

State of Utah
Administrative Rule Analysis

NOTICE OF PROPOSED RULE

- * The agency identified below in box 1 provides notice of proposed rule change pursuant to Utah Code Section 63G-3-301.
- * Please address questions regarding information on this notice to the agency.
- * The full text of all rule filings is published in the Utah State Bulletin unless excluded because of space constraints.
- * The full text of all rule filings may also be inspected at the Division of Administrative Rules.

DAR file no:		Date filed:	
State Admin Rule Filing Id:		Time filed:	

		Agency No.		Rule No.		Section No.
Utah Admin. Code Ref (R no.):	R	156	-	79	-	
Changed to Admin. Code Ref. (R no.):	R		-		-	

1.	Agency:	Commerce/Division of Occupational and Professional Licensing			
	Room no.:				
	Building:	Heber M. Wells Building			
	Street address 1:	160 East 300 South			
	Street address 2:				
	City, state, zip:	Salt Lake City UT 84111-2316			
	Mailing address 1:	PO Box 146741			
	Mailing address 2:				
	City, state, zip:	Salt Lake City UT 84114-6741			
	Contact person(s):				
	Name:	Phone:	Fax:	E-mail:	
	Clyde Ormond	801-530-6254	801-530-6511	cormond@utah.gov	

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

2.	Title of rule or section (catchline):	Hunting Guides and Outfitters Licensing Act Rule
3.	Type of notice:	New ___; Amendment XX; Repeal ___; Repeal and Reenact ___
4.	Purpose of the rule or reason for the change:	The Division and the Hunting Guides and Outfitters Licensing Board further reviewed this rule after an August 2009 rule hearing and written comments received by the Division with respect to this rule. As a result of that review, additional amendments are being proposed.
5.	This change is a response to comments from the Administrative Rules Review Committee.	No XX; Yes ___
6.	Summary of the rule or change:	

	<p>Section 102: Paragraph (2) - American Heart Association is being added as an additional provider of first aid/cardiopulmonary resuscitation (CPR) courses. Section 302d: Paragraph (1)(d) is amended to reduce the number of conviction of misdemeanors from three to one or more involving wildlife violations. Paragraphs (1)(f) and (g): Minor wording changes are made. Section 303: Updated renewal cycle from one year to two years as provided in the governing statute. Section 502: Paragraph (14) is updated with respect to general liability insurance coverage required by the United States Forest Service or the Bureau of Land Management. Sections 601 and 602: In addition to the American Heart Association amendments being added, these two sections are amended to remove the 30 days of basic instruction requirement and give the Board the responsibility of approving the training programs for the hunting guide and outfitter programs. Also, the training requirements of orienteering and map reading are being added. Section 701 is being deleted as it is inappropriate and has created confusion in the outfitter and hunting guide industry.</p>						
7.	<p>Aggregate anticipated cost or savings to:</p> <p>A) State budget:</p> <p>Affected: <input type="checkbox"/> No ___; <input checked="" type="checkbox"/> Yes XX</p> <p>The Division will incur minimal costs of approximately \$75 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.</p> <p>B) Local government:</p> <p>Affected: <input type="checkbox"/> No XX; <input type="checkbox"/> Yes ___</p> <p>The proposed amendments only apply to licensed hunting guides and outfitters and applicants for licensure in those classifications. As a result, the proposed amendments do not apply to local governments.</p> <p>C) Small businesses ("small business" means a business employing fewer than 50 persons):</p> <p>Affected: <input type="checkbox"/> No XX; <input type="checkbox"/> Yes ___</p> <p>The proposed amendments only apply to licensed hunting guides and outfitters and applicants for licensure in those classifications. Licensees and applicants for licensure may work in a small business; however, the proposed amendments would not directly affect the business. The Division does not anticipate that these proposed amendments will create any additional costs or savings to the regulated industry.</p> <p>D) Persons other than small businesses, businesses, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):</p> <p>Affected: <input type="checkbox"/> No XX; <input type="checkbox"/> Yes ___</p> <p>The proposed amendments only apply to licensed hunting guides and outfitters and applicants for licensure in those classifications. The Division does not anticipate that these proposed amendments will create any additional costs or savings to the regulated industry.</p>						
8.	<p>Compliance costs for affected persons:</p> <p>The proposed amendments only apply to licensed hunting guides and outfitters and applicants for licensure in those classifications. The Division does not anticipate that these proposed amendments will create any additional costs or savings to the regulated industry.</p>						
9.	<p>A) Comments by the department head on the fiscal impact the rule may have on businesses:</p> <p>No fiscal impact to businesses is anticipated from this rule filing which clarifies existing provisions based on comments received during a rule hearing.</p> <p>B) Name and title of department head commenting on the fiscal impacts:</p> <p>Francine A. Giani, Executive Director</p>						
10.	<p>This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws.</p> <p>State code or constitution citations (required) (e.g., Section 63G-3-402; Subsection 63G-3-601(3); Article IV) :</p> <table border="1" data-bbox="186 1669 1492 1774"> <tr> <td data-bbox="186 1669 836 1701">58-79-101</td> <td data-bbox="836 1669 1492 1701">58-1-106(1)(a)</td> </tr> <tr> <td data-bbox="186 1701 836 1732">58-1-202(1)(a)</td> <td data-bbox="836 1701 1492 1732"></td> </tr> <tr> <td data-bbox="186 1732 836 1774"></td> <td data-bbox="836 1732 1492 1774"></td> </tr> </table>	58-79-101	58-1-106(1)(a)	58-1-202(1)(a)			
58-79-101	58-1-106(1)(a)						
58-1-202(1)(a)							
11.	<p>This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Division of Administrative Rules; <i>if none, leave blank</i>):</p> <table border="1" data-bbox="186 1848 1492 1892"> <tr> <td data-bbox="186 1848 633 1892"></td> <td data-bbox="633 1848 1031 1892">First Incorporation</td> <td data-bbox="1031 1848 1492 1892">Second Incorporation</td> </tr> </table>		First Incorporation	Second Incorporation			
	First Incorporation	Second Incorporation					

