capacity vessels being led requirements.~~

~~(a) On all river sections, except as noted in Subsection (b) below, there shall be at least one qualified license or permit holder for every four low capacity vessels being led in a group.~~

~~(b) On lakes, reservoirs, there shall be at least one qualified license or permit holder for every eight low capacity vessels, or racing shells being led in a group; and flatwater river area, there shall be at least one qualified license or permit holder for every six low capacity vessels or racing shells being led in a group.~~

~~(13) A license or permit holder shall not operate a vessel carrying passengers for hire for more than 12 hours in a 24-hour period.~~

~~(14) A license or permit holder shall conduct a safety and emergency protocols discussion with passengers prior to the vessel getting underway. This discussion shall include the topics of water safety, use and stowage of safety equipment, wearing and usage of life jackets and initiating the rescue of a passenger(s).~~

~~(15) Vessel operators who are licensed or permitted to carry passengers for hire in another state, and possess a state-issued vessel captain's license, or similar license or permit accepted and recognized by the Division, where the state has similar vessel operator licensing provisions, shall not be required to obtain and possess a Utah CPFH License or Utah Crew Permit as required by this section.~~

#### **R651-206-4. Additional PFD Requirements for Vessels Carrying Passengers for Hire.**

~~(1) Type I PFDs are required. Each vessel shall have an adequate number of Type I PFDs on board, that meets or exceeds the number of persons on board the vessel. A Type V PFD may be used in lieu of a Type I PFD if the Type V PFD is approved for the activity in which it is going to be used.~~

(2) In situations where infants, children and youth are in enclosed cabin areas of vessels over 19 feet in length and not wearing PFDs, a minimum of ten percent of the wearable PFDs on board the vessel must be of an appropriate type and size for infants, children and youth passengers.

(3) Type I PFDs or Type V PFDs used in lieu of the Type I PFD, must be listed for commercial use on the label.

(4) If PFDs are not being worn by passengers, and the PFDs are being stored on the vessel, the PFDs shall be stored in readily accessible containers that legibly and visually indicate their contents.

(5) Each PFD must be marked with the name of the outfitting company, in one-inch high letters that contrast with the color of the device.

(6) The Type IV PFD shall be a ring life buoy on vessels 26 feet or more in length. CPFH vessels on rivers are exempt from carrying a ring life buoy and must comply with R651-215-2 and R651-215-8.

(a) Vessels that are 40 feet or more in length shall carry a minimum of two Type IV PFDs.

(b) Ring life buoys shall have a minimum of 60 feet of line attached.

(7) If U.S. Coast Guard approved Type I PFDs are not available for infants under the weight of 30 pounds, Type II PFDs may be used, provided they are the correct size for the intended wearer.

(8) On rivers, any low capacity vessel operator or a working employee of the outfitting company, may wear a Type III PFD in lieu of the Type I PFD.

(9) On lakes and reservoirs, any low capacity vessel operator or a working employee may wear or carry, a Type III PFD may be carried or worn in lieu of the required Type I PFD.

(10) All passengers and crew members shall wear a PFD when a vessel is being operated in hazardous conditions.

(11) The license or permit holder is responsible for the passengers on his vessel to be in compliance with this section and R651-215.

#### **R651-206-5. Additional Fire Extinguisher Requirements for Vessels Carrying Passengers for Hire.**

(1) Each motorboat that carries passengers for hire, must carry a minimum of one type B-I fire extinguisher. Vessels equipped solely with an electric motor, and not carrying flammable fuels on board, are exempt from this provision.

(2) Each motorboat that carries more than six passengers for hire and is equipped with an inboard, inboard/outboard, inboard jet, or direct drive gasoline engine, and carrying passengers for hire, shall have at least one fixed U.S. Coast Guard approved fire extinguishing system mounted in the engine compartment.

(3) Portable fire extinguishers shall be mounted in a readily accessible location, near the helm, away from the engine compartment. For motorized vessels operating on rivers, portable fire extinguishers may be stowed in a readily accessible location near the operator's position.

(4) For vessels carrying more than 12 passengers for hire or providing on board overnight passenger accommodations, smoke detectors shall be installed in each enclosed passenger area.

#### **R651-206-6. Additional Equipment Requirements for Vessels Carrying Passengers for Hire.**

(1) Emergency communications equipment.

(a) An outfitting company shall have appropriate communication equipment for contacting emergency services, or, have a policy and emergency communications protocols that describe the quickest and most efficient means of contacting emergency services, taking into consideration the remoteness of the area in which the vessel will be operated.

(b) For vessels traveling in a group, this requirement can be met by carrying one communication device in the group.

(2) Carbon monoxide detectors.

Each vessel carrying passengers for hire shall be equipped with carbon monoxide detectors in each enclosed passenger area.

(3) Survival Craft.

Each vessel carrying more than six passengers for hire, and operating at a distance greater than one mile from shore, shall carry an appropriate number of life rafts or other life saving apparatus respective to the number of passengers carried on board.

(4) Visual distress signals.

Each vessel carrying more than six passengers for hire, and operating at a distance greater than one mile from shore, shall carry a minimum of three visual distress signal flares that are approved for day and night use.

(5) Navigation equipment.

(a) Each vessel must carry a map or chart of the water body and a compass or GPS unit that is in good and serviceable condition.

(b) For vessels traveling in a group, this requirement can be met by carrying a map or chart and a compass or GPS unit in the group.

(c) River trip vessels are only required to carry a map of the water body or river or river sections.

(6) Lines, straps and anchorage.

(a) Each vessel shall be equipped with at least one suitable anchor and an appropriate anchorage system, respective of the body of water on which the vessel will be operating. Any line, when attached to an anchor, shall be attached by an eye splice, thimble and shackle. On lakes and/or reservoirs, low capacity vessels and racing shells are exempt from this requirement.

(b) Vessels operating on rivers are exempt from carrying an anchor, but shall have sufficient lines to secure the vessel to shore.

(c) Lines and straps utilized for anchorage, mooring and maintaining vessel structural integrity shall be in good and serviceable condition.

(7) Portable lighting.

Each vessel carrying passengers for hire shall carry on board, at least one portable, battery-operated light per operator or crew member. That portable battery-operated light shall be in good and serviceable condition and readily accessible.

(8) First Aid Kit.

(a) Each vessel shall have on board, an adequate first aid kit, stocked with supplies respective to the number of passengers carried on board, and the nature of boating activity in which the vessel will be engaged.

(b) For vessels traveling in a group, this requirement can be met by carrying one first aid kit in the group.

(9) Identification of outfitting company.

(a) An outfitting company shall prominently display its name on the hull or superstructure of the vessel.

(b) The display of an outfitting company's name shall not interfere with any required numbering, registration or documentation display.

~~\_\_\_\_\_ (c) If another governmental agency prohibits the display of an outfitting company's name on the exterior of a vessel, the name shall be displayed in a visible manner that does not violate the agency's requirements.~~

~~\_\_\_\_\_ (10) Marine toilets and sanitary facilities:~~

~~\_\_\_\_\_ (a) Each vessel carrying more than six passengers for hire shall be equipped with a minimum of one marine toilet and washbasin sanitary facilities, except for vessels where suitable privacy enclosures are not practical.~~

~~\_\_\_\_\_ (b) The toilet and washbasin shall be connected to a permanently installed holding tank that allows for dockside pumpout at approved sanitary disposal facilities. Vessels that do not have access to dockside pumpout facilities may carry a portable marine toilet and washbasin to meet this requirement.~~

~~\_\_\_\_\_ (c) For vessels traveling in a group, this requirement can be met by carrying one marine sanitation device in the group.~~

~~\_\_\_\_\_ (d) Marine toilets and washbasins shall be maintained in a good and serviceable, sanitary condition.~~

~~\_\_\_\_\_ (e) A vessel that carries more than 49 passengers shall have at least two marine toilets and washbasins, one each for men and women.~~

~~\_\_\_\_\_ (f) A vessel operating on a trip or excursion with a duration of one hour or less, or operating on a river, is not required to be equipped with a marine toilet or washbasin.~~

**R651-206-7. Towing Vessels for Hire Requirements.**

~~\_\_\_\_\_ (1) Any person or entity that provides the service of towing vessels for hire on waters of this state, shall register with the Division as an outfitting company and pay the appropriate fee.~~

~~\_\_\_\_\_ (2) A vessel engaged in the activity of towing vessels for hire shall comply with the dockside and dry dock vessel maintenance and inspection requirements, plus the additional equipment requirements described in this section.~~

~~\_\_\_\_\_ (3) Any conditions of a contract, special use permit, or other agreement with a person or entity that is towing vessels for hire, shall not supersede the boating safety and assistance activities of a state park ranger, other law enforcement officer, emergency and search and rescue personnel, a member of the U.S. Coast Guard Auxiliary, or any other person providing "Good Samaritan" service to vessels needing or requesting assistance.~~

~~\_\_\_\_\_ (4) Any vessel receiving assistance from a state park ranger, other law enforcement officer, emergency and search and rescue personnel, a member of the U.S. Coast Guard Auxiliary, or any person providing "Good Samaritan" service need not be turned over to, or directed to a person or entity registered with the Division and authorized to tow vessels for hire, unless the operator or owner of the vessel receiving assistance specifically requests such action.~~

~~\_\_\_\_\_ (5) A person or entity towing vessels for hire shall immediately notify a law enforcement officer of any vessel they assist, if the person reasonably believes the vessel being assisted was involved in a reportable boating accident.~~

~~\_\_\_\_\_ (6) A person or entity towing vessels for hire shall not perform an emergency rescue unless he reasonably believes immediate emergency assistance is required to save the lives of persons, prevent additional injuries to persons onboard a vessel, or reduce damage to a vessel, and a state park ranger, other law enforcement officer, emergency and search and rescue personnel, or a member of the U.S. Coast Guard Auxiliary is not immediately available, or a state park~~

~~ranger, other law enforcement officer, or emergency and search and rescue personnel make such a request for emergency assistance.~~

~~\_\_\_\_\_ (7) The owner of a vessel engaged towing vessels for hire shall carry general liability insurance. The insurance coverage shall be determined by the permitting agency.~~

~~\_\_\_\_\_ (8) A vessel engaged in towing vessels for hire, shall be a minimum of 21 feet in length and have a minimum total of a 150-hp gasoline engine(s) or a 90-hp diesel engine(s). The towing vessel should be as large or larger than the average vessel it will be towing.~~

~~\_\_\_\_\_ (9) A vessel engaged in towing vessels for hire, must have at least one Tow Vessel License holder on board.~~

~~\_\_\_\_\_ (10) A person or entity towing vessels for hire shall provide appropriate types of training for each of its license and permit holders. Each vessel operator shall conduct a minimum of five training evolutions of towing a vessel each year, with at least one evolution being a side tow.~~

~~\_\_\_\_\_ (11) The operator and any crew members on board a vessel engaged in towing vessels for hire, shall wear a PFD at all times. The operator of a vessel engaged in towing vessels for hire is responsible to have all occupants of a vessel being towed to wear a properly fitted PFD for the duration of the tow.~~

~~\_\_\_\_\_ (12) A person or entity engaged in towing vessels for hire must keep a log of each tow or vessel assist. The towing vessels for hire log of activities shall include:~~

~~\_\_\_\_\_ (a) Assisted vessel's assigned bow number.~~

~~\_\_\_\_\_ (b) Name of assisted vessel's owner or operator, including address and phone number.~~

~~\_\_\_\_\_ (c) Number of persons on board the assisted vessel.~~

~~\_\_\_\_\_ (d) Nature of assistance.~~

~~\_\_\_\_\_ (e) Date and time assistance provided.~~

~~\_\_\_\_\_ (f) Location of the assisted vessel.~~

~~\_\_\_\_\_ (g) The operator of the vessel towing for hire shall make appropriate radio or other communications of the above actions with a person on land preferable at the company's place of business.~~

~~\_\_\_\_\_ (h) Upon request of an agent of the Division, an outfitting company shall provide the Division with a copy of a towing vessels for hire log.~~

~~\_\_\_\_\_ (13) Additional Equipment Requirements for Vessels Towing for Hire:~~

~~\_\_\_\_\_ (a) PFDs:~~

~~\_\_\_\_\_ (i) Shall carry a sufficient number of Type I PFDs for persons on board a towed vessel.~~

~~\_\_\_\_\_ (ii) Shall carry a minimum of two Type IV PFDs, one of which must be a ring life buoy.~~

~~\_\_\_\_\_ (b) Vessel shall be equipped with a depth finder.~~

~~\_\_\_\_\_ (c) Tow Line:~~

~~\_\_\_\_\_ (i) Shall have a minimum of 100 feet of 5/8" line with a tow bridle.~~

~~\_\_\_\_\_ (ii) Towing vessel shall be equipped with a towing post or reinforced cleats.~~

~~\_\_\_\_\_ (d) Vessel shall carry a dewatering pump with a minimum capacity of 25 gallons per minute, to be used to dewater other vessels.~~

~~\_\_\_\_\_ (e) If a vessel is towing for hire between sunset and sunrise, the vessel shall carry the following pieces of equipment:~~

~~\_\_\_\_\_ (i) A white spot light with a minimum brightness of 500,000 candle power.~~

~~\_\_\_\_\_ (ii) It is recommended that a vessel be equipped with electronic RADAR equipment.~~

- ~~\_\_\_\_\_ (f) Vessel shall carry a loudhailer, speaker, or other means of communicating with another vessel from a distance.~~
- ~~\_\_\_\_\_ (g) Vessel shall carry the following equipment, in addition to the equipment required for vessels carrying passengers for hire.~~
  - ~~\_\_\_\_\_ (i) A knife capable of cutting the vessel's towline;~~
  - ~~\_\_\_\_\_ (ii) A boat hook;~~
  - ~~\_\_\_\_\_ (iii) A minimum of four six-inch fenders;~~
  - ~~\_\_\_\_\_ (iv) Binoculars;~~
  - ~~\_\_\_\_\_ (v) A jump starting system;~~
  - ~~\_\_\_\_\_ (vi) A tool kit and spare items for repairs on assisting vessel;~~
- ~~\_\_\_\_\_ and~~
- ~~\_\_\_\_\_ (vii) Damage control items for quick repairs to another vessel.~~

**~~R651-206-8. Maintenance and Inspections of Vessels Carrying Passengers for Hire.~~**

- ~~\_\_\_\_\_ (1) Each outfitting company carrying passengers for hire shall have an ongoing vessel maintenance and inspection program. The vessel maintenance and inspection program shall include the structural integrity, flotation, propulsion of the vessel, and equipment associated with passenger safety.~~
- ~~\_\_\_\_\_ (2) The annual vessel maintenance and inspection program certification will be required beginning January 1, 2009. The five-year vessel inspections will be required no later than January 1, 2014.~~
- ~~\_\_\_\_\_ (3) The Division shall prepare and maintain a "Carrying Passengers for Hire Vessel Inspection Manual".~~
  - ~~\_\_\_\_\_ (a) The Division shall establish a committee to oversee, maintain, and recommend any substantive changes in the "Carrying Passengers for Hire Vessel Inspection Manual".~~
    - ~~\_\_\_\_\_ (i) The members of this committee shall be selected by the Boating Advisory Council and shall report directly to the Boating Advisory Council.~~
    - ~~\_\_\_\_\_ (ii) This committee shall consist of five members: two members who will represent the non-float trip vessel carrying passengers for hire industry in Utah; two members who will represent the float trip vessel carrying passengers for hire industry in Utah; and one member who will represent a state or federal agency responsible for managing or regulating the activity of carrying passengers for hire in Utah.~~
    - ~~\_\_\_\_\_ (iii) This committee shall convene when information regarding substantive changes to the "Carrying Passengers for Hire Vessel Inspection Manual" has been presented to the Boating Advisory Council.~~
  - ~~\_\_\_\_\_ (b) The Division shall establish a committee to prepare and develop the portions of the "Carrying Passengers for Hire Vessel Inspection Manual" that do not pertain to River Trip Vessels.~~
    - ~~\_\_\_\_\_ (i) This committee shall consist of five members: three members who represent the carrying passengers for hire industry in Utah; and two members who represent a state or federal agency responsible for managing or regulating the activity of carrying passengers for hire in Utah.~~
    - ~~\_\_\_\_\_ (ii) This committee will disband after the original "Carrying Passengers for Hire Vessel Inspection Manual" is approved and accepted by the Boating Advisory Council.~~
    - ~~\_\_\_\_\_ (c) The Division shall establish a committee to prepare and develop the portions of the "Carrying Passengers For Hire Vessel Inspection Manual" that pertain to River Trip Vessels.~~
      - ~~\_\_\_\_\_ (i) This committee shall consist of five members: three members who represent the River Trip Vessel carrying passengers for~~

hire industry in Utah; and two members who represent a state or federal agency responsible for managing or regulating the activity of carrying passengers for hire in Utah.

~~\_\_\_\_\_ (ii) This committee will disband after the original "Carrying Passengers for Hire Vessel Inspection Manual" is approved and accepted by the Boating Advisory Council.]~~

**R651-206-1. Definitions.**

(1) "Advanced first aid training" means a course that meets the current National Registry of Emergency Medical Technicians, Emergency Medical Responder Education Standards.

(2) "Agent" means a person(s) designated by an outfitting company to act in behalf of that company.

(3) "Basic First Aid training" means a course which shall include hands-on training and skills evaluation. Course examples include but are not limited to: the American Red Cross, the American Heart Association, the National Safety Council, or local hospitals.

(4) "Boating Advisory Council" As defined in R651-202-1.

(5) "Boating Program Coordinator" means a Division employee overseeing Utah's boating program that administers the United States Coast Guard's Recreational Boating Safety grant and Carrying Passengers for Hire program.

(6) "Cardiopulmonary Resuscitation (CPR)" means a hands on course that shall include training and evaluation that meets the standards of the American Heart Association Emergency Cardiovascular Care (ECC) course.

(7) "Certificate of Compliance" means a document produced by the Division and signed by a compliance inspector and an agent of the outfitting company certifying that the company has met all the requirements of a site inspection and the Maintenance and Inspection Program for Carrying Passengers for Hire.

(8) "Certifying experience" means vessel operation or river running experience obtained within ten years of the trip leader's or guide's date of authorization by an outfitting company.

(9) "CFR" means U.S. Code of Federal Regulations.

(10) "Compliance inspector" means a person who has been trained and authorized by the Division to perform dock side, dry dock and site visits for outfitting companies.

(11) "Consideration" as defined in Utah Code 73-18-2(6), means something of value given or done in exchange for something given or done by another. Consideration also includes, but is not limited to "commercial gain and commercial activity, as defined in Utah Admin. Code R651-601-12 and -13.

(12) "Deck rail" means a guard structure at the outer edge of a vessel deck consisting of vertical solid or tubular posts and horizontal courses made of metal tubing, wood, cable, rope or suitable material.

(13) "Division" means the Utah Division of Parks and Recreation.

(14) "Dockside inspection" means an annual examination of a vessel when the vessel is afloat in the water so that all of the exterior of the vessel above the waterline and the interior of the vessel may be examined. For river trip vessels, the annual dockside inspection may be performed at the company's place of business.

(15) "Dry dock inspection" means an examination of a vessel, conducted once every five years, when the vessel is out of the water and supported so all the exterior and interior of the vessel may be examined. For float trip vessels, the five-year dry dock inspection may be performed at the company's place of business.

(16) "Flatwater River Area" means all river sections defined in Utah Administrative Code R651-215-10.

(17) "Good marine practices and standards" means those methods and ways of maintaining, operating, equipping, repairing and restructuring a vessel according to commonly accepted standards, including 46 CFR, the American Boat and Yacht Council, the American Bureau of Shipping, the National Marine Manufacturers Association, and other appropriate generally accepted standards as sources of reference.

