

# 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 Government Operations, 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 801-957-7110. 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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# EXECUTIVE DOCUMENTS

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Under authority granted by the Utah Constitution and various federal and state statutes, the Governor periodically issues **EXECUTIVE DOCUMENTS**, which can be categorized as either Executive Orders, Proclamations, and Declarations. Executive Orders set policy for the executive branch; create boards and commissions; provide for the transfer of authority; or otherwise interpret, implement, or give administrative effect to a provision of the Constitution, state law or executive policy. Proclamations call special or extraordinary legislative sessions; designate classes of cities; publish states-of-emergency; promulgate other official formal public announcements or functions; or publicly avow or cause certain matters of state government to be made generally known. Declarations designate special days, weeks or other time periods; call attention to or recognize people, groups, organizations, functions, or similar actions having a public purpose; or invoke specific legislative purposes (such as the declaration of an agricultural disaster).

The Governor's Office staff files **EXECUTIVE DOCUMENTS** that have legal effect with the Office of Administrative Rules for publication and distribution.

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## WRIT OF ELECTION, PROCLAMATION, AND NOTICE OF ELECTION

2023-1P

### Calling and Giving Notice of a Special Congressional Election

**WHEREAS**, on June 6, 2023, United States Rep. Chris Stewart submitted an irrevocable letter of resignation to the governor stating that Rep. Stewart's final day representing the Second Congressional District of Utah is Sep. 15, 2023;

**WHEREAS**, Article I, Section 2 of the United States Constitution states that "[w]hen vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writ of Election to fill such Vacancies;"

**WHEREAS**, Utah Code § 20A-1-502.5 provides that once a United States representative submits an irrevocable letter of resignation, the governor shall issue a proclamation calling a special congressional election and setting a date for a primary special congressional election and a date for a general special congressional election;

**WHEREAS**, Utah Code § 20A-1-502.5 states that the governor may set a date for a primary special congressional election and a date for a general special congressional election that are different than the days specified in Utah Code § 20A-1-502.5(1)(a) if the governor calls a special session for the Legislature to appropriate money to hold the special elections;

**WHEREAS**, Utah Code § 20A-1-502.5(1)(f) requires the governor's proclamation to, consistent with that section, establish the "deadlines, time frames, and procedures for filing a declaration of candidacy, giving notice of an election, and other election requirements;"

**WHEREAS**, Utah Code § 67-1a-2 designates the Lieutenant Governor as the Chief Election Officer of the State and authorizes her to "exercise oversight, and general supervisory authority, over all elections," and to "exercise direct authority over the conduct of elections for federal, state, and multicounty officers;"

**NOW, THEREFORE**, I, Spencer J. Cox, Governor of the State of Utah, by the authority vested in me by the Constitution of the United States, Utah Constitution, and laws of the State of Utah, do hereby issue this Writ of Election, Proclamation, and Notice of Election, and order as follows:

1. The Chief Election Officer shall, if the Legislature appropriates money under Utah Code § 20A-1-502.5(2):
  - a. conduct a primary special congressional election on Sep. 5, 2023;
  - b. conduct a general special congressional election on Nov. 21, 2023; and
  - c. perform any other duties necessary to conduct the elections above.
2. In addition, the following deadlines, time frames, and procedures shall apply:
  - a. Declaration of Candidacy

## EXECUTIVE DOCUMENTS

- i. Each prospective candidate shall file a declaration of candidacy with the Chief Election Officer between 8 a.m. MST June 8, 2023, and 5 p.m. MST June 14, 2023.
- b. Intent to Gather Signatures
  - i. Each candidate for a qualified political party that intends to seek the party's nomination through the signature gathering process shall, before gathering signatures, file a notice of intent to gather signatures between 8 a.m. MST June 8, 2023 and 5 p.m. MST June 14, 2023.
- c. Candidate Selection
  - i. Each registered political party that is not a qualified political party shall have until July 5, 2023, to select one candidate, in a manner determined by the registered political party, as a candidate for the registered political party.
  - ii. For each qualified political party, before 5 p.m. on July 5, 2023:
    1. the party shall submit to the lieutenant governor one name for placement on the special congressional election primary ballot that the party selects using the convention process described in Utah Code Section 20A-9-407; and
    2. members of the qualified political party who desire to be placed on the special congressional election primary ballot using the signature-gathering process described in Utah Code Section 20A-9-408 shall submit signatures to the lieutenant governor.
- d. Uniform Military and Overseas Voters
  - i. For the primary special congressional election, county clerks shall transmit ballots to uniformed-service and overseas voters by July 21, 2023.
  - ii. For the general special congressional election, county clerks shall transmit ballots to uniformed-service and overseas voters by Oct. 6, 2023.
  - iii. An election officer shall comply with the requirements of Utah Code § 20A-16-102 *et seq.*, Uniform Military and Overseas Voters Act.
- e. Voter Registration
  - i. The voter registration deadlines and procedures set forth in Utah Code Title 20A, Election Code shall apply to the special congressional elections.
- f. Canvassing
  - i. County Canvass:
    1. For the primary special congressional election, the County Board of Canvassers shall complete canvassing by Sep. 19, 2023.
    2. For the general special congressional election, the County Board of Canvassers shall complete canvassing by Dec. 6, 2023.
  - g. State Canvass:
    - i. For the general special congressional election, the State Board of Canvassers shall complete canvassing by Dec. 8, 2023.
3. Except as otherwise addressed in this proclamation, the deadlines, time frames, and procedures in Utah Code Title 20A, Election Code, shall apply to the congressional special elections.

### NOTICE OF ELECTION

I hereby provide notice of an election to fill a vacancy in the Second Congressional District of Utah, consistent with deadlines, time frames, and other requirements provided in this proclamation.

(State Seal)

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the state of Utah. Done this 7th day of June 2023.

**Spencer J. Cox**  
Governor, State of Utah

ATTEST:

**Deidre M. Henderson**  
Lieutenant Governor, State of Utah



**PROCLAMATION****2023-2S**

Calling a Special Session of the Utah Legislature

**WHEREAS**, on June 6, 2023, United States Rep. Chris Stewart submitted an irrevocable letter of resignation to the governor stating that Rep. Stewart's final day representing the Second Congressional District of Utah is Sep. 15, 2023;

**WHEREAS**, Article I, Section 2 of the United States Constitution states that "[w]hen vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies;"

**WHEREAS**, Utah Code § 20A-1-502.5 provides that once a United States representative submits an irrevocable letter of resignation, the governor shall issue a proclamation calling a special congressional election and setting a date for a primary special congressional election and a date for a general special congressional election;

**WHEREAS**, Utah Code § 20A-1-502.5 states that the governor may set a date for a primary special congressional election and a date for a general special congressional election that are different than the days specified in Utah Code § 20A-1-502.5(1)(a) if the governor calls a special session for the Legislature to appropriate money to hold the special elections;

**WHEREAS**, by proclamation of the governor, the primary special congressional election has been set for Tuesday, Sep. 5, 2023, and the general special congressional election has been set for Tuesday, Nov. 21, 2023;

**WHEREAS**, Article VII, Section 6 of the Constitution of the State of Utah provides that the Governor may, by proclamation, convene the Legislature into Special Session;

**NOW, THEREFORE**, I, Spencer J. Cox, governor of the State of Utah, by virtue of the authority vested in me by the Utah Constitution and the laws of the State of Utah, do by this Proclamation call the Sixty-fifth Legislature of the State of Utah into a Second Special Session at the Utah State Capitol, in Salt Lake City, Utah, on the 14th day of June 2023, at 4 p.m., for the following specific purposes:

1. to appropriate money to conduct the elections to be held on Tuesday, Sep. 5, 2023, and Tuesday, Nov. 21, 2023;
2. to change the date of the 2023 municipal primary election from Aug. 15, 2023, to Sep. 5, 2023;
3. to change the date of the 2023 municipal general election from Nov. 7, 2023, to Nov. 21, 2023;
4. to align canvassing deadlines for the Sep. 5, 2023, municipal primary election and the Nov. 21, 2023, municipal general election with the canvassing deadlines for the primary special congressional election and the general special congressional election;
5. to direct counties to conduct the 2023 municipal elections and the counties within the Second Congressional District of Utah to also conduct the special congressional elections;
6. to allow election officers to accept and count ballots for the municipal primary election and the primary special congressional election that are postmarked on or before Sep. 5, 2023;
7. to establish the deadline by which a voter may change the voter's political party affiliation for the Sep. 5, 2023, primary special congressional election; and
8. the Senate consenting to appointments made by the Governor.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the state of Utah. Done this 7th day of June 2023.

(State Seal)

**Spencer J. Cox**  
Governor, State of Utah

EXECUTIVE DOCUMENTS

ATTEST:

**Deidre M. Henderson**  
**Lieutenant Governor, State of Utah**

**End of the Executive Documents 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 June 02, 2023, 12:00 a.m., and June 15, 2023, 11:59 p.m. are included in this, the July 01, 2023, 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 July 31, 2023. 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 October 30, 2023, 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** or 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

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Repeal		
Rule or Section Number:	R23-30	Filing ID: 55458

**Agency Information**

<b>1. Department:</b>	Government Operations		
<b>Agency:</b>	Facilities Management	Construction	and
<b>Room number:</b>	3626		
<b>Building:</b>	Taylorsville State Office Building		
<b>Street address:</b>	4315 S 2700 W, 3rd Floor		
<b>City, state and zip:</b>	Taylorsville, UT 84129		
<b>Mailing address:</b>	4315 S 2700 W, 3rd Floor		
<b>City, state and zip:</b>	Taylorsville, UT 84129		
<b>Contact persons:</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Mike Kelley	801-957-7239	mkelley@agutah.gov	
Michelle Adams	801-957-7240	michelledadams@agutah.gov	
<b>Please address questions regarding information on this notice to the persons listed above.</b>			

**General Information**

2. Rule or section catchline:
R23-30. State Facility Energy Efficiency Fund
3. Purpose of the new rule or reason for the change:
Subsection 63I-1-263(2) repeals Section 63A-5b-1003, State Facility Energy Efficiency Fund, effective 07/01/2023. The statutory authorization for Rule R23-30 will no longer be in effect as of 07/01/2023.
4. Summary of the new rule or change:
This filing repeals Rule R23-30 in its entirety.

**Fiscal Information**

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
None--The statutory authorization for Rule R23-30 will no longer be in effect as of 07/01/2023.

<b>B) Local governments:</b>			
None--The statutory authorization for Rule R23-30 will no longer be in effect as of 07/01/2023.			
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):			
None--The statutory authorization for Rule R23-30 will no longer be in effect as of 07/01/2023.			
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):			
None--The statutory authorization for Rule R23-30 will no longer be in effect as of 07/01/2023.			
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):			
None--The statutory authorization for Rule R23-30 will no longer be in effect as of 07/01/2023.			
<b>F) Compliance costs for affected persons</b> (How much will it cost an impacted entity to adhere to this rule or its changes?):			
None--The statutory authorization for Rule R23-30 will no longer be in effect as of 07/01/2023.			
<b>G) Regulatory Impact Summary Table</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 will be included in narratives above.)			
<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0

Local Governments	\$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>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

The Executive Director of the Department of Government Operations, Marvin Dodge, concurs with the analysis above.

**Citation Information**

**6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 63A-5b-1003		
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**Public Notice Information**

**8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	07/31/2023
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<b>9. This rule change MAY become effective on:</b>	08/07/2023
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	James R. Russell, Director	<b>Date:</b>	06/13/2023
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**R23. Government Operations, Facilities Construction and Management.**

**~~R23-30. State Facility Energy Efficiency Fund.~~**

**~~R23-30-1. Purpose.~~**

~~This rule is for the purposes of:~~

~~(1) conducting the responsibilities assigned to the Division of Facilities Construction and Management in managing the State Facility Energy Efficiency Fund and implementing the associated revolving loan program established in Section 63A-5b-1003; and~~

~~(2) establishing requirements for eligibility for loans from the State Facility Energy Efficiency Fund, procedures for accepting, evaluating, and prioritizing applications for loans, and the terms and conditions for loans.~~

**~~R23-30-2. Authority and Requirements for This Rule.~~**

~~This rule is authorized by Section 63A-5b-1003.~~

**~~R23-30-3. Definitions.~~**

~~(1) "Director" means the director of the Division of Facilities Construction and Management, appointed pursuant to Section 63A-5b-302.~~

~~(2) "Division" means the Division of Facilities Construction and Management created under Section 63A-5b-301.~~

~~(3) "Energy cost payback" or "cost payback" means the period, generally expressed in years, that is needed for the energy cost savings of an energy efficiency project to equal the cost of the energy efficiency project. It does not include the time value of money.~~

~~(4) "Energy savings" means monies not expended by a state agency as the result of energy efficiency measures.~~

~~(5) "Fund" means the State Facility Energy Efficiency Fund under Section 63A-5b-1003.~~

~~(6) "Quarter" means a three-month period beginning with one of the following dates: January 1, April 1, July 1, and October 1.~~

~~(7) "SBEEP" means the State Building Energy Efficiency Program, a program within the Division of Facilities Construction and Management, which is required by Section 63A-5b-1003 to serve as staff to the revolving loan program associated with the State Facilities Energy Efficiency Fund.~~

~~(8) "State Agency" means each executive, legislative, and judicial branch department, agency, board, commission, or division and includes an institution of higher education.~~

~~(9) "SBEEP Manager" means the designee of the director that manages the SBEEP Program.~~

**~~R23-30-4. Eligibility of Projects for Loans.~~**

~~(1) Eligibility for loans from the fund is limited to state agencies.~~

~~(2) Loans may be used only by state agencies to fully or partially finance energy efficiency projects within buildings owned and controlled by the state.~~

~~(3) For energy efficiency projects involving renovation, upgrade, or improvement of existing buildings, the following project measures may be eligible for loan financing from the fund:~~

~~(a) building envelope improvements;~~

~~(b) increase or improvement in building insulation;~~

~~(c) lighting upgrades;~~

~~(d) lighting delamping;~~

~~(e) heating, ventilation, and air conditioning (HVAC) replacements or upgrades;~~

~~(f) improvements to energy control systems;~~

~~(g) other energy efficiency projects or programs that a state agency can demonstrate will result in a reduction in the consumption of energy; and~~

~~(h) renewable energy projects.~~

~~(4) There is no limit to the total number of loans a single state agency may receive from the fund.~~

~~(5) An energy efficiency project is eligible for a loan only if the loan criteria is met, including an energy cost payback, all subject to approval by the division.~~

**R23-30-5. Eligible Costs.**

(1) This section defines the specific costs incurred by an energy efficiency project that may be eligible for financing from the fund.

(2) The following direct costs of an energy efficiency project may be eligible for financing, subject to the remaining conditions of this section:

- (a) building materials;
- (b) doors and windows;
- (c) mechanical systems and components including HVAC and hot water;
- (d) electrical systems and components including lighting and energy management systems;
- (e) labor necessary for the construction or installation of the energy efficiency project;
- (f) design and planning of the energy efficiency project;
- (g) energy audits that identify measures included in the energy efficiency project; and
- (h) inspections or certifications necessary for implementing the energy efficiency project.

(3) The costs of a renovation project that are not directly related to energy efficiency measures are not eligible for financing from the fund.

(4) In cases for which the state agency receives a financial incentive or rebate from a utility or other third party for undertaking the measures in an energy efficiency project, such incentives or rebates are to be deducted from the costs that are eligible for financing from the fund. No loans made from the fund may exceed the final cost incurred by the state agency for the project after third-party financing.

(5) For an energy efficiency project undertaken as part of the renovation of an existing building, building components or systems that are covered by the prescriptive requirements of the Utah Energy Code, the project must exceed the minimum Utah Energy Code requirements in order for the project's costs to be eligible for a loan from the fund. In addition, each project must comply with all applicable division energy design requirements as well as all applicable codes, laws, and regulations.

**R23-30-6. Loan Application Process.**

(1) The division shall receive and evaluate applications for loans from the fund.

(2) State agencies interested in applying for a loan should first contact the SBEEP manager. The SBEEP manager will consult or meet with the state agency to make an initial assessment of the strength or weakness of a proposed project. The SBEEP manager may also choose to conduct a site visit and inspection of the proposed project location before the submittal of an application and the state agency shall cooperate with the SBEEP manager in making the site available for such site visit and inspection. The SBEEP manager may assist state agencies in assessing potential project measures and in preparing an application.

(3) Applications for loans will be made using forms developed by the SBEEP manager. State agencies shall provide the following information on the forms developed by the SBEEP manager:

- (a) name and location of the state agency;
- (b) name and location of the building or buildings where the energy efficiency project will take place;
- (c) a description of the building or buildings, including what the building is used for, seasonal variations in use, general construction of the building, and square footage;

(d) a description of the current energy usage of the building, including types and quantities of energy consumed, building systems, and the age of the building and the particular systems and condition;

(e) a description of the energy efficiency project to be undertaken, including specific measures to be undertaken, the cost or incremental cost of each measure, and the equipment or building materials to be installed;

(f) projected or estimated energy savings that result from each measure undertaken as part of the project;

(g) projected or estimated energy cost savings from each measure undertaken as part of the project;

(h) a description of how energy savings and cost savings will be measured and verified using objective and verifiable post-construction measures, that take into account fluctuations in energy cost and temperature, as well as describing the commissioning procedures for the project;

(i) a description of any additional community or environmental benefits that may result from the project; and

(j) plans and specifications shall accompany the form which describes the proposed energy efficiency measures.

(4) The applicant shall submit an application to the SBEEP manager. The SBEEP manager will conduct an initial review of each application. This initial review will be for determining the completeness of the application, whether additional information is needed, to provide advice on the likelihood that proposed projects, measures, and costs may be eligible for loan financing, and to assist the state agency in improving its application.

(5) When the SBEEP manager has determined that an application is complete and that the proposed project complies with this rule, the application will be forwarded to the director for the director's evaluation.

(6) The SBEEP manager shall make a recommendation for each application to the director. Based upon the score as determined by the SBEEP manager, the SBEEP manager will make recommendations to the director for the funding of energy efficiency projects. The SBEEP manager may have the assistance of others with the appropriate expertise to assist with the review of the application. The SBEEP manager and any others that assist the SBEEP manager in scoring the application must disclose to the director any conflicts of interest that exist in regard to the review of the application. The SBEEP manager shall make a recommendation to the director based on the following criteria and scoring:

(a) the feasibility and practicality of the project (maximum 30 points);

(b) the projected energy cost payback period of the project (maximum 20 points);

(c) the energy cost savings attributable to eligible energy efficiency measures (maximum 30 points); and

(d) the environmental and other benefits to the state and local community attributable to the project (maximum 20 points).

(7) The availability of another source of funding may result in a reduction in the number of overall points in proportion to the likelihood of such other source of funding and the degree to which the source of other funding will fund the entire project. If the other source of funding is likely and funds the entire project, then the SBEEP manager may recommend to the director that the project is ineligible for funding and the director may so determine.

(8) If there are matching funds from another source that are available for the project, the SBEEP manager may add points to the overall score to the project in proportion to the likelihood that the

~~matching funds will be available and the degree to which the matching funds apply to the entire project.~~

~~(9) The SBEEP manager may deduct points from the score of the entire project if the state agency has not used funds properly in the past, not performed the work properly in the past, not provided annual reports or access for inspections, any of which based on the degree of noncompliance.~~

~~(10) The SBEEP manager shall provide advice and recommendations to the director. For applications that receive an average score of less than 70 points, the SBEEP manager shall recommend that the director not provide a loan from the fund. Applications receiving an average score over 70 will normally be recommended by the SBEEP manager for funding. However, if the current balance of the fund does not permit for the funding of all projects with an average score over 70, the SBEEP manager will recommend, beginning with the highest scoring application and working downward in score, those applications that may be funded given the current balance of the fund. The SBEEP manager is not authorized to make decisions regarding the public's business in connection with the fund. The director is the decision-making authority with regard to the award of loans from the fund.~~

~~(11) Based upon the SBEEP manager's scoring, evaluations, and recommendations, the SBEEP manager shall prepare a memorandum for the director that shall:~~

~~(a) provide a brief description of each project reviewed by the SBEEP manager;~~

~~(b) list the energy savings, energy cost savings, and cost payback for each project as estimated by the applicant;~~

~~(c) list the energy savings, energy cost savings, and cost payback for each project as estimated by the SBEEP technical specialist for the program;~~

~~(d) list the total score and the score for each evaluation criterion for each application;~~

~~(e) specify projects recommended for funding and those not recommended for funding; and~~

~~(f) provide a brief explanation of the SBEEP manager's rationale for each application that is not recommended for funding.~~

~~(12) The director will consider pending applications for loans from the fund and will review the SBEEP manager's recommendations for each project. The director may also provide an opportunity for applicants and other interested persons to comment regarding the recommendations and information provided by the SBEEP manager.~~

~~(13) When considering loan applications, the director may modify the dollar amount or project scope for which a loan is awarded if the director determines that individual measures included in a project do not meet the requirements of this rule, are not cost effective, or that funds could better be used for funding of other projects.~~

~~(14) In reviewing energy efficiency measures for possible funding after receiving the report and recommendations of the SBEEP manager and other testimony and documents provided to the director, the director shall:~~

~~(a) review the loan application and the plans and specifications for the energy efficiency measures;~~

~~(b) determine whether to grant the loan by applying the loan eligibility criteria; and~~

~~(c) if the loan is granted by the director, prioritize the funding of the energy efficiency measures by applying the prioritization criteria.~~

~~(15) The director may condition approval of a loan application and the availability of funds on assurances from the state~~

~~agency that the director considers necessary to ensure that the state agency:~~

~~(a) uses the proceeds to pay the cost of the energy efficiency measures; and~~

~~(b) implements the energy efficiency measures.~~

#### **R23-30-7. Loan Terms.**

~~(1) The amount of a loan award approved by the director represents a maximum approved project cost. The final value of any loan may vary from the director approved amount according to the actual incurrence of eligible costs by the state agency. In cases where eligible costs have exceeded those presented in the initial application, a state agency may request that the director increase its loan award, by filing a written request with the SBEEP manager. The director can approve such request if good cause has been submitted by the state agency for such increase and may deny a request in its sole discretion.~~

~~(2) After approval of a loan application by the director, a state agency shall complete the project in accordance with the construction schedule provided in the approved application for the energy efficiency project. If the state agency cannot complete the project on time, before the deadline, the state agency may request an extension from the director, by filing a written request with the SBEEP manager, if good cause has been submitted by the state agency for such extension.~~

~~(3) Loan amounts from the fund will be disbursed only upon documentation of actual eligible costs incurred from the state agency during construction of the energy efficiency project.~~

~~(4) Once a project has been completed as determined by the SBEEP manager, the state agency shall provide to the SBEEP manager, documentation of actual eligible costs incurred, such as invoices from contractors, as well as information on any third-party financial incentives received. SBEEP will use this information to determine the actual eligible cost of the project measures approved by the director.~~

~~(5) The final loan amount will be equal to actual costs incurred for the project minus the value of any third-party incentives received unless:~~

~~(a) this amount exceeds the amount approved by the director, in which case the loan amount will be set at the amount originally approved by the director; or~~

~~(b) this amount exceeds the amount approved by the director and the director increases the loan award at the request of the state agency.~~

~~(6) The director will establish repayment terms and interest rates.~~

~~(7) State agencies that are approved by the director for a loan award will enter into a contract with the division that specifies all terms applying to the loan, including the terms specified in this rule and other contract terms deemed necessary by the director to carry out the purposes of this rule. The director may authorize the SBEEP manager to execute the contract on the division's behalf.~~

#### **R23-30-8. Reporting and Site Visits.**

~~(1) In the period between director approval and project completion, the state agency shall complete and provide to the SBEEP manager, a written report at the beginning of each calendar quarter. The report shall include information on the state agency's progress in completing the energy efficiency project, its most current estimate for the time of project completion, and any notable problems or changes in the project since the director's approval, such as construction delays or cost overruns.~~

## NOTICES OF PROPOSED RULES

(2) After loan funds have been disbursed, the state agency shall complete and provide to the SBEEP manager, a report which shall include the following:

(a) a description of the performance of the building and of the performance of the measures included in the energy efficiency project using the approved objective and verifiable post-construction measures, that take into account fluctuations in energy costs and temperature, approved in the loan application process;

(b) a description of any problems that have occurred with the building or the project;

(c) a description of any changes to the building or to its operations that would cause a change in its energy consumption;

(d) copies of energy bills incurred for the building during the prior year such as electric and utility bills or shipping invoices for fuels such as fuel oil or propane;

(e) documentation of energy consumed by the building in the prior year; and

(f) other information requested by the SBEEP manager or deemed important by the state agency.

(3) Approximately one year after project completion, the SBEEP manager will conduct a site visit to the location of the energy efficiency project to verify project completion and assess the success of the project. Additional site visits may also be conducted by the SBEEP manager during the repayment period. Loan recipients will assist the SBEEP manager with such site visits, including providing access to all components of the energy efficiency project.

**KEY: energy, efficiency, agencies, loans**

**Date of Last Change: February 8, 2023**

**Notice of Continuation: July 11, 2018**

**Authorizing, and Implemented or Interpreted Law: 63A-5b-1003]**

### NOTICE OF PROPOSED RULE

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R162-2c</b>	<b>Filing ID:</b> <b>55495</b>
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### Agency Information

<b>1. Department:</b>	Commerce	
<b>Agency:</b>	Real Estate	
<b>Room number:</b>	2nd Floor	
<b>Building:</b>	Heber M Wells	
<b>Street address:</b>	160 E 300 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84101	
<b>Mailing address:</b>	PO Box 146711	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6711	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Justin Barney	801-530-6603	justinbarney@utah.gov

**Please address questions regarding information on this notice to the persons listed above.**

### General Information

#### 2. Rule or section catchline:

R162-2c. Utah Residential Mortgage Practices and Licensing Rules

#### 3. Reason for this change:

The Residential Mortgage Regulatory Commission has become increasingly concerned about the possible misuse of customer information following a breach of a mortgage entity's security.

The reason for the proposed rule amendment is to protect the public by requiring that a mortgage entity meet minimum customer information security requirements and, when a suspected security breach occurs, requiring that the mortgage entity notify affected customers of the breach.

In addition, the Commission wishes to address minimum standards for supervision of mortgage loan originators and staff members in response to the growing teleworking movement.

#### 4. Summary of this change:

The proposed rule clarifies that the oversight required of a lending manager over sponsored mortgage loan originators and staff includes supervision of those who telework.

The proposed rule requires that a lending manager include conditions of privacy and security of customer information, encryption of data, password management, and use of a secured virtual private network in the policies and procedures that the lending manager is required to establish, maintain, and enforce.

The proposed rule also requires that a mortgage entity notify its customers in the event of a suspected security breach if misuse of the customer's personal information is likely to occur as a result of the security breach.

### Fiscal Information

#### 5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

##### A) State budget:

The Division of Real Estate (Division) has the staff and budget in place to administer the proposed rule amendment. None of the proposed changes is expected to impact the state's budget. After conducting a thorough analysis, there is no anticipated cost or savings to the state budget.



**B) Local government:**

Local governments are not required to comply with or enforce the Utah Residential Mortgage Practicing and Licensing Rules. This rule is not expected to have a fiscal impact on local governments' revenues or expenditures.

**C) Small businesses** ("small business" means a business employing 1-49 persons):**1. Information Security.**

The proposed rule amendment would require the lending manager of residential mortgage entities to establish, maintain, and enforce customer information security requirements, including securing customer information, encrypting data, password management, and maintenance of a virtual private network (information security requirements).

The Division estimates that 600 (about 70%) of the approximately 862 licensed mortgage entities are small businesses.

The Division estimates that approximately 480 (about 80%) of these small businesses already contract with an outside business for the information security services or they employ staff to provide the information security that would be required by the proposed rule amendment and would not incur any cost for the information security requirements of the proposed rule amendment.

The Division estimates that approximately 120 licensed mortgage entities would need to contract with a provider or employ staff to comply with the information security requirements in the proposed rule amendment.

After conducting a thorough analysis, the Division estimates that 120 licensed mortgage entities will either hire staff or will purchase some or all of the information security services required by the proposed rule amendment. The one-time cost to a mortgage entity purchasing all of these services is estimated to be approximately \$4,000, and the on-going annual cost for these mortgage entities is estimated to be approximately \$600 per year, beginning the year following the initial sale.

The Division estimate that approximately one-half of the affected small mortgage businesses will purchase these services in fiscal year 2024 and one-half will purchase the services in fiscal year 2025. The total cost to 60 small business mortgage entities is estimated to be \$240,000 in fiscal year 2024 and \$240,000 in fiscal year 2025.

Fiscal year 2024 -- 60 businesses x \$4,000 = \$240,000  
 Fiscal year 2025 -- 60 businesses x \$4,000 = \$240,000  
 Fiscal year 2024 -- 60 businesses x \$600 = \$36,000  
 Fiscal year 2025 -- 120 businesses x \$600 = \$72,000  
 Fiscal year 2026 -- 120 businesses x \$600 = \$72,000

**2. Notice Requirement.**

Not all mortgage entities will experience a suspected security breach in which misuse of the customer's personal information is likely to occur as a result of the security breach. To protect the public, those mortgage entities that do experience such a suspected breach would be required by the proposed rule amendment to notify affected customers of the suspected breach.

Estimating that approximately 15 licensed small business mortgage entities might experience a suspected breach of customer information in any one fiscal year affecting an estimated average of 150 customers for each affected mortgage entity, the total number of customers to be notified by a small business mortgage entity is estimated to be approximately 2,250 customers per fiscal year.

Assuming the cost to notify a customer to be approximately \$5.00, the average total annual regulatory cost to residential mortgage entities for notifying customers of a suspected breach would be approximately \$11,250.

Each fiscal year -- 15 businesses x 150 customers x \$5 per customer = \$11,250.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):**1. Information Security.**

The proposed rule amendment would require licensed residential mortgage entities to establish, maintain, and enforce customer information security requirements, including securing customer information, encrypting data, password management, and maintenance of a virtual private network (information security requirements).

The Division estimates that approximately 260 (about 30%) of the licensed mortgage entities are non-small businesses.

The Division estimates that all licensed mortgage entities that are non-small businesses already contract with an outside business for the information security services or they employ staff to provide the information security that would be required by the proposed rule amendment and would not incur any cost for the information security requirements of the proposed rule amendment.

**2. Notice Requirement.**

Not all mortgage entities will experience a suspected security breach in which misuse of the customer's personal information is likely to occur as a result of the security breach. To protect the public, those mortgage entities that do experience such a suspected breach would be required by the proposed rule amendment to notify affected customers of the suspected breach.

Estimating that approximately 5 licensed non-small business mortgage entities might experience a suspected breach of customer information in any one fiscal year affecting an estimated average of 150 customers for each

affected mortgage entity, the total number of customers to be notified by a non-small business mortgage entity is estimated to be approximately 750 customers per fiscal year.

Assuming the cost to notify a customer to be approximately \$5.00, the average total annual regulatory cost to licensed non-small mortgage entities for notifying customers of a suspected breach would be approximately \$3,750.

Each fiscal year -- 5 businesses x 150 customers x \$5 per customer = \$3,750.

**E) Persons other than small businesses, non-small businesses, or state 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**):

The proposed amendment does not create new obligations for persons other than small businesses, non-small businesses, state, or local government entities nor does it increase the cost associated with any existing obligation. After conducting a thorough analysis, it was determined that the proposed rule amendment will not result in a fiscal impact to persons other than small businesses, businesses, or local government entities.

**F) Compliance costs for affected persons:**

The compliance costs for affected persons are reflected in total in the fiscal impact estimated for affected licensed mortgage entities split between small businesses and non-small businesses. No other compliance cost is anticipated from the proposed rule amendment.

**G) Regulatory Impact Summary Table** (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 will be included in narratives above.)

**Regulatory Impact Table**

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$287,250	\$323,250	\$83,250
Non-Small Businesses	\$3,750	\$3,750	\$3,750
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$291,000</b>	<b>\$327,000</b>	<b>\$87,000</b>
<b>Fiscal Benefits</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>

State Government	\$0	\$0	\$0
Local Governments	\$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>(\$291,000)</b>	<b>(\$327,000)</b>	<b>(\$87,000)</b>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

The Executive Director of the Department of Commerce, Margaret Busse, has reviewed and approved this regulatory impact analysis.

**Citation Information**

**6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Subsection 61-2c-103(3)	Section 61-2c-301	
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**Public Notice Information**

**8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 07/31/2023

**9. This rule change MAY become effective on:** 08/07/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Jonathan Stewart, Director	<b>Date:</b>	04/19/2023
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**R162. Commerce, Real Estate.**

**R162-2c. Utah Residential Mortgage Practices and Licensing Rules.**

**R162-2c-301a. Unprofessional Conduct.**

(1) ~~Mortgage loan originator.~~

—(a) ~~[Affirmative duties.]~~ A mortgage loan originator shall:

~~(i) [who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 61-2c-405. A mortgage loan originator shall:~~

~~(i)-~~ solicit business and market products solely in the name of the mortgage loan originator's sponsoring entity;

(ii) conduct the business of residential mortgage loans solely in the name of the mortgage loan originator's sponsoring entity;

(iii) remit to any third-party ~~[third-party]~~ service provider the fees- that have been collected from a borrower on behalf of the third-party ~~[third-party]~~ service provider, including:

- (A) appraisal fees;
- (B) inspection fees;
- (C) credit reporting fees; and
- (D) insurance premiums;

(iv) turn all records over to the sponsoring entity for proper retention and disposal; and

(v) comply with a division request for information within ten ~~[10]~~ business days of the date of the request.

(b) A mortgage loan originator who fails to fulfill any requirement under Subsection (1)(a) shall be subject to discipline under Sections 61-2c-401 through 61-2c-405.

~~(c) [(b)] Prohibited conduct. A mortgage loan originator who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 61-2c-405.~~ A mortgage loan originator may not:

(i) charge for services not ~~[actually]~~ performed;

(ii) require a borrower to pay more for third-party ~~[third party]~~ services than the ~~[actual]~~ cost of those services;

(iii) withhold, without reasonable justification, payment owed to a third-party ~~[third-party]~~ service provider in connection with the business of residential mortgage loans;

(iv) alter an appraisal of real property; or

(v) unless acting under a valid real estate license and not under a mortgage license, perform any act that requires a real estate license under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, including:

(A) providing a buyer or seller of real estate with a comparative market analysis;

(B) assisting a buyer or seller to determine the offering price or sales price of real estate;

(C) representing or assisting a buyer or seller of real estate in negotiations concerning a possible sale of real estate;

(D) advertising the sale of real estate by use of any advertising medium;

(E) preparing, on behalf of a buyer or seller, a Real Estate Purchase Contract, addendum, or other contract for the sale of real property; or

(F) altering, on behalf of a buyer or seller, a Real Estate Purchase Contract, addendum, or other contract for the sale of real property.

(d) A mortgage loan originator who engages in any prohibited activity under Subsection (1)(c) shall be subject to discipline under Sections 61-2c-401 through 61-2c-405.

~~(e)~~ A mortgage loan originator does not engage in an activity requiring a real estate license where the mortgage loan originator:

(i) offers advice about the consequences that the terms of a purchase agreement might have on the terms and availability of various mortgage products;

(ii) owns real property that the mortgage loan originator offers "for sale by owner"; or

(iii) advertises mortgage loan services in cooperation with a "for sale by owner" seller where the advertising clearly identifies:

- (A) the owner's contact information;
- (B) the owner's role;
- (C) the mortgage loan originator's contact information; and
- (D) the specific mortgage-related services that the mortgage loan originator may provide to a buyer; or

(iv) advertises in conjunction with a real estate brokerage where the advertising clearly identifies the:

- (A) contact information for the brokerage;
- (B) role of the brokerage;
- (C) mortgage loan originator's contact information; and
- (D) specific mortgage-related services that the mortgage loan originator may provide to a buyer.

~~(2) [Lending manager.~~

~~(a) Affirmative duties. A lending manager who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 61-2c-405.~~

~~[(a)] [(b)]~~ An LM who is designated in the nationwide database as the principal lending manager of an entity shall:

(i) be accountable for the affirmative duties outlined in Subsection (1)(a);

(ii) provide to ~~[all]~~ sponsored mortgage loan originators and unlicensed staff specific written policies as to their affirmative duties and prohibited activities, as established by:

- (A) federal law governing residential mortgage lending;
- (B) state law governing residential mortgage lending and including the Utah Residential Mortgage Practices Act; and
- (C) administrative rules promulgated by the division under authority of the Utah Residential Mortgage Practices Act;

(iii) if acting as a PLM or BLM, exercise reasonable supervision over each ~~[all]~~ sponsored mortgage loan originator[s] and ~~[over all]~~ unlicensed staff ~~[working from the licensee's office]~~ member, including each sponsored mortgage loan originator or unlicensed staff member teleworking, by:

- (A) directing the details and means of their work activities;
- (B) requiring that they read and agree to comply with the Utah Residential Mortgage Practices and Licensing Act and the rules promulgated thereunder;

(C) requiring that they conduct ~~[all]~~ residential mortgage loan business in the name of the sponsoring entity; and

(D) prohibiting unlicensed staff from engaging in any activity that requires licensure;

~~(iv)~~ (A) establish, maintain, and enforce written policies and procedures to ensure [for ensuring] the independent judgment of each [any] underwriter employed by the PLM's sponsoring entity; and

(B) take corrective action for problems identified through the underwriting process;

(v) establish and follow procedures for responding to ~~[all]~~ consumer complaints;

(vi) establish and maintain a quality control plan that:

- (A) complies with HUD and FHA requirements;
- (B) complies with Freddie Mac and Fannie Mae requirements; or

(C) includes, at a minimum, procedures for:

(I) performing pre-closing and post-closing audits of at least 10% ~~[ten percent]~~ of ~~[all]~~ loan files; and

(II) taking corrective action for problems identified through the audit process;

(vii) establish, maintain, and enforce written policies and procedures to ensure customer privacy, customer information security, encryption of data, and password management, including a

cyber security policy that provides that each teleworking employee and sponsored originator must use a secure virtual private network maintained by the sponsoring mortgage entity; ~~the independent judgment of any underwriter employed by the sponsoring entity, whether sponsored from the principal entity location or a branch office; and~~

~~(B) take corrective action for problems identified through the underwriting process; and]~~

(viii) review for compliance with applicable federal and state laws the [all] advertising and marketing materials and methods used by:

(A) the PLM's sponsoring entity; and

(B) the entity's sponsored mortgage loan originators; and

(ix)(A) actively supervise:

(I) any ALM sponsored by the entity; and

(II) any BLM who is assigned to oversee the mortgage loan origination activities of a branch office; and

(B) remain personally responsible and accountable for adequate supervision of ~~all~~ sponsored mortgage loan originators, unlicensed staff, and entity operations throughout all locations, including persons teleworking.

~~(b)(e)]~~ An LM who is designated as a branch lending manager in the nationwide database shall:

(i) work from the branch office the LM is assigned to manage;

(ii) personally oversee the [all] mortgage loan origination activities conducted through the branch office; and

(iii) personally supervise the [all] mortgage loan originators and unlicensed staff affiliated with the branch office.

(c) An LM who fails to fulfill any requirements under Subsections (2)(a) and (2)(b) shall be subject to discipline under Sections 61-2c-401 through 61-2c-405.

(d) [Prohibited conduct. An LM who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 61-2c-405.] An LM may not engage in any activity that is prohibited under Subsection (1)(c) or (3)(c) for a mortgage loan originator or a mortgage entity.

(e) An LM who engages in any prohibited activity under Subsection (2)(d) shall be subject to discipline under Sections 61-2c-401 through 61-2c-405.

~~(3)[Mortgage entity.~~

~~—(a) [Affirmative duties. A mortgage entity that fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 61-2c-405.] A mortgage entity shall:~~

~~(i) remit to any third-party [third party]-service provider the fees [-] that have been collected from a borrower on behalf of the third-party [third party]-service provider, including:~~

~~(A) appraisal fees, which shall be remitted no later than 30 days following the date when[on which] the fees are received by the mortgage entity;~~

~~(B) inspection fees;~~

~~(C) credit reporting fees; and~~

~~(D) insurance premiums;~~

~~(ii) keep[retain] and dispose of records and customer information according to Section R162-2c-302; and~~

~~(iii) comply with a division request for information within ten [40] business days of the date of the request;~~

~~(iv)(A) notify the division of the location from which the entity's PLM will work; and~~

~~(B) if the entity originates Utah loans from a location where the PLM is not present to oversee and supervise activities~~

related to the business of residential mortgage loans, assign a separate LM to serve as the BLM per Subsection 61-2c-102(1)(e);

(v) ensure that:

(I) each sponsored mortgage loan originator fulfills the affirmative duties set forth in ~~[this]~~ Subsection (1); and

(II) each sponsored LM fulfills the affirmative duties set forth in ~~[this]~~ Subsection (2); and

~~(vi) [if using an incentive program, strictly comply with Subsection R162-2c-301b] notify, in writing and without unreasonable delay, each affected customer of a suspected breach of the mortgage entity's security system, if misuse of the customer's personal information occurs or is likely to occur as a result of the suspected security breach.~~

(b) A mortgage entity that fails to fulfill any requirement under Subsection (3)(a) shall be subject to discipline under Sections 61-2c-401 through 61-2c-405.

~~(c)(b) [Prohibited conduct.] A mortgage entity may not allow [shall be subject to discipline under Sections 61-2c-401 through 61-2c-405 if]:~~

~~(i) any sponsored mortgage loan originator or LM to engage[s] in any prohibited conduct; or~~

~~(ii) any unlicensed employee to perform[s] an activity that requires a license [for which licensure is required].~~

(d) A mortgage entity that engages in any prohibited activity under Subsection (3)(c) shall be subject to discipline under Sections 61-2c-401 through 61-2c-405.

~~(4)[Reporting unprofessional conduct.~~

~~—(a) The division shall report in the nationwide database any final disciplinary action taken against a licensee for unprofessional conduct.~~

~~(b) A licensee may challenge the information entered by the division into the nationwide database pursuant to Section 63G-2-603.~~

~~(5)[School.~~

~~—(a) [Affirmative duties. A school that fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 61-2c-405.] A school shall:~~

~~(i) within 15 calendar days of any material change in the information outlined in Subsection R162-2c-203(1)(b), provide to the division written notice of the change;~~

~~(ii) with regard to the criminal history disclosure required under Subsection R162-2c-203(1)(b)(ix),[.]~~

~~(A) obtain each student's signature before allowing the student to participate in course instruction;~~

~~(B) keep[retain] each signed criminal history disclosure for a minimum of two years; and~~

~~(C) make any signed criminal history disclosure available to the division upon request;~~

~~(iii) maintain a record of each student's attendance for a minimum of five years after enrollment;~~

~~(iv) upon request of the division, substantiate any claim made in advertising materials;~~

~~(v) maintain a high quality of instruction;~~

~~(vi) adhere to all state laws and rules [regulations] regarding school and instructor certification;~~

~~(vii) provide the instructors [-] for each course with the required course content outline;~~

~~(viii) require instructors to adhere to the approved course content;~~

~~(ix) comply with a division request for information within ten [40] business days of the date of the request;~~

(x) upon completion of the course requirements, provide a certificate of completion to each student; and

- (xi) ensure that the material is current in courses taught on:
  - (A) Utah statutes;
  - (B) Utah administrative rules;
  - (C) federal laws; and
  - (D) federal regulations.

(b) A school that fails to fulfill any requirement under Subsection (5)(a) shall be subject to discipline under Sections 61-2c-401 through 61-2c-405.

(c) [(b) Prohibited conduct. A school that engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 61-2c-405.] A school may not:

- (i) accept payment from a student without first providing to that student the information outlined in Subsections R162-2c-203(1)(b)(vi) [-]through R162-2c-203(1)(b)(ix);
- (ii) continue to operate after the expiration date of the school certification and without renewing;
- (iii) continue to offer a course after its expiration date and without renewing;
- (iv) allow an instructor whose instructor certification has expired to continue teaching;
- (v) allow an individual student to earn more than eight credit hours of education in a single day;
- (vi) award credit to a student who has not complied with the minimum attendance requirements;
- (vii) allow a student to obtain credit for all or part of a course by taking an examination in lieu of attending the course;
- (viii) give valuable consideration to a person licensed with the division under Title 61, Chapter 2c, Utah Residential Mortgage Practices and Licensing Act, [-]for referring students to the school;
- (ix) accept valuable consideration from a person licensed with the division under Title 61, Chapter 2c, Utah Residential Mortgage Practices and Licensing Act, [-]for referring students to a licensed mortgage entity;
- (x) allow licensed mortgage entities to solicit prospective mortgage loan originators at the school during class time or during the 10-minute break that is permitted during each hour of instruction;
- (xi) require a student to attend any program organized for [the purpose of] solicitation;
- (xii) make a misrepresentation in its advertising;
- (xiii) advertise in any manner that denigrates the mortgage profession;
- (xiv) advertise in any manner that disparages a competitor's services or methods of operation;
- (xv) advertise or teach any course that has not been certified by the division;
- (xvi) advertise a course with language that indicates division approval is pending or otherwise forthcoming; or
- (xvii) attempt by any means to obtain or to use in its educational offerings the questions from any mortgage examination unless the questions have been dropped from the current bank of exam questions.

(d) A school that engages in any prohibited activity under Subsection (5)(c) shall be subject to discipline under Sections 61-2c-401 through 61-2c-405.

(6) [-Instructor. —] (a) [Affirmative duties. An instructor who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 61-2c-405.] An instructor shall:

- (i) adhere to the approved outline for any course taught; and

(ii) comply with a division request for information within ten [40-]business days of the date of the request.

(b) An instructor who fails to fulfill any requirement under Subsection (6)(a) shall be subject to discipline under Sections 61-2c-401 through 61-2c-405.

(c) [(b) Prohibited conduct. An instructor who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 61-2c-405.] An instructor may not:

- (i) continue to teach any course after the instructor's certification has expired and without renewing the instructor's certification; or
- (ii) continue to teach any course after the course has expired and without renewing the course certification.

(d) An instructor who engages in any prohibited activity under Subsection (6)(c) shall be subject to discipline under Sections 61-2c-401 through 61-2c-405.

#### **R162-2c-302. Requirements for[—Record] the Security, Retention, and Disposal of Records and Customer Information.**

(1) [—Record Retention. —] (a)

An entity licensed under the Utah Residential Mortgage Practices Act shall maintain and safeguard for the period set forth in Section 61-2c-302 the following records and customer information:

- (i) application forms, which include~~[-, but are not limited to]~~ to:
  - (A) the initial 1003 form, signed and dated by the loan originator; and
  - (B) the final 1003 form, signed and dated by the loan originator;
- (ii) disclosure forms;
- (iii) truth-in-lending forms;
- (iv) credit reports and the explanations therefor;
- (v) conversation logs;
- (vi) verifications of employment, paycheck stubs, and tax returns;
- (vii) proof of legal residency, if applicable;
- (viii) appraisals, appraisal addenda, and records of communications between the appraiser and the registrant, licensee, and lender;
- (ix) underwriter denials;
- (x) notices of adverse action;
- (xi) loan approval;
- (xii) name and contact information for the borrower in the transaction;
- (xiii) pre-qualification and pre-approval letters;~~[-and]~~
- (xiv) [all-]other records required by underwriters involved with the transaction or provided to a lender; and

(xv) customer information acquired in the application or lending process.

(b) Records may be maintained electronically if the storage system complies with Title 46 Chapter 04, Utah Uniform Electronic Transactions Act.

(c) A licensed entity shall make each record [all records] available to the division pursuant to Subsection 61-2c-302(3).

(d) An individual who terminates sponsorship with an entity shall turn over to the entity any records and customer information in the individual's possession when the sponsorship is terminated[at the time of termination].

(2) [Record Disposal.] A person who disposes of records and customer information at the end of the retention period shall destroy the records and customer information, including any personal

## NOTICES OF PROPOSED RULES

information by shredding, erasing, or otherwise making the information indecipherable.

(3) ~~Responsible Party.~~

(a) If a licensed entity is actively engaged in the business of residential mortgage loans, the PLM is responsible for proper retention, maintenance, safeguarding, and disposal of records and customer information.

(b) If a licensed entity stops ~~ceases~~ doing business in Utah, the control persons ~~person(s)~~ as of its last day of operation are responsible for proper retention, maintenance, safeguarding, and disposal of records and customer information.

**KEY:** residential mortgage, loan origination, licensing, enforcement

**Date of Last Change:** 2023 ~~October 26, 2021~~

**Notice of Continuation:** January 15, 2020

**Authorizing, and Implemented or Interpreted Law:** 61-2c-103(3); 61-2c-402(4)(a)

### NOTICE OF PROPOSED RULE

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R162-2e</b>	<b>Filing ID:</b> <b>55456</b>
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### Agency Information

<b>1. Department:</b>	Commerce	
<b>Agency:</b>	Real Estate	
<b>Room number:</b>	2nd Floor	
<b>Building:</b>	Heber M Wells	
<b>Street address:</b>	160 E 300 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84101	
<b>Mailing address:</b>	PO Box 146711	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6711	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Justin Barney	801-530-6603	justinbarney@utah.gov

**Please address questions regarding information on this notice to the persons listed above.**

### General Information

#### 2. Rule or section catchline:

R162-2e. Appraisal Management Company Administrative Rules

#### 3. Reason for this change:

The reason for the proposed rule amendment is to clarify the communication required of an Appraisal Management Company (AMC) to an appraiser when the AMC chooses to use a bifurcated appraisal assignment and to reduce the

amount of USPAP instruction required for AMC personnel under certain circumstances.

#### 4. Summary of this change:

The proposed rule would: 1) add definitions for appraisal review, bifurcated assignment, and third-party property data collection; 2) for a bifurcated appraisal assignment, require that the AMC disclose to the appraiser: a) the date data was collected; b) the identity or the collector; and c) other relevant information; 3) incorporate USPAP into rule by reference; and 4) reduce the amount of required USPAP instruction for AMC personnel who do not appraise property but who select an appraiser for an assignment or who complete the review of an appraisal.

### Fiscal Information

#### 5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

##### A) State budget:

There is no anticipated cost or savings to the state budget as the Division of Real Estate (Division) has the staff and budget in place to administer the proposed rule amendment. None of the proposed changes is expected to impact the state's budget by either increasing costs or generating savings.

##### B) Local government:

Local governments are not required to comply with or enforce the Appraisal Management Company Administrative Rules. After conducting a thorough analysis, it was determined that the proposed rule amendment will not result in a fiscal impact to local governments.

##### C) Small businesses ("small business" means a business employing 1-49 persons):

The Division finds that adoption of the proposed rule amendments will not result in a fiscal impact for small businesses. Since the practices of most small businesses doing appraisals are already conducting the process, the proposed amendments will only affect businesses positively that choose to implement the bifurcation process.

Further, the Division does not foresee any negative impact on small businesses from the grammar since the new rule was drafted to comport to the Utah Rulewriting Manual.

##### D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

The proposed amendment does not create new obligations for non-small businesses nor does it increase the cost associated with any existing obligation. After conducting a thorough analysis, it was determined that the proposed rule amendment will not result in a fiscal impact to non-small businesses.



**E) Persons other than small businesses, non-small businesses, or state 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**):

The proposed amendment does not create new obligations for persons other than small businesses, non-small businesses, state, or local government entities nor does it increase the cost associated with any existing obligation. After conducting a thorough analysis, it was determined that the proposed rule amendment will not result in a fiscal impact to persons other than small businesses, businesses, or local government entities.

**F) Compliance costs for affected persons:**

Not all AMCs will be affected by the proposed rule amendment. AMCs are not required to offer bifurcated appraisal assignments. Those that choose to offer such assignments have made a business decision to do so, presumably because of likely cost savings to the AMC for bifurcated assignments but also because of other possible benefits perceived by the AMC unrelated to cost savings. The proposed rule would require an AMC that chooses to offer a bifurcated appraisal assignment to communicate to the appraiser information about who collected data for use in an appraisal assignment, when the data was collected, and other relevant information. This information would already be known to the AMC and could be communicated through a simple electronic communication or other method selected by the AMC. The Division is unable to estimate how many bifurcated appraisal assignments AMCs will choose to offer, but whatever the number, the cost of communicating required information is estimated to be negligible or is unable to be determined and likely would be offset by possible cost savings to the AMC resulting from the AMCs choice to offer a bifurcated appraisal.

The proposed change that reduces the education requirement for certain AMC personnel would result in both a time savings and cost savings for affected AMCs. The Division is unable to estimate the cost savings because the Division cannot know how many AMCs have an unlicensed person selecting an appraiser for an assignment or conducting an appraisal review and which would therefor benefit from the lower cost due to the reduced education requirement. A licensed person in this role for the AMC would have already received the education expected to be reduced by the proposed rule.

After conducting a thorough analysis, it was determined that the proposed rule amendment will not result in a fiscal impact to affected persons or, if there is a fiscal impact, the impact is inestimable. Any fiscal impact would likely be negligible and offset by a possible cost savings to the AMC.

**G) Regulatory Impact Summary Table** (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 will be included in narratives above.)

**Regulatory Impact Table**

<b>Fiscal Cost</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$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>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

The Executive Director of Commerce, Margaret Busse, has reviewed and approved this regulatory impact analysis.

"I have reviewed the proposed filing for the above-referenced rule and considered the fiscal impact that the rule may have on businesses. The Division of Real Estate (Division), in concert with the Real Estate Appraiser Board, propose amendments to Rule R162-2e to accommodate a bifurcated appraisal process. A bifurcated appraisal provides for a licensed or certified appraiser to use third-party data collected by licensed or non-licensed persons engaged by an appraisal management company (AMC). The appraisal process for a bifurcated appraisal is split between the data accumulation phase followed by the analysis phase.

The proposed amendment would also reduce the current education requirement of AMC personnel who select an appraiser for an appraisal assignment or who conduct an

appraisal review for the AMC from a 15-hour instructive course to a four-hour course."

### Citation Information

**6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 61-2e-103	Subsection 61-2e-301(3)	Subsection 61-2e-304(3)
Subsection 61-2e-305(2)		

### Incorporations by Reference Information

#### 7. Incorporations by Reference:

**A) This rule adds, updates, or removes the following title of materials incorporated by references:**

<b>Official Title of Materials Incorporated (from title page)</b>	2020-2021 Uniform Standards of Professional Appraisal Practice
<b>Publisher</b>	The Appraisal Foundation
<b>Issue Date</b>	January 1, 2020
<b>Issue or Version</b>	2020-2021 Edition, Extended through December 31, 2023

### Public Notice Information

**8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 07/31/2023

**9. This rule change MAY become effective on:** 08/07/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

### Agency Authorization Information

<b>Agency head or designee and title:</b>	Jonathan C. Stewart, Director	<b>Date:</b>	04/05/2023
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### R162. Commerce, Real Estate.

#### R162-2e. Appraisal Management Company Administrative Rules.

##### R162-2e-101. Title.

This rule [chapter] is known as the "Appraisal Management Company Administrative Rules."

##### R162-2e-102. Definitions.

(1) "Affiliation" means a business association:

(a) between:

(i) two individuals registered, licensed, or certified under Title 61, Chapter 2g, Real Estate Appraiser Licensing and Practices Act [Section 61-2g]; or

(ii) an individual registered, licensed, or certified under Title 61, Chapter 2g, Real Estate Appraiser Licensing and Practices Act [Section 61-2g] and:

(A) an appraisal entity; or

(B) a government agency;

(b) for [the purpose of] providing an appraisal service; and

(c) regardless of whether an employment relationship exists between the parties.

