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Re: Formal Submission of Legislative Legal Risk Addendum and Request for Oversight Referral

Respectfully, Natural Resources Leadership, House and Senate Chairs and Members,

I submit this letter and the attached **Legislative Legal Risk Addendum (v1.0)** for inclusion in the committee record concerning the regulation of outfitters and guides under Utah Code Title 23A, **S.B. 149 (2025)**, **Rule R657-72**, and related legislation currently before the Legislature, including **H.B. 168 (2026)**.

This Addendum is **included with a Finalized Packet on Utah Outfitter and Guide Regulation**. Its purpose is to **preserve legislative notice** of identified institutional legal risks and to present those risks in a consolidated format designed to assist committee review, Rules Review oversight, and evaluation by the Utah State Office of the Attorney General and Federal Land Management Agencies and Legislative Committees.

This submission is **not offered as policy advocacy**. It is submitted solely as **formal notice of potential state-liability exposure** arising from the structure and administration of the current regulatory framework.

Enclosed for the committee file is:

1. **Legislative Legal Risk Addendum (v1.0)**

- including a high-level risk matrix cross-referenced to Tabs C and D of the Finalized Packet.

2. **Portfolio; Outfitter and Guide Bill.**

Collectively, these materials identify and summarize risks associated with:

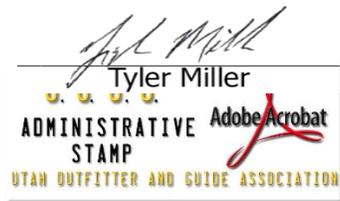
- potential ultra vires delegation in program design and administration;
- continuing structural due-process concerns following elimination of licensure and neutral adjudication;
- rule-supplied standards and non-delegation risk under Rule R657-72;
- potential federal–state coordination issues and involving U.S. Forest Service and BLM permitting frameworks; and the **Supremacy Clause (Article VI of the Constitution)**.
- prospective fiscal and enforcement-related exposure associated with fees, penalties, and ongoing administration.

I respectfully request that the Committee:

1. Enter the Addendum into the committee record;
2. Acknowledge receipt for the file; and
3. Refer the identified issues to the **Administrative Rules Review & General Oversight Committee** for oversight consideration, as appropriate.
4. Federal land management administration intervenes and investigates potential violations and joins with Utah Outfitter and Guide Association should a Federal Injunction be warranted.

Prior related materials have been provided to legislative committees, and additional legal and record-based analysis is being reviewed separately by the State OAG. This Addendum is submitted to ensure the Legislature has a clear, consolidated risk notice for the record.

Respectfully submitted,



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LEGISLATIVE LEGAL RISK ADDENDUM

Supplemental Oversight and Escalation Analysis

PURPOSE AND STATUS OF THIS ADDENDUM

This Legislative Legal Risk Addendum is submitted as a **stand-alone oversight document**, separate from the primary legislative binder titled:

Utah Outfitter and Guide Professional Licensure, Governance, and Operational Standards Act (the “**Primary Binder**”).

The Primary Binder establishes the **statutory record, regulatory history, implementation findings, structural defects**, and a **complete repeal-and-reenact legislative framework** relating to Utah Code Title 23A, Chapter 4, Part 12, as amended by S.B. 149 (2025), H.B. 168 (2026), and implemented through Rule R657-72.

This Addendum does **not restate** that record. Its purpose is to:

- consolidate and escalate **institutional legal-risk consequences** arising from defects already documented;
- evaluate **cumulative and continuing-violation exposure**;
- explain the **limits of cleanup or incremental legislation**; and
- assist **Rules Review, the Office of the Attorney General, and legislative leadership** in assessing overall risk posture.

This Addendum does not propose statutory language and is not a substitute for the Primary Binder.

DISCLAIMER

This document is submitted for **informational and oversight review purposes only**. It does not constitute legal advice, does not allege misconduct, and does not direct legislative action.

All analysis is based on publicly available statutes, administrative rules, and reported implementation practices. No inference of intent or fault is made regarding any agency, official, or employee.