(18) "Guide" means an individual authorized by an outfitting company to carry passengers for hire.

(19) "License" means an annual certificate issued by the Division to an outfitting company that authorizes the company to Carry Passengers for Hire.

(20) "Low capacity vessel" means a manually propelled vessel designed or intended to carry no more than two occupants.

(21) "Outfitting Company" as defined in Utah Code 73-18-2(14), means any person who, for consideration:

(a) Provides equipment to transport persons on all waters of this state; and

(b) Supervises a person who:

(i) Operates a vessel to transport passengers; or

(ii) Leads a person on a vessel.

(22) "Person" means:

(a) An individual;

(b) An association;

(c) An institution;

(d) A corporation;

(e) A company;

(f) A trust;

(g) A limited liability company;

(h) A partnership;

(i) A political subdivision;

(j) A government office, department, division, bureau, or other body of government and;

(k) Any other organization or entity

(23) "Program Safety Committee" means 5 members representing their commercial boating industries to make substantive changes to the Maintenance and Inspection Program for vessels Carrying Passengers for Hire.

(24) "River trip vessel" means a vessel, or the components and equipment used to configure such a vessel that is designed to be operated on a whitewater river or section of river. A river trip vessel may be a raft with inflatable chambers or a configuration of metal and/or wood frames, straps or chains, and inflatable pontoon tubes that are integral in maintaining the flotation, structural integrity and general seaworthiness of the vessel.

(25) "Racing shell" means a long, narrow watercraft outfitted with long oars and sliding seats; and specifically designed for racing or exercise.

(26) "Site Visit" means a meeting with an outfitting company for the purpose of inspecting vessels, vessel components and trip leader and guide authorization documents.

(27) "Sole state waters," means all waters of this state, except for the waters of Bear Lake, Flaming Gorge and Lake Powell.

(28) "Towing for hire" means the activity of towing vessels or providing on-the-water assistance to vessels for consideration.

(29) "Trip Leader" is a guide assigned by the outfitting company to be in charge of a carrying passengers for hire trip.

(30) "Trip Log" means a document managed by an outfitting company that lists trip leaders and guides on the water experience.

(31) "Trip Manifest" means a document produced by the outfitting company authorizing a carrying passenger for hire trip

(32) "Whitewater river" means all rivers not designated as a flatwater river area or other Division recognized whitewater rivers in other states.

#### **R651-206-2. Outfitting Company Responsibilities.**

(1) Except where exempted by section R651-206-9, each outfitting company carrying passengers for hire on waters of this state shall make application with the Division annually, prior to commencement of operation.

(a) The outfitting company licensing process with the Division requires the completion of the prescribed application form and providing the following:

(i) Evidence of a current and valid business license;

(ii) List of company agent(s);

(iii) Evidence of general liability insurance coverage;

(iv) Payment of the appropriate application fee.

(b) An outfitting company license expires annually on December 31.

(2) Upon successful application with the Division, the Division shall issue a license in the name of the outfitting company.

(a) An outfitting company shall display its license at its place of business in a prominent location, visible to persons and passengers who enter the place of business.

(b) Any outfitting company using a DBA ("doing business as") shall list any and all DBA's on the outfitting company license application. Should new DBA's be formed, the outfitting company shall notify the Division, in writing, within ten days of the action.

(c) Licenses are not transferable. If a business is sold or transferred, a new license application shall be submitted by the new owner(s).

(d) An outfitting company's license shall be issued electronically within a reasonable time period, not to exceed 10 days after the Division receives an eligible and complete application. Licenses will be sent by email to the email address provided by the outfitting company.

(3) An agent of an outfitting company shall certify that:

(a) All the elements of the Certificate of Compliance have been fulfilled.

(b) Each trip leader or guide authorized by the outfitting company has:

(i) Obtained the minimum levels of required vessel operation experience and

(ii) Obtained the appropriate first aid and CPR certificates.

(c) Copies of the trip manifests are provided for each trip with:

(i) A copy retained by the trip leader and available during the trip.

(ii) A copy to remain on file with the outfitting company for six (6) years.

(5) An outfitting company shall have a written policy describing a program for a drug free workplace.

(6) An outfitting company shall maintain a trip log for each of its trip leaders and guides.

(7) An outfitting company shall maintain a trip manifest for each trip or excursion conducted by the company. The trip manifest shall contain the following information:

(a) Name and address and phone number of the outfitting company;

(b) Name, date of birth of each trip leader and guide assigned to the trip;

(c) Trip departure and arrival locations with dates and/or times; and

(d) A passenger list.

(8) An outfitting company shall maintain a daily or trip operations log for each of its vessels.

(9) A trip leader assigned by the outfitting company shall accompany every commercial trip.

(10) An outfitting company shall ensure that a trip leader or guide conducts a vessel safety check and a passenger orientation prior to embarking on a trip.

(a) The vessel safety check shall include:

(i) A check of the vessel's required carriage of safety equipment;

(ii) A check of the vessel's communication systems;

(iii) A check of the operation and control of the vessel's steering controls and propulsion system; and

(iv) A check of the vessel's navigation lights, if the vessel will be operating between sunset and sunrise.

(b) The passenger orientation shall include:

(i) A passenger count;

(ii) A discussion of safety protocols and emergency operations with passengers on board the vessel;

(iii) The conditions of weather, river, terrain, equipment, travel, housing and vessels that passengers may expect to encounter;

(iv) The personal equipment, clothing and gear that commercial passengers should have for the trip;

(v) The proper fit, wearing, and use of personal flotation devices (PFD);

(vi) Passenger riding and positioning in the vessel;

(vii) Safety procedures for swimming through river rapids and getting back in the vessel;

(viii) Instructions on what to do in the event of a vessel accident; and

(ix) Sanitation, litter prevention and human refuse disposal.

(11) An outfitting company shall ensure that each vessel in its fleet is equipped with the required safety equipment.

(12) An outfitting company shall maintain each vessel in its fleet according to good marine practices and standards.

(a) The outfitting company shall ensure that each vessel used in the service of carrying passengers for hire meets the maintenance and inspection requirements, if such inspections are required of a vessel.

(b) The outfitting company shall maintain a file of its maintenance and inspections for each vessel, or the components and equipment that configure a river trip vessel that is required to be inspected in its fleet. Maintenance and inspection files shall be retained for the duration in which the vessel is in the service of carrying passengers for hire, plus six additional years.

(13) The owner of a vessel carrying passengers for hire shall carry general liability insurance. The insurance coverage shall be determined by the permitting agency.

(14) Upon request of an agent of the Division, an outfitting company shall provide the Division with a copy of the company's:

(a) Liability insurance policy;

(b) Drug free workplace policy;

(c) Trip manifests;

(d) Trip Authorization permits;

(e) A vessel's maintenance and inspection files; or

(f) Trip leader and guide trip logs.

(15) An outfitting company that is registered to carry passengers for hire in another state and possesses a state-issued certificate of outfitting company registration, or similar license, permit or registration accepted and recognized by the Division, where the state has similar outfitting company registration provisions, shall not be required to obtain and display a Utah License of outfitting company registration as required by this section when:

(a) Operating vessels on Bear Lake, Flaming Gorge, and Lake Powell where a trip embarks and disembarks from the out-of-state portion of the lake and less than 25 percent of a trip is conducted on the Utah portion of the lake.

(b) Operating vessels on rivers flowing into Utah where the river trip originates out-of-state and terminates at the first available launch ramp/take-out.

(i) For vessels operating on the Colorado River, the first available take-out is the Westwater Ranger Station launch ramp/take-out.

(ii) For vessels operating on the Dolores River, the first available take-out is the Dewey Bridge launch ramp/take-out on the Colorado River.

(iii) For vessels operating on the Green River, the first available take-out is the Split Mountain launch ramp/take-out.

(iv) For vessels operating on the San Juan River, the first available take-out is the Montezuma Creek launch ramp/take-out.

**R651-206-3. Utah Carrying Passengers for Hire (CPFH) Trip Leader and Guide Qualifications.**

(1) Unless exempted in R651-206-9, no person shall operate a vessel engaged in carrying passengers for hire on sole state waters unless that person is a trip leader, guide or U.S. Coast Guard Master's License holder authorized by an outfitting company licensed by the Division.

(2) When carrying passengers for hire on the waters of Bear Lake, Flaming Gorge or Lake Powell,

(a) on motorized trips the trip leader authorized by an outfitting company shall have a valid and appropriately endorsed U.S. Coast Guard Master's License.

(b) on non-motorized trips, authorized trip leaders and guides are not required to have a U.S. Coast Guard Master's License.

(3) Every trip leader and guide engaged in carrying passengers for hire shall have in their possession a trip manifest issued by the outfitting company containing the information in R651-206-2(7).

(4) A person qualified as a trip leader on lakes and reservoirs shall meet the following qualifications:

(a) have a valid and appropriately endorsed U.S. Coast Guard Master's License for motorized trips.

(b) Be at least 18 years of age.

(c) Complete a minimum of at least 80 hours of actual vessel operation experience, including 40 hours operating the same or

similar vessel on the same lake or reservoir upon which the person shall carry passengers for hire.

(d) Possess a current advanced first aid certification; and

(e) Possess a current CPR certification.

(f) A person qualified to lead as a trip leader on motorized and/or non-motorized trips shall meet the following criteria:

(i) Motorized trips: completion of National Association of State Boating Law Administrators (NASBLA) approved boating safety course.

(ii) Non-motorized trips: completion of a skills course from the American Canoe Association (ACA) or from the World Paddling Association (WPA).

(5) A person qualified as a trip leader operating on whitewater rivers shall meet the following qualifications:

(a) Be at least 18 years of age.

(b) Complete a minimum of nine river trips on whitewater river sections, including at least one trip shall operate the same or similar vessel on the same river section on which the operator will be carrying passengers for hire.

(c) Possess a current advanced first aid certification.

(d) Possess a current CPR certification.

(6) A person qualified as a trip leader operating on Flat water river areas shall meet the following qualifications:

(a) Be at least 18 years of age.

(b) Complete a minimum of six river trips on any river section, and at least one trip shall operate the same or similar vessel, on the same river section on which the trip leader will be carrying passengers for hire.

(c) Possess a current advanced first aid certification.

(d) Possess a current CPR certification.

(7) A person qualified as a guide operating on Lakes and Reservoirs, shall meet the following qualifications:

(a) Have a valid and appropriately endorsed U.S. Coast Guard Master's License for motorized trips or

(a) Be at least 18 years of age.

(b) Complete a minimum of at least 20 hours of actual vessel operation experience; Including 10 hours operating the same or similar vessel on the same lake or reservoir upon which the person shall carry passengers for hire.

(c) Possess a current basic first aid certification.

(d) Possess a current CPR certification.

(e) A person qualified as a guide operating on motorized and/or non-motorized trips shall meet the following criteria:

(i) Motorized trips: completion of a National Association of Boating Law Administrators (NASBLA) approved boating safety course.

(ii) Non-motorized trips: completion of a skills course from the American Canoe Association (ACA) or from the World Paddling Association (WPA).

(8) A person qualified as a guide operating on whitewater rivers, shall meet the following qualifications:

(a) Be at least 18 years of age.

(b) Complete a minimum of three river trips on "whitewater" rivers or river sections, and at least one trip shall operate the same or similar vessel, on the same river section on which the person will be carrying passengers for hire.

(c) Possess a current basic first aid certification.

(d) Possess a current CPR certification.

(9) A person qualified as a guide operating on flatwater rivers, shall meet the following qualifications:

(a) Be at least 18 years of age.

(b) Complete a minimum of three river trips on flatwater or whitewater river sections, and at least one trip shall operate the same or similar vessel on the same river section on which the person will be carrying passengers for hire.

(c) Possess a current basic first aid certification.

(d) Possess a current CPR certification.

(10) An outfitting company shall maintain a trip log for each person certified by the company as a trip leader or guide. The log shall include the person's:

(a) Full legal name and date of birth;

(b) Proof of a current certification in first-aid and CPR.

(c) A record of on water experience including dates of trips.

(11) An outfitting company shall maintain all trip leader and guide trip logs while they are authorized by the company and for a period of at least six years after his/her termination. These records shall be maintained at the outfitting company's designated place of business. The outfitting company, or any employee having access to such records, shall provide it to any peace officer enforcing the provisions of R651-602.

(13) A trip leader or guide shall not carry passengers for hire when unfamiliar with the vessel and the waterway provided there is a trip leader or guide on board who is familiar. An exception to this rule allows a trip leader to lead passengers on an unfamiliar lake, reservoir, or a flatwater river area, as long as there is a trip leader or guide who is familiar with the vessel, the waterway, and remains within sight of the rest of the group.

(14) There shall be at least one trip leader and one guide under the following conditions:

(a) On a vessel carrying more than 49 passengers for hire;

(b) On a vessel carrying more than 24 passengers for hire, and operating more than one mile from shore;

(c) For each passenger deck on a vessel.

(15) Requirements for leading low capacity vessels in a group.

(a) On lakes and reservoirs, there shall be at least one trip leader or guide for every eight low capacity vessels;

(b) On whitewater river sections, there shall be at least one trip leader or guide for every four low capacity vessels.

(c) On flatwater river areas, there shall be at least one trip leader or guide for every six low capacity vessels or racing shells.

(16) A trip leader or guide shall not operate a vessel for more than 12 hours in a 24 hour period.

**R651-206-4. Additional Personal Floatation Device (PFD) Requirements for Vessels Carrying Passengers for Hire.**

(1) Wearable PFDs are required. Each vessel shall have an adequate number of wearable PFDs on board that meets or exceeds the number of persons on board the vessel. The wearable PFD shall be approved for the activity in which it is going to be used.

(2) In situations where infants, children and youth are in enclosed cabin areas of vessels over 19 feet in length and not wearing PFDs, a minimum of ten percent of the wearable PFDs on board the vessel shall be of an appropriate type and size for infants, children and youth passengers.

(3) Wearable PFDs shall be listed for commercial use on the label.

(4) If PFDs are not being worn by passengers, and the PFDs are being stored on the vessel, the PFDs shall be stored in readily accessible containers that legibly and visually indicate their contents.

(5) Each PFD shall be marked with the name of the outfitting company, in one-inch high letters that contrast with the color of the device.

(6) Vessels that are 26 feet or more in length shall carry a throwable PFD, and it shall be a ring life buoy.

(a) Vessels that are 40 feet or more in length shall carry a minimum of two throwable PFDs.

(b) Ring life buoys shall have a minimum of 60 feet of line attached.

(7) All passengers and crew members shall wear a PFD when a vessel is being operated in hazardous conditions.

(8) The trip leader or guide is responsible for the passengers on his vessel to be in compliance with this section and R651-215.

**R651-206-5. Additional Fire Extinguisher Requirements for Vessels Carrying Passengers for Hire.**

(1) Each motorboat shall carry a minimum of one type B-1 fire extinguisher. Vessels equipped solely with an electric motor, and not carrying flammable fuels on board, are exempt from this provision.

(2) Each motorboat that carries more than six passengers and is equipped with an inboard, inboard/outboard, inboard jet, or direct drive gasoline engine, shall have at least one fixed U.S. Coast Guard approved fire extinguishing system mounted in the engine compartment.

(3) Portable fire extinguishers shall be mounted in a readily accessible location, near the helm, away from the engine compartment. For motorized vessels operating on rivers, portable fire extinguishers may be stowed in a readily accessible location near the operator's position.

(4) For vessels carrying more than 12 passengers for hire or providing on board overnight passenger accommodations, smoke detectors shall be installed in each enclosed passenger area.

**R651-206-6. Additional Equipment Requirements for Vessels Carrying Passengers for Hire.**

(1) Emergency communications equipment.

(a) An outfitting company shall have appropriate communication equipment for contacting emergency services, or have a policy and emergency communications protocols that describe the quickest and most efficient means of contacting emergency services, taking into consideration the remoteness of the area in which the vessel will be operated.

(b) For vessels traveling in a group, this requirement can be met by carrying one communication device in the group.

(2) Carbon monoxide detectors shall be provided in each enclosed passenger area.

(3) Vessels carrying more than six passengers for hire and operating at a distance greater than one mile from shore shall provide the following:

(a) An appropriate number of life rafts or other lifesaving apparatus(s);

(b) A minimum of three visual distress signals that are approved for day and night use.

(5) Navigation equipment.

(a) Each vessel shall carry a map or chart of the water body and a compass or GPS unit that is in good and serviceable condition.

(b) For vessels traveling in a group, this requirement can be met by carrying a map or chart and a compass or GPS unit in the group.

(c) River trip vessels are only required to carry a map of the water body or river or river sections.

(6) Lines, straps and anchorage.

(a) Each vessel shall be equipped with at least one suitable anchor and an appropriate anchorage system, respective of the body of water on which the vessel will be operating. Any line, when attached to an anchor, shall be attached by an eye splice, thimble and shackle. On lakes and/or reservoirs, low capacity vessels and racing shells are exempt from this requirement.

(b) Vessels operating on rivers are exempt from carrying an anchor, but shall have sufficient lines to secure the vessel to shore.

(c) Lines and straps utilized for anchorage, mooring and maintaining vessel structural integrity shall be in good and serviceable condition.

(7) At least one portable, battery-operated light per trip leader or guide shall be on board, in good and serviceable condition and readily accessible.

(8) First Aid Kit.

(a) Each vessel shall have on board, an adequate first aid kit, stocked with supplies respective to the number of passengers carried on board, and the nature of boating activity in which the vessel will be engaged.

(b) For vessels traveling in a group, this requirement can be met by carrying one first aid kit in the group.

(9) Identification of outfitting company.

(a) An outfitting company shall prominently display its name on the hull or superstructure of the vessel.

(b) The display of an outfitting company's name shall not interfere with any required numbering, registration or documentation display.

(c) If another governmental agency prohibits the display of an outfitting company's name on the exterior of a vessel, the name shall be displayed in a visible manner that does not violate the agency's requirements.

(10) Marine toilets and sanitary facilities.

(a) Each vessel carrying more than six passengers for hire shall be equipped with a minimum of one marine toilet and washbasin sanitary facilities, except for vessels where suitable privacy enclosures are not practical.

(b) The toilet and washbasin shall be connected to a permanently installed holding tank that allows for dockside pumpout at approved sanitary disposal facilities. Vessels that do not have access to dockside pumpout facilities may carry a portable marine toilet and washbasin to meet this requirement.

(c) For vessels traveling in a group, this requirement can be met by carrying one marine sanitation device in the group.

(d) Marine toilets and washbasins shall be maintained in a good and serviceable, sanitary condition.

(e) A vessel that carries more than 49 passengers shall have at least two marine toilets and washbasins, one each for men and women.

(f) A vessel operating on a trip or excursion with a duration of one hour or less, or operating on a river, is not required to be equipped with a marine toilet or washbasin.

**R651-206-7. Towing Vessels for Hire Requirements.**

(1) Any person or entity that provides the service of towing vessels for hire on waters of this state, shall make application with the Division as an outfitting company.

(2) A vessel engaged in the activity of towing vessels for hire shall comply with the dockside and dry dock vessel maintenance and inspection requirements, plus the additional equipment requirements described in this section.

(3) Any conditions of a contract, special use permit, or other agreement with a person or entity that is towing vessels for hire, shall not supersede the boating safety and assistance activities of a state park ranger, other law enforcement officer, emergency and search and rescue personnel, a member of the U.S. Coast Guard Auxiliary, or any other person providing "Good Samaritan" service to vessels needing or requesting assistance.

(4) Any vessel receiving assistance from a state park ranger, other law enforcement officer, emergency and search and rescue personnel, a member of the U.S. Coast Guard Auxiliary, or any person providing "Good Samaritan" service need not be turned over to, or directed to a person or entity registered with the Division and authorized to tow vessels for hire, unless the operator or owner of the vessel receiving assistance specifically requests such action.