(2) The acronym "AMC" stands for appraisal management company.

(3)(a) "Appraisal review" means the act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal assignment related to the appraiser's data collection, analysis, opinions of value, conclusions, estimate of value, or compliance with USPAP.

(3)(b) "Appraisal review" does not include a general examination for:

(i) grammatical, typographical or other similar errors; or

(ii) completeness including regulatory requirements, client requirements, or both such requirements as specified in the engagement letter that does not communicate an opinion.

(4) "Bifurcated Assignment" means an appraisal assignment for which a third-party provides the appropriate inspection or relevant property data characteristics of the subject property.

(5) "Business day" means a day other than:

(a) a Saturday;

(b) a Sunday; or

(c) a state or federal holiday.

(6)[(4)] "Client" is defined in Subsection 61-2e-102(10).

(7)[(5)] "Competency statement" means a statement provided by the AMC to the appraiser that, at a minimum, requires the appraiser to attest that the appraiser:

(a) is competent according to USPAP standards;

(b) recognizes and agrees to comply with:

(i) laws and rules [regulations] that apply to the appraiser and to the assignment;

(ii) assignment conditions; and

(iii) the scope of work outlined by the client; and

(c) has access, either independently or through an affiliation pursuant to Subsection (1), to the records necessary to complete a credible appraisal, including:

(i) multiple listing service data; and

(ii) county records.

(8)[(6)(a)] For purposes of this rule, "Employee" means an individual:

(a)[(i)] whose manner and means of work performance are subject to the right of control of, or are controlled by, another person; and

(b)[(ii)] whose compensation for federal income tax purposes is reported, or is required to be reported, on a W-2 form issued by the controlling person.

(9)[(b)] For purposes of this rule, "Employee" does not mean [include] an independent contractor who performs duties other than at the discretion of, and subject to the supervision and instruction of, another person.



~~[(c) For purposes of applying Subsection R162-2e-401(1)(g), an appraiser who completes an assignment is considered to be an employee of the AMC that offers the assignment if:~~

~~(i) this subsection (a) describes the employment relationship between the appraiser and the AMC; or~~

~~(ii) pursuant to this subsection (a), the appraiser is an employee of a company:~~

~~(A) that is wholly owned by the AMC; or~~

~~(B) in which the AMC owns a controlling interest.]~~

(10) For purposes of Section R162-2e-304 the term "general criteria" means a standard description of the factors the AMC considers when ranking or differentiating appraisers or tiers within a panel of appraisers.

(11)[(7)] "Select" means:

(a) for purposes of composing the AMC appraiser panel, to review and evaluate the qualifications of an appraiser who applies to be included on the AMC's appraiser panel; and

(b) for purposes of assigning an appraisal activity to an appraiser:

(i) to choose from the AMC's appraiser panel an individual appraiser or appraisal entity to complete an assignment; or

(ii) to compile, from among the appraisers included in the AMC's appraiser panel, an electronic distribution list of appraisers to whom an assignment will be offered through email[e-mail].

(12) "Third-Party Property Data Collection" means a person engaged to collect relevant property data characteristics or conducts a property site visit of the subject property for use in a valuation assignment performed by an appraiser.

(13)[(8)] The acronym "USPAP" stands for Uniform Standards of Professional Appraisal Practice. The 2020-2021 edition of USPAP is incorporated by reference.

#### **R162-2e-304. Required Disclosures and Customary and Reasonable Compensation.**

(1) In addition to the disclosures required by Section 61-2e-304, an AMC shall:

(a) notify the appraiser in writing when[at the time] an appraiser is first added to an appraiser panel:

(i) of the general criteria the AMC uses to rank an appraiser on the panel; and[.]

(ii) if the AMC chooses to separate appraisers into different tiers, of the general criteria the AMC uses to distinguish one tier from another;

(b) notify the affected appraisers in writing of any changes if, after the notice provided for in S[s]ubsection (1)(a), the AMC changes any of the general criteria the AMC considers relative to an appraiser's ranking, tier, or classification within the panel structure;

(c) when[at the time] an assignment is offered, disclose to the appraiser:

(i) the total amount that the appraiser may expect to earn from the assignment:

(A) disclosed as a dollar amount; and

(B) delineating any fees or costs that will be charged by the AMC to the appraiser;

(ii)(A) the property address;

(B) the legal description; or

(C) equivalent information that would allow the appraiser to determine whether the appraiser has been involved with any service regarding the subject property within the three years preceding the date on which the assignment is offered;

(iii) the assignment conditions and scope of work requirements in sufficient detail to allow the appraiser to determine whether the appraiser is competent to complete the assignment;~~[and]~~

(iv) in a bifurcated assignment for which the AMC provides relevant property characteristics, adequate information to enable the appraiser to determine whether credible assignment results can be produced including:

(A) the date of collection;

(B) the identity of collector; and

(C) other relevant information; and

(v) any known deadlines within which the assignment must be completed;

(d) at or before the time the appraiser accepts an assignment, obtain the appraiser's acknowledgment as to the AMC's competency statement;

(e) before requiring the appraiser to submit a completed report, disclose to the appraiser:

(i) the total fee that will be collected by the AMC for the assignment; and

(ii) the total amount that the AMC will keep[retain] from the fee charged, disclosed as a dollar amount; and

(f) direct the appraiser who performs the real estate appraisal activity to disclose in the body of the appraisal report:

(i) the total compensation, stated as a dollar amount, paid to the appraiser or, if the appraiser is employed by an appraisal company, to the appraiser's employer; and

(ii) the total compensation kept[retained] by the AMC in connection with the real estate appraisal activity, stated as a dollar amount.

(2) Notice to an appraiser pursuant to Subsection (1) does not require that an AMC disclose any algorithm, formula, or information about the propriety processes of the AMC.

(3)[(2)] Within ten[10]-business days of receiving a written request from an appraiser or any inquiry related to the business relationship between the appraiser and the AMC, an AMC shall reply to the appraiser in writing. An inquiry may address subjects including the AMC scorecard, appraiser panel status, clarification on work assignments, training, or notice of the removal of an appraiser from an AMC panel as required by [Utah Code]Section 61-2e-306. If the AMC has requested appraisers send such inquiries to a specific address or email address, appraisers shall direct such inquiries as follows:[accordingly.]

(a) if[if] the AMC has determined to decrease the number of assignments to the appraiser the AMC's reply will explain the reason why the AMC has made this decision;

(b) if the AMC has determined to stop[cease] offering assignments to the appraiser, the [the-]AMC's reply will explain the reason why the AMC has made this decision; and

(c) if the AMC has determined to remove the appraiser from an appraiser panel, the AMC shall provide the appraiser notice as required by [Utah Code]Section 61-2e-306.

(4)[(3)] Any written notice or reply required by this section from an AMC to an appraiser may be communicated:

(a) by email;

(b) in a written communication to the mailing address provided by the appraiser; or

(c) by posting to a private vendor website, portal, or other digital venue to which the appraiser has access for at least 30 days following posting of the notice.

## NOTICES OF PROPOSED RULES

~~[(4) For purposes of this Section, the term "general criteria" means a standard description of the factors the AMC considers when ranking or differentiating appraisers or tiers within a panel of appraisers. This does not require an AMC to disclose any algorithms, formulas, or information about proprietary processes.]~~

(5) In replying to a request from an appraiser, an AMC is not required to reply to subsequent or multiple requests if a request unreasonably duplicates a prior request from that person.

(6) In addition to the presumptions of compliance referenced in ~~[Utah Code]~~ Subsection 61-2e-304(2)(b), an AMC is presumed to be in compliance with the Utah requirement to pay appraisers a customary and reasonable fee if the AMC compensates an appraiser for a completed appraisal at a rate consistent with the fee schedule for the state ~~[of Utah]~~ as published by the United States Department of Veterans Affairs Denver Regional Loan Center Appraisal Fee Schedule, as the fee schedule is updated from time-to-time.

### **R162-2e-305. Employee Requirements.**

(1) An AMC seeking registration shall demonstrate to the division that each person who selects an appraiser or conducts an appraisal review ~~[reviews an appraiser's work]~~ for the AMC:

(a) is a licensed or certified appraiser in good standing; or

(b) has taken and passed a minimum of a four-hour USPAP instructive course ~~[the 15-hour national USPAP course]~~.

(2) An AMC seeking renewal of the company's registration shall demonstrate to the division that each person who selects an appraiser or conducts an appraisal review ~~[reviews an appraiser's work]~~ for the AMC:

(a) is a licensed or certified appraiser in good standing; or

(b) has taken and passed a minimum of a four-hour USPAP instructive ~~[completed the seven-hour national USPAP update]~~ course.

### **R162-2e-401. Unprofessional Conduct.**

(1) An entity that is registered or required to be registered with the division as an AMC pursuant to Section 61-2e-201 commits unprofessional conduct if the entity:

(a) requires an appraiser to modify any aspect of the appraisal report, unless the modification complies with Section 61-2e-307;

(b) unless first prohibited by the client or applicable law, prohibits or inhibits an appraiser from contacting:

(i) the client;

(ii) a person licensed under Title 61, Chapter 2c, Utah Residential Mortgage Practices and Licensing Act, or Title 61, Chapter 2f, Real Estate Licensing and Practices Act ~~[Section 61-2e or Section 61-2f]~~; or

(iii) any other person with whom the appraiser reasonably needs to communicate ~~[in order]~~ to obtain information necessary to complete a credible appraisal report;

(c) requires the appraiser to do anything that does not comply with:

(i) USPAP; or

(ii) assignment conditions and certifications required by the client;

(d) makes any portion of the appraiser's fee or the AMC's fee contingent on a favorable outcome, including ~~[but not limited to]~~:

(i) a loan closing; or

(ii) a specific dollar amount being achieved by the appraiser in the appraisal report;

(e) requests, for ~~[the purpose of]~~ facilitating a mortgage loan transaction; ~~[.]~~

(i) a broker price opinion; or

(ii) any other real property price or value estimation that does not qualify as an appraisal;

(f) charges an appraiser:

(i) for a service not ~~[actually]~~ performed; or

(ii) for a fee or cost that:

(A) is not accurately disclosed pursuant to Subsection R162-2e-304(1)(a)(ii); or

(B) exceeds the ~~[actual]~~ cost of a service provided by a third-party ~~[third party]~~;

(g) fails to pay the appraiser's fee within 45 days of completion of the appraisal assignment;

(h) uses or retains an employee to complete an appraisal assignment without first disclosing to the client that the appraiser is an employee of the company, such that the company is acting in the capacity of an appraisal firm rather than as an AMC pursuant to ~~[Utah Code]~~ Subsection 61-2e-102(4); or

(i) when acting in the capacity of an AMC pursuant to ~~[Utah Code]~~ Subsection 61-2e-102(4), uses or retains an employee appraiser to complete an appraisal assignment.

(2) An AMC commits unprofessional conduct and creates a violation by the appraiser of Subsection R162-2g-502b(1)(f) if the AMC requires the appraiser to:

(a) accept full payment; and

(b) remit a portion of the full payment back to the AMC.

(3) For purposes of applying Subsection (1)(g), an appraiser who completes an assignment is considered to be an employee of the AMC that offers the assignment if:

(a) Subsection R162-2e-102(9)(a)(i) describes the employment relationship between the appraiser and the AMC; or

(b) pursuant to Subsection R162-2e-102(9)(a)(ii), the appraiser is an employee of a company:

(i) that is wholly owned by the AMC; or

(ii) in which the AMC owns a controlling interest.

**KEY:** administrative proceedings, appraisal management company (AMC), conduct, AMC registry fee

Date of Last Change: 2023 ~~December 12, 2018~~

Notice of Continuation: January 15, 2020

Authorizing, and Implemented or Interpreted Law: 61-2e-102(4); 61-2e-103; 61-2e-307; 61-2e-305; 61-2e-402(1)

### **NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

**Rule or Section Number:**

**R162-2f**

**Filing ID:**  
**55454**

### **Agency Information**

<b>1. Department:</b>	Commerce
<b>Agency:</b>	Real Estate
<b>Room number:</b>	2nd Floor
<b>Building:</b>	Heber M Wells
<b>Street address:</b>	160 E 300 S
<b>City, state and zip:</b>	Salt Lake City, UT 84101

<b>Mailing address:</b> PO Box 146711		
<b>City, state and zip:</b> Salt Lake City, UT 84114-6711		
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Justin Barney	801-530-6603	justinbarney@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule or section catchline:</b>
R162-2f. Real Estate Licensing and Practices Rules
<b>3. Reason for this change:</b>
<p>The Division of Real Estate (Division), in concert with the Real Estate Commission, propose amendments to Rule R162-2f to accommodate situations that may arise in the event of the sudden death or incapacity of a principal broker, when no provisions have been made for a successor principal broker.</p> <p>The Division wishes to expand the core continuing education topics, to relax the requirements for a broker applicant currently licensed in another state, to allow a broker applicant to acquire partial experience, and to eliminate a form from the forms list.</p> <p>Also, the Division has made formatting conformities throughout the rule to align with the Utah Rulewriting Manual in accordance with Executive Orders No. 2021-1 and 2021-12.</p>
<b>4. Summary of this change:</b>
<p>The proposed amendment would: 1) allow a broker applicant to accumulate partial experience points for a portion of the total number of experience points required to qualify for licensure, thus allowing some applicants to qualify for licensure sooner, and in some instances, with less overall experience; 2) allow certain broker applicants who are already licensed as a real estate broker in another state to qualify for licensure in Utah without repeating the national portion of prelicensing education or the national component of the licensing exam, saving the applicant both time and money; 3) authorize the Real Estate Commission to designate an acting principal broker in the event of the death or incapacity of a principal broker under circumstances in which a real estate brokerage fails to replace the deceased or incapacitated principal broker within 14 days to close out active and pending transactions but would not to represent new clients or continue the activities of the brokerage for more than four months; 4) add additional topics to the list of approved continuing education core topics; and 5) eliminate the outdated state approved Uniform Real Estate Contract.</p>

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
<p>The Division has the staff and budget in place to administer the proposed amendment. None of the proposed changes are expected to impact the state's budget by either increasing costs or generating savings.</p> <p>After conducting a thorough analysis, it was determined that the proposed rule amendment will not result in any cost or savings to the state budget.</p>
<b>B) Local government:</b>
<p>Local governments are not required to comply with or enforce the Real Estate Licensing and Practices Rules. After conducting a thorough analysis, it was determined that the proposed rule amendment will not result in a fiscal impact to local governments.</p>
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
<p>The proposed rule amendment would restructure the courses for broker applicants. Under the proposed amendment, the Division believes that 12 to 24 brokers already licensed in another state will apply each year for licensure as a broker in Utah.</p> <p>The Division feels that one-half of these applicants already apply for and are granted a waiver of a portion of the pre-licensing education under the current rule.</p> <p>The Division believes that 6 to 12 applicants per year may qualify for reduced pre-licensing education hours. The cost of pre-licensing education hours could average \$10 per hour for the education. The Division estimates that eight applicants would purchase a total of 80 fewer hours each per year resulting in a fiscal cost to small business education providers of \$6,400 per year.</p> <p>Ultimately, the Division estimates the fiscal impact in possible lost revenue to small business education providers would be approximately \$6,400 per year beginning in fiscal year 2024.</p>
<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>
<p>After conducting a thorough analysis, the Division finds that the non-small businesses in Utah will not suffer a negative fiscal impact from the proposed changes, or, if there is a negative fiscal impact, the impact is inestimable.</p>
<b>E) Persons other than small businesses, non-small businesses, or state or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):</b>

The proposed amendment does not create new obligations for persons other than small businesses, non-small businesses, state, or local government entities nor does it increase the cost associated with any existing obligation.

After conducting a thorough analysis, it was determined that the proposed rule amendment will not result in a fiscal impact to persons other than small businesses, businesses, or local government entities.

#### F) Compliance costs for affected persons:

Affected persons include real estate broker applicants who will qualify for application for licensure with fewer pre-license education hours. The proposed rule amendment does not create new obligations for affected persons nor does it increase the cost associated with any existing obligation.

The proposed rule amendment does provide for a reduction in educational requirements for broker applicants for licensure in Utah who are already licensed in another state. This option would result in a fiscal benefit in the form of cost savings to affected persons in the amount that they would not need to pay to education providers (see paragraph C, fiscal information for small businesses).

After conducting a thorough analysis, it was determined that the lower cost for pre-license education paid by affected persons would result in fiscal benefit of approximately \$6,400 per year.

**G) Regulatory Impact Summary Table** (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 will be included in narratives above.)

#### Regulatory Impact Table

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$6,400	\$6,400	\$6,400
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$6,400</b>	<b>\$6,400</b>	<b>\$6,400</b>
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0

Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$6,400	\$6,400	\$6,400
<b>Total Fiscal Benefits</b>	<b>\$6,400</b>	<b>\$6,400</b>	<b>\$6,400</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

#### H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of Commerce, Margaret Busse, has reviewed and approved this regulatory impact analysis.

#### Citation Information

**6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 61-2f-103	Subsection 61-2f-202(6)	Subsection 61-2f-203(1)
Subsection 61-2f-206(8)	Subsection 61-2f-306(3)	Section 61-2f-401(13)

#### Public Notice Information

**8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 07/31/2023

**9. This rule change MAY become effective on:** 08/07/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

#### Agency Authorization Information

<b>Agency head or designee and title:</b>	Jonathan C. Stewart, Director	<b>Date:</b>	04/05/2023
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#### R162. Commerce, Real Estate.

##### R162-2f. Real Estate Licensing and Practices Rules.

##### R162-2f-202b. Broker Licensing Fees and Procedures.

(1) To obtain a Utah license to practice as a broker, an individual shall:

(a) evidence honesty, integrity, truthfulness, and reputation pursuant to Subsection R162-2f-201(1);

(b) evidence competency to transact the business of real estate pursuant to Subsection R162-2f-201(2);

(c)(i) successfully complete 120 hours of approved prelicensing education, including:

- (A) 45 hours of broker principles;
- (B) 45 hours of broker practices; and
- (C) 30 hours of Utah law and testing; or

(ii) apply to the division for waiver of all or part of the education requirement by virtue of:

(A) completing equivalent education as part of a college undergraduate or postgraduate degree program, regardless of the date of the degree; or

(B) completing other equivalent real estate education within the 12-month period before the date of application;

(d)(i) apply with a testing service designated by the division to sit for the licensing examination; and

(ii) pay a nonrefundable examination fee to the testing center;

(e) pursuant to Subsection ~~(5)(a)(3)(a)~~, take and pass both the state and national components of the licensing examination;

(f)(i) unless Subsection ~~(4)(a)(2)(a)~~ applies, evidence the individual's having, within the five-year period preceding the date of application either:

(A) three years full-time, licensed, active real estate experience; or

(B) two years full-time, licensed, active, real estate experience and one year full-time professional real estate experience from the optional experience table in Appendix 3; and

(ii) evidence having accumulated, within the five-year period preceding the date of application, a total of at least 60 documented experience points complying with Section R162-2f-401a, as follows:

(A) 45 to 60 points pursuant to the experience points tables found in Appendices 1 and 2, of which a maximum of 25 points may have been accumulated from the "Other property management" subsections of Appendix 2; and

(B) 0 to 15 points pursuant to the experience point table found in Appendix 3;

(iii) a minimum of one-half of the experience points from Tables 1 and 2 must derive from transactions of properties located in Utah;

(iv) evidence of qualifying experience which the individual shall submit to the division by:

(A) selecting from the individual's total qualifying experience documented experience points for which the experience complies with the requirements in Section R162-2f-401a; and

(B) submitting for review and approval by the division documentation of at least 60 documented experience points and no more than 80 documented experience points of the individual's qualifying experience; and

(v) if an individual submits evidence of experience points for transactions involving a team or group, experience points are limited to those transactions for which the individual is named in any written agency agreements and purchase and lease contracts and the applicable experience points will be divided proportionally among the licensees identified in the agency agreements and lease contracts;

(g) pursuant to Subsection (3)(b), submit to the division an application for licensure including:

(i) documentation indicating successful completion of the approved broker prelicensing education;

(ii) a report of the examination showing a passing score for each component of the examination; and

(iii) the applicant's business, home, and email addresses;

(h) provide from any state where licensed as a real estate agent or broker:

(i) a written record of the applicant's license history; and

(ii) complete documentation of any disciplinary action taken against the applicant's license;

(i) if applying for an active license, affiliate with a registered company;

(j) pay the nonrefundable fees required for licensure, including the nonrefundable fee required under Section 61-2f-505 for the Real Estate Education, Research, and Recovery Fund;

(k) if applying for licensure as a principal broker, establish real estate and property management trust accounts, as applicable pursuant to Sections R162-2f-403a and R162-2f-403b that:

(i) for a real estate trust account contains either the term "real estate trust account" or "real estate escrow account" in the account name;

(ii) for a property management trust account contains either the term "property management trust account" or "property management escrow account" in the account name; and

(iii) are separate from any operating accounts of the registered entity for which the individual will serve as principal broker; and

(l) if applying for licensure as a principal broker, identify the locations where brokerage records will be kept.

(2) A broker applicant must accumulate a minimum of 45 experience points of the minimum 60 required experience points according to Experience Tables 1, 2, or 3, Section R162-2f-501, Appendices, which experience points comply with agency requirements specified in Section R162-2f-401a. A broker applicant may receive partial experience points for up to 15 of the 60 required experience points if the applicant can successfully document from signed agency agreements or purchase contracts that the applicant created or confirmed their agency with the clients they represented. Partial experience points must be documented from the transactions originally submitted by applicant totaling the maximum of 80 experience points and approved for partial experience points by the division.

(3) To obtain a Utah license to practice as a broker, an individual who is currently and actively licensed as a broker in another state shall:

(a) evidence honesty, integrity, truthfulness, and reputation pursuant to Subsection R162-2f-201(1);

(b) evidence competency to transact the business of real estate pursuant to Subsection R162-2f-201(2);

(c) successfully complete division approved prelicensing education relating to Utah law and administrative rules;

(d)(i) apply with a testing service designated by the division to sit for the state component of the licensing examination; and

(ii) pay a nonrefundable examination fee to the testing center;

(e) pursuant to Subsection (5)(a), take and pass the state component of the licensing examination;

(f) pursuant to Subsection (5)(b), submit to the division an application for licensure including:

(i) documentation indicating successful completion of the required prelicensing education;

(ii) a report of the examination showing a passing score for the state component of the examination; and

(iii) the applicant's business, home, and email addresses;

(g) provide from each state where licensed;  
(i) a written record of the applicant's license history; and  
(ii) complete documentation of any disciplinary action  
taken against any license held by the applicant; and

(h) pay the nonrefundable fees required for licensure,  
including the nonrefundable fee required under Section 61-2f-505 for  
the Real Estate Education, Research, and Recovery Fund.

(4)(a)(2)(a) If an individual applies under this section within two years of allowing a broker license to expire, the experience required under Subsection (1)(f) shall be accumulated within the seven-year period preceding the date of application.

(b) Pursuant to Section R162-2f-407, an individual whose application is denied by the division for failure to meet experience requirements under Subsection (1)(f) may bring the application before the commission.

(5)(3) Deadlines for passing tests and submitting an application are as follows:

(a) If an individual passes one test component but fails the other, the individual shall retake and pass the failed component:

(i) within six months of the date on which the individual achieves a passing score on the passed component; and

(ii) within 12 months of the date on which the individual completes the precursing education.

(b) An application for licensure shall be submitted:

(i) within 90 days of the date on which the individual achieves passing scores on both examination components; and

(ii) within 12 months of the date on which the individual completes the precursing education.

(c) If any deadline in this section falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

(6)(4) A broker license may not be granted to an applicant whose sales agent license is on suspension or probation at the time of application.

(7)(a)(i)(5)(a)(i) A person who holds or obtains a dual broker license may function as the principal broker of a property management company that is a separate entity from the person's real estate brokerage.

(ii) A dual broker may not conduct real estate sales activities from the separate property management company.

(iii) A principal broker may conduct property management activities from the person's real estate brokerage:

(A) without holding a dual broker license; and

(B) in accordance with Sections R162-2f-401j, R162-2f-403a, and R162-2f-403b.

(b) A dual broker who wishes to consolidate real estate and property management operations into a single brokerage may:

(i) at the broker's request, convert the dual broker license to a principal broker license; and

(ii)(A) convert the property management company to a branch office of the real estate brokerage, including the assignment of a branch broker and using the same name as the real estate brokerage; or

(B) close the separate property management company.

#### **R162-2f-202e. Procedure to Designate an Acting Principal Broker.**

(1) The division may inactivate the registration of a real estate brokerage if, upon the death or incapacity of its principal broker, the real estate brokerage fails to replace the principal broker within 14 days.

(2) The real estate business activities of an inactive brokerage may not continue and each licensee affiliated with the principal broker must stop any activity that requires a real estate license, until:

(a) the brokerage appoints another principal broker;

(b) the licensee affiliates with another principal broker; or

(c) an acting principal broker for the brokerage is qualified and designated.

(3) Before the death or incapacitation of a principal broker, a brokerage may identify in a written instrument signed by the owners of the brokerage an individual to become the acting principal broker to take effect when the principal broker dies or becomes incapacitated.

(a) If the designated acting principal broker is an associate broker within the brokerage, this individual will become the acting principal broker upon notifying the division.

(b) If the designated acting principal broker is not an associate broker within the brokerage, this individual will become the acting principal broker upon the approval of the commission.

(4) Following the death or incapacity of its principal broker, a real estate brokerage may, within 14 days:

(a) appoint another principal broker; or

(b) designate an associate broker affiliated with the brokerage to act as the principal broker.

(5) The commission, with the concurrence of the division, may designate an individual to act as principal broker giving preference to individuals in the following order:

(a) a licensee currently affiliated with the real estate brokerage;

(b) a licensee from another registered real estate brokerage;

(c) an attorney representing the real estate brokerage; or

(d) any other person designated by the commission.

(6) An acting principal broker may close out those transactions, listings, purchase contracts, and property management agreements that are active or pending when an incident occurs that requires the designation of an acting principal broker.

(7) An acting principal broker may not:

(a) agree to represent new clients; or

(b) continue the business activities of the brokerage for more than four months after the occurrence of the death or incapacity of the principal broker.

(8) The acting principal broker shall:

(a) maintain or supervise each escrow or trust account until the money is transferred or disbursed as agreed;

(b) arrange for pending transactions to be closed; and

(c) notify in writing the following persons of the individual's designation as acting principal broker:

(i) each licensee affiliated with the deceased or incapacitated principal broker; and

(ii) each client and party to a pending real estate contract.

#### **R162-2f-206c. Certification of Continuing Education Course.**

(1)(a) The division may not award continuing education credit for a course that is advertised in Utah to real estate licensees unless the course is certified before its being taught.

(b) A licensee who completes a course that is not required to be certified pursuant to Subsection (1)(a), and who believes that the course satisfies the objectives of continuing education pursuant to Subsection (2)(f), may apply to the division for an award of continuing education credit after successfully completing the course.

(2) To certify a continuing education course for traditional education, a person shall, no later than 30 days before the date on which the course is proposed to begin, provide the following to the division:

- (a) name and contact information of the course provider;
- (b) name and contact information of the entity that will provide the course~~[through which the course will be provided]~~;
- (c) description of the physical facility where the course will be taught;
- (d) course title;
- (e) number of credit hours;
- (f) statement defining how the course will meet the objectives of continuing education by increasing the participant's:
  - (i) knowledge;
  - (ii) professionalism; and
  - (iii) ability to protect and serve the public;
- (g) course outline including a description of the subject matter covered in each 15-minute segment;
- (h) a minimum of three learning objectives for every three hours of class time;
  - (i) name and certification number of each certified instructor who will teach the course;
  - (j) copies of materials to be distributed to participants;
  - (k) signed statement in which the course provider and each instructor:
    - (i) agree not to market personal sales products;
    - (ii) allow the division or its representative to audit the course on an unannounced basis; and
    - (iii) agree to upload, within ten business days after the end of a course offering, to the database specified by the division, the following:
      - (A) course name;
      - (B) course certificate number assigned by the division;
      - (C) dates the course was taught;
      - (D) number of credit hours; and
      - (E) names and license numbers of each student receiving continuing education credit;

- (l) procedure for pre[-]registration;
- (m) tuition or registration fee;
- (n) cancellation and refund policy;
- (o) procedure for taking and maintaining control of attendance during class time;
- (p) sample of the completion certificate;
- (q) nonrefundable fee for certification as required by the division; and
- (r) any other information the division requires.

(3) To certify a continuing education course for distance education, a person shall:

- (a) comply with Subsection (2);
- (b) submit to the division a complete description of the course delivery methods and the media to be used;
- (c) provide course access for the division using the same delivery methods and media that will be provided to the students;
- (d) describe specific, frequent, and periodic interactive events included in the course and appropriate to the delivery method that will contribute to the students' achievement of the stated learning objectives and encourage student participation;
- (e) describe how and when certified instructors will be available to answer student questions; and
- (f) provide an attestation from the sponsor of the availability and adequacy of the equipment, software, and other technologies needed to achieve the course's instructional claims.

(4) To certify a continuing education course for virtual-live continuing education, a person shall:

- (a) comply with Subsection (2);
- (b) submit to the division a complete description of the course delivery methods and the media to be used;
- (c) provide course access for the division using the same delivery methods and media that will be provided to the students;
- (d) describe specific, frequent, and periodic interactive events included in the course and appropriate to the delivery method that will contribute to the students' achievement of the stated learning objectives and encourage student participation;
- (e) describe how and when certified instructors will be available to answer student questions; and
- (f) provide an attestation from the sponsor of the availability and adequacy of the equipment, software, and other technologies needed to achieve the course's instructional claims.

(5)(a) Traditional continuing education courses shall be taught in an appropriate classroom facility and not in a private residence.

(b) Except for a division approved virtual-live single session convention continuing education course as provided for in Subsection (5)(c), virtual-live continuing education courses are restricted as follows:

- (i) each course with a class size of one to 50 students shall have at least one non-instructor monitoring assistant;
- (ii) each course with a class size of between 51 and 100 students shall have at least two non-instructor monitoring assistants;
- (iii) the division may not approve a virtual-live continuing education course for more than 100 students, regardless of the number of non-instructor monitoring assistants;
- (iv) each student shall participate in the course with an adequately functioning microphone and live camera that is monitored by a non-instructor monitoring assistant; and
- (v) the course instructor shall instruct using an adequately functioning microphone and live camera such that the instructor may be heard and seen during instruction by student participants.

(c) The division may approve a virtual-live single session convention continuing education course on a per course basis that is designed to meet the needs of students without limitation of the number of participating students.

(d) The minimum length of a course shall be one credit hour.

(e) The procedure for taking attendance shall be more extensive than having the student sign a class roll.

(f) The completion certificate shall include the following information:

- (i) licensee's name;
- (ii) type of license;
- (iii) license number;
- (iv) date of course;
- (v) name of the course provider;
- (vi) course title;
- (vii) number of credit hours awarded;
- (viii) course certification number;
- (ix) course certification expiration date;
- (x) signature of the course sponsor; and
- (xi) signature of the licensee.

(6) Certification procedures.

(a) Upon receipt of a complete application for certification of a continuing education course, the division shall, at its own discretion, determine whether a course qualifies for certification.



## NOTICES OF PROPOSED RULES

(b) Upon determining that a course qualifies for certification, the division shall determine whether the content satisfies core or elective requirements.

(c) Core topics include the following:

- (i) state-approved forms and contracts;
- (ii) other industry used forms or contracts;
- (iii) ethics;
- (iv) agency, agency agreements, and fiduciary duties;
- (v) short sales or sales of bank-owned property;
- (vi) environmental hazards;
- (vii) property management;
- (viii) prevention of real estate and mortgage fraud, including wire fraud;

(ix) federal and state real estate laws;

(x) fair housing, diversity, identifying bias, promoting equity, and inclusion;

(xi) division administrative rules;

(xii) broker trust accounts; ~~and~~

(xiii) water law, rights and transfer; and

(xiv) multiple offers.

(d) If a course regarding an industry used form or contract is approved by the division as a core course, the provider of the course shall:

(i) obtain authorization to use each form or contract taught in the course;

(ii) obtain permission for licensees to subsequently use each form or contract taught in the course; and

(iii) if applicable, arrange for the owner of each form or contract to make it available to licensees for a reasonable fee.

(e) Elective topics include the following:

(i) real estate financing, including mortgages and other financing techniques;

(ii) real estate investments;

(iii) real estate market measures and evaluation;

(iv) real estate appraising;

(v) market analysis;

(vi) measurement of homes or buildings;

(vii) accounting and taxation as applied to real property;

(viii) estate building and portfolio management for clients;

(ix) settlement statements;

(x) real estate mathematics;

(xi) real estate law;

(xii) contract law;

(xiii) agency and sub-agency;

(xiv) real estate securities and syndications;

(xv) regulation and management of timeshares, condominiums, and cooperatives;

(xvi) resort and recreational properties;

(xvii) farm and ranch properties;

(xviii) real property exchanging;

(xix) legislative issues that influence real estate practice;

(xx) real estate license law;

(xxi) division administrative rules;

(xxii) land development;

(xxiii) land use;

(xxiv) planning and zoning;

(xxv) construction;

(xxvi) energy conservation in buildings;

(xxvii) water rights;

(xxviii) landlord-tenant relationships;

(xxix) property disclosure forms;

(xxx) Americans with Disabilities Act;

(xxxi) affirmative marketing;

(xxxii) commercial real estate;

(xxxiii) tenancy in common;

(xxxiv) professional development;

(xxxv) business success;

(xxxvi) customer relation skills;

(xxxvii) sales promotion, including:

(A) salesmanship;

(B) negotiation;

(C) sales psychology;

(D) marketing techniques related to real estate knowledge;

(E) servicing clients; and

(F) communication skills;

(xxxviii) personal and property protection for licensees

and their clients;

(xxxix) any topic that focuses on real estate concepts, principles, or industry practices or procedures, if the topic enhances licensee professional skills and thereby advances public protection and safety;

(xl) any other topic that directly relates to the real estate brokerage practice and directly contributes to the objective of continuing education; and

(xli) technology courses that utilize the majority of the time instructing students how the technology:

(A) directly benefits the consumer; or

(B) enables the licensee to be more proficient in performing the licensee's agency responsibilities.

(f) Mandatory Courses include the following:

(i) the Mandatory Residential Course;

(ii) the Mandatory Property Management Course; or

(iii) the Mandatory Commercial Course.

(g) Unacceptable topics include the following:

(i) offerings in mechanical office and business skills, including:

(A) typing;

(B) speed reading;

(C) memory improvement;

(D) language report writing;

(E) advertising; and

(F) technology courses with a principal focus on technology operation, software design, or software use;

(ii) physical well-being, including:

(A) personal motivation;

(B) stress management; and

(C) dress-for-success;

(iii) meetings held in conjunction with the general business of the licensee and the licensee's broker, employer, or trade organization, including:

(A) sales meetings;

(B) in-house staff meetings or training meetings; and

(C) member orientations for professional organizations;

(iv) courses in wealth creation or retirement planning for licensees; and

(v) courses that are specifically designed for exam preparation.

(g) If an application for certification of a continuing education course is denied by the division, the person making application may appeal to the commission.

(7)(a) A continuing education course certification expires 24 months after the date of issuance ~~[from the date of issuance]~~ and must be renewed before the expiration date to remain active.



(b) To renew a continuing education course certification, an applicant shall:

(i) complete a renewal application as provided by the division; and

(ii) pay a nonrefundable renewal fee.

(c) To reinstate an expired continuing education course certification within 30 days following the expiration date, a person shall:

(i) comply with the requirements for a timely renewal; and

(ii) pay a nonrefundable late fee.

(d) To reinstate an expired continuing education course certification after 30 days and within six months following the expiration date, a person shall:

(i) comply with the requirements for a timely renewal; and

(ii) pay a nonrefundable reinstatement fee.

(e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.

(f) If a deadline specified in this [sub]section falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

#### **R162-2f-401c. Additional Provisions Applicable to Brokers.**

(1) A principal broker shall:

(a) strictly comply with the record retention and maintenance requirements of Section R162-2f-401k;

(b) provide to the person whom the principal broker represents in a real estate transaction:

(i) a detailed statement showing the current status of a transaction upon the earlier of:

(A) the expiration of 30 days after an offer has been made and accepted; or

(B) a buyer or seller making a demand for such statement; and

(ii) an updated transaction status statement at 30-day intervals thereafter until the transaction either closes or fails;

(c)(i) regardless of who closes a real estate transaction, ensure that final settlement statements are reviewed for content and accuracy at or before the time of closing by:

(A) the principal broker;

(B) an associate broker or branch broker affiliated with the principal broker; or

(C) the sales agent who is:

(I) affiliated with the principal broker; and

(II) representing the principal in the transaction; and

(ii) ensure the principals in each closed real estate transaction receive copies of each document executed in the transaction closing;

(d) before assigning all or part of the principal broker's compensation to an associate broker or sales agent in accordance with Section 61-2f-305, provide written instructions to the title insurance agent that include the following:

(i) an identification of the property involved in the real estate transaction;

(ii) an identification of the principal broker and sales agent or associate broker who will receive compensation in accordance with the written instructions;

(iii) a designation of the amount of compensation that will be received by both the principal broker and the sales agent or associate broker;

(iv) a prohibition against alteration of the written instructions by anyone other than the principal broker; and

(v) additional instructions at the discretion of the principal broker;

(e) obtain written consent from both the buyer and the seller before retaining any portion of an earnest money deposit being held by the principal broker;

(f) strictly adhere to the rule governing real estate auctions, as outlined in Section R162-2f-401i;

(g) strictly adhere to the rule governing property management, as outlined in Section R162-2f-401j;

(h)(i) except as provided in Subsection (1)(h)(iii), within three business days of receiving a client's money in a real estate transaction, deposit the client's money into a trust account:

(A) maintained by the principal broker pursuant to Section R162-2f-403; or

(B) if the parties to the transaction agree in writing, maintained by:

(I) a title company pursuant to Section 31A-23a-406; or

(II) another authorized escrow entity; and

(ii) within three business days of receiving money from a client or a tenant in a property management transaction, deposit the money into a trust account maintained by the principal broker pursuant to Section R162-2f-403 or forward or deposit client or tenant money into an account maintained by the property owner;

(iii) a principal broker is not required to comply with Subsection (1)(h)(i) or (ii) if:

(A) the contract or other written agreement states that the money is to be:

(I) held for a specific length of time; or

(II) as to a real estate transaction, deposited upon acceptance by the seller; or

(B) as to a real estate transaction, the Real Estate Purchase Contract or other written agreement states that a promissory note may be tendered in lieu of good funds and the promissory note:

(I) names the seller as payee; and

(II) is retained in the principal broker's file until closing;

(i)(i) maintain at the principal business location a complete record of any consideration received or escrowed for real estate and property management transactions; and

(ii) be personally responsible for deposits held in the principal broker's trust account;

(j)(i)(A)(I) in a real estate transaction, assign a consecutive, sequential number to each offer; and

(II) assign a unique identification to each property management client; and

(B) include the transaction number or client identification, as applicable, on:

(I) trust account deposit records; and

(II) trust account checks or other equivalent records evidencing the transfer of trust funds;

(ii) maintain a separate transaction file for each offer in a real estate transaction, including a rejected offer, that involves funds tendered through the brokerage and deposited into a trust account;

~~and~~  
(iii) ~~[maintain a separate transaction file for each offer in a real estate transaction, including a rejected offer, that involves funds tendered through the brokerage and deposited into a trust account;~~

~~—(iv)—[maintain a record of each rejected offer in a real estate transaction that does not involve funds deposited to trust:~~

(A) in separate files; or

(B) in a single file holding any such offer; and

## NOTICES OF PROPOSED RULES

(k) if the principal broker assigns an affiliated associate broker or branch broker to assist the principal broker in accomplishing the affirmative duties outlined in Subsection (1):

(i) actively supervise any such associate broker or branch broker;

(ii) remain personally responsible and accountable for adequate supervision of each licensee and unlicensed staff affiliated with the principal broker; and

(l) exercise active and reasonable supervision over the conduct of each licensee and unlicensed staff employed by or affiliated with the principal broker.

(2) A branch broker shall:

(a) exercise active and reasonable supervision over the conduct of each licensee and unlicensed staff employed by or affiliated with the branch or branches supervised by the branch broker; and

(b) be personally responsible and accountable for any other responsibility and duty assigned to the branch broker by the principal broker and accepted by the branch broker.

(3) Active and reasonable supervision includes:

(a) the establishment of:

(i) written policies, rules, and procedures; and

(ii) systems that allow the broker to review, oversee, inspect, and manage:

(A) real estate transactions performed by a licensee affiliated with the broker at either the main office or a branch supervised by the broker;

(B) documents that may have a material effect upon the rights or obligations of a party to such real estate transaction;

(C) the filing, storage, and maintenance of such documents;

(D) the handling of trust funds;

(E) advertising of any service for which a real estate license is required;

(F) familiarizing licensees with the requirements of federal and state law governing real estate transactions including prohibitions against discrimination;

(G) to ensure that each person conducting licensed activity on behalf of the broker holds an active license;

(H) to ensure that each affiliated licensee can maintain reasonable and timely communication with the supervising broker or a competent designee to assist the licensee with real estate transactions handled by the brokerage; and

(I) to maintain adequate, reasonable, and regular contact with each affiliated licensee engaged in real estate transactions so as to prevent or curtail practices by a licensee that would violate ~~the provisions of~~ this chapter;

(b) being reasonably available to the public to discuss or resolve complaints and disputes that may arise during a real estate transaction involving the broker or affiliated licensee~~[in which the broker or affiliated licensee is involved]~~;

(c) providing guidance to, and instruction and oversight of, each licensee and unlicensed staff member regarding the policies, rules, procedures, and systems of the brokerage;

(d) documenting the instruction and oversight provided pursuant to Subsection (3)(b); and

(e) establishing a system for monitoring compliance with the policies, rules, and procedures, and systems of the brokerage by licensees and unlicensed staff members.

(4) A principal broker or branch broker may use a licensee or unlicensed staff member to assist in administering Subsection (3), except that the broker may not relinquish overall responsibility for

active and reasonable supervision of the acts of licensees and unlicensed staff members affiliated or associated with the broker.

(5) In establishing such policies, rules, procedures, and systems, the broker shall consider the number of sales agents and associate brokers and the number and location of branch offices supervised by the broker.

(6) A principal broker and a branch broker are responsible for violations of Title 61, Chapter 2f, Real Estate Licensing and Practices Act, and the rules promulgated thereunder by licensees and unlicensed staff members they supervise, except that neither a principal broker nor a branch broker shall be deemed in violation of failing to exercise active and reasonable supervision ~~if~~~~[where]~~:

(a) the supervising broker had in place ~~when~~ [at the time of] the violation occurred, specific written policies or instructions to prevent such a violation;

(b) reasonable procedures were established by the broker to ensure that licensees receive active and reasonable supervision and the broker has followed those procedures;

(c) upon learning of the violation, the broker attempted to prevent or mitigate the damage;

(d) the broker did not participate in the violation;

(e) the broker did not ratify the violation; and

(f) the broker did not attempt to avoid learning of the violation.

### **R162-2f-401f. Approved Forms.**

(1) The following standard forms are approved by the commission and the Office of the Attorney General for use by ~~all~~ licensees:

(a) September 1, 2017, Real Estate Purchase Contract;

(b) ~~January 1, 1987, Uniform Real Estate Contract;~~

~~October 1, 1983, All Inclusive Trust Deed;~~

~~October 1, 1983, All Inclusive Promissory Note Secured by All Inclusive Trust Deed;~~

~~January 1, 2020, Addendum to Real Estate Purchase Contract;~~

~~October 20, 2021, Seller Financing Addendum to Real Estate Purchase Contract;~~

~~January 1, 1999, Buyer Financial Information Sheet;~~

~~January 1, 2021, FHA/VA Loan Addendum to Real Estate Purchase Contract;~~

~~January 1, 1999, Assumption Addendum to Real Estate Purchase Contract;~~

~~August 1, 2018, Lead-based Paint Addendum to Real Estate Purchase Contract;~~~~and~~

~~August 1, 2018, Disclosure and Acknowledgment Regarding Lead-based Paint and/or Lead-based Paint Hazards; and~~

~~January 1, 2018, Deposit of Earnest Money With Title Company Addendum to Real Estate Purchase Contract.~~

### **R162-2f-501. Appendices.**

(1) When submitting evidence of qualifying experience ~~[which experience complies with the requirements in Section R162-2f-401a]~~ as part of an application for licensure as a broker, an applicant shall select from the applicant's total qualifying experience at least 60 documented experience points and no more than 80 documented experience points for review and approval by the division.

(2) A minimum of 45 experience points of the required 60 experience points for qualification as a broker must comply fully with the requirements in Section R162-2f-401a. As provided for in

Subsection R162-2f-202b(2), a broker applicant may receive partial experience points for up to 15 of the 60 required experience points if the applicant can successfully document from signed agency agreements or purchase contracts that the applicant created or confirmed their agency with the clients they represented. Partial experience points must be documented from the transactions originally submitted by applicant totaling the maximum of 80 experience points and approved by the division.

(3)[(2)] When calculating experience points in Table 1, experience points for a transaction subject to an agency agreement other than an exclusive brokerage agreement as defined in Subsection 61-2f-308(1)(d) are limited to one-quarter of the points described in Table 1.

(4)[(3)] When calculating experience points from Tables 1 and 2, experience points are limited to points for those activities which require a real estate license and comply with Section R162-2f-401a. A minimum of one-half of the points in Tables 1 and 2 must derive from transactions of properties located in Utah.

TABLE 1 APPENDIX 1 - REAL ESTATE SALES TRANSACTIONS EXPERIENCE TABLE	
RESIDENTIAL - points can be accumulated from either the selling or the listing side of a real estate sales transaction:	Points that may be earned
(a) One-unit dwelling	2.5 points
(b) Two- to four-unit dwellings	5 points
(c) Apartments, 5 units or over	10 points
(d) Improved lot	2 points
(e) Vacant land or subdivision	10 points
COMMERCIAL	Points that may be earned
(f) Hotel or motel	10 points
(g) Industrial or warehouse	10 points
(h) Office building	10 points
(i) Retail building	10 points

TABLE 2 APPENDIX 2 - LEASING TRANSACTIONS AND PROPERTY MANAGEMENT EXPERIENCE TABLE	
RESIDENTIAL	Points that may be earned
(a) Each property management agreement	1 point per unit up to 5 points

(b) Each unit leased	1.25 points per unit
(c) Other property management	0.25 points per month*
COMMERCIAL -- hotel, motel, industrial, warehouse, office, or retail building	Points that may be earned
(a)(ii) Each property management agreement	1 point per unit up to 5 points
(ii) Each unit leased	1.25 points per unit
(b) Each Owner Agreement of 5 units+	5 points
(ii) Each unit leased	1.25 pts < 2,000 sf 3 pts 2,001 -- 5,000 sf 5 pts > 5,000 sf
(e) Property management	1 pt/100,000 sf/month
(f) Other property management	1 pt/100,000 sf/month*
* When calculating experience points from Table 2, the total combined monthly experience credit claimed for "Other property management" combined, both residential and commercial, may not exceed 25 points in any application to practice as a real estate broker.	

TABLE 3 APPENDIX 3 - OPTIONAL EXPERIENCE TABLE	
	Points that may be earned
Real Estate Attorney	1 pt/month
CPA-Certified Public Accountant	1 pt/month
Mortgage Loan Officer	1 pt/month
Licensed Escrow Officer	1 pt/month
Licensed Title Agent	1 pt/month
Designated Appraiser	1 pt/month
Licensed General Contractor	1 pt/month

**KEY: real estate business, operational requirements, trust account records, notification requirements**  
**Date of Last Change: 2023[May 25, 2022]**  
**Notice of Continuation: March 26, 2020**

## NOTICES OF PROPOSED RULES

Authorizing, and Implemented or Interpreted Law: 61-2f-103(1); 61-2f-105; 61-2f-203(1)(e); 61-2f-206(3); 61-2f-206(4)(a); 61-2f-306; 61-2f-307

### NOTICE OF PROPOSED RULE

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R277-110</b>	<b>Filing ID:</b> <b>55486</b>
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### Agency Information

<b>1. Department:</b>	Education	
<b>Agency:</b>	Administration	
<b>Building:</b>	Board of Education	
<b>Street address:</b>	250 E 500 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov

Please address questions regarding information on this notice to the persons listed above.

### General Information

<b>2. Rule or section catchline:</b>
R277-110. Educator Salary Adjustment
<b>3. Purpose of the new rule or reason for the change:</b>
This rule is being amended due to the passage of H.B. 215, during the 2023 General Session, which required the Board to make rules.
<b>4. Summary of the new rule or change:</b>
These amendments make specific changes to the educator evaluation procedures and to the educator's salary adjustment. The amendments require a Local Education Agency (LEA) to: 1) increase the total wage compensation of each educator, including salary and stipends, by at least \$4,200, from the educator's compensation in fiscal year 2022-23; and 2) appropriately code educator salary and payroll provided through the educator salary adjustment to the educator salary adjustment program code in accordance with Rule R277-113 and the LEA's program accounting policy.

### Fiscal Information

**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:**

#### A) State budget:

This rule change is not expected to have fiscal impact on state government revenues or expenditures. The fiscal impacts have been captured in the fiscal note to H.B. 215 (2023). This rule change clarifies legislation changes from H.B. 215 (2023) to inform LEA salary schedules and procedures.

There is no impact to the Utah State Board of Education (USBE) budget as any impacts are on the LEAs. USBE will not incur additional expense, Full Time Equivalencies (FTEs), or receive any additional revenue.

#### B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. This rule clarifies the changes in H.B. 215 (2023) in LEAs. The increased educator salary adjustment amount is meant to be separate from normal LEA salary negotiations and increases. Therefore, LEAs will follow their normal procedures for negotiating and setting salary schedules.

The USBE does not estimate any additional expenditures for LEAs outside the fiscal note already provided with H.B. 215 (2023).

#### C) Small businesses ("small business" means a business employing 1-49 persons):

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures.

#### D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses, and it does not require any expenditures of, or generate revenue for non-small businesses.

#### E) Persons other than small businesses, non-small businesses, state, 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**):

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. Educators will receive additional compensation, but these impacts were captured in the legislation from H.B. 215 (2023).

Otherwise this rule change only affects LEAs.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs for affected persons. USBE does not estimate any measurable compliance costs for LEAs. If LEAs do not increase educator salary by the required amounts, USBE would initiate corrective action plans to ensure compliance. However, this can be done within the scope of existing staff and resources.

**G) Regulatory Impact Summary Table** (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 will be included in narratives above.)

**Regulatory Impact Table**

<b>Fiscal Cost</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$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>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.

**Citation Information**

**6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Article X, Section 3	Subsection 53E-3-401(4)	Subsection 53F-2-405(5)
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**Public Notice Information**

**8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 07/31/2023

**9. This rule change MAY become effective on:** 08/07/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	06/15/2023
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**R277. Education, Administration.**

**R277-110. Educator Salary Adjustment.**

**R277-110-1. Authority and Purpose.**

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Subsection 53F-2-405(5), which authorizes the Board to make rules to administer the educator salary adjustment program.

(2) The purpose of this rule is to outline a consistent method for enacting educator salary adjustments in accordance with Section 53F-2-405.

**R277-110-2. Definitions.**

(1) "Educator" has the same meaning as defined in Subsection 53F-2-405(1).

(2) "Educator Salary Adjustment" or "Adjustment" means funds allocated by the Board to an LEA in accordance with Subsection 53F-2-405(3).

(3) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(4) "USIMS" has the same meaning as defined in Subsection R277-312-2(6).

**R277-110-3. Procedures.**

(1) An LEA shall:

(a)(i) have employee evaluation procedures consistent with Title 53G, Chapter 11, Part 5, School District and Utah Schools for the Deaf and the Blind Employee Requirements; or

## NOTICES OF PROPOSED RULES

(ii) if an LEA is exempt from the requirements of Subsection (1)(a)(i), have employee evaluation procedures in place to receive funds under Section 53F-2-405;

(b) put the adjustment appropriation into the LEA's salary schedule each year that funds are appropriated by the Legislature;

(c) ensure the amount of the adjustment is the same for each eligible full-time-equivalent educator position in the LEA;

(d) ensure that each eligible employee who is not a full-time educator receives a proportional salary adjustment based on the number of hours the employee works in the employee's current assignment as an educator; and

(e) ensure that each educator who receives an adjustment has not received [a satisfactory or above job performance] an unsatisfactory rating [in] on any of the educator's three most recent evaluations as described in Subsection 53F-2-405(4)(c). [concluded in the school year prior to the year for which the adjustment is made.]

(2) Notwithstanding Subsection (1)(e), an LEA may grant an adjustment to a new hire who has successfully completed the position hiring process and been selected for an educator position.

(3) Once an educator qualifies for an adjustment in a designated school year, the adjustment becomes an ongoing part of the educator's salary.

(4)(a) Beginning July 1, 2023, an educator shall receive at least the amount described in Subsection 53F-2-405(4)(a) for the educator salary adjustment.

(b) [An] Beginning July 1, 2024, an educator shall receive an annual adjustment of [\$4200] an amount equal to the amount described in Subsection 53F-2-405(4)(d) based upon legislative funding allocations.

(c) The Superintendent shall distribute funds to LEAs for the educator salary adjustment based on LEA educator data submitted by November 15.

(d) An LEA may be required to provide funding to meet benefit costs for educators under this program.

(5) A school building level administrator shall receive an annual adjustment of \$2,500 and benefits as provided in Subsection 53F-2-405(7).

(6) Each LEA shall annually note on the appropriate salary schedule:

(a) the amount of the educator salary adjustment;

(b) the positions qualifying for the adjustment; and

(c) performance rating requirements in accordance with Subsection 53F-2-405(4)(c).

(7) Each LEA shall annually maintain record of performance ratings for an educator receiving an adjustment in accordance with this rule.

(8)(a) The Superintendent shall remit to LEAs an estimated educator salary adjustment allotment through monthly bank transfers and allotment memos beginning in July of each year.

(b) The Superintendent shall adjust the allotment amount in November of each year to match the number of qualified educators in CACTUS or USIMS.

(9) An adjustment to CACTUS or USIMS made after November 15 may not count toward[s] an LEA's amount for educator salary adjustments until the following year.

(10) An LEA may not include educator salary adjustments when calculating the weighted average compensation adjustment for non-administrative licensed staff.

(11) For purposes of ensuring that an LEA may not reduce or artificially limit an educator's salary to convert the salary supplement in this section into a windfall to the LEA as required in Section 53F-2-405 an LEA shall:

(a) increase the total wage compensation of each educator, including salary and stipends, by at least \$4,200, from the educator's compensation in fiscal year 2022-23; and

(b) appropriately code educator salary and payroll provided through the educator salary adjustment to the educator salary adjustment program code in accordance with Rule R277-113 and the LEA's program accounting policy.

### KEY: educators, salary adjustments

Date of Last Change: 2023[June 7, 2022]

Notice of Continuation: April 15, 2022

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53F-2-405(5)

### NOTICE OF PROPOSED RULE

TYPE OF FILING: Amendment

Rule or Section Number:	R277-496	Filing ID: 55487
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### Agency Information

<b>1. Department:</b>	Education	
<b>Agency:</b>	Administration	
<b>Building:</b>	Board of Education	
<b>Street address:</b>	250 E 500 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov

Please address questions regarding information on this notice to the persons listed above.