CROSS-REFERENCE TO PRIMARY BINDER

All factual predicates, statutory citations, and implementation findings referenced herein are **incorporated by reference** to the Primary Binder, including:

- **Tab A** — Executive Summary
- **Tab B** — Implementation & Rule Issues
- **Tab C** — Due-Process, Governance, and Liability Risks
- **Tab D** — Delegation & Statutory Alignment Review
- **Tab E** — Statutory Crosswalk
- **Tab F** — Complete repeal-and-reenact legislative framework.

This Addendum addresses **risk interaction, escalation, and institutional exposure**, and does not restate factual findings or doctrinal analysis contained in the Primary Binder.

MAPPING: ADDENDUM → PRIMARY BINDER

The following cross-reference map is provided to facilitate review and avoid duplication between this Addendum and the Primary Binder.

<u>Addendum Topic</u>	<u>Primary Binder Reference</u>
Ultra vires / delegation ambiguity	Tabs C, D
Structural due-process defects	Tab C
Enforcement–licensing overlap	Tabs C, D
Rule R657-72 overreach	Tabs B, D
Federal permit misalignment	Tabs B, E
Cleanup limitations	Tabs A, E
Structural correction threshold	Tab F

QUESTIONS PRESENTED (OVERSIGHT-LEVEL)

1. Whether the interaction of documented structural defects produces **escalating legal exposure** not reliably curable through technical amendment.
2. Whether continued administration, renewal, fee collection, and enforcement under the existing framework creates **continuing-violation risk** that compounds liability over time.

3. Whether legislative action framed as “cleanup” or “stabilization,” taken after notice of these defects, may **increase institutional exposure** through ratification or assumption-of-risk doctrines.
 4. Whether **prospective structural realignment**, rather than incremental repair, is required to reset statutory authority and contain cumulative risk.
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EXECUTIVE SUMMARY (ESCALATION ONLY)

The Primary Binder documents multiple statutory, administrative-law, and due-process defects arising from the replacement of professional licensure with a registration-based Certificate of Registration (COR) framework.

This Addendum explains **why those defects escalate, why exposure compounds over time, and why incremental legislative repair is not reliably sufficient to contain institutional risk.**

Key escalation dynamics include:

- **Ultra vires and delegation ambiguity**, rendering downstream administrative acts vulnerable and not reliably curable solely through later statutory alignment;
- **Structural due-process failures**, persisting regardless of enforcement intent and inviting facial and as-applied challenges;
- **Enforcement-linked financial incentives**, independently increasing invalidation and injunction risk;
- **Rule-supplied core professional standards**, magnifying nondelegation and vagueness exposure; and
- **Federal–state misalignment**, expanding exposure beyond state forums.

Continued operation under the current framework increases institutional risk even where enforcement discretion is exercised conservatively.

SCOPE AND ANALYTICAL FRAMEWORK

This Addendum evaluates institutional legal-risk posture, not policy merit.

Analysis focuses on:

- escalation effects;
- interaction between defects;
- continuing-violation dynamics; and
- limits of curative legislation.

Where doctrinal foundations or factual records are addressed in the Primary Binder, this Addendum states **only the escalation consequence**.

REGULATORY HISTORY

The regulatory chronology from 2009 to the present, including the legal effect of each phase, is **incorporated by reference** to Primary Binder Tabs A–D. No additional historical findings are introduced here.

STRUCTURAL DEFECTS — ESCALATION CONSEQUENCES

Ultra Vires and Delegation Ambiguity (*Tabs C, D*)

Administrative action taken without clear statutory delegation creates retroactive vulnerability. Each subsequent registration, enforcement action, or fee assessment expands exposure and may shift risk into ratification analysis.

Structural Due-Process Failure (*Tab C*)

The absence of neutral professional governance and adjudication persists regardless of enforcement discretion, increasing the likelihood of facial challenges and structural remedies.

Collapse of Separation Between Licensing and Enforcement (*Tabs C, D*)

Institutional linkage between interpretation, enforcement, and fiscal benefit supports inferences of structural bias and weakens good-faith defenses.

Enforcement-Linked Revenue Incentives (*Tabs B, C, E*)

Routing licensure-related revenues into enforcement-accessible funds independently increases injunction and refund risk.