(5) A trip leader or guide towing vessels for hire shall immediately notify a law enforcement officer of any vessel they assist, if the person reasonably believes the vessel being assisted was involved in a reportable boating accident or the operator or occupants pose a threat to themselves or others.

(6) A trip leader or guide towing vessels for hire shall not perform an emergency rescue unless he reasonably believes immediate emergency assistance is required to save the lives of persons, prevent additional injuries to persons onboard a vessel, or reduce damage to a vessel, and a state park ranger, other law enforcement officer, emergency and search and rescue personnel, or a member of the U.S. Coast Guard Auxiliary is not immediately available, or a state park ranger, other law enforcement officer, or emergency and search and rescue personnel make such a request for emergency assistance.

(7) The owner of a vessel engaged in towing vessels for hire shall carry general liability insurance. The insurance coverage shall be determined by the permitting agency.

(8) A vessel engaged in towing vessels for hire, shall be a minimum of 21 feet in length and have a minimum total of a 150 hp gasoline engine(s) or a 90 hp diesel engine(s). The towing vessel should be as large as or larger than the average vessel it will be towing.

(9) An outfitting company shall provide appropriate types of training for each of its trip leaders or guides. Each trip leader or guide shall conduct a minimum of five training evolutions of towing a vessel each year, with at least one evolution being a side tow.

(10) The trip leader or guide and any passengers on board a vessel engaged in towing vessels for hire, shall wear a PFD at all times. The trip leader or guide is responsible for all occupants of a vessel being towed wear a properly fitted PFD for the duration of the tow.

(11) An outfitting company engaged in towing vessels for hire shall keep a log of each tow or vessel assist. The towing vessels for hire log of activities shall include:

(a) Assisted vessel's assigned bow number.

(b) Name of assisted vessel's owner or operator, including address and phone number.

(c) Number of persons on board the assisted vessel.

(d) Nature of assistance.

(e) Date and time assistance provided.

(f) Location of the assisted vessel.

(g) The trip leader or guide of the vessel towing for hire shall make appropriate radio or other communications of the above actions with a person on land preferable at the outfitting company's place of business.

(h) Upon request of an agent of the Division, an outfitting company shall provide the Division with a copy of a towing vessels for hire log.

(12) Additional equipment requirements for vessels towing for hire:

(a) PFDs.

(i) Shall carry a sufficient number of Wearable PFDs, approved for the activity engaged in, for all persons on board a towed vessel.

(ii) Shall carry a minimum of two throwable PFDs, one of which shall be a ring life buoy.

(b) Shall be equipped with a depth finder.

(c) Shall be equipped with a tow Line.

(i) Shall be a minimum of 100 feet of 5/8" line with a tow bridle.

(ii) Towing vessel shall be equipped with a towing post or reinforced cleats.

(d) Vessel shall carry a dewatering pump with a minimum capacity of 25 gallons per minute, to be used to dewater other vessels.

(e) If a vessel is towing for hire between sunset and sunrise, the vessel shall carry the following pieces of equipment.

(i) A white spot light with a minimum brightness of 500,000 candle power.

(ii) It is recommended that a vessel be equipped with electronic RADAR equipment.

(f) Vessel shall carry a loudhailer, speaker, or other means of communicating with another vessel from a distance.

(g) Vessel shall carry the following equipment, in addition to the equipment required for vessels carrying passengers for hire.

(i) A knife capable of cutting the vessel's towline;

(ii) A boat hook;

(iii) A minimum of four six-inch fenders;

(iv) Binoculars;

(v) A jump starting system;

(vi) A tool kit and spare items for repairs on assisting vessel; and

(vii) Damage control items for quick repairs to another vessel.

**R651-206-8. Maintenance and Inspections Program of Vessels Carrying Passengers for Hire.**

(1) Each outfitting company carrying passengers for hire shall have a current copy of the Maintenance and Inspection Program for Carrying Passengers for Hire. The outfitting company shall comply with all the necessary sections of the Program.

(2) The Division shall request the formation of a safety committee by the Boating Advisory Council as defined in R651-202-1 for the purpose of overseeing, maintaining, and recommending any substantive changes to the program.

(i) The members of this safety committee shall be selected and directly report to the Boating Advisory Council.

(ii) This committee shall consist of five members:

(a) two members representing the industry for non-float trip vessels in Utah;

(b) two members representing the industry for float trip vessels in Utah;

(c) and one member representing a state or federal agency responsible for managing or regulating the activity of carrying passengers for hire in Utah.

(iii) This committee shall convene when the Boating Advisory Council hears a proposal that requests substantive changes to the program or the Division's Boating Program Coordinator requests an evaluation of the program.

(iv) The Division's Boating Program Coordinator shall have authority to assign or delegate responsibilities among the safety committee members.

#### **R651-206-9. Exemptions to R651-206.**

(1) Owners and employees of a migratory bird production area created under Title 23, Chapter 28, Migratory Bird Production Area and operating within that Migratory Bird Production Area shall not be considered an outfitting company.

(2) The Director or his designee may exempt a charitable organization or volunteer, meaning a person donating service without pay or other compensation, from an outfitting company's licensing requirements, upon submission of a written application and request for hearing, pursuant to the procedures set forth in Utah Code Ann. 63G-4-201(1), Utah Admin. Code R651-101 et seq. and as further set forth in these rules. The determination shall be made after a hearing, and upon showing by a preponderance of the evidence.

#### **R651-206-10. Enforcement.**

(1) Outfitter Violations

(a) Suspension, Revocation or Denied License

(i) Pursuant to the procedures set forth in Utah Code Ann. 63G-4-201(1), Utah Admin. Code R651-101 et seq. and these rules an outfitting company's annual license with the Division may be suspended, denied, or revoked for a length of time determined by the Division director or designee, if one of the following occurs:

(ii) The outfitting company's, or agent's negligence caused personal injury or death as determined by due process of law;

(iii) The outfitting company or agent is convicted of three violations of Title 73, Chapter 18, or rules promulgated thereunder during a calendar year period;

(iv) False or fictitious statements were certified or false qualifications were used to qualify a person authorized by the outfitting company as a trip leader or guide;

(v) The Division determines that the outfitting company intentionally provided false or fictitious statements or qualifications when making application with the Division;

(vi) The Division determines that the outfitting company intentionally provided false statements or qualifications when certifying the condition of a vessel or equipment;

(vii) The outfitting company has utilized a private trip permit for carrying passengers for hire and has been prosecuted by the issuing agency and found guilty of the violation;

(viii) The outfitting company used a non-authorized trip leader or guide while engaging in carrying passengers for hire; or

(ix) The outfitting company is convicted of violating a resource protection regulation or public safety regulation in effect by the respective land managing and/or access permitting agency.

(2) Guide or Trip Leader violations.

(a) Pursuant to the procedures set forth in Utah Code Ann. 63G-4-201(1), Utah Admin. Code R651-101 et seq. and these rules, an outfitting company's annual license with the Division may be suspended, denied, or revoked for a length of time. The privilege to guide or carry passengers for hire may be suspended, revoked, or denied by the Division or the outfitting company if a trip leader or guide is convicted of the following offence(s):

(i) Three violations of the Utah Boating Act, Title 73, Chapter 18, or rules promulgated thereunder driving under the influence or reckless driving while carrying passenger for hire, as set forth in the Traffic Code, Utah Code Ann. 41-6a-501 and 53-3-231;

(ii) The Division determines that the trip leader or guide intentionally provided false or fictitious statements or qualifications to obtain authorization to carry passengers for hire by an outfitting company.

**KEY: boating[-parks]**

**Date of Enactment or Last Substantive Amendment: [~~October 22, 2015~~2019]**

**Notice of Continuation: January 7, 2016**

**Authorizing, and Implemented or Interpreted Law: 73-18-[4(~~4~~)]7(18)(d)**

## Natural Resources, Wildlife Resources R657-22 Commercial Hunting Areas

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43491

FILED: 01/28/2019

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being amended pursuant to Regional Advisory Council meetings and Wildlife Board meetings conducted for taking public input and reviewing the commercial hunting areas rule.

**SUMMARY OF THE RULE OR CHANGE:** The revisions to this rule include: 1) allowing the use of digital maps; 2) increasing acreage cap from 3 square miles to 9 square miles; 3) reducing the required signage interval from every 300 feet to every 300 yards; 4) removing the contiguous tracts requirement and allowing for tract minimums of 180 acres; 5) removing season extension provision; 6) removing application dates and allowing for rolling applications; 7) adjusting shooting hours to be consistent with other resident game bird restrictions; 8) adding Avian Influenza and Mycoplasma to the list of disease testing; 9) adjusting

reporting requirements, simplifying the process; and 10) making technical wording corrections.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-17-6 and Section 63-46b-5

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** These amendments only clarify existing requirements and streamline processes. Therefore, the Division of Wildlife Resources (Division) has determined that these amendments will not create any cost or savings impact to the state budget or the Division's budget, since changes will not increase workload and can be carried out with the existing budget.

◆ **LOCAL GOVERNMENTS:** These amendments only clarify existing requirements and streamline processes. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by this rule. Nor are local governments indirectly impacted because this rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** These amendments only clarify existing requirements and streamline processes. Therefore, this rule does not impose any additional financial requirements on small businesses, nor generate a cost or savings impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These amendments only clarify existing requirements and streamline processes. Therefore, this rule does not impose any additional financial requirements on persons, nor generate a cost or savings impact to other persons.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** These amendment only clarify existing requirements and streamline processes. The Division has determined that there are no additional compliance costs associated with these amendments.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES  
 WILDLIFE RESOURCES  
 1594 W NORTH TEMPLE  
 SALT LAKE CITY, UT 84116-3154  
 or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/18/2019

THIS RULE MAY BECOME EFFECTIVE ON: 03/25/2019

AUTHORIZED BY: Mike Fowlks, Director

**Appendix 1: Regulatory Impact Summary Table\***

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**

These rule changes are not expected to have any fiscal impact on non-small businesses revenues or expenditures, because they currently do not benefit from the commercial hunting areas program or the regulations set forth in these rule amendments.

The head of department of Natural Resources, Executive Director Michael Styler, has reviewed and approved this fiscal analysis.

**R657. Natural Resources, Wildlife Resources.****R657-22. Commercial Hunting Areas.****R657-22-1. Purpose and Authority.**

Under authority of Section 23-17-6, this rule provides the procedures and requirements for establishing, maintaining, and operating a CHA.

**R657-22-2. Definitions.**

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "CHA" means Commercial Hunting Area.

(b) "Commercial hunting area" means a parcel of land where pen-raised or propagated game birds are released for the purpose of allowing hunters to take them for a fee.

(c) "Game bird" means, for the purpose of this rule only, all species or sub-species of partridge, pheasant, and quail authorized for release on a CHA.

(d) "Operator" means a person, group, or business entity, including their agents, employees and contractors, that manages, owns, administers, or oversees the activities and operations of a CHA. Operator further includes any person, group or business entity that employs or contracts another to serve or act as an operator.

**R657-22-3. Application for a Certificate of Registration.**

(1)(a) A certificate of registration is required before any person may operate a CHA.

(b) An application for a CHA certificate of registration must be completed and returned to the regional office where the proposed CHA is located~~[by May 1].~~

(2)(a) Any application that does not clearly and legibly verify ownership or lease by the applicant as required in Subsection (3), of all property for which the application applies shall be returned to the applicant.

(b) Discovery of property after issuance of the CHA certificate of registration, which is not approved by its owner or lessee to be included in the CHA, shall immediately void the CHA certificate of registration.

(3)(a) The application must be accompanied by:

(i) ~~[County Recorder Plat maps, or equivalent maps, dated by receipt of purchase within 30 days of submitting the CHA application.]~~ Detailed maps depicting boundaries, game bird holding facilities and ownership of all [property]parcels within the CHA; and

~~[(ii) U.S. Geological Survey topographical maps, no smaller scale than 7 1/2 minutes, with the proposed boundaries clearly marked;]~~ (ii) Large scale maps depicting the location of the CHA relative to the nearest city or town;

(iii) evidence of ownership of the property, such as a copy of a title, deed, or tax notice that provides evidence the applicant is the owner of the property described; or

(iv) a lease agreement for the period of the CHA certificate of registration, listing the name, address and telephone number of the lessor, that provides evidence the applicant is the lessee of the hunting or shooting rights of the property described;

(v) the address of any propagation or game bird holding facility not located on the CHA property; and

(vi) the annual CHA certificate of registration fee for the first year of operation.

(4) The division may return any application that is incomplete, completed incorrectly, or that is not accompanied by the information required in Subsection (3).

(5)(a) Review and processing of the application may require up to ~~[45]~~60 days.

(b) More time may be required to process an application if the applicant requests authorization from the Wildlife Board for a variance to this rule.

(6) Applications are not accepted for a CHA that is within 1/4 mile of any existing state wildlife or waterfowl management area without requesting a variance from the Wildlife Board.

(7) The division may deny any application or impose provisions on the CHA certificate of registration that are more restrictive than this rule in the interest of wildlife or wildlife habitat.

(8) Commercial Hunting Area certificates of registration are effective from the date issued through June 30 of the third consecutive year.

(9) The annual CHA certificate of registration fee for the second and third years of operation must be submitted when invoiced.

(10) Rights granted by a CHA certificate of registration are not transferable or assignable.

**R657-22-4. Renewal of Certificate of Registration.**

(1) A certificate of registration may be renewed by completing a renewal application and paying a CHA certificate of registration renewal fee.

(2)(a) Renewal applications must be completed and submitted to the division regional office in which the CHA is located by May 1 immediately prior to the June 30 expiration date identified on the current CHA certificate of registration.

(b) Any application that does not clearly and legibly verify ownership or lease by the applicant as required in Subsection (3), of all property for which the application applies shall be returned to the applicant.

(c) Discovery of property during the CHA certificate of registration period, which is not approved by its owner or lessee to be included in the CHA, shall immediately void the CHA certificate of registration.

(3)(a) The renewal application must be accompanied by:

(i) a lease agreement extending through the period of the CHA certificate of registration being applied for listing the name, address and telephone number of the lessor, that provides evidence the applicant is the lessee of the hunting or shooting rights of the property described;

(ii) an annual report as provided in Subsection R657-22-6(2); and

~~[(iii) any change in property ownership differing from ownership identified in the CHA certificate of registration immediately preceding the current application, including updated maps as provided in Subsection R657-22-3(3)(a) if the CHA boundaries change.]~~ (iii) Detailed maps depicting boundaries, game bird holding facilities and ownership of all parcels within the CHA; and

(iv) Large scale maps depicting the location of the CHA relative to the nearest city or town;

**R657-22-5. Conditions for Approval Initial and Renewal Applications.**

(1) Initial and renewal applications may be denied by the division if the applicant or operator, or any of its agents or employees:

(a) violated any provision of this rule, the Wildlife Resources Code, a CHA certificate of registration, or the CHA application;

(b) obtained or attempted to obtain a CHA certificate of registration by fraud, deceit, falsification, or misrepresentation;

(c) is employed, contracted through writing or verbal agreement, assigned, or requested to apply and act as the operator by a person, group, or business entity that will directly or indirectly benefit from the CHA, but would otherwise be ineligible under this rule or by virtue of suspension under Section 23-19-9 to operate a CHA if they applied directly as the operator; or

(d) engaged in conduct that results in the conviction of, a plea of no contest to, a plea held in abeyance, or a diversion agreement to a crime of moral turpitude, or any other crime that when considered with the functions and responsibilities of a CHA operator bears a reasonable relationship to the operator's or applicant's ability to safely and responsibly operate a CHA.

(2) Initial and renewal applications may be denied by the division if CHA operations may present unacceptable risk to wildlife populations.

(3) If an application is denied, the division shall state the reasons in writing within 30 days of denial.

**R657-22-6. Records and Reports[~~—Annual Report~~].**

(1) The operator of a CHA shall maintain complete and accurate records of:

(a) the number, species, and source of any game birds purchased or propagated;

(b) health certificates for all game birds purchased from outside the state of Utah;

(c) the number, species and ~~[date]~~season the game birds are released; and

(d) the number, species and ~~[date]~~season of game birds taken within the CHA boundary, including wild game birds~~[-and]~~

(e) the number, species and date of unusual mortality events due to sickness, disease, diet or unknown cause; and

(f) copies of the bill of sale issued to hunters and any other person who purchases game birds.

(2) Each operator must submit an annual report on a form provided by the division within 30 days of the close of the season or at the time of renewal, including:

(a) the number of game birds by species that were released and the total number of game birds taken by hunters or sold;

(b) the date, source, and number of the game birds purchased; and

(c) the number of game birds by species held in possession ~~[on April 15]~~for carryover breeding stock at the close of the season.

(3) All records must be maintained on the hunting premises or the principal place of business for three years and must be available for inspection by the division.

(4) Falsifying or fabricating any record or report is prohibited and may result in forfeiture of CHA opportunities.

(5) The operator of a CHA shall notify the Division of any large mortality events due to sickness, disease, diet or unknown cause within 72 hours of the event.

**R657-22-7. Boundary Marking.**

(1) The CHA area must be posted:

(a) at least every 300 ~~[feet]~~yards along the outer boundary of all hunted areas; and

(b) on all corners, streams, rivers, drainage divides, roads, gates, trails, rights-of-way, dikes, canals, and ditches crossing the boundary lines.

(2) Each sign used to post the property must be at least 8-1/2 by 11 inches and must clearly state:

(a) the name of the CHA as designated on the CHA certificate of registration;

(b) the words "No Trespassing"; and

(c) wording indicating the sign is located on the CHA boundary.

(3)(a) If the CHA operator fails to renew a CHA certificate of registration or a renewal application is denied, all signs shall be immediately removed.

(b) The division may remove and dispose of any signs that are not removed within 30 days after the termination of the CHA certificate of registration.

(4) Commercial hunting area activities may only be conducted on property properly posted and specifically authorized in the CHA certificate of registration.

(5) Commercial hunting area operators may not post or otherwise restrict public access on public roads, right-of-ways, or easements within the CHA.

**R657-22-8. Acreage Requirements.**

(1)(a) The minimum acreage accepted for a CHA is 160 acres in a single~~[-connected]~~contiguous tract.

(b) Disjunct areas may be included under a single CHA COR if each area is 160 acres or larger and all areas can be contained within an circular area 10 miles in diameter.

~~(b) The maximum acreage accepted for a CHA is [1,920]5,760 acres[-in a single, connected tract].~~

(2) A CHA may not be established closer than 1/4 mile of a wildlife management area, ~~[or-]~~waterfowl management area, or migratory bird refuge unless otherwise allowed by a variance of the Wildlife Board.

~~(3) The Wildlife Board may allow a variance to the acreage requirements provided in Subsection (1) if no more than 1,920 acres are to be used for hunting at any one time.]~~

**R657-22-9. Bill of Sale Required.**

(1) The operator of a CHA shall issue a bill of sale to each person who has taken a game bird from the CHA.

(2) The bill of sale shall be issued prior to the transportation of any bird from the CHA.

(3) The bill of sale must include:

(a) the person's name;

(b) the date the game birds were taken or purchased;

(c) the species, number of game birds, and sex of the game birds; and

(d) the name of the CHA where the game birds were taken or purchased.

**R657-22-10. Importation.**

(1) A CHA certificate of registration allows the importation of live game birds provided the operator first obtains a valid certificate of veterinary inspection covering each imported game bird, and further receives an import permit from the Utah Department of Agriculture and Food consistent with the requirements of Rule R58-1.

(2) The health certificate must contain an entry permit number from the Department of Agriculture as provided in Section R58-1-4.