### General Information

#### 2. Rule or section catchline:

R277-496. K-3 Reading Software Licenses

#### 3. Purpose of the new rule or reason for the change:

This rule is being amended due to the passage of S.B. 44, during the 2023 General Session.

#### 4. Summary of the new rule or change:

These amendments remove requirements for the Utah State Board of Education (USBE) to distribute software licenses for the early interactive reading software program to Local Education Agencies (LEAs) that apply for the licenses, and instead requires the USBE to administer funds for early interactive reading software for early grades.



**Fiscal Information****5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

This rule change is not expected to have fiscal impact on state government revenues or expenditures. The USBE has a slightly reduced workload from not distributing licenses to LEAs, but these changes were captured as part of the fiscal note for S.B. 44 (2023).

Otherwise, there are no additional staff costs or resources required to distribute funds to LEAs based on early grades enrollment rather than distribute the licenses. There is no change to USBE revenue.

**B) Local governments:**

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. The fiscal impact of moving from USBE distributed licenses to having LEAs receive funds and contract with providers on their own was captured in the fiscal note to S.B. 44 (2023).

USBE does not estimate any additional impact from this rule change; data sharing agreements are standard practice for LEAs contracting with software providers and USBE does not estimate any additional LEA staff time or other costs.

**C) Small businesses** ("small business" means a business employing 1-49 persons):

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures.

This only affects USBE and LEAs.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses, and it does not require any expenditures of, or generate revenue for non-small businesses.

**E) Persons other than small businesses, non-small businesses, state, 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**):

This rule change is not expected to have fiscal impacts on revenues or expenditures for persons other than small businesses, businesses, or local government entities.

This only affects USBE and LEAs.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs for affected persons. USBE does not estimate any costs for the agency or LEAs to comply with this rule.

**G) Regulatory Impact Summary Table** (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 will be included in narratives above.)**Regulatory Impact Table**

<b>Fiscal Cost</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$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>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.

**Citation Information**

**6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Article X, Section 3	Subsection 53E-3-401(4)	Section 53F-4-203
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**Public Notice Information**

**8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 07/31/2023

**9. This rule change MAY become effective on:** 08/07/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	06/15/2023
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**R277. Education, Administration.****R277-496. K-3 Reading Software Licenses.****R277-496-1. Authority and Purpose.**

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah constitution and state law; and

~~[(c) Subsection 53F-4-203(2), which directs the Board to distribute software licenses for the early interactive reading software program to LEAs that apply for the licenses.]~~

(c) Section 53F-4-203, which requires the Board to administer funds for early interactive reading software for early grades.

(2) The purpose of this rule is to establish criteria and procedures to administer the K-3 reading software program.

**R277-496-2. Definitions.**

~~[(1) "Aggregate student population" means the total number of students within a school who are using a technology provider's early interactive reading software licenses.~~

~~(2) "Dosage" means amount of instruction time.~~

~~(3) "Early interactive reading software" or "K-3 reading software license" means technology tools and software that adjust the presentation of educational material according to a student's weaknesses and strengths, as indicated by the student's responses to questions.~~

~~[(4) "Personalized fidelity" means local measures for fidelity to a software product based on three or more data points that demonstrate successful student outcomes at or above the level of~~

~~student outcomes achieved by the technology provider's dosage recommendations.~~

~~(5) "Use early interactive reading software in accordance with a technology provider's dosage recommendations" means when at least 80% of the aggregate student population of a school, by provider:~~

~~(a) uses a technology provider's K-3 reading software for at least 80% of:~~

~~(i) the minimum number of weeks of use recommended by the technology provider for the K-3 reading software program;~~

~~(ii) the average number of minutes of use recommended by the technology provider for the K-3 reading software program or~~

~~(b) demonstrates personalized fidelity per programmatic requirements.]~~

**R277-496-3. K-3 Reading Software Licenses.**

~~(1)[(a) The Superintendent shall select one or more technology providers through an RFP to provide early interactive reading software for students in kindergarten through grade 3.] An LEA shall select one or more technology providers through an LEA-approved selection process.~~

~~[(b) A provider identified by the Superintendent under Subsection (1)(a) shall use evidence-informed core materials and evidence-based instructional practices and intervention materials.~~

~~(c) The Superintendent may define standards for evidence consistent with Subsections 53G-11-303(1)(a) and (b).~~

~~(2) A school may apply for early interactive reading software for students in kindergarten through grade 3.~~

~~(3) The Superintendent shall accept applications from LEAs for early interactive reading software licenses that satisfy the requirements of Section 53F-4-203 and the provisions of this rule.~~

~~(4) If the number of requests for K-3 reading software licenses exceeds the number of licenses available, the Superintendent shall give priority to:~~

~~(a) requests for licenses to be used in Kindergarten or grade 1; or~~

~~(b) a school that:~~

~~(i) received a K-3 reading license in a previous school year; and~~

~~(ii) used the K-3 reading license in accordance with the technology provider's dosage recommendations.~~

~~(5) The Superintendent shall establish timelines for submission of applications.]~~

~~(2)(a) An LEA shall enter into a data sharing agreement with a provider selected in accordance with Subsection (1).~~

~~(b) An LEA's data sharing agreement with a software provider shall require the software provider to share information with a third party program evaluator selected by the Superintendent.~~

~~(c) An LEA shall provide a signed copy of the LEA's data sharing agreement to the Superintendent before receiving reimbursement for allocated funds.~~

~~[(6)3] A school may not require a student to participate in the K-3 reading software license program.~~

**[R277-496-4. School Probationary Re-entry Into the Program.**

~~(1) If a school does not use the early interactive reading software licenses in accordance with the technology provider's dosage recommendations, the school may not receive K-3 reading software licenses for one year.~~

~~(2) A school described in Subsection (1) may reapply to re-enter the program on a probationary basis and receive K-3 reading~~



software licenses if the school meets the probation requirements of this Section R277-496-4.

~~(3) A school is on probation if the school:~~

~~(a) previously received K-3 reading software licenses;~~

~~(b) lost eligibility to participate in the program, which includes failure to use the early interactive software per the technology provider's dosage recommendations for two consecutive years; and~~

~~(c) receives K-3 reading software licenses after re-entering the program.~~

~~(4)(a) The school principal, instructional leaders, and teachers of a school on probation shall engage in all of the available technology provider support structures and interventions for probationary software programs, including:~~

~~(i) data dives;~~

~~(ii) professional learning; and~~

~~(iii) usage and fidelity updates.~~

~~(b) A technology provider shall establish the specific support structure requirements and interventions described in Subsection (4)(a) for the technology provider's software program.~~

~~(5) If a technology provider does not offer support structure requirements and interventions as described in Subsection (4), the Superintendent may not make the technology provider's software available for a school that is on probation.~~

~~(6) If a school on probation does not use the early interactive reading software licenses in accordance with a technology provider's dosage recommendations during the probationary year, the school may not receive an early interactive reading license for the following year unless the school on probation pays for 50% of the costs of the K-3 reading license software license.~~

]

#### **R277-496-5. Reporting.**

(1) ~~[An LEA that receives]~~A provider that provides K-3 reading software licenses shall provide information ~~[that is requested upon request]~~ by the Superintendent or an external evaluator selected by the Board in ~~[conducting the evaluation required in]~~accordance with Subsections 53F-4-203(3) and (4).

(2) The Superintendent may recommend action to the Board, including withholding of funds, in accordance with Rule R277-114 for an LEA that fails to provide complete, accurate, and timely reporting as required by this rule.

**KEY:** reading, software, licenses

**Date of Last Change:** 2023|November 7, 2022|

**Notice of Continuation:** September 15, 2022

**Authorizing, and Implemented or Interpreted Law:** Art X Sec 3; 53E-3-401(4); 53F-4-203

#### **NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R277-497</b>	<b>Filing ID:</b> <b>55488</b>
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#### **Agency Information**

<b>1. Department:</b>	Education
<b>Agency:</b>	Administration
<b>Building:</b>	Board of Education
<b>Street address:</b>	250 E 500 S

<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

#### **General Information**

##### **2. Rule or section catchline:**

R277-497. School Accountability System

##### **3. Purpose of the new rule or reason for the change:**

This rule is being amended due to the passage of H.B. 308, during the 2023 General Session.

##### **4. Summary of the new rule or change:**

These amendments remove the requirement for the Superintendent to Assign an Overall Rating for a School and make updates related to how the indexing of points are used to calculate academic growth.

#### **Fiscal Information**

##### **5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:**

###### **A) State budget:**

This rule change is not expected to have fiscal impact on state government revenues or expenditures. The changes from H.B. 308 (2023) that required the rule change to remove the overall ratings/letter grades do not have a fiscal impact for the Utah State Board of Education (USBE). The functionality required to make these changes is already built into agency systems.

There are no additional costs for USBE or changes to revenue associated with this rule change.

###### **B) Local governments:**

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. The school accountability system is not directly tied to school funding and does not have an impact to Local Education Agencies' (LEAs) revenues and does not add any costs for LEAs.

###### **C) Small businesses** ("small business" means a business employing 1-49 persons):

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures.

This only affects USBE's rating system.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses, and it does not require any expenditures of, or generate revenue for non-small businesses.

**E) Persons other than small businesses, non-small businesses, state, 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**):

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities.

This only affects USBE's rating system.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs for affected persons. There are no costs for USBE associated with adjusting to the school grading system modifications. The functionality required to make the changes is already built into agency systems.

**G) Regulatory Impact Summary Table** (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 will be included in narratives above.)

**Regulatory Impact Table**

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0

<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$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>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.

**Citation Information**

**6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Article X, Section 3	Subsection 53E-3-401(4)	Section 53E-5-202
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**Public Notice Information**

**8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)**

**A) Comments will be accepted until:** 07/31/2023

**9. This rule change MAY become effective on:** 08/07/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	06/15/2023
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**R277. Education, Administration.**  
**R277-497. School Accountability System.**  
**R277-497-1. Authority and Purpose.**

(1) This rule is authorized by:  
 (a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board;  
 (b) Section 53E-5-202, which directs the Board to adopt rules to implement a statewide accountability system; and  
 (c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and State law.  
 (2) The purpose of this rule is to ~~set~~establish performance thresholds for ~~the purpose of~~ meaningfully differentiating ~~assigning overall ratings to~~ schools, establish provisions for the methodology of calculating points, and address exclusions from the school accountability system.

**[R277-497-2. Assignment of Overall Rating for a School.]**

~~(1) The Superintendent shall assign an overall school rating in accordance with the indicators described in Section 53E-5-205 for elementary and middle schools and Section 53E-5-206 for high schools.~~  
~~(2) The Board establishes the following performance thresholds for the Superintendent to assign overall ratings to schools:~~  
~~(3) For an elementary or middle school:~~  
~~(a) an "A" rating represents an exemplary school, where the school has earned 63.25% of the total points possible;~~  
~~(b) a "B" rating represents a commendable school, where the school has earned 55% of the total points possible;~~  
~~(c) a "C" rating represents a typical school, where the school has earned 43.5% of the total points possible;~~  
~~(d) a "D" rating represents a developing school, where the school has earned 35.5% of the total points possible; and~~  
~~(e) an "F" rating represents a critical needs school, where the school has earned less than 35.5% of the total points possible.~~  
~~(4) For a high school:~~  
~~(a) an "A" rating represents an exemplary school, where the school has earned 64% of the total points possible;~~  
~~(b) a "B" rating represents a commendable school, where the school has earned 57% of the total points possible;~~  
~~(c) a "C" rating represents a typical school, where the school has earned 46% of the total points possible;~~  
~~(d) a "D" rating represents a developing school, where the school has earned 38% of the total points possible; and~~  
~~(e) an "F" rating represents a critical needs school, where the school has earned less than 38% of the total points possible.~~  
~~(5) In accordance with Section 53E-5-204(3)(b), for the 2018-19 and the 2019-20 school year, the Superintendent may not assign an overall rating to a school.~~

**R277-497-[3]2. Indexing of Points for Calculating Academic Growth.**

(1) For the purposes of calculating academic growth, the Superintendent shall assign each student a student growth percentile (SGP). ~~and a student growth target (SGT).]~~  
 (2) The Superintendent shall assign point[s] weights to a school for student growth ~~relative to the percentage of students who meet their SGT]~~ as follows:  
~~— (a) if a student's SGP is greater than or equal to the student's SGT, and the student meets the SGT goal for a subject area, the student is awarded a weight based on the student's SGP using the following index:]~~

~~[(i)](a)~~ if the student's SGP is greater than ~~[65]~~80, the weight is 1.0;

~~[(ii)](b)~~ if the student's SGP is between ~~[50 and 65]~~60 and 79, the weight is 0.75;

~~[(iii)](c)~~ if the student's SGP is between 40 and ~~[49]~~59, the weight is 0.50; ~~and]~~

~~[(iv)](d)~~ if the student's SGP is ~~[less than 40]~~between 20 and 39, the weight is 0.25; or

~~— (e) if the student's SGP is less than 20, the weight is 0.~~

~~— (b) if a student's SGP is less than the student's SGT and the student does not meet the SGT goal for a subject area, the student is awarded a weight based on the student's SGP using the following index:~~

~~— (i) if the student's SGP is greater than 65, the weight is 0.75;~~

~~— (ii) if the student's SGP is between 50 and 65, the weight is 0.50;~~

~~— (iii) if the student's SGP is between 40 and 49, the weight is 0.25; and~~

~~— (iv) if the student's SGP is less than 40, the weight is 0.]~~

(3) To determine the total growth points allocated to a school, the Superintendent shall:

(a) add all the weights and divide by the total number of [tests]qualifying tests defined in the Utah Accountability Technical Manual, described in Subsection R277-497-3(5), to establish a percentage; and

(b) multiply the percentage by the total growth points possible.

**R277-497-[4]3. Specific Provisions on Calculation of Points.**

(1)(a) In accordance with Subsection 53E-5-207(4)(c)(ii), the Superintendent shall award 10% of the points allocated for high school graduation based on a school's five-year graduation rate.

(b) A school may not earn more than the total number of points possible for the graduation rate indicator.

(2)(a) In accordance with Section 53E-5-210, the Superintendent shall determine that an ELL student meets adequate progress if the ELL student has an increase in proficiency level ~~[by 0.4]~~as described in the Utah Accountability Technical Manual on an English language proficiency assessment approved by the Board and designated in Rule R277-404.

(3)(a) For a school that chooses to include additional quality indicators on its school report card, the school may choose up to two additional self-reported indicators.

(b) The Superintendent shall approve a list of indicators that a school may use for purposes of Subsection (3)(a), and may also approve other indicators that an LEA may submit for consideration.

(c) The Superintendent shall publish the pre-approved self-reported indicators list on the Assessment and Accountability section of the USBE website.

(d) If a school elects to include the additional self-reported indicators, the school shall notify the Superintendent by established due dates.

(4) When calculating postsecondary readiness points for a high school student's performance on a college readiness assessment, the Superintendent shall use the student's ACT score obtained during the statewide administration of ACT.

(5) The Superintendent shall publish the Utah Accountability Technical Manual, which includes:

- (a) additional technical details on the calculation of points;
- (b) business rules;

## NOTICES OF PROPOSED RULES

(c) detailed explanations on the methodologies for the calculation of achievement, student growth, equitable education opportunity, and postsecondary readiness and;

(d) other indicators to appropriately assess the educational impact of a school that serves a special student population.

(6) A copy of the Utah Accountability Technical Manual is located at:

(a) <https://schools.utah.gov/assessment/resources>; and

(b) the offices of the Utah State Board of Education.

### **R277-497-[5]4. Exclusions From the Accountability System and Indicators for Schools Serving a Special Student Population.**

(1)(a) In determining schools to exempt from the school accountability system, in accordance with Section 53E-5-203, the Superintendent shall exempt a school in which the number of students tested on a statewide assessment is less than 10.

(b) The Superintendent may not report any school indicator for which the student group size for that indicator is less than 10.

(2) The Superintendent shall publish other indicators, in addition to indicators described in Sections 53E-5-205 and 53E-5-206, to appropriately assess the educational impact of a school that serves a special student population.

**KEY:** school reports, school grading accountability

**Date of Last Change:** ~~2023~~**August 25, 2021**

**Notice of Continuation:** June 5, 2020

**Authorizing, and Implemented or Interpreted Law:** Art X, Sec 3; 53E-5-202; 53E-3-401(4)

### **NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R277-607</b>	<b>Filing ID:</b> <b>55489</b>
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### **Agency Information**

<b>1. Department:</b>	Education	
<b>Agency:</b>	Administration	
<b>Building:</b>	Board of Education	
<b>Street address:</b>	250 E 500 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov

**Please address questions regarding information on this notice to the persons listed above.**

### **General Information**

#### **2. Rule or section catchline:**

R277-607. Absenteeism and Truancy Prevention

### **3. Purpose of the new rule or reason for the change:**

This rule is being amended due to the passage of H.B. 400, during the 2023 General Session.

### **4. Summary of the new rule or change:**

These amendments include updates to terminology throughout this rule, and updated policy requirements for responding to absenteeism issues.

### **Fiscal Information**

#### **5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:**

##### **A) State budget:**

This rule change is not expected to have fiscal impact on state government revenues or expenditures. H.B. 400 (2023)'s fiscal note captured the need for the Utah State Board of Education (USBE) to hire an additional prevention specialist to train Local Education Agencies (LEAs) on best practices for creating policies and strategies to reduce student absenteeism.

This rule change does not add any additional staff, or resources to USBE's budgets and does not affect USBE revenue.

##### **B) Local governments:**

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. Impacts on LEA policymaking have been captured in the fiscal note to H.B. 400 (2023), and this rule does not add any measurable costs for LEAs. LEAs already report absences through existing systems. There is no impact to LEA revenues with this rule change.

##### **C) Small businesses** ("small business" means a business employing 1-49 persons):

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures.

This only affects USBE and LEAs.

##### **D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses, and it does not require any expenditures of, or generate revenue for non-small businesses.

**E) Persons other than small businesses, non-small businesses, state, 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**):

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities.

This only affects USBE and LEAs.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs for affected persons. USBE does not anticipate any added costs apart from what has been captured in the fiscal note to H.B. 400 (2023) for the agency or for LEAs.

**G) Regulatory Impact Summary Table** (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 will be included in narratives above.)

**Regulatory Impact Table**

<b>Fiscal Cost</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$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>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.

**Citation Information**

**6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Article X, Section 3	Subsection 53E-3-401(4)	Section 53G-6-206
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**Public Notice Information**

**8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 07/31/2023

**9. This rule change MAY become effective on:** 08/07/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	06/15/2023
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**R277. Education, Administration.**

**R277-607. Absenteeism and Truancy Prevention.**

**R277-607-1. Authority and Purpose.**

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state; and

(c) Section 53G-6-206, which: ~~directs educational entities and parents working on behalf of children to make efforts to resolve school attendance problems of school-age minors who are or who should be enrolled in an LEA.~~

~~(2) The purpose of this rule is to direct an LEA to create policies for truancy procedures and compulsory education.]~~

(i) describes the duties of an LEA governing board in promoting regular attendance;

(ii) does not impose civil liability on the Board, and LEA governing board, or their employees; and

(iii) requires each LEA to annually report data on absences with or without a valid excuse to the state board.

(d) Section 53G-9-804, which:

~~(i) describes the Legislature's expectations regarding absenteeism prevention and outreach policies; and~~  
~~(ii) requires the Board to make rules requiring LEAs to enact chronic absenteeism prevention and intervention policies.~~  
~~(2) The purpose of this rule is to direct LEAs to create a policy, which:~~  
~~(a) defines attendance expectations;~~  
~~(b) delineates consequences consistent with state law; and~~  
~~(c) provides an appeals process.~~  
~~(3) An LEA described in Subsection 53G-9-802(5) is exempt from providing dropout recovery services as described in Subsection 53G-9-802(3).~~

**R277-607-2. Definitions.**

~~\_\_\_\_\_ (1) "Absence" means the same as that term is defined in Subsection 53G-6-201(1).~~  
~~\_\_\_\_\_ (2) "Behavioral health" means the impact a student's actions can have on a student's physical or mental health and includes conditions in which services provided by social workers, counselors, psychiatrists, neurologists, behavior analyst, psychologists, and physicians would be appropriate.~~  
~~\_\_\_\_\_ (3) "Mental health" means the same as that term is defined in Subsection R277-625-2(2).~~  
~~\_\_\_\_\_ (4) "Notice of truancy" is a citation issued consistent with Section 53G-6-203.~~  
~~\_\_\_\_\_ (5) "Punitive action" means~~  
~~\_\_\_\_\_ (a) a Notice of truancy;~~  
~~\_\_\_\_\_ (b) a notice of compulsory education violation consistent with Section 53G-6-202; and~~  
~~\_\_\_\_\_ (c) does not mean any other supports or alternative interventions as determined by an LEA.~~  
~~\_\_\_\_\_ (6) "Truant" means the same as that term is defined in Subsection 53G-6-201(7).~~  
~~\_\_\_\_\_ (7) "Unexcused absence" means a student's absence from school for reasons other than those deemed a valid excuse.~~  
~~\_\_\_\_\_ (8) "Valid excuse" means the same as that term is defined in Subsection 53G-6-201(9).]~~  
~~\_\_\_\_\_ (1) "Chronic absenteeism" means a student misses 10% or more of days enrolled, for any reason, and makes a school aware that a beginning of tiered supports may be needed.~~  
~~\_\_\_\_\_ (2) "Intervention" means the same as the term is defined in Subsection 53G-6-206(1).~~  
~~\_\_\_\_\_ (3) "Notice of compulsory education" is a notice of violation to the parents of students in grades 1-6 consistent with Section 53G-6-202.~~  
~~\_\_\_\_\_ (4) "Notice of truancy" is a citation issued to students and parents of students in grades 7-12 consistent with Section 53G-6-203.~~  
~~\_\_\_\_\_ (5) "Truancy means a condition consistent with Subsection 53G-6-201(8).~~  
~~\_\_\_\_\_ (6) "Valid excuse" means the same as the term is defined in Subsection 53G-6-201(10).~~

**R277-607-3. [Absenteeism and Truancy Policy Requirements] Promotion of Regular Attendance.**

~~\_\_\_\_\_ (1) An LEA shall:~~  
~~\_\_\_\_\_ (a) develop an absenteeism and truancy policy that:~~  
~~\_\_\_\_\_ (i) encourages regular, punctual attendance of students, consistent with Section 53G-8-211 and Title 53G Public Education System Local Administration, Chapter 6 Participation in Public Schools, Part 2 Compulsory Education; and~~  
~~\_\_\_\_\_ (ii) ensures valid excused absences for mental health or behavioral health are not used to circumvent Free Appropriate Public~~

~~Education (FAPE) requirements or other educational services requirement under federal law including the Individuals with Disabilities Education Act (IDEA);~~  
~~\_\_\_\_\_ (iii) ensure between March 17, 2021 and June 1, 2022 that no punitive action is taken against a student or student's parent for being truant.~~  
~~\_\_\_\_\_ (b) review the LEA's absenteeism and truancy policy regularly;~~  
~~\_\_\_\_\_ (c) create and operate an attendance review team as described in Subsection (3);~~  
~~\_\_\_\_\_ (d) review attendance data annually and consider revisions to the absenteeism and truancy policy to encourage student attendance;~~  
~~\_\_\_\_\_ (e) make the absenteeism and truancy policy available for review by parents or interested parties; and~~  
~~\_\_\_\_\_ (f) as described in Subsection 53G-8-211(2)(b), ensure that the LEA does not refer a student to a court for being truant between March 17, 2021 and June 1, 2022.~~  
~~\_\_\_\_\_ (2) An LEA may issue a notice of truancy to a student consistent with the LEA's absenteeism and truancy policy and Section 53G-6-203.~~  
~~\_\_\_\_\_ (3) An LEA's attendance review team shall:~~  
~~\_\_\_\_\_ (a) consist of:~~  
~~\_\_\_\_\_ (i) administrators including those responsible for:~~  
~~\_\_\_\_\_ (A) academic instruction;~~  
~~\_\_\_\_\_ (B) health and wellness;~~  
~~\_\_\_\_\_ (C) student support services; and~~  
~~\_\_\_\_\_ (D) attendance data;~~  
~~\_\_\_\_\_ (ii) where possible, community agencies; and~~  
~~\_\_\_\_\_ (iii) may include the LEA's multi-disciplinary team;~~  
~~\_\_\_\_\_ (b) review attendance data to inform actions and tiered interventions development at least monthly;~~  
~~\_\_\_\_\_ (c) create a systematic LEA and school level response for the LEA's absenteeism and truancy policy including:~~  
~~\_\_\_\_\_ (i) practice improvement; and~~  
~~\_\_\_\_\_ (ii) prevention and intervention strategies; and~~  
~~\_\_\_\_\_ (d) promote shared accountability and continuous improvement related to an LEA's absenteeism and truancy policy including a school level attendance plan developed at the end of the previous school year.~~

**R277-607-4. Compulsory Education Procedures.**

~~\_\_\_\_\_ (1) An LEA shall develop compulsory education procedures as part of the LEA's absenteeism and truancy policy described in Section R277-607-3.~~  
~~\_\_\_\_\_ (2) The compulsory education procedures shall:~~  
~~\_\_\_\_\_ (a) provide a process for notice to parents about the absenteeism and truancy policy;~~  
~~\_\_\_\_\_ (b) require notice to parents regarding the progress of a student's discipline and consequences for violation of the truancy policy;~~  
~~\_\_\_\_\_ (c) provide an appeals process to contest:~~  
~~\_\_\_\_\_ (i) a notice of truancy; or~~  
~~\_\_\_\_\_ (ii) any disciplinary actions against a student pursuant to the absenteeism and truancy policy or;~~  
~~\_\_\_\_\_ (d) establish definitions not provided in law or this rule necessary to implement the absenteeism and truancy policy and compulsory education procedures;~~  
~~\_\_\_\_\_ (e) include definitions of:~~  
~~\_\_\_\_\_ (i) "approved school activity" under Subsection 53G-6-201(9)(c); and~~  
~~\_\_\_\_\_ (ii) "any other excuse" under Subsection 53G-6-201(9)(e);~~



~~(f) include criteria and procedures for preapproval of extended absences consistent with Section 53G-6-205; and~~  
~~(g) establish programs and meaningful incentives which promote regular, punctual student attendance.~~

~~(3) An LEA shall publish the appeals process described in Subsection R277-607-4(2)(c) for use by a student or the student's parents.]~~

(1) An LEA governing board:

(a) shall create and review an LEA attendance policy that:

(i) outlines attendance expectations with language and definitions consistent with Subsection 53G-9-804(1)(a) and Title 53G, Chapter 6, Part 2, Compulsory Education;

(ii) addresses the interplay between absences for mental health or behavioral health and Free Appropriate Public Education requirements or other educational service requirements for students under federal law including the IDEA;

(ii) provides for school level procedure making; and

(iii) provides an appeals process to contest:

(A) a notice of truancy;

(B) a notice of compulsory education; or

(C) any disciplinary actions taken against a student pursuant to an LEA's attendance policy;

(b) shall publicize the LEA's attendance policy and appeals process through:

(i) LEA and school websites;

(ii) handbooks;

(iii) letters to parents; and

(iv) other reasonable means of communication;

(c) shall support institutional efforts to promote regular attendance and address school absenteeism and truancy issues for school-age children enrolled in the LEA, in accordance with Subsection 53G-6-206(3) and Section 53G-9-804; and

(d) may enlist the assistance of community agencies and organizations for early intervention services, in accordance with Section 53G-8-211.

(2) An LEA shall annually report the following data separately to the Superintendent:

(a) absences with a valid excuse; and

(b) absences without a valid excuse.

**KEY: compulsory education, truancy, absenteeism**

**Date of Last Change: 2023|August 25, 2024|**

**Notice of Continuation: June 4, 2021**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53G-6-206; 53G-9-804**

#### NOTICE OF PROPOSED RULE

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R277-613</b>	<b>Filing ID:</b> <b>55490</b>
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#### Agency Information

<b>1. Department:</b>	Education
<b>Agency:</b>	Administration
<b>Building:</b>	Board of Education
<b>Street address:</b>	250 E 500 S
<b>City, state and zip:</b>	Salt Lake City, UT 84111

<b>Mailing address:</b>	PO Box 144200	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

#### General Information

##### 2. Rule or section catchline:

R277-613. LEA Policies and Training Regarding Bullying, Cyber-bullying, Hazing, Retaliation, and Abusive Conduct

##### 3. Purpose of the new rule or reason for the change:

This rule is being amended due to the passage of H.B. 481, in the 2023 General Session.

##### 4. Summary of the new rule or change:

These amendments add notification requirements for student threats of suicide and a requirement for Local Education Agencies (LEAs) to provide parents with suicide prevention materials and information.

#### Fiscal Information

##### 5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

###### A) State budget:

This rule change is not expected to have fiscal impact on state government revenues or expenditures. H.B. 481 (2023) did not note any fiscal impact, as the Utah State Board of Education (USBE) already has the suicide prevention resources available for Local Education Agency (LEA) use.

USBE does not anticipate any additional costs for the agency or revenue changes associated with this rule.

###### B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. The impacts of notifying families with firearm safety information when a student threatens safety were captured in the fiscal note to H.B. 481 (2023).

USBE does not anticipate any additional impacts to LEA budgets associated with this rule change on sending notifications to families.

LEAs already have systems in place to send required notifications to families.

**C) Small businesses** ("small business" means a business employing 1-49 persons):

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures.

This only affects USBE and LEAs.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses, and it does not require any expenditures of, or generate revenue for non-small businesses.

**E) Persons other than small businesses, non-small businesses, state, 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**):

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities.

This only affects USBE and LEAs.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs for affected persons. USBE does not anticipate any added costs for the agency or LEAs outside the impacts captured by the fiscal note for H.B. 481 (2023).

**G) Regulatory Impact Summary Table** (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 will be included in narratives above.)**Regulatory Impact Table**

<b>Fiscal Cost</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$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>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.

**Citation Information****6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Article X, Section 3	Subsection 53E-3-401(4)	Section 53G-9-607
Section 53E-3-501	Section 53G-8-209	Title 53G, Chapter 9

**Public Notice Information****8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 07/31/2023

**9. This rule change MAY become effective on:** 08/07/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.



**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	06/15/2023
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**R277. Education, Administration.****R277-613. LEA Policies and Training Regarding Bullying, Cyber-bullying, Hazing, Retaliation, and Abusive Conduct.****R277-613-1. Authority and Purpose.**

(1) This rule is authorized by:

(a) Section 53G-9-606, which directs the board to monitor LEA development and implementation of bullying and hazing policies;

(b) Section 53G-9-607, which directs the board to make rules that establish standards for high quality training related to bullying, cyber-bullying, hazing, and abusive conduct, and retaliation;

(c) Section 53E-3-501, which directs the Board to establish rules and minimum standards for the public schools governing discipline and control;

(d) Section 53G-8-209, which requires the Board, when making rules regarding student participation in co-curricular or extracurricular activities, to include:

(i) prohibitions against the use of foul, abusive, or profane language while in the classroom, on school property, or during a school sponsored activity; and

(ii) prohibitions against hazing, demeaning, or assaultive behavior, whether consensual or not;

(e) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board; and

(f) Subsection 53E-3-401(4)(a), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of the rule is to:

(a) require LEAs to develop, update, and implement bullying, cyber-bullying, hazing, retaliation, and abusive conduct policies at the school district and school level;

(b) provide for regular and meaningful training of school employees and students;

(c) provide for enforcement of the policies in schools, at the state level and in public school athletic programs; and

(d) require an LEA to review allegations of bullying, cyber-bullying, hazing, retaliation, and abusive conduct.

**R277-613-2. Definitions.**

(1) "Abusive conduct" means the same as that term is defined in Subsection 53G-9-601(1).

(2)(a) "Bullying" means the same as that term is defined in Subsection 53G-9-601(2).

(b) The conduct described in Subsection 53G-9-601(2) constitutes bullying, regardless of whether the person against whom the conduct is committed directed, consented to, or acquiesced in, the conduct.

(3) "Civil rights violation" means bullying, cyber-bullying, harassment, or hazing that is targeted at a student based upon the students' or employees' identification as part of any group protected from discrimination under the following federal laws:

(a) Title VI of the Civil Rights Act of 1964;

(b) Title IX of the Education Amendments of 1972;

(c) Section 504 of the Rehabilitation Act of 1973; or

(d) Title II of the Americans with Disabilities Act of 1990.

(4) "Cyber-bullying" means the same as that term is defined in Subsection 53G-9-601(4).

(5) "Disruptive student behavior" means the same as that term is defined in Subsection 53G-8-210(1)(a).

(6) "Hazing" means the same as that term is defined in Subsection 53G-9-601(5).

(7)(a) "Incident" means one or more infractions committed by a student or group of students acting in concert, at the same time and place.

(b) A single incident may involve one or more victims and one or more offenders.

(8) "Infraction" means an act of prohibited behavior.

(9) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(10) "Participant" means any student, employee or volunteer coach participating in a public school sponsored athletic program or activity, including a curricular, co-curricular, or extracurricular club or activity.

(11) "Policy" means standards and procedures that:

(a) are required in Section 53G-9-605;

(b) include the provisions of Section 53G-8-202; and

(c) provide additional standards, procedures, and training adopted in an open meeting by an LEA board that:

(i) define bullying, cyber-bullying, hazing, retaliation, and abusive conduct;

(ii) prohibit bullying, cyber-bullying, hazing, retaliation, and abusive conduct;

(iii) require regular annual discussion and training designed to prevent bullying, cyber-bullying, hazing, and retaliation among school employees and students; and

(iv) provide for enforcement through employment action or student discipline.

(12) "Restorative justice practice" means a discipline practice that brings together students, school personnel, families, and community members to resolve conflicts, address disruptive behaviors, promote positive relationships, and healing.

(13) "Retaliate" or "retaliation" means the same as that term is defined in Subsection 53G-9-601(7).

(14) "School employee" means the same as that term is defined in Subsection 53G-9-601(10).

(15) "Trauma-Informed Care" means a strengths-based service delivery approach that is grounded in an understanding of and responsiveness to the impact of trauma, that emphasizes physical, psychological, and emotional safety for both the alleged victim and the individual who is alleged to have engaged in prohibited conduct, and that creates opportunities for targets to rebuild a sense of control and empowerment.

(16) "Volunteer" means a non-employee with significant, unsupervised access to students in connection with a school assignment.

**R277-613-3. Superintendent Responsibilities.**

(1) The Superintendent shall provide:

(a) a model policy on bullying, cyber-bullying, hazing, and retaliation as required in Section 53G-9-606;

(b) subject to availability of funds, model training and training opportunities on:

(i) the prevention and identification of bullying, cyber-bullying, hazing, and retaliation, that an LEA may use to train the LEA's employees, contract employees, and volunteers, including coaches; and

(ii) the reporting and review requirements in Section R277-613-5;

(c) subject to availability of funds, evidence based practices and policies related to the prevention of bullying, cyber-bullying, hazing, and retaliation.

(2) Although an LEA is required to have a policy on bullying, cyber-bullying, hazing, retaliation and abusive conduct as described in Section 53G-9-605 and this rule and provide training as described in Section 53G-9-607 and this rule, the LEA is not required to use the model policy or model training developed by the Superintendent described in Subsection (1).

(3) The Board may interrupt disbursements of funds consistent with Subsection 53E-3-401(8) and Rule R277-114 for failure of an LEA to comply with:

- (a) Title 53G, Chapter 9, Bullying and Hazing; and
- (b) this rule.

(4) In addition to the requirements of Title 53G, Chapter 9, Bullying and Hazing and this ~~[R277-613]~~ rule, LEAs are required to comply with applicable federal requirements.

**R277-613-4. LEA Responsibility to Create or Update Bullying Policies.**

(1) In addition to the requirements of Subsection 53G-9-605(3), an LEA shall:

(a) develop, update, and implement policies as required by Section 53G-9-605 and this rule, which shall include a prohibition on:

- (i) bullying;
- (ii) cyber-bullying;
- (iii) hazing;
- (iv) retaliation;
- (v) abusive conduct; and
- (vi) making a false report.

(b) post a copy of the LEA's policy on the LEA website;

(c) develop an action plan to address a reported incident of bullying, cyber-bullying, hazing, or retaliation;

(d) provide a requirement for a signed statement that meets the requirements of Subsection 53G-9-605(3)(h) annually; and

(e) review the policies required by this Subsection (1) regularly with input from stakeholders, as described in Subsection 53G-9-605(2)(a).

(2) A signed statement under Subsection (1)(d) may not be used as a substitute for other training requirements as set forth in this rule.

(3)(a) As required by Section 53G-9-605, an LEA shall notify a student's parent of:

- (i) ~~[a parent's]~~ the student's threat ~~[to commit]~~ of suicide; or
- (ii) an incident of bullying, cyber-bullying, hazing, or retaliation involving the ~~[parent's]~~ student as a victim or an individual who is alleged to have engaged in prohibited conduct.

(b) An LEA shall:

~~[(i) notify a parent described in Subsection (3)(a) in a timely manner;]~~

~~[(i)]~~ designate the appropriate school employee to provide parental notification; and

~~[(ii)]~~ designate the format in which notification is provided to ~~[parents]~~ a parent and maintained by the LEA.

(c) An LEA shall:

~~[(i) make a notification required in Subsection (3)(a) in a timely manner; and~~

~~[(ii) provide the parent with:~~

(A) suicide prevention materials and information as recommended by the Superintendent in accordance with Subsection 53G-9-604(2)(b);

(B) information on ways to limit a student's access to fatal means, including firearms or medication;

(C) information and resources on the healthy use of social media and online practices.

(4) Subject to the parental consent requirements of Section 53E-9-203, if applicable, an LEA shall assess students about the prevalence of bullying, cyber-bullying, hazing, and retaliation in LEAs and schools, specifically locations where students are unsafe and additional adult supervision may be required, such as playgrounds, hallways, and lunch areas.

(5) An LEA shall take strong responsive action against retaliation, including assistance to victims and their parents in reporting subsequent problems and new incidents.

(6)(a) An LEA shall provide that students, school employees, coaches, and volunteers receive training on bullying, cyber-bullying, hazing, retaliation, and abusive conduct from individuals qualified to provide such training.

(b) The training described in Subsection ~~[(5)]~~(6)(a) shall

(i) include information on:

(A) bullying, cyber-bullying, hazing retaliation, and abusive conduct;

(B) discrimination under the following federal laws:

(I) Title VI of the Civil Rights Act of 1964;

(II) Title IX of the Education Amendments of 1972;

(III) Section 504 of the Rehabilitation Act of 1973; and

(IV) Title II of the Americans with Disabilities Act of 1990;

(C) how bullying, cyber-bullying, hazing retaliation, and abusive conduct are different from discrimination and may occur separately from each other or in combination;

(D) how bullying, cyber-bullying, hazing, retaliation, and abusive conduct are prohibited based upon the students' or employees' actual or perceived characteristics, including race, color, national origin, sex, disability, religion, gender identity, sexual orientation, or other physical or mental attributes or conformance or failure to conform with stereotypes; and

(E) the right of free speech and how it differs for students, employees, and parents;

(ii) complement the suicide prevention program required for students under Rule R277-620 and the suicide prevention training required for licensed educators consistent with Subsection 53G-9-704(1); and

(iii) include information on when issues relating to this rule may lead to student or employee discipline.

(7) The training described in Subsection (6) shall be offered to:

(a) new school employees, coaches, and volunteers within the first year of employment or service; and

(b) all school employees, coaches, and volunteers at least once every three years after the initial training.

(8)(a) An LEA's policies developed under this section shall complement existing school policies and research based school discipline plans.

(b) Consistent with Rule R277-609, the discipline plan shall provide direction for dealing with bullying, cyber-bullying, hazing, retaliation, abusive conduct, and disruptive students.

(c) An LEA shall ensure that a discipline plan required by Rule R277-609:

(i) directs schools to determine the range of behaviors and establish the continuum of administrative procedures to be used by school personnel to address the behavior of students;

(ii) provides for identification, by position, of individuals designated to issue notices of disruptive student behavior, bullying, cyber-bullying, hazing, retaliation, and abusive conduct;

(iii) designates to whom notices shall be provided;

(iv) provides for documentation of disruptive student behavior in the LEA's student information system;

(v) includes strategies to provide for necessary adult supervision;

(vi) is clearly written and consistently enforced; and

(vii) includes administration, instruction and support staff, students, parents, community council and other community members in policy development, training and prevention implementation so as to create a community sense of participation, ownership, support and responsibility.

**R277-613-5. Reporting and Incident Investigations of Allegations of Bullying, Cyber-bullying, Hazing, Retaliation and Abusive Conduct.**

(1) In accordance with an action plan adopted in accordance with Subsection R277-613-4(1)(c), an LEA shall:

(a) investigate allegations of incidents of bullying, cyber-bullying, hazing, retaliation, and abusive conduct in accordance with this section;

(b) provide an individual who investigates allegations of incidents of bullying, cyber-bullying, hazing, retaliation, and abusive conduct with adequate training on conducting an investigation; and

(c) identify an LEA employee to be the point person with training and expertise to assist, direct, and supervise training of other employees in the responsibilities established in Subsections R277-613-5(1)(a) and (b).

(2)(a) An LEA shall investigate allegations of incidents described in Subsection (1)(a) by interviewing:

(i) the alleged victim;

(ii) the individual who is alleged to have engaged in prohibited conduct;

(iii) parents of the alleged victim and the individual who is alleged to have engaged in prohibited conduct;

(iv) any witnesses;

(v) school staff familiar with the alleged victim;

(vi) school staff familiar with the individual who is alleged to have engaged in prohibited conduct; or

(vii) other individuals who may provide additional relevant information.

(c) An individual who investigates an allegation of an incident shall inform an individual being interviewed that:

(i) to the extent allowed by law, the individual shall keep all details of the interview confidential; and

(ii) further reports of bullying will become part of the review.

(3) The confidentiality requirement in Subsection (2)(c) does not apply to:

(a) conversations with law enforcement professionals;

(b) requests for information pursuant to a warrant or subpoena;

(c) a state or federal reporting requirement; or

(d) other reporting required by this rule.

(4) In conducting an investigation under this section, an LEA may:

(a) review disciplinary reports of involved students; and

(b) review physical evidence, consistent with search and seizure law in schools, which may include:

(i) video or audio;

(ii) notes;

(iii) email;

(iv) text messages;

(v) social media; or

(vi) graffiti.

(5) An LEA shall adopt a policy outlining under what circumstances the LEA will report incidents of bullying, cyber-bullying, harassment, and retaliation to law enforcement.

(6) An LEA shall adopt a policy outlining under what circumstances the LEA will investigate and report incidents of bullying, cyber-bullying, retaliation, and abusive conduct as civil rights violations.

(7) Following an investigation of a confirmed allegation of an incident of bullying, cyber-bullying, hazing, retaliation, or abusive conduct, if appropriate, an LEA may:

(a) in accordance with the requirements in Subsection (6), take positive restorative justice practice action, in accordance with policies established by the LEA; and

(b) support involved students through trauma-informed practices, if appropriate.

(8)(a) An alleged victim is not required to participate in a restorative justice practice as described in Subsection (7)(a) with an individual who is alleged to have engaged in prohibited conduct.

(b) If an LEA would like a student to participate in a restorative justice practice, the LEA shall notify the student's parent of the restorative justice practice and obtain consent from the student's parent before including the student in the process.

(9) A grievance process required under Subsection 53G-9-605(3)(f) shall be consistent with the LEA's established grievance process.

(10) An LEA shall follow up with the parents of all parties to:

(a) inform parents when an investigation is concluded;

(b) inform parents what safety measures will be in place for their child, as determined by the investigation;

(c) provide additional information about the investigation or the resolution consistent with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g; and

(d) inform parents of appeal options, if available, if the parents disagree with resolution of the investigation.

(11) An LEA shall, as required by Subsection 53G-9-606(2), report the following annually, on or before June 30, to the Superintendent in accordance with the Superintendent's submission requirements:

(a) a copy of the LEA's policy required in Section R277-613-4;

(b) implementation of the signed statement requirement described in Subsection 53G-9-605(3)(h);

(c) verification of the LEA's training of school employees relating to bullying, cyber-bullying, hazing, retaliation, and abusive conduct described in Section 53G-9-607;

(d) verified and alleged incidents of bullying, cyber-bullying, hazing, retaliation, and abusive conduct;

(e) the number and type of incidents described in Subsection (11)(d) required to be reported separately under federal law, including the reporting requirements in:

(i) Title VI of the Civil Rights Act of 1964;

(ii) Title IX of the Education Amendments of 1972;

(iii) Section 504 of the Rehabilitation Act of 1973; and

## NOTICES OF PROPOSED RULES

(iv) Title II of the Americans with Disabilities Act of 1990; and

(f) the number and type of incidents described in Subsection (11)(d) that include a student or LEA employee who was bullied, cyber-bullied, hazed, or retaliated against based on the student's or LEA employee's actual or perceived characteristics, including disability, race, national origin, religion, sex, gender identity, or sexual orientation.

(12) The requirements of this [R]ule[~~R277-613~~] are in addition to any federal requirements, including reporting civil rights violations to the appropriate entities and taking other appropriate action.

### **R277-613-6. Training by LEAs Specific to Participants in Public School Athletic Programs and School Clubs.**

(1)(a) Prior to any student, employee or volunteer coach participating in a public school sponsored athletic program, both curricular and extracurricular, or extracurricular club or activity, the student, employee or coach shall participate in bullying, cyber-bullying, hazing, retaliation, and abusive conduct prevention training.

(b) A training described in Subsection (1)(a) shall be offered to new participants on an annual basis and to all participants at least once every three years.

(2) An LEA shall inform student athletes and extracurricular club members of prohibited activities under this rule and potential consequences for violation of the law and the rule.

(3) An LEA shall maintain training participant lists or signatures, to be provided to the Board upon request.

### **R277-613-7. Abusive Conduct.**

(1) An LEA shall prohibit abusive conduct.

(2) An LEA's bullying, cyber-bullying, hazing, abusive conduct, and retaliation policy, required in Section 53G-9-605 and this rule, shall include a grievance process for a school employee who has experienced abusive conduct as described in Subsection 53G-9-605(3)(f).

**KEY: abusive conduct, bullying, harassment, hazing, training**

**Date of Last Change: 2023[June 2, 2022]**

**Notice of Continuation: August 2, 2018**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53G-9-607; 53E-3-501; 53G-8-209; 53G-9**

## **NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Repeal

<b>Rule or Section Number:</b>	<b>R277-619</b>	<b>Filing ID: 55491</b>
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### **Agency Information**

<b>1. Department:</b>	Education
<b>Agency:</b>	Administration
<b>Building:</b>	Board of Education
<b>Street address:</b>	250 E 500 S
<b>City, state and zip:</b>	Salt Lake City, UT 84111
<b>Mailing address:</b>	PO Box 144200

<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

### **General Information**

#### **2. Rule or section catchline:**

R277-619. Student Leadership Skills Development

#### **3. Purpose of the new rule or reason for the change:**

This rule is being repealed because pilot Student Leadership Skills Development program was repealed from the Utah Code in 2021.

#### **4. Summary of the new rule or change:**

This rule is being repealed in its entirety.

### **Fiscal Information**

#### **5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:**

##### **A) State budget:**

This rule change is not expected to have fiscal impact on state government revenues or expenditures. There are no costs or revenue changes for the Utah State Board of Education (USBE) associated with repealing this rule for the program which was repealed in 2021.

##### **B) Local governments:**

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. This has no impact for Local Education Agencies (LEAs) as the program was repealed by the Legislature in 2021.

##### **C) Small businesses** ("small business" means a business employing 1-49 persons):

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures.

This rule only affects USBE and LEAs.

##### **D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are

not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses, and it does not require any expenditures of, or generate revenue for non-small businesses.

**E) Persons other than small businesses, non-small businesses, state, 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**):

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities.

This rule only affects USBE and LEAs.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs for affected persons. There are no costs associated with repealing this rule for a program repealed by the Legislature in 2021.

**G) Regulatory Impact Summary Table** (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 will be included in narratives above.)

**Regulatory Impact Table**

<b>Fiscal Cost</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$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>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.

**Citation Information**

**6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Article X, Section 3	Subsection 53E-3-401(4)	Section 53F-2-508
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**Public Notice Information**

**8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 07/31/2023

**9. This rule change MAY become effective on:** 08/07/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	06/15/2023
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**R277. Education, Administration.**

~~**R277-619. Student Leadership Skills Development.**~~

~~**R277-619 1. Authority and Purpose.**~~

~~(1) This rule is authorized by:~~

~~(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;~~

~~(b) Subsection 53E-3-401(4), which allows the Board to execute rules to carry out its duties and responsibilities under the Utah Constitution and state law; and~~

~~(c) Subsection 53F-2-508(4), which directs the Board to make rules for elementary school participation in this pilot grant program.~~

~~(2) The purpose of this rule is to provide criteria, procedures and timelines for the Board to designate schools and grant awards to facilitate elementary school participation in the pilot Student Leadership Skills Development program.~~

**R277-619-2. Definitions.**

(1) ~~"Matching funds" means an amount of funds or services that shall be provided by an applicant in the Board application to meet the match requirement of Subsection 53F-2-508(5)(a) for first year applicants.~~

(2) ~~"Student leadership skills development program" or "Program" means a program established in accordance with Section 53F-2-508 to develop students' behaviors and skills vital for learning and career success and that will enhance a school's learning environment.~~

**R277-619-3. School Selection Criteria.**

(1) ~~An elementary school that includes any combination of grades K-6 may apply for program funds.~~

(2) ~~An applicant school shall provide a completed application for its pilot program, which shall:~~

(a) ~~indicate how the program will develop:~~

(i) ~~communication skills;~~

(ii) ~~teamwork skills;~~

(iii) ~~interpersonal skills;~~

(iv) ~~initiative and self-motivation;~~

(v) ~~goal setting skills;~~

(vi) ~~problem solving skills; and~~

(vii) ~~creativity;~~

(b) ~~estimate the number of students that will be served by the program;~~

(c) ~~agree that the school will provide all data and information required by the Superintendent for evaluation and reporting purposes;~~

(d) ~~explain how the school will provide matching funds as required under Subsection 53F-2-505(5)(a).~~

(d) ~~provide additional information requested by the Superintendent on the application including selection criteria and assurances provided in Subsection 53F-2-508(5).~~

**R277-619-4. School Selection and Criteria.**

(1) ~~The Superintendent shall set application and funding deadlines based on funding availability.~~

(2) ~~The Superintendent shall screen all applications for compliance with all state laws, this Rule R277-619, and application requirements.~~

(3) ~~The Superintendent may seek the participation and advice of an independent evaluating committee in recommending applications for funding.~~

(4) ~~The Board shall make final school funding selections.~~

(5) ~~Subject to legislative appropriation, the Board shall determine the final number of schools and amounts per school not to exceed \$10,000 per school for first year applicants and \$20,000 per school for second year applicants, based on the number and quality of applications.~~

**KEY:** ~~students, leadership skills~~

**Date of Last Change:** ~~August 7, 2018~~

**Notice of Continuation:** ~~July 13, 2018~~

**Authorizing, and Implemented or Interpreted Law:** ~~Art X, Sec 3; 53E-3-401(4); 53F-2-508]~~

**NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

**Rule or Section Number:**

**R277-726**

**Filing ID:**  
**55492**

**Agency Information**

**1. Department:** Education

**Agency:** Administration

**Building:** Board of Education

**Street address:** 250 E 500 S

**City, state and zip:** Salt Lake City, UT 84111

**Mailing address:** PO Box 144200

**City, state and zip:** Salt Lake City, UT 84114-4200

**Contact persons:**

**Name:**

**Phone:**

**Email:**

Angie Stallings

801-538-7830

angie.stallings@schools.utah.gov

**Please address questions regarding information on this notice to the persons listed above.**

**General Information****2. Rule or section catchline:**

R277-726. Statewide Online Education Program

**3. Purpose of the new rule or reason for the change:**

This rule is being amended due to the passage of S.B. 45 and S.B. 167, during the 2023 General Session.

**4. Summary of the new rule or change:**

These amendments add several new definitions, as well as update language to clarify existing definitions. The amendments make specific updates related to the Course Credit Acknowledgment (CCA) process, and also update the requirements related to program implementation and accountability for a Local Education Agency (LEA), Superintendent, parents and students, and authorized online course providers.

**Fiscal Information****5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

This rule change is not expected to have fiscal impact on state government revenues or expenditures. Impacts to the Utah State Board of Education (USBE) budgets were captured with the fiscal note to S.B. 45 and S.B. 167 (2023). USBE does not anticipate any additional costs associated with the rule updates including staff time or resources.



There are no changes to USBE revenue associated with this rule update.

**B) Local governments:**

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. Impacts to LEAs were captured in S.B. 45 and S.B. 167 (2023).

USBE does not anticipate any added costs for LEAs associated with this rule change or revenue changes.

**C) Small businesses** ("small business" means a business employing 1-49 persons):

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures. This only impacts USBE and LEAs.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses, and it does not require any expenditures of, or generate revenue for non-small businesses.

**E) Persons other than small businesses, non-small businesses, state, 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**):

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities.

This only impacts USBE and LEAs.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs for affected persons. USBE does not anticipate added costs for the entity or LEAs related to the language changes from the rule; costs to USBE budgets were captured with the fiscal note to S.B. 45 and S.B. 167 (2023).

There are no staff or additional resources needed associated with the rule changes.

**G) Regulatory Impact Summary Table** (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 will be included in narratives above.)

**Regulatory Impact Table**

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$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>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.

**Citation Information**

**6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Article X, Section 3	Section 53E-3-401	Section 53F-4-510
Section 53F-4-514		

**Public Notice Information**

**8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 07/31/2023

**9. This rule change MAY become effective on:** 08/07/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	06/15/2023
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**R277. Education, Administration.****R277-726. Statewide Online Education Program.****R277-726-1. Authority and Purpose.**

- (1) This rule is authorized by:
- (a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board;
- (b) Section 53F-4-514, which requires the Board to make rules:
- (i) providing for the administration of the applicable statewide assessments to students enrolled in online courses;
- (ii) that establish a course credit acknowledgment form and procedures for completing and submitting the form to the Board; and
- (iii) that establish protocols for an online course provider to obtain approval to become [a]n authorized or certified online course provider; and
- (c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.
- (2) The purpose of this rule is to:
- (a) define necessary terms;
- (b) provide and describe a program registration agreement; and
- (c) provide other requirements for an LEA, the Superintendent, a parent and a student, and [a]n authorized online course provider for program implementation and accountability.

**R277-726-2. Definitions.**

- (1) "Actively participates" means, for purposes of an initial funding distribution described in Section 53F-4-505, the student actively participates as defined by the provider in a written standard of active participation on record with the Superintendent.
- (2) "Applicable statewide assessments" means:
- (a) the high school assessment described in Section 53E-4-304 and Subsection R277-404-2~~[(6)](7)~~;
- (b) a standards assessment as defined in Section 53E-4-303; and
- (c) a Utah alternative assessment as defined in [Subsection]Rule R277-404[-2(13)].

~~(3)~~ "Approved absence" means an absence permitted in accordance with Subsection 53G-6-803(5).