Rule-Supplied Core Standards (*Tabs B, D*)

Material professional standards supplied by rule rather than statute magnify nondelegation and invalidation exposure with each enforcement action.

OPERATIONAL DEFECTS AS RISK MULTIPLIERS (*Tabs B, C*)

Operational defects documented in the Primary Binder function as multipliers of structural risk when layered on existing defects, including:

- de facto licensure without licensure safeguards;
- disproportionate occupational consequences;
- audit and compliance overreach; and
- market exit by experienced operators.

CONTINUING-VIOLATION AND CUMULATIVE EXPOSURE

The interaction of structural and operational defects creates continuing violation and cumulative exposure dynamics. Renewals, fee assessments, audits, and enforcement actions may, depending on factual context, provide independent bases for as-applied claims. Incremental legislative amendments do not sever liability where the same structural framework persists.

FEDERAL–STATE STRUCTURAL CONFLICT AND PREEMPTION RISK

(Structural Incompatibility · Supremacy Clause Exposure · NEPA Spillover Risk)

This section addresses legal risk arising from **structural incompatibility** between Utah’s **Certificate of Registration (COR)** framework and federal land-management permitting regimes administered by the U.S. Forest Service (USFS) and the Bureau of Land Management (BLM).

These risks do not depend on the State regulating federal land or displacing federal authority. Rather, they arise because the State’s COR framework **authorizes professional participation without recognizing or integrating the federal permitting systems that function as the de-facto gatekeepers for commercial outfitting activity on federal lands.**

A. Federal Special Use Permits as the De-Facto Gatekeeper

Commercial outfitting and guiding on National Forest System lands and BLM lands requires a **Special Use Permit (SUP)** issued under federal law. SUPs are discretionary authorizations issued only after federal agencies evaluate, among other factors:

- land suitability and environmental impact;
- public need and demand for commercial outfitting services;
- the appropriate number of authorized operators within a district or management unit;
- authorized service days, staffing assumptions, and operating models; and
- consistency with land-use plans and NEPA-reviewed environmental assumptions.

Through these mechanisms, the USFS and BLM function as the **de-facto gatekeepers** for commercial outfitting activity on federal lands by imposing **capacity-based, geographically specific limits** on who may operate and at what scale.

B. State COR Framework Authorizes Entry Without Capacity Integration

By contrast, **S.B. 149 and Rule R657-72** establish a statewide **Certificate of Registration** framework that:

- imposes no numerical cap on the number of outfitters or guides eligible to register;
- does not condition issuance of a COR on possession or availability of a federal SUP;
- does not defer to federal district-level capacity determinations; and
- confers statewide professional authorization independent of land-specific suitability analysis.

As a result, the State authorizes professional eligibility **without regard to the federal capacity limits that ultimately control access to and operation on federal lands**.

This divergence reflects a **failure by the State framework to recognize the identity and role of the actual gatekeeping authorities**, rather than an incidental administrative gap.

C. Structural Conflict and Compliance Traps

The disconnect between state professional authorization and federal capacity-based permitting creates a structurally conflicted regulatory environment in which:

- individuals may hold a valid state COR but be barred from operating on federal lands;
- federally permitted operators may face destabilization as uncapped state registration increases competition beyond federally reviewed assumptions; and
- enforcement actions may arise from conduct that is federally contemplated but rendered impracticable by state-level structural misalignment.

These outcomes do not arise from operator misconduct. They arise from **regulatory architectures that fail to acknowledge and harmonize with the federal gatekeeping role exercised by USFS and BLM**.

D. Supremacy Clause and Obstacle-Preemption Exposure

Under the Supremacy Clause, state law may present preemption risk where its **practical operation** stands as an obstacle to the accomplishment of federal objectives, including:

- managing land use according to environmental carrying capacity;
- limiting commercial outfitting to levels supported by land-use planning; and
- ensuring operations conform to NEPA-reviewed assumptions.

A state framework that authorizes **uncapped professional entry while disregarding federal capacity controls** presents **obstacle-preemption exposure**, particularly where state-authorized participation materially undermines the assumptions on which federal permits are issued.