**R657-22-11. Disease Protocol.**

(1) The division may:

(a) investigate any reported disease and take any necessary action to control a contagious or infectious disease affecting domestic animals, wildlife, or public health; or

(b) order a veterinarian or certified pathologist's report of a suspected disease at the operator's expense, and may order quarantine, immunization, testing, or other sanitary measures.

(2)(a) The division may order the destruction and disposal of any game bird found to have an untreatable disease which poses a potential threat or health risk to domestic poultry, humans, or wildlife, as determined by the division, the Department of Agriculture, or the Department of Health.

(b) Actions taken pursuant to Subsection (a) shall be:

(i) at the operator's expense; and

(ii) accomplished by following procedures acceptable to the division that ensure the disease is not transmitted to wildlife, domestic animals, or humans.

(3)(a) Commercial hunting area operators must take reasonable precautions to prevent and control the spread of infectious diseases among pen-raised game birds under their control including the requirements as provided in Subsection (b) and Section R657-22-10.

(b) Commercial hunting area operators must obtain a statement from a veterinarian before release that the birds have ~~been tested for~~ tested negative for Mycoplasma gallisepticum, Mycoplasma synoviae, Avian Influenza virus and Salmonella pullorum or come from a source flock that participates in the National Poultry Improvement Plan (NPIP).

(c) Commercial hunting area operators who have a current CHA certificate of registration must comply with the requirement in Subsection (b) within six months from the effective date of this rule.

**R657-22-12. Authorized Species.**

The only game birds that may be released or propagated under the authority of a CHA certificate of registration are species or subspecies of partridge, pheasant, or quail ~~including any subspecies.~~ specifically authorized on a certificate of registration.

**R657-22-13. Inspection of Game Birds, Premises, and Records.**

(1)(a) Certificates of registration are issued upon the express condition that the operator agrees to permit the division and public health and safety officials to enter and inspect the premises, facilities, and all required records and health certificates to ensure the CHA is in compliance with this rule and other applicable laws.

(b) Commercial hunting area operators must allow the division and public health and safety officials reasonable access to conduct the inspections authorized in Subsection (1)(a).

(2) Inspections shall be made during reasonable hours.

**R657-22-14. Restrictions on Release and Harvest.**

(1)(a) Except as provided in Subsection R657-22-16(2) (e), game birds raised or held in possession under this rule may be released only on the CHA property.

(b) Each game bird released must be healthy, capable of flight, ~~and~~ free of disease[-] and suitable for human consumption.

(c) A person may not retard or restrict a game bird's ability to fly or run ~~[by clipping, brailing, blinding, pinioning, harnessing, or drugging.]~~ during hunting activities in any manner other than dizzying or tucking heads under wings before release.

(2) ~~[At least]~~ A minimum of 100 game birds of each authorized species ~~[- or as approved by the Wildlife Board, or otherwise stated on the CHA certificate of registration],~~ shall be released on the CHA during the current operating year.

(3)(a) Operators may not allow the harvest of more than 85% of each species released, except as provided in Subsection (b).

(b) There is no limit to the percentage of game birds that may be harvested that are not, in the opinion of the division, established as a wild population in the vicinity of the CHA. Any variance to Subsection (a) shall be indicated on the CHA certificate of registration.

(4) Only those game birds obtained from the following sources may be released or held in possession on a CHA:

(a) an aviculturist, certified as provided in Rule R657-4;

(b) a CHA, certified under this rule; or

(c) a source located outside of Utah provided the game birds are imported as provided in Rule R58-1.

(5) Protected wildlife not authorized for release on the CHA may be hunted only during their respective seasons as provided in the rules and proclamations of the Wildlife Board.

**R657-22-15. Recapture.**

(1)(a) Trapping game birds alive or retrapping game birds that have been released is permitted only:

(i) within the CHA area boundaries;

(ii) from September 1 through April 2; and

(iii) for wild species listed on the CHA certificate of registration as not established in the area.

(b) Any game bird that escapes from the CHA becomes the property of the state of Utah and may not be recaptured.

(2) Any game bird trapped alive may not be recounted or added to the total number of birds released when computing the number which may be taken as provided in Subsection R657-22-14(3).

**R657-22-16. Propagation.**

(1) The CHA certificate of registration allows the propagation of those species of game birds held in possession as indicated on the CHA certificate of registration.

(2) Any game birds held in possession under this rule must be released on the CHA or may be sold:

(a) to a private wildlife farm, certified as provided in Rule R657-4;

- (b) a CHA, certified under this rule;
- (c) to a person located outside of Utah;
- (d) to a person for consumption; or
- (e) for use in training dogs or the sport of falconry as provided in Rule R657-46.

~~[(3)(a) If a CHA game bird is held in possession at any location other than that listed on the application or transferred alive to any other location, prior authorization must be obtained from the division or must be authorized on the CHA certificate of registration.]~~

[(b)3] Authorization for the possession of live game birds for any primary purpose other than being released to allow hunters to take them for a fee may be obtained under the provisions of Rule R657-4 or Rule R657-46.

**R657-22-17. Season Dates.**

(1)[(a)] Hunting on CHA areas is permitted from September 1 through March 31.

~~[(b) The Wildlife Board may authorize a variance to the dates provided in Subsection (a) if:~~

~~[(i) wild game birds do not nest within the location of the CHA or surrounding areas; and~~

~~[(ii) there are no detrimental effects to other species of wildlife.]~~

(2) If September 1 falls on a Sunday, the season will open on August 31.

~~[(3) The director may extend the season up to fifteen days, provided wild nesting game birds are not adversely affected.]~~

**R657-22-18. Hunting Hours and Hunter Requirements.**

(1) Game birds may be taken on a CHA only one-half hour before sunrise through one-half hour after sunset~~[-except on a CHA located adjacent to a state wildlife or waterfowl management area, game birds may be taken one-half hour before sunrise through sunset].~~

(2) Any person hunting within the state on any CHA must meet ~~[hunter education]~~requirements as provided in Section 23-17-6.

**R657-22-19. Suspension.**

The division may suspend a CHA certificate of registration for a CHA as authorized under Section 23-19-9 and Rule R657-26.

**KEY: game birds, wildlife, wildlife law**

**Date of Enactment or Last Substantive Amendment: [May 8, 2007]2019**

**Notice of Continuation: May 3, 2017**

**Authorizing, and Implemented or Interpreted Law: 63G-4-203; 23-17-6**

Natural Resources, Wildlife Resources  
**R657-33**  
 Taking Bear

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 43492

FILED: 01/28/2019

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resources' (Division) rule pursuant to taking bear.

**SUMMARY OF THE RULE OR CHANGE:** The proposed revisions to this rule: 1) allow for the issuance of bear control permits to landowners, lessees or their designee in situations where chronic crop depredation is occurring; 2) allow for the use of crossbows and airguns for the taking of bear; 3) clarify bait placement language; 4) modify requirement to allow additional employees to check and tag a bear; 5) require exact location of kill when a bear is checked in; and 6) make technical corrections as needed.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 23-14-18 and Section 23-14-19

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** These amendments clarify language and allow for additional weapons already in use for other species. The Division has determined that these amendments do not create a cost or savings impact to the state budget, since the changes will not increase workload and can be carried out with existing budget.

◆ **LOCAL GOVERNMENTS:** Since these amendments only add weapon clarification for airguns and makes language clarifications, this filing does not create any direct cost or savings impact to any local governments. Nor are local governments indirectly impacted because this rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** Since these amendments allow for increased opportunity with the use of airguns, do not remove opportunity from those wishing to hunt black bears in Utah, and clarify existing language, the Division feels this filing will not generate a cost or savings impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Since these amendments allow for increased opportunity with the use of airguns, do not remove opportunity from those wishing to hunt black bears in Utah, and clarify existing language, the Division feels this filing will not generate a cost or savings impact to other persons.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The Division has determined that these amendments do not create additional costs for sportsmen wishing to harvest bear in Utah.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that these proposed rule amendments will not result in a fiscal impact to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES  
WILDLIFE RESOURCES  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/18/2019

THIS RULE MAY BECOME EFFECTIVE ON: 03/25/2019

AUTHORIZED BY: Mike Fowlks, Director

Net Fiscal Benefits:	\$0	\$0	\$0

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**

These rule changes are not expected to have any fiscal impacts on non-small businesses' revenues or expenditures, because they currently do not benefit from the taking of black bear hunting program or the regulations set forth in these rule changes.

The head of Department of Natural Resources, Executive Director Michael Styler, has reviewed and approved this fiscal analysis.

**R657. Natural Resources, Wildlife Resources.**

**R657-33. Taking Bear.**

**R657-33-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, of the Utah Code, the Wildlife Board has established this rule for taking and pursuing bear.

(2) Specific dates, areas, number of permits, limits and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking and pursuing bear.

**R657-33-3. Permits for Taking Bear.**

(1)(a) To harvest a bear, a person must first obtain a valid limited entry bear permit~~[-or]~~, a harvest objective bear permit, or a bear control permit for a specified hunt unit as provided in the guidebook of the Wildlife Board for taking bear.

(b) Any person who obtains a limited entry bear permit or a harvest objective bear permit which allows the use of dogs may pursue bear without a pursuit permit while hunting during the season and on the unit for which the take permit is valid, provided the person is the dog handler.

(2)(i) A person may not apply for or obtain more than one bear permit per year, except:

(ii) if the person is unsuccessful in the drawing administered by the division under R657-62, the person may purchase a permit available outside of the drawing; and

(iii) a person may acquire more than one bear control permit as described in R657-33-23(4).

(3) Any bear permit purchased after the season opens is not valid until three days after the date of purchase.

(4) Residents and nonresidents may apply for and receive limited entry bear permits, and may purchase harvest objective bear permits and bear pursuit permits.

(5)(a) A person must complete a mandatory orientation course prior to applying for or obtaining a limited entry, harvest objective, or bear pursuit permit.

(b) The orientation course is not required to receive a bear control permit under R657-33-23(4).

(6) To obtain a limited entry, harvest objective, or bear pursuit permit, a person must possess a valid Utah hunting or combination license.

**Appendix 1: Regulatory Impact Summary Table\***

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**R657-33-6. Firearms~~[-and]~~, Archery Equipment, Crossbows, and Airguns.**

(1) For limited entry and harvest objective hunts identified as an "any legal weapon hunt" in the Wildlife Board's guidebook for taking bear, a person may use the following to take bear:

(a) any firearm not capable of being fired fully automatic, except a firearm using a rimfire cartridge;

(b) archery equipment meeting the following requirements:

(i) the minimum bow pull is 30 pounds at the draw or the peak, whichever comes first;

(ii) arrowheads used have two or more sharp cutting edges that cannot pass through a 7/8 inch ring;

(iii) expanding arrowheads cannot pass through a 7/8 inch ring when expanded; and

(iv) arrows must be a minimum of 20 inches in length from the tip of the arrowhead to the tip of the nock;~~[-and]~~

(c) a crossbow meeting the following requirements:

(i) a minimum draw weight of 125 pounds;

(ii) a positive mechanical safety mechanism; and

(iii) an arrow or bolt that is at least 16 inches long with:

(A) a fixed broadhead that is at least 7/8 inch wide at the widest point; or

(B) an expandable, mechanical broadhead that is at least 7/8 inch wide at the widest point when the broadhead is in the open position~~[-]; and~~

~~(3)~~(d) an airgun used to hunt bear must:

(i) be pneumatically powered;

(ii) be pressurized solely through a separate charging device; and

(iii) may only fire a bolt or arrow;

(A) no less than 16 inches long;

(B) with a fixed or expandable broadhead at least 7/8 inch wide at its widest position; and

(C) traveling no less than 400 feet per second at the muzzle.

(2) Arrows and bolts carried in or on a vehicle where a person is riding must be in an arrow quiver or a closed case.

(~~4~~)<sup>3</sup>(a) A person who has obtained a limited entry bear archery permit may not use, possess, or be in control of a firearm, crossbow, ~~or~~-draw-lock, or airgun while in the field during an archery bear hunt.

(b) "Field" for purposes of this subsection, means a location where the permitted species of wildlife is likely to be found, but does not include a hunter's established campsite or the interior of a fully enclosed automobile or truck.

(c) The provisions of Subsection (a) do not apply to:

(i) a person lawfully hunting upland game or waterfowl;

(ii) a person licensed to hunt big game species during hunts that coincide with the archery bear hunt;

(iii) livestock owners protecting their livestock; or

(iv) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take protected wildlife.

**R657-33-8. State Parks.**

(1) Hunting of any wildlife is prohibited within the boundaries of all state park areas except those designated by the Division of Parks and Recreation in Section R651-614.

(2) Hunting with a rifle, handgun or muzzleloader in park areas designated open is prohibited within one mile of all area park facilities, including buildings, camp or picnic sites, overlooks, golf courses, boat ramps and developed beaches.

(3) Hunting with shotguns, crossbows, ~~and~~-archery tackle, and airguns is prohibited within one quarter mile of the above stated areas.

**R657-33-12. Use of Dogs.**

(1) Dogs may be used to take or pursue bear only during authorized hunts as provided in the guidebook of the Wildlife Board for taking bear.

(2) A dog handler may pursue bear in a unit and during a season permitting the use of dogs, provided he or she possesses:

(a) a valid limited entry or harvest objective bear permit issued to the dog handler;

(b) a valid bear pursuit permit; or

(c) the documentation and certifications required in R657-33-26(2) to pursue bear for compensation.

(3) When dogs are used to pursue a bear, the licensed hunter intending to take the bear must be present when the dogs are released and must continuously participate in the hunt thereafter until the hunt is completed.

(4) When dogs are used to take a bear ~~and~~during a restricted pursuit season or when there is not an open pursuit season, the dog handler must have:

(a) a limited entry or harvest objective bear permit authorizing the use of dogs issued to the dog handler for the unit being hunted;

(b)(i) a valid bear pursuit permit; and

(ii) be accompanied, as provided in Subsection (3), by a hunter possessing a limited entry or harvest objective bear permit authorizing the use of dogs for the unit being hunted; or

(c)(i) the documentation and certifications required in R657-33-26(2) to pursue bear for compensation; and

(ii) be accompanied, as provided in Subsection (3), by a paying client possessing a limited entry or harvest objective bear permit authorizing the use of dogs for the unit being hunted.

(5) A dog handler may pursue bear under:

(a) a bear pursuit permit only during the season and in the areas designated by the Wildlife Board in guidebook open to pursuit;

(b) a limited entry or harvest objective bear permit authorizing the use of dogs only during the season and in the area designated by the Wildlife Board in guidebook for that permit; or

(c) the pursuit for compensation provisions in this rule only during the seasons and in the areas designated by the Wildlife Board in guidebook open to pursuit.

(6) When dogs are used to pursue or take a bear, no more than eight dogs may be used in the field at one time while pursuing during the summer pursuit or restricted pursuit seasons as established by the Wildlife Board in guidebook.

~~(7) A dog handler pursuing bear may retrieve dogs that separate from the pack, provided the dog handler:~~

~~(A) takes reasonable steps to keep the pack together before and during pursuit;~~

~~(B) separates from the permit holder exclusively to retrieve stray dogs and does not attempt to actively pursue bear during the retrieval process; and~~

~~(C) immediately releases any bear incidentally treed or held at bay by the stray dogs.~~

#### **R657-33-14. Use of Bait.**

(1)(a) A person who has obtained a limited entry bear archery permit may use archery tackle only, even when hunting bear away from the bait station.

(b) A person who has obtained a limited entry bear permit for a season and hunt unit that allows baiting may use firearms and archery equipment as provided in R657-33-6.

(c) Bear lured to a bait station may only be taken using firearms and archery equipment approved by the Wildlife Board and described in the guidebook for taking bear.

(d) A person may establish or use no more than two bait stations. The bait stations may only be used during ~~[an open season.]~~ periods designated in the guidebook for taking bear.

(e) Bear lured to a bait station may not be taken with dogs.

(f) Bait may not be contained in or include any metal, glass, porcelain, plastic, cardboard, or paper.

(g) The bait station must be marked with a sign provided by the division and posted within 10 feet of the bait.

(h) A dog handler may not intentionally run dogs off of a bait station while pursuing bear.

(2)(a) Bait may be placed only in areas open to hunting and only during the open seasons.

(b) All materials used as bait must be removed within 72 hours after the close of the season or within 72 hours after the person or persons, who are registered for that bait station harvest a bear.

(3) A person may use nongame fish as bait, except those listed as prohibited in Rule R657-13 and the guidebook of the Wildlife Board for Taking Fish and Crayfish. No other species of protected wildlife may be used as bait.

(4)(a) Domestic livestock or its parts, including processed meat scraps, may be used as bait.

(b) A person using domestic livestock or their parts for bait must have in possession:

(i) a certificate of brand inspection, bill of sale, or other proof of ownership or legal possession.

(5) Bait may not be placed within:

(a) 100 yards of water or a public road or designated trail;

or  
(b) 1/2 mile of any permanent dwelling or campground;

~~(c) any area identified as potentially increasing nuisance bear activity by the division.~~

~~(6) Violations of this rule and the guidebook of the Wildlife Board for taking and pursuing bear concerning baiting on federal lands may be a violation of federal regulations and prosecuted under federal law.]~~

#### **R657-33-17. Permanent Tag.**

(1) Each bear ~~[must be]~~ taken by the permit holder ~~[to a conservation officer or]~~ must be checked by a division [office] representative within 48 hours after the date of kill to have a permanent possession tag affixed to the pelt or unskinned carcass.

(2) A person may not possess a green pelt after the 48-hour check-in period, ship a green pelt out of Utah, or present a green pelt to a taxidermist if the green pelt does not have a permanent possession tag attached.

(3) The location of harvest and a tooth sample must be provided to the division during the check-in process.

#### **R657-33-26. Bear Pursuit.**

(1)(a) Except as provided in rule R657-33-3(1)(b) and Subsection (2), bear may be pursued only by persons who have obtained a bear pursuit permit.

(b) The bear pursuit permit does not allow a person to:

(i) kill a bear; or

(ii) pursue bear for compensation.

(c) A person may pursue bear for compensation only as provided in Subsection (2).

(d) To obtain a bear pursuit permit, a person must possess a Utah hunting or combination license.

(2)(a) A person may pursue bear on public lands for compensation, provided the dog handler:

(i) receives compensation from a client or customer to pursue bear;

(ii) is a licensed hunting guide or outfitter under Title 58, Chapter 79 of the Utah Code and authorized to pursue bear;

(iii) possesses on his or her person the Utah hunting guide or outfitter license;

(iv) possesses on his or her person all permits and authorizations required by the applicable public lands managing authority to pursue bear for compensation; and

(v) is accompanied by the client or customer at all times during pursuit.

(b) A person may pursue bear on private lands for compensation, provided the dog handler:

(i) receives compensation from a client or customer to pursue bear;

(ii) is accompanied by the client or customer at all times during pursuit; and

(iii) possesses on his or her person written permission from all private landowners on whose property pursuit takes place.

(c) A person who is an employee or agent of the Division of Wildlife Services may pursue bear on public lands and private lands while acting within the scope of their employment.

(3) A pursuit permit is not required to pursue bear under Subsection (2).

(4)(a) A person pursuing bear for compensation under subsections (2)(a) and (2)(b) shall comply with all other requirements and restrictions in statute, rule and the guidebooks of the Wildlife Board regulating the pursuit and take of bear.

(b) Any violation of, or failure to comply with the provisions of Title 23 of the Utah Code, this rule, or the guidebooks of the Wildlife Board may be grounds for suspension of the privilege to pursue bear for compensation under this subsection, as determined by a division hearing officer.

(5) Except as provided in Subsection (6), a bear pursuit permit authorizes the holder to pursue bear with dogs on any unit open to pursuing bear during the seasons and under the conditions prescribed by the Wildlife Board in guidebook.