~~(4)~~ "Authorized online course provider" or "provider" means the same as the term is defined in Section 53F-4-501.

~~[(3)](5)~~ "Certified online course provider" means the same as the term is defined in ~~[Subs]~~Section 53F-4-501~~[(4)]~~.

~~[(4)](6)~~ "Course completion" means that a student has completed a course with a passing grade and the provider has transmitted the course title, course code, grade and credit to the primary LEA of enrollment and the Superintendent.

~~[(5)(a)](7)~~ "Course Credit Acknowledgment" or "CCA" means an agreement and registration record that:

(a) ~~[using]~~uses the Statewide Online Education Program application provided by the Superintendent~~[-]; and~~

(b) ~~[E]~~except as provided in ~~[Subs]~~Section 53F-4-508~~[(3)(b)]~~, ~~[the CCA shall be]~~is signed by the designee of the primary school of enrollment, and the qualified provider.

(8) "Effective Date" means that, notwithstanding Title 63G, Chapter 3, Utah Administrative Rulemaking Act, a delayed effective date that the Board is required to provide after the school year has ended for changes in administrative rule related to the Statewide Online Education Program, as described in Subsection 53F-4-514(1).

~~[(6)](9)(a)~~ "Eligible student" means the same as the term is defined in Section 53F-4-501.~~[a student enrolled in grades 7-12 in a secondary environment in a course that:~~

~~(i) is offered by a public school; and~~

~~(ii) provides the student the opportunity to complete middle school requirements or earn high school graduation credit.]~~

(b) "Eligible student" does not include a student enrolled in an adult education program.

~~[(7)](10)~~ "Enrollment confirmation" means ~~[the]~~a student who initially registered and actively participated, as defined under Subsection (1).

~~[(8)](11)(a)~~ "Executed CCA" means a CCA that has been executed pursuant to Subsection 53F-4-508(3) and received by the Superintendent.

~~[(b)]~~ Following enrollment confirmation and participation, Superintendent directs funds to the provider, consistent with Sections 53F-4-505 through 53F-4-507.]

(12) "Fee" means the same as the term is defined in Rule R277-407.

~~[(9)](13)~~ "High school" means the same as the term is defined in Section 53F-4-501.

~~[(10)](14)~~ "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(15) "Middle school" means the same as the term is defined in Section 53F-4-501.

~~[(11)](16)~~ "Online course" means the same as the term is defined in Section 53F-4-501 regardless of whether the student participates in the online course at home, at a school, at another location, or in any combination of these settings~~[a course of instruction offered through the Statewide Online Education Program]~~.

~~[(12)](17)~~ "Online course payment" means the amount of funds withheld from a student's primary LEA and disbursed, or otherwise paid to the designated provider following satisfaction of the requirements of the law, and as directed in Subsection 53F-4-507(2) and Section 53F-4-518.

~~[(13)]~~ "Online course provider" or "provider" means:

~~(a) a school district school with an approved application described in Subsection R277-726-3(1)(a);~~



~~(b) a charter school with an approved application described in Subsection R277-726-3(1)(a);~~

~~(c) an LEA program created to serve Utah students in grades 7-12 online with an approved application described in Subsection R277-726-3(1)(a); or~~

~~(d) a program of an institution of higher education described in Subsection 53F-4-504(3) with an approved application described in Subsection R277-726-3(1)(b).]~~

~~[(14)](18) "Primary LEA of enrollment" means the LEA [in which an eligible student is enrolled for courses other than online courses offered through the Statewide Online Education Program, and which reports] reporting the student to be in regular membership, and special education membership, if applicable.~~

~~[(15)](19) "Primary school of enrollment" means:~~

~~(a) a student's school of record within a primary LEA of enrollment; [and]~~

~~(b) the school that maintains the student's cumulative file, enrollment information, individualized education program, and transcript for purposes of high school graduation[-]; and~~

~~(c) the school responsible for oversight and implementation of the student's educational requirements under the Individuals with Disabilities Education Act.~~

~~[(16)](20) "Resident school" means the district school within whose attendance boundaries the student's custodial parent or legal guardian resides.~~

~~(21) "School" means the same as the term is defined in Rule R277-100.~~

~~[(17)](22) "Section 504" means Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794.~~

~~[(18)](23) "Standard of active participation" means the measure of student engagement[-that is] used by [the certified-]an authorized online course provider to count a student as in attendance and participation at least once every ten school days for a course consistent with Section R277-419-5.~~

~~[(19)](24) "Statewide Online Education Program" or "program" means the Statewide Online Education Program created in Section 53F-4-502. [courses offered to students under Title 53F, Chapter 4, Part 5, Statewide Online Education Program Act.]~~

~~[(20)](25) "Teacher of record" means the teacher who is [employed]assigned by a provider and to whom students are assigned for purposes of reporting and data submissions to the Superintendent in accordance with Section R277-484-3 and this rule.~~

~~[(21)](26) "Underenrolled student" means a student with less than a full course load, as defined by the LEA, during the regular school day at the student's primary school of enrollment.~~

~~[(22)](27) "USBE course code" means a code for a designated subject matter course assigned by the Superintendent.~~

~~[(23)](28) "Withdrawal from online course" means that a student withdraws from or ceases participation in an online course as follows:~~

~~(a) within 20 calendar days of the start date of the course, if the student enrolls on or before the start date;~~

~~(b) within 20 calendar days of enrolling in a course, if the student enrolls after the start date;~~

~~(c) within 20 calendar days after the start date of the second 0.5 credit of a 1.0 credit course; [or]~~

~~(d) as the result of a student suspension from an online course following adequately documented due process by the provider[-]; or~~

~~(e) as a result of the student losing program eligibility, including when the student moves out of state.~~

### **R277-726-3. Course Credit Acknowledgment (CCA) Process.**

(1) A student, a student's parent, a counselor, or a provider may initiate a CCA.

(2)(a) A counselor designated by a student's primary school of enrollment shall review the student's CCA to ensure consistency with:

- (i) graduation requirements;
- (ii) the student's plan for college and career readiness;
- (iii) the student's IEP;
- (iv) the student's Section 504 plan; or
- (v) the student's international baccalaureate program.

(b) The primary school of enrollment shall return the CCA to the Superintendent within 72 business hours.

(3)(a) The primary school of enrollment is not required to meet with the student or parent for approval of a course request.

(b) The Superintendent shall notify a primary school of enrollment of a student's enrollment in the program.

(4) If a student enrolling in the program has an IEP, Section 504 plan, or qualifies for multilingual supports, the primary LEA or school of enrollment shall:

(a) invite a representative of the authorized online course provider to meet as a member of the student's IEP team to determine and coordinate services and accommodations applicable to online course delivery of content and instruction;

(b) following an IEP revision or amendment after the meeting described in Subsection (4)(a), ensure that a counselor and special education staff from the LEA forward [the]an existing or amended IEP or description of 504 accommodations, [-and other] relevant supports, and related aids, accommodations, and services, to the provider;

(i) consistent with IDEA timelines; or

(ii) within 72 business hours of receiving notice from the Superintendent that the provider has accepted the enrollment request where IDEA timelines do not apply.

(5) The Superintendent shall develop and administer procedures for facilitation of a CCA that informs the appropriate parties.

(6) Once a student's enrollment and active participation is confirmed, the Superintendent shall direct funds to the provider, consistent with Sections 53F-4-505 through 53F-4-507, and Section 53F-4-518.

### **R277-726-4. Eligible Student and Parent Rights and Responsibilities.**

(1) An eligible student may register for program credits consistent with Section 53F-4-503 and this rule.

(2) An eligible student may exceed a full course load during a regular school year if:

(a) the student's plan for college and career readiness indicates that the student intends to complete high school graduation requirements and exit high school before the rest of the student's high school cohort; or

(b) the student's local school board or charter school governing board has a policy that allows students to enroll in additional courses.

(3)(a) Only original credit may be funded through the program.

(b) Competency-based award of credit without engagement in a course of digital, teacher-led instruction may not be funded under Statewide Online Education Program and Minimum School Program provisions.

~~[(3) In accordance with Subsection 53F-4-509(5), if a student enrolled in a program course exceeds a full course load during a regular school year, a primary LEA of enrollment may mark the student as an early graduate and increase membership in accordance with Section R277-419-8 and Rule R277-484 to account for credits in excess of full-time enrollment in a local student information system.]~~

(4)(a) An eligible student is expected to complete courses in which the student enrolls in a timely manner consistent with Section 53F-4-505 and requirements for attendance and participation in accordance with Subsection R277-726-7(15) and Subsection R277-726-2(17).

(b) If a student changes the student's enrollment in the student's primary LEA or withdraws from an online course for any reason, it is the student's or student's parent's responsibility to notify the provider immediately.

(5) A student shall enroll in online courses, or declare an intention to enroll, during the school course registration period designated by the primary LEA of enrollment for regular course registration, provided the student's LEA notifies students of the opportunity to enroll in the program as described in Section 53F-4-513.

(6)(a) A student may alter a course schedule by dropping a traditional course and adding an online course in accordance with the primary school of enrollment's same established deadline for dropping and adding traditional courses.

(b) A student may enroll in a course outside of the primary school of enrollment's established deadline for dropping and adding traditional courses if the student is not seeking to alter a course schedule by dropping a traditional course and adding an online course but is instead seeking to add courses above full-time-enrollment consistent with an approved plan for early graduation.

(7)(a) Notwithstanding Subsection ~~[(6)](5)~~, an underenrolled student may enroll in an online course at any time during a calendar year.

(b) If an underenrolled student enrolls in an online course as described in Subsection (7)(a), the primary school of enrollment may immediately claim the student for the adjusted portion of enrollment by entering the course into the primary LEA's student information system and increasing membership, if necessary.

(8)(a) An authorized online course provider shall reasonably accommodate a request of a student's parent to visit and observe any class the student attends, including allowing appropriate access to digital systems of course delivery, as required in Section 53G-6-803.

(b) An authorized online course provider shall reasonably accommodate and record an excused absence at the request of a student's parent as an "approved absence" as described in Subsection 53G-6-803(5) if:

(i) the parent submits a written statement at least one school day before the scheduled absence; and

(ii) the student agrees to make up coursework for school days missed for the scheduled absence in accordance with LEA policy.

#### **R277-726-5. LEA Requirements and Responsibilities.**

(1) A primary school of enrollment shall facilitate student enrollment with any eligible providers selected by an eligible student consistent with course credit limits.

(2) A primary school of enrollment ~~[or]~~ and a provider LEA shall use the CCA application, records, and processes provided by the Superintendent for the program.

(3) In accordance with Subsection 53F-4-509(5), if a student enrolled in a program course intends to graduate early and exceeds a full course load during a regular school year, a primary LEA of enrollment may mark the student as an early graduate and increase membership in accordance with Section R277-419-6, Section R277-700-6 and Rule R277-484 to account for credits in excess of full-time enrollment in a local student information system.

~~[(3)](4)~~ A primary school or LEA of enrollment shall provide information about available online courses and programs:

- (a) in registration materials;
- (b) on the LEA's website; and
- (c) on the school's website.

[(4)](5) To facilitate enrollment as required by Section 53F-4-513, [A] a primary school or LEA of enrollment shall provide the notice required under Subsection ~~[(3)](4)~~ concurrent with the high school course registration period designated by the LEA for the upcoming school year~~[to facilitate enrollment as required by Section 53F-4-513].~~

~~[(5)](6)~~ A primary school of enrollment shall include a student's online courses in the student's enrollment records and, upon course completion, include online course grades and credits on the student's transcripts, including appropriate student coursework completed before grade 9, including appropriate student coursework using course title and core codes.

~~[(6)](7)~~ A primary school of enrollment shall recognize credit earned toward high school graduation by a participating ~~[secondary]~~ student through courses completed before grade 9 for purposes of high school graduation, ~~[provided that:~~

~~(a) the student has in the student's records documentation of the student's intention to graduate early; and~~

~~(b) the student is enrolled at a middle school or junior high school and a high school accredited in accordance with Rule R277-440.]~~

~~[(7)](8)~~ A primary school of enrollment shall determine fee waiver eligibility for participating public school students pursuant to Rule R277-407.

~~[(8)](9)(a)~~ If a participating student qualifies for a fee waiver, the student's primary LEA or school of enrollment shall provide the participating student access to an online course by:

(i) allowing a student access to necessary technology in a computer lab or other space within the school building during a school period or during the regular school day for the student to participate in an online course; or

(ii) providing a participating student technology and wi-fi needed for the student to participate outside of the school building.

(b) If a participating student who qualifies for a fee waiver is a home or private school student, the online course provider shall provide the participating home or private school student access to the online course.

~~[(9)](10)~~ A primary school of enrollment shall provide participating students access to facilities for the student to participate in an online course during the regular school day, sports, extracurricular and co-curricular activities, and graduation services consistent with local policies governing participation irrespective of relative levels of participation in traditional courses versus Statewide Online Education courses.

~~[(10)](11)(a) [If a participating student's primary school of enrollment is a middle school or junior high as defined in Rule R277-700, course]~~ Course completions conferring high school credit shall ~~will~~ be recorded in a student's record of credit and course completion for grade 9 to allow recognition toward grades 9-12, and high school graduation requirements~~[and post-secondary requirements].~~

(b) A primary LEA of enrollment accepting credit toward high school requirements is not required to independently verify:

(i) early graduation status; or

(ii) ~~[the non-supplanting nature of SOEP courses]~~ that high school courses taken through the program did not replace middle school courses for a student.

~~[(14)]~~ (12) When a student satisfactorily completes an online semester or quarter course:

(a) for high school credit, in accordance with the LEA's procedures, a designated counselor or registrar at the primary school of enrollment shall forward records of grades and high school graduation credit, listing core codes for each completed course; or

(b) ~~[for students]~~ for a student participating in the program before grade 9, ~~[to]~~ the student's grade 9 primary school of enrollment ~~[for]~~ shall record ~~[ing]~~ grades and credit per Subsection ~~[(10)]~~ (11) once ~~[a]~~ the student completes grade 8.

#### **R277-726-6. Superintendent Requirements and Responsibilities.**

(1) The Superintendent shall provide a website for the program, including information required under Section 53F-4-512 and other information as determined by the Board.

(2) The Superintendent shall direct a provider to administer the Utah standards and high school assessments, as applicable, consistent with Section 53F-4-514 and Rule R277-404.

(3) (a) The Superintendent shall prepare and make available applications and program agreements for authorized online course providers. ~~[-~~

~~(a) LEA providers;~~

~~(b) higher education providers; and~~

~~(c) certified online providers.]~~

(b) The Superintendent shall review each application within a reasonable amount of time and may invite prospective providers for interviews or further discussions of qualifications to clarify outstanding issues.

(4) (a) With the exception of the requirements of Subsection 53F-5-514(2), the ~~[The]~~ Superintendent may determine space availability standards and appropriate course load standards for online courses consistent with Subsection 53F-4-512(3) ~~[(4)]~~ (g).

(b) Course load standards may differ based on subject matter.

(5) (a) Before approving a provider, the Superintendent shall review Annual Financial Reports and state-administered test data to establish capacity of a program to serve an increased range of students while still meeting program requirements.

(b) The Superintendent may restrict a provider from offering coursework if the Superintendent determines that the provider demonstrates repeated low performance on statewide assessments in English Language Arts, math, or science.

(6) The Superintendent shall withhold funds from a primary LEA of enrollment and ~~[make payments to]~~ pay a provider consistent with Sections 53F-4-505 through 53F-4-507, and Section 53F-4-518.

(7) The Superintendent may refuse to provide funds under a CCA if the Superintendent finds that information has been submitted fraudulently or in violation of the law or Board rule by any of the parties to a CCA.

(8) The Superintendent shall receive and investigate complaints, and impose sanctions, if appropriate, regarding course integrity, financial mismanagement, enrollment fraud or inaccuracy, or violations of the law or this rule specific to the requirements and provisions of the program.

(9) If a Superintendent or federal entity's investigation finds that a provider has violated the IDEA or Section 504 provisions for a student taking online courses, the provider shall compensate the student's primary LEA of enrollment for costs related to compliance.

(10) The Superintendent may monitor an LEA's or program provider's compliance with any requirement of state or federal law or Board rule under the program.

(11) The Superintendent may withhold funds from a program provider for the participant's failure to comply with a reasonable request for records or information.

(12) Program records are available to the public subject to Title 63G, Chapter 2, Government Records Access and Management Act.

(13) The Superintendent shall withhold online course payment from a primary LEA of enrollment and payments to an eligible provider at the nearest monthly transfer of funds, subject to verification of information, in an amount consistent with, and when a provider qualifies to receive payment, under Subsections 53F-4-505(4), 53F-4-507(3)(b) and 53F-4-508(2)(b).

(14) The Superintendent shall pay a provider consistent with Minimum School Program funding transfer schedules.

(15) (a) The Superintendent may make decisions on questions or issues unresolved by Title 53F, Chapter 4, Part 5, Statewide Online Program Act or this rule on a case-by-case basis.

(b) The Superintendent shall report decisions described in Subsection (15)(a) to the Board consistent with the purposes of the law and this rule.

(16) In accordance with Title 53E, Chapter 4, Academic Standards, Assessments, and Materials, the Superintendent shall establish criteria for an authorized online course provider to submit for approval an online course that does not have an existing Board course code.

#### **R277-726-7. Provider Requirements and Responsibilities.**

(1) (a) A provider shall administer the applicable statewide assessments to a participating private or home school student as directed by the Superintendent, including proctoring the applicable statewide assessments, consistent with Section 53F-4-510 and Rule R277-404.

(b) A provider shall pay administrative and proctoring costs for the applicable statewide assessments described in Subsection (1)(a).

(c) A provider shall establish a procedure that a student or parent may complete online to excuse the student from statewide assessments as described in Subsection 53G-6-803(9).

(2) A provider shall provide a parent or a student with email and telephone contacts for the provider during regular business hours to facilitate parent contact.

(3) A provider and any third party working with a provider shall, for all eligible students, satisfy Board requirements for:

(a) consistency with course standards as described in Sections 53F-4-514 and 53E-6-201;

(b) criminal background checks for provider employees consistent with Title 53G, Chapter 11, Part 4, Background Checks;

(c) documentation of student enrollment and participation; and

(d) compliance with:

(i) the IDEA;

(ii) Section 504; and

(iii) requirements for multilingual students.

## NOTICES OF PROPOSED RULES

(4) A provider shall receive payments for a student properly enrolled in the program from the Superintendent consistent with:

- (a) Board procedures;
- (b) Board timelines; and

(c) Sections 53F-4-505 through 53F-4-508, and Section 53F-4-518.

(5)(a) A provider may charge a fee consistent with other secondary schools and in accordance with Title 53G, Chapter 7, Part 5, Student Fees, and Rule R277-407.

(b) If a provider intends to charge a fee of any kind, the provider:

(i) shall notify the primary school of enrollment with whom the provider has the CCA of the purpose for fees and amounts of fees;

(ii) shall provide timely notice to a parent of required fees and fee waiver opportunities;

(iii) shall post fees on the provider website;

(iv) shall be responsible for fee waivers for an eligible student, including materials for a student designated fee waiver eligible by a student's primary school of enrollment;

(v) shall satisfy the requirements of Rule R277-407, as applicable; and

(vi) shall provide fee waivers to home school or private school students who meet fee waiver eligibility at the provider's expense.

(6) A provider shall maintain a student's records and comply with the federal Family Educational Rights and Privacy Act, Title 53E, Chapter 9, Part 3, Student Data Protection, and Rule R277-487, including:

(a) protecting the confidentiality of a student's records and providing a parent and an eligible student access to records; and

(b) providing a parent or student documentation of educational performance, including:

(i) test scores;

(ii) grades;

(iii) progress and performance measures; and

(iv) completion of credit.

(7) Except as otherwise provided in this ~~[R]ule [R277-726]~~, a provider shall submit a student's credit and grade to the Superintendent, using processes and applications provided by the Superintendent for this purpose, and listing core codes for each included course, to a designated counselor or registrar at the primary school of enrollment, and the student's parent no later than the earlier of:

(a) 30 days after a student satisfactorily completes an online semester or quarter course; or

(b) June 30 of the school year.

(8) A provider may not withhold a student's credits, grades, or transcripts from the student, parent, or the student's school of enrollment for any reason.

(9)(a) If a provider suspends or expels a student from an online course for disciplinary reasons, the provider shall notify the student's primary LEA of enrollment by placing the student on disciplinary withdrawal.

(b) A provider is responsible for due process procedures for student disciplinary actions in the provider's online program.

(c)(i) A provider shall notify the Superintendent of a student's administrative withdrawal, if the student is inactive in a course for more than ten days, using forms and processes developed by the Superintendent for this purpose.

(ii) If a student, parent, or counselor fails to request reinstatement following notification under Subsection (c)(i), the provider shall formally withdraw the student within 72 hours and notify the student, parent, and primary LEA of the action.

(10) If a student entitled to services under the IDEA is removed from an online program, the primary LEA shall work with the student and the student's parents to identify alternatives to provide a free and appropriate public education.

(11)(a) A provider shall provide to the Superintendent a list of course options using USBE-provided course codes.

(b) ~~[A]Beginning with the 2024-25 school year, a provider [shall] may only~~ code program courses as semester or quarter courses.

(c) A provider shall update the provider's course offerings annually.

(12) A provider shall serve a student on a first-come-first-served basis who desires to take courses and who is designated eligible by a primary school of enrollment if desired courses have space available.

(13) A provider shall maintain and provide records and systems as part of a public online school or program, including:

(a) financial and enrollment records;

(b) information for accountability, program monitoring, and audit purposes; and

(c) providing timely documentation of student participation, enrollment, educator credentials, and ~~[other]~~ additional data for other purposes including giving a student's primary school of enrollment access to the student's records to appropriately support the student.

(14) A provider shall maintain the following for at least five calendar years after the student graduates:

(a) test scores;

(b) student grades;

(c) completion of credit; and

(d) other progress and performance measures.

(15)(a) A provider is responsible for complete and timely submissions of record changes to executed CCAs and submission of other reports and records as required by the Superintendent.

(b) A provider shall update CCAs to the nearest credit value earned by June 30 annually.

(c) A provider may only maintain an CCA open after June 30 if a student remains actively engaged in coursework, meeting the provider's standard of active participation.

(16)(a) ~~[A]Before the inception of coursework, as a component of the provider's initial communication of provisions of the provider's standard of active participation, a provider shall inform a student and the student's parent of travel expectations to fulfill course requirements. [for active participation before the inception of coursework, including informing the student and the student's parent of travel expectations to fulfill course requirements.]~~

(b) Travel expectations to fulfill course requirements as described in Subsection (16)(a) include a requirement to participate in a proctored assessment or other proctored or assessment requirement outside a student's home, including travel to participate in statewide assessments at a secure testing site.

(17)(a) An LEA may participate in the program as a provider by offering a school or program consistent with Rule R277-115 to a Utah ~~[secondary]~~ student in grades ~~[7]~~6-12 who is not a resident student of the LEA and a regularly-enrolled student of the LEA consistent with Sections 53F-4-501 and 53F-4-503.

(b) An LEA program created in accordance with Subsection (18)(a) for serving students in grades 9-12 online must partner with an accredited school and shall:

(i) report grades and credit earned by a student to the Superintendent; and  
 (ii) record educator assignments consistent with Rule R277-484.

(18) A program school or program shall:

(a) be accredited consistent with Rule R277-410;

(b) have a designated administrator who meets the requirements of Rule R277-309;

(c) ensure that a student who qualifies for a fee waiver receives services offered by and through the public schools consistent with Section 53G-7-504 and Rule R277-407;

(d) maintain student records consistent with:

(i) the federal Family Educational Rights and Privacy Act, 20 U.S.C. 1232g and 34 CFR Part 99;

(ii) Rule R277-487;

(iii) this ~~Rule~~ ~~rule~~ ~~R277-726~~; and

(e) shall offer course work:

(i) aligned with Utah Core standards as described in Sections 53E-4-202, 53F-4-505, and 53F-4-514;

(ii) in accordance with program requirements; and

(iii) in accordance with Rules R277-700 and R277-404;

(f) shall not issue transcripts under the name of a third party provider; and

(g) shall record teaching assignments by November 15 annually consistent with Rule R277-484 and Section R277-312-3, either directly or through a partner school in accordance with Subsection (18)(b).

(19) An LEA that offers an online program or school as a provider under the program:

(a) shall employ only educators licensed in Utah as teachers;

(b) may not employ an individual whose educator license has been suspended or revoked;

(c) shall require employees to meet requirements of Title 53G, Chapter 11, Part 4, Background Checks, before the provider offering services to a student;

(d) may only employ teachers who meet the requirements of ~~Rule R277-301, Educator Licensing Highly Qualified Assignment~~ Section 53E-6-201, Section 53F-4-504, and Rule R277-309;

(e) for a provider that provides an online course, including to a private or home school student, shall agree to administer and, before approval as an authorized online course provider, have the capacity to proctor and carry out the applicable statewide assessments, consistent with Sections 53E-4-302, 53F-2-103, and Rule R277-404;

(f) in accordance with Section R277-726-8, shall provide services to a student consistent with requirements of the IDEA, Section 504, and Title VI of the Civil Rights Act of 1964 for multilingual students;

(g) shall submit CCAs to the Superintendent before the provider initiating instruction of a student;

(h) may not begin offering instruction to a student until the Superintendent issues a notice of enrollment, and the provider follows other enrollment procedures as prescribed by the Superintendent for the student, and for each course the student participates in; and

(i) shall agree that funds ~~shall~~ may be withheld by the Superintendent consistent with Sections 53F-4-505, 53F-4-506, ~~and 53F-4-508, and 53F-4-518.~~

(21) A provider shall post required information online on the provider's individual website including required assessment and accountability information.

(22)(a) A provider contracting with a third party to provide educational services to students participating with the provider through the Statewide Online Education Program shall:

(b) develop a written monitoring plan to supervise the activities and services provided by the third party provider to ensure:

(i) a third party provider is complying with:

(A) federal law;

(B) state law; and

(C) Board rules;

(ii) curriculum provided by a third party provider is aligned with the Board's core standards and rules;

(iii) a third party provider has access to curriculum for alignment and adjustment to ensure the curriculum is consistent with the Utah core standards in Rule R277-700 and a Board approved core code;

(iv) supervision of third party facilitation ~~and instruction~~ by an educator licensed in Utah:

(A) ~~employed~~ assigned by the provider~~;~~ and

(B) reported as teacher of record per Section R277-484-3 and Subsection R277-726-2(3); and

(iv) consistent with the LEA's administrative records retention schedule, maintenance of documentation of the LEA's supervisory activities.

(23) A provider shall offer courses consistent with standards outlined in an applicable Statewide Services Agreement, which may be updated or amended to reflect changes in law, rule or recommended practice.

~~[(24) A provider shall maintain a course completion rate of at least 80% annually to remain in good standing with the program.]~~

~~[(25) A provider is]~~ (24) All authorized online course providers are subject to the same approval and annual performance review as described for a certified online course provider in Subsections R277-726-[(12)](11)(1) through (10) while utilizing the applicable applications for [a]an authorized online course provider described in Subsections R277-726-3(1)(a) and (b).

~~[(26)]~~ (25) A provider utilizing a third party shall establish contractual and procedural safeguards:

(a) retaining legal and procedural authority to open coursework to a participating student only upon issuance of a notice of enrollment regarding a particular course and credit;

(b) signifying the provider's authority to interact instructionally with a student not regularly-enrolled in an LEA, but participating in SOEP courses with approval of the student's primary LEA of enrollment; and

(c) including acceptance of financial responsibility by a primary LEA of enrollment.

~~[(27)]~~ (26) A provider is not required to independently verify:

(a) early graduation status; or

(b) ~~the non-supplanting nature of SOEP courses~~ that high school courses taken through the Statewide Online Education Program did not replace Middle School courses.

(28)(a) A provider shall adhere to requirements to remain certified and in good standing within the program, including:

(b) before providing services to students, ensuring that 100% of all educators assigned as teacher of record for all course sections shall be appropriately licensed, endorsed and aligned with core code describing course assignment; and

(c) complying with requirements applicable to an authorized online course provider described in this Rule R277-726, including the requirement to maintain a course completion rate of at least 80%.

**R277-726-8. Services to Students with Disabilities Participating in the Program.**

(1)(a) If a student wishes to receive services under Section 504 of the Rehabilitation Act of 1973, the student shall make a request with either the student's primary school of enrollment or a provider.

~~[(b) The primary school of enrollment shall evaluate a student's request under Subsection (1)(a) and determine if a student is eligible for Section 504 accommodations.~~

~~[(c) If the primary school of enrollment determines the student is eligible, the school shall prepare a Section 504 plan and implement the plan in accordance with Subsection (2)(b).]~~

(b) Responsibility for ensuring a request is evaluated in accordance with federal law, Utah Code, and Board Rule resides with a primary school of enrollment.

(c) If a student's request for services is initially directed to a provider, the provider shall immediately contact the 504 coordinator of the student's primary school of enrollment.

(d) Under the direction of the primary school of enrollment where feasible, the student's primary school of enrollment and the provider shall jointly evaluate a student's request under Subsection (1)(a) and determine if the student is eligible for related aids, accommodations, and services under Section 504.

(e) The provider shall implement the Section 504 plan in accordance with Subsection (1)(d).

(2) If a student's request for services is initially directed to a provider and a good faith effort at cooperation with the student's primary school of enrollment is unsuccessful, the provider may determine student eligibility and provide services.

~~[(2)(a) If a student requests services related to an existing Section 504 accommodation, a provider shall:~~

~~(i) except as provided in Subsection (2)(b), review and implement the plan for the student; and~~

~~(ii) provide the services or accommodations to the student in accordance with the student's Section 504 plan.~~

~~(b) An LEA of enrollment shall provide a Section 504 plan of a student to a provider within 72 business hours if:~~

~~(i) the student is enrolled in a primary LEA of enrollment; and~~

~~(ii) the primary LEA of enrollment has a current Section 504 plan for the student.]~~

(3) If a student with an existing Section 504 plan for related aids, accommodations, or services newly enrolls in online courses or requests amendments related to an existing plan for related aids, accommodations, and services:

(a) the primary school of enrollment and the provider shall jointly prepare a Section 504 plan in accordance with Subsection (4); and

(b) the provider shall implement the Section 504 plan and provide related aids, accommodations, and services to the student in accordance with the student's Section 504 plan.

(4) To prepare or amend a 504 plan for related aids, accommodations, and services under Section 504 of the Rehabilitation Act of 1973, the committee evaluating the student shall:

(a) be drawn jointly from the student's primary school of enrollment and the provider; and

(b) include persons knowledgeable about the student, the meaning of the evaluation data, and placement options available in a virtual environment.

(5) If a home or private school student requests services under Section 504 of the Rehabilitation Act of 1973, a provider may determine student eligibility, prepare a 504 plan for the home or private school student's online program, and provide related aids, accommodations, and services.

~~[(3)](6) For a student enrolled in a primary LEA of enrollment, if a student participating in the program qualifies to receive services under the IDEA:~~

(a) the student's primary LEA of enrollment shall:

(i) working with a provider LEA representative, review or develop an IEP for the student within ten days of enrollment;

(ii) working with a provider LEA representative, update an existing IEP with necessary accommodations and services, considering the courses selected by the student;

(iii) provide the IEP described in Subsection ~~[(3)](6)(a)(i)~~ to the provider within 72 business hours of completion of the student's IEP; and

(iv) continue to claim the student in the primary LEA of enrollment's membership; and

(b) the provider shall provide special education services and accommodations to the student in accordance with the student's IEP described in Subsection ~~[(3)](6)(a)(i)~~.

~~[(4)](7) If a home or private school student requests an evaluation for eligibility to receive special education services:~~

(a) the home or private school student's resident school shall:

(i) evaluate the student's eligibility for services under the IDEA;

(ii) if eligible, the student may enroll in the LEA that will prepare an IEP for the student, with input from the provider LEA, in accordance with the timelines required by the IDEA;

(iii) provide the IEP described in Subsection ~~[(4)](7)(a)(ii)~~ to the provider within 72 business hours of completion of the student's IEP; and

(b) the provider shall provide special education services and accommodations to the student in accordance with the student's IEP described in Subsection ~~[(4)](7)(a)(i)~~ including in cases where the provider utilizes a third party provider for delivery of educational or other services.

**R277-726-9. Limited Appropriations for Special Populations.**

(1) The Superintendent shall allocate the annual appropriation for home and private school tuition, along with any carryover or unobligated funds, ~~as follows:~~

~~(a) Before December 1 annually, the Superintendent shall accommodate home school students with at least 50% of the total appropriation for home and private school students, unless the home school demand is less.~~

~~(b) After December 1 annually, until available funds are obligated, the Superintendent shall:~~

~~(i) receive and accept enrollment requests on a first come, first served basis; and~~

~~(ii) offer preference to home school students in the event demand exceeds available funding.~~

~~(3) If home school or private school student funds remain by December 1, the Superintendent may release the funds for any pending enrollment requests.]~~

(2) The Superintendent shall distribute funds appropriated to the Statewide Online Education Program to support students from

small high schools, home schools, or private schools based on the needs of the eligible students.

~~[(4)](3)(a)~~ Subject to legislative appropriations available for this purpose, for each public high school with a student population of less than 1,000 students, the Superintendent shall incentivize program use by small schools by prioritizing small schools to the extent of funding available for this purpose.

~~(b)~~ The Superintendent shall carry forward unallocated funds to meet the needs of eligible students. ~~[prioritize available funds to cover at least one course at the highest course rate.]~~

~~(4)~~ The Superintendent shall determine student and LEA eligibility using prior-year UTRex end of year data.

~~[(b)]~~ After disbursing funds in accordance with Subsection (4)(a), if funds remain, the Superintendent shall distribute the remaining funds based on population with 70% to qualifying district schools and 30% to charter schools.

~~(c)~~ If unused funds remain after March 1 annually, the Superintendent may redistribute available funds to qualifying LEAs whose needs exceeded their initial allocation.

~~(d)~~ The Superintendent shall calculate allocations using prior year UTRex end of year extracts.]

#### **R277-726-10. Other Information.**

(1) A primary school of enrollment shall set reasonable timelines and standards and shall inform providers of timelines necessary for reporting grades and credit for graduating seniors.

(2) A provider shall adhere to timelines and standards described in Subsection (1) for student grades and enrollment in online courses for purposes of:

(a) school awards and honors;

(b) Utah High School Activities Association participation; and

(c) high school graduation.

~~(3)~~ If a student is at risk of academic failure or at risk of not graduating with the student's graduation cohort, a provider shall:

~~(a)~~ inform counselors at the student's primary school of enrollment that student is at risk of academic or other failure; and

~~(b)~~ before quarter 4 a student's senior school year, inform counselors at the student's primary school of enrollment that the senior student is at risk of failure.

#### **R277-726-11. Certified and Authorized Online Course Provider Application Approval, Program Requirements, and Fees.**

(1) An entity other than an authorized online course provider may become a certified online course provider if the entity submits an application on a form provided by the Superintendent.

(2) An entity ~~[other than an online course provider]~~ shall submit an application on or before the annual deadline established by the Superintendent.

(3) The Superintendent shall review each application within a reasonable amount of time and may invite prospective providers for interviews or further discussion of qualifications to clarify outstanding issues.

(4) If the Superintendent finds the application submitted is satisfactory, including a demonstration of the entity's ability to adhere to requirements within the application, this ~~[R]rule~~ ~~[-R277-726]~~, and state law, the Superintendent shall forward the application to the Board for final approval.

(5) Once approved by the Board, an entity shall become a certified online course provider.

(6) A certified online course provider shall adhere to the following requirements to remain certified and in good standing within the program, including:

~~(a)~~ complying with a process within existing state systems to provide the Superintendent with the provider's educator's licensing, endorsement, certification, and assignment information;

~~(b)~~ if the provider's educator is teaching an online course for the provider, the educator's online course assignments shall be listed in CACTUS or USIMS under an employing school;

~~(c)~~ if an authorized online course provider that is not a certified online course provider forwards an educator to the Board for a provider-specific license as described in Sections 53F-4-514 and 53E-6-201, the educator's employment and online course assignments shall be listed in CACTUS or USIMS;

~~(d)~~ before providing services to students, 100% of the provider's educators assigned as teacher of record for all course sections shall be appropriately licensed and endorsed for any course assignment as required in Rule R277-309;

~~[(a)](c)~~ requirements applicable to an online course provider described in this ~~[R]rule~~ ~~[-R277-726]~~, including the requirement to maintain a course completion rate of at least 80%;

~~[(b)](f)~~ additional requirements prescribed in the application; and

~~[(e)](g)~~ state laws applicable to an online course provider, including Sections 53F-4-501 et. seq. and Sections 53F-4-504 and 53F-4-514.

~~[(7)]~~ A certified online course provider shall be subject to an annual performance review by the Superintendent.]

~~[(8)](7)~~ If the Superintendent finds the certified online course provider is not in compliance with any requirement as outlined in Subsection (6) of this part, the Superintendent shall provide the certified online course provider with a list of non-compliance issues and a reasonable timeline for the certified online course provider to cure the instances of non-compliance.

~~[(9)](8)~~ If ~~the~~ a certified online course provider fails to correct instances of non-compliance within the allotted timeline as described in Section 53F-4-504, the certified online course provider shall be removed from the program.

~~[(10)](9)~~ A certified online course provider that has been removed from the program may apply in the application round following removal from the program for re-admission to the program using an application provided by the Superintendent.

~~[(11)](10)~~ A certified online course provider shall remit fees to the Superintendent for participation in the program as follows:

(a) 5% of revenue collected for the first \$200,000 received pursuant to Section 53F-4-505; and

(b) 1% of revenue collected after the first \$200,000 received pursuant to Sections 53F-4-505 and 53F-4-514.

#### **R277-726-12. Online Concurrent Enrollment.**

For a student enrolled in a concurrent enrollment course through an SOEP provider, to the extent there is a conflict between this rule and Title 53F, Chapter 4, Part 5, Statewide Online Education Program, and Title 53E, Chapter 10, Part 3, Concurrent Enrollment, the concurrent enrollment code provisions shall govern.

**KEY: statewide online education program**

**Date of Last Change: 2023** ~~[November 7, 2022]~~

**Notice of Continuation: January 13, 2022**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53F-4-510; 53F-4-514; 53E-3-401**

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Rule or Section Number:	R277-920	Filing ID: 55493

**Agency Information**

<b>1. Department:</b>	Education	
<b>Agency:</b>	Administration	
<b>Building:</b>	Board of Education	
<b>Street address:</b>	250 E 500 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

2. Rule or section catchline:
R277-920. School Improvement and Leadership Development
3. Purpose of the new rule or reason for the change:
This rule is being amended due to the passage of H.B. 308, during the 2023 General Session.
4. Summary of the new rule or change:
These amendments specifically update Section R277-920-5, related to the 'Superintendent's Identification of Schools for Targeted Needs Status and Elevate Schools' and Section R277-920-12 'Exit Criteria for a Springboard School and Schools in Critical Needs Status -- Extensions -- More Rigorous Interventions'.
The amendments update the cutoff score to replace the references to letter grades, which were eliminated by the Legislature through H.B. 308 (2023).

**Fiscal Information**

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
This rule change is not expected to have fiscal impact on state government revenues or expenditures. The changes are due to H.B. 308 (2023) to updated identification of applicable schools.

The Utah State Board of Education (USBE) has all mechanisms in place to identify schools as required by the legislation and does not anticipate any added staff time, resources, or revenue changes.

**B) Local governments:**

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. H.B. 308 (2023) made changes to the school grading system and identification of applicable schools, but this rule change has no independent fiscal impacts for Local Education Agency (LEA) expenditures or revenues.

**C) Small businesses** ("small business" means a business employing 1-49 persons):

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures.

This only affects USBE and LEAs.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses, and it does not require any expenditures of, or generate revenue for non-small businesses.

**E) Persons other than small businesses, non-small businesses, state, 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**):

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities.

This only affects USBE and LEAs.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs for affected persons. There are no costs for USBE or LEAs with the rule changes.

It updates the applicable schools identified for supports with the changes in H.B. 308 (2023).



**G) Regulatory Impact Summary Table** (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 will be included in narratives above.)

**Regulatory Impact Table**

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$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>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.

**Citation Information**

**6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Article X, Section 3	Subsection 53E-3-401(4)	Section 53E-7-202
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**Public Notice Information**

**8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 07/31/2023

**9. This rule change MAY become effective on:** 08/07/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	06/15/2023
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**R277. Education, Administration.**

**R277-920. School Improvement and Leadership Development.**

**R277-920-1. Authority and Purpose.**

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Title 53E, Chapter 5, Part 3, School Improvement and Leadership Development, which requires the Board to make rules to establish:

(i) an appeal process for the denial of a school improvement plan;

(ii) provisions regarding funding distributed to a springboard school or elevate school;

(iii) criteria for granting an extension to a springboard school;

(iv) criteria for exiting a school that has demonstrated sufficient improvement;

(v) implications for a springboard school; and

(vi) eligibility criteria, application procedures, selection criteria, and procedures for awarding incentive pay for the School Leadership Development Program.

(2) The purpose of this rule is to:

(a) enact provisions governing school improvement efforts; and

(b) implement and administer Title 53E, Chapter 5, Part 3, School Improvement and Leadership Development.

**R277-920-2. Definitions.**

(1) "Appeal committee" means the committee established by Section R277-920-6.

(2) "Baseline performance" means the percentage of possible points earned by a school through the school accountability system in the year the school was identified as a springboard school.

(3) "Committee" means a school improvement committee established in accordance with Subsection 53E-5-303(1) or 53E-5-304(4).

(4) "Continuous improvement expert" means the same as that term is defined in Section 53E-5-301.

(5) "Elevate school" means the same as that term is defined in Section 53E-5-301.

## NOTICES OF PROPOSED RULES

(6) "High performing charter school" means the same as that term is defined in Section 53E-5-306.

(7) "Non-Title I school" means a school that does not receive funds under the Elementary and Secondary Education Act of 1965, Title I, 20 U.S.C. Sec. 6301 et seq.

(8) "School improvement grant" means a Title I grant under the Elementary and Secondary Education Act, 20 U.S.C. Sec. 6303(g).

(9) "School in critical needs status" means a school that is a:

(a) high school with a four-year adjusted cohort graduation rate of less than or equal to 67% for three school years on average;

(b) Title I school that does not exit targeted needs status; or

(c) Title I school that:

(i) has not been identified as a school meeting the definition of Subsection (9)(a), (9)(b), or (14); and

(ii) performed in the lowest 5% of Title I schools over the past three years on average according to the percentage of points earned under the school accountability system.

(10) "School in targeted needs status" means a school that is identified as a targeted support and improvement school with one or more student groups as described in Section R277-920-5.

(11) "School leader" means the same as that term is defined in Section 53E-5-309.

(12) "School improvement plan" means a school improvement plan described in Section R277-920-8.

(13) "School improvement program" means the school improvement and leadership development program described in Title 53E, Chapter 5, Part 3, School Improvement and Leadership Development.

(14) "Springboard school" means the same as that term is defined in Section 53E-5-301.

(15) "State review panel" means a state review panel appointed by the Superintendent that includes at least three members who each have demonstrated expertise in two or more of the following fields:

(a) leadership at the school district or school level;

(b) standards-based elementary or secondary curriculum instruction and assessment;

(c) instructional data management and analysis;

(d) educational program evaluation;

(e) educational program management;

(f) teacher leadership;

(g) change management;

(h) organizational management; or

(i) school budgeting and finance.

(16) "Title I school" means a school that receives funds under the Elementary and Secondary Education Act of 1965, Title I, 20 U.S.C. Sec. 6301 et seq.

(17) "ESSA state plan" means the Revised State Template for the Consolidated State Plan: The Elementary and Secondary Education Act of 1965, Every Student Succeeds Act incorporated by reference in Section R277-920-3.

### **R277-920-3. Revised State Template for the Consolidated State Plan: The Elementary and Secondary Education Act of 1965 Incorporated by Reference.**

(1) This rule incorporates by reference the Revised State Template for the Consolidated State Plan: The Elementary and Secondary Education Act of 1965, Every Student Succeeds Act,

which provides clarification of the requirements and the state's plan for seven federal Title programs including school improvement.

(2) A copy of the manual is located at:

(a) <https://www.schools.utah.gov/file/e803c7a4-3c13-459c-97a6-da92b4579c52>; and

(b) the Utah State Board of Education.

### **R277-920-4. Superintendent's Identification of Schools for Critical Needs Status and Springboard Schools -- Readiness Review.**

(1) Subject to Subsection (2), on or before October 31, the Superintendent shall identify schools for critical needs status and springboard schools.

(2) The Superintendent shall make the identification under:

(a) Subsection R277-920-2(9)(a) beginning with the 2021-22 school accountability results and every three years thereafter, consistent with the ESSA state plan;

(b) Subsection R277-920-2(9)(b) beginning with the 2023-24 school accountability results and every year thereafter, consistent with the ESSA state plan;

(c) Subsection R277-920-2(9)(c) beginning with the 2021-2022 school accountability results and every three years thereafter, consistent with the ESSA state plan; and

(d) Subsection R277-920-2(14) beginning with the 2024-25 school accountability results and every four years thereafter, consistent with Subsection 53E-5-302(1)(a).

(3)(a) Except as provided in Subsection (3)(b), schools in critical needs status are required to comply with Title 53E, Chapter 5, Part 3, School Improvement and Leadership Development.

(b) A school in critical needs status is exempt from the requirement to contract with continuous improvement expert described in Section 53E-5-305.

### **R277-920-5. Superintendent's Identification of Schools for Targeted Needs Status and Elevate Schools.**

(1) As used in this section, "student groups" means a group of ten or more students:

(a) who are economically disadvantaged;

(b) with disabilities;

(c) who are English learners;

(d) who are African American;

(e) who are American Indian;

(f) who are Asian;

(g) who are Hispanic;

(h) who are Multiple races;

(i) who are Pacific Islander; or

(j) who are White.

(2)(a) Subject to Subsection (2)(b), the Superintendent shall identify for targeted needs status any school with one or more student groups who:

(i) for two consecutive years, is assigned a percentage of possible points in the state's accountability system that is equal to or below;

(A) 35.5% of the total points possible for a school that is an elementary or middle school; or

(B) 38% of the total points possible for a school that enrolls students who are in grade 12[the percentage of possible points associated with the lowest rating in the state's accountability system]; and

(ii) is not currently identified for critical needs status under Section R277-920-4.

(b) The Superintendent shall make the identification under Subsection (2)(a) beginning with the 2018-2019 school accountability results and every year thereafter.

(3) A school identified under Subsection (2) shall develop and implement a plan to improve performance of the student group that was the subject of the identification under Subsection (2), in accordance with the Elementary and Secondary Education Act of 1965, 20 U.S.C. Sec. 6301 et seq.

(4) To exit targeted needs status, a school shall demonstrate that the school no longer meets the criteria for which the school was identified for two consecutive years within four school years after the month in which the school was identified.

(5) The Superintendent shall identify a Title I school that does not meet the exit criteria described in Subsection (4) as a school with chronically underperforming student groups as described in Section R277-920-4.

(6) For each year the Board is required to identify elevate schools as described in Section 53E-5-302.1, the Superintendent shall:

(a) accept applications as described in Subsection 53E-5-302.1(1)(a);

(b) identify elevate schools as described in Subsection 53E-5-302.1(1)(b); and

(c) conduct a needs assessment for each elevate school as described in Subsection 53E-5-302.1(1)(c).

**R277-920-6. Identification of New Schools due to Statewide Assessment System Irregularities During the 2020 COVID-19 Pandemic.**

The Superintendent may not identify a new school for critical needs status based on school accountability results from the 2019-20 school year due to the waiver to administer assessments described in Section 53E-4-315.

**R277-920-7. Superintendent Review of Continuous Improvement Expert Proposals for Springboard and Elevate Schools.**

(1) The Superintendent shall review and approve a springboard or elevate school's proposal described in Subsection 53E-5-303(1)(d).

(2) On or before January 15, a local education board of a springboard or elevate school shall submit a proposal described in Subsection 53E-5-303(1) or Subsection 53E-5-304(4) to the Superintendent for approval.

**R277-920-8. School Improvement Plan Submission and Approval Process.**

(1) In addition to the requirements described in Subsection 53E-5-303(5), a springboard school, elevate school, or school in critical needs status shall create a school improvement plan and include at least the following:

(a) a request to the local school board and district superintendent for:

(i) additional resources;

(ii) personnel; or

(iii) exemptions from district policy that may be contributing to the low performance of the district school; and

(b) a plan for management of school personnel, including:

(i) recruitment of an educator or school leader; and

(ii) professional development for an educator or school leader.

(2) A local education board shall include in the plan a strategy for sustaining school improvement efforts after a school exits critical needs status.

(3)(a) A local education board may approve or deny a plan in whole or in part, if the part of the plan the board denies is severable from the part of the plan the board approves.

(b) A local education board shall give a reason for a denial of each part of a plan.

(4) A local education board shall submit a school improvement plan in accordance with Subsection 53E-5-303(7) or Subsection 53E-5-304(9) to the Board.

(5) In accordance with Subsection 53E-5-305(3), the Board may review and approve or deny a school improvement plan in whole or in part, if the part of the school improvement plan the Board denies is severable from the part of the school improvement plan the Board approves.

**R277-920-9. Appeal Process for Denial of a School Improvement Plan.**

(1) A committee or local education board may appeal the denial of a plan, in whole or in part, by following the procedures and requirements of this section.

(2) An appeal authorized by this rule:

(a) is an informal adjudicative proceeding under Section 63G-4-203; and

(b) shall be resolved by the date specified in Subsection 53E-5-305(6)(b).

(3)(a) A principal, on behalf of a committee, may request that the local education board reconsider the denial of a plan:

(i) by electronically filing the request:

(A) with the chair of the local education board; and

(B) on a form provided on the Board website; and

(ii) within five calendar days of the denial.

(b) The reconsideration request may include a modification to the plan if the committee approves the modification.

(c) The local education board shall respond to the request within ten calendar days by:

(i) refusing to reconsider its action;

(ii) approving a plan, in whole or in part; or

(iii) denying a plan modification.

(d) The principal may appeal the denial of a plan under this Subsection (3):

(i) by electronically filing an appeal with the Superintendent on a form provided on the Board website; and

(ii) within five calendar days of the denial.

(e) An appeal filed under this subsection shall be resolved in accordance with Subsections (4) and (5).

(4) A district superintendent, on behalf of a local school board, or a charter school governing board chair, on behalf of a charter school governing board, may appeal the Board's denial of a plan:

(a) by electronically filing an appeal with the Superintendent on a form provided on the Board website; and

(b) within five calendar days of the denial.

(5)(a) At least three members of a Board committee, appointed by the Board as the appeal committee, shall review the written appeal.

(b) The appeal committee may ask the principal, district superintendent, local school board chair, or charter school governing board chair to:

(i) provide additional written information; or

(ii) appear personally and provide information.

## NOTICES OF PROPOSED RULES

(c) The appeal committee shall make a written recommendation within five business days of receipt of the appeal request to the Board to accept, modify, or reject the plan and give a reason for the recommendation.

(6) The Board may accept or reject the appeal committee's recommendation and the Board's decision is the final administrative action.

### **R277-920-10. Springboard and Elevate School Program Funding.**

(1) The Superintendent shall annually designate an amount of funds available for distribution to springboard and elevate schools under this section, taking into consideration:

- (a) encumbered funds; and
- (b) other program obligations.

(2) On or before January 30 of the school year in which a springboard or elevate school is identified, the Superintendent shall distribute at least \$375,000 per springboard or elevate school to each local education board of a springboard or elevate school.

(3) The Superintendent shall distribute any funds available for distribution under Subsection (1) after the allocation of funds described in Subsection (2) to local education boards of springboard and elevate schools on a prioritized basis taking need for the funds, as demonstrated by the needs assessment conducted in accordance with Section 53E-5-302, into account.

(4)(a) The local education board shall use at least a portion of the funding distributed under Subsections (2) and (3) to contract with a continuous improvement expert, including travel costs, in accordance with Sections 53E-5-303 and 53E-5-304.

(b) A local education board shall use funding available after the allocation of funds under Subsection (4)(a) only for interventions identified in a school improvement plan.

(5) The Superintendent may review uses of funds and contracts with continuous improvement experts.

(6) The Superintendent may provide funding to a school that remains in the school improvement program beyond the school's identified exit year.

### **R277-920-11. School Leadership Development Program.**

(1) A school leader may apply to participate in the School Leadership Development Program if the school leader:

- (a) is assigned to a school in critical needs status; or
- (b) is nominated by the school leader's district superintendent or charter school governing board to participate.

(2) A school leader who meets the requirements of Subsection (1) may apply to participate in the School Leadership Development Program by electronically submitting an application to the Superintendent on a form provided on the Board website by the date specified on the Board website.

(3)(a) The Superintendent shall select a school leader to participate in the School Leadership Development Program based on the following selection criteria:

- (i) first priority shall be given to a school leader who is assigned to a springboard school or elevate school;
- (ii) second priority is given to a school leader who is assigned to a school in critical needs status that is not a springboard school or elevate school; and
- (iii) third priority is given to a school leader who is nominated by the school leader's district superintendent or charter school governing board.

(b) Notwithstanding Subsection (3)(a), the Superintendent may give priority to a school leader who has not received prior

leadership training before selecting a school leader who has received prior leadership training.

(4)(a) In accordance with Subsection 53E-5-309(4), the Superintendent shall award incentive pay to a school leader within 30 days after:

- (i) the school leader completes the School Leadership Development Program; and
- (ii) the school leader's LEA verifies that the school leader entered into a written agreement as described in Subsection 53E-5-309(4).

(b) The Superintendent shall distribute \$400 per session to a school leader who completes at least 75% of the School Leadership Development Program sessions.

(5) The Superintendent may award incentive pay to a school leader described in Subsection (5) for up to five years.

### **R277-920-12. Exit Criteria for a Springboard School and Schools in Critical Needs Status -- Extensions -- More Rigorous Interventions.**

(1) To exit the springboard school program, a springboard school shall demonstrate, in the third or fourth year after which the school was identified as a springboard school, that the school:

(a) meets individualized exit criteria that is calculated by reducing the gap in performance by one-third between:

- (i) the springboard school's baseline performance; and
- (ii)(A) 55% of the total points possible for a school that is an elementary or middle school; or

(B) 57% of the total points possible for a school that enrolls students in grade 12[the threshold score for a 'B' letter grade, as described in Section R277-497-2, by one third]; and

(b) exceeds the lowest 5% of all schools in the ranking of schools from the year the school was identified.

(2) In determining whether a school has met the criteria described in Subsection (1), the Superintendent shall apply the indicators, weightings, and threshold scores described in the version of Title 53E, Chapter 5, Part 2, School Accountability System that was in place when the school was identified.

(3) If a school does not meet the exit criteria described in Subsection (1) in the fourth year after which the school was identified as a springboard school, the school may qualify for an extension to continue current school improvement efforts for up to two years if the school:

(a)(i)(A) reduced the gap in performance by one-fourth between:

- (I) the school's baseline performance; and
- (II)(Aa) 55% of the total points possible for a school that is an elementary or middle school; or

(Bb) 57% of the total points possible for a school that enrolls students in grade 12[the threshold for a 'B' letter grade, as described in Section R277-497-2, by at least one fourth]; and

(B) exceeds at least the lowest 3% of all schools in the ranking of schools from the year the school was scheduled to exit; or

(ii) has met only one of the exit criteria described in Subsection (1); and

(b) electronically files an extension request with the Superintendent within 15 days of the release of school accountability results, that provides rationale justifying an extension.