This exposure may arise even where state law is facially neutral and does not purport to regulate federal land directly.

LIMITS OF CLEANUP LEGISLATION

Cleanup or technical legislation cannot reliably cure defects arising from:

- lack of delegated authority;
- absence of neutral adjudication;
- enforcement-linked financial incentives; or
- rule-supplied professional standards.

Legislative action taken after notice of these risk factors may increase institutional exposure through ratification analysis.

INSTITUTIONAL RISK POSTURE

From an institutional perspective:

- exposure increases with continued operation and record expansion; and
- partial fixes do not arrest cumulative risk or foreclose structural remedies.

These consequences attach to the State as an institution, independent of enforcement intent.

STRUCTURAL CORRECTION CONDITIONS

The defects identified can be resolved only through **prospective structural realignment**, including:

- clear statutory delegation;
- separation of professional governance from enforcement;
- neutral adjudication consistent with UAPA principles; and
- statutory codification of core professional standards.

This observation is descriptive and does not advocate a particular policy outcome.

APPENDICES (REFERENCE ONLY)

Appendix A — Chronology of Administrative Control

(Evidentiary predicate; incorporated record)

Appendix B — Consolidated Risk Matrix and Escalation Profile

(Index and synthesis; no narrative re-litigation)

Appendix C — Table of Authorities

(Supporting reference)

APPENDIX A

CHRONOLOGY OF ADMINISTRATIVE CONTROL

(Evidentiary Predicate for Ultra Vires and Structural Claims)

Phase 1: Licensed Profession (2009–2019)

- Outfitters and guides regulated through professional licensure.
- Entry standards, examinations, insurance, CPR/First Aid, and board governance.
- Neutral adjudication and peer review existed.
- Enforcement separated from licensure and discipline.

Legal Effect:

Protected property and reliance interests established; governance structure constitutionally sufficient.

Phase 2: Licensure Elimination (2020)

- Legislature repeals professional licensure and licensing board.
- Criminal penalties, operational restrictions, and enforcement authority retained.
- No replacement governance or adjudicative structure created.

Legal Effect:

Structural due-process vulnerability created; occupational liberty exposed.

Phase 3: Pre-Statutory Enforcement Design (2020–2024)

- Enforcement personnel conceptualize registration framework.
- Compliance architecture, databases, and enforcement logic developed.
- No statutory delegation during this period.

Legal Effect:

Ultra vires groundwork laid; later statutes inherit structural defect.

Phase 4: Statutory Registration + Rule Implementation (2025)

- S.B. 149 enacted.
- Rule R657-72 adopted, supplying core professional standards.
- Enforcement retains operational and financial control.
- Fees increased; compliance expanded.

Legal Effect:

Nondelegation, rule overreach, excessive fines, and enforcement-bias risks crystallize.

Phase 5: Cleanup Attempt (2026)

- H.B. 168 proposes refinements without structural correction.
- Enforcement funding proposals expanded.

Legal Effect:

Legislative ratification risk; assumption of liability; defects persist.

APPENDIX B

CONSOLIDATED RISK MATRIX AND ESCALATION PROFILE

This Appendix consolidates **existing legal risks documented in the Primary Binder** and evaluates their **cumulative and interacting exposure**. No new factual predicates or policy arguments are introduced.

Courts and oversight bodies routinely assess regulatory regimes **as a whole**, particularly where multiple constitutional and administrative doctrines overlap.

A. PURPOSE OF THE CUMULATIVE ANALYSIS

This Appendix is intended to:

- identify how individual defects reinforce one another;
 - assess escalation potential over time; and
 - provide Rules Review, AGO, and legislative leadership with a consolidated institutional risk profile.
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B. CUMULATIVE RISK MATRIX (OVERVIEW)

Risk Category	Probability	Impact	Classification
Ultra vires delegation	Very High	Very High	Structural
Structural due process	High	Very High	Structural
Separation of functions collapse	High	Very High	Structural
Enforcement financial incentive	High	High	Structural