(6) The Wildlife Board may establish or designate in guidebook restricted pursuit units as determined necessary or convenient to better manage wildlife resources, including to protect wildlife, curtail over-utilization of resources, reduce conflict with other recreational activities, reduce conflict with private and public land activities, and protect wildlife habitat.

(a) Bear may not be pursued on a restricted pursuit unit unless the dog handler:

(i) possesses a pursuit permit issued for the particular restricted pursuit unit;

(ii) possesses or is accompanied by a person who possesses a limited entry or harvest objective bear permit allowing the use of dogs, and the pursuit occurs within the area and during the season established by the respective permit; or

(iii) is engaged in pursuit for compensation as provided in Subsection (2), and pursuit occurs within the area and during the season established for the:

(A) paying client's limited entry or harvest objective bear permit allowing the use of dogs; or

(B) restricted pursuit unit.

(b) A pursuit permit issued for a restricted pursuit unit authorizes the holder to pursue bear on:

(i) the particular restricted pursuit unit for which the permit is issued; and

(ii) any other bear pursuit unit not designated as a restricted pursuit unit.

(c) Notwithstanding Subsection (6)(a)(i), when two or more dog owners are in the field pursuing bear together with a single pack of eight dogs or less on a restricted pursuit unit, only one must possess a restricted pursuit unit permit, provided the dog owners accompany the person possessing the restricted pursuit unit permit at all times.

(i) A dog [owner]handler pursuing bear on a restricted pursuit unit may leave the pursuit permit holder to retrieve dogs that separate from the pack, provided the dog [owner]handler;

(A) takes reasonable steps to keep the pack together before and during pursuit;

(B) separates from the pursuit permit holder exclusively to retrieve stray dogs and does not attempt to actively pursue bear during the retrieval process; and

(C) immediately releases any bear incidentally treed or held at bay by the stray dogs.

(7) Pursuit permits may be obtained at division offices, through the Internet and at license agents.

(a) The division may distribute pursuit permits for restricted pursuit units:

(i) through its offices, license agents, or online resources on a first-come, first-served basis; or

(ii) through a random drawing.

(8) A person may not:

(a) take or pursue a female bear with cubs;

(b) repeatedly pursue, chase, tree, corner or hold at bay the same bear during the same day;

(c) individually or in combination with another person, use more than eight dogs in the field to pursue a bear during the summer pursuit season as established by the Wildlife Board in guidebook; or

(d) possess a firearm or any device that could be used to kill a bear while pursuing bear.

(i) The weapon restrictions set forth in Subsection (d) do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing or attempting to utilize the concealed weapon to injure or kill bear.

(9) If eligible, a person who has obtained a bear pursuit permit may also obtain a limited entry or harvest objective bear permit.

(10) Season dates, closed areas and bear pursuit permit areas are published in the guidebook of the Wildlife Board for taking and pursuing bear.

**KEY: wildlife, bear, game laws**

**Date of Enactment or Last Substantive Amendment:** ~~March 26, 2018~~ 2019

**Notice of Continuation:** November 28, 2017

**Authorizing, and Implemented or Interpreted Law:** 23-14-18; 23-14-19; 23-13-2

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## Transportation, Administration

### R907-66

## Incorporation and Use of Federal Acquisition Regulations on Federal-Aid and State-Financed Transportation Projects

### NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 43490

FILED: 01/25/2019

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The reason for the change to this rule is to alleviate concerns raised by the Department of Transportation's (Department) internal audit for contracting professional services. This rule requires amendments for federal planning and research funding to be in compliance with contracting professional services according to State Procurement code and administrative rules, while also allowing the use of qualifications based selection for planning and research consultant contracts. The Department's Consultant Services Division needs changes in this rule due to federal code references being out of date and needing clarification and interpretations of the Utah Code to align purchasing requirements with the Department procurement practices.

**SUMMARY OF THE RULE OR CHANGE:** This rule is being repealed and reenacted. Several subsections are reordered and renumbered. The catchline of this rule changes from "Incorporation and Use of Federal Acquisition Regulations on Federal-Aid and State-Financed Transportation Projects" to "Procurement of Consultant Services, Procedures and Contract Administration". The substance of the reenacted rule replaces similar provisions of administrative rules under Title R33 and applies only to the Department to authorize procuring design professional, engineering, and engineering-related services. The reenacted rule accommodates how the Department functions better than similar provisions of Title R33 does. This proposed change to Rule R907-66 includes references to the Department's Consultant Services Manual of Instruction, project-specific solicitations, and other guidance from the Consultant Services Division. Title R33 (Division of Purchasing and General Services) is generic and intended to apply to all state agencies and political subdivisions and does not work well with many of the Department's specialized procurement functions and processes. Title R33 also does not incorporate the federal regulations the Department must follow on projects for which federal aid funding requirements apply. This rule reenactment changes the purpose of this rule from adopting federal cost principles to qualifications-based consultant selection for design, engineering and engineering-related services and moves the cost principle adoption to subsequent sections and updates federal cost principle references to 2 CFR 200 Subpart E Grants and Agreements, Cost Principles; and adds several definitions, including a definition that incorporates the federal definition of engineering and design related services, which requires the services to result in a construction project and the state definition of design professional services, which do not require the services result in a construction project. The Department will perform qualifications-based selection for services that fall under either definition following both state and federal qualifications-based selection processes. A section is added to define what services fall within the state's definition of other professional services as may be necessary to the planning, progress, and completion of any engineering services. This definition adds grant writing, asset management, transportation research, prototype development, technology transfer, project-related public involvement, right of way acquisition services, or other services as deemed necessary by the Department to coverage of this rule. Revises the Small Purchase Cap Section: This section aligns the Department's small purchase cap with the federal simplified acquisition threshold, which is set at \$250,000 by federal regulation. Sections are added to the Small Purchase Cap regarding the Department establishment of pools of qualified consultants. A deadline is added to the requirement for consultants to submit updated Financial Screening Applications.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 63G-6a-106(3)(a) and Subsection 72-1-201(1)(h)

**MATERIALS INCORPORATED BY REFERENCE:**

- ◆ Adds 23 CFR 1.33 Conflicts of Interest, published by Office of the Federal Register National Archives and Records Administration, 04/01/2011
- ◆ Adds 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, published by Office of the Federal Register National Archives and Records Administration, 12/26/2013
- ◆ Adds 23 CFR 172 Administration of Engineering and Design Related Service Contracts, published by Office of the Federal Register National Archives and Records Administration, 04/01/2010
- ◆ Adds 23 CFR 1 11 Engineering Services, published by Office of the Federal Register National Archives and Records Administration, 11/23/2001

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** The Department does not anticipate this proposed repeal and reenactment will have any tangible, estimable, or material fiscal impact on the state's budget because it only changes the Department's procedure for procuring professional design, engineering, and related services.
- ◆ **LOCAL GOVERNMENTS:** The Department does not anticipate any local government in Utah will experience a material fiscal impact resulting from this proposed repeal and reenactment because this rule only applies to the Department and firms from which it procures services.
- ◆ **SMALL BUSINESSES:** This proposed repeal and reenactment does not require anything of third party contractors, small or non-small, that might negatively impact their budgets or relieve them of any responsibilities that might lead to savings to their budgets because it only changes the Department's procedure for procuring professional design, engineering, and related services.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Department does not anticipate this proposed repeal and reenactment will lead to any fiscal impact to persons other than businesses and local governments because it does not require anything additional from the public or business in general or relieve them of any responsibilities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The Department does not anticipate there will be any compliance costs for persons affected by this repeal and reenactment of Rule R907-66 because it only changes the Department's procedure for procuring professional design, engineering, and related services.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This repeal and reenactment of Rule R907-66 will not cause any fiscal impact to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TRANSPORTATION  
ADMINISTRATION  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
SALT LAKE CITY, UT 84119-5998  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at [cwnewman@utah.gov](mailto:cwnewman@utah.gov)
- ◆ James Palmer by phone at 801-965-4000, by FAX at 801-965-4338, or by Internet E-mail at [jimpalmer@utah.gov](mailto:jimpalmer@utah.gov)
- ◆ Josh Dangel by Internet E-mail at [jdangel@utah.gov](mailto:jdangel@utah.gov)
- ◆ Linda Hull by phone at 801-965-4253, or by Internet E-mail at [lhull@utah.gov](mailto:lhull@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/18/2019

THIS RULE MAY BECOME EFFECTIVE ON: 03/25/2019

AUTHORIZED BY: Carlos Braceras, Executive Director

impact resulting from this proposed repeal and reenactment. The reenacted rule establishes UDOT's procedures for procuring services that fall within the state's definition of "other professional services as may be necessary to the planning, progress, and completion of any engineering services" to include but not be limited to grant writing, asset management, transportation research, prototype development, technology transfer, project-related public involvement, right of way acquisition services, or other services as deemed necessary by UDOT.

- 2) UDOT does not anticipate any local government in Utah will experience a material fiscal impact resulting from this proposed repeal and reenactment.
- 3) Rule R907-66, regulates UDOT's procedure for procuring professional design, engineering and related services.
- 4) This proposed repeal and reenactment does not require anything of third party contractors that might negatively impact their budgets or relieve third-party contractors of any responsibilities that might lead to savings to their budgets.
- 5) UDOT does not anticipate this proposed repeal and reenactment will lead to any fiscal impact to persons other than businesses and local governments because it does not require anything additional from the public or business in general or relieve them of any responsibilities.
- 6) UDOT does not anticipate this proposed repeal and reenactment will have any tangible, estimable, or material fiscal impact on the state's budget because the changes to UDOT's procedure for procuring professional design, engineering, and related services.
- 7) Carlos Braceras, executive director of the Department, has reviewed and approved this fiscal analysis.

**R907. Transportation, Administration.**

~~**[R907-66. Incorporation and Use of Federal Acquisition Regulations on Federal Aid and State-Financed Transportation Projects.**~~

~~**R907-66-1. Reason for Incorporation -- Federal Aid Projects and State Projects.**~~

~~(1) 23 U.S.C. 112 requires States to use the relevant parts of the Federal Acquisition Regulations (FAR), contained in 48 CFR Chapter 1 to calculate appropriate contract costs in all Federal Aid transportation projects. Previously, federal law allowed States to develop their own cost principles and procedures in Federal Aid projects.~~

~~(2) Consequently, the Department adopts and incorporates 48 CFR Chapter 1 Parts 1, 2, 30, 31, 32, 36 and 42 for use in Federal Aid transportation projects.~~

~~(3) Because many transportation projects that the Department administers receive federal aid, the Department believes it is generally most efficient to also use FAR when calculating contract cost principles and procedures in transportation projects financed solely with state funds. Therefore, the Department also adopts and incorporates 48 CFR Chapter 1 Parts 1, 2, 30, 31, 32, 36 and 42 for use in most state-financed transportation projects.~~

~~**R907-66-2. Financial Screening.**~~

~~(1) To verify that the calculated overhead and hourly billing rates comply with FAR, UDOT conducts an initial financial screening and approval of consultants desiring to submit a Statement of Qualification (SOQ) for architecture and engineering service contracts.~~

~~(2) Consultants shall update their financial screening information by submitting a new completed financial screening application and related information to the Consultant Services Division. The consultant shall file the updated applications annually, on the anniversary date of the initial filing.~~

Appendix 1: Regulatory Impact Summary Table\*

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

Appendix 2: Regulatory Impact to Small and Non-Small Businesses

1) The Utah Department of Transportation (UDOT) does not anticipate any industries or businesses in Utah will experience a material fiscal

**R907-66-3. Contract Negotiations.**

(1) UDOT negotiates consultant contracts with the firm it considers most qualified to provide such services, using guidelines developed by the Consultant Services Division. UDOT prepares independent estimates of the value of such services for use in negotiations.

(2) Negotiations follow state and federal procurement procedures and are based on compensation that UDOT considers fair and reasonable. Negotiations will end when UDOT decides that it cannot agree on terms with the first most qualified firm. UDOT will then begin negotiations with the next most qualified firm. This process continues until either mutually agreeable terms are negotiated or UDOT chooses to begin the selection process again to identify other firms qualified to provide such services.

(3) The guidelines for both selection and negotiations are public information and can be obtained by contacting the Consultant Services Division.

**R907-66-4. Award of Contracts.**

UDOT awards the contract to the best qualified consultant with which it can negotiate a fair and reasonable cost as required by state rules and FAR and in accordance with UDOT selection procedures and guidelines.

**R907-66-5. Small Purchase Cap.**

To be consistent between federal-aid projects and state-financed projects, UDOT adopts the federal small purchase cap or simplified acquisition threshold established in 48 CFR 2.101, which is currently \$150,000.

**R907-66-6. Execution of Contracts.**

UDOT considers no contract effective until funding has been approved and all signature lines have been filled in with the appropriate officer's signature.]

**R907-66. Procurement of Consultant Services - Procedures and Contract Administration.****R907-66-1. Authority and Purpose.**

(1) Authority. The Department of Transportation (the "Department") makes this rule pursuant to authority granted by Utah Code Sections 63G-6a-106(3)(a) and 72-1-201(1)(h).

(2) Purpose. The Department solicits for and contracts with consultants to perform design professional, engineering, and engineering-related services.

(a) This Rule, R907-66, establishes procedures for procuring services of design, engineering and engineering-related professionals, identified herein as consultants, and administering the attendant contracts utilizing Federal-aid highway program funding or Utah state funding.

(b) For detailed guidance beyond federal and state codes, federal regulations, and this rule, the Department's Consultant Services Division maintains the Consultant Services Manual of Instruction, which includes procedures and guidelines for preparing and publishing solicitations such as requests for qualifications that have project-specific requirements.

**R907-66-2. Definitions.**

For purposes of this rule, R907-66, the following definitions apply:

(1) "Brooks Act" means a commonly used term for the Federal Property and Administrative Services Act of 1949 (Public Law 92--582, 86 Stat. 1278 (1972) and 40 U.S.C. Chapter 11, Section 1101-1104.

(2) "Competitive negotiation" means any form of negotiation that utilizes qualifications-based procedures complying with the Brooks Act.

(3) "Consultant" means an expert the Department contracts with to perform professional services as may be necessary to the planning, progress, and completion of any design, engineering, and engineering-related service.

(4) "Desk review" means a process that includes a limited-scope examination of a Consultant's original source documentation and communication to provide reasonable assurance that costs presented are not materially misstated and comply with FAR and 2 CFR Part 200.

(5) "The division" means the Consultant Services Division of the Department of Transportation.

(6) "Engineering," "the practice of engineering," and "professional engineering" mean the same as the terms are defined in Utah Code Section 58-22-102(9)(a).

(7) "FAR" means Federal Acquisition Regulations, Title 48, Code of Federal Regulations.

(8) "Federal-aid highway funds" means funds authorized by Congress to assist the Department in providing for construction, reconstruction, and improvement of highways and bridges on eligible Federal-Aid highway routes and for other special purpose programs and projects.

(9) "Other Professional Services" means grant writing, asset management, transportation research, prototype development, technology transfer, project-related public involvement, right of way acquisition services, or other services as deemed necessary by the executive director or designee.

(10) "Qualifications-based selection" or "OBS" means that procurement process 40 U.S.C. Sections 1101 -- 1104 (Brooks Act), as a process for public agencies to use for architectural, engineering, and related professional services for public construction projects and Utah Code 63G-6a Part 15 for procurement of design professional services.

(11) "Risk Assessment" means a process that includes identifying and analyzing potential internal control deficiencies and evaluation of initial evidence for indications of noncompliance with FAR and 2 CFR Part 200 and making judgments on the tolerability of the risk of accepting the Consultant's indirect cost rate(s) as presented without further action.

**R907-66-3. Qualifications-based Selection of Consultants for Design, Engineering and Engineering-related Services.**

(1) The Department will perform qualifications-based selection procedures, including competitive negotiations to procure, manage, and administer contracts with consultants and other professional services.

**R907-66-4. Incorporation by Reference of Applicable Federal Law.**

To receive grants of federal-aid highway funds the Department must conform to applicable federal law. Therefore, the Department incorporates by reference the following federal regulations:

(1) 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards for both federal and state funded projects. 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

(2) 23 CFR 1.11, Engineering Services. 23 CFR 1.11 Engineering Services

(3) 23 CFR 1.33, Conflicts of Interest. 23 CFR 1.33 Conflicts of Interest

(4) 23 CFR 172, Procurement, Management, and Administration of Engineering and Design Related Service Contracts. Procurement, Management, and Administration of Engineering and Design Related Services

**R907-66-5. Small Purchase Cap.**

(1) Utah Code Section 63G-6a-506(2) grants the Department authority to make rules governing small purchases of any procurement item.

(2) When procuring services of consultants, the Division will follow the simplified acquisition threshold established by 48 CFR 2.101 as the small purchase maximum or small purchase cap for individual procurement of consultant services.

(3) The Division will establish pools of prequalified consultants or other professional service providers for various work disciplines for consultant selection to perform services with an estimated value less than the Small Purchase Cap following the Utah Procurement Code Section 63G-6a-507 Approved Vendor List Procurement Process.

(4) The Department will publish detailed procedures the Consultant Services Division will follow to establish pre-qualified consultant pools in the Consultant Services Manual of Instruction, Pool Solicitation or other Solicitations such as Requests for Qualifications.

**R907-66-6. Selection of Consultants for Services with Estimated Values in Excess of the Small Purchase Cap.**

The Department will select consultants for contracts with a value in excess of the small purchase cap set forth in R907-66-5 in accordance with 23 CFR Part 172, Utah Procurement Code 63G-6a Part 15 Design Professional Services, the Consultant Services Manual of Instruction, and the specific Solicitation such as the Request for Qualifications.

**R907-66-7. Consultant Financial Screening and Auditing.**

(1) To provide reasonable assurance that the Consultant's presented Indirect Cost Rate(s), hourly billing rates, and direct costs comply with the FAR and 2 CFR Part 200, Subpart E, Cost Principles, the Department will conduct risk assessments, desk reviews, and audits as necessary for consultants seeking to perform design professional, engineering, or engineering-related services for the Department.

(2) Consultants submit their firm's Financial Screening Application (including all required supporting documents) within 90 days of their most recent fiscal year-end or 60 days prior to the anniversary date of their previous financial screening application approval, whichever occurs first.

(3) The Department Office of Internal Audit may conduct an audit to determine costs are allowable and in compliance with the requirements of 2 CFR Part 200.

**R907-66-8. Competitive Contract Negotiations.**

(1) The Department will conduct competitive negotiations for contracts with the consultant firm it considers most qualified to provide services necessary to complete a project using guidelines developed by the Division. The Department will prepare independent estimates of the value of such services for use in negotiations.

(2) Negotiations follow state and federal procurement procedures and are based on compensation that the Department considers fair and reasonable. Negotiations will end if the Department decides that it cannot agree on terms with the firm it considers most qualified. The Division will then begin negotiations with the firm it determines to be next most qualified firm. This process continues until either mutually agreeable terms are agreed to or the Division chooses to begin the selection process again to identify other firms qualified to provide such services.

(3) The guidelines for both consultant selection and negotiations are public information and may be found within the Consultant Services Manual of Instruction, the project-specific solicitation or request for qualifications, and other guidelines established by the Division and published on the Department's Internet web site.

**R907-66-9. Award of Contracts.**

The Division will award a contract to the best qualified, responsive and responsible consultant with which it can negotiate a fair and reasonable cost as required by the Utah Procurement Code and 23 CFR Part 172, and in accordance with the Department's Consultant Services Manual of Instruction and other guidelines established by the Consultant Services Division.

**R907-66-10. Execution of Contracts.**

The Department will not consider a contract effective until funding has been approved and all signature lines have been filled in with the appropriate officer's signature.

**R907-66-11. Notice to Proceed.**

(1) Consultants may not begin performing work under a contract before the Division has issued to the consultant a notice to proceed for the contract.