(4) If a school identified as a springboard school does not meet the exit criteria described in Subsection (1) or qualify for an extension as described in Subsection (3) the following groups shall make a recommendation to the Board on what action the Board should take:

(a) a state review panel, described in Subsection (6);  
 (b) if the school is a district school, the local school board, with input from the community as described in Subsection (7); and  
 (c) if the school is a charter school, the charter school authorizer with input from the community as described in Subsection (7).

(5) The groups described in Subsection (4) shall make a recommendation within 90 days of the release of school accountability results on whether the Board should:

(a) require personnel changes, including replacement of school leaders or teachers;

(b) if the school is a district school:

(i) require involuntary transfers of school leaders or teachers;

(ii) require the local school board to change school boundaries;

(iii) temporarily appoint a public or non-profit entity other than the local school board to manage and operate the school; or

(iv) permanently transfer control of a school to a public or non-profit entity other than the local education board;

(c) if the school is a charter school:

(i) require that the charter school governing board be replaced; or

(ii) require that the charter school authorizer close the school; or

(d) if the school is a charter school, require that the charter school authorizer:

(i) replace some or all members of the charter school governing board;

(ii) transfer operation and control of the charter school to:

(A) a high performing charter school; or

(B) the school district in which the charter school is located; or

(iii) close the school; or

(e) take other action.

(6)(a) The Superintendent shall appoint members of a state review panel.

(b) The state review panel shall critically evaluate at least:

(i) whether the local education agency has the capacity to implement the changes necessary to improve school performance;

(ii) whether the school leadership is adequate to implement change to improve school performance;

(iii) whether the school has sufficient authority to implement change;

(iv) whether the plan is being implemented with fidelity;

(v) whether the state and local education board provided sufficient resources to the school to support school improvement efforts, including whether the local school board prioritized school district funding and resources to the school in accordance with Section 53E-5-303;

(vi) the likelihood that performance can be improved within the current management structure and staffing; and

(vii) the necessity that the school remain in operation to serve students.

(7) An LEA and charter school authorizer shall develop recommendations under this section in collaboration with:

(a) parents of students currently attending the springboard school;

(b) teachers, principals, and other school leaders at the school;

(c) stakeholders representing the interests of students with disabilities, English learners, and other vulnerable student populations; and

(d) other community members and community partners.

(8) A school in critical needs status that does not exit critical needs status shall engage in more rigorous interventions consistent with the ESSA state plan.

#### **R277-920-13. Exit Criteria for a Schools in Critical Needs Status and Elevate Schools.**

(1) A school in critical needs status may exit critical needs status as described in the ESSA state plan.

(2) An elevate school may exit after successful completion of four years participating in the implementation of a continuous improvement cycle, including working with the elevate school's continuous improvement expert.

#### **R277-920-14. Exit Criteria for Schools in a year with Statewide Assessment System Irregularities.**

(1) For a school year where there are statewide assessment system irregularities or a suspension of the administration of statewide assessments:

(a) the Superintendent shall appoint a state review panel; and

(b) the state review panel shall review the data of a school eligible to be considered for exit at the conclusion of the applicable year and make a recommendation to the Board on whether the school demonstrated adequate progress to exit the springboard school program.

(2) A state review panel described in Subsection (1) shall review the following questions to inform the state review panel's recommendation:

(a) whether the school provides evidence of substantial progress and growth; and

(b) whether the school has qualitative or quantitative data from the implementation of the school's school improvement plan that also demonstrate substantial improvement.

(3) For a school whose data are impacted by statewide assessment system irregularities or a suspension of the administration of statewide assessments during one or more of the school's designated years in the springboard school program:

(a) the Superintendent shall appoint a state review panel;

(b) the state review panel shall review the data of the school whose data are impacted by the statewide assessment system irregularities or suspension of statewide assessment; and

(c) the state review panel shall make a recommendation to the Board whether the school demonstrated substantial improvement.

(4) A state review panel described in Subsection (3) shall review qualitative and quantitative data from the implementation of the school's improvement plan.

(5) The qualitative and quantitative data described in Subsection (4) may include:

(a) local student performance data, including formative assessment data;

(b) for a springboard school that is a high school:

(i) credit earned;

(ii) graduation rate; and

(iii) other types of successful completion, such as earning a GED;

(c) increased attendance;

## NOTICES OF PROPOSED RULES

(d) student engagement or school climate;  
 (e) parent engagement;  
 (f) criteria presented by the school being reviewed;  
 (g) if the springboard school is a charter school, whether the charter school is meeting all minimum standards described in Section 53G-5-303 in the school's charter agreement with the authorizer, including:

- (i) minimum financial standards for operating the charter school;
- (ii) minimum standards for student achievement;
- (iii) the mission statement and purpose of the charter school;
- (iv) the grade levels served;
- (v) the maximum number of students; and
- (vi) the charter school governing board and structure; and
- (h) additional criteria established by the Superintendent.

(6)(a) Notwithstanding other provisions in this Section R277-920-14, for a school year where there are statewide assessment system irregularities or a suspension of the administration of statewide assessments, a school eligible to be considered for exit at the conclusion of the applicable year may elect to remain in the springboard school program an additional year.

(b) For a school that elects to remain in the program an additional year as described in Subsection (6)(a), the Superintendent may provide a different standard of review of the school's data by the state review panel.

(7) For a school that elects to remain in the program an additional year as described in Subsection (6):

(a) the Superintendent may provide a different standard of review of the school's data by the state review panel; and

(b) in addition to the information described in Subsection (5), the school shall provide a request for resources to the Superintendent, including the proposed uses of the resources, for the school's additional year in the springboard school program.

**KEY: principals, school improvements, school leaders**

**Date of Last Change:** 2023 February 8, 2023

**Notice of Continuation:** June 4, 2021

**Authorizing, and Implemented or Interpreted Law:** Art X, Sec 3; 53E-3-401(4); Title 53E, Chapter 5, Part 3

### NOTICE OF PROPOSED RULE

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R386-705</b>	<b>Filing ID:</b> <b>55455</b>
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### Agency Information

<b>1. Department:</b>	Health and Human Services
<b>Agency:</b>	Disease Control and Prevention, Epidemiology
<b>Room number:</b>	Second Floor
<b>Building:</b>	Cannon Health Building
<b>Street address:</b>	288 N 1460 W
<b>City, state and zip:</b>	Salt Lake City, UT 84116

<b>Mailing address:</b>	PO Box 142102	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-2102	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
April Clements	385 229- 0858	aclements@utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

### General Information

#### 2. Rule or section catchline:

R386-705. Epidemiology, Health Care Associated Infection

#### 3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

The amendments to Rule R386-705 provide technical and conforming changes in accordance with the Utah Rulewriting Manual.

#### 4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

Technical and conforming amendments were made to all sections of this rule to align with the Utah Rulewriting Manual and remove superfluous and repetitive language, including the following:

In Section R386-705-2, definitions for acronyms used in the rule are added.  
 The definition of UFORS was removed as it is no longer active.

In Section R386-705-3, various formatting changes were made. The correct spelling of *Clostridioides difficile* was fixed.

In Section R386-705-4, report date for influenza reporting changed to May 15 to align with the date required through NHSN.

Instances of the use of UFORS was removed as it is no longer active.

### Fiscal Information

#### 5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

##### A) State budget:

No anticipated cost or savings because the changes do not affect existing operations.

<b>B) Local governments:</b>			
No anticipated cost or savings because the changes do not affect existing operations.			
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):			
No anticipated cost or savings because the changes do not affect existing operations.			
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):			
No anticipated cost or savings because the changes do not affect existing operations.			
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):			
No anticipated cost or savings because the changes do not affect existing operations.			
<b>F) Compliance costs for affected persons</b> (How much will it cost an impacted entity to adhere to this rule or its changes?):			
No anticipated cost or savings because the changes do not affect existing operations.			
<b>G) Regulatory Impact Summary Table</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 will be included in narratives above.)			
<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$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>
<b>H) Department head comments on fiscal impact and approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Health and Human Services, Tracy Gruber, has reviewed and approved this regulatory impact analysis			

**Citation Information**

<b>6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</b>		
Section 26B-1-202	Section 26B-7-202	Section 26B-7-207
Section 26B-7-221		

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**Public Notice Information**

<b>8. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	07/31/2023

<b>9. This rule change MAY become effective on:</b>	08/07/2023
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Tracy S. Gruber, Executive Director	<b>Date:</b>	05/21/2023
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**R386. Health and Human Services, Disease Control and Prevention, Epidemiology.**

**R386-705. Epidemiology, Health Care Associated Infection.**

**R386-705-1. Authority and Purpose.**

This rule establishes data sharing requirements for health care associated infections and for influenza vaccination of health care workers. It is authorized by [Utah Code] Sections 26B-1-202, 26B-7-202, 26B-7-207, and 26B-7-221. [26-1-30(2), 26-6-3, 26-6-7, and 26-6-31.]



**R386-705-2. Definitions.**

For purposes of this rule:

(1) "Ambulatory surgical center" or "ASC" is as defined in ~~[Utah Code]Section 26B-2-201[26-21-2].~~

(2) "CDC" means the Centers for Disease Control and Prevention.

(3) "CMS" means the Center for Medicare and Medicaid Services.

(~~2~~)4 "Department" means the Utah Department of Health and Human Services.

(~~3~~)5 "End stage renal disease facility" is as defined in ~~[Utah Code]Section 26B-2-201[26-21-2].~~

(~~4~~)6 "General acute hospital" is ~~[s]~~defined in ~~[Utah Code]Section 26B-2-201[26-21-2].~~

(~~5~~)7 "Health care facility" is as defined in ~~[Utah Code]Section 26B-2-201[26-21-2].~~

(~~6~~)8 "Health care workers" or "HCW"s means a person working in a health care setting, for a health care facility, the Department, or for a local health department, including ~~include, but are not limited to, personnel such as~~ physicians, nurses, nursing assistants, therapists, technicians, dental personnel, pharmacists, laboratory personnel, autopsy personnel, contractual staff not employed by the health care facility, and persons ~~[(e.g., clerical, dietary, housekeeping, maintenance, and volunteers)]~~not directly involved in patient care, but potentially exposed to infectious agents that can be transmitted to and from employees of a health care facility, such as clerical, dietary, housekeeping, maintenance staff and volunteers.

(9) "NHSN" means the National Healthcare Safety Network in the Centers for Disease Control and Prevention.

(~~7~~)10 "Specialty hospital" is as defined in ~~[Utah Code]Section 26B-2-201[26-21-2].~~

**R386-705-3. Health Care Associated Infections Reporting.**

(1) Pursuant to ~~[Utah Code]Section [26-6-31]26B-7-221,~~ each [facilities]facility required to report data on the incidence and rate of health-care associated infections, including any ambulatory surgical facility, general acute hospital, specialty hospital, end stage renal disease facility, or any facility required by CMS, as mandated by ~~[the Center for Medicare and Medicaid Services (CMS) to the National Healthcare Safety Network (NHSN) in the Centers for Disease Control and Prevention (CDC)]CMS to the NHSN~~ shall:

(a) ~~[S]share data with the Department by joining the Department NHSN Group, UDOH HAI (ID# 17686)[, and confer rights to the Department in NHSN. All data shared with the Department under this rule shall];~~

(b) confer rights to the Department in NHSN;

(c) exclude patient identifiers unless necessary for reporting requirements and data validation[-]; and

(~~b~~)d ~~[F]follow CMS rules and NHSN protocols for defining terms and criteria for reporting infection data.~~

(~~2~~) ~~Facilities required to share data submitted to NHSN with the Department include:~~

~~\_\_\_\_\_ (a) Ambulatory surgical facilities;~~

~~\_\_\_\_\_ (b) General acute hospitals;~~

~~\_\_\_\_\_ (c) Specialty hospitals;~~

~~\_\_\_\_\_ (d) End stage renal disease facilities; and~~

~~\_\_\_\_\_ (e) Any other facilities as required by CMS.]~~

(~~3~~)2 ~~[Facilities]Any facility~~ required to report data to NHSN shall confer rights to the Department for all reported data elements, except for patient identifiers unless necessary for reporting

requirements, including for data validation, for the following conditions:

(a) ~~[C]central line associated bloodstream infections (CLABSI);~~

(b) ~~[C]catheter associated urinary tract infections[;]~~ (CAUTI);

(c) ~~[S]surgical site infections from procedures on the colon and abdominal hysterectomy;~~

(d) ~~[M]methicillin-resistant Staphylococcus aureus bacteremia;~~

(e) ~~[Clostridium]Clostridioides~~ difficile infection of the colon; and

(f) ~~[A]any other health[-]care associated infections reported to NHSN as required by CMS.~~

**R386-705-4. Influenza Vaccination Rate Reporting.**

(1) Each licensed hospital and licensed long-term care facility shall report its influenza vaccination rates for the current influenza season by ~~[January 31]May 15.~~

(2) Reports of influenza vaccination rates shall include the total number of HCWs and the number of those workers who are documented to have received an influenza vaccine for the current influenza season.

(a) Licensed hospitals and long-term care facilities that report HCW influenza vaccination data to NHSN may confer rights to the Department to HCW influenza vaccination data, ~~[t]excluding any patient identifiers[;]~~ to fulfill this reporting requirement.

(b) Licensed hospitals and long-term care facilities that do not confer rights to the Department for HCW influenza vaccination data through NHSN shall report HCW influenza vaccination data online to the Department as instructed. ~~[through the Utah Facility Online Reporting System (UFORS). Facilities may contact the Bureau of Epidemiology at (801) 538-6191 with questions about UFORS, to report a problem, or to obtain instructions for using the system.]~~

(c) Influenza vaccination rates ~~[reported to UFORS-]~~shall be measured using complete enumeration of all HCWs in the facility during the season and the number of them who were vaccinated during that season.

(d) Licensed long-term care facilities shall report HCW influenza vaccination data according to requirements in ~~[Utah Administrative Code]Rule R432-40, the Long-Term Care Facility Immunizations[-Rule].~~

**R386-705-5. Health Care Associated Infection Prevention.**

Each facility required to share data with the Department as described in Section R386-705-3 shall:

(1) implement a process[es] to prevent the incidence of any health[-]care associated infection[s];

~~(1) The processes shall include at least one intervention that is proven by scientifically valid means to be effective in health care associated infection prevention. Interventions that have been recommended by an accepted health authority, including the CDC, or the federal Hospital Infection Control Practices Advisory Committee (HICPAC), meet this requirement.] that is:~~

(a) recommended by an accepted health authority, including the CDC or the federal Hospital Infection Control Practices Advisory Committee (HICPAC); or

(b) proven by scientifically valid means to be effective in health care associated infection prevention; and



(2) ~~[The facility shall]~~ have a system to monitor ~~[these processes]~~ the process in Subsection (1) and shall make information about ~~[them]~~ it available upon request.

#### **R386-705-6. Attestation Required.**

Each facility required to share data with the Department as described in Section R386-705-3 and Section R386-705-4 shall attest to the implementation and effectiveness of its health care infection prevention program, as described in Section R386-705-5, and its systems for reporting, as required by this rule, once every three years.

#### **R386-705-7. Penalties.**

An entity that violates ~~[any provision of]~~ this rule may be assessed a penalty as provided in ~~[Utah Code]~~ Section 26B-1-224 ~~[26-23-6]~~.

**KEY:** quality improvement, patient safety, health care, infection controls

Date of Last Change: 2023 ~~[December 21, 2012]~~

Notice of Continuation: November 3, 2022

Authorizing, and Implemented or Interpreted Law: [26-1-30(2); 26-6-3; 26-6-7; 26-6-31] 26B-1-202; 26B-7-202; 26B-7-207; 26B-7-221

### **NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R414-8</b>	<b>Filing ID:</b> <b>55496</b>
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#### **Agency Information**

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Health Care Financing, Coverage and Reimbursement Policy	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 143102	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-3102	
<b>Contact person(s):</b>		
<b>Phone:</b>	<b>Phone:</b>	<b>Email:</b>
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

#### **General Information**

##### **2. Rule or section catchline:**

R414-8. Electronic Personal Medical Records for the Medicaid Program

##### **3. Purpose of the new rule or reason for the change:**

The purpose of this change is to update and clarify the rule text as needed.

##### **4. Summary of the new rule or change:**

This amendment updates and clarifies terms and entities in the text. It also makes other technical changes.

#### **Fiscal Information**

##### **5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:**

###### **A) State budget:**

There is no impact to the state budget as there are only minor changes and technical updates.

###### **B) Local governments:**

There is no impact on local governments as they neither fund nor provide benefits under the Medicaid Program.

###### **C) Small businesses** ("small business" means a business employing 1-49 persons):

There is no impact on small businesses as there are only minor changes and technical updates.

###### **D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

There is no impact on non-small businesses as there are only minor changes and technical updates.

###### **E) Persons other than small businesses, non-small businesses, state, 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**):

There is no impact to other persons or entities as there are only minor changes and technical updates.

###### **F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs to a single person or entity as there are only minor changes and technical updates.

**G) Regulatory Impact Summary Table** (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 will be included in narratives above.)

**Regulatory Impact Table**

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$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>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

The Executive Director of the Department of Health and Human Services, Tracy Gruber, has reviewed and approved this regulatory impact analysis.

Businesses will see no fiscal impact with these minor changes and technical updates.

**Citation Information**

**6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 26B-1-213 | Section 26B-3-902 | Section 26B-3-108

**Public Notice Information**

**8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 07/31/2023

**9. This rule change MAY become effective on:** 08/07/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Tracy S. Gruber, Executive Director	<b>Date:</b>	06/15/2023
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**R414. Health and Human Services, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-8. Electronic Personal Medical Records for the Medicaid Program.**

**R414-8-1. Introduction and Authority.**

This rule is promulgated under authority granted in Section 26B-~~18~~~~3~~~~3~~~~108~~, as last amended by Laws of Utah 2012, Chapters 28 and 242].

**R414-8-2. Purpose.**

This rule establishes requirements for enrolling a Medicaid member~~[beneficiaries]~~ in the electronic exchange of clinical health information unless the individual opts out.

**R414-8-3. Definitions.**

~~[These definitions apply to Rule R414-8:]~~

(1) "Medicaid ~~[beneficiaries]~~member" means an individual[s] who receives assistance through any of the following programs:

- (a) Medicaid;
- ~~(b) Primary Care Network;~~
- ~~(c) Utah's Premium Partnership for Health Insurance (UPP);~~

~~(d) Baby Your Baby; and~~  
~~(e) Cost sharing programs that include Qualified Medicare Beneficiary, [(QMB)], Specified Low-Income Medicare Beneficiary, [(SLMB)], and Qualified Individual[(QI)].~~

~~(2) "Technical Specifications" means the technical specifications document published by the Utah Health Information Network (UHN) that describes the variables and formats of the data to be submitted as well as submission directions and guidelines.]~~

~~(2) "Program website" means the website for the Department of Health and Human Services Division of Integrated Healthcare, and the UPP website.~~

~~(3) "Program Website" means the Department of Health, Department of Workforce Services, Division of Medicaid and Health Financing, Utah's Premium Partnership for Health Insurance, and Primary Care Network websites.]~~

**R414-8-4. Enrollment Notification.**

(1) ~~[Prior to]~~Before the enrollment process in the Clinical Health Information Exchange ~~(e)CHIE~~, the Department ~~[will]~~ provides ~~[N]~~notice of ~~[I]~~intent to a Medicaid member~~[beneficiaries]~~

to enroll in [e]CHIE and includes the individual's right [of individuals] to opt out.

(2) The Department [will] provides additional education regarding the individual's right to opt out on the program websites.

#### R414-8-5. Enrollment Process.

(1) The Department [will] provides [e]CHIE an enrollment file of [all] Medicaid beneficiaries.

(2) The enrollment file [will] contains the succeeding month's Medicaid enrollment.

(3) [e]CHIE [will] enrolls Medicaid beneficiaries on the first day of the succeeding month.

(4) ~~[Submission procedures and guidelines, including required data elements, will be described in detail in the technical specifications published by UHIN and will be included in the Department's Operating Agreement with CHIE.]~~ The technical specifications published by UHIN and the Department's operating agreement with CHIE include detailed submission procedures and guidelines, including required data elements.

(5) The Department [will] uses a secure format to transfer any enrollment files to [e]CHIE.

#### R414-8-6. Exemptions.

~~[(4)]~~ An individual's previous consent status in [e]CHIE [will be] is honored by [e]CHIE and is ~~[will]~~ not ~~[be]~~ overridden by the Medicaid enrollment file.

**KEY: Medicaid, [e]CHIE**

**Date of Last Change:** 2023[September 1, 2012]

**Notice of Continuation:** July 26, 2022

**Authorizing, and Implemented or Interpreted Law:** ~~[26-1-5]~~ 26B-1-213; 26B-~~[48]~~3-3[108; 26B-3-902]

### NOTICE OF PROPOSED RULE

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R414-12</b>	<b>Filing ID:</b> <b>55497</b>
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#### Agency Information

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Health Care Financing, Coverage and Reimbursement Policy	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 143102	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-3102	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov

Jonah Shaw	385-310-2389	jshaw@utah.gov
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**Please address questions regarding information on this notice to the persons listed above.**

#### General Information

##### 2. Rule or section catchline:

R414-12. Laboratory Services

##### 3. Purpose of the new rule or reason for the change:

The purpose of this change is to update and clarify this rule text as needed.

Additionally, this rule updates the authorizing citations following the 2023 General Session recodification of the Department of Health and Human Services' (Department) statute.

##### 4. Summary of the new rule or change:

This amendment updates names, terms, and entities in the text. It also makes other technical and structural changes.

Additionally, this amendment updates the authorizing citations of this rule, this is due to the recodification and consolidation of the Department's statute.

#### Fiscal Information

##### 5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

###### A) State budget:

There is no impact to the state budget as there are only minor changes and technical updates.

###### B) Local governments:

There is no impact on local governments as they neither fund nor provide benefits under the Medicaid program.

###### C) Small businesses ("small business" means a business employing 1-49 persons):

There is no impact on small businesses as there are only minor changes and technical updates.

###### D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

There is no impact on non-small businesses as there are only minor changes and technical updates.

###### E) Persons other than small businesses, non-small businesses, state, 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**):

There is no impact to other persons or entities as there are only minor changes and technical updates.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs to a single person or entity as there are only minor changes and technical updates.

**G) Regulatory Impact Summary Table** (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 will be included in narratives above.)

**Regulatory Impact Table**

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$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>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

The Executive Director of the Department of Health and Human Services, Tracy Gruber, has reviewed and approved this regulatory impact analysis.

**Citation Information**

**6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 26B-1-213	Section 26B-3-108	
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**Public Notice Information**

**8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	07/31/2023
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<b>9. This rule change MAY become effective on:</b>	08/07/2023
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Tracy S. Gruber, Executive Director	<b>Date:</b>	06/15/2023
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**R414. Health and Human Services, Health Care Financing, Finance Policy.**

**R414-12. Laboratory Services.**

**R414-12-1. ~~Introduction~~ Purpose and Authority.**

(1) Laboratory services provide a scope of services to meet the basic medical needs of eligible Medicaid members.

(2) Laboratory services are a mandatory Medicaid service authorized by Title XIX of the Social Security Act.

(3) Sections 26B-1-213 and 26B-3-108 authorize this rule.

**R414-12-2. Definitions.**

(1) "COT" means chronic opioid therapy.

(2) "SUD" means substance use disorder.

(3) "Presumptive and qualitative drug testing" means testing used to determine the presence or absence of drugs or drug classes in a urine sample, with results expressed as negative, positive, or as a numerical result, and includes competitive immunoassays and thin layer chromatography.

(4) "Definitive quantitative confirmation" means to identify specific medications, illicit substances, and metabolites, which report the results of analytes absent or present typically in nanogram per milliliter concentrations. Definitive methods include gas chromatography-mass spectrometry [~~GC-MS~~] and lethal concentration-tandem mass spectrometry testing methods [~~LC-MS/MS~~].

**R414-12-3. Eligibility Requirements.**

Laboratory services are available to each eligible Medicaid member.

**R414-12-4. Program Access Requirements.**

An eligible Medicaid member may obtain laboratory services from any Utah Medicaid provider.

**R414-12-5. Service Coverage and Limitations.**

(1) Medicaid covers urine drug testing ~~when~~ if medically necessary for COT or SUD as follows:

(a) annual quantity limits of 60 presumptive tests and 16 definitive tests; and

(b) daily quantity limits of one presumptive test and one definitive test.

(2) Medicaid evaluates quantity limit exceptions on a case-by-case basis.

**KEY: Medicaid**

**Date of Last Change:** 2023~~May 1, 2021~~

**Authorizing, and Implemented or Interpreted Law:** 26B-1-213; 26B-3-108~~26-1-5; 26-18-3~~

**NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R432-35</b>	<b>Filing ID:</b> <b>55494</b>
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**Agency Information**

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Health Care Facility Licensing	
<b>Room number:</b>	1st Floor	
<b>Building:</b>	MASOB	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Janice Weinman	385-321-5586	jweinman@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov

**Please address questions regarding information on this notice to the agency.**

**General Information**

<b>2. Rule or section catchline:</b>
R432-35. Background Screening -- Health Facilities
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
The purpose of this amendment is to modify and replace outdated language with the Utah Rulewriting Manual standards.

**4. Summary of the new rule or change** (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

The revisions include more specific language consistent with the Utah Rulewriting Manual.

**Fiscal Information**

**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:**

**A) State budget:**

This change will not impact the current process for licensure and re-licensure surveys. No change to the state budget is expected because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards.

There are no fiscal costs or savings to state government as a result of this rule filing.

**B) Local governments:**

This rule amendment should not impact costs for local governments because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards.

There are no fiscal costs or savings to local governments as a result of this rule filing.

**C) Small businesses** ("small business" means a business employing 1-49 persons):

This rule amendment should not impact costs for small businesses because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards.

There are no fiscal costs or savings to small businesses as a result of this rule filing.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

This rule amendment should not impact costs for non-small businesses because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards.

There are no fiscal costs or savings to non-small businesses as a result of this rule filing.

**E) Persons other than small businesses, non-small businesses, state, 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**):



This rule amendment will not result in a fiscal impact to affected persons because this amendment modifies and replaces outdated language with current state rulewriting manual standards. There are no fiscal costs or savings to affected persons as a result of this rule filing.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

This rule amendment will not result in a fiscal impact to compliance costs for affected persons because this amendment modifies and replaces outdated language with current state rulewriting manual standards. There are no added compliance costs for compliance with this rule.

**G) Regulatory Impact Summary Table** (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 will be included in narratives above.)

#### Regulatory Impact Table

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$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>

#### H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Health and Human Services, Tracy Gruber, has reviewed and approved this regulatory impact analysis.

#### Citation Information

**6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 26B-2-202

#### Public Notice Information

**8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 07/31/2023

**9. This rule change MAY become effective on:** 08/07/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

#### Agency Authorization Information

<b>Agency head or designee and title:</b>	Tracy S. Gruber, Executive Director	<b>Date:</b>	05/25/2023
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**R432. Health and Human Services, [~~Family Health and Preparedness, Licensing, Health Care Facility Licensing,~~**

**R432-35. Background Screening -- Health Facilities.**

**R432-35-1. Authority.**

[This rule is adopted pursuant to Title 26 Chapter 21 Part 2.] Section 26B-2-202 authorizes this rule.

**R432-35-2. Purpose.**

The purpose of this rule is [F]to outline the process required for individuals to [be cleared to have] obtain a certification for direct patient access while employed by a covered provider, covered contractor, or covered employer.

**R432-35-3. Definitions.**

Terms used in this rule are defined in Section 26B-2-238.[Title 26, Chapter 21 Part 2.] In addition, this rule defines the following terms:

[In addition:

(1) "Aged" means an individual who is 60 years of age or older.

(2) ["Clearance"] "Certification for direct patient access" means [approval] a department approved background screening clearance [by the department under Section 26-21-203] for an individual to have direct patient or resident access whose engaged employment has not lapsed for a period of 180 days.

(3) "Covered body" means a covered provider, covered contractor, or covered employer.

(4) "Corporation" means ~~a corporation~~ an entity that has business interest or connection to covered providers that employ individuals who provide consultative services ~~[which]~~ that may result in direct patient access.

(5) "Covered contractor" means a person or corporation that ~~[supplies]~~ provides covered individuals, by contract, to:

(a) a covered employer~~[-]~~; or

(b) a covered provider for services within the scope of the health facility license.

(6) "Covered employer" means an individual who:

(a) engages a covered individual to provide services in a private residence to:

(i) an aged individual, as defined by department rule; or

(ii) a disabled individual, as defined by department rule;

(b) is not a covered provider; and

(c) is not a licensed health care facility within the state.

(7) "Covered individual":

(a) means an individual that:

(i) ~~[whom]~~ a covered body engages; and

(ii) ~~[who]~~ may have direct patient access;

(b) ~~[which]~~ a covered individual ~~[may]~~ includes:

(i) a nursing assistant;

(ii) a personal care aide;

(iii) an individual licensed to engage in the practice of nursing under Title 58, Chapter 31b, Nurse Practice Act;

(iv) a provider of medical, therapeutic, or social services, including a provider of laboratory and radiology services;

(v) an executive;

(vi) administrative staff, including a manager or other administrator;

(vii) dietary and food service staff;

(viii) housekeeping;

(ix) transportation staff;

(x) maintenance staff; and

(xi) volunteer as defined by department rule.

(c) a covered individual does not include a student directly supervised by a member of the staff of the covered body or the student's instructor.

(8) "Covered provider" means:

(a) an end stage renal disease facility;

(b) a long-term care hospital;

(c) a nursing care facility;

(d) a small health care facility;

(e) an assisted living facility;

(f) a hospice;

(g) a home health agency; or

(h) a personal care agency.

(9) "DACS" means Direct Access Clearance System.

(10) "Direct patient access" means ~~[for]~~ an individual ~~[to be]~~ in a position where the individual could, in relation to a patient or resident of the covered body, ~~[who engages the individual]~~

(a) cause physical or mental harm;

(b) commit theft; or

(c) view medical or financial records.

(11) "Disabled individual" means an individual who has limitations with two or more major life activities, such as caring for one~~[-s]~~ self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and employment.

(12) "Engage" means to obtain ~~[one's]~~ an individual's services:

(a) by employment;

(b) by contract;

(c) as a volunteer; or

(d) by other arrangement.

(13) "Long-term care hospital":

(a) means a hospital that is certified to provide long-term care services under ~~[the provisions of 42 U.S.C. Sec. 1395t]~~ 42 U.S.C. Sec 1395t; and

(b) does not include a critical access hospital, designated under 42 U.S.C. Sec. 1395i-4(c)(2).

(14) "Nursing Assistant" means an individual who performs duties under the supervision of a nurse, ~~[which]~~ that may include a nurse aide, personal care aide or certified nurse aide.

(15) "Patient" means an individual who receives health care services from one of the following covered providers:

(a) an end stage renal disease facility;

(b) a long-term care hospital;

(c) a hospice;

(d) a home health agency; or

(e) a personal care agency.

(16) "Resident" means an individual who receives health care services from one of the following covered providers:

(a) a nursing care facility;

(b) a small health care facility;

(c) an assisted living facility; or

(d) a hospice that provides living quarters as part of its services.

(17) "Residential setting" means a place provided by a covered provider:

(a) for residents to live as part of the services provided by the covered provider; and

(b) where an individual who is not a resident also lives.

(18) "Volunteer" means an individual who may have unsupervised direct patient access who is not directly compensated for providing services.

~~[The following groups or individuals are excluded as volunteers and are not required to complete the background clearance process as defined in R432-35:~~

~~(a) Clergy;~~

~~(b) Religious groups;~~

~~(c) Entertainment groups;~~

~~(d) Resident family members;~~

~~(e) Patient family members; and~~

~~(f) Individuals volunteering services for 20 hours per month or less.]~~

#### **R432-35-4. Covered Provider -- DACS Process.**

(1) ~~The~~ [C]covered provider~~[s]~~ shall enter required information into DACS to initiate a certification for direct patient access ~~[clearance]~~ of ~~[for]~~ each covered individual ~~[prior to]~~ before issuance of a provisional license, license renewal, or engagement as a covered individual.

(2) The covered provider ~~[must]~~ shall ensure ~~[that]~~ the engaged covered individual:

(a) [S]signs a criminal background screening authorization form ~~[which must be]~~ that is available for review by the department; and

(b) [S]submits fingerprints within 15 working days of engagement.

(3) The covered provider ~~[must]~~ shall ensure ~~[that]~~ DACS reflects the current status of the covered individual within [5] five working days of the engagement or termination.



(4) ~~[A]The~~ covered provider may provisionally engage a covered individual while certification for direct patient access ~~[clearance]is pending[-]~~ as permitted in Section 26B-2-239.

(5) If the ~~[D]~~department determines an individual is not eligible for direct patient access, based on information obtained through DACS and the sources listed in Section R432-35-8, the ~~[D]~~department shall send a ~~[N]~~notice of ~~[A]~~agency ~~[A]~~action, as outlined in Rule R432-30, to the covered provider and the individual explaining the action and the individual's right of appeal. ~~[as defined in Rule R432-30.]~~

(6) ~~[A]The~~ covered provider may not ~~[allow]~~arrange for a covered individual who has been determined ~~[to be]~~not eligible for direct patient access ~~[to be engaged]~~to engage in a position with direct patient access.

(7) The ~~[D]~~department may allow a covered individual to have direct patient access with conditions, during an appeal process, if the covered individual ~~[can]~~demonstrates to the department, the work arrangement does not pose a threat to the safety and health of patients or residents.

(8) ~~[A]The~~ covered provider that provides services in a residential setting ~~[must]~~shall enter required information into DACS to initiate and obtain ~~[a clearance]~~certification for direct patient access for ~~[all]~~each individual[s] 12 years of age and older, who ~~[are]~~is not a resident[s], and resides in the residential setting. If the individual is not eligible for direct patient access and continues to reside in the setting, ~~[clearance as defined in Section R432-35-8,]~~ the ~~[D]~~department may revoke an existing license or deny licensure for healthcare services in the residential setting.

(9) ~~The~~ ~~[C]~~covered provider[s] ~~[requesting]~~seeking to renew a license as a health care facility ~~[must]~~shall utilize DACS to run a verification report and verify ~~[that]~~each covered individual's information is correct, including:

- (a) employment status;
- (b) address;
- (c) email address; and
- (d) name.

(10) An ~~[F]~~individual[s] or covered individual[s] ~~[requesting]~~seeking ~~[to be licensed]~~licensure as a covered provider ~~[must]~~shall submit required information to the ~~[D]~~department to initiate and obtain ~~[a]~~certification for direct patient access ~~[clearance prior to]~~before the issuance of the provisional license. If the individual ~~[s are]~~is not eligible for direct patient access, ~~[clearance as defined in Section R432-35-8,]~~ the ~~[D]~~department may revoke an existing license or deny licensure as a health care facility.

#### **R432-35-5. Covered Contractor -- DACS Process.**

(1) ~~[A]The~~ covered contractor may enter required information into DACS to initiate certification for direct patient access ~~[a clearance for]~~ of each covered individual ~~[prior to being supplied by contract to]~~before providing the individual by contract with a covered provider.

(2) ~~[A]The~~ covered contractor ~~[must]~~shall ensure ~~[that]~~the covered individual, being ~~[supplied]~~provided by contract to a covered provider:

(a) ~~[S]~~signs a criminal background screening authorization form ~~[which must be]~~that is available for review by the department; and

(b) ~~[S]~~submits fingerprints within 15 working days of placement with a covered provider.

(3) The covered contractor ~~[must]~~shall ensure DACS reflects the current status of the covered individual within five working days of placement or termination.

(4) ~~[A]The~~ covered contractor may provisionally ~~[supply]~~provide a covered individual ~~[to]~~with a covered provider while certification for direct patient access ~~[clearance]~~ is pending~~[-]~~ as permitted in Section 26B-2-239.

(5) If the ~~[D]~~department determines an individual is not eligible for direct patient access, based on information obtained through DACS and the sources listed in Section R432-35-8, the ~~[D]~~department shall send a ~~[N]~~notice of ~~[A]~~agency ~~[A]~~action, as outlined in Rule R432-30, to the covered contractor and the individual explaining the action and the individual's right of appeal. ~~[as defined in Rule R432-30.]~~

(6) A covered contractor may not ~~[supply to a covered provider]~~provide a covered individual to a covered provider, if the individual ~~[who has been]~~ is determined ~~[to be]~~not eligible to have direct patient access.

(7) The ~~[D]~~department may allow a covered individual direct patient access with conditions, during an appeal process, if the covered individual can demonstrate to the department that the work arrangement does not pose a threat to the safety and health of patients or residents.

#### **R432-35-6. Covered Employer -- DACS Process.**

(1) ~~[A]The~~ covered employer may ~~[be allowed to]~~ensure the ~~[enter]~~required information is entered into DACS to initiate and obtain ~~[a clearance]~~certification for direct patient access for a covered individual.

(2) If the ~~[D]~~department determines an individual is not eligible for direct patient access, based on information obtained through DACS~~[-]~~ or the sources in Section R432-35-8, the ~~[D]~~department shall send a ~~[N]~~notice of ~~[A]~~agency ~~[A]~~action, as outlined in Rule R432-30, to the covered employer and the individual explaining the action and the individual's right of appeal. ~~[as defined in Rule R432-30.]~~

#### **R432-35-7. Volunteers.**

The following individuals or groups of volunteers are not required to complete the certification for direct patient access process:

- (1) clergy;
- (2) religious groups;
- (3) entertainment groups;
- (4) resident family members;
- (5) patient family members; and
- (6) individuals volunteering services for 20 hours per month or less.

#### **R432-35-8. Sources for Background Review.**

(1) As required in Section 26B-2-240~~[26-21-204],~~ the department may review relevant information obtained from the following sources:

(a) Department of Public Safety arrest, conviction, and disposition records described in Title 53, Chapter 10, Criminal Investigations and Technical Services Act, including information in state, regional, and national records files;

(b) juvenile court arrest, adjudication, and disposition records, as allowed under Section 78A-6-209;

(c) federal criminal background databases available to the state;

(d) the ~~[Department of Human Services']~~Division of Child and Family Services' Licensing Information System described in Section ~~[62A-4a-1006]~~80-2-1002;

(e) child abuse or neglect findings described in Section ~~80-3-404~~~~[78A-6-323]~~;

(f) the ~~[Department of Human Services']~~ Division of Aging and Adult Services vulnerable adult abuse, neglect, or exploitation database described in Section ~~[62A-3-311.4]~~~~26B-6-210~~;

(g) registries of nurse aids described in ~~[Title 42 Code of Federal Regulations Section 42 CFR 483.156]~~;

(h) licensing and certification records of individuals licensed or certified by the Division of ~~[Occupational and Professional Licensing under Title 58, Occupations and Professions]~~; and

(i) the List of Excluded Individuals and Entities (LEIE) database maintained by the United States Department of Health and Human Services' Office of Inspector General.

(2) If the ~~[D]~~ department determines an individual is not eligible for direct patient access, based upon the criminal background screening, and the individual disagrees with the information provided by the Criminal Investigations and Technical Services Division or court record, the individual may challenge the information as provided by ~~[law]~~ Section 53-10-108.

(3) If the ~~[D]~~ department determines an individual is not eligible for direct patient access based upon the non-criminal background screening and the individual disagrees with the information provided, the individual may challenge the information through the appropriate agency.

#### **R432-35-9[8]. Exclusion from Direct Patient Access.**

(1) The department shall review [C] convictions or [P] pending [C] charges as follows:

(a) ~~[P]~~ pursuant to Section ~~26B-2-240~~~~[26-21-204]~~, any individual or covered individual who has been convicted, has pleaded no contest, or is subject to a plea in abeyance or diversion agreement, within the past 10 years, for any offense listed ~~[below]~~ in this section, ~~[shall]~~ may not have direct patient access:

(i) any felony or class A misdemeanor under the following: ~~[Utah Code:]~~

(A) ~~Subsection 76-6-106(2)(b)(i)(A) Criminal Mischief - Human Life;~~

(B) Title 76, Chapter ~~[-]4~~, Enticement of a Minor;

(C) Title 76, Chapter ~~[-]5~~, Offenses Against the Person;

(D) Title 76, Chapter 5b, Sexual Exploitation Act;

(E) Sections 76-3-203.9 through 203.10, Violent Offenses Committed in Presence of a Child;

(~~[D]~~~~[E]~~) Section 76-9-301.8, Bestiality;

(~~[E]~~~~[G]~~) Sections ~~76-9-702~~ through 702.1 Lewdness - Sexual Battery;

(~~[E]~~~~[H]~~) Sections ~~76-9-702.5~~ and 76-9-702.7 Lewdness Involving Child and Voyeurism offenses;

(~~[G]~~~~[I]~~) Sections ~~76-10-1201~~ through 76-10-1228, Pornographic and Harmful Materials and Performances;

(~~[H]~~~~[J]~~) Sections ~~76-10-1301~~ through 1314, Prostitution; ~~[or]~~

(K) Title 78B, Chapter 7, Protective Order and Stalking Injunctions; or

(~~[H]~~~~[L]~~) Section ~~26B-6-205~~~~[62A-3-305]~~, ~~[f]~~ Failure to ~~[r]~~ Report ~~[s]~~ Suspected ~~[a]~~ Abuse, ~~[n]~~ Neglect, or ~~[e]~~ Exploitation of a ~~[v]~~ Vulnerable ~~[a]~~ Adult~~[-]~~;

(b) ~~[E]~~ except as listed ~~[above]~~ in Subsection ~~R432-35-9(1)(a)~~, if an individual or covered individual has been convicted, has pleaded no contest, or is subject to a plea in abeyance or diversion agreement, for the following offenses, the ~~[D]~~ department may

consider ~~granting~~~~[approving an individual for]~~ certification for direct patient access:

(i) any felony or class A misdemeanor ~~[under the Utah Code]~~;

(ii) any felony, class A or B misdemeanor under Subsection 76-6-106(2)(b)(i)(A), Criminal Mischief - Human Life;

(iii) any felony or class A, B or C misdemeanor under the following: ~~[Utah Code:]~~

(A) Title 76, ~~[-]~~ Chapter 4, Enticement of a Minor;

(B) Title 76, ~~[-]~~ Chapter 5, Offenses Against the Person;

(C) Title 76, Chapter 5b, Sexual Exploitation Act;

(D) Sections 76-3-203.9 through 203.10, Violent Offenses Committed in Presence of a Child;

(~~[C]~~~~[E]~~) Section 76-9-301.8, Bestiality;

(~~[D]~~~~[F]~~) Section 76-9-702 through 702.1 Lewdness - Sexual Battery;

(~~[E]~~~~[G]~~) Section 76-9-702.5 and 76-9-702.7 Lewdness Involving Child - Voyeurism offenses;

(~~[F]~~~~[H]~~) Section 76-10-1201 through 76-10-1228, Pornographic and Harmful Materials and Performances;

(~~[G]~~~~[I]~~) Section 76-10-1301 through 1314, Prostitution; ~~[and]~~

(J) Title 78B, Chapter 7, Protective Order and Stalking Injunctions; and

(~~[H]~~~~[K]~~) Section ~~26B-6-205~~~~[62A-3-305]~~, ~~[f]~~ Failure to ~~[r]~~ Report ~~[s]~~ Suspected ~~[a]~~ Abuse, ~~[n]~~ Neglect, or ~~[e]~~ Exploitation of a ~~[v]~~ Vulnerable ~~[a]~~ Adult~~[-]~~;

(c) ~~[A]~~ any individual or covered individual who has a warrant for arrest or an arrest for any of the identified offenses in Subsection R432-35-8(1)(a) or (b), may deny ~~[clearance]~~ direct patient access based on:

(i) the type of offense;

(ii) the severity of offense; and

(iii) potential risk to patients or residents.

(2) The department shall review ~~[J]~~ juvenile ~~[R]~~ records as follows:

(a) ~~[A]~~ as required by ~~Subsection 26B-2-240~~~~[Subsection 26-21-204(4)]~~(a)(ii)(E), juvenile court records shall be reviewed if an individual or covered individual is:

(i) under the age of 28; or

(ii) over the age of 28 and has convictions or pending charges identified in Subsection R432-35-8(1)(a) or (b); ~~[-]~~;

(b) ~~[A]~~ adjudication~~[s]~~ by a juvenile court ~~shall~~~~[may]~~ exclude the individual from direct patient access if the adjudication~~[s]~~ refers to an act that, if committed by an adult, would be a felony or a misdemeanor~~[-]~~ as identified in Subsection R432-35-9(1)(a); and

(c) adjudication by a juvenile court may exclude the individual from direct patient access, if the adjudication refers to an act that if committed as an adult, would be a felony or misdemeanor as identified in Subsection R432-35-9(1)(b).

(3) [Non-Criminal Records]

(a) ~~As authorized by Subsection 26-21-204(3),~~ ~~[t]~~ The ~~[D]~~ department may review non-criminal findings from the following sources to determine whether an individual or covered individual should be granted or retain certification for direct patient access:

(~~[a]~~~~[i]~~) ~~[the Department of Human Services']~~ Division of Child and Family Services Licensing Information System described in Section ~~[62A-4a-1006]~~~~80-2-1002~~;

(~~[b]~~~~[ii]~~) child abuse or neglect findings described in Section ~~80-3-404~~~~[78A-6-323]~~;

## NOTICES OF PROPOSED RULES

(c)(iii) ~~[the Department of Human Services']~~ Division of Aging and Adult Services vulnerable adult abuse, neglect, or exploitation database described in Section 26B-6-210~~[62A-3-311.4]~~;

(d)(iv) ~~registries of nurse aids described in [Title 42 Code of Federal Regulations Section] 42 CFR 483.156;~~

(e)(v) ~~licensing and certification records of individuals licensed or certified by the Division of [Occupational and] Professional Licensing under Title 58, Occupations and Professions; and~~

(f)(vi) ~~the [List of Excluded Individuals and Entities](LEIE) database maintained by the United States Department of Health and Human Services' Office of Inspector General.~~

(4) ~~[Review of.]~~The department may review ~~[R]~~relevant background ~~[I]~~information from sources listed in Section R432-35-8~~[~~

~~(a) Relevant background information from sources listed in Section R432-35-7, shall be reviewed]~~ to determine under what circumstance, if any, the covered individual may be granted or retain certification for direct patient access~~[-]~~ and ~~[-T]~~the following factors may be considered:

(a)(i) types and number of offenses or findings;

(b)(ii) passage of time since the offense or finding;

(c)(iii) surrounding circumstances of the offense or finding;

(d)(iv) intervening circumstances regarding the offense or finding; and

(e)(v) steps taken to correct or improve.

(5)(b) The department shall rely on relevant information from sources identified in ~~[Rule]~~Section R432-35-~~[7]~~8 as conclusive evidence and may deny direct patient access~~[clearance]~~ based on that information.

(6) A denied application may be re-submitted to the department no sooner than 2 years from the date of separation or upon substantial change to the covered individual's circumstances.

### **R432-35-~~9~~10. Covered Individuals with Arrests or Pending Criminal Charges.**

(1) If the ~~[D]~~department determines ~~[there exists]~~credible evidence exists that a covered individual has been arrested or charged with a felony or a misdemeanor that would be excluded under Subsection R432-35-8(1), the ~~[D]~~department may take action~~[act]~~ to protect the health and safety of patients or residents in covered providers.

(2) The ~~[D]~~department may allow a covered individual direct patient access with conditions, until the arrest or criminal charges are resolved, if the covered individual can demonstrate the work arrangement does not pose a threat to the safety and health of patients or residents.

(3) If the ~~[D]~~department denies or revokes a license, or denies direct patient access based upon arrest or criminal charges, the ~~[D]~~department shall send a ~~[N]~~notice of ~~[A]~~agency ~~[A]~~action, as outlined in Rule R432-30, to the covered provider and the covered individual notifying them of the right to appeal~~[in accordance with Rule R432-30].~~

### **R432-35-10. Penalties.**

~~[The department may impose civil monetary penalties in accordance with Title 26, Chapter 23, Utah Health Code Enforcement Provisions and Penalties, if there has been a failure to comply with Section 26-21-2, or Rule R435-35, as follows:]~~

~~(1) if significant problems exist that are likely to lead to the harm of an individual resident, the department may impose a civil penalty of \$50 to \$1,000 per day; and~~

~~(2) if significant problems exist that result in actual harm to a resident, the department may impose a civil penalty of \$1,050 to \$10,000 per day.]~~

Any person who violates any provision of this rule may be subject to the penalties enumerated in Section 26B-2-208 and Rule R432-3.

**KEY: health care facilities, background screening**

**Date of Last Change: 2023~~[March 1, 2020]~~**

**Notice of Continuation: January 23, 2023**

**Authorizing, and Implemented or Interpreted Law: ~~[26-21-9.5]~~26B-2-202**

## **NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R432-500</b>	<b>Filing ID:</b> <b>55434</b>
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### **Agency Information**

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Health Care Facility Licensing	
<b>Room number:</b>	1st Floor	
<b>Building:</b>	MASOB	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Janice Weinman	385-321-5586	jweinman@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov

**Please address questions regarding information on this notice to the persons listed above.**

### **General Information**

#### **2. Rule or section catchline:**

R432-500. Freestanding Ambulatory Surgical Center Rules

#### **3. Purpose of the new rule or reason for the change:**

The purpose of this amendment is to modify and replace outdated language with the Utah Rulewriting Manual standards.

Statutory citations are updated in accordance with recodification following S.B.38 in the 2023 General Session and the rule title is updated to reflect the new division titles.

**4. Summary of the new rule or change:**

The revisions include more specific language consistent with the Utah Rulewriting Manual.

**Fiscal Information****5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

State government process was thoroughly reviewed. This change will not impact the current process for licensure and re-licensure surveys. No change to the state budget is expected because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards.

There are no fiscal costs or savings to state government as a result of this rule filing.

**B) Local governments:**

After conducting a thorough analysis, it was determined that this rule amendment should not impact costs for local governments because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards.

There are no fiscal costs or savings to local governments as a result of this rule filing.

**C) Small businesses** ("small business" means a business employing 1-49 persons):

After conducting a thorough analysis, it was determined that this rule amendment should not impact costs for small businesses because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards.

There are no fiscal costs or savings to small businesses as a result of this rule filing.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

After conducting a thorough analysis, it was determined that this rule amendment should not impact costs for non-small businesses because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards.

There are no fiscal costs or savings to non-small businesses as a result of this rule filing.

**E) Persons other than small businesses, non-small businesses, state, 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**):

After conducting a thorough analysis, it was determined that this rule amendment will not result in a fiscal impact to affected persons because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards.

There are no fiscal costs or savings to affected persons as a result of this rule filing.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

After conducting a thorough analysis, it was determined that this rule amendment will not result in a fiscal impact to compliance costs for affected persons because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards.

There are no added compliance costs for compliance with this rule.

**G) Regulatory Impact Summary Table** (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 will be included in narratives above.)**Regulatory Impact Table**

<b>Fiscal Cost</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$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>

# NOTICES OF PROPOSED RULES

<b>Net Benefits</b>	<b>Fiscal \$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head comments on fiscal impact and approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Health and Human Services, Tracy S. Gruber, has reviewed and approved this regulatory impact analysis.			

## Citation Information

<b>6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</b>
Section 26B-2-202

## Public Notice Information

<b>8. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	08/14/2023

<b>9. This rule change MAY become effective on:</b>	08/21/2023
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

## Agency Authorization Information

<b>Agency head or designee and title:</b>	Tracy S. Gruber, Executive Director	<b>Date:</b>	05/22/2023
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**R432. Health and Human Services, [Family Health and Preparedness,] Health Care Facility Licensing.**  
**R432-500. Freestanding Ambulatory Surgical Center Rules.**  
**R432-500-1. Legal Authority.**  
 [This rule is adopted pursuant to Title 26, Chapter 21.] Section 26B-2-202 authorizes this rule.

### R432-500-2. Purpose.

The purpose of this rule is to establish standards for the operation of a freestanding surgical facility [which] that provides surgical services to patients not requiring hospitalization.

### [R432-500-3. Time for Compliance.

All facilities governed by this rule shall be in full compliance at the time of licensure.]

### R432-500-[4]3. Definitions.

[(1) See common definitions R432-1-3.] Terms for this rule are defined in Rule R432-1, in addition the following terms apply to this rule:

[— (2) Special definitions.]

[(a)1] "Anesthesia service" [~~includes~~] means services for ~~any~~ patients who:

[(i) a] receive general, spinal, or other major regional anesthesia; or

[(i) b] undergo surgery or other procedures when receiving ~~either or both of~~ the following:

[(A) i] general, spinal, or other major regional anesthesia;

or

[(B) ii] intravenous, intramuscular, or inhalation sedation or analgesia that may result in the loss of the patient's protective reflexes.

[(b) 2] "Continual" means repeated regularly and frequently in steady rapid succession.

[(e) 3] "Continuous" means prolonged without any interruption at any time.

(4) "Extended Recovery Services" means patient care after the initial post-surgery recovery period.

(5) "Foot Candle of Light" means a unit of illuminance. One foot candle is one lumen per square foot (lm/ft<sup>2</sup>) in accordance with the Illuminating Engineering Society of North America.

[(d) 6] [~~"Monitored Anesthesia Care" includes intraoperative monitoring by a qualified anesthetist of the patient's vital physiological signs, in anticipation of the need for administration of general anesthesia or of the development of adverse physiological patient reaction to the surgical procedure. Monitored anesthesia care also includes performing a preanesthetic examination, evaluating, planning, and administering anesthesia services required, and providing indicated postoperative anesthesia services.~~] "Initial Post-surgery Recovery Period" means patient care no longer than six hours beyond the completion of surgery.

[(e) 7] [~~"Qualified Anesthetist" means an anesthesiologist, another qualified physician, oral surgeon, or certified registered nurse anesthetist, who:~~

(i) is licensed to provide anesthesia services in accordance with Utah laws for occupational and professional licensing;

(ii) is a member of the staff of the ambulatory surgical center;

(iii) has been determined by the facility to be competent;

(iv) has been granted privileges to provide anesthesia services to patients in the facility; and

(v) if the qualified anesthetist is a qualified physician or oral surgeon, has documented training that includes the equivalent of 40 days preceptorship with an anesthesiologist and is able to perform at least the following:

(A) safely render the patient insensible to pain during the performance of surgical, and other pain producing clinical procedures;

(B) monitor and sustain life support functions during the administration of anesthesia, including induction and intubation procedures; and

(C) provide pre-anesthesia and post-anesthesia management of the patient.

(f) "Extended Recovery Services" means patient care after the initial post surgery recovery period.

(g) "Initial Post Surgery Recovery Period" means patient care no longer than six hours beyond the completion of surgery.] "Licensed Professional" means a qualified physician or oral surgeon who is involved in the pre-operative assessment of the patient and has ensured that a qualified anesthetist is providing anesthesia services.

~~([h]8) ["Licensed Professional" means a qualified physician or oral surgeon who is involved in the preoperative assessment of the patient and has ensured that a qualified anesthetist is providing anesthesia services.]~~"Monitored Anesthesia Care" includes intraoperative monitoring of the patient's vital physiological signs by a qualified anesthetist, in the event of the need for administration of general anesthesia or the development of adverse reaction to the surgical procedure. Monitored anesthesia care also includes performing a preanesthetic examination, evaluating, planning, and administering anesthesia services required, and providing indicated post-operative anesthesia services.