Risk Category	Probability	Impact	Classification
Rule overreach / nondelegation	High	High	Structural
Excessive fines exposure	Moderate–High	High	Operational
Equal protection / uniform operation	Moderate–High	Moderate–High	Operational
Improper tax / fee doctrine	Moderate–High	High	Operational
Federal permit misalignment	Moderate	High	Operational
Market exit / displacement	Moderate	Moderate	Cumulative

C. ESCALATION MECHANISMS (SUMMARY)

1. **Structural defects do not attenuate** with time; continued enforcement compounds exposure.
2. **Cleanup or ratification-style legislation** may increase institutional risk if defects persist.
3. **Rulemaking amplifies ambiguity** where statutory direction is incomplete.
4. **Federal and fiscal overlap** increases likelihood of multi-forum litigation.

D. OVERSIGHT SIGNIFICANCE

From an institutional perspective:

- no single defect must be dispositive for exposure to exist;
- partial cures do not resolve cumulative risk; and
- unresolved structural defects migrate into fiscal and constitutional claims over time.

Interpretive Note

Each risk identified above is **already documented in the Primary Binder**. This Appendix consolidates and indexes exposure to assist oversight and legal review.

APPENDIX C:

TABLE OF AUTHORITIES

A. United States Supreme Court

- **Barry v. Barchi**, 443 U.S. 55 (1979)
Due process requires prompt, neutral adjudication when government action affects a protected occupational interest.
- **Board of Regents v. Roth**, 408 U.S. 564 (1972)
Licenses, contracts, and government-conferred benefits can constitute protected property interests.
- **Grayned v. City of Rockford**, 408 U.S. 104 (1972)
Vagueness doctrine; laws must give fair notice and limit enforcement discretion.
- **Mathews v. Eldridge**, 424 U.S. 319 (1976)
Balancing test for procedural due process.
- **Meyer v. Nebraska**, 262 U.S. 390 (1923)
Protection of occupational liberty.
- **Panama Refining Co. v. Ryan**, 293 U.S. 388 (1935)
Nondelegation doctrine; Congress (and by analogy legislatures) must make core policy decisions.
- **Penn Central Transp. Co. v. New York City**, 438 U.S. 104 (1978)
Regulatory takings framework.
- **Schwabe v. Board of Bar Examiners**, 353 U.S. 232 (1957)
Arbitrary exclusion from a profession violates due process.
- **Timbs v. Indiana**, 586 U.S. 216 (2019)
Excessive Fines Clause applies to civil and regulatory penalties.
- **Tumey v. Ohio**, 273 U.S. 510 (1927)
Due process violated where adjudicator has financial interest.
- **Ward v. Monroeville**, 409 U.S. 57 (1972)
Structural bias sufficient; proof of actual bias not required.
- **Whitman v. American Trucking Ass'ns**, 531 U.S. 457 (2001)
Limits on delegation of legislative power.

~~B. Utah Supreme Court / Utah Appellate Courts~~

- **Washington County v. Dep't of Health**, 2002 UT 34
Agencies may exercise only authority expressly delegated; ultra vires acts are void.
- **Morton Int'l, Inc. v. Auditing Div.**, 814 P.2d 581 (Utah 1991) Rules
may not create substantive law absent statutory authorization.
- **State v. Mohi**, 901 P.2d 991 (Utah 1995)
Uniform Operation Clause prohibits targeted, non-uniform legislation.

- **State v. Clark**, 2001 UT 9
Separation of powers and limits on executive authority.
 - **Utah Chapter of Sierra Club v. Utah Air Quality Bd.**, 2006 UT 74
Delegation and administrative law principles.
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C. Constitutional Provisions

- **U.S. Const. amend. VIII** — Excessive Fines
 - **U.S. Const. amend. XIV** — Due Process
 - **Utah Const. art. I, § 7** — Due Process
 - **Utah Const. art. I, § 22** — Takings
 - **Utah Const. art. I, § 24** — Uniform Operation of Laws
 - **Utah Const. art. XIII** — Taxation and Revenue
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D. Statutes and Rules

- **Utah Title 23a**
- **S.B. 149 (2025)**
- **H.B. 168 (2026)**
- **Utah Administrative Code R657-72**
- **Utah Administrative Procedures Act**, Title 63G, chs. 3–4