(2) The Department will not pay for any work a consultant performs before the Department has issued to the consultant a notice to proceed for the contract.

**KEY: [~~transportation, contracts~~]procurement, small purchases, design and engineering services**

**Date of Enactment or Last Substantive Amendment: [~~December 8, 2011~~]2019**

**Notice of Continuation: October 7, 2016**

**Authorizing, and Implemented or Interpreted Law: 63G-6-105; 72-1-201**

**Transportation, Operations,  
Maintenance  
R918-4  
Using Volunteer Groups and Third  
Party Contractors for the Adopt-a-  
Highway and Sponsor-a-Highway Litter  
Pickup Programs**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 43489

FILED: 01/25/2019

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** After performing the five-year review of this rule required by Section 63G-3-305, the Department of Transportation (Department) determined these proposed amendments will improve the efficiency of the Adopt-a-Highway and Sponsor-a-Highway Litter Pickup Programs, and increase safety for participants.

**SUMMARY OF THE RULE OR CHANGE:** These proposed amendments allow the Department to provide an application form, or agreement, to formalize the terms and conditions of those participating in the programs regulated by this rule. This changes the procedures participants follow when returning loaned safety equipment to the Department and when they find items that appear suspicious or unsafe, i.e., syringes, drug paraphernalia, or closed containers. These amendments also make several technical changes to this rule.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 72-1-201

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The Department does not anticipate that these proposed amendments will have any tangible, estimable, or material fiscal impact on the state's budget because they only make minor changes to the procedures the Department follows when dealing with volunteer groups and third-party contractors doing litter pickup along state highways.

◆ **LOCAL GOVERNMENTS:** The Department does not anticipate any local government in Utah will experience a material fiscal impact resulting from these proposed amendments because they do not require anything additional from local governments or relieve them of any responsibilities.

◆ **SMALL BUSINESSES:** The Department does not anticipate that these proposed amendments will lead to any fiscal impact to the budgets of small businesses because they do not require anything of third-party contractors that might negatively impact their budgets or relieve third-party contractors of any responsibilities that might lead to savings to their budgets.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Department does not anticipate that these proposed amendments will lead to any fiscal impact to persons other than businesses and local governments because they do not require anything additional from the public or business in general or relieve them of any responsibilities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for any business, local government, or other person affected by these proposed rule changes.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** These proposed amendments will not have a fiscal impact on businesses.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**

TRANSPORTATION  
OPERATIONS, MAINTENANCE  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
SALT LAKE CITY, UT 84119-5998  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at [cwnewman@utah.gov](mailto:cwnewman@utah.gov)
- ◆ James Palmer by phone at 801-965-4000, by FAX at 801-965-4338, or by Internet E-mail at [jimpalmer@utah.gov](mailto:jimpalmer@utah.gov)
- ◆ Josh Dangel by Internet E-mail at [jdangel@utah.gov](mailto:jdangel@utah.gov)
- ◆ Linda Hull by phone at 801-965-4253, or by Internet E-mail at [lhull@utah.gov](mailto:lhull@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/18/2019**

**THIS RULE MAY BECOME EFFECTIVE ON: 03/25/2019**

**AUTHORIZED BY: Carlos Braceras, Executive Director**

**Appendix 1: Regulatory Impact Summary Table\***

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0

Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>			
	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Small and Non-Small Businesses**

- 1) The Utah Department of Transportation (UDOT) does not anticipate any industries or businesses in Utah will experience a material fiscal impact resulting from these proposed amendments. After performing the five-year review on this rule required by Section 63G-3-305, UDOT determined these proposed amendments will improve the efficiency of the Adopt-a-Highway and Sponsor-a-Highway Litter Pickup Programs, and increase safety for participants.
- 2) UDOT does not anticipate any local government in Utah will experience a material fiscal impact resulting from these proposed amendments.
- 3) Rule R918-4 regulates UDOT's procedure for using volunteer groups and third-party contractors for litter pickup, and provides additional resources to increase UDOT's litter control effort at a minimal cost.
- 4) These proposed amendments do not require anything of third party contractors that might negatively impact their budgets or relieve third party contractors of any responsibilities that might lead to savings to their budgets.
- 5) UDOT does not anticipate these proposed amendments will lead to any fiscal impact to persons other than businesses and local governments because they do not require anything additional from the public or business in general or relieve them of any responsibilities.
- 6) UDOT does not anticipate these proposed amendments will have any tangible, estimable, or material fiscal impact on the state's budget because it only makes minor changes to the procedures UDOT follows when dealing with volunteer groups and third party contractors doing litter pickup along state highways.
- 7) Executive Director Carlos Braceras, head of UDOT, has reviewed and approved this fiscal analysis.

**R918. Transportation, Operations, Maintenance.**

**R918-4. Using Volunteer Groups and Third[-]Party Contractors for the Adopt-a-Highway and Sponsor-a-Highway Litter Pickup Programs.**

**R918-4-1. Purpose and Authority.**

The purpose of this rule is to establish a procedure for using volunteer groups and third[-]party contractors for litter pickup and to provide additional resources to increase UDOT's litter control effort at a minimal cost. This program is not operated ~~[for the purpose of]~~to provide[ing] a highway signing program for a free speech forum. This rule is enacted under the general rulemaking authority in Section 72-1-201.

**R918-4-2. Application for the Adopt-A-Highway Program.**

(1) A group or person who wishes to participate in a program to pick up litter along UDOT right-of-way may apply with the UDOT Region in which the right-of-way is located. The application ~~[shall]~~will contain, at a minimum, the name of the organization or person, the right-of-way requested, along with alternatives if desired, the name and address of a contact person, and the name of the sponsoring organization requested to be placed on the Recognition Sign. UDOT may provide an application form or agreement to formalize the terms and conditions of this rule.

(2) If the name of an organization is to appear on the sign, the applicant ~~[shall]~~must submit, ~~[with the application,]~~upon request, documentation from the state showing the form, status, and official name of the entity. Only the official name of the organization will be printed on the sign.

(3) UDOT also coordinates a program similar to Adopt-A-Highway, known as Sponsor-A-Highway, wherein a private contractor performs the actual litter pickup on behalf of local businesses or other entities ("sponsors") in return for a sponsorship fee. The sponsoring entity is recognized with a sign. A business, government entity, group, or person who wishes to participate in the Sponsor-A-Highway program may apply to the contractor. The contractor ~~[shall]~~must submit the name of the entity, sponsorship segment, and proposed Sponsor-A-Highway sign rendering to UDOT for approval.

**R918-4-3. Conditions of Adopt-A-Highway Participation.**

If the Adopt-A-Highway application is granted, UDOT ~~[shall]~~will notify the applicant's contact person in writing and promptly send to him or her a contract that sets forth the following basic conditions:

- (1) the location of the right-of-way;
- (2) a hold harmless agreement, waiver of liability, and indemnification for third-party claims;
- (3) safety rules;
- (4) information concerning safety apparel that must be used and that which is recommended;
- (5) the name of the entity or organization that is applying for the permit;
- (6) an explanation of the condition in which UDOT expects the applicant to keep the roadway and notification that the decision whether ~~[or not]~~the applicant has done so is solely within UDOT's discretion;
- (7) notification of reasons for termination, which include failure to comply with any part of the agreement, fraud in the application, failure to follow safety requirements or commands;

(8) a date when the agreement will terminate, along with any automatic renewal provisions;

(9) volunteer groups ~~[shall]~~must provide a responsible supervisor to properly control the activities of the group, with the expertise and degree of supervision to be decided by UDOT;

(10) no person under the age of ~~[eleven]~~fourteen years may participate in the litter pick-up program or be on the right-of-way;

(11) volunteers ~~[shall]~~must accept and receive safety instructions by the Region Safety/Risk Manager, or designee;

(12) volunteers ~~[shall]~~must stay off the traveled area of the roadway, except when traveled area must be crossed, with any crossing being done by the entire group together along with the signing, flagging, or supervision directed by the Region Safety/Risk Manager or designee;

(13) volunteers ~~[shall]~~must stay off the traveled areas of Interstate Routes, Freeways, and divided highways at all times~~[-except when crossing in the manner specified in paragraph (12)];~~

(14) in areas where the Region Director or Safety/Risk Manager or Traffic Engineer believes it appropriate, the applicant ~~[shall]~~must use advance warning signs;

(15) work ~~[shall]~~must be done during daylight hours;

(16) such other information as UDOT believes may be required to adequately advise the applicant of its responsibilities and provide for the public safety;

(17) clean up the assigned right-of-way at least three times a year as well as when UDOT specifically requests; and

(18) notify ~~[the appropriate authorities such as the Health Department or police]~~UDOT as soon as reasonably possible if they find items that appear suspicious or unsafe, i.e., syringes, drug paraphernalia, or closed containers.

#### **R918-4-4. Conditions of Sponsor-A-Highway Participation.**

A business, government entity, group, or person participating in the Sponsor-A-Highway program ~~[shall]~~must:

(1) be legally empowered to enter a contract in the state of Utah; and

(2) use their legal name or a registered DBA name.

#### **R918-4-5. UDOT discretion to allow use of right-of-way.**

(1) Nothing in this rule or any other UDOT rule may be construed to require UDOT to make any ~~[particular]~~ portion of right-of-way available for litter pick up. The decision whether to do so is exclusively within UDOT's discretion. Similarly, the decision to take a route out of the litter pick-up program is also within UDOT's exclusive discretion even if the route is currently available and being used for litter pick-up.

(2) Should UDOT determine that a route no longer qualifies for participation in the Adopt-a-Highway program, UDOT ~~[shall]~~will notify the person or organization assigned the route of that

determination. The notification constitutes termination of the contract, regardless of how much time is left on the contract.

(3) UDOT may also terminate a contract at any time if it determines that continuing the contract would be counterproductive to the program's purpose or have undesirable results such as vandalism, increased litter, or would otherwise jeopardize the safety of the participants, the traveling public, or UDOT employees.

#### **R918-4-6. Recognition Signs.**

(1) If the applicant's authorized representative (contact person) signs the contract provided by UDOT, UDOT will place a recognition sign along the route, if all other conditions are met. UDOT will not place either slogans or logos on Adopt-A-Highway signs. The name may be edited to comply with space limitations.

(2) Slogans, DBA names, registered trademarks, and registered service marks may be included on Sponsor-A-Highway signs, subject to UDOT review and approval.

#### **R918-4-7. Replacement of Signs.**

(1) Adopt-A-Highway Signs: UDOT will not replace damaged or missing signs unless the damage was due to weather or other natural cause and then only if there is sufficient funding. In no case will UDOT replace a sign more than once every five years.

(2) Sponsor-A-Highway Signs: Sponsor-A-Highway signs remain the property of the Sponsor-A-Highway contractor.

#### **R918-4-8. UDOT's Responsibilities.**

UDOT ~~[shall]~~will:

(1) furnish volunteers with UDOT-standard vests, which~~[-when the contract is terminated shall]~~ must be returned after cleanup activities are completed;

(2) furnish litter bags, which, when filled, ~~[shall]~~must be placed along the shoulder of the road for collection by UDOT personnel;

(3) furnish advance warning signs in areas where the Region Director, Safety/Risk Manager, or Traffic Engineer believes it appropriate; and

(4) install contractor furnished Sponsor-A-Highway signs at locations designated by the Region Traffic Engineer and maintain the sign base, posts, and mounting hardware.

**KEY: adopt-a-highway, sponsor-a-highway, litter, volunteer**

**Date of Enactment or Last Substantive Amendment: ~~[March 12, 2012]~~2019**

**Notice of Continuation: October 8, 2018**

**Authorizing, and Implemented or Interpreted Law: 72-1-201**

### **End of the Notices of Proposed Rules Section**

## NOTICES OF CHANGES IN PROPOSED RULES

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After an agency has published a **PROPOSED RULE** in the *Utah State Bulletin*, it may receive comment that requires the **PROPOSED RULE** to be altered before it goes into effect. A **CHANGE IN PROPOSED RULE** allows an agency to respond to comments it receives.

As with a **PROPOSED RULE**, a **CHANGE IN PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **CHANGE IN PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

While the law does not designate a comment period for a **CHANGE IN PROPOSED RULE**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **CHANGES IN PROPOSED RULES** published in this issue of the *Utah State Bulletin* ends March 18, 2019.

Following the **RULE ANALYSIS**, the text of the **CHANGE IN PROPOSED RULE** is usually printed. The text shows only those changes made since the **PROPOSED RULE** was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (example). Deletions made to the rule appear struck out with brackets surrounding them (~~example~~). A row of dots in the text between paragraphs (. . . . .) indicates that unaffected text, either whole sections or subsections, was removed to conserve space. If a **CHANGE IN PROPOSED RULE** is too long to print, the Office of Administrative Rules may include only the **RULE ANALYSIS**. A copy of rules that are too long to print is available from the agency or from the Office of Administrative Rules.

From the end of the 30-day waiting period through June 15, 2019, an agency may notify the Office of Administrative Rules that it wants to make the **CHANGE IN PROPOSED RULE** effective. When an agency submits a **NOTICE OF EFFECTIVE DATE** for a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** as amended by the **CHANGE IN PROPOSED RULE** becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **CHANGE IN PROPOSED RULE**. If the agency designates a public comment period, the effective date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date. Alternatively, the agency may file another **CHANGE IN PROPOSED RULE** in response to additional comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or another **CHANGE IN PROPOSED RULE** by the end of the 120-day period after publication, the **CHANGE IN PROPOSED RULE** filing, along with its associated **PROPOSED RULE**, lapses.

**CHANGES IN PROPOSED RULES** are governed by Section 63G-3-303, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5b, R15-4-7, R15-4-9, and R15-4-10.

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**The Changes in Proposed Rules Begin on the Following Page**

**Commerce, Occupational and  
Professional Licensing  
R156-28  
Veterinary Practice Act Rule**

**NOTICE OF CHANGE IN PROPOSED RULE**

DAR FILE NO.: 43189

FILED: 01/24/2019

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Following a public rule hearing, written comments received, and further review and recommendations by the Veterinary Board, these additional proposed amendments provide necessary definitions and clarify how unlicensed assistive personnel can work and be supervised by licensed veterinarians.

**SUMMARY OF THE RULE OR CHANGE:** In Section R156-28-102, these proposed amendments define what "working under" means with regards to unlicensed assistive personnel. (EDITOR'S NOTE: The original proposed amendment upon which this change in proposed rule (CPR) was based was published in the October 1, 2018, issue of the Utah State Bulletin, on page 7. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the CPR and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 58-28-101 and Subsection 58-1-106(1) (a) and Subsection 58-1-202(1)(a)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The Division of Occupational and Professional Licensing (Division) estimates that there will be no impact on the state budget from any of these additional proposed amendments because these amendments only conform this rule to existing practice except for those costs already identified in the original amended filing in the October 1, 2018, Bulletin.

◆ **LOCAL GOVERNMENTS:** The Division estimates that there will be no impact on local governments from any of these additional proposed amendments because these amendments only conform this rule to existing practice.

◆ **SMALL BUSINESSES:** The additional amendments in Section R156-28-102 define "working under" and will affect licensed veterinarians and the individuals working under them, which may indirectly affect the 223 small businesses in Utah comprising establishments of licensed veterinarians engaged in the practice of veterinary medicine (NAICS

541940). However, the Division estimates that there will be no fiscal cost or benefit to small businesses from these additional amendments because these amendments only conform this rule to existing practice.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The additional amendments in Section R156-28-102 define "working under" and will affect licensed veterinarians and the individuals working under them. However, the Division estimates that there will be no impact on these other persons from these amendments, because these amendments only conform this rule to existing practice.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The additional amendments in Section R156-28-102 define "working under" and will affect a licensed veterinarian and an individual working under a licensed veterinarian. However, the Division estimates that there will be no compliance costs for these affected persons from these additional proposed amendments because these amendments only conform this rule to existing practice.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Based on recommendations by the Veterinarians Licensing Board, these proposed amendments provide a necessary definition of "working under" and clarify how unlicensed assistive personnel can work and be supervised by licensed veterinarians. **Small Business:** The additional amendments in Section R156-28-102 will affect licensed veterinarians and the individuals working under them, which may indirectly affect the 223 small businesses in Utah comprising establishments of licensed veterinarians engaged in the practice of veterinary medicine (NAICS 541940). However, the Division estimates that there will be no fiscal cost or benefit to small businesses from these amendments, because these amendments only conform this rule to existing practice. **Non-small businesses:** Similarly, the Section R156-28-102 amendments that define "working under" will affect licensed veterinarians and the individuals working under them, which may indirectly affect the four non-small businesses in Utah comprising establishments of licensed veterinarians engaged in the practice of veterinary medicine (NAICS 541940). However, the Division estimates that there will be no fiscal cost or benefit to non-small businesses from these amendments, because these amendments only conform this rule to existing practice.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**

COMMERCE  
OCCUPATIONAL AND PROFESSIONAL  
LICENSING  
HEBER M WELLS BLDG  
160 E 300 S  
SALT LAKE CITY, UT 84111-2316  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Jana Johansen by phone at 801-530-6621, by FAX at 801-530-6511, or by Internet E-mail at janajohansen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/18/2019

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:  
 ♦ 02/20/2019 09:00 AM, Heber Wells Bldg, 160 E 300 S, Investigations Conference Room, first floor, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 03/25/2019

AUTHORIZED BY: Mark Steinagel, Director

Appendix 1: Regulatory Impact Summary Table\*

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described above. Inestimable impacts for Non-Small Businesses are described below.

Appendix 2: Regulatory Impact to Non-Small Businesses (50 or more employees)

Section R156-28-102 has additional amendments that define "working under" that will affect licensed veterinarians and the individuals working under them, which may indirectly affect the four non-small businesses in Utah comprising establishments of licensed veterinarians engaged in the practice of veterinary medicine (NAICS 541940). However, the Division estimates that there will be no fiscal cost or

benefit to non-small businesses from these amendments, because these amendments only conform the rule to existing practice.

The head of the Department of Commerce, Executive Director Francine A. Giani, has reviewed and approved this fiscal analysis.

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

**R156-28. Veterinary Practice Act Rule.**

**R156-28-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 28, as used in Title 58, Chapters 1 and 28 or this rule:

(1) "In association with licensed veterinarians", as used in Subsection 58-28-307(6), means the out of state licensed veterinarian is performing veterinarian services in this state as the result of a request for assistance or consultation initiated by a Utah licensed veterinarian regarding a specific client or patient and the services provided by the out of state licensed veterinarian are limited to that specific request.

(2) "NBEC" means the National Board Examination Committee of the American Veterinary Medical Association.

(3) "Patient" means any animal receiving veterinarian services.

(4) "Practice of veterinary medicine, surgery, and dentistry" as defined in Subsection 58-28-102(11) does not include the implantation of any electronic device for the purpose of establishing or maintaining positive identification of animals.

(5) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 28, is further defined in accordance with Subsection 58-1-203(1)(e) in Section R156-28-502.

(6) "Working under" as used in Subsection 58-28-102(13), means when an individual performs services in Utah as an individual:

~~(a) who performs services in Utah as~~ unlicensed assistive personnel while ~~employed~~ supervised by a licensed veterinarian, ~~provided;~~ ;

~~(b) a~~ whose the manner and means of work performance are subject to the right of control of, or are controlled by, a licensed veterinarian; ~~and~~

~~(e) b~~ the delegated tasks are maintained in the supervising veterinarian's medical records ~~whose compensation for federal income tax purposes is reported, or is required to be reported, on a W-2 form; and~~

~~(d) who is entitled to workers compensation and unemployment insurance provided by the individual's employer under state or federal law].~~

.....