~~([i]9) ["upon the request of" means a patient specific order of a licensed professional working within the scope of his license.]~~"Qualified Anesthetist" means an anesthesiologist, another qualified physician, oral surgeon, or certified registered nurse anesthetist, who:

(a) is licensed to provide anesthesia services in accordance with Utah laws for occupational and professional licensing;

(b) is a member of the staff of the ambulatory surgical center;

(c) has been determined by the facility to be competent;

(d) has been granted privileges to provide anesthesia services to patients in the facility; and

(e) if the qualified anesthetist is a qualified physician or oral surgeon, has documented training that includes the equivalent of 40 days preceptorship with an anesthesiologist and can perform at least the following:

(i) safely make the patient insensible to pain during the performance of surgical, and other pain producing clinical procedures;

(ii) monitor and sustain life support functions during the administration of anesthesia, including induction and intubation procedures; and

(iii) provide pre-anesthesia and post-anesthesia management of the patient.

#### **R432-500-[5]4. Licensure.**

~~(1) A [L]license is [R]required to operate a freestanding ambulatory surgical center in accordance with [See]Rule R432-2.~~

~~(2) Exempt facilities [shall meet the provisions of]are outlined in Section [26-24-7]26B-2-205. Physician-[based surgical centers shall request an exemption to this rule [in order]to apply for Medicaid[/]or Medicare certification.~~

#### **R432-500-[6]5. General Construction Rules.**

~~(1) See R432-13. Ambulatory Surgical Center Construction Rule.]The licensee shall ensure that each physical facility of an ambulatory surgical center additionally complies with Rule R432-13.~~

#### **R432-500-[7]6. Administration and Organization.**

~~(1) Direction.]~~

~~([a]1) A licensee shall operate each freestanding ambulatory surgical center.[Each facility shall be operated by a licensee.]~~

~~([b]2) If the licensee is other than a single individual, the licensee shall ensure there is[If the licensee is other than a single individual, there shall be] an organized functioning governing authority to [assure]ensure accountability.~~

~~([e]3) The governing authority shall meet at least quarterly and keep written minutes of its meetings.~~

~~([2]4) [Responsibilities.]The licensee shall have the overall responsibility and authority for the organization and have at least the following additional responsibilities:~~

~~(a) The licensee shall have the overall responsibility and authority for the organization.~~

~~(b) Responsibilities shall include at least the following:]~~

~~([i]a) [C]comply with [all]any applicable federal, state, and local laws, rules, and requirements;~~

~~([i]b) [A]adopt and institute bylaws, operating room protocols, policies, and procedures relative to the operation of the facility;~~

~~([i]c) [A]appoint, in writing, a qualified administrator, who may be the licensee, administrator or medical director, as the same person.[-(the licensee, administrator, or medical director may be the same person)] to be responsible for the implementation of facility bylaws, policies and procedures, and for the overall management of the facility;~~

~~([i]d) [A]appoint, in writing, a qualified medical director to advise and be accountable to the licensee for the quality of patient care;~~

~~([i]e) [E]ensure that patients requiring hospitalization are not admitted to the facility; and~~

~~([i]f) [A]appoint members of the medical staff and delineate their clinical privileges.~~

#### **R432-500-[8]7. Administrator.**

~~(1) Direction.]~~

~~([a]1) Each [facility]licensee shall designate, in writing, an administrator who [shall have]has freedom from other responsibilities to be on the premises of the facility [a sufficient number of]enough hours in the business day to manage the facility and to respond to appropriate requests by the [D]department.~~

~~([b]a) The administrator shall designate a person, in writing, to act as administrator in their[his] absence.~~

~~(i) [This person]The designee shall have [sufficient]enough power, authority, and freedom to act in the best interests of patient safety and well-being and shall [be]remain available at the facility.~~

~~(ii) [It is not the intent to permit a]A de facto administrator [to]may not supplant or replace the designated facility administrator.~~

~~([e]b) The licensee shall ensure the administrator [shall be]is the direct representative of the board in the management of the facility and [shall be]is responsible to the board for the performance of their[his] duties.~~

~~(2) Qualifications.~~

~~The administrator and his designee shall be 21 years or older and shall be experienced in administration and supervision of personnel and shall be knowledgeable about the practice of medicine to interpret and be conversant in surgery protocols.]~~

~~([3]2) [Duties and Responsibilities.]The licensee shall ensure the administrator and designee are:~~

~~(a) at least 21 years old;~~

~~(b) experienced in administration and supervision of personnel; and~~

~~(c) knowledgeable enough about the practice of medicine to interpret and be conversant in surgery protocols.~~

~~([a]3) The licensee shall provide the administrator's responsibilities [shall be written]in a written job description [and shall be]that is available for [D]department review. Administrator responsibilities shall include the following:~~

~~(b) Responsibilities shall include:]~~

(i)a) ensure [C]compliance with [all]any applicable federal, state, and local laws, and facility bylaws;  
 (ii)b) [D]develop, evaluate, update, and implement facility policies and procedures annually;  
 (iii)c) [M]maintain enough[an adequate number of] qualified and competent staff to meet the needs of patients;  
 (iv)d) [D]develop clear and complete job descriptions for each position;  
 (v)e) [N]notify appropriate authorities when a reportable disease is diagnosed;  
 (vi)f) [R]review [all]any incident and accident reports and take appropriate action;  
 (vii)g) [E]establish a quality assurance committee that will respond to the quality and appropriateness of services and respond to the recommendations made by the committee;  
 (viii)h) [S]secure through contracts the necessary services not provided directly by the [facility]licensee; and  
 (ix)i) [R]receive and respond to the licensure inspection report by the [D]department.

#### **R432-500-[9]8. Medical Director.**

[—(1) Direction.]

(a)1) The licensee [of the surgical facility]shall retain, by formal agreement, a qualified physician to serve as medical director[;] who is:

(b)2) [The medical director shall have freedom]free from other responsibilities to assume professional, organizational, and administrative responsibility[;]; and

(c)3) [The medical director shall be]accountable to the governing authority for the quality of services provided[rendered].

[—(2) Qualifications.]

(2) The physician designated as the medical director shall have at least the following qualifications:

(a) [Be]current[ly] license[d] to practice medicine in Utah; and

(b) [Have]training and expertise in the[ese] branches of surgery and anesthesia services offered to provide supervision at the facility.

[—(3) Responsibilities.]

(a) The medical director shall have overall responsibility for surgery and anesthesia services delivered in the facility.

(b)3) The medical director shall ensure [A]applicable laws relating to use of anesthesia, professional licensure acts, and facility protocols [shall]govern both medical staff and employee performance.

(c)4) The licensee shall ensure the medical director [shall be]is responsible for [at least]the following:

(i)a) [Review and update facility protocols]surgery and anesthesia services delivered in the facility;

(ii)b) [Periodically conduct reappraisals of medical staff privileges and revise those privileges as appropriate]reviewing and updating facility protocols;

(iii)c) [Recommend to the governing authority, names of qualified health care practitioners to perform approved procedures, and to recommend facility privileges to be granted]conduct periodic reappraisals of medical staff privileges and revising those privileges as appropriate;

(iv)d) [Establish and maintain a quality assurance mechanism to review identified problems and take appropriate action]recommend to the governing authority, names of qualified health care practitioners to perform approved procedures, and to recommend privileges to be granted;

(v)e) [Coordinate, direct and evaluate all clinical operations of the facility]establish and maintain quality assurance mechanisms to review and identify problems and take appropriate action;

(vi)f) [Evaluate and recommend the type and amount of equipment needed in the facility]coordinate, direct, and evaluate any clinical operations of the facility;

(vii)g) [Assure that a qualified physician available when patients are in the facility]evaluate and recommend the equipment type and quantity needed in the facility;

(viii)h) [Ensure physician documentation is recorded immediately and reflects an accurate description of care given]ensure that a qualified physician is available when patients are in the facility;

(ix)i) [Assure that planned surgical procedures are within the scope of privileges granted to the physicians.]ensure physician documentation is recorded immediately and reflects an accurate description of care given; and

(j) ensure that planned surgical procedures are within the scope of privileges granted to the physicians.

#### **R432-500-[10]9. Director of Nursing Services.**

[—(1) Direction.]

(1) Each [facility]licensee shall employ and designate in writing a [registered nurse]director of nursing who [will be]is responsible for the supervision and direction of the nursing staff and the operating room suite.

[—(2) Qualifications.]

(2) The licensee shall ensure the director of nursing [shall be]is a registered nurse who is qualified by training or education to supervise nursing services.

[—(3) Responsibilities.]

(a)3) The director of nursing[; in consultation] shall consult with the medical director [shall]to plan and direct the delivery of nursing care.

(b)4) The licensee shall ensure the director of nursing [shall be]is responsible for[at least]:

(i)a) [M]maintaining qualified health care personnel that are available and used as needed under the supervision of a registered nurse;

(ii)b) [Assure]ensuring a licensed nurse is on duty when patients are in the facility;

(iii)c) [M]maintaining the operating room register;

(iv)d) [R]reviewing and updating[e] nursing care policies and procedures;

(v)e) [E]ensuring[e] that nursing documentation is recorded immediately and reflects an accurate description of care given;

(vi)f) [M]maintaining policies and procedures for pre-operative and post-operative care;

(vii)g) [E]ensuring[e] post-operative instructions are in writing and are reviewed with the patient or other responsible person following surgery;

(viii)h) [S]supervising[e] [all]any non-physician direct patient care services, as defined in facility policy;

(ix)i) [R]reviewing identified problems with the medical director through quality assurance mechanisms and take appropriate action;

(x)j) [E]ensuring[e] patient care policies including admission and discharge policies are reviewed annually[;]; and Patient care policies shall be developed and revised by a group representing all professionals involved in patient care.]



~~(k) ensuring patient care policies are developed and revised by a group representing professionals involved in patient care.~~

#### **R432-500-1[4]0. Staff and Personnel.**

~~(1) Health Surveillance.~~

~~((a)1) The [facility]licensee shall establish a policy and procedure for the health screening of [all]any personnel [which]that [shall]protects the health and safety of personnel and patients. The licensee shall:—Employee health screening and immunization components of personnel health programs shall be developed in accordance with R386-702. Communicable Disease rules.~~

~~(a) develop employee health screening and immunization components of personnel health programs in accordance with Rule R386-702. Communicable Disease rules;~~

~~(b) [The facility shall]prohibit employees with [a]communicable diseases or open skin lesions, or weeping dermatitis, from direct contact with patients[-]or patient care items, if direct contact may result in the transmission of the infection or [the]disease[-];~~

~~(c) [This health screening shall be performed]perform health screening within the first two weeks of employment and as defined in facility protocols[-];~~

~~(d) [Employee skin testing by]utilize the Mantoux method or other [FDA]Food and Drug Administration approved in-vitro serologic test for employee skin testing and follow-up for tuberculosis [shall be done]in accordance with Rule R388-804, Special Measures for the Control of Tuberculosis[-];~~

~~((i)1) [The licensee shall]ensure that [all]each employee[s] [are]is skin-tested for tuberculosis within two weeks of:~~

~~((A)i) initial hiring;~~

~~((B)ii) suspected exposure to a person with active tuberculosis; [and]or~~

~~((C)iii) development of symptoms of tuberculosis[-];~~

~~(f) exempt any employee with a known positive reaction to skin tests from tuberculosis skin testing;~~

~~(g) ensure any infections and communicable diseases reportable by law are reported by the facility to the local health department in accordance with Section R386-702-2; and~~

~~(h) ensure that the facility is in compliance with the Occupational Safety and Health Administrations Bloodborne Pathogen Standard.~~

~~[(ii) Skin testing shall be exempted for all employees with known positive reaction to skin tests.~~

~~(e) All infections and communicable diseases reportable by law shall be reported by the facility to the local health department in accordance with R386-702-2.~~

~~(f) The facility shall be in compliance with the Occupational Safety and Health Administrations Bloodborne Pathogen Standard.]~~

~~(2) [In-service Training and Orientation.]The licensee shall ensure that there is an in-service training and orientation program that is planned and documented for each staff member. The licensee shall:~~

~~(a) [There shall be planned and documented in-service training programs for all personnel.]define the frequency and content of the training program in the facility policy;~~

~~(b) [The frequency and content of training programs shall be defined in facility policy.]review facility policy and procedures in the training program; and~~

~~(c) [The training program shall include a review of all facility policies and procedures.]ensure each staff member has access to, and knowledge of the policy and procedures manual.~~

~~[(d) All personnel shall have access and knowledge of the facility's policy and procedure manuals.]~~

#### **R432-500-1[2]1. Contracts and Agreements.**

~~(1) Contracts.~~

~~((a)1) The licensee shall secure and update contracts for services not provided directly by the facility.~~

~~((b)2) The licensee shall ensure that each [C]contract[s] shall includes a statement that the contractor will conform to the standards required by this[ese] rule[s].~~

~~[(2) Transfer Agreements.]~~

~~((a)3) The licensee shall maintain hospital admitting privileges for [all]each staff member, or a written transfer agreement with one or more full-service licensed hospitals located within an overall travel time of 15 minutes or less from the facility. The transfer agreement shall include:~~

~~((b)a) [The transfer agreement shall include provisions for.]transfer of information needed for proper care and treatment of the patient transferred; and~~

~~((i)b) [Transfer of information needed for proper care and treatment of the patient transferred.]security and accountability of the personal effects belonging to the patient being transferred.~~

~~[(ii) Security and accountability of the personal effects of the patient being transferred.]~~

#### **R432-500-1[3]2. Quality Assurance.**

~~(1) The administrator and the medical director[-] shall establish a quality assurance program and a quality assurance committee to review facility operations, protocols, policies and procedures, incident reports, medication usage, infection control, patient care, and safety.~~

~~(2) [General Provisions Quality Assurance Committee.]The quality assurance committee shall:~~

~~(a) [The committee shall]include a representative from the facility administration, the medical director, the director of nursing, and may also include other representatives, as appropriate[-];~~

~~(b) [The committee shall]meet at least quarterly and keep written minutes available for [D]department review[-]; and~~

~~(c) [The committee shall]report findings and concerns to the medical director, administrator, and governing authority as applicable.~~

#### **R432-500-1[4]3. Emergency and Disaster.**

~~(1) Each [facility]licensee [has the responsibility to]shall [assure]ensure the safety and well-being of patients in the event of an emergency or disaster. An emergency or disaster may include utility interruption, explosion, fire, earthquake, bomb threat, flood, windstorm, epidemic, and injury.~~

~~[(1) General Provisions.]~~

~~((a)2) The licensee shall ensure the administrator [shall be]is in charge of facility operations during any significant emergency. If not on the premises, the administrator [should]shall make every effort to get to the facility to relieve the administrator designee to take charge during an emergency.~~

~~((b)3) The licensee and the administrator [shall be]are responsible for the development of a written emergency and disaster plan, coordinated with state and local emergency or disaster authorities.~~

~~((e)a) The licensee shall make the plan [shall be made]available to [all]each staff member to [assure]ensure prompt and efficient implementation.[-(see R432-500-14(2)).]~~

## NOTICES OF PROPOSED RULES

([d]b) The administrator and the licensee shall review and update the plan at least annually.

([e]4) The licensee shall post names and telephone numbers of facility staff, emergency medical personnel, and emergency service systems, ~~shall be conveniently posted.~~

### ~~(2) Emergency and Disaster Plan and Drills.~~

(5) The [facility]licensee shall have an internal and external emergency or disaster plan including the following:

(a) [E]vacuation of occupants to a safe place, as specified;

(b) [D]elivery of emergency care and services to facility occupants when staff is reduced by an emergency;

(c) [F]the receiving of patients to the facility from another location, including housing, staffing, medication handling, and record maintenance and protection;

(d) [F]the person ~~or persons~~ with decision-making authority for fiscal, medical, and personnel management;

(e) [A]n inventory of available personnel, equipment, supplies and instructions and how to acquire additional assistance;

(f) [S]taff assignment for specific tasks during an emergency;

(g) [N]ames and telephone numbers at each telephone for ~~of~~ on-call physicians ~~and staff at each telephone~~;

(h) [D]ocumentation of emergency events;

(i) [E]mergency or [D]isaster drills, other than fire drills ~~shall be~~ are held at least biannually, at least one per shift, with a record of time and date maintained ~~[-A]~~ actual evacuation of patients during a drill is optional; and

(j) [N]otification ~~of~~ to the [D]epartment if the facility is evacuated.

### ~~(3) Fire Emergencies.~~

(6) The licensee and administrator shall develop a written fire emergency and evacuation plan in consultation with qualified fire safety personnel ~~that identifies:~~

~~(a) An evacuation plan shall identify:~~

([i]a) evacuation routes ~~;~~ ;

([ii]b) the locations of fire alarm boxes and fire extinguishers ~~;~~ ; and

([iii]c) emergency telephone numbers including the local fire department.

([b]7) The licensee shall post the evacuation plan ~~shall be posted~~ at several locations throughout the facility.

([e]8) The emergency plan shall include fire containment procedures and how to use the facility alarm systems, extinguishers, and signals.

([d]9) The licensee shall hold [F]ire drills ~~shall be held~~ at least quarterly on each shift and documentation of the drill shall include a record of the time and date. Actual evacuation of patients during a drill is optional.

### ~~(4) Smoking Policies.~~

(10) The licensee shall ensure [S]moking policies ~~shall~~ comply are compliant with Title 26B, Chapter 7 ~~38 the~~, [“]Utah Indoor Clean Air Act[“], and Section 31-4.4 of the 1991 Life Safety Code].

## **R432-500-1[5]4. Patients' Rights.**

(1) ~~Written policies regarding the patient rights shall be made available.~~ The licensee shall ensure that written policies regarding the patient rights are made available.

(2) The policies and procedures shall ensure outline that each patient admitted to the facility ~~shall be~~ is treated as an individual with dignity and respect and ~~have~~ is the following right[s] to:

(a) ~~To be~~ be fully informed, ~~prior to~~ before, or at the time of admission, and during their stay, of the patient rights and of ~~all~~ any facility rules that pertain to the patient;

(b) ~~To be~~ be fully informed ~~prior to~~ before admission of the treatment to be received, potential complications, and expected outcome;

(c) [F]to refuse treatment and to be informed of the medical consequences of such refusal;

(d) [F]to be informed, ~~prior to~~ before or at the time of admission and during their stay, of services available in the facility and of any expected charges ~~for which~~ that the patient may be liable;

(e) [F]to participate in decisions involved in their health care;

(f) [F]to refuse to participate in experimental research;

(g) [F]to be assured confidential treatment of personal and medical records and to approve or refuse release to any individual outside the facility, except in the case of transfer to another health facility, or as required by law or third ~~[-]~~ party payment contract; and

(h) [F]to be treated with consideration, respect, and full recognition of personal dignity and individuality, including privacy in treatment and in care for personal needs.

## **R432-500-1[6]5. Patient Care Services.**

(1) A member of the medical staff or contracted provider is responsible for the care of each patient. ~~Each patient shall be under the care of a member of the medical staff or under contract.~~

(2) The licensee shall ensure that [M]edical [S]taff [B]ylaws ~~shall~~ establish the credentialing process and ~~shall~~ include the delineation of professional staff privileges.

### ~~(3) Responsibilities.~~

([a]3) The attending member of the medical staff, including any non-physician specialist, ~~shall be~~ is responsible for the quality of patient care delivered and the supervision of patients admitted to the facility.

([b]4) ~~All~~ Each ~~facility~~ staff member ~~[s]~~ and those under contract by the facility, shall comply with current laws, facility protocols, and current standards as interpreted by the medical director.

## **R432-500-1[7]6. Extended Recovery Services.**

(1) Extended recovery care services provided by a [Freestanding Ambulatory Surgical Center]licensee shall not exceed 24 hours. The [facility]licensee shall ensure the following: provide services to no more than three patients, anywhere within the facility, between the hours of 10:00 p.m. and 6:00 a.m.

(a) services are provided to no more than three patients anywhere in the facility between the hours of 10pm and 6 am;

([2]b) ~~[E]~~ extended recovery care services ~~shall be~~ are integrated with other departments and services of the facility ~~;~~ ;

([3]c) ~~[E]~~ extended recovery care services ~~shall~~ have policies and procedures that describe the nature and extent of the extended recovery services provided, ~~which~~ that are consistent with ambulatory surgery and anesthesia services ~~;~~ and

([4]d) ~~[A]~~ a minimum of two health care workers, including one ~~of which~~ that ~~shall be~~ is a registered nurse with Advanced Cardiac Life Support certification ~~[-(ACLS)]~~, ~~shall be~~ is on duty when patients are in the extended recovery care unit.

(5) In addition to the items required in a patient's medical record under [s]Section R432-500-22, the physician shall document the following:

(a) the reason ~~(+)~~ or need for a patient's admission to the extended recovery service ~~;~~ ; and

(b) dietary orders to meet the nutritional needs of the patient.

(6) The [facility]licensee shall obtain a Food Service Establishment Permit, if required by the local health department.

(a) The licensee shall ensure [I]inspection reports by the local health department [shall be]are maintained at the facility for review by the [D]department.

(b) [A]Any personnel [who]that prepare or serve food shall observe personal hygiene and sanitation practices [which]to protect food from contamination.

#### **R432-500-1[8]7. Nursing Services.**

~~[(1) Direction.]~~

(1) Each [facility]licensee shall ensure that [provide]nursing services are provided commensurate with the needs of the patients served.

~~[(2) Organization.]~~

(2) [A]The licensee shall ensure any non-medical patient services [shall be]are under the general direction of the director of nursing, except as exempted by facility policy.

~~[(3) Responsibilities.]~~

(a) 3 Nursing service personnel shall maintain a current Utah license and are [be] responsible to plan and deliver nursing care, and assist with treatments and procedures.

~~[(b) All nursing personnel shall maintain a current Utah license.]~~

~~[(4) Equipment.]~~

(a) 4 The [facility]licensee shall provide equipment in good working order to meet the needs of patients.

(b) a The licensee shall ensure the facility has [T]the type and amount of equipment [shall be]indicated in facility policy and approved by the medical director.

(e) b The licensee shall ensure the following equipment [shall be]is available to the operating suite:

- (i) [E]emergency call system;
- (ii) [C]cardiac [M]monitor;
- (iii) [V]entilation support system;
- (iv) [D]efibrillator;
- (v) [S]uction equipment;
- (vi) [E]quipment for Cardiopulmonary Resuscitation and Airway Management;
- (vii) [P]ortable [O]xygen; and
- (viii) [E]mergency [C]art.

#### **R432-500-1[9]8. Pharmacy Service.**

(1) The licensee shall ensure that [P]pharmacy space and equipment required [depends]are adequate based upon the type of drug distribution system used, number of patients served, and extent of shared or purchased services.

~~[(1) Direction.]~~

(a) 2 The licensee shall ensure [T]there [shall be]is a pharmacy supply under the direction of a pharmacist.

(b) 3 If the [facility]licensee does not have a staff pharmacist, it shall retain a consultant pharmacist by written contract.

(e) 4 [There shall be]The licensee shall ensure there are written policies and procedures approved by the medical director and pharmacist that [to] govern the acquisition, storage, and disposal of medications.

~~[(d) The medical director and facility pharmacist shall approve these policies.]~~

~~[(e)5 The licensee shall ensure the [The]quality and appropriateness of medication usage [shall be]is monitored by the [Q]quality [A]assurance [C]committee.~~

~~[(2) Pharmacy Supply.]~~

(a) 6 [Provision will be made to]The licensee shall supply necessary drugs and biologicals in a prompt and timely manner.

(b) 7 The licensee shall ensure a [A] current pharmacy reference manual [shall be]is available to [all]each staff member.

~~[(3) Storage.]~~

(a) 8 [A]The licensee shall ensure any medications, solutions, and prescription items [shall be]are kept secure and separate from non-medicine items in a conveniently located storage area.

(b) 9 The licensee shall ensure [A]an accessible emergency drug supply [shall be]is maintained in the facility if the facility does not have a pharmacy.

(i) a [The emergency drug supply shall be approved by]The medical director and the facility pharmacist shall approve the emergency drug supply.

(ii) b The licensee shall ensure [C]contents of the emergency drug supply [shall be]are listed on the outside of the container[-] and [-A]an inventory of the contents [shall be]is documented by nursing staff after each use and at least weekly.

(iii) c [Used items shall be replaced within 48 hours.]The licensee shall replace used items within 48 hours.

(e) 10 The licensee shall maintain m [M]edications that are stored at room temperature, [shall be maintained]within 59 [-]to 80 degrees [F-]Fahrenheit (F) [for 15 to 30 degrees Celsius (C)[C-]]. The licensee shall maintain r [R]efrigerated medications [shall be maintained]within 36 [-]to 46 degrees F[-] or ~~[(2)]two to [8]eight~~ degrees C.~~[-]~~

(f) 11 The licensee shall securely store [M]medications and other items that require refrigeration[- shall be stored securely and] separately from food items.

~~[(4) Controlled Drugs.]~~

(a) 12 The licensee shall only allow access to drugs by [Drugs shall be accessible only to] licensed nursing, pharmacy, and medical personnel as designated by facility policy. The licensee shall maintain Schedule II drugs [shall be kept]under double-lock and separate from other medication.

(b) a The licensee shall maintain s [S]eparate records of drug use [shall be maintained]on each Schedule II drug[-], and ensure the following:

(i) [R]records [shall be]are accurate and complete including patient name,[-] drug name,[-] strength,[-] administration documentation,[-] and name, title, and signature of person administering the drug[-];

(ii) [T]the record [shall be]is reconciled at least daily and retained for at least one year[-]; and

(iii) If medications are supplied as part of a unit-dose medication system, separate records are not required[-];

(e) 13 The licensee shall maintain r [R]ecords of Schedule III and IV [D]rugs, as identified in the Controlled Substance Act of 1970, 21 USC 802-6, [shall be maintained]in such a manner that the receipt and disposition of the drugs can be readily traced.

~~[(5) Disposal of Drugs.]~~

(a) 14 [A]The licensee shall promptly destroy any discontinued and outdated drugs, including those listed in Schedules II, III, or IV of the ["]Federal Comprehensive Drug Abuse Prevention and Control Act of 1970,[-] shall be destroyed promptly by the facility. A licensed physician and a licensed registered nurse, designated by the licensee, shall witness and document t [T]he drug

destruction. ~~[shall be witnessed and documented by two licensed members of the facility staff, preferably a physician and a registered nurse designated by the facility.]~~

(b) ~~The name of the patient, the name and strength of the drug, the prescription number, the amount destroyed, the method of destruction, the date of destruction and the signatures of the witnesses shall be recorded in a separate log kept for this purpose. The log shall be retained for at least three years.]~~

(15) The licensee shall keep individual drug destruction logs for three years that include the following:

- (a) name of the patient;
- (b) name and strength of the drug;
- (c) prescription number;
- (d) amount destroyed;
- (e) method of destruction;
- (f) date of destruction; and
- (g) the signatures of the witnesses.

~~[(6) Administration.]~~

(~~(a)~~16) The discharging physician may order that a [A] single dose or pre-packaged medications may be sent with the patient upon discharge, ~~[when ordered by the discharging physician.]~~

(~~(b)~~17) The licensee shall ensure the u [U]se of multiple dose medications ~~[shall be]~~is released in compliance with Utah pharmacy law.

(~~(e)~~18) ~~[A]The licensee shall document any medications used ~~[shall be documented]~~ in the patient's medical record.~~

#### **R432-500-~~[20]~~19. Anesthesiology Services.**

(1) The licensee shall ensure ~~[T]here ~~[shall be]~~are~~ facilities and equipment for the administration of anesthesia services commensurate with the clinical and surgical procedures planned for the facility.

(2) The medical staff shall appoint a medical director of anesthesia services who shall meet the following requirements:

- (a) ~~[be licensed]~~licensure to practice medicine in Utah; and
- (b) ~~[have]~~training and expertise in anesthesia services offered to ensure adequate supervision of patient care.

(3) The medical director of anesthesia services shall implement, coordinate, and ensure the quality of anesthesia services provided in the facility including the implementation of written policies and protocols ~~[approved by the medical staff which]~~that clearly define the responsibilities and privileges of qualified anesthetists.

(4) Only qualified anesthetists shall provide anesthesia care.

(5) During the surgical procedure, a qualified anesthetist ~~[shall be]~~is responsible for the following:

- (a) monitor, by continuous presence in the operating room, ~~[except for short periods of time for personal safety, ~~[such as]~~including during radiation exposure[]],~~ a patient who is undergoing a surgical procedure and who is receiving general anesthetics, regional anesthetics, or monitored anesthesia care; and

(b) continually evaluate a patient's oxygenation, ventilation, and circulation, and have means available to measure temperature during administration of ~~[all]~~any anesthetics.

(6) The non-physician qualified anesthetists shall provide patient specific anesthesia services upon the request of a licensed professional, as defined in Subsection R432-500-~~[2(e)]~~4(9). The licensed professional ~~[shall be]~~is responsible to remain involved in each patient's pre-operative assessment and shall ensure that the non-physician anesthetist is providing anesthesia services in a manner that specifically addresses the needs of each individual patient.

(7) The qualified anesthetist shall inform the patient and operating surgeon ~~[shall be informed prior to]~~before surgery of who will be administering anesthesia.

(8) The licensee shall ensure a physician remains immediately available in the facility to respond to medical emergencies w [W]hen the operating team consists entirely of non-physicians. ~~[a physician shall be immediately available in the facility to respond to medical emergencies.]~~

~~[(9) Policies and Procedures.]~~

(~~(a)~~9) The licensee shall ensure ~~[W]~~written anesthesia service policies ~~[shall]~~include ~~[the following]:~~

(~~(i)~~a) ~~[A]~~anesthesia care policies and procedures for pre-anesthesia evaluation, intraoperative care including documenting a time-based record of events, and post-anesthesia care;

(~~(ii)~~b) ~~[A]~~a qualified anesthetist ~~[shall]~~ conducts a pre-anesthesia evaluation, and documents the evaluation in the patient's medical record ~~[prior to]~~before inducing anesthesia[] to include:

~~[(iii) The preanesthesia evaluation shall include the following information:]~~

- (~~(A)~~i) planned anesthesia choice;
- (~~(B)~~ii) assessment of anesthesia risk;
- (~~(C)~~iii) anticipated surgical procedure;
- (~~(D)~~iv) current medications and previous untoward drug experiences;

(~~(E)~~v) ~~[prior]~~previous anesthetic experiences; and

(~~(F)~~vi) any unusual potential anesthetic problems.

(~~(b)~~10) A qualified anesthetist shall remain with the patient until the patient's status is stable. The qualified anesthetist or the anesthetist's qualified designee shall remain with the patient until the patient's protective reflexes have returned to normal, and it is determined safe as defined in facility policy.

(~~(e)~~11) The medical director of anesthesia services shall define the mechanism for the release of patients from post-anesthesia care[] and a responsible adult shall accompany the discharge of ~~[E]~~each patient who is admitted to an ambulatory surgical facility, and who receives other than un-supplemented local anesthesia. ~~[shall be discharged in the company of a responsible adult.]~~

(~~[(40)]~~12) Medicaid certified ~~[facilities]~~providers shall comply with the 42 CFR 415.110 and 42 CFR 416.42 (December 30, 1999). ~~[which is incorporated by reference.]~~

(~~[(44)]~~13) The licensee may not use ~~[The use of]~~flammable anesthetic agents for anesthesia or for the pre-operative preparation of the surgical field. ~~[is prohibited.]~~

(~~[(42)]~~14) The licensee shall ensure ~~[The]~~anesthetic equipment ~~[shall be]~~is inspected and tested by the person administering anesthesia before use in accordance with ~~[the]~~facility policy.

#### **R432-500-2~~[4]~~0. Laboratory and Radiology Services.**

~~[(1) General Requirements.]~~

(~~(a)~~1) The ~~[facility]~~licensee shall make ~~[provisions]~~accommodations, as appropriate, for laboratory, radiology, and associated services according to facility policy.

(~~(b)~~2) The licensee shall ensure ~~[S]~~services ~~[shall be]~~are provided with an order from a physician or a person licensed to prescribe such services[] and ~~[T]~~the order for laboratory and radiology services and the test results ~~[shall be]~~are included in the patient's medical record.

(~~(e)~~3) If services are provided by contract, a Clinical Laboratory Improvement Amendments (CLIA) certified, ~~[S]~~state-[] approved laboratory shall perform such services[] and promptly

provide ~~r~~[R]eports or results ~~[shall be reported promptly]~~ to the attending physician and documented in the patient's medical record.  
~~[(2) Facility Laboratory Services.]~~

~~(4)~~ If the ~~[facility]~~licensee provides CLIA certified or state[-]approved laboratory service, these services shall comply with the Laboratory Services section of Rule R432-100~~[-22]~~. If the licensee provides its own radiology services, these services shall comply with the Radiology Services section of Rule R432-100.

~~[(3) Facility Radiology Services.]~~

~~-----~~ If the facility provides its own radiology services, these services shall comply with R432-100-21.]

#### **R432-500-2[2]1. Medical Records.**

~~[(1) Direction.]~~

~~(1)~~ The licensee shall have written policies and procedures that ensure ~~[M]~~medical records ~~[shall be]~~are complete, accurately documented, and systematically organized to facilitate storage and retrieval for staff use.~~[- There shall be written policies and procedures to accomplish these purposes.]~~

~~(2) [Medical Record Organization.]~~The licensee shall ensure medical records comply with the following:

~~(a) [A]~~a permanent individual medical record ~~[shall be]~~is maintained for each patient admitted~~[-];~~

~~(b) [All]~~any entr[ies]y ~~[shall be]~~is permanently ~~[(t)]~~typed or handwritten ~~[legibly]~~in ink,~~[-]~~ and ~~[capable of being]~~able to be photocopied~~[-S]~~ and stamps are not acceptable unless a co-signature is present~~[-];~~~~[- Entries must be authenticated including date, name or identified initials, and title of the person making the entry.]~~

~~(c)~~ each entry is authenticated with the date, name or identified initials, and title of the person making the entry;

~~[(e)]d~~ [R]records ~~[shall be]~~are kept current and ~~[shall]~~conform to~~[- good]~~ medical and professional practice based on the service provided to the patient~~[-];~~~~[- Automated Record Systems may be utilized provided the medical record content maintained meets the requirements as defined within these rules.]~~

~~(e)~~ if utilized, an automated record system meets the content requirements of this rule;

~~[(d)]f~~ [All]any records of discharged patients ~~[shall be]~~are completed and filed within a time frame established by written facility policy. The physician ~~[has the responsibility to]~~shall complete the medical record~~[-];~~ and

~~[(3) Medical Record Content.]~~

~~(g)~~ [E]each patient's medical record ~~[shall]~~includes the following:

~~[(a)]i~~ [A]an admission record ~~[(face sheet)]~~that includes the name, address, and telephone number of the patient, physician and responsible person and the patient's age and date of admission;

~~[(b)]ii~~ [A]a current physical examination and history, including allergies and abnormal drug reactions;

~~[(e)]iii~~ [F]informed consent signed by the patient or, if applicable, the patient's representative;

~~[(d)]iv~~ [C]complete findings and techniques of the operation;

~~[(e)]v~~ [S]signed and dated physician orders for ~~[drugs]~~medications and treatments;

~~[(f)]vi~~ [S]signed and dated nurse's notes ~~[regarding care of the patient. Nursing notes shall]~~that include vital signs, medications, treatments, and other pertinent information;

~~[(g)]vii~~ [D]discharge summary ~~[which]~~contain[s]ing a brief narrative of conditions and diagnoses of the patient's final disposition, ~~[to include]~~and instructions given to the patient and responsible person;

~~[(h)]viii~~ [T]the pathologist's report of human tissue removed during the surgical procedure, if any;

~~(ix)~~ [R]eports of laboratory and x-ray procedures performed, consultations and any other pre-operative diagnostic studies; and

~~[(j)]x~~ [P]re-anesthesia evaluation.

~~[(4) Retention and Storage.]~~

~~[(a)]3~~ The licensee shall ensure medical record retention, storage and release practices comply with the following:~~[Medical records shall be retained for at least seven years after the last date of patient care. Records of minors shall be retained until the minor reaches age 18 or the age of majority plus an additional three years.]~~

~~(a)~~ medical records are retained for at least seven years after the last date of patient care or until a minor reaches age 18 or the age of majority, plus an additional three years;

~~[(b)]b~~ [All]a new owner retains any patient records ~~[shall be retained by the new owners.]~~upon change of ownership~~[-];~~

~~[(e)]c~~ [P]rovision ~~[shall be]~~is made for filing, safe storage, security, and easy accessibility of medical records~~[-];~~

~~[(5) Release of Information.]~~

~~[(a)]d~~ [Medical record information shall be confidential.]medical record information is confidential;

~~[(i)]e~~ [T]here ~~[shall be]~~are written procedures for the use and removal of medical records and the release of patient information~~[-];~~

~~[(ii)]f~~ [H]information ~~[may be]~~is disclosed only to authorized persons in accordance with federal and state laws, and facility policy~~[-];~~ and

~~[(iii)]g~~ [R]equests for information identifying the patient, ~~[(including photographs,)]~~shall require written consent by the patient.

~~[(b)]~~ Authorized representatives of the Department may review records to determine compliance with licensure rules and standards.]

#### **R432-500-2[3]2. Housekeeping Services.**

~~[(1) Organization.]~~

~~(1)~~ ~~[There shall be]~~The licensee shall provide housekeeping services to maintain a clean, sanitary, and healthy~~[-ful]~~ environment. If the ~~[facility]~~licensee contracts for housekeeping services with an outside agency, ~~[there shall be]~~the licensee shall ensure there is a signed, dated agreement that details ~~[all]~~any services provided~~[-]~~ and ~~[-T]~~the housekeeping service ~~[shall]~~meets ~~[all]~~each ~~[the-]~~requirement[s] of this section.

~~[(2) Policies and Procedures.]~~

~~(2)~~ The licensee shall ensure ~~[-W]~~written housekeeping policies and procedures ~~[shall be]~~are developed and implemented~~[- by the facility]~~, and reviewed and updated annually.

~~[(3) Personnel.]~~

~~(3)~~ ~~[A sufficient number of]~~The licensee shall ensure enough housekeeping staff ~~[shall be]~~are employed or contracted with to maintain both the exterior and interior of the facility in a safe, clean, orderly manner.

~~[(4) Equipment and Supplies.]~~

~~[(a)]4~~ The licensee shall ensure:~~[Housekeeping equipment shall be suitable for institutional use and properly maintained.]~~

~~[(b)]a~~ ~~[Cleaning solutions for floors shall be prepared according to manufacturer's instructions and be checked periodically to insure proper germicidal concentrations are maintained.]~~housekeeping equipment is suitable for institutional use and properly maintained;

~~([e]b) [There shall be sufficient numbers of noncombustible trash containers. Lids shall be provided where appropriate.]~~ cleaning solutions for floors are prepared according to manufacturer's instructions and be checked periodically to ensure proper germicidal concentrations are maintained;

~~([d]c) [Storage areas containing cleaning agents, bleaches, insecticides, or poisonous, dangerous, or flammable materials, shall be safeguarded. Toilet rooms shall not be used for storage.]~~ there is enough noncombustible trash containers and lids are provided where appropriate;

~~([e]d) [Throw or scatter rugs shall not be used in the main traffic areas of the facility or in exitways.]~~ storage areas containing cleaning agents, bleaches, insecticides, or poisonous, dangerous, or flammable materials, are safeguarded.

(c) toilet rooms are not used for storage; and

(f) throw or scatter rugs are not used in the main traffic areas of the facility or in exit ways.

### **R432-500-2[4]3. Laundry Services.**

~~[(1) Direction.]~~

~~([a]1) Each [facility]licensee shall ensure there are[have]~~ provisions for storage and processing of clean and soiled linen as required for patient care.

~~([i]a) The licensee shall ensure [P]rocessing [may be]is~~ done within the facility, in an on or offsite[separate] building ~~[-(on or off site)],~~ or in a commercial or shared laundry.

~~([ii]b) If the [facility]licensee contracts for laundry service,~~ [there shall be]the licensee shall ensure there is a signed, dated agreement that details [all]any services provided.

~~([iii]c) The licensee shall ensure that the laundry service~~ [shall]meets [all]each requirement[s] of this section.

~~([b]d) If the [facility]licensee processes laundry on the premises, the licensee shall employ a qualified person [shall be employed]to direct the facility's laundry service. The person shall have experience or training in the following:~~

- ~~(i) [P]proper use of the chemicals in the laundry;~~
- ~~(ii) [P]proper laundry procedures;~~
- ~~(iii) [P]proper use of laundry equipment;~~
- ~~(iv) [A]appropriate facility policy and procedures; and~~
- ~~(v) [A]appropriate federal regulations, state rules, and~~

local laws.

~~[(2) Physical Plant.]~~

~~([a]2) If laundry is processed by a commercial laundry [which]that is not part of the facility, the [facility must]licensee shall provide [at least]the following:~~

~~([i]a) [A]a separate room, vented to the outside, for holding and sorting soiled linen until ready for transport;~~

~~([ii]b) [A]a central, clean linen storage area in addition to the linen storage provided in each unit[-The] with enough central storage capacity[-shall be sufficient] for the facility's operation;~~

~~([iii]c) [A]a separate storage area to maintain clean and soiled linen carts [out of]away from traffic areas; and~~

~~([iv]d) [H]handwashing facilities [shall be provided]in each area where unbagged soiled linen is handled.~~

~~([b]3) If laundry is processed [by the facility]either [c]within the facility or in a separate building[)], [provision shall be made]the licensee shall provide for the following:~~

~~([i]a) [R]receiving, holding, and sorting room for control and distribution of soiled linen. Soiled linen chutes may empty into this room;~~

~~([ii]b) [A]a laundry room with washing machines and~~ dryers adequate for the quantity and type of laundry to be processed;

~~[(iii) A laundry room with dryers adequate for the quantity and type of laundry to be processed;]~~

~~([iv]c) [A]a clean storage room with space and shelving adequate to store one[-]-half of [all]any laundry being processed;~~

~~([v]d) [C]convenient access to employee lockers and lounge;~~

~~([vi]e) [S]storage for laundry supplies;~~

~~([vii]f) [S]storage area for[to park] clean and soiled linen carts out of traffic;~~

~~([viii]g) [T]traffic pattern through laundry area [shall be]that is:~~

~~([A]i) [F]from building corridor to receiving and sorting[)] or soiled linen room;~~

~~([B]ii) [F]from sorting soiled linen room to wash[-]room;~~

~~([C]iii) [F]from wash[-]room to a dry room[-The dry room shall be]that is separated from the wash[-]room by a wall with a door;~~

~~([D]iv) [F]from dry room to clean storage or covered and protected building corridor[-covered and protected]; and~~

~~([E]v) [A]air flow [shall be]is positive in direction[)] moving from clean to soiled[)] then to the exterior.~~

~~[(3) Policies and Procedures.]~~

~~(4) Each [facility]licensee shall develop and implement policies and procedures relevant to operation of the laundry. The licensee shall review and update policies and procedures annually and ensure they address:[These policies and procedures shall be reviewed and updated annually, and shall address the following:]~~

~~(a) [M]methods to handle, store, transport, and process clean, soiled, contaminated, and wet linens;~~

~~(b) [W]water temperature to wash laundry that is at least 150 degrees F, or [c]66 degrees C,[] unless the laundry equipment manufacturer recommends other temperatures[-A], however, an automatic chemical sterilizing system may be used in lieu of 150 degrees F water with [D]department approval;~~

~~(c) [C]collection and transportation of soiled linen to the laundry in closed, leak-proof laundry bags, or covered impermeable containers. Separate linen carts labeled ["SOILED"]soiled or ["CLEAN LINEN"]clean linen [shall be]are constructed of washable material and [shall be]laundered or suitably cleaned to maintain sanitation;~~

~~(d) [T]the training of laundry personnel in proper procedures for laundry infection control;~~

~~(e) [P]provision for adequate laundry equipment [c]including washers, dryers, linen carts, and transport carts[)] to maintain clean laundry for the facility;~~

~~(f) [M]maintenance of laundry equipment in proper working condition; and~~

~~(g) [P]provision for a lavatory with hot and cold running water, soap, and sanitary towels within the laundry area.~~

~~[(4) Clean Linen.]~~

~~([a]5) The licensee shall ensure:[Clean linen shall be stored, handled, and transported in a manner to prevent contamination. Clean linen shall be stored in clean closets, rooms, or alcoves used only for that purpose.]~~

~~(a) clean linen is stored, handled, and transported in a manner to prevent contamination;~~

~~(b) clean linen is stored in clean closets, rooms, or alcoves used only for that purpose;~~

~~([b]c) [C]clean linen [must be]is covered if stored in alcoves or transported through the facility[-];[Clean linen from a commercial laundry shall be delivered to a designated clean area in a manner that prevents contamination.]~~

(d) clean linen from a commercial laundry is delivered to a designated clean area in a manner that prevents contamination;

([e]e) [L]linens ~~shall be~~are maintained in good repair[-];  
A supply of clean linen and other supplies shall be provided and available to staff to meet the needs of patients.]

(f) a supply of clean linen and other supplies are provided and available to staff to meet the needs of patients;

[~~-----~~(5) Soiled Linen.]

([a]g) [S]soiled linen ~~shall be~~is handled, stored, and processed to prevent the spread of infections[-];  
~~Soiled linen shall be sorted by methods to protect from contamination, and as specified in facility policy.]~~

(h) soiled linen is sorted by methods to protect from contamination, and as specified in facility policy;

([b]i) [S]soiled linen ~~shall be~~is stored and transported in a closed container ~~[which]that prevents airborne contamination of corridors and areas occupied by patients, and precludes cross contamination of clean linens[-]; and~~  
~~Laundry chutes shall be maintained in a clean sanitary condition.]~~

(i) laundry chutes are maintained in a clean sanitary condition.

#### **R432-500-2[5]4. ~~[Maintenance,]~~Physical Environment[7] and Safety.**

(1) The licensee shall ~~[Surgical centers shall-]~~provide a safe and sanitary environment.  
~~[All ambulatory surgical facilities shall comply with this Section.]~~

[~~-----~~(1) Direction.]

(a) The administrator shall employ a person qualified by experience and training to be in charge of facility maintenance, or if the ~~[facility]~~licensee contracts for maintenance services, there ~~shall be~~is a signed, dated agreement that specifies agreement to comply with ~~[all]~~each requirement[s] of this section.

(b) The ~~[facility]~~licensee shall develop and implement a written maintenance program, ~~[including preventive maintenance,]~~to ensure continued equipment function and sanitary practices throughout the facility.

[~~-----~~(2) Policies and Procedures.]

([a]2) Each ~~[facility]~~licensee shall develop and implement maintenance, safety, and sanitation policies and procedures that ~~shall be~~are reviewed and updated annually.

([b]a) When maintenance is performed by an equipment-service company, the company shall certify that work performed[-] is in accordance with acceptable standards[-] ~~This~~ and the licensee shall retain documentation of certification ~~shall be retained by the facility~~ for department review.

([e]b) ~~[A pest control program shall be developed to ensure the facility is free from vermin and rodents which shall be conducted in the facility buildings and grounds by a licensed pest control contractor or an employee trained in pest control procedures. All openings to the outside of the facility shall prevent the entrance of insects and vermin.]~~  
The licensee shall develop a pest control program that ensures:

(i) the facility is free from insects and rodents;

(ii) a licensed pest control contractor or an employee trained in pest control procedures conducts the pest control program in the facility buildings and grounds; and

(iii) any openings to the outside of the facility prevent the entrance of insects and rodents.

([d]3) The license shall ensure ~~[A]~~architectural and engineering drawing, specification books, and maintenance literature concerning the design and construction of built-in systems ~~should~~

~~be~~are available for use by maintenance and safety personnel[-] this includes:

([e]a) [I]instructional information, cautions, specifications, and operational data on ~~[all]~~any facility equipment ~~shall be~~is available ~~[for reference by all]~~to any concerned departments[-];

([f]b) [S]systems-disconnects location information ~~shall be~~is readily available[-]; and

([g]c) ~~[D]~~documentation ~~shall be~~is maintained for ~~[D]~~department review of the pest control program and other maintenance activity.

#### **R432-500-2[6]5. General Maintenance.**

(1) The licensee shall ensure ~~[E]~~equipment used in the facility ~~shall be~~is approved by the Underwriter's Laboratories[7], a global safety certification company in the United States, and meet ~~[all]~~any applicable Utah Occupational Safety and Health Act requirements in effect at the time of purchase.

(2) The licensee shall ensure the general maintenance of the facility complies with the following:

([2]a) ~~[D]~~draperies, carpets, and furniture ~~shall be~~are maintained clean and in good repair[-];

([3]b) ~~[E]~~electrical systems including appliances, cords, equipment, call systems, switches, and grounding systems ~~shall be~~are maintained to ~~[assure]~~ensure safe functioning[-];

([4]c) ~~[H]~~heating and cooling systems ~~shall be~~are inspected and documented annually to ~~[assure]~~ensure safe operation[-];  
~~Written records of maintenance on high intensity (90%) filters and humidifiers shall be kept.]~~

(d) written records of maintenance on high intensity (90%) filters and humidifiers are kept;

([a]e) ~~[H]~~heating equipment ~~shall be~~are capable to maintain 80 [-]degrees F.;

([b]f) ~~[C]~~cooling equipment ~~shall be~~are capable to maintain 74 degrees F.;

([5]g) ~~[E]~~electric circuits ~~shall be~~are tested annually to show that phase, voltage, amperage, grounding, and load balancing are as required[-];

([6]h) ~~[G]~~grounding systems in operating rooms ~~shall be~~are tested and documented monthly;  
~~and documented.]~~

([7]i) ~~[M]~~medical gas systems ~~shall be~~are inspected quarterly[-];

([8]j) ~~[S]~~steam systems driving autoclaves and other sterilization equipment ~~shall be~~are tested regularly to ~~[assure]~~ensure proper operating temperatures, volumes, and pressures. Gauges ~~shall be~~are tested annually[-];

([9]k) ~~[All]~~any switch-over devices, relays, breakers, outlets, and receptacles in the emergency system ~~shall be~~are tested quarterly[-];

([10]l) ~~[A]~~air supplies, main burners, and stack afterburners ~~shall be~~are inspected annually[-];

([11]m) ~~[All]~~any new equipment ~~shall be~~is tested ~~[prior to]~~before use[-];

([12]n) ~~[All]~~any patient care equipment ~~shall be~~is tested as specified in facility policy but at least according to manufacturer's specifications[-];

([13]o) ~~[All]~~any other electric and electronic equipment ~~shall be~~is tested at least annually[-];

([14]p) ~~[All]~~any testing and inspections of systems and equipment ~~shall be~~is done by ~~[qualified persons-]~~individuals with specialized training of the equipment they are testing;

([15]q) ~~[R]~~records ~~shall be~~are maintained ~~[of all]~~for inspections and testing[-];



(~~(16)~~r) [~~M~~]maintenance work performed [~~shall be~~]is documented. [~~All~~]Any required records including maintenance, safety inspections, and drill schedules [~~shall be~~]are retained for two years or from the date of the last major inspection[-];

(~~(17)~~s) [~~All~~]any buildings, fixtures, equipment, spaces, and sanitation systems [~~shall be~~]are maintained in operable condition[-];

(~~(18)~~t) [~~A~~]any poisonous chemical [~~of a poisonous nature shall be~~]is properly labeled and [~~shall not~~]is be stored with patient care items[-]; and

(u) any air filters installed in heating, air conditioning, and ventilation systems, are inspected and filters replaced as needed to maintain the systems in operating condition.

#### **R432-500-27. Air Filters.**

~~All air filters installed in heating, air conditioning, and ventilation systems, shall be inspected and filters replaced as needed to maintain the systems in operating condition.~~

#### **R432-500-~~28~~26. Emergency Electric Service.**

(1) The [~~facility~~]licensee shall [~~make provision for~~]ensure an emergency generator is available to provide power to critical areas essential for patient safety in the event of an interruption in normal electrical power service.

(2) The licensee shall provide:~~[There shall be provision for emergency exit lighting in accordance with NFPA 101.]~~

(a) emergency exit lighting; and

(~~(3)~~b) [~~F~~]flash[-]lights [~~shall be~~]available for emergency use by staff.

~~[(4) Testing Emergency Power Systems.]~~

(~~(a)~~3) [~~All emergency electrical power systems shall be maintained in operating condition and tested as follows:~~]The licensee shall ensure that emergency electrical power systems are maintained in operating condition and tested as follows:

(~~(i)~~a) [~~F~~]the emergency power generator [~~shall be~~]is tested weekly and run under load for a period of 30 minutes monthly[-];

(~~(ii)~~b) [~~F~~]transfer switches and battery[-]-operated equipment [~~shall be~~]are tested at approximately 14-day intervals[-]; and

(~~(b)~~c) [~~A~~]a written record of inspection, performance, test period, and repair of the emergency generator [~~shall be~~]is maintained on the premises for review.

#### **R432-500-29. Storage and Disposal of Garbage, Refuse, and Waste.**

~~Facilities and equipment shall be provided for the sanitary storage and treatment or disposal of all categories of waste, including hazardous and infectious wastes if applicable, using techniques acceptable to the Department of Environmental Quality, and the local health department having jurisdiction.~~

#### **R432-500-~~30~~27. Provisions for Gas Usage.**

(1) Flammable anesthetic agents or chemicals may not be used unless the building is properly constructed for its use.~~[-in accordance with NFPA guidelines.]~~

(~~(a)~~2) For gas usage in a facility, the licensee shall ensure:~~[Compressed gases and flammable liquids shall be stored safely. All compressed gas cylinders in storage shall be capped and secured.]~~

(a) compressed gasses and flammable liquids are stored safely and any compressed gas cylinders in storage are capped and secured;

(b) [~~O~~]oxidizing agents may not be stored with flammables[-];

(~~(b)~~c) [~~O~~]oxygen and flammable agents [~~shall be~~]are stored away from combustibles[-];

(d) [~~L~~]liquid flammable agents [~~shall be~~]are stored in metal cabinets with no more than ten gallons of any one flammable liquid or 60 gallons total of flammable liquids stored per cabinet[-];

(e) [~~W~~]warning signs [~~shall be~~]are posted when compressed gasses or flammable liquids are used[-];

(~~(2)~~f) [~~E~~]equipment [~~shall be~~]is available to extinguish liquid oxygen and enriched gasses[-]; and

(g) [~~E~~]employees [~~shall be~~]are trained in the proper use of equipment and containment of combustions.

(3) When using oxygen, the licensee shall ensure provision [~~shall be~~]is made for~~[-at least]~~ the following:

(a) [~~S~~]safe handling and storage; and

(b) [~~F~~]facility personnel [~~shall~~]may not transfer gas from one cylinder to another[-];

(~~(e)~~4) The licensee shall test the [~~P~~]piped oxygen system [~~shall be tested in accordance with The NFPA 56F and 56K.]~~ and file a written report [~~shall be filed.]~~ as follows:

(~~(i)~~a) [~~U~~]upon completion of initial installation;

(~~(ii)~~b) [~~W~~]when~~[-ever]~~ changes are made to the system;

(~~(iii)~~c) [~~W~~]when~~[-ever]~~ the integrity of the system has been breached; and

(~~(iv)~~d) ensure [~~F~~]there [~~shall be~~]is a scavenging system for evacuation of anesthetic waste gas.