	Official Title of Materials Incorporated (from title page)		
	Publisher		
	Date Issued		
	Issue, or version		
	ISBN Number (optional)		
	ISSN Number (optional)		
	Cost of Incorporated Reference		
	Action: Adds, updates, or removes		
	(If this rule incorporates more than two items by reference, please attach additional pages)		
12.	The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)		
	A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy):	12/01/2009	
	B) A public hearing (optional) will be held:		
	On (mm/dd/yyyy):	At (hh:mm AM/PM):	At (place):
	11/10/2009	1:00 pm	160 East 300 South, Conference Room 474 (4th floor), Salt Lake City, Utah
13.	This rule change may become effective on (mm/dd/yyyy):	12/08/2009	
	NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 12(A) above, the agency must submit a Notice of Effective Date to the Division of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.		
14.	Indexing information -- keywords (maximum of four, in lower case, except for acronyms (e.g., "GRAMA") or proper nouns (e.g., "Medicaid")); may not include the name of the agency:		
	licensing	hunting guides	
	outfitters		
15.	Attach an RTF document containing the text of this rule change (filename):	R156-79.pro	
To the agency: Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i> , and delaying the first possible effective date.			
AGENCY AUTHORIZATION			
Agency head or designee, and title:	Mark B. Steinagel, Director	Date (mm/dd/yyyy):	10/15/2009

R156. Commerce, Occupational and Professional Licensing.

R156-79. Hunting Guides and Outfitters Licensing Act Rule.

R156-79-102. Definitions.

In addition to the definitions in Sections 58-1-102 and 58-79-102, which shall apply to this rule:

(1) "Client" means the person who engages the professional services of a licensed outfitter.

(2) "Certification of completion of a first aid and CPR course" means a valid certificate issued by the American Red Cross or American Heart Association to denote the individual whose name and signature appear thereon has successfully completed an applicable American Red Cross or American Heart Association first aid and CPR course.

(3) "Conviction" means criminal conduct where the filing of a criminal charge has resulted in:

(a) a finding of guilt based on evidence presented to a judge or jury;

(b) a guilty plea;

(c) a plea of nolo contendere;

(d) a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation;

(e) a pending diversion agreement;

(f) a conviction which has been reduced pursuant to Subsection 76-3-402(1); or

(g) an equivalent of any of the above in another jurisdiction.

(4) "Packing" means transporting for hire or compensation hunters, game animals or equipment in the field.

(5) "Protecting" means the hunting guide and outfitter protects any clientele.

(6) "Responsible charge" means having principal care for the safety and welfare of a client when and where the hunting guide services are being provided.

(7) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 79, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-79-502.

R156-79-302d. Qualifications for Licensure - Good Moral Character.

(1) Any one or more of the following may disqualify an individual from obtaining or holding a hunting guide or outfitters license:

(a) a violation of a state or federal wildlife, hunting guide or outfitter statute or regulation that includes:

(i) an imprisonment for more than five days within the previous five years;

(ii) an unsuspended fine of more than \$2,000 imposed in the previous 12 months;

(iii) an unsuspended fine of more than \$3,000 imposed in the previous 36 months; or

(iv) an unsuspended fine of more than \$5,000 imposed in the

previous 60 months;

(b) any felony conviction within the last five years;

(c) a conviction for a felony offense against a person under Title 76, Chapter 5, Utah Criminal Code, Offenses Against the Person, within the last ten years;

(d) a conviction for [~~three~~ one] or more misdemeanors involving wildlife violations;

(e) a conviction for a misdemeanor crime of moral turpitude;

(f) a suspension or disciplinary action involving an individual [~~'s right to~~] obtaining or exercis[e]ing the privileges granted by a hunting guide or outfitter license in this state or another state of the United States, province of Canada, by the Federal Bureau of Land Management or by the United States Forest Service; and

(g) a loss of the [~~right~~ privilege] to hunt in this state or another state of the United States or province of Canada.