**KEY: veterinary medicine, licensing, veterinarian**

**Date of Enactment or Last Substantive Amendment: [2018]2019**

**Notice of Continuation: November 3, 2016**

**Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-28-101**

**End of the Notices of Changes in Proposed Rules Section**



# FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at <https://rules.utah.gov/>. The rule text may also be inspected at the agency or the Office of Administrative Rules. **REVIEWS** are effective upon filing.

**REVIEWS** are governed by Section 63G-3-305.

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Health, Administration

**R380-70**

Standards for Electronic Exchange of  
Clinical Health Information

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 43487  
FILED: 01/24/2019

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-1-37 requires the Department of Health (Department) to establish standards for the electronic exchange of clinical health information.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule provides a means for the Department to coordinate information exchange between healthcare providers, third party payers, and laboratories. The standards identified by this rule form an information infrastructure in which health care organizations, payers, providers, and laboratories can exchange information to support individual, public, and population health. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED,  
DURING REGULAR BUSINESS HOURS, AT:

HEALTH  
ADMINISTRATION  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Jeff Duncan by phone at 801-538-7023, by FAX at 801-538-7012, or by Internet E-mail at [jduncan@utah.gov](mailto:jduncan@utah.gov)

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 01/24/2019

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Human Services, Administration

**R495-882**

Termination of Parental Rights

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 43496  
FILED: 02/01/2019

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 62A-11-107 gives the Office of Recovery Services (ORS) the authority to adopt, amend, and enforce rules necessary to carry out its responsibilities under state law. Sections 62A-1-117 and

78A-6-1106 authorize child support to be assigned to the Department of Human Services (DHS) when a child is placed in the care or custody of the state of Utah for at least 30 days, and designates ORS as the payee for such child support payments. Section 78A-6-513 divests the parent and child of all legal rights, powers, immunities, duties, and obligations with respect to each other when an order has been established to terminate the parent-child legal relationship.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments received since the last five-year review of this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is necessary to continue this rule which provides information regarding ORS's enforcement of a child support obligation that is assigned to the state when a child is placed in the care or custody of the state, or with an individual other than the parent for at least 30 days. This rule further explains that ORS will continue to collect child support that is payable to the state that accrued up to the point that the parental rights were terminated for a child who was in the care or custody of the state.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 HUMAN SERVICES  
 ADMINISTRATION  
 DHS ADMINISTRATIVE OFFICE  
 MULTI STATE OFFICE BUILDING  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Casey Cole by phone at 801-741-7523, by FAX at 801-536-8509, or by Internet E-mail at cacole@utah.gov  
 ♦ Jonah Shaw by phone at 801-538-4219, by FAX at 801-538-3942, or by Internet E-mail at jshaw@utah.gov

AUTHORIZED BY: Ann Williamson, Executive Director

EFFECTIVE: 02/01/2019

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**Lieutenant Governor, Elections  
 R623-1  
 Lieutenant Governor's Procedure for  
 Regulation of Lobbyist Activities**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION  
 DAR FILE NO.: 43493  
 FILED: 01/28/2019**

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 36-11-404 requires the Lieutenant Governor to make rules that provide for the appointment of an administrative law judge to adjudicate alleged violations of this section and to impose penalties and procedures for license applications, disapprovals, suspensions, revocations, and reinstatements.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Lieutenant Governor's Office has not received written comments in support or in opposition to this administrative rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Lobbyists must be licensed by the state, and this administrative rule provides for the procedure to obtain a license and penalties for failure to comply with procedures. This rule also outlines an adjudication process if a lobbyist allegedly violates regulated activities. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 LIEUTENANT GOVERNOR  
 ELECTIONS  
 ROOM 220 UTAH STATE CAPITOL  
 350 N STATE STREET  
 SALT LAKE CITY, UT 84114  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Derek Brenchley by phone at 801-538-1041, or by Internet E-mail at dbrenchley@utah.gov

AUTHORIZED BY: Justin Lee, Director

EFFECTIVE: 01/28/2019

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**Lieutenant Governor, Elections  
 R623-2  
 Uniform Ballot Counting Standards**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**DAR FILE NO.: 43494  
FILED: 01/28/2019**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: 42 U.S.C. 15481(a)(6) directs each state to "adopt uniform and non-discriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State". 42 U.S.C. 15403(e) clarifies that the "chief State election official" is "responsible for coordination" of these standards. Because the Lieutenant Governor is chief election officer of the state (see Subsection 67-1a-2(2)), the Lieutenant Governor has the authority to adopt these standards. Additionally, the Governor has the authority under Utah Constitution Article VII, Sections 1 and 5 to "see that the laws are faithfully executed". Under the Utah Constitution Article VII, Section 14, this authority may be delegated from the Governor to the Lt. Governor.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Lieutenant Governor has not received written comments in support or in opposition to this administrative rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: In addition to meeting requirements of federal law, this rule provides uniform standards for election officials throughout the state to process ballots. Uniformity ensures that ballots are correctly counted and that voter's rights are not impinged. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

LIEUTENANT GOVERNOR  
ELECTIONS  
ROOM 220 UTAH STATE CAPITOL  
350 N STATE STREET  
SALT LAKE CITY, UT 84114  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Derek Brenchley by phone at 801-538-1041, or by Internet E-mail at [dbrenchley@utah.gov](mailto:dbrenchley@utah.gov)

AUTHORIZED BY: Justin Lee, Director

EFFECTIVE: 01/28/2019

**Lieutenant Governor, Elections  
R623-3****Utah State Plan on Election Reform****FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**DAR FILE NO.: 43495  
FILED: 01/28/2019**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: 42 U.S.C. 15404 directs each state to make a plan to describe how the state will meet various federal election requirements. As chief election officer of the state (see Subsection 67-1a-2(2)), the Lieutenant Governor has the authority to set this plan. Additionally, the Governor has the authority under Utah Constitution Article VII, Sections 1 and 5 to "see that the laws are faithfully executed". Under the Utah Constitution Article VII, Section 14, this authority may be delegated from the Governor to the Lt. Governor.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Lieutenant Governor has not received written comments in support or in opposition to this administrative rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is meant to incorporate by reference the policies and procedures of the Utah State Plan on Election Reform adopted by the State Plan Committee on 11/08/2004. This plan is required by federal law. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

LIEUTENANT GOVERNOR  
ELECTIONS  
ROOM 220 UTAH STATE CAPITOL  
350 N STATE STREET  
SALT LAKE CITY, UT 84114  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Derek Brenchley by phone at 801-538-1041, or by Internet E-mail at [dbrenchley@utah.gov](mailto:dbrenchley@utah.gov)

AUTHORIZED BY: Justin Lee, Director

EFFECTIVE: 01/28/2019



**NOTICES OF  
FIVE-YEAR REVIEW EXTENSIONS**

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Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file a **NOTICE OF FIVE-YEAR REVIEW EXTENSION (EXTENSION)** with the Office of Administrative Rules. The **EXTENSION** permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed **EXTENSIONS** for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date.

**EXTENSIONS** are governed by Subsection 63G-3-305(6).

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Governor, Economic Development  
**R357-7**  
Utah Capital Investment Board

**FIVE-YEAR REVIEW EXTENSION**

DAR FILE NO.: 43488

FILED: 01/24/2019

EXTENSION REASON AND NEW DEADLINE: The agency needs more time to review whether or not this rule is still needed. The new deadline is 05/24/2019.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Dane Ishihara by phone at 801-538-8865, or by Internet E-mail at dishihara@utah.gov

AUTHORIZED BY: Val Hale, Executive Director

EFFECTIVE: 01/24/2019

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**End of the Notices of Five-Year Review Extensions Section**



## NOTICES OF RULE EFFECTIVE DATES

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State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Office of Administrative Rules that the rules listed below have been made effective.

**NOTICES OF EFFECTIVE DATE** are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

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### Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal & Reenact

REP = Repeal

### Administrative Services

#### Finance

No. 43404 (AMD): R25-10. State Entities' Posting of Financial Information to the Utah Public Finance Website  
Published: 12/15/2018  
Effective: 01/23/2019

### Commerce

#### Real Estate

No. 43407 (AMD): R162-2f. Real Estate Licensing and Practices Rules  
Published: 12/15/2018  
Effective: 01/23/2019

### Governor

#### Energy Development (Office of)

No. 43419 (NEW): R362-5. Commercial Property Assessed Clean Energy (C-PACE) Administrative Rules  
Published: 12/15/2018  
Effective: 01/23/2019

### Health

#### Family Health and Preparedness, Emergency Medical Services

No. 43321 (AMD): R426-9. Trauma and EMS System Facility Designations  
Published: 11/15/2018  
Effective: 01/18/2019

### Human Services

#### Administration, Administrative Services, Licensing

No. 43330 (AMD): R501-1. General Provisions for Licensing  
Published: 11/15/2018  
Effective: 01/17/2019

#### No. 43234 (AMD): R501-8. Outdoor Youth Programs

Published: 11/01/2018  
Effective: 01/17/2019

#### Substance Abuse and Mental Health

No. 43141 (AMD): R523-5. Peer Support Specialist Training and Certification  
Published: 09/01/2018  
Effective: 01/29/2019

#### No. 43141 (CPR): R523-5. Peer Support Specialist Training and Certification

Published: 12/15/2018  
Effective: 01/29/2019

#### No. 43355 (NEW): R523-19. Community Mental Health

Crisis and Suicide Prevention Training Grant Standards  
Published: 12/01/2018  
Effective: 01/29/2019

### Natural Resources

#### Parks and Recreation

No. 43416 (AMD): R651-301. State Recreation Fiscal Assistance Programs  
Published: 12/15/2018  
Effective: 01/24/2019

#### No. 43415 (AMD): R651-406. Off-Highway Vehicle Registration Fees

Published: 12/15/2018  
Effective: 01/24/2019

NOTICES OF RULE EFFECTIVE DATES

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Wildlife Resources  
No. 43414 (AMD): R657-11. Taking Furbearers and Trapping  
Published: 12/15/2018  
Effective: 01/24/2019

No. 43420 (AMD): R657-13. Taking Fish and Crayfish  
Published: 12/15/2018  
Effective: 01/24/2019

**End of the Notices of Rule Effective Dates Section**

**RULES INDEX  
BY AGENCY (CODE NUMBER)  
AND  
BY KEYWORD (SUBJECT)**

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The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2019 through February 01, 2019. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

Questions regarding the index and the information it contains should be addressed to the Office of Administrative Rules (801-538-3003).

A copy of the **RULES INDEX** is available for public inspection at the Office of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Office's web site (<https://rules.utah.gov/>).

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**RULES INDEX - BY AGENCY (CODE NUMBER)**

**ABBREVIATIONS**

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<b>ADMINISTRATIVE SERVICES</b>					
<u>Finance</u>					
R25-10	State Entities' Posting of Financial Information to the Utah Public Finance Website	43404	AMD	01/23/2019	2018-24/6
R25-11	Utah Transparency Advisory Board, Procedures for Electronic Meetings	43471	5YR	01/07/2019	2019-3/43
<u>Risk Management</u>					
R37-4	Adjusted Utah Governmental Immunity Act Limitations on Judgments	43235	AMD	01/18/2019	2018-21/2
<b>AGRICULTURE AND FOOD</b>					
<u>Animal Industry</u>					
R58-20	Domesticated Elk Hunting Parks	43469	5YR	01/07/2019	2019-3/43
<b>COMMERCE</b>					
<u>Occupational and Professional Licensing</u>					
R156-20a (Changed to R156-20b)	Environmental Health Scientist Act Rule	43466	NSC	01/11/2019	Not Printed
R156-80a	Medical Language Interpreter Act Rule	43465	5YR	01/02/2019	2019-2/19
<u>Real Estate</u>					
R162-2f	Real Estate Licensing and Practices Rules	43407	AMD	01/23/2019	2018-24/8
<b>EDUCATION</b>					
<u>Administration</u>					
R277-419	Pupil Accounting	43475	NSC	01/15/2019	Not Printed
R277-437	Student Enrollment Options	43397	AMD	01/09/2019	2018-23/6
R277-470	Charter Schools - General Provisions	43374	REP	01/09/2019	2018-23/9
R277-481	Charter School Oversight, Monitoring and Appeals	43399	REP	01/09/2019	2018-23/12
R277-482	Charter School Timelines and Approval Processes	43392	REP	01/09/2019	2018-23/15
R277-509	Licensure of Student Teachers and Interns	43373	AMD	01/09/2019	2018-23/19
R277-550	Charter Schools – Definitions	43400	NEW	01/09/2019	2018-23/21
R277-551	Charter Schools - General Provisions	43393	NEW	01/09/2019	2018-23/24
R277-552	Charter School Timelines and Approval Processes	43394	NEW	01/09/2019	2018-23/26
R277-553	Charter School Oversight, Monitoring and Appeals	43401	NEW	01/09/2019	2018-23/31
R277-554	State Charter School Board Grants and Mentoring Program	43395	NEW	01/09/2019	2018-23/34

R277-555	Corrective Action Against Charter School Authorizers	43396	NEW	01/09/2019	2018-23/38
R277-600	Student Transportation Standards and Procedures	43375	AMD	01/09/2019	2018-23/38
R277-922	Digital Teaching and Learning Grant Program	43398	AMD	01/09/2019	2018-23/45
<b>ENVIRONMENTAL QUALITY</b>					
<u>Air Quality</u>					
R307-110-17	Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits	42976	AMD	01/03/2019	2018-13/35
R307-110-17	Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits	42976	CPR	01/03/2019	2018-21/134
<u>Drinking Water</u>					
R309-100-9	Variances	43378	AMD	01/15/2019	2018-23/57
R309-105-4	General	43379	AMD	01/15/2019	2018-23/58
R309-110-4	Definitions	43380	AMD	01/15/2019	2018-23/60
R309-200	Monitoring and Water Quality: Drinking Water Standards	43381	AMD	01/15/2019	2018-23/73
R309-210-8	Disinfection Byproducts - Stage 1 Requirements	43382	AMD	01/15/2019	2018-23/80
R309-211	Monitoring and Water Quality: Distribution System -- Total Coliform Requirements	43383	AMD	01/15/2019	2018-23/85
R309-215-10	Residual Disinfectant	43384	AMD	01/15/2019	2018-23/91
R309-215-16	Groundwater Rule	43385	AMD	01/15/2019	2018-23/93
R309-220-4	General Public Notification Requirements	43386	AMD	01/15/2019	2018-23/99
R309-225-4	General Requirements	43387	AMD	01/15/2019	2018-23/101
<u>Waste Management and Radiation Control, Radiation</u>					
R313-28-31	General and Administrative Requirements	43253	AMD	01/14/2019	2018-21/52
<u>Waste Management and Radiation Control, Waste Management</u>					
R315-273	Standards for Universal Waste Management	43252	AMD	01/14/2019	2018-21/55
<b>GOVERNOR</b>					
<u>Economic Development</u>					
R357-7	Utah Capital Investment Board	43488	EXT	01/24/2019	Not Printed
<u>Energy Development (Office of)</u>					
R362-5	Commercial Property Assessed Clean Energy (C-PACE) Administrative Rules	43419	NEW	01/23/2019	2018-24/15
<b>HEALTH</b>					
<u>Administration</u>					
R380-70	Standards for Electronic Exchange of Clinical Health Information	43487	5YR	01/24/2019	Not Printed
<u>Family Health and Preparedness, Emergency Medical Services</u>					
R426-1	General Definitions	43177	AMD	01/11/2019	2018-18/15
R426-2	Emergency Medical Services Provider Designations for Pre-Hospital Providers, Critical Incident Stress Management and Quality Assurance Reviews	43178	AMD	01/11/2019	2018-18/19
R426-9	Trauma and EMS System Facility Designations	43321	AMD	01/18/2019	2018-22/114
<u>Health Care Financing, Coverage and Reimbursement Policy</u>					
R414-520	Admission Criteria for Medically Complex Children's Waiver	43332	NEW	01/04/2019	2018-22/111
R414-521	Accountable Care Organization Hospital Report	43352	NEW	01/04/2019	2018-22/113

RULES INDEX

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HUMAN RESOURCE MANAGEMENT

Administration

R477-101 Administrative Law Judge Conduct Committee 43470 5YR 01/07/2019 2019-3/44

HUMAN SERVICES

Administration

R495-882 Termination of Parental Rights 43496 5YR 02/01/2019 Not Printed

Administration, Administrative Services, Licensing

R501-1 General Provisions for Licensing 43330 AMD 01/17/2019 2018-22/119

R501-8 Outdoor Youth Programs 43234 AMD 01/17/2019 2018-21/89

Child and Family Services

R512-305 Out-of-Home Services, Transition to Adult Living Services 43358 AMD 01/09/2019 2018-23/115

Substance Abuse and Mental Health

R523-5 Peer Support Specialist Training and Certification 43141 AMD 01/29/2019 2018-17/60

R523-5 Peer Support Specialist Training and Certification 43141 CPR 01/29/2019 2018-24/38

R523-19 Community Mental Health Crisis and Suicide Prevention Training Grant Standards 43355 NEW 01/29/2019 2018-23/118

INSURANCE

Administration

R590-269 Individual Open Enrollment Period 43474 5YR 01/11/2019 2019-3/44

LIEUTENANT GOVERNOR

Elections

R623-1 Lieutenant Governor's Procedure for Regulation of Lobbyist Activities 43493 5YR 01/28/2019 Not Printed

R623-2 Uniform Ballot Counting Standards 43494 5YR 01/28/2019 Not Printed

R623-3 Utah State Plan on Election Reform 43495 5YR 01/28/2019 Not Printed

NATURAL RESOURCES

Parks and Recreation

R651-301 State Recreation Fiscal Assistance Programs 43416 AMD 01/24/2019 2018-24/20

R651-406 Off-Highway Vehicle Registration Fees 43415 AMD 01/24/2019 2018-24/23

Wildlife Resources

R657-11 Taking Furbearers and Trapping 43414 AMD 01/24/2019 2018-24/25

R657-13 Taking Fish and Crayfish 43420 AMD 01/24/2019 2018-24/27

PUBLIC SAFETY

Fire Marshal

R710-15 Seizure and Disposal of Fireworks, Class A Explosives, and Class B Explosives 43354 NEW 01/14/2019 2018-22/155

TAX COMMISSION

Property Tax

R884-24P-27 Standards for Assessment Level and Uniformity of Performance Pursuant to Utah Code Ann. Sections 59-2-704 and 59-2-704.5 43371 AMD 01/10/2019 2018-23/119

TECHNOLOGY SERVICES

Administration

R895-7 Acceptable Use of Information Technology Resources 43467 5YR 01/03/2019 2019-3/45

**RULES INDEX - BY KEYWORD (SUBJECT)**

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KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>acceptable use</u> Technology Services, Administration	43467	R895-7	5YR	01/03/2019	2019-3/45
<u>administrative law judges</u> Human Resource Management, Administration	43470	R477-101	5YR	01/07/2019	2019-3/44
<u>administrative procedures</u> Environmental Quality, Drinking Water	43378	R309-100-9	AMD	01/15/2019	2018-23/57
<u>air pollution</u> Environmental Quality, Air Quality	42976 42976	R307-110-17 R307-110-17	AMD CPR	01/03/2019 01/03/2019	2018-13/35 2018-21/134
<u>appeals</u> Education, Administration	43399 43401	R277-481 R277-553	REP NEW	01/09/2019 01/09/2019	2018-23/12 2018-23/31
<u>appraisals</u> Tax Commission, Property Tax	43371	R884-24P-27	AMD	01/10/2019	2018-23/119
<u>assessment</u> Governor, Energy Development (Office of)	43419	R362-5	NEW	01/23/2019	2018-24/15
<u>assistance</u> Natural Resources, Parks and Recreation	43416	R651-301	AMD	01/24/2019	2018-24/20
<u>ballots</u> Lieutenant Governor, Elections	43494	R623-2	5YR	01/28/2019	Not Printed
<u>beam limitation</u> Environmental Quality, Waste Management and Radiation Control, Radiation	43253	R313-28-31	AMD	01/14/2019	2018-21/52
<u>capital investments</u> Governor, Economic Development	43488	R357-7	EXT	01/24/2019	Not Printed
<u>certification of programs</u> Human Services, Substance Abuse and Mental Health	43141 43141	R523-5 R523-5	AMD CPR	01/29/2019 01/29/2019	2018-17/60 2018-24/38
<u>certified medical language interpreter</u> Commerce, Occupational and Professional Licensing	43465	R156-80a	5YR	01/02/2019	2019-2/19
<u>charter schools</u> Education, Administration	43374 43399 43400 43393	R277-470 R277-481 R277-550 R277-551	REP REP NEW NEW	01/09/2019 01/09/2019 01/09/2019 01/09/2019	2018-23/9 2018-23/12 2018-23/21 2018-23/24