#### **R432-500-~~34~~28. Lighting.**

(1) Sodium and mercury vapor lights shall not be used inside the facility, but may be used as a source of exterior lighting.

(2) [~~All~~]The licensee shall ensure there is an accessible storeroom, stairway, ramp, exit, and entrance areas [~~shall be~~]are illuminated by at least ~~[of]~~20 foot-candles of light at floor level.

(3) [~~All~~]The licensee shall ensure that corridors [~~shall be~~]are illuminated with a minimum of 20 foot-candles of light at floor level.

(4) [~~O~~]The licensee shall ensure other areas [~~shall be~~]are provided with the following minimum foot~~[-]~~-candles of light at working surfaces:

(a) [~~O~~]operating rooms,[-] 50 [~~F~~]foot-candles;

(b) [~~M~~]medication preparation areas,[-] 50 foot-candles;

(c) [~~C~~]charting areas,[-] 50 foot-candles;

(d) [~~R~~]reading areas,[-] 50 foot-candles;

(e) [~~L~~]laundry areas,[-] 30 foot-candles;

(f) [~~F~~]toilet, bath, and shower rooms,[-] 30 foot-candles; and

(g) [~~N~~]nutritional area,[-] 30 foot-candles.

#### **R432-500-~~32~~29. Water Supply.**

(1) [Plumbing and drainage facilities shall be maintained in compliance with Utah Plumbing Code.]The licensee shall ensure the following:

(~~(2)~~a) [~~Backflow prevention devices shall be maintained in operating condition and tested when required by the Utah Plumbing Code and Utah Public Drinking Water Regulations.]~~plumbing and drainage facilities are maintained in compliance with Utah Plumbing Code;

(~~(3)~~b) [~~Hot water temperature controls shall automatically regulate temperatures of hot water delivered to plumbing fixtures used by staff and patrons. The facility shall maintain hot water delivered to patient care areas at temperatures between 105 and 115~~]

~~degrees F. Temperatures shall be regularly tested and a record maintained as part of the preventive maintenance program.]backflow prevention devices are maintained in operating condition and tested when required by the Utah Plumbing Code and Utah Public Drinking Water Regulations;~~

~~[(4)c] [There shall be grab bars at each bathroom facility used by patients.]hot water temperature controls automatically regulate temperatures of hot water delivered to plumbing fixtures used by staff and patrons;~~

~~[(5)d] [Water sterilizers, exchangers, distilleries, deionizers and filters shall be functional and shall provide the quality of water intended in each application.]maintain hot water delivered to patient care areas at temperatures between 105 and 115 degrees F.;~~

~~(e) temperatures are regularly tested and a record maintained as part of the preventive maintenance program; and~~

~~(f) there are grab bars at each bathroom facility utilized by patients.~~

~~(2) The licensee shall ensure water sterilizers, exchangers, distilleries, deionizers and filters are functional and provide the quality of water intended in each application.~~

#### **R432-500-[33]30. Sanitation Facilities.**

~~(1) The licensee shall provide:[Handwashing and toilet facilities shall be adequate in number and convenient for use by employees and patrons. Facilities shall be kept clean, in good repair and adequately ventilated.]~~

~~(a) enough handwashing and toilet facilities for convenient use by employees and patrons;~~

~~(b) clean, adequately ventilated facilities that are in good repair; and~~

~~[(2)c] [A]an adequate supply of hand [cleansing-]soap and a supply of sanitary towels or an approved hand drying appliance [shall be]are available for use. Common towels are prohibited.~~

~~[(3) Adequate and conveniently located toilet facilities shall be provided for employees and patrons. Toilet facilities shall be kept clean, in good repair, and free of objectionable odors. They shall be adequately ventilated.]~~

~~[(4)2] [Any] toilet and bathroom doors used by patients and opening inward [into]toward the bath or toilet room shall also allow the door to be removed from the outside of the bath or toilet room.~~

~~[(5) Other Safety and Sanitation Provisions:~~

~~(a) Trash chutes, laundry chutes, and dumb waiters shall be safe and sanitary. Trash and laundry chutes, elevators, dumb waiters, message tubes, and other such systems shall not pump contaminated air into clean areas.]~~

~~[(b)3] The use of exposed element portable heaters is prohibited.~~

~~[(e)4] If virulent agents are tested in the facility, the licensee shall provide a shielded exhaust hood or other equivalent protective device.[(s) shall be provided.]~~

~~[(d)5] The licensee shall ensure:[Building, grounds, walkways, and parking shall be free of hazards and in good repair. Parking and walkways shall be clear of snow and ice. A clear unobstructed path shall be maintained from all emergency exits to a public way.]~~

~~(a) building, grounds, walkways, and parking are free of hazards and in good repair;~~

~~(b) parking and walkways are clear of snow and ice;~~

~~(c) a clear unobstructed path are maintained from any emergency exits to a public way;~~

~~[(e)d] [F]floors [shall be]are maintained so they are in good repair. Floors in labs, toilet rooms, baths, kitchens, and isolation rooms [shall be]are of ceramic tile, roll-type vinyls, or seamless bonded flooring [which]that is resilient, non-absorbent, impervious, and easily cleaned[-]; and~~

~~[(f)e] [F]traffic in [all]any patient care areas [shall be]is monitored. The licensee shall permit only[Only] authorized individuals [shall]to have access to sterile areas.~~

~~(6) The licensee shall provide facilities and equipment for the sanitary storage and treatment or disposal of any categories of waste, including hazardous and infectious wastes if applicable, using techniques acceptable to the department of Environmental Quality, and the local health department with jurisdiction.~~

~~(7) The licensee shall ensure trash chutes, laundry chutes, and dumb waiters are safe and sanitary, and trash and laundry chutes, elevators, dumb waiters, message tubes, and other systems do not pump contaminated air into clean areas.~~

#### **R432-500-[34]31. Penalties.**

Any person who violates any provision of this rule may be subject to the penalties enumerated in Section [26-21-11]26B-2-208, [and]Rule R432-3[-6], and [be punished for violation of a class A misdemeanor as provided in]Sections [26-21-16]26B-2-216 and 26B-1-224.

**KEY: health care facilities**

**Date of Last Change: [October 1, 2011]2023**

**Notice of Continuation: September 2, 2020**

**Authorizing, and Implemented or Interpreted Law: [26-21-5; 26-21-16]26B-2-202**

#### **NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Repeal

<b>Rule or Section Number:</b>	<b>R657-3</b>	<b>Filing ID:</b> <b>55462</b>
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#### **Agency Information**

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Wildlife Resources	
<b>Room number:</b>	Suite 2110	
<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 146301	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6301	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Staci Coons	801-450-3093	stacicoons@utah.gov

**Please address questions regarding information on this notice to the persons listed above.**

**General Information****2. Rule or section catchline:**

R657-3. Collection, Importation, Transportation, and Possession of Animals

**3. Purpose of the new rule or reason for the change:**

The Division of Wildlife Resources (Division) is recommending to repeal Rule R657-3. Collection, Importation, Transportation, and Possession of Animals (the "CIP Rule"). The CIP rule regulates the collection, importation, transportation, and possession of animals in Utah. It covers issuance and renewal criteria for obtaining certificates of registration (CORs) authorizing the collection, importation, transportation, and possession of an animal or animals.

The rule also covers species classification by classifying species and subspecies as controlled, noncontrolled, and prohibited based on their potential for impact to wild populations, the environment, or human health or safety.

The current version of the CIP rule is difficult to read, navigate, and understand. The goal of repealing Rule R657-3 is to simplify the rule by making it easier for the public and Division staff to navigate and use, this will be accomplished by repealing the original rule and transferring the contents into three separate rules (subparts). Instead of one long Rule R657-3, the Division is proposing breaking it up into Rules R657-3a (General Subpart), R657-3b (Birds and Mammals Subpart), and R657-3c (Fish, Mollusks, and Crustaceans Subpart).

**4. Summary of the new rule or change:**

Rule R657-3 will be repealed in its entirety and then replaced by Rules R657-3a, R657-3b, and R657-3c. (EDITOR'S NOTE: The proposed new rules of R657-3a, ID 55463; R657-3b, ID 55464; and R657-3c, ID 55465, are in this issue, July 1, 2023, of the Bulletin.)

**Fiscal Information****5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

The repeal of Rule R657-3 is administrative in nature. The Division determines that these changes can be initiated within the current workload and resources of the Division, therefore, the Division does not believe that this would create a cost or savings impact to the state budget or the Division's budget since the changes will not increase workload and can be carried out with existing budget.

**B) Local governments:**

The proposed repeal of this rule does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because this rule does

not create a situation requiring services from local governments.

**C) Small businesses** ("small business" means a business employing 1-49 persons):

The proposed repeal of the rule will not directly impact small businesses because a service is not required of them.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

The proposed repeal of the rule will not directly impact non-small businesses because a service is not required of them.

**E) Persons other than small businesses, non-small businesses, state, 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**):

The Division determines that this repeal will not create additional costs for those participating in Collection, Importation or Transportation of classified species because it is not establishing any new requirements.

The repeal of Rule R657-3 and the placement of Rule R657-3a, Rule R657-3b, and Rule R657-3c is an administrative adjustment and does not require additional costs or savings to those wishing to participate in the program.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

The Division determines that this repeal will not create additional costs for those participating in Collection, Importation or Transportation of classified species because it is not establishing any new requirements.

The repeal of Rule R657-3 and the placement of Rule R657-3a, Rule R657-3b, and Rule R657-3c is an administrative adjustment and does not require additional costs or savings to those wishing to participate in the program.

**G) Regulatory Impact Summary Table** (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 will be included in narratives above.)**Regulatory Impact Table**

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0

Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$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>
<b>H) Department head comments on fiscal impact and approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Natural Resources, Joel Ferry, has reviewed and approved this fiscal analysis.			

**Citation Information**

<b>6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</b>		
Section 23-13-2		

**Public Notice Information**

<b>8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)</b>	
<b>A) Comments will be accepted until:</b>	07/31/2023

<b>9. This rule change MAY become effective on:</b>	08/07/2023
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Justin Shirley, DWR Director	<b>Date:</b>	06/14/2023
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**R657. Natural Resources, Wildlife Resources.**

~~[R657 3. Collection, Importation, Transportation, and Possession of Animals.~~

**R657 3-1. Purpose and Authority.**

~~(1) Under Title 23, Wildlife Resources Code of Utah and in accordance with a memorandum of understanding with the Department of Agriculture and Food, Department of Health, and the Division of Wildlife Resources, this rule governs the collection, importation, exportation, transportation, and possession of animals and their parts.~~

~~(2) Nothing in this rule shall be construed as superseding the provisions set forth in Title 23, Wildlife Resources Code of Utah. Any provision of this rule setting forth a criminal violation that overlaps a section of that title is provided in this rule only as a clarification or to provide greater specificity needed for the administration of the provisions of this rule.~~

~~(3) In addition to this rule, the Wildlife Board may allow the collection, importation, transportation, propagation and possession of species of animal species under specific circumstances as provided in Rules R657 4 through R657 6, R657 9 through R657 11, R657 13, R657 14, R657 16, R657 19, R657 20 through R657 22, R657 33, R657 37, R657 38, R657 40, R657 41, R657 43, R657 44, R657 46 and R657 52 through R657 60. Where a more specific provision has been adopted, that provision shall control.~~

~~(4) The importation, distribution, relocation, holding in captivity or possession of coyotes and raccoons in Utah is governed by the Agricultural and Wildlife Damage Prevention Board and is prohibited under Section 4-23-11 and Rule R657 14, except as permitted by the Utah Department of Agriculture and Food.~~

~~(5) This rule does not apply to division employees acting within the scope of their assigned duties.~~

~~(6) The English and scientific names used throughout this rule for animals are, at the time of publication, the most widely accepted names. The English and the scientific names of animals change, and the names used in this rule are to be considered synonymous with names in earlier use and with names that, at any time after publication of this rule, may supersede those used herein.~~

**R657 3-2. Species Not Covered by This Rule.**

The following species of animals are not governed by this rule:

- ~~(1) Alpaca (Lama pacos);~~
- ~~(2) Ass or donkey (Equus asinus);~~
- ~~(3) American bison, privately owned (Bos bison);~~
- ~~(4) Camel (Camelus bactrianus and Camelus dromedarius);~~
- ~~(5) Cassowary (All species)(Casuarius);~~
- ~~(6) Cat, domestic, including breeds that are recognized by The International Cat Association as Preliminary New, Advanced New, Non championship, and Championship Breeds (Felis catus);~~
- ~~(7) Cattle (Bos taurus taurus);~~
- ~~(8) Chicken (Gallus gallus);~~
- ~~(9) Chinchilla (Chinchilla laniger);~~
- ~~(10) Dog, domestic including hybrids between wild and domestic species and subspecies (Canis familiaris);~~

- ~~\_\_\_\_\_ (11) Ducks distinguishable morphologically from wild birds (Anatidae);~~
- ~~\_\_\_\_\_ (12) Elk, privately owned (Cervus elaphus canadensis);~~
- ~~\_\_\_\_\_ (13) Emu (Dromaius novaehollandiae);~~
- ~~\_\_\_\_\_ (14) Ferret or polecat, European (Mustela putorius);~~
- ~~\_\_\_\_\_ (15) Fowl (guinea) (Numida meleagris);~~
- ~~\_\_\_\_\_ (16) Fox, privately owned, domestically bred and raised (Vulpes vulpes);~~
- ~~\_\_\_\_\_ (17) Geese, distinguishable morphologically from wild geese (Anatidae);~~
- ~~\_\_\_\_\_ (18) "Gerbils" or Mongolian jirds (Meriones unguiculatus);~~
- ~~\_\_\_\_\_ (19) Goat (Capra hircus);~~
- ~~\_\_\_\_\_ (20) Hamster (All species) (Mesocricetus spp.);~~
- ~~\_\_\_\_\_ (21) Hedgehog (white bellied)(Erinaceidae atelerix albiventris)~~
- ~~\_\_\_\_\_ (22) Horse (Equus caballus);~~
- ~~\_\_\_\_\_ (23) Llama (Lama glama);~~
- ~~\_\_\_\_\_ (24) American Mink, privately owned, ranch raised (Neovison vison);~~
- ~~\_\_\_\_\_ (25) Mouse, house (Mus musculus);~~
- ~~\_\_\_\_\_ (26) Mule and hinny (hybrids of Equus caballus and Equus asinus);~~
- ~~\_\_\_\_\_ (27) Ostrich (Struthio camelus);~~
- ~~\_\_\_\_\_ (28) Peafowl (Pavo cristatus);~~
- ~~\_\_\_\_\_ (29) Pig, guinea (Cavia porcellus);~~
- ~~\_\_\_\_\_ (30) Pigeon (Columba livia);~~
- ~~\_\_\_\_\_ (31) Rabbit, European (Oryctolagus cuniculus);~~
- ~~\_\_\_\_\_ (32) Rats, Norway and Black (Rattus norvegicus and Rattus rattus);~~
- ~~\_\_\_\_\_ (33) Rhea (Rhea americana);~~
- ~~\_\_\_\_\_ (34) Sheep (Ovis aries);~~
- ~~\_\_\_\_\_ (35) Sugar glider (Petaurus breviceps);~~
- ~~\_\_\_\_\_ (36) Swine, domestic (Sus scrofa domestica);~~
- ~~\_\_\_\_\_ (37) Tenrec (Tenrecidae);~~
- ~~\_\_\_\_\_ (38) Turkey, privately owned, pen-raised domestic varieties (Meleagris gallopavo). Domestic varieties means any turkey or turkey egg held under human control and which is imprinted on other poultry or humans and which does not have morphological characteristics of wild turkeys;~~
- ~~\_\_\_\_\_ (39) Water buffalo (Bubalis arnee);~~
- ~~\_\_\_\_\_ (40) Yak (Bos mutus); and~~
- ~~\_\_\_\_\_ (41) Zebu, or "Brahma" (Bos taurus indicus)~~

**~~R657-3-3. Cooperative Agreements with Department of Health and Department of Agriculture and Food Agency Responsibilities.~~**

- ~~\_\_\_\_\_ (1) The division, the Department of Agriculture and Food, and the Department of Health work cooperatively through memorandums of understanding to:~~
  - ~~\_\_\_\_\_ (a) protect the health, welfare, and safety of the public;~~
  - ~~\_\_\_\_\_ (b) protect the health, welfare, safety, and genetic integrity of wildlife, including environmental and ecological impacts; and~~
  - ~~\_\_\_\_\_ (c) protect the health, welfare, safety, and genetic integrity of domestic livestock, poultry, and other animals.~~
- ~~\_\_\_\_\_ (2) The division is responsible for:~~
  - ~~\_\_\_\_\_ (a) issuing certificates of registration for the collection, possession, importation, and transportation of animals;~~
  - ~~\_\_\_\_\_ (b) maintaining the integrity of wild and free-ranging protected wildlife;~~
  - ~~\_\_\_\_\_ (c) determining the species of animals that may be imported, possessed, and transported within the state;~~

- ~~\_\_\_\_\_ (d) preventing the outbreak and controlling the spread of disease causing pathogens among aquatic animals in public aquaculture facilities;~~
- ~~\_\_\_\_\_ (e) preventing the spread of disease-causing pathogens from aquatic animals in, to be deposited in, or harvested from public aquaculture facilities and private ponds to aquatic wildlife, other animals, and humans;~~
- ~~\_\_\_\_\_ (f) preventing the spread of disease-causing pathogens from aquatic animals to other aquatic animals transferred from one site to another in the wild;~~
- ~~\_\_\_\_\_ (g) investigating and preventing the outbreak and controlling the spread of disease-causing pathogens in terrestrial wildlife;~~
- ~~\_\_\_\_\_ (h) preventing the spread of disease-causing pathogens from terrestrial animals to other terrestrial animals transferred from one site to another; and~~
- ~~\_\_\_\_\_ (i) enforcing laws and rules made by the Wildlife Board governing the collection, importation, transportation, and possession of animals.~~
- ~~\_\_\_\_\_ (3)(a) The Utah Department of Agriculture and Food is responsible for eliminating, reducing, and preventing the spread of diseases among livestock, fish, poultry, wildlife, and other animals by providing standards for:~~
  - ~~\_\_\_\_\_ (i) the importation of livestock, fish, poultry, and other animals, including wildlife, as provided in Section R58-1-4;~~
  - ~~\_\_\_\_\_ (ii) the control of predators and depredating animals as provided in Title 4, Chapter 23, Agriculture and Wildlife Damage Prevention Act;~~
  - ~~\_\_\_\_\_ (iii) enforcing laws and rules made by the Wildlife Board governing species of animals which may be imported into the state or possessed or transported within the state that are applicable to aquaculture or fee fishing facilities;~~
  - ~~\_\_\_\_\_ (iv) preventing the outbreak and controlling the spread of disease causing pathogens among aquatic animals in aquaculture and fee fishing facilities; and~~
  - ~~\_\_\_\_\_ (v) preventing the spread of disease-causing pathogens from aquatic animals in, to be deposited in, or harvested from aquaculture or fee fishing facilities to aquatic wildlife, or other animals, and humans.~~
- ~~\_\_\_\_\_ (b) The Department of Agriculture and Food may quarantine any infected domestic animal or area within the state to prevent the spread of infectious or contagious disease as provided in Title 4, Chapter 31, Section 17.~~
- ~~\_\_\_\_\_ (c) In addition to the authority and responsibilities listed in Subsection (3)(a) and (b), the Department of Agriculture and Food may make recommendations to the division concerning the collection, importation, transportation, and possession of animals if a disease is suspected of endangering livestock, fish, poultry, or other domestic animals.~~
- ~~\_\_\_\_\_ (4) The Utah Department of Health is responsible for promoting and protecting public health and welfare and may make recommendations to the division concerning the collection, importation, transportation, and possession of animals if a disease or animal is suspected of endangering public health or welfare.~~

**~~R657-3-4. Definitions.~~**

- ~~\_\_\_\_\_ (1) Terms used for purposes of this rule are defined in Section 23-13-2 and Subsection (2) through Subsection (33).~~
- ~~\_\_\_\_\_ (2)(a) "Animal" means:~~
  - ~~\_\_\_\_\_ (i) native, naturalized, and nonnative animals belonging to a species that naturally occurs in the wild, including animals captured from the wild or born or raised in captivity;~~

~~(ii) hybrids of any native, naturalized, or nonnative species or subspecies of animal, including hybrids between wild and domestic species or subspecies; and~~

~~(iii) viable embryos or gametes (eggs or sperm) of any native, naturalized, or nonnative species or subspecies of animals.~~

~~(b) "Animal" does not include species listed in Subsection R657-3-2, domestic species, or amphibians or reptiles as defined in Rule R657-53.~~

~~(3) "Aquaculture" means the controlled cultivation of aquatic animals.~~

~~(4)(a) "Aquaculture facility" means any tank, canal, raceway, pond, off-stream reservoir, or other structure used for aquaculture. "Aquaculture facility" does not include any public aquaculture facility or fee fishing facility.~~

~~(b) Structures that are separated by more than 1/2 mile, or structures that drain to or are modified to drain to, different drainages, are considered separate aquaculture facilities regardless of ownership.~~

~~(5) "Aquatic animal" means a member of any species of fish, mollusk, or crustacean, including their eggs or sperm.~~

~~(6) "Captive-bred" means any privately owned animal, which is born inside of and has spent its entire life in captivity and is the offspring of privately owned animals that are born inside of and have spent their entire life in captivity.~~

~~(7) "Certificate of registration" means an official document issued by the division authorizing the collection, importation, transportation, and possession of an animal or animals. A certificate of registration number may be issued in order to obtain an entry permit number and the entry permit number must in turn be provided to the division before final approval and issuance of the certificate of registration.~~

~~(8) "Certificate of veterinary inspection" means an official health authorization issued by an accredited veterinarian required for the importation of animals, as provided in Rule R58-1.~~

~~(9) "CFR" means the Code of Federal Regulations.~~

~~(10) "CITES" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora.~~

~~(a) Appendix I of CITES protects threatened species from all international commercial trade; and~~

~~(b) Appendix II of CITES regulates trade in species not threatened with extinction, but which may become threatened if trade goes unregulated.~~

~~(c) CITES appendices are published periodically by the CITES Secretariat and may be viewed at <http://www.cites.org/> which is incorporated herein by reference.~~

~~(11) "Collect" means to take, catch, capture, salvage, or kill any animal within Utah.~~

~~(12) "Commercial use" means any activity through which a person in possession of an animal:~~

~~(a) receives any consideration for that animal or for a use of that animal, including nuisance control and roadkill removal; or~~

~~(b) expects to recover all or any part of the cost of keeping the animal through selling, bartering, trading, exchanging, breeding, or other use, including displaying the animal for entertainment, advertisement, or business promotion.~~

~~(13) "Controlled species" means a species or subspecies of animal that if taken from the wild, introduced into the wild, or held in captivity, poses a possible significant detrimental impact to wild populations, the environment, or human health or safety, and for which a certificate of registration is required.~~

~~(14) "Domestic" means an animal that belongs to a species which is notably different from its wild ancestors through generations~~

~~of selective breeding and taming in captivity by humans for food, commodities, transportation, assistance, work, protection, companionship, display and other beneficial purposes.~~

~~(15) "Educational use" means the possession and use of an animal for conducting educational activities concerning wildlife.~~

~~(16) "Entry permit number" means a number issued by the state veterinarian's office to a veterinarian signing a certificate of veterinary inspection. The entry permit number must be written on the certificate of veterinary inspection before the importation of the animal. This number must be provided to the division prior to final approval and issuance of a certificate of registration. The entry permit is valid only for 30 days after its issuance.~~

~~(17) "Export" means to move or cause to move any animal from Utah by any means.~~

~~(18) "Fee fishing facility" means a body of water used for holding or rearing fish to provide fishing for a fee or for pecuniary consideration or advantage.~~

~~(19) "Import" means to bring or cause an animal to be brought into Utah by any means.~~

~~(20)(a) "Marine aquatic animal" means a member of any species of fish, mollusk, or crustacean that spends its entire life cycle in a marine environment.~~

~~(b) "Marine aquatic animal" does not include:~~

~~(i) anadromous aquatic animal species;~~

~~(ii) species that temporarily or permanently reside in brackish water; and~~

~~(iii) species classified as invasive or nuisance by state or federal law.~~

~~(21) "Native species" means any species or subspecies of animal that historically occurred in Utah and has not been introduced by humans or migrated into Utah as a result of human activity.~~

~~(22) "Naturalized species" means any species or subspecies of animal that is not native to Utah but has established a wild, self-sustaining population in Utah.~~

~~(23) "Noncontrolled species" means a species or subspecies of animal that if taken from the wild, introduced into the wild, or held in captivity poses no detrimental impact to wild populations, the environment, or human health or safety, and for which a certificate of registration is not required, unless otherwise specified.~~

~~(24)(a) "Nonnative species" means a species or subspecies of animal that is not native to Utah.~~

~~(b) "Nonnative species" does not include domestic animals or naturalized species of animals.~~

~~(25)(a) "Ornamental aquatic animal species" means any species of fish, mollusk, or crustacean that is commonly cultured and sold in the United States' aquarium industry for display.~~

~~(b) "Ornamental aquatic animal species" does not include;~~

~~(i) fresh water;~~

~~(A) sport fish — aquatic animal species commonly angled or harvested for recreation or sport;~~

~~(B) baitfish — aquatic animal species authorized for use as bait in R657-13-12, and any other species commonly used by anglers as bait in sport fishing;~~

~~(C) food fish — aquatic animal species commonly cultured or harvested from the wild for human consumption; or~~

~~(D) native species; or~~

~~(ii) aquatic animal species prohibited for importation or possession by any state, federal, or local law; or~~

~~(iii) aquatic animal species listed as prohibited or controlled in Sections R657-3-22 and R657-3-23.~~

(26) "Personal use" means the possession and use of an animal for a hobby or for its intrinsic pleasure and where no consideration for the possession or use of the animal is received by selling, bartering, trading, exchanging, breeding, hunting or any other use.

(27) "Possession" means to physically retain or to exercise dominion or control over an animal.

(28) "Prohibited species" means a species or subspecies of animal that if taken from the wild, introduced into the wild, or held in captivity, poses a significant detrimental impact to wild populations, the environment, or human health or safety, and for which a certificate of registration shall only be issued in accordance with this rule and any applicable federal laws.

(29) "Public aquaculture facility" means a tank, canal, raceway, pond, off-stream reservoir, or other structure used for aquaculture by the division, U.S. Fish and Wildlife Service, a school, or an institution of higher education.

(30) "Resident Canada Goose" means Canada geese that nest within Utah in urban environments during the months of March, April, May or June.

(31) "Scientific use" means the possession and use of an animal for conducting scientific research that is directly or indirectly beneficial to wildlife or the general public.

(32) "Transport" means to move or cause to move any animal within Utah by any means.

(33) "Wildlife Registration Office" means the division office in Salt Lake City responsible for processing applications and issuing certificates of registration.

#### **R657-3-5. Liability.**

(1)(a) Any person who accepts a certificate of registration assumes all liability and responsibility for the collection, importation, transportation, possession and propagation of the authorized animal and for any other activity authorized by the certificate of registration.

(b) To the extent provided under the Utah Governmental Immunity Act, the division, Department of Agriculture and Food, and Department of Health shall not be liable in any civil action for:

(i) any injury, disease, or damage caused by or to any animal, person, or property as a result of any activity authorized under this rule or a certificate of registration; or

(ii) the issuance, denial, suspension, or revocation of or by the failure or refusal to issue, deny, suspend, or revoke any certificate of registration or similar authorization.

(2) It is the responsibility of any person who obtains a certificate of registration to read, understand and comply with this rule and all other applicable federal, state, county, city, or other municipality laws, regulations, and ordinances governing animals.

#### **R657-3-6. Animal Welfare.**

(1) Any animal held in possession under the authority of a certificate of registration shall be maintained under humane and healthy conditions, including the humane handling, care, confinement, transportation, and feeding, as provided in:

(a) 9 CFR Section 3 Subpart F, 2002 ed., which is adopted and incorporated by reference;

(b) Section 76-9-301; and

(c) Section 7 CFR 2.17, 2.51, and 371.2(g), 2002 ed., which are incorporated by reference.

(2) A person commits cruelty to animals under this section if that person intentionally, knowingly, or with criminal negligence, as defined in Section 76-2-103:

(a) tortures or seriously overworks an animal; or

(b) fails to provide necessary food, care, or shelter for any animal in that person's custody.

(3) Adequate measures must be taken for the protection of the public when handling, confining, or transporting any animal.

#### **R657-3-7. Take of Nuisance Birds and Mammals.**

(1)(a) A person is not required to obtain a certificate of registration or a federal permit to kill a bird belonging to a species listed in Subsection (1)(b) that is committing or about to commit depredations on ornamental or shade trees, agricultural crops, livestock, or wildlife, or when concentrated in such numbers and manner as to constitute a health hazard or other nuisance, provided:

(i) an attempt to control the birds using non-lethal methods occurs prior to using lethal methods;

(ii) applicable local, state and federal laws are strictly complied with; and

(iii) none of the birds killed, nor their plumage, are sold or offered for sale.

(b) The following bird species are subject to the provisions of Subsection (1)(a):

(i) black-billed magpie (*Pica hudsonia*);

(ii) American crow (*Corvus brachyrhynchos*);

(iii) bronzed cowbird (*Molothrus aeneus*);

(iv) brown-headed cowbird (*Molothrus ater*); and

(v) shiny cowbird (*Molothrus bonariensis*).

(c) Nuisance birds removed under Subsection (1)(a):

(i) must be taken over the threatened area;

(ii) may not be taken with:

(A) bait, explosives, or poisons; or

(B) ammunition with lead or toxic projectiles, except when fired from an air rifle, air pistol, or a 22 caliber rimfire firearm; and

(iii) must be disposed of at a landfill that accepts wildlife carcasses, or burned or incinerated.

(d)(i) Any person that takes a nuisance bird pursuant to Subsection (1)(a) must provide to the appropriate U.S. Fish and Wildlife Service, Regional Migratory Bird Permit Office an annual report for each species taken.

(ii) Reports must be submitted by January 31st of the following year, and include the following information:

(A) name, address, phone number, and e-mail address of the person taking the birds;

(B) the species and number of birds taken;

(C) the months in which the birds were taken;

(D) the county or counties in which the birds were taken; and

(E) the general purpose for which the birds were taken, such as protection of agriculture, human health and safety, property, or natural resources.

(e) This Subsection (1) incorporates Section 50 CFR 21.41, 21.42 and 21.43, 2007, ed., by reference.

(2)(a) A person is not required to obtain a certificate of registration or a federal permit to kill a house sparrow (*Passer domesticus*), European starling (*Sturnus vulgaris*), or domestic pigeon or rock pigeon (*Columba livia*) when found damaging personal or real property, or when concentrated in such numbers and manner as to constitute a health hazard or other nuisance, provided:

(i) an attempt to control the birds using non-lethal methods occurs prior to using lethal methods;

(ii) applicable local, state and federal laws are strictly complied with; and

(iii) none of the birds killed, nor their plumage, are sold or offered for sale.



~~(b) Nuisance birds removed under Subsection (2)(a):~~  
~~(i) must be taken over the threatened area;~~  
~~(ii) may not be taken with bait, explosives, or poisons; and~~  
~~(iii) must be disposed of at a landfill that accepts wildlife carcasses, or burned or incinerated.~~  
~~(3) A person that takes a nuisance bird pursuant to Subsection (1) shall:~~  
~~(a) allow any federal warden or state conservation officer unrestricted access over the premises where the birds are killed; and~~  
~~(b) furnish any information concerning the control operations to the division or federal official upon request.~~  
~~(4) A person may kill nongame mammals as provided in R657-19~~

**R657-3-8. Collection, Importation, and Possession of Threatened and Endangered Species and Migratory Birds.**

~~(1) The following species are prohibited from collection, possession, and importation into Utah without first obtaining a certificate of registration from the division, a federal permit from the U.S. Fish and Wildlife Service, and an entry permit number from the Department of Agriculture and Food if importing:~~  
~~(a) any species which have been determined by the U.S. Fish and Wildlife Service to be endangered or threatened pursuant to the federal Endangered Species Act, as amended; and~~  
~~(b) any species of migratory birds protected under the Migratory Bird Treaty Act.~~  
~~(2) Federal laws and regulations apply to threatened and endangered species and migratory birds in addition to state and local laws.~~  
~~(3) Neither a federal permit nor a state certificate of registration is required to destroy the nests and eggs of resident Canada geese provided:~~  
~~(a) the landowner or agent qualifies, registers and complies with all provisions of the Federal Nest and Egg Registry located at [www.fws.gov/permits/mbpermits/GooseEggRegistration.html](http://www.fws.gov/permits/mbpermits/GooseEggRegistration.html).~~  
~~(b) The landowner reports to the state the date, location (including county) and number of eggs and nests destroyed, by October 1 of each year to the Wildlife Registration Coordinator.~~

**R657-3-9. Release of Animals to the Wild—Capture or Disposal of Escaped Wildlife.**

~~(1)(a) Except as provided in this rule, the rules and regulations of the Wildlife Board, or Title 4, Chapter 37 of the Utah Code, a person may not release to the wild or release into any public or private waters any animal, including fish, without first obtaining authorization from the division.~~  
~~(b) A violation of this section is punishable under Section 23-13-14.~~  
~~(2) The division may seize or dispose of any illegally held animal.~~  
~~(3)(a) Any peace officer, division representative, or authorized animal control officer may seize or dispose of any live animal that escapes from captivity.~~  
~~(b) The division may retain custody of any recaptured animal until the costs of recapture or care have been paid by its owner or keeper.~~

**R657-3-10. Inspection of Animals, Facilities, and Documentation.**

~~(1) A conservation officer or any other peace officer may require any person engaged in activities regulated by this rule to exhibit:~~

~~(a) any documentation related to activities covered by this rule, including certificates of registration, permits, certificates of veterinary inspection, certification, bills of sale, or proof of ownership or legal possession;~~  
~~(b) any animal; or~~  
~~(c) any device, apparatus, or facility used for activities covered by this rule.~~  
~~(2) Inspection shall be made during business hours.~~

**R657-3-11. Certificate of Registration.**

~~(1)(a) Except as provided in Subsection (8) a person shall obtain a certificate of registration before collecting, importing, transporting, possessing or propagating any species of animal or its parts classified as prohibited or controlled, except as otherwise provided in this rule, statute or rules and orders of the Wildlife Board.~~  
~~(b) A certificate of registration is not required:~~  
~~(i) to collect, import, transport, possess, or propagate any species or subspecies of animal classified as noncontrolled;~~  
~~(ii) to export any species or subspecies of animal from Utah, provided that the animal is held in legal possession; or~~  
~~(iii) to collect, transport or possess brine shrimp and brine shrimp eggs for personal use, provided:~~  
~~(A) the brine shrimp and brine shrimp eggs are collected, transported and possessed together with water in a container no larger than one gallon;~~  
~~(B) no more than a one gallon container of brine shrimp and brine shrimp eggs, including water, is collected during any consecutive seven day period; and~~  
~~(C) the brine shrimp or brine shrimp eggs following possession are not released live into the Great Salt Lake, Sevier River or any of their tributary waters.~~  
~~(e) Applications for animals classified as prohibited shall not be accepted by the division without providing written justification describing how the applicant's proposed collection, importation, or possession of the animal meets the criteria provided in Subsections R657-3-20(1)(b) or R657-3-18(4)(b).~~  
~~(2)(a) Certificates of registration are not transferable and expire December 31 of the year issued, except as otherwise designated on the certificate of registration.~~  
~~(b) If the holder of a certificate of registration is a representative of an institution, organization, business, or agency, the certificate of registration shall expire effective upon the date of the representative's discontinuation of association with that entity.~~  
~~(c) Certificates of registration do not provide the holder any rights of succession and any certificate of registration issued to a business or organization shall be void upon the termination of the business or organization or upon bankruptcy or transfer or death of the COR holder.~~  
~~(3)(a) The issuance of a certificate of registration automatically incorporates within its terms the conditions and requirements of this rule specifically governing the activity for which the certificate of registration is issued.~~  
~~(b) Any person accepting a certificate of registration under this rule acknowledges the necessity for periodic regulation and monitoring by the division.~~  
~~(4) In addition to this rule, the division may impose specific requirements on the holder of the certificate of registration necessary for the safe and humane handling and care of the animal involved, including requirements for veterinary care, cage or holding pen sizes and standards, feeding requirements, social grouping requirements, and other requirements considered necessary by the division for the health and welfare of the animal or the public.~~

~~(5)(a) Upon or before the expiration date of a certificate of registration, the holder must apply for a renewal of the certificate of registration to continue the activity.~~

~~(b) The division may use the criteria provided in Section R657-3-14 in determining whether to renew the certificate of registration.~~

~~(c) It is unlawful for a person to possess an animal for which a certificate of registration is required if that person;~~

~~(i) does not have a valid certificate of registration authorizing possession of the animal; or~~

~~(ii) fails to submit a renewal application to the division prior to the expiration of an existing certificate of registration authorizing possession of the animal.~~

~~(d) If a renewal application is not submitted to the division by the expiration date, live or dead animals held in possession under the expired certificate of registration shall be considered unlawfully held and may be seized by the division.~~

~~(e) If a renewal application is submitted to the division before the expiration date of the existing certificate of registration, continued possession of the animal under the expired certificate of registration shall remain lawful while the renewal application is pending.~~

~~(6) Failure to submit timely, accurate, or valid reports as required under Section R657-3-16 or the terms of a certificate of registration may disqualify a person from renewing an existing certificate of registration or obtaining a new certificate of registration.~~

~~(7) A certificate of registration may be suspended as provided in this rule, Section 23-19-9 and Rule R657-26.~~

~~(8)(a) A certificate of registration is not required to import, possess, or transfer a live marine aquatic animal classified as nonecontrolled, controlled or prohibited, provided the marine aquatic animal is:~~

~~(i) imported, possessed, or transferred for purposes of immediate human consumption;~~

~~(ii) possessed live no longer than 30 days from the date of importation or the date of receipt, if acquired from an intrastate source;~~

~~(iii) held in a tank or aquaria with an effluent that discharges into a sewage treatment system or other area that does not drain into any surface water source;~~

~~(iv) never released in any water source, including sewer systems;~~

~~(v) acquired from a lawful source and documentation of purchase is retained; and~~

~~(vi) imported and possessed in compliance with applicable state and federal laws, including the importation requirements in R657-3-25.~~

~~(b) A certificate of registration is not required to import, possess, or transfer a dead aquatic animal or its parts classified as nonecontrolled, controlled or prohibited, provided it is:~~

~~(i) imported, possessed, or transferred for purposes of immediate human consumption;~~

~~(ii) acquired from a lawful source and documentation of purchase is retained; and~~

~~(b) imported and possessed in compliance with applicable state and federal laws.~~

#### **R657-3-12. Application Procedures—Fees.**

~~(1)(a) Initial and renewal applications for certificates of registration are available from, and must be submitted to, the Wildlife Registration Office in Salt Lake City or any regional division office.~~

~~(b) Applications may require a minimum of 45 days for review and processing from the date the application is received.~~

~~(c) Applications that are incomplete, completed incorrectly, or submitted without the appropriate fee or other required information may be returned to the applicant.~~

~~(2)(a) Legal tender in the correct amount must accompany the application.~~

~~(b) The certificate of registration fee includes a nonrefundable handling fee.~~

~~(c) Upon request, applicable fees may be waived for wildlife rehabilitation, educational or scientific activities, or for state or federal agencies if, in the opinion of the division, the activity will significantly benefit the division, wildlife, or wildlife management.~~

#### **R657-3-13. Retroactive Effect on Possession.**

~~A person lawfully possessing an animal prior to the effective date of any species reclassification may receive a certificate of registration from the division for the continued possession of that animal where the animal's species classification has changed hereunder from nonecontrolled to controlled or prohibited. The certificate of registration shall be obtained within six months of the reclassification. If a certificate of registration is not obtained possession of the animal thereafter shall be unlawful.~~

#### **R657-3-14. Issuance Criteria.**

~~(1) The following factors shall be considered before the division may issue or renew a certificate of registration for the collection, importation, transportation, possession or propagation of an animal:~~

~~(a) the health, welfare, and safety of the public;~~

~~(b) the health, welfare, safety, and genetic integrity of wildlife, domestic livestock, poultry, and other animals;~~

~~(c) ecological and environmental impacts;~~

~~(d) the suitability of the applicant's holding facilities;~~

~~(e) the experience of the applicant for the activity requested; and~~

~~(f) ecological or environmental impact on other states.~~

~~(2) In addition to the criteria provided in Subsection (1), the division shall use the following criteria for the issuance or renewal of a certificate of registration for a scientific use of an animal;~~

~~(a) the validity of the objectives and design;~~

~~(b) the likelihood the project will fulfill the stated objectives;~~

~~(c) the applicant's qualifications to conduct the research, including education or experience;~~

~~(d) the adequacy of the applicant's resources to conduct the study; and~~

~~(e) whether the scientific use is in the best interest of the animal, wildlife management, education, or the advancement of science without unnecessarily duplicating previously documented scientific research.~~

~~(3) In addition to the criteria provided in Subsection (1), the division may use the following criteria for the issuance or renewal of a certificate of registration for an educational use of an animal:~~

~~(a) the objectives and structure of the educational program; and~~

~~(b) whether the applicant has written approval from the appropriate official if the activity is conducted in a school or other educational facility; and~~

~~(c) whether the individual is in possession of the required federal permits.~~

~~(4) The division may deny issuing or renewing a certificate of registration to any applicant, if:~~

~~(a) the applicant has violated any provision of Title 23, Utah Wildlife Resources Code, Administrative Code R657, proclamation or guidebook, a certificate of registration, an order of the Wildlife Board or any other law that when considered with the functions and responsibilities of collecting, importing, possessing or propagating an animal bears a reasonable relationship to the applicant's ability to safely and responsibly carry out such activities;~~

~~(b) the applicant has previously been issued a certificate of registration and failed to submit any report or information required by this rule, the division, or the Wildlife Board;~~

~~(c) the applicant misrepresented or failed to disclose material information required in connection with the application; or~~

~~(d) holding the animal at the proposed location violates federal, state, or local laws.~~

~~(5) The collection or importation and subsequent possession of an animal may be granted only upon a clear demonstration that the criteria established in this section have been met by the applicant.~~

~~(6) The division, in making a determination under this section, may consider any available facts or information that is relevant to the issuance or renewal of the certificate of registration, including independent inquiry or investigation to verify information or substantiate the qualifications asserted by the applicant.~~

~~(7) If an application is denied, the division shall provide the applicant with written notice of the reasons for denial.~~

~~(8) An appeal of the denial of an application may be made as provided in Section R657-3-37.~~

#### **R657-3-15. Amendment to Certificate of Registration.**

~~(1)(a) If circumstances materially change, requiring a modification of the terms of the certificate of registration, the holder may request an amendment by submitting written justification and supporting information.~~

~~(b) The division may amend the certificate of registration or deny the request based on the criteria for initial and renewal applications provided in Section R657-3-14, and, if the request for an amendment is denied, shall provide the applicant with written notice of the reasons for denial.~~

~~(c) The division may charge a fee for amending the certificate of registration.~~

~~(d) An appeal of a request for an amendment may be made as provided in Section R657-3-37.~~

~~(2) The division reserves the right to amend any certificate of registration for good cause upon notification to the holder and written findings of necessity.~~

~~(3)(a) Each holder of a certificate of registration shall notify the division within 30 days of any change in mailing address.~~

~~(b) Animals or activities authorized by a certificate of registration may not be held at any location not specified on the certificate of registration without prior written permission from the division.~~

#### **R657-3-16. Records and Reports.**

~~(1)(a) From the date of issuance or renewal of the certificate of registration, the holder shall maintain complete and accurate records of any taking, possession, transportation, propagation, sale, purchase, barter, or importation authorized pursuant to this rule or the certificate of registration.~~

~~(b) Records must be kept current and shall include the names, phone numbers, and addresses of persons to whom any~~

~~animal has been sold, bartered, or otherwise transferred or received, and the dates of the transactions.~~

~~(c) The records required under this section must be maintained for two years from the expiration date of the certificate of registration.~~

~~(2) Reports of activity must be submitted to the Wildlife Registration Office as specified on the certificate of registration.~~

~~(3) Failure to submit the appropriate records and reports may result in denial or suspension of a certificate of registration.~~

#### **R657-3-17. Collection, Importation or Possession for Personal Use.**

~~(1) A person may collect, import or possess live or dead animals or their parts for a personal use only as follows:~~

~~(a) Certificates of registration are not issued for the collection, importation or possession of any live or dead animals or their parts classified as prohibited, except as provided in R657-3-36 or the rules and guidebooks of the Wildlife Board.~~

~~(b) A certificate of registration is required for collecting, importing or possessing any live or dead animals or their parts classified as controlled, except as otherwise provided by this rule or the rules and guidebooks of the Wildlife Board.~~

~~(c) A certificate of registration is not required for collecting, importing or possessing live or dead animals or their parts classified as noncontrolled.~~

~~(2) Notwithstanding Subsection (1), a person may import or possess any dead animal or its parts, except as provided in Section R657-3-8, for personal use without obtaining a certificate of registration, provided the animal was legally taken, is held in legal possession, and a valid license, permit, tag, certificate of registration, bill of sale, or invoice is available for inspection upon request.~~

#### **R657-3-18. Collection, Importation or Possession of a Live Animal for a Commercial Use.**

~~(1)(a) A person may not collect or possess a live animal for a commercial use or commercial venture for financial gain, unless otherwise provided in the rules and proclamations of the Wildlife Board.~~

~~(b) Use of brine shrimp for culturing ornamental aquatic animal species is not a commercial use if the brine shrimp eggs or cysts are not sold, bartered, or traded and no more than 200 pounds are collected annually.~~

~~(2)(a) A person may import or possess a live animal or parts thereof classified as non-controlled for a commercial use or a commercial venture, except native or naturalized species of animals may not be sold or traded unless they originate from a captive-bred population.~~

~~(b) Complete and accurate records for native or naturalized species must be maintained and available for inspection for two years from the date of transaction, documenting the date, name, phone number, and address of the person from whom the animal has been obtained.~~

~~(3)(a) A person may not import, collect or possess a live animal classified as controlled for a commercial use or commercial venture, without first obtaining a certificate of registration.~~

~~(b) A certificate of registration will not be issued to sell or trade a native or naturalized species of animal classified as controlled unless it originates from a captive-bred population.~~

~~(c) It is unlawful to transfer a live animal classified as controlled to a person who does not have a certificate of registration to possess the animal.~~

~~(d) Complete and accurate records must be maintained and available for inspection for two years from the date of transaction, documenting the date, name, phone number, and address of the person from whom the animal has been obtained.~~

~~(e) Complete and accurate records must be maintained and available for inspection for two years from the date of transfer, documenting the date, name, address and certificate of registration number of the person receiving the animal.~~

~~(4)(a) A certificate of registration will not be issued for importing or possessing a live animal classified as prohibited for a commercial use or commercial venture, except as provided in Subsection (b) or R657-3-36.~~

~~(b) The division may issue a certificate of registration to a zoo, circus, amusement park, aviary, aquarium, or film company to import, collect or possess live species of animals classified as prohibited if, in the opinion of the division, the importation for a commercial use is beneficial to wildlife or significantly benefits the general public without material detriment to wildlife.~~

~~(c) The division's authority to issue a certificate of registration to a zoo, circus, amusement park, aquarium, aviary or film company under this Subsection is restricted to those facilities that keep the prohibited species of animals in a park, building, cage, enclosure or other structure for the primary purpose of public exhibition, viewing, or filming.~~

~~(5) An entry permit, and a certificate of veterinary inspection are required by the Department of Agriculture to import a live animal classified as noncontrolled, controlled or prohibited.~~

**~~R657-3-19. Collection, Importation or Possession of Dead Animals or Their Parts for a Commercial Use.~~**

~~(1) Pursuant to Sections 23-13-13 and 23-20-3, a person may not collect, import or possess any dead animal or its parts for a commercial use or commercial venture for financial gain, unless otherwise provided in the rules and proclamations of the Wildlife Board, or a memorandum of understanding with the division.~~

~~(2) The restrictions in Subsection (1) do not apply to the following:~~

~~(a) the commercial use of a dead coyote, jackrabbit, muskrat, raccoon, or its parts;~~

~~(b) a business entity that has obtained a certificate of registration from the division to conduct nuisance wildlife control or carcass removal; and~~

~~(c) dead animals sold or traded for educational use.~~

**~~R657-3-20. Collection, Importation or Possession for Scientific or Educational Use.~~**

~~(1) A person may collect, import or possess live or dead animals or their parts for a scientific or educational use only as follows:~~

~~(a) Certificates of registration are not issued for collecting, importing or possessing live or dead animals classified as prohibited, except as provided in Subsection (b), or R657-3-36.~~

~~(b) The division may issue a certificate of registration to a university, college, governmental agency, bona fide nonprofit institution, or a person involved in wildlife research to collect, import or possess live or dead animals classified as prohibited if, in the opinion of the division, the scientific or educational use is beneficial to wildlife or significantly benefits the general public without material detriment to wildlife.~~

~~(2) A person shall obtain a certificate of registration before collecting, importing or possessing live or dead animals or their parts classified as controlled.~~

~~(3) A certificate of registration is not required to collect, import or possess live or dead animals classified as noncontrolled.~~

**~~R657-3-21. Classification and Specific Rules for Birds.~~**

~~(1) The following birds are classified as noncontrolled for collection, importation and possession:~~

~~(a) Penguins, family Spheniscidae, (All species);~~

~~(b) Megapodes (Mound builders), family Megapodiidae (All species);~~

~~(c) Coturnix quail, family Phasianidae (Coturnix spp.);~~

~~(d) Buttonquails, family Turnicidae (All species);~~

~~(e) Turacos (including Plantain eaters and Go-away birds), family Musophagidae (All species);~~

~~(f) Pigeons and Doves, family Columbidae (All species not native to North America);~~

~~(g) Parrots, family Psittacidae (All species not native to North America);~~

~~(h) Rollers, family Coraciidae (All species);~~

~~(i) Motmots, family Momotidae (All species);~~

~~(j) Hornbills, family Bucerotidae (All species);~~

~~(k) Barbets, families Capitonidae and Rhamphastidae (Capitoninae) (All species not native to North America);~~

~~(l) Toucans, families Ramphastidae and Rhamphastidae (Ramphastinae) (All species not native to North America);~~

~~(m) Broadbills, family Eurylaimidae (All species);~~

~~(n) Cotingas, family Cotingidae (All species);~~

~~(o) Honeyeaters, Meliphagidae Family (All species);~~

~~(p) Leafbirds and Fairy bluebirds, family Irenidae (Irena spp., Chloropsis spp., and Aegithina spp.);~~

~~(q) Babblers, family Timaliidae (All species);~~

~~(r) White-eyes, family Zosteropidae (All species);~~

~~(s) Sunbirds, family Nectariniidae (All species);~~

~~(t) Sugarbirds, family Promeropidae (All species);~~

~~(u) Weaver finches, family Ploceidae (All species);~~

~~(v) Estrildid finches (Waxbills, Mannikins, and Munias) family Estrildidae, (Estrildidae) (Estrildinae) (All species); and~~

~~(w) Vidua finches (Indigobirds and Whydahs) family Viduidae, Estrildidae (Viduinæ) (All species);~~

~~(x) Finches and Canaries, family Fringillidae (All species not native to North America);~~

~~(y) Tanagers (including Swallow tanager), family Thraupidae (All species not native to North America); and~~

~~(z) Icterids (Troupials, Blackbirds, Orioles, etc.), family Icteridae (All species not native to North America, except Central and South American Cowbirds).~~

~~(2) The following birds are classified as noncontrolled for collection and possession, and controlled for importation:~~

~~(a) Cowbirds (Molothrus spp.) family Icteridae;~~

~~(b) European Starling, family Sturnidae (Sturnus vulgaris);~~

~~(c) House (English) Sparrow, family Passeridae (Passer domesticus); and~~

~~(d) Domestic Pigeon (Rock Dove) (Columba livia) family Columbidae.~~

~~(3) The following birds are classified as prohibited for collection, importation and possession:~~

~~(a) Ocellated turkey, family Phasianidae, (Meleagris ocellata).~~

~~(4) All species and subspecies of birds and their parts, including feathers, not listed in Subsection (1) through Subsection (3);~~

~~\_\_\_\_\_ (a) and not listed in Appendix I or II of CITES are classified as prohibited for collection and controlled for importation and possession;~~

~~\_\_\_\_\_ (b) and listed in Appendix I of CITES are classified as prohibited for collection and importation and controlled for possession;~~

~~\_\_\_\_\_ (c) and listed in Appendix II of CITES are classified as prohibited for collection and controlled for importation and possession;~~

~~\_\_\_\_\_ (d) destruction of resident Canada goose eggs and nests is allowed provided the landowner complies with R657-3-8(3).~~

~~\_\_\_\_\_ (5) Destruction of resident Canada goose eggs and nests is allowed provided the landowner complies with R657-3-8(3).~~

#### **R657-3-22. Classification and Specific Rules for Crustaceans and Mollusks.**

~~\_\_\_\_\_ (1) Crustaceans are classified as follows:~~

~~\_\_\_\_\_ (a) Asiatic (Mitten) Crab, family Grapsidae (Eriocheir, All species) are prohibited for collection, importation and possession;~~

~~\_\_\_\_\_ (b) Brine shrimp, family Mysidae (All species) are classified as controlled for collection, and noncontrolled for importation and possession;~~

~~\_\_\_\_\_ (c) Crayfish, families Astacidae, Cambaridae and Parastacidae (All species except Cherax quadricarinatus) are prohibited for collection, importation and possession;~~

~~\_\_\_\_\_ (d) Pilose crayfish, (Pacifastacus gambelii) is prohibited for collection, importation, and possession;~~

~~\_\_\_\_\_ (e) Daphnia, family Daphnidae (Daphnia lumholtzi) is prohibited for collection, importation and possession;~~

~~\_\_\_\_\_ (f) Fishhook water flea, family Cercopagidae (Cercopagis pengoi) is prohibited for collection, importation and possession; and~~

~~\_\_\_\_\_ (g) Spiny water flea, family Cercopagidae (Bythotrephes cederstroemii) is prohibited for collection, importation and possession;~~

~~\_\_\_\_\_ (h) Stygobromus utahensis, family Crangonnyetidae is prohibited for collection, importation and possession.~~

~~\_\_\_\_\_ (2) Mollusks are classified as follows:~~

~~\_\_\_\_\_ (a) Family Achatinidae (All species) is prohibited for collection, importation and possession;~~

~~\_\_\_\_\_ (b) Brian Head mountainsnail, family Oreohelicideae (Oreohelix parawanensis) is controlled for collection, importation and possession;~~

~~\_\_\_\_\_ (c) Dark falsemussel, (Mytilopsis leucophaeta) family Dreissenidae is controlled for collection, importation and possession;~~

~~\_\_\_\_\_ (d) Desert mountainsnail, family Oreohelicideae (Oreohelix peripherica) is controlled for collection, importation and possession;~~

~~\_\_\_\_\_ (e) Desert springsnail, (Pyrgulopsis deserta) family Hydrobiidae is controlled for collection, importation and possession;~~