R156-79-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the [~~one~~ two]-year renewal cycle applicable to licensees under Title 58, Chapter 79 is established by rule in Section R156-1-308a.

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

R156-79-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) engaging in fraud in advertising or soliciting hunting guide or outfitter services to the public;

(2) intentionally obstructing or hindering or attempting to obstruct or hinder lawful hunting by a person who is not a client or an employee of the licensee;

(3) failing to promptly report, unless a reasonable means of communication is not readily available, and in no event later than 20 days, a violation of a state or federal wildlife, game or guiding statute that the licensee believes was committed by a client or an employee of the licensee;

(4) materially breaching a contract with a person using the hunting guide or outfitting services of the licensee;

(5) failing to provide any animal used in the conduct of business with proper food, drink and subjecting any animal used in the conduct of business to needless abuse or cruel and inhumane treatment;

(6) failing to allow the Division or its agents access at all times to inspect hunting camps, whether or not the licensee is present;

(7) failing to provide a hunting guide for every two hunters in wilderness areas and for up to six hunters in all other areas of the state;

(8) failing to maintain a neat, orderly and sanitary camp by not disposing of garbage, debris and human waste appropriately;

(9) failing to provide clean drinking water or failing to protect all food from contamination;

(10) failing to separate livestock facilities and camp facilities and to protect streams from contamination;

(11) failing to report any serious injury or fatality to the client or outfitter staff to a federal, state, county or local law enforcement authority;

(12) failing to comply with state and federal laws and rules regarding hunting guides and outfitters;

(13) failing to comply with state and federal wildlife laws and rules;

(14) failing to ~~[provide and]~~adequately maintain general liability insurance coverage ~~[during the entire licensing period]~~as required by the United States Forest Service or the Bureau of Land Management;

(15) failing as a licensee to carry an original license, as issued by the Division, at all times when providing outfitting or hunting guide services;

(16) providing outfitter services to a person who is not properly licensed to hunt for the species sought by that person; and

(17) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established by the Utah Guides and Outfitters Association, adopted July 1, 2006, which is hereby incorporated by reference.

R156-79-601. Content of the Hunting Guide Basic Training Program.

The basic training program for hunting guides as required in Subsection 58-79-302(1)(e) shall be approved by the Division in collaboration with the Board and may~~[contain at least 30 days of basic instruction to]~~ include the following components or their equivalent:

(1) hunter ethics and attitude;

(2) horsemanship;

(3) packing skills;

(4) transporting livestock;

(5) shoeing skills;

(6) use of a crosscut saw and ax;

(7) use of a chain saw;

(8) general weapon knowledge;

(9) guiding skills;

(10) game care;

(11) setting up camps;

(12) hunting guide regulations;

(13) an American Red Cross or American Heart Association first aid and CPR course;

(14) orienteering and map reading;

~~[(14)]~~15) a basic off highway vehicle safety course;

(~~[15]~~16) basic survival skills;~~[-and]~~
(~~[16]~~17) trophy judging skills;
(18) other topics pertinent to the hunting guide industry as approved by the Division in collaboration with the Board.

R156-79-602. Content of the Outfitter Basic Training Program.

The basic training program for outfitters as required in Subsection 58-79-302(2)(e) shall be approved by the Division in collaboration with the Board and may~~[contain at least 30 days of basic instruction to]~~ include the following components or their equivalent:

- (1) hunter ethics and attitude;
- (2) horsemanship;
- (3) packing skills;
- (4) transporting livestock;
- (5) shoeing skills;
- (6) use of a crosscut saw and ax;
- (7) use of a chain saw;
- (8) general weapon knowledge;
- (9) guiding skills;
- (10) game care;
- (11) setting up camps;
- (12) outfitter regulations;
- (13) an American Red Cross or American Heart Association first aid and CPR course;
- (14) a basic off highway vehicle safety course;
- (15) supervising clientele;
- (16) hiring and supervising personnel;
- (17) outfitter advertising;
- (18) booking clientele;
- (19) going into business for oneself;
- (20) wilderness and back country manners;
- (21) applying federal and state land use policies;
- (22) obtaining all necessary licenses and permits and permissions for the client;
- (23) providing staff and facilities for hunting;
- (24) providing a hunting guide;
- (25) orienteering and map reading;
- (~~[25]~~26) basic survival skills;~~[-and]~~
- (~~[26]~~27) trophy judging skills;
- (28) other topics pertinent to the outfitter industry as approved by the Division in collaboration with the Board.

~~**R156-79-701. Effective Date of Rule.**~~

~~The effective date of this rule shall be January 1, 2010.]~~

KEY: licensing, hunting guides, outfitters

Date of Enactment or Last Substantive Amendment: [September 10, 2009]

Authorizing, and Implemented or Interpreted Law: 58-79-101; 58-1-106(1)(a); 58-1-202(1)(a)