RULES INDEX

	43401	R277-553	NEW	01/09/2019	2018-23/31
	43395	R277-554	NEW	01/09/2019	2018-23/34
	43396	R277-555	NEW	01/09/2019	2018-23/38
<u>child welfare</u>					
Human Services, Child and Family Services	43358	R512-305	AMD	01/09/2019	2018-23/115
<u>clinical health information exchange</u>					
Health, Administration	43487	R380-70	5YR	01/24/2019	Not Printed
<u>commercial</u>					
Governor, Energy Development (Office of)	43419	R362-5	NEW	01/23/2019	2018-24/15
<u>community crisis training grant</u>					
Human Services, Substance Abuse and Mental Health	43355	R523-19	NEW	01/29/2019	2018-23/118
<u>compliance determinations</u>					
Environmental Quality, Drinking Water	43382	R309-210-8	AMD	01/15/2019	2018-23/80
	43383	R309-211	AMD	01/15/2019	2018-23/85
	43384	R309-215-10	AMD	01/15/2019	2018-23/91
	43385	R309-215-16	AMD	01/15/2019	2018-23/93
<u>conduct committee</u>					
Human Resource Management, Administration	43470	R477-101	5YR	01/07/2019	2019-3/44
<u>consumer confidence report</u>					
Environmental Quality, Drinking Water	43387	R309-225-4	AMD	01/15/2019	2018-23/101
<u>corrective action</u>					
Education, Administration	43396	R277-555	NEW	01/09/2019	2018-23/38
<u>crisis training grant</u>					
Human Services, Substance Abuse and Mental Health	43355	R523-19	NEW	01/29/2019	2018-23/118
<u>definitions</u>					
Environmental Quality, Drinking Water	43380	R309-110-4	AMD	01/15/2019	2018-23/60
<u>dental</u>					
Environmental Quality, Waste Management and Radiation Control, Radiation	43253	R313-28-31	AMD	01/14/2019	2018-21/52
<u>digital teaching and learning</u>					
Education, Administration	43398	R277-922	AMD	01/09/2019	2018-23/45
<u>disinfection monitoring</u>					
Environmental Quality, Drinking Water	43384	R309-215-10	AMD	01/15/2019	2018-23/91
	43385	R309-215-16	AMD	01/15/2019	2018-23/93
<u>disposal of fireworks</u>					
Public Safety, Fire Marshal	43354	R710-15	NEW	01/14/2019	2018-22/155
<u>distribution system monitoring</u>					
Environmental Quality, Drinking Water	43382	R309-210-8	AMD	01/15/2019	2018-23/80
	43383	R309-211	AMD	01/15/2019	2018-23/85
<u>drinking water</u>					
Environmental Quality, Drinking Water	43378	R309-100-9	AMD	01/15/2019	2018-23/57
	43379	R309-105-4	AMD	01/15/2019	2018-23/58
	43380	R309-110-4	AMD	01/15/2019	2018-23/60
	43381	R309-200	AMD	01/15/2019	2018-23/73
	43382	R309-210-8	AMD	01/15/2019	2018-23/80
	43383	R309-211	AMD	01/15/2019	2018-23/85
	43384	R309-215-10	AMD	01/15/2019	2018-23/91
	43385	R309-215-16	AMD	01/15/2019	2018-23/93
	43386	R309-220-4	AMD	01/15/2019	2018-23/99

	43387	R309-225-4	AMD	01/15/2019	2018-23/101
<u>economic development</u>					
Governor, Economic Development	43488	R357-7	EXT	01/24/2019	Not Printed
<u>education</u>					
Education, Administration	43374	R277-470	REP	01/09/2019	2018-23/9
	43400	R277-550	NEW	01/09/2019	2018-23/21
	43393	R277-551	NEW	01/09/2019	2018-23/24
<u>education finance</u>					
Education, Administration	43475	R277-419	NSC	01/15/2019	Not Printed
<u>elections</u>					
Lieutenant Governor, Elections	43494	R623-2	5YR	01/28/2019	Not Printed
	43495	R623-3	5YR	01/28/2019	Not Printed
<u>electronic meetings</u>					
Administrative Services, Finance	43471	R25-11	5YR	01/07/2019	2019-3/43
<u>elk</u>					
Agriculture and Food, Animal Industry	43469	R58-20	5YR	01/07/2019	2019-3/43
<u>emergency medical services</u>					
Health, Family Health and Preparedness, Emergency Medical Services	43177	R426-1	AMD	01/11/2019	2018-18/15
	43178	R426-2	AMD	01/11/2019	2018-18/19
	43321	R426-9	AMD	01/18/2019	2018-22/114
<u>energy</u>					
Governor, Energy Development (Office of)	43419	R362-5	NEW	01/23/2019	2018-24/15
<u>enrollment options</u>					
Education, Administration	43397	R277-437	AMD	01/09/2019	2018-23/6
<u>environmental health scientist</u>					
Commerce, Occupational and Professional Licensing	43466	R156-20a	NSC	01/11/2019	Not Printed
<u>environmental health scientist-in-training</u>					
Commerce, Occupational and Professional Licensing	43466	R156-20a	NSC	01/11/2019	Not Printed
<u>environmental protection</u>					
Environmental Quality, Drinking Water	43378	R309-100-9	AMD	01/15/2019	2018-23/57
<u>expansion</u>					
Education, Administration	43392	R277-482	REP	01/09/2019	2018-23/15
	43394	R277-552	NEW	01/09/2019	2018-23/26
<u>federal election reform</u>					
Lieutenant Governor, Elections	43495	R623-3	5YR	01/28/2019	Not Printed
<u>finance</u>					
Administrative Services, Finance	43404	R25-10	AMD	01/23/2019	2018-24/6
<u>financing</u>					
Governor, Energy Development (Office of)	43419	R362-5	NEW	01/23/2019	2018-24/15
<u>fiscal</u>					
Natural Resources, Parks and Recreation	43416	R651-301	AMD	01/24/2019	2018-24/20
<u>fish</u>					
Natural Resources, Wildlife Resources	43420	R657-13	AMD	01/24/2019	2018-24/27
<u>fishing</u>					
Natural Resources, Wildlife Resources	43420	R657-13	AMD	01/24/2019	2018-24/27

RULES INDEX

---

<u>furbearers</u>						
Natural Resources, Wildlife Resources	43414	R657-11	AMD	01/24/2019	2018-24/25	
<u>game laws</u>						
Natural Resources, Wildlife Resources	43414	R657-11	AMD	01/24/2019	2018-24/25	
<u>Governmental Immunity Act caps</u>						
Administrative Services, Risk Management	43235	R37-4	AMD	01/18/2019	2018-21/2	
<u>grant programs</u>						
Education, Administration	43398	R277-922	AMD	01/09/2019	2018-23/45	
<u>hazardous waste</u>						
Environmental Quality, Waste Management and Radiation Control, Waste Management	43252	R315-273	AMD	01/14/2019	2018-21/55	
<u>health effects</u>						
Environmental Quality, Drinking Water	43386	R309-220-4	AMD	01/15/2019	2018-23/99	
<u>Help America Vote Act</u>						
Lieutenant Governor, Elections	43494	R623-2	5YR	01/28/2019	Not Printed	
<u>human services</u>						
Human Services, Administration, Administrative Services, Licensing	43330	R501-1	AMD	01/17/2019	2018-22/119	
	43234	R501-8	AMD	01/17/2019	2018-21/89	
<u>hunting parks</u>						
Agriculture and Food, Animal Industry	43469	R58-20	5YR	01/07/2019	2019-3/43	
<u>implementation</u>						
Education, Administration	43395	R277-554	NEW	01/09/2019	2018-23/34	
<u>individual open enrollment period</u>						
Insurance, Administration	43474	R590-269	5YR	01/11/2019	2019-3/44	
<u>information technology resources</u>						
Technology Services, Administration	43467	R895-7	5YR	01/03/2019	2019-3/45	
<u>inspections</u>						
Agriculture and Food, Animal Industry	43469	R58-20	5YR	01/07/2019	2019-3/43	
<u>interns</u>						
Education, Administration	43373	R277-509	AMD	01/09/2019	2018-23/19	
<u>licensing</u>						
Commerce, Occupational and Professional Licensing	43466	R156-20a	NSC	01/11/2019	Not Printed	
	43465	R156-80a	5YR	01/02/2019	2019-2/19	
Human Services, Administration, Administrative Services, Licensing	43330	R501-1	AMD	01/17/2019	2018-22/119	
	43234	R501-8	AMD	01/17/2019	2018-21/89	
<u>limitation on judgments</u>						
Administrative Services, Risk Management	43235	R37-4	AMD	01/18/2019	2018-21/2	
<u>lobbyist</u>						
Lieutenant Governor, Elections	43493	R623-1	5YR	01/28/2019	Not Printed	
<u>lobbyist registration</u>						
Lieutenant Governor, Elections	43493	R623-1	5YR	01/28/2019	Not Printed	
<u>mammography</u>						
Environmental Quality, Waste Management and Radiation Control, Radiation	43253	R313-28-31	AMD	01/14/2019	2018-21/52	

<u>Medicaid</u>						
Health, Health Care Financing, Coverage and Reimbursement Policy	43332	R414-520	NEW	01/04/2019	2018-22/111	
	43352	R414-521	NEW	01/04/2019	2018-22/113	
<u>medical language interpreter</u>						
Commerce, Occupational and Professional Licensing	43465	R156-80a	5YR	01/02/2019	2019-2/19	
<u>mental health crisis and suicide prevention training grant</u>						
Human Services, Substance Abuse and Mental Health	43355	R523-19	NEW	01/29/2019	2018-23/118	
<u>mentoring</u>						
Education, Administration	43395	R277-554	NEW	01/09/2019	2018-23/34	
<u>monitoring</u>						
Education, Administration	43399	R277-481	REP	01/09/2019	2018-23/12	
	43401	R277-553	NEW	01/09/2019	2018-23/31	
<u>notification requirements</u>						
Commerce, Real Estate	43407	R162-2f	AMD	01/23/2019	2018-24/8	
<u>off-highway vehicles</u>						
Natural Resources, Parks and Recreation	43415	R651-406	AMD	01/24/2019	2018-24/23	
<u>operational requirements</u>						
Commerce, Real Estate	43407	R162-2f	AMD	01/23/2019	2018-24/8	
<u>out-of-home care</u>						
Human Services, Child and Family Services	43358	R512-305	AMD	01/09/2019	2018-23/115	
<u>oversight</u>						
Education, Administration	43399	R277-481	REP	01/09/2019	2018-23/12	
	43401	R277-553	NEW	01/09/2019	2018-23/31	
<u>ozone</u>						
Environmental Quality, Air Quality	42976	R307-110-17	AMD	01/03/2019	2018-13/35	
	42976	R307-110-17	CPR	01/03/2019	2018-21/134	
<u>parental rights</u>						
Human Services, Administration	43496	R495-882	5YR	02/01/2019	Not Printed	
<u>peer support specialist</u>						
Human Services, Substance Abuse and Mental Health	43141	R523-5	AMD	01/29/2019	2018-17/60	
<u>peer support specialists</u>						
Human Services, Substance Abuse and Mental Health	43141	R523-5	CPR	01/29/2019	2018-24/38	
<u>personal property</u>						
Tax Commission, Property Tax	43371	R884-24P-27	AMD	01/10/2019	2018-23/119	
<u>PM10</u>						
Environmental Quality, Air Quality	42976	R307-110-17	AMD	01/03/2019	2018-13/35	
	42976	R307-110-17	CPR	01/03/2019	2018-21/134	
<u>PM2.5</u>						
Environmental Quality, Air Quality	42976	R307-110-17	AMD	01/03/2019	2018-13/35	
	42976	R307-110-17	CPR	01/03/2019	2018-21/134	
<u>property tax</u>						
Tax Commission, Property Tax	43371	R884-24P-27	AMD	01/10/2019	2018-23/119	
<u>PSS program</u>						
Human Services, Substance Abuse and Mental Health	43141	R523-5	AMD	01/29/2019	2018-17/60	

RULES INDEX

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	43141	R523-5	CPR	01/29/2019	2018-24/38
<u>public education</u>					
Education, Administration	43397	R277-437	AMD	01/09/2019	2018-23/6
<u>public notification</u>					
Environmental Quality, Drinking Water	43386	R309-220-4	AMD	01/15/2019	2018-23/99
<u>pupil accounting</u>					
Education, Administration	43475	R277-419	NSC	01/15/2019	Not Printed
<u>quality standards</u>					
Environmental Quality, Drinking Water	43381	R309-200	AMD	01/15/2019	2018-23/73
<u>real estate business</u>					
Commerce, Real Estate	43407	R162-2f	AMD	01/23/2019	2018-24/8
<u>recreation</u>					
Natural Resources, Parks and Recreation	43416	R651-301	AMD	01/24/2019	2018-24/20
<u>regulated contaminants</u>					
Environmental Quality, Drinking Water	43381	R309-200	AMD	01/15/2019	2018-23/73
<u>reporting</u>					
Health, Family Health and Preparedness, Emergency Medical Services	43321	R426-9	AMD	01/18/2019	2018-22/114
<u>reporting requirements</u>					
Health, Health Care Financing, Coverage and Reimbursement Policy	43352	R414-521	NEW	01/04/2019	2018-22/113
<u>repurposing of fireworks</u>					
Public Safety, Fire Marshal	43354	R710-15	NEW	01/14/2019	2018-22/155
<u>risk management</u>					
Administrative Services, Risk Management	43235	R37-4	AMD	01/18/2019	2018-21/2
<u>sanitarian</u>					
Commerce, Occupational and Professional Licensing	43466	R156-20a	NSC	01/11/2019	Not Printed
<u>satellite</u>					
Education, Administration	43392	R277-482	REP	01/09/2019	2018-23/15
	43394	R277-552	NEW	01/09/2019	2018-23/26
<u>school buses</u>					
Education, Administration	43375	R277-600	AMD	01/09/2019	2018-23/38
<u>school enrollment</u>					
Education, Administration	43475	R277-419	NSC	01/15/2019	Not Printed
<u>school transportation</u>					
Education, Administration	43375	R277-600	AMD	01/09/2019	2018-23/38
<u>seizure of fireworks</u>					
Public Safety, Fire Marshal	43354	R710-15	NEW	01/14/2019	2018-22/155
<u>social services</u>					
Human Services, Child and Family Services	43358	R512-305	AMD	01/09/2019	2018-23/115
<u>standards</u>					
Health, Administration	43487	R380-70	5YR	01/24/2019	Not Printed
<u>startup</u>					
Education, Administration	43395	R277-554	NEW	01/09/2019	2018-23/34
<u>state custody</u>					
Human Services, Administration	43496	R495-882	5YR	02/01/2019	Not Printed

<u>state employees</u> Administrative Services, Finance	43404	R25-10	AMD	01/23/2019	2018-24/6
<u>state plan</u> Lieutenant Governor, Elections	43495	R623-3	5YR	01/28/2019	Not Printed
<u>storage of fireworks</u> Public Safety, Fire Marshal	43354	R710-15	NEW	01/14/2019	2018-22/155
<u>student teachers</u> Education, Administration	43373	R277-509	AMD	01/09/2019	2018-23/19
<u>substance use disorder</u> Human Services, Substance Abuse and Mental Health	43141	R523-5	AMD	01/29/2019	2018-17/60
	43141	R523-5	CPR	01/29/2019	2018-24/38
<u>suicide prevention training grant</u> Human Services, Substance Abuse and Mental Health	43355	R523-19	NEW	01/29/2019	2018-23/118
<u>surface water treatment plant monitoring</u> Environmental Quality, Drinking Water	43384	R309-215-10	AMD	01/15/2019	2018-23/91
	43385	R309-215-16	AMD	01/15/2019	2018-23/93
<u>tax credits</u> Governor, Economic Development	43488	R357-7	EXT	01/24/2019	Not Printed
<u>taxation</u> Tax Commission, Property Tax	43371	R884-24P-27	AMD	01/10/2019	2018-23/119
<u>teacher preparation programs</u> Education, Administration	43373	R277-509	AMD	01/09/2019	2018-23/19
<u>timelines</u> Education, Administration	43392	R277-482	REP	01/09/2019	2018-23/15
	43394	R277-552	NEW	01/09/2019	2018-23/26
<u>total coliform</u> Environmental Quality, Drinking Water	43383	R309-211	AMD	01/15/2019	2018-23/85
<u>training</u> Education, Administration	43392	R277-482	REP	01/09/2019	2018-23/15
	43394	R277-552	NEW	01/09/2019	2018-23/26
<u>Transition to Adult Living</u> Human Services, Child and Family Services	43358	R512-305	AMD	01/09/2019	2018-23/115
<u>transparency</u> Administrative Services, Finance	43404	R25-10	AMD	01/23/2019	2018-24/6
<u>trauma</u> Health, Family Health and Preparedness, Emergency Medical Services	43321	R426-9	AMD	01/18/2019	2018-22/114
<u>trauma center designation</u> Health, Family Health and Preparedness, Emergency Medical Services	43321	R426-9	AMD	01/18/2019	2018-22/114
<u>trust account records</u> Commerce, Real Estate	43407	R162-2f	AMD	01/23/2019	2018-24/8
<u>universal waste</u> Environmental Quality, Waste Management and Radiation Control, Waste Management	43252	R315-273	AMD	01/14/2019	2018-21/55

RULES INDEX

---

<u>Utah Capital Investment Board</u> Governor, Economic Development	43488	R357-7	EXT	01/24/2019	Not Printed
<u>Utah Public Financial Website</u> Administrative Services, Finance	43404	R25-10	AMD	01/23/2019	2018-24/6
<u>Utah Transparency Advisory Board</u> Administrative Services, Finance	43471	R25-11	5YR	01/07/2019	2019-3/43
<u>voting</u> Lieutenant Governor, Elections	43494	R623-2	5YR	01/28/2019	Not Printed
<u>water quality</u> Environmental Quality, Drinking Water	43387	R309-225-4	AMD	01/15/2019	2018-23/101
<u>watershed management</u> Environmental Quality, Drinking Water	43379	R309-105-4	AMD	01/15/2019	2018-23/58
<u>wildlife</u> Natural Resources, Wildlife Resources	43414 43420	R657-11 R657-13	AMD AMD	01/24/2019 01/24/2019	2018-24/25 2018-24/27
<u>wildlife law</u> Natural Resources, Wildlife Resources	43414 43420	R657-11 R657-13	AMD AMD	01/24/2019 01/24/2019	2018-24/25 2018-24/27
<u>X-rays</u> Environmental Quality, Waste Management and Radiation Control, Radiation	43253	R313-28-31	AMD	01/14/2019	2018-21/52
<u>youth</u> Human Services, Administration, Administrative Services, Licensing	43234	R501-8	AMD	01/17/2019	2018-21/89