~~\_\_\_\_\_ (f) Desert valvata, (Valvata utahensis) family Valvatidae is prohibited for collection, importation and possession;~~

~~\_\_\_\_\_ (g) Eureka mountainsnail, (Oreohelix eurekaensis) family Oreohelicideae is controlled for collection, importation and possession;~~

~~\_\_\_\_\_ (h) Fat whorled pondsnail, (Stagnicola bonnevillensis) family Lymnaeidae is controlled for collection, importation and possession;~~

~~\_\_\_\_\_ (i) Fish Lake physa, (Physella microstriata) family Physidae is controlled for collection, importation and possession;~~

~~\_\_\_\_\_ (j) Fish Springs marshsnail, (Stagnicola pilsbryi) family Lymnaeidae is prohibited for collection, importation and possession;~~

~~\_\_\_\_\_ (k) Floater, (Anodonta spp. All species) family Anodontidae is controlled for collection, importation and possession;~~

~~\_\_\_\_\_ (l) Glossy valvata, (Valvata humeralis) family Valvatidae is controlled for collection, importation and possession;~~

~~\_\_\_\_\_ (m) Kanab ambersnail, (Oxyloma kanabense) family Succineidae is prohibited for collection, importation and possession;~~

~~\_\_\_\_\_ (n) Lyrate mountainsnail, (Oreohelix haydeni) family Oreohelicideae is controlled for collection, importation and possession;~~

~~\_\_\_\_\_ (o) New Zealand mudsnail, (Potamopyrgus antipodarum) family Hydrobiidae is prohibited for collection, importation and possession;~~

~~\_\_\_\_\_ (p) Quagga mussel, (Dreissena bugenses) family Dreissenidae is prohibited for collection, importation and possession;~~

~~\_\_\_\_\_ (q) Red rimmed melania, (Melanoides tuberculatus) family Thiaridae is prohibited for collection, importation and possession;~~

~~\_\_\_\_\_ (r) Springsnails or pyrgs (Pyrgulopsis spp., All species) family Hydrobiidae are controlled for collection, importation and possession.~~

~~\_\_\_\_\_ (s) Southern tightcoil, (Ogaridiscus subrupicola) family Zonitidae is controlled for collection, importation and possession;~~

~~\_\_\_\_\_ (t) Spruce snail, (Microphysula ingersolli) family Thysanophoridae is controlled for collection, importation and possession;~~

~~\_\_\_\_\_ (u) Thickshell pondsnail, (Stagnicola utahensis) family Lymnaeidae is prohibited for collection, importation and possession;~~

~~\_\_\_\_\_ (v) Utah physa, (Physella utahensis) family Physidae is controlled for collection, importation and possession;~~

~~\_\_\_\_\_ (w) Western pearlshell, (Margaritifera falcata) family Margaritiferidae is prohibited for collection, importation and possession;~~

~~\_\_\_\_\_ (x) Wet rock physa, (Physella zionis) family Physidae is controlled for collection, importation and possession;~~

~~\_\_\_\_\_ (y) Yavapai mountainsnail, (Oreohelix yavapai) family Oreohelicideae is controlled for collection, importation and possession; and~~

~~\_\_\_\_\_ (z) Zebra mussel, (Dreissena polymorpha) family Dreissenidae is prohibited for collection, importation and possession.~~

~~\_\_\_\_\_ (3) All native species and subspecies of crustaceans and mollusks not listed in Subsection (1) and (2), excluding ornamental aquatic animal species, are classified as controlled for collection, importation and possession.~~

~~\_\_\_\_\_ (4) All nonnative species and subspecies of crustaceans and mollusks not listed in Subsection (1) and (2), excluding ornamental aquatic animal species, are classified as prohibited for collection, importation and possession.~~

#### **R657-3-23. Classification and Specific Rules for Fish.**

~~\_\_\_\_\_ (1) All species of fish listed in Subsections (2) through (30) are classified as prohibited for collection, importation and possession, except:~~

~~\_\_\_\_\_ (a) Koi, (Cyprinus carpio) family Cyprinidae is prohibited for collection, and noncontrolled for importation and possession;~~

~~\_\_\_\_\_ (b) all species and subspecies of ornamental aquatic animal species not listed in Subsections (2) through (30) are classified as prohibited for collection, and noncontrolled for importation and possession; and~~

~~\_\_\_\_\_ (c) all native and nonnative species and subspecies of fish that are not ornamental aquatic animal species and not listed in Subsections (2) through (30) are classified as prohibited for collection, and controlled for importation and possession.~~

## NOTICES OF PROPOSED RULES

~~(2) Carp, including hybrids, family Cyprinidae (All species, except Koi);~~  
~~(3) Catfish:~~  
~~(a) Blue catfish, (*Ictalurus fuscatus*) family Ictaluridae;~~  
~~(b) Flathead catfish, (*Pylodictus olivaris*) family Ictaluridae;~~  
~~(c) Giant walking catfish (airsac), family Heteropneustidae (All species);~~  
~~(d) Labyrinth catfish (walking), family Clariidae (All species); and~~  
~~(e) Parasitic catfish (candiru, earnero) family Trichomycteridae (All species);~~  
~~(4) Herring:~~  
~~(a) Alewife, (*Alosa pseudoharengus*) family Clupeidae; and~~  
~~(b) Gizzard shad, (*Dorosoma cepedianum*) family Clupeidae;~~  
~~(5) Killifish, family Fundulidae (All species);~~  
~~(6) Pike killifish, (*Belonesox belizanus*) family Poeciliidae;~~  
~~(7) Minnows:~~  
~~(a) Bonytail, (*Gila elegans*) family Cyprinidae;~~  
~~(b) Colorado pikeminnow, (*Ptychocheilus lucius*) family Cyprinidae;~~  
~~(c) Creek chub, (*Semotilus atromaculatus*) family Cyprinidae;~~  
~~(d) Emerald shiner, (*Notropis atherinoides*) family Cyprinidae;~~  
~~(e) Humpback chub, (*Gila cypha*) family Cyprinidae;~~  
~~(f) Least chub, (*Iotichthys phlegathontis*) family Cyprinidae;~~  
~~(g) Northern leatherside chub, (*Lepidomeda copei*) family Cyprinidae;~~  
~~(h) Red shiner, (*Cyprinella lutrensis*) family Cyprinidae;~~  
~~(i) Redside shiner, (*Richardsonius balteatus*) family Cyprinidae;~~  
~~(j) Roundtail chub, (*Gila robusta*) family Cyprinidae;~~  
~~(k) Sand shiner, (*Notropis stramineus*) family Cyprinidae;~~  
~~(l) Southern leatherside chub, (*Lepidomeda aliciae*) family Cyprinidae;~~  
~~(m) Utah chub, (*Gila atraria*) family Cyprinidae;~~  
~~(n) Virgin River chub, (*Gila seminuda*) family Cyprinidae; and~~  
~~(o) Virgin spinedace, Cyprinidae Family (*Lepidomeda mollispinis*);~~  
~~(p) Woundfin, (*Plagopterus argentissimus*) family Cyprinidae;~~  
~~(8) Burbot, (*Lota lota*) family Lotidae;~~  
~~(9) Suckers:~~  
~~(a) Bluehead sucker, (*Catostomus discobolus*) family Catostomidae;~~  
~~(b) Desert sucker, (*Catostomus clarki*) family Catostomidae;~~  
~~(c) Flannelmouth sucker, (*Catostomus latipinnis*) family Catostomidae;~~  
~~(d) June sucker, (*Chasmistes liorus*) family Catostomidae;~~  
~~(e) Razorback sucker, (*Xyrauchen texanus*) family Catostomidae;~~  
~~(f) Utah sucker, (*Catostomus ardens*) family Catostomidae; and~~  
~~(g) White sucker, (*Catostomus commersoni*) family Catostomidae;~~

~~(10) White perch, (*Morone americana*) family Moronidae;~~  
~~(11) Cutthroat trout, (*Oncorhynchus clarki*) (All subspecies) family Salmonidae;~~  
~~(12) Bowfin, (All species) family Amiidae;~~  
~~(13) Bull shark, (*Carcharhinus leucas*) family Carcharhinidae;~~  
~~(14) Drum (All freshwater species), family Sciaenidae;~~  
~~(15) Gar, (All species) family Lepidosteidae;~~  
~~(16) Jaguar guapote, (*Cichlasoma managuense*) family Cichlidae;~~  
~~(17) Lamprey, (All species) family Petromyzontidae;~~  
~~(18) Mexican tetra, (*Astyanax mexicanus*, except blind form) family Characidae;~~  
~~(19) Mooneye, (All species) family Hiodontidae;~~  
~~(20) Nile perch, (*Lates, luciolates*) (All species) family Centropomidae;~~  
~~(21) Northern pike, (*Esox lucius*) family Esocidae;~~  
~~(22) Piranha, (*Serrasalmus*, All species) family Characidae;~~  
~~(23) Round goby, (*Neogobius melanostomus*) family Gobiidae;~~  
~~(24) Ruffe, (*Gymnocephalus cernuus*) family Percidae;~~  
~~(25) Snakehead, (All species) family Channidae;~~  
~~(26) Stickleback, (All species) family Gasterosteidae;~~  
~~(27) Stingray (All freshwater species) family Dasyatidae;~~  
~~(28) Swamp eel, (All species) family Synbranchidae;~~  
~~(29) Tiger fish or guavinus, (*Hoplias malabaricus*) family Erythrinidae;~~  
~~(30) Tilapia, (*Tilapia* and *Sarotherodon*) (All species) family Cichlidae;~~

### **R657-3-24. Classification and Specific Rules for Mammals.**

~~(1) Mammals are classified as follows:~~  
~~(a) Monotremes (platypus and spiny anteaters), (All species) families Ornithorhynchidae and Tachyglossidae are prohibited for collection, and controlled for importation and possession;~~  
~~(b) Marsupials are classified as follows:~~  
~~(i) Virginia opossum, (*Didelphis virginiana*) family Didelphidae is noncontrolled for collection, prohibited for importation and controlled for possession;~~  
~~(ii) Wallabies, wallaroos and kangaroos, (All species) family Macropodidae are prohibited for collection, importation and possession;~~  
~~(c) Bats and flying foxes (All families, All species) (order Chiroptera), are prohibited for collection, importation and possession;~~  
~~(d) Insectivores (all groups, All species) are controlled for collection, importation and possession;~~  
~~(e) Hedgehogs (*Erinaceidae*) except white bellied hedgehogs are controlled for collection, importation and possession;~~  
~~(f) Shrews, (*Sorex* spp. and *Notisorex* spp.) family Soricidae are controlled for collection, importation and possession;~~  
~~(g) Anteaters, sloths and armadillos (All families, All species) (order Xenarthra), are prohibited for collection, and controlled for importation and possession;~~  
~~(h) Aardvark (*Oryzeteropus afer*) family Oryzeteropodidae is prohibited for collection, and controlled for importation and possession;~~  
~~(i) Pangolins or scaly anteaters (*Manis* spp.,) (order Philodota) are prohibited for collection and importation, and controlled for possession;~~

~~(j) Tree shrews (All species) family Tupalidae are prohibited for collection, and controlled for importation and possession;~~

~~(k) Lagomorphs (rabbits, hares and pikas) are classified as follows:~~

~~(i) Jackrabbits, (*Lepus* spp.) family Leporidae are nonecontrolled for collection, and controlled for importation and possession;~~

~~(ii) Cottontails, (*Sylvilagus* spp.) family Leporidae are prohibited for collection, and controlled for importation and possession;~~

~~(iii) Pygmy rabbit, (*Brachylagus idahoensis*) family Leporidae is prohibited for collection, and controlled for importation and possession;~~

~~(iv) Snowshoe hare, (*Lepus americanus*) family Leporidae is prohibited for collection, and controlled for importation and possession;~~

~~(v) Pika, (*Ochotona princeps*) family Ochotonidae is controlled for collection, importation and possession;~~

~~(l) Elephant shrews (All species) family Macroscelididae are prohibited for collection, and controlled for importation and possession;~~

~~(m) Rodents (order Rodentia) are classified as follows:~~

~~(i) Beaver, (*Castor canadensis*) family Castoridae is controlled for collection, importation and possession;~~

~~(ii) Muskrat, (*Ondatra zibethicus*) family Muridae are nonecontrolled for collection, and controlled for importation and possession;~~

~~(iii) Deer mice and related species, (*Peromyscus* spp.) family Muridae are controlled for collection, importation and possession;~~

~~(iv) Grasshopper mice, (*Onychomys* spp.) family Muridae are controlled for collection, importation and possession;~~

~~(v) Voles (All genera and species), family Muridae, subfamily Microtinae are controlled for collection, importation and possession;~~

~~(vi) Western harvest mouse, (*Reithrodontomys megalotis*) family Muridae is controlled for collection, importation and possession;~~

~~(vii) Woodrats, (*Neotoma* spp.) family Muridae are controlled for collection, importation and possession;~~

~~(viii) Nutria or coypu, (*Myocastor coypus*) family Myocastoridae is nonecontrolled for collection, prohibited for importation and controlled for possession;~~

~~(ix) Pocket gophers (All species, except the Idaho pocket gopher (*Thomomys idahoensis*)) family Geomyidae are nonecontrolled for collection, and controlled for importation and possession;~~

~~(x) Pocket mice, (*Perognathus* spp. and *Chaetodipus intermedius*) family Heteromyidae are controlled for collection, importation and possession;~~

~~(xi) Dark kangaroo mouse, (*Microdipodops pallidus*) family Heteromyidae is controlled for collection, importation and possession;~~

~~(xii) Kangaroo rats, (*Dipodomys* spp.) family Heteromyidae are controlled for collection, importation and possession;~~

~~(xiii) Abert's squirrel, (*Sciurus aberti*) family Sciuridae is prohibited for collection, importation and possession;~~

~~(xiv) Black tailed prairie dog, (*Cynomys ludovicianus*) family Sciuridae is controlled for collection, and prohibited for importation and possession;~~

~~(xv) Gunnison's prairie dog, (*Cynomys gunnisoni*) family Sciuridae is controlled for collection, importation and possession;~~

~~(xvi) Utah prairie dog, (*Cynomys parvidens*) family Sciuridae is controlled for lethal take, and prohibited for live collection, importation and possession;~~

~~(xvii) White tailed prairie dog, (*Cynomys leucurus*) family Sciuridae is controlled for collection, importation and possession;~~

~~(xviii) Chipmunks, All species except yellow pine chipmunk (*Neotamias amoenus*) family Sciuridae are nonecontrolled for collection, and controlled for importation and possession;~~

~~(xix) Yellow pine chipmunk, (*neotamias amoenus*) family Sciuridae is controlled for collection, importation and possession;~~

~~(xx) Northern flying squirrel, (*Glaucomys sabrinus*) family Sciuridae is controlled for collection, importation and possession;~~

~~(xxi) Southern flying squirrel, (*Glaucomys volans*) family Sciuridae is prohibited for collection, importation and possession;~~

~~(xxii) Fox squirrel or eastern fox squirrel (*Sciurus niger*) family Sciuridae is prohibited for collection, importation, and possession;~~

~~(xxiii) Ground squirrel and rock squirrel, and antelope squirrels (All species, All genera), family Sciuridae are controlled for collection, importation and possession, except nuisance squirrels which are nonecontrolled for collection;~~

~~(xxiv) Red squirrel, (*Tamiasciurus hudsonicus*) family Sciuridae are controlled for collection, importation and possession, except for nuisance animals, which are nonecontrolled for collection;~~

~~(xxv) Yellow bellied marmot, (*Marmota flaviventris*) family Sciuridae is controlled for collection, importation and possession;~~

~~(xxvi) Western jumping mouse, (*Zapus princeps*) family Zapodidae is controlled for collection, importation and possession;~~

~~(xxvii) Poreupine, (*Erethizon dorsatum*) family Erethizontidae is controlled for collection, importation and possession;~~

~~(xxviii) Degus and other South American rodents, family Oetodontidae (All species) are prohibited for collection, importation and possession;~~

~~(xxvix) Dormice, families Gliridae and Selevinidae (All species) are prohibited for collection, importation and possession;~~

~~(xxx) African pouched rats, family Muridae (All species) are prohibited for collection, importation and possession;~~

~~(xxxi) Jirds, (*Meriones* spp.) family Muridae are prohibited for collection, importation and possession;~~

~~(xxxii) Mice, (All species of *Mus*) family Muridae, except *Mus musculus* are prohibited for collection, importation and possession;~~

~~(xxxiii) Spiny mice, (*Acomys* spp.) family Muridae are prohibited for collection, importation and possession;~~

~~(xxxiv) Hyraxes (All species) family Procaviidae are prohibited for collection, and controlled for importation and possession;~~

~~(xxxv) Idaho pocket gopher, (*Thomomys idahoensis*) family Geomyidae is controlled for collection, importation and possession;~~

~~(n) Hoofed mammals (*Artiodactyla* and *Perissodactyla*) are classified as follows:~~

~~(i) American bison or "buffalo" wild and free ranging, (*Bos bison*) family Bovidae is prohibited for collection, importation and possession;~~

~~(ii) Collared peccary or javelina, (*Tayassu tajacu*) family Tayassuidae is prohibited for collection, importation and possession;~~



~~(iii) Axis deer, (*Cervus axis*) family Cervidae is prohibited for collection, importation and possession;~~

~~(iv) Caribou, wild and free ranging, (*Rangifer tarandus*) family Cervidae is prohibited for collection, importation and possession;~~

~~(v) Caribou, captive bred, (*Rangifer tarandus*) family Cervidae is prohibited for collection, and controlled for importation and possession;~~

~~(vi) Elk or red deer (*Cervus elaphus*), wild and free ranging, family Cervidae is prohibited for collection, importation and possession;~~

~~(vii) Fallow deer, (*Cervus dama*), wild and free ranging, family Cervidae is prohibited for collection, importation and possession;~~

~~(viii) Fallow deer, (*Cervus dama*) captive bred, family Cervidae is prohibited for collection, and controlled for importation and possession;~~

~~(ix) Moose, (*Alces alces*) family Cervidae is prohibited for collection, importation and possession;~~

~~(x) Mule deer, (*Odocoileus hemionus*) family Cervidae is prohibited for collection, importation and possession;~~

~~(xi) White tailed deer (*Odocoileus virginianus*), family Cervidae is prohibited for collection, importation and possession;~~

~~(xii) Rusa deer, (*Cervus timorensis*) family Cervidae is prohibited for collection, importation and possession;~~

~~(xiii) Sambar deer, (*Cervus unicolor*) family Cervidae is prohibited for collection, importation and possession;~~

~~(xiv) Sika deer, (*Cervus nippon*) family Cervidae is prohibited for collection, importation and possession;~~

~~(xv) Muskox, (*Ovibos moschatus*), wild and free ranging, family Bovidae is prohibited for collection, importation and possession;~~

~~(xvi) Muskox, (*Ovibos moschatus*), captive bred, family Bovidae is prohibited for collection, and controlled for importation and possession;~~

~~(xvii) Pronghorn, (*Antilocapra americana*) family Antilocapridae is prohibited for collection, importation and possession;~~

~~(xviii) Barbary sheep or aoudad, (*Ammotragus lervia*) family Bovidae is prohibited for collection, importation and possession;~~

~~(xix) Bighorn sheep (*Ovis canadensis*) (including hybrids) family Bovidae are prohibited for collection, importation and possession;~~

~~(xx) Dall's and Stone's sheep (*Ovis dalli*) (including hybrids) family Bovidae are prohibited for collection, importation and possession;~~

~~(xxi) Exotic wild sheep (including mouflon, *Ovis musimon*; Asiatic or red sheep, *Ovis orientalis*; urial, *Ovis vignei*; argali, *Ovis ammon*; and snow sheep, *Ovis nivicola*), including hybrids, family Bovidae are prohibited for collection, importation and possession;~~

~~(xxii) Rocky Mountain goat, (*Oreamnos americanus*) family Bovidae is prohibited for collection, importation and possession;~~

~~(xxiii) Ibex, (*Capra ibex*) family Bovidae is prohibited for collection, importation and possession;~~

~~(xxiv) Wild boar or pig (*Sus scrofa*), including hybrids, are prohibited for collection, importation and possession;~~

~~(c) Carnivores (*Carnivora*) are classified as follows:~~

~~(i) Bears, (All species) family Ursidae are prohibited for collection, importation and possession;~~

~~(ii) Coyote, (*Canis latrans*) family Canidae is prohibited for importation, and is controlled by the Utah Department of Agriculture for collection and possession;~~

~~(iii) Fennec, (*Vulpes zerda*) family Canidae is prohibited for collection, importation and possession;~~

~~(iv) Gray fox, (*Urocyon cinereoargenteus*) family Canidae is prohibited for collection, importation and possession;~~

~~(v) Kit fox, (*Vulpes macrotis*) family Canidae is prohibited for collection, importation and possession;~~

~~(vi) Red fox, (*Vulpes vulpes*) family Canidae, as applied to animals in the wild or taken from the wild, is noncontrolled for lethal take and prohibited for live collection, possession, or importation;~~

~~(vii) Gray wolf, (*Canis lupus*) except hybrids with domestic dogs, family Canidae is prohibited for collection, importation and possession;~~

~~(viii) Wild Cats (All species, including hybrids) family Felidae are prohibited for collection, importation, and possession;~~

~~(ix) Bobcat, (*Lynx rufus*) wild and free ranging, family Felidae is prohibited for collection, importation and possession;~~

~~(x) Bobcat, (*Lynx rufus*) captive bred, family Felidae is prohibited for collection, and controlled for importation and possession;~~

~~(xi) Cougar, puma or mountain lion, (*Puma concolor*) family Felidae is prohibited for collection, importation and possession;~~

~~(xii) Canada lynx, (*Lynx lynx*) wild and free ranging, family Felidae is prohibited for collection, importation and possession;~~

~~(xiii) Eurasian lynx, (*Lynx lynx*) captive bred, family Felidae is prohibited for collection, and controlled for importation and possession;~~

~~(xiv) American badger, (*Taxidea taxus*) family Mustelidae is prohibited for collection, importation and possession;~~

~~(xv) Black footed ferret, (*Mustela nigripes*) family Mustelidae is prohibited for collection, importation or possession;~~

~~(xvi) Ermine, stout, or short tailed weasel, (*Mustela erminea*) family Mustelidae is prohibited for collection, importation and possession;~~

~~(xvii) Long tailed weasel (*Mustela frenata*) family Mustelidae is prohibited for collection, importation and possession;~~

~~(xviii) American marten, (*Martes americana*) wild and free ranging, family Mustelidae is prohibited for collection, importation and possession;~~

~~(xix) American marten, (*Martes americana*) captive bred, family Mustelidae is prohibited for collection, controlled for importation and possession;~~

~~(xx) American mink, (*Neovison vison*) except domestic forms, family Mustelidae is prohibited for collection, importation and possession;~~

~~(xxi) Northern river otter, (*Lontra canadensis*) family Mustelidae is prohibited for collection, importation and possession;~~

~~(xxii) Striped skunk, (*Mephitis mephitis*) family Mephitidae is prohibited for collection, importation, and possession, except nuisance skinks, which are noncontrolled for collection;~~

~~(xxiii) Western spotted skunk, (*Spilogale gracilis*) family Mephitidae is prohibited for collection, importation, and possession;~~

~~(xxiv) Wolverine, (*Gulo gulo*) family Mustelidae is prohibited for collection, importation and possession;~~

~~(xxv) Coatis, (*Nasua* spp. and *Nasuella* spp.) family Procyonidae are prohibited for collection, importation and possession;~~

~~(xxvi) Kinkajou, (*Potos flavus*) family Procyonidae is prohibited for collection, importation and possession;~~

~~(xxvii) Northern Raccoon, (*Procyon lotor*) family Procyonidae is prohibited for importation, and controlled by the Department of Agriculture for collection and possession;~~

~~(xxviii) Ringtail, (*Bassariscus astutus*) family Procyonidae is prohibited for collection, importation and possession;~~

~~(xxix) Civets, genets and related forms, (All species) family Viverridae are prohibited for collection, importation and possession;~~

~~(p) Primates are classified as follows:~~

~~(i) Lemurs, (All species) family Lemuridae are prohibited for collection, importation and possession;~~

~~(ii) Dwarf and mouse lemurs, (All species) family Cheirogaleidae are prohibited for collection, importation and possession;~~

~~(iii) Indri and sifakas, (All species) family Indridae are prohibited for collection, importation and possession;~~

~~(iv) Aye aye, (*Daubentonia madagascensis*) family Daubentonidae is prohibited for collection, importation and possession;~~

~~(v) Bush babies, pottos and lorises, (All species) family Lorisidae are prohibited for collection, importation and possession;~~

~~(vi) Tarsiers, (All species) family Tarsiidae are prohibited for collection, importation and possession;~~

~~(vii) New World monkeys, (All species) family Cebidae are prohibited for collection, importation and possession;~~

~~(viii) Marmosets and tamarins, (All species) family Callitrichidae are prohibited for collection, importation and possession;~~

~~(ix) Old world monkeys, (All species) which includes baboons and macaques, family Cercopithecidae are prohibited for collection, importation and possession;~~

~~(x) Great apes (All species), which include gorillas, chimpanzees and orangutans, family Hominidae are prohibited for collection, importation and possession;~~

~~(xi) Lesser apes (Siamang and gibbons, All species), family Hylobatidae are prohibited for collection, importation and possession;~~

~~(2) All species and subspecies of mammals and their parts, not listed in Subsection (1):~~

~~(a) and not listed in Appendix I or II of CITES are classified as prohibited for collection and controlled for importation and possession;~~

~~(b) and listed in Appendix I of CITES are classified as prohibited for collection and importation and controlled for possession;~~

~~(c) and listed in Appendix II of CITES are classified as prohibited for collection and controlled for importation and possession.~~

#### **R657-3-25. Importation of Animals into Utah.**

~~(1) As provided in Rule R58-1, the Department of Agriculture and Food requires a valid certificate of veterinary inspection and an entry permit number before any live animal may be imported into Utah.~~

~~(2)(a) All live aquatic animals, including marine aquatic animals, imported into Utah and not destined for an aquaculture facility or fee fishing facility must be accompanied by the following documentation:~~

~~(i) common or scientific names of the aquatic animals;~~

~~(ii) name and address of the consignor and consignee;~~

~~(iii) origin of shipment;~~

~~(iv) final destination;~~

~~(v) number of aquatic animals shipped; and~~

~~(vi) certificate of veterinary inspection, Utah entry permit number issued by the Utah Department of Agriculture and Food, and any other health certifications.~~

~~(b) A person may import live fish destined for an aquaculture facility or fee fishing facility only as provided by Title 4, Chapter 37, Aquaculture Act and the rules promulgated there under.~~

~~(3) Subsection (2)(a) does not apply to dead fish or crayfish caught in Lake Powell, Bear Lake, or Flaming Gorge reservoirs under the authority of a valid fishing license and in accordance with Rule R657-13 and the proclamation of the Wildlife Board for taking fish and crayfish.~~

#### **R657-3-26. Transporting Live Animals Through Utah.**

~~(1) Any controlled or prohibited species of animal may be transported through Utah without a certificate of registration if:~~

~~(a) the animal remains in Utah no more than 72 hours; and~~

~~(b) the animal is not sold, transferred, exhibited, displayed, or used for a commercial venture while in Utah; and~~

~~(c) the animal is a raptor used for falconry purposes in compliance with the requirements in R657-20.~~

~~(2) A certificate of veterinary inspection is required from the state of origin as provided in Rule R58-1 and proof of legal possession must accompany the animal.~~

~~(3) If delays in transportation arise, an extension of the 72 hours may be requested by contacting the Wildlife Registration Office in Salt Lake City.~~

~~(4) None of the provisions in this section will be construed to supersede R657-20-14 and R657-20-30.~~

#### **R657-3-27. Importing Animals into Utah for Processing.**

~~(1) A person shipping animals directly to a state or federally regulated establishment for immediate euthanasia and processing is not required to obtain a certificate of registration or certificate of veterinary inspection provided the animals or their parts are accompanied by a waybill or other proof of legal ownership describing the animals, their source, and indicating the destination.~~

~~(2) Any water used to hold or transport fish may not be emptied into a stream, lake, or other natural body of water.~~

#### **R657-3-28. Transfer of Possession.**

~~(1) A person may possess an animal classified as prohibited or controlled only after applying for and obtaining a certificate of registration from the division or Wildlife Board as provided in this rule.~~

~~(2) Any person who possesses an animal classified as prohibited or controlled may transfer possession of that animal only to a person who has first applied for and obtained a certificate of registration for that animal from the division or Wildlife Board.~~

~~(3) The division may issue a certificate of registration granting the transfer and possession of that animal only if the applicant meets the issuance criteria provided in Section R657-3-14.~~

~~(4) A certificate of registration does not provide the holder any rights of succession.~~

#### **R657-3-29. Propagation.**

~~(1) A person may propagate animals classified as nonecontrolled for possession.~~

~~(2) A person may propagate animals classified as controlled for possession only after obtaining a certificate of~~

registration from the division, or as otherwise authorized in Sections R657-3-30, R657-3-31, and R657-3-32.

~~(3) A person may not propagate animals classified as prohibited for possession, except as authorized in Sections R657-3-30, R657-3-31, R657-3-32, and R657-3-36.~~

**R657-3-30. Propagation of Raptors.**

~~(1) A person may propagate raptors only as provided in this section, R657-20-30, and 50 CFR 21.30, 2011 which are incorporated herein by reference. All applicants for captive breeding permits must become familiar with this rule and other applicable state and federal regulations.~~

~~(2) A person must apply for a federal raptor propagation permit and a certificate of registration from the division to propagate raptors.~~

~~(3) If the applicant requests authority to use raptors taken from the wild, the division's avian program coordinator must determine the following:~~

~~(a) whether issuance of the permit would have significant effect on any wild population of raptors;~~

~~(b) the length of time the wild caught raptor has been in captivity;~~

~~(c) whether suitable captive stock is available; and~~

~~(d) whether wild stock is needed to enhance the genetic variability of captive stock; and~~

~~(e) whether a federal permit to use a wild caught raptor for propagation has been issued.~~

~~(4) Raptors may not be taken from the wild for captive breeding, except as provided in Subsection (3) and R657-20-30.~~

~~(5) A person must obtain authorization from the division before importing raptors or raptor semen into Utah. The authorization shall be noted on the certificate of registration.~~

~~(6) A person may sell a captive-bred raptor properly marked with a band approved by the U.S. Fish and Wildlife Service or issued by the U.S. Fish and Wildlife Service to a resident raptor breeder or falconer who has a valid Utah falconry certificate of registration or to a nonresident state and federally licensed apprentice, general or master class falconer or raptor breeder.~~

~~(7) A permittee may not purchase, sell or barter any raptor eggs, any raptors taken from the wild, any raptor semen collected from the wild, or any raptors hatched from eggs taken from the wild.~~

~~(8) A raptor imported into Utah is required to have:~~

~~(a) a certificate of veterinary inspection from the state, tribe, country or territory of origin; and~~

~~(b) an import authorization number issued through the Utah Department of Agriculture and Food.~~

~~(9) A permittee may use raptors held in possession for propagation in the sport of falconry only if such use is designated on both the permittee's propagation permit and the falconry certificate of registration.~~

~~(a) Formal approval from the division is required to transfer a raptor from a falconry certificate of registration to propagation use that exceeds 8 months in duration.~~

~~(b) A licensed raptor propagator may temporarily possess and use a falconry raptor for propagation without division approval, provided the propagator possesses:~~

~~(i) a signed and dated statement from the falconer authorizing the temporary possession; and~~

~~(ii) a copy of the falconer's original FWS Form 3-186A for that raptor.~~

~~(10) Raptors considered unsuitable for release to the wild from rehabilitation projects, and certified as not releasable by the~~

~~rehabilitator and a licensed veterinarian, may be placed with a licensed propagator upon written request to the division from the licensed propagator that is endorsed by the rehabilitator and in concurrence with the U.S. Fish and Wildlife Service.~~

~~(11) A copy of the propagator's annual report of activities required by the U.S. Fish and Wildlife Service must be sent to the division as specified on the certificate of registration.~~

~~(12) None of the provisions in this section will be construed to supersede R657-20-30.~~

**R657-3-31. Propagation of Bobcat, Lynx, and Marten.**

~~(1)(a) A person may propagate captive-bred bobcat, lynx (Canada and/or Eurasian), or American marten only after obtaining a certificate of registration from the division.~~

~~(b) The certificate of registration must be renewed annually.~~

~~(c) Renewal of a certificate of registration will be subject to submission of a report indicating:~~

~~(i) the number of progeny produced;~~

~~(ii) the animal's disposition; and~~

~~(iii) a certificate of inspection by a licensed veterinarian verifying that the animals are maintained under healthy and nutritionally adequate conditions.~~

~~(2)(a) Any person engaged in propagation must keep at least one male and one female in possession.~~

~~(b) Live bobcat, lynx, and American marten may not be obtained from the wild for use in propagation.~~

~~(c) Bobcat, lynx, and American marten held for propagation shall not be maintained as pets and shall not be declawed or defanged.~~

~~(3) The progeny and descendants of any bobcat, lynx, or American marten may be pelted or sold.~~

~~(4)(a) If any bobcat, lynx, or American marten is sold live to a person residing in Utah, the purchaser must have first obtained a certificate of registration from the division and must show proof of this fact to the seller.~~

~~(b) The offense of selling or transferring a live bobcat, lynx, or American marten to a person who has not obtained a certificate of registration shall be punishable against both the transferor and the transferee.~~

~~(5)(a) Each pelt must have attached to it a permanent possession tag before being sold, bartered, traded, or transferred to another person.~~

~~(b) Permanent possession tags may be obtained at any regional division office and shall be affixed to the pelt by a division employee.~~

~~(6) The progeny of bobcat, lynx, or American marten may not be released to the wild.~~

~~(7) Nothing in this section shall be construed to allow a person holding a certificate of registration for propagation to use or possess a bobcat, lynx, or American marten for any purpose other than propagation without express authorization on the certificate of registration.~~

**R657-3-32. Propagation of Caribou, Fallow Deer, Musk ox, and Reindeer.**

~~(1)(a) A person may propagate captive-bred caribou, fallow deer, musk ox, or reindeer only after obtaining a certificate of registration from the division.~~

~~(b) The certificate of registration must be renewed annually.~~

~~(c) Renewal of a certificate of registration will be subject to submission of a report indicating:~~

~~(i) the disposition of each animal held in possession during the year; and~~

~~(ii) a certificate of inspection by a licensed veterinarian verifying that the animals are maintained under healthy and nutritionally adequate conditions.~~

~~(2)(a) If any live caribou, fallow deer, musk ox, or reindeer is sold, traded, or given to another person as a gift in Utah, the purchaser must have first obtained a certificate of registration from the division and must show proof of this fact to the seller.~~

~~(b) The offense of selling or transferring a live caribou, fallow deer, musk ox, or reindeer to a person who has not obtained a certificate of registration shall be punishable against both the transferor and the transferee.~~

~~(3) If, at any time, the division determines that the possession or propagation of caribou, fallow deer, musk ox, or reindeer has a significantly detrimental effect to the health of any population of wildlife, the division may:~~

~~(a) terminate the authorization for propagation; and~~

~~(b) require the removal or destruction of the animals at the owner's expense.~~

#### **R657-3-33. Violations.**

~~(1) Any violation of this rule shall be punishable as provided in Section 23-13-11.~~

~~(2) Nothing in this rule shall be construed to supersede any provision of Title 23, of Utah Code which establishes a penalty greater than an infraction. Any provision of this rule which overlaps a provision of Title 23 is intended only as a clarification or to provide greater specificity needed for the administration of the provisions of this rule.~~

#### **R657-3-34. Division Responsibilities.**

~~(1) The division, in consultation with the Department of Agriculture and Food and the Department of Health, will be responsible for:~~

~~(a) reviewing;~~

~~(i) petitions to reclassify species and subspecies of animals; and~~

~~(ii) requests for variances to this rule; and~~

~~(b) making recommendations to the Wildlife Board.~~

~~(2) The division shall require a fee for the submission of a request provided in Section R657-3-35 and R657-3-36.~~

#### **R657-3-35. Request for Species Reclassification.**

~~(1) A person may request to change the classification of a species or subspecies of animal provided in this rule.~~

~~(2) A request for reclassification must be made to the division by submitting an application for reclassification.~~

~~(3)(a) The application shall include:~~

~~(i) the petitioner's name, address, and phone number;~~

~~(ii) the species or subspecies for which the application is made;~~

~~(iii) the name of all interested parties known by the petitioner;~~

~~(iv) the current classification of the species or subspecies;~~

~~(v) a statement of the facts and reasons forming the basis for the reclassification; and~~

~~(vi) copies of scientific literature or other evidence supporting the change in classification.~~

~~(b) In addition to the information required under Subsection (a), the applicant must provide any information requested by the division necessary to formulate a recommendation to the Wildlife Board.~~

~~(4)(a) The division shall, within a reasonable time, consider the request for reclassification and shall submit its recommendation to the Wildlife Board.~~

~~(b) The division shall send a copy of its recommendation to the applicant and other interested parties specified on the application.~~

~~(5)(a) At the next available Wildlife Board meeting, the Wildlife Board shall:~~

~~(i) consider the division recommendation; and~~

~~(ii) any information provided by the applicant or other interested parties.~~

~~(b) The Wildlife Board shall approve or deny the request for reclassification based on the issuance criteria provided in Section R657-3-14.~~

~~(6) A change in species classification shall be made in accordance with Title 63, Chapter 46a, Administrative Rulemaking Act.~~

#### **R657-3-36. Request for Variance.**

~~(1) A person may request a variance to this rule for the collection, importation, propagation, or possession of an animal classified as prohibited under this rule by submitting a variance request to the division.~~

~~(2)(a) A variance request shall include the following:~~

~~(i) the name, address, and phone number of the person making the request;~~

~~(ii) the species or subspecies of animal and associated activities for which the request is made; and~~

~~(iii) a statement of the facts and reasons forming the basis for the variance.~~

~~(b) In addition to the information required under Subsection (a), the person making the request must provide any information requested by the division necessary to formulate a recommendation to the Wildlife Board.~~

~~(3) The division shall, within a reasonable time, consider the request and shall submit its recommendation to the Wildlife Board.~~

~~(4) At the next available Wildlife Board meeting the Wildlife Board shall:~~

~~(a) consider the division recommendation; and~~

~~(b) any information provided by the person making the request.~~

~~(5)(a) The Wildlife Board shall approve or deny the request based on the issuance criteria provided in Section R657-3-14.~~

~~(b) If the request applies to a broad class of persons and not to the unique circumstances of the applicant, the Wildlife Board shall consider changing the species classification before issuing a variance to this rule.~~

~~(6)(a) If the request is approved, the Wildlife Board may impose any restrictions on the person making the request considered necessary for that person to maintain the standards upon which the variance is made.~~

~~(b) Any restrictions imposed on the person making the request shall be included in writing on the certificate of registration which shall be signed by the person making the request before its issuance.~~

## NOTICES OF PROPOSED RULES

### ~~R657-3-37. Appeal of Certificate of Registration Denial.~~

~~(1) A person may appeal the division's denial of a certificate of registration by submitting an appeal request consistent with R657-2.~~

~~(2) The request must be made within 30 days after the date of the denial.~~

~~**KEY:** wildlife, animal protection, import restrictions, zoological animals~~

~~**Date of Enactment or Last Substantive Amendment:** August 9, 2018~~

~~**Notice of Continuation:** February 1, 2023~~

~~**Authorizing, and Implemented or Interpreted Law:** 23-14-18; 23-14-19; 23-20-3; 23-13-14; 63G-7-101 et seq.~~

### NOTICE OF PROPOSED RULE

**TYPE OF FILING:** New

<b>Rule or Section Number:</b>	<b>R657-3a</b>	<b>Filing ID:</b> <b>55463</b>
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### Agency Information

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Wildlife Resources	
<b>Room number:</b>	Suite 2110	
<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 146301	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6301	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Staci Coons	801-450-3093	stacicoons@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

### General Information

<b>2. Rule or section catchline:</b>
R657-3a. Collection, Importation, Transportation, and Possession of Animals
<b>3. Purpose of the new rule or reason for the change:</b>
The new Rule R657-3a largely contains the same content as the repealed Rule R657-3. However, some differences include the separation of Birds and Mammals into new Rule R657-3b; and Fish, Mollusks, and Crustaceans into new Rule R657-3c. The new rules clarify that all species are prohibited unless already classified as controlled or noncontrolled and simplifies the reclassification process.

### 4. Summary of the new rule or change:

The filing of R657-3a covers the regulation of all animals classified as noncontrolled, controlled, and prohibited. (EDITOR'S NOTE: The proposed repeal of Rule R657-3, ID 55462, and the new proposed rules of R657-3b, ID 55464, and R657-3c, ID 55465, are in this issue, July 1, 2023, of the Bulletin.)

### Fiscal Information

#### 5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

##### A) State budget:

The implementation of the new Rule R657-3a are administrative in nature, the Division of Wildlife Resources (DWR) determines that implementing this new rule can be initiated within the current workload and resources of DWR, therefore, DWR does not believe that these amendments would create a cost or savings impact to the state budget or the DWR's budget since the changes will not increase workload and can be carried out with existing budget.

##### B) Local governments:

Since the proposed new rule simplifies an existing program this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because this rule does not create a situation requiring services from local governments.

##### C) Small businesses ("small business" means a business employing 1-49 persons):

The proposed new rule will not directly impact small businesses because a service is not required of them.

##### D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

The proposed new rule will not directly impact non-small businesses because a service is not required of them.

##### E) Persons other than small businesses, non-small businesses, state, 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**):

The DWR determines that the repeal of Rule R657-3 and the implementation of Rule R657-3a will not create additional costs for those participating in Collection, Importation or Transportation of classified species because it is not establishing any new requirements.

The repeal of Rule R657-3 and the placement of Rule R657-3a, Rule R657-3b, and Rule R657-3c is an administrative adjustment and does not require additional costs or savings to those wishing to participate in the program.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

The DWR determines that the repeal of Rule R657-3 and the implementation of Rule R657-3a will not create additional costs for those participating in Collection, Importation or Transportation of classified species because it is not establishing any new requirements.

The repeal of Rule R657-3 and the placement of Rule R657-3a, Rule R657-3b, and Rule R657-3c is an administrative adjustment and does not require additional costs or savings to those wishing to participate in the program.

**G) Regulatory Impact Summary Table** (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 will be included in narratives above.)**Regulatory Impact Table**

<b>Fiscal Cost</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$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>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

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

**Citation Information****6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 23-13-2

**Public Notice Information****8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 07/31/2023

**9. This rule change MAY become effective on:** 08/07/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Justin Shirley, DWR Director	<b>Date:</b>	06/14/2023
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**R657. Natural Resources, Wildlife Resources.****R657-3a. Collection, Importation, Transportation, and Possession of Animals.****R657-3a-1. Purpose and Authority.**

(1) Under Title 23, the Wildlife Resources Code of Utah and in accordance with a memorandum of understanding between the division, the Utah Department of Agriculture and Food, and the Utah Department of Health and Human Services, this rule governs the collection, importation, transportation, and possession of animals and animal parts.

(2) Nothing in this rule shall be construed as superseding the provisions set forth in Title 23, the Wildlife Resources Code of Utah. Any provision of this rule setting forth a criminal violation that overlaps a section of that title is provided in this rule only as a clarification or to provide greater specificity needed for the administration of this rule.

(3) In addition to this rule, the Wildlife Board may allow for collection, importation, transportation, propagation, and possession of animal species under specific circumstances as provided elsewhere in Title R657. Where a more specific provision has been adopted, that provision shall control.

(4) This rule does not apply to division employees acting within the scope of their assigned duties.

(5) The English and scientific names used throughout this rule for animals are, at the time of publication, the most widely accepted names. The English and scientific names of animals change, and the names used in this rule are to be considered synonymous with names in earlier use and with names that, at any time after publication of this rule, may supersede those used in this rule.

(6) Nothing in this rule or in the issuance of a certificate of registration shall be construed as creating a property right and certificates of registration are subject to change.

(7) Nothing in this rule is intended to authorize an activity that is otherwise prohibited by federal law, rules of the Utah Department of Agriculture and Food, or properly enacted restrictions imposed by local government entities.

(8) The division, in consultation with the Utah Department of Agriculture and Food and the Utah Department of Health and Human Services, will be responsible for:

(a) reviewing:

(i) petitions to reclassify species and subspecies of animals; and

(ii) requests for variances to this rule; and

(b) making recommendations to the Wildlife Board.

(9) The division shall require a fee for the submission of a request provided in Sections R657-3a-8 and R657-3a-9.

(10) Certificates of registration issued by the division before the effective date of this rule are valid. Specific terms contained in each certificate of registration issued before the effective date of this rule remain in effect and are not impacted by any inconsistency created by this rule.

#### **R657-3a-2. Definitions.**

(1) Terms used for purposes of this rule are defined in Section 23-13-2 and Subsection (2) through Subsection (24).

(2)(a) "Animal" means:

(i) native, naturalized, and nonnative animals belonging to a species that naturally occurs in the wild, including animals captured from the wild or born or raised in captivity;

(ii) hybrids of any native, naturalized, or nonnative species or subspecies of animal, including hybrids between wild and domestic species or subspecies; and

(iii) viable embryos or gametes (eggs or sperm) of any native, naturalized, or nonnative species or subspecies of animals.

(b) For purposes of this rule, "Animal" does not include species or subspecies from the Class of Amphibia or Reptilia, which are guided by Rule R657-53.

(3) "Captive-bred" means any privately owned animal, which is born inside of and has spent its entire life in captivity, and is the offspring of privately owned animals that are born inside of and have spent their entire life in captivity.

(4) "Certificate of registration" means, for the purposes of this rule, an official document issued by the division authorizing the collection, importation, transportation, and possession of an animal or animals.

(5) "Certificate of veterinary inspection" means an official health authorization issued by an accredited veterinarian required for the importation of animals, as provided in Rule R58-1.

(6) "CFR" means the Code of Federal Regulations.

(7) "Collect" means to take, catch, capture, salvage, or kill any animal within Utah.

(8) "Commercial use" means any activity through which a person in possession of an animal:

(a) receives any consideration for that animal or for a use of that animal; or

(b) expects to recover all or any part of the cost of keeping the animal through selling, bartering, trading, exchanging, breeding, or other use, including displaying the animal for entertainment, advertisement, or business promotion.

(9) "Controlled species" means a species or subspecies of animal that if taken from the wild, introduced into the wild, or held in captivity, threatens to pose a significant detrimental impact to wild populations, the environment, or human health or safety, and for which a certificate of registration is required.

(10) "Domestic" means an animal notably different from its wild ancestors because of selective breeding and taming in captivity by humans for food, commodities, transportation, assistance, work, protection, companionship, display and other beneficial purposes.

(11) "Educational use" means the possession and use of an animal for conducting educational activities.

(12) "Entry permit number" means a number issued by the state veterinarian's office to a veterinarian signing a certificate of veterinary inspection.

(13) "Import" means to bring or cause an animal to be brought into Utah by any means.

(14) "Native species" means any species or subspecies of animal that historically occurred in Utah and has not been introduced by humans or migrated into Utah because of human activity.

(15) "Naturalized species" means any species or subspecies of animal that is not native to Utah but has established a wild, self-sustaining population in Utah.

(16) "Noncontrolled species" means a species or subspecies of animal that, if taken from the wild, introduced into the wild, or held in captivity, likely poses minimal or no detrimental impact to wild populations, the environment, or human health or safety, and for which a certificate of registration is not required, unless otherwise specified.

(17) "Nonnative species" means a species or subspecies of animal that is not native to Utah.

(18) "Personal use" means the possession and use of an animal where no consideration for the possession or use of the animal is received by selling, bartering, trading, exchanging, breeding, hunting or any other use.

(19) "Possession" means to physically keep or to exercise dominion or control over a live or dead animal, or animal parts.

(20)(a) "Prohibited species" means a species or subspecies of animal that, if taken from the wild, introduced into the wild, or held in captivity, poses a significant detrimental impact to wild populations, the environment, or human health or safety, and for which a certificate of registration shall only be issued under special circumstances as approved by the division.

(b) "Prohibited species" also means a species or subspecies that has not gone through the division's species classification process.

(21) "Scientific use" means the possession and use of an animal for conducting scientific research that is directly or indirectly beneficial to wildlife or the general public.

(22) "Transport" means to move or cause to move any animal within Utah by any means.

(23) "Wildlife Registration Office" means the division office in Salt Lake City responsible for processing applications and issuing certificates of registration.



**R657-3a-3. Collection of Animals and Animal Parts.**

(1) An individual may collect a dead animal or animal parts listed as controlled or prohibited for personal, commercial, or scientific use as follows:

(a) A certificate of registration may be issued for personal use, except as otherwise provided in Title R657 and the Wildlife Board's guidebooks.

(b) A certificate of registration may be issued for commercial use.

(c) A certificate of registration may be issued for scientific and educational uses if:

(i) the applicant is a university, college, governmental agency, bona fide nonprofit institution, or person involved in wildlife research; and

(ii) in the opinion of the division, the scientific or educational use is beneficial to wildlife or significantly benefits the general public without material detriment to wildlife.

**R657-3a-4. Importation of Animals and Animal Parts.**

(1) As provided in Rule R58-1, the Utah Department of Agriculture and Food requires a valid certificate of veterinary inspection and an entry permit number before any live animal may be imported into Utah.

(2) A certificate of registration number may be issued to obtain an entry permit number and the entry permit number must in turn be provided to the division before final approval and issuance of the certificate of registration.

(3) A person may import an animal classified as controlled for personal, commercial, and scientific and educational uses only after obtaining a certificate of registration from the division.

**R657-3a-5. Transportation of Animals and Animal Parts.**

(1) A person may transport an animal classified as controlled for personal, commercial, and scientific and educational uses only after obtaining a certificate of registration from the division.

(2) Any controlled or prohibited animal species may be transported through Utah without a certificate of registration if:

(a) the animal remains in Utah no more than 72 hours;

(b) the animal is not sold, transferred, exhibited, displayed, or used for a commercial use while in Utah; and

(c) the animal is a raptor used for falconry purposes in compliance with the requirements in Rule R657-20.

(3) A certificate of veterinary inspection is required from the state of origin as provided in Rule R58-1 and proof of legal possession must accompany the animal.

(4) If delays in transportation arise, an extension of the 72 hours may be requested by contacting the Wildlife Registration Office in Salt Lake City.

(5) None of the provisions in this section will be construed to supersede Sections R657-20-14 and R657-20-30.

(6) A person shipping live animals directly to a state other than Utah or to a federally regulated establishment for immediate euthanasia and processing is not required to obtain a certificate of registration or certificate of veterinary inspection, provided the animal is accompanied by a waybill or other proof of legal ownership describing the animals, their source, and indicating the destination.

**R657-3a-6. Possession of Animals and Animal Parts.**

(1) An individual shall obtain a certificate of registration before possession of a live animal classified as controlled.

(2) A certificate of registration is not required for possessing a live animal classified as noncontrolled.

(3) Any animal or animal parts in a person's possession must originate from a legal source.

(4)(a) A person who lawfully possesses an animal classified as controlled or prohibited may transfer possession of that animal to another person only after that person first applies for and obtains a certificate of registration from the division for that animal.

(b) The division may issue a certificate of registration granting the transfer and possession of a controlled or prohibited animal only if the applicant meets the application criteria provided in Section R657-3-6.

(5) A certificate of registration is not required to possess a live animal if the applicant is registered and in good standing with the Association of Zoos and Aquariums.

**R657-3a-7. Propagation of Animals.**

(1) A person may propagate animal species not classified as controlled or prohibited without obtaining a certificate of registration from the division.

(2) A person may propagate animal species classified as controlled for personal, commercial, and scientific and educational uses only after obtaining a certificate of registration from the division.

(3) The division may provide any federal and additional requirements for propagating specific species on a certificate of registration.

(4) No person in possession of a certificate of registration for propagation may propagate a captive-bred animal with any wild animal.

(5) Propagation may not be used to exceed the number allowed under a certificate of registration for possession.

**R657-3a-8. Request for Species Reclassification.**

(1) A person may request to change the species or subspecies classification of an animal provided under this rule.

(2) A request for species or subspecies reclassification must be made to the division by applying for reclassification.

(3) The reclassification application shall include:

(a) the petitioner's name, address, and phone number;

(b) the requested species or subspecies reclassification;

(c) the name of all interested parties known by the petitioner;

(d) the current classification of the species or subspecies;

(e) a statement of the facts and reasons forming the basis for the reclassification; and

(f) copies of scientific literature or other evidence supporting the change in classification.

(4)(a) The division shall consider the request for reclassification and shall approve or deny the request for reclassification based on the issuance and renewal criteria provided in Sections R657-3b-6 and R657-3c-8.

(b) The division shall send a copy of its approval or denial to the applicant and other interested parties specified on the application.

(5) A change in species classification shall be made in accordance with Title 63g, Chapter 3, Utah Administrative Rulemaking Act.

**R657-3a-9. Request for Variance.**

(1) A person may request a variance to this rule for the collection, importation, propagation, or possession of an animal

## NOTICES OF PROPOSED RULES

classified as prohibited under this rule by submitting a variance request to the division.

(2) A variance request shall include the following:

(a) the name, address, and phone number of the person making the request;

(b) the species or subspecies of animal and associated activities for which the request is made; and

(c) a statement of the facts and reasons forming the basis for the variance.

(3)(a) The division shall consider the request and shall approve or deny the request based on the issuance and renewal criteria provided in Sections R657-3b-6 and R657-3c-8.

(b) If the request applies to a broad class of persons and not to the unique circumstances of the applicant, the division shall consider changing the species classification before issuing a variance to this rule.

(4)(a) If the request is approved, the division may impose any restrictions on the person making the request considered necessary for that person to maintain the standards upon which the variance is made.

(b) Any restrictions imposed on the person making the request shall be included in writing on the certificate of registration which shall be signed by the person making the request before its issuance.

### **R657-3a-10. Violations and Suspensions.**

(1) Any violation of this rule shall be punishable under Sections 23-13-11 and 23-13-14.

(2) A certificate of registration may be suspended as provided in this rule, Section 23-19-9, and Rule R657-26.

(3) Failure to submit the appropriate records and reports as required under this rule may result in suspension of a certificate of registration.

(4) Nothing in this rule shall be construed to supersede Title 23, the Wildlife Resources Code, which establishes a penalty greater than an infraction. Any provision of this rule which overlaps a Title 23 is intended only as a clarification or to provide greater specificity needed for the administration of this rule.

### **R657-3a-11. Administrative Appeals.**

(1) A person may appeal the division's denial of a certificate of registration, request for species classification, and request for a variance by submitting a request for agency action consistent with Rule R657-2.

(2) The request must be made within 30 days after the date of the denial.

**KEY: wildlife, animal protection, import restrictions, zoological animals**

**Date of Last Change: 2023**

**Authorizing, and Implemented or Interpreted Law: 23-13-2**

## **NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** New

<b>Rule or Section Number:</b>	<b>R657-3b</b>	<b>Filing ID:</b> <b>55464</b>
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## **Agency Information**

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Wildlife Resources	
<b>Room number:</b>	Suite 2110	
<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 146301	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6301	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Staci Coons	801-450-3093	stacicoons@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

## **General Information**

<b>2. Rule or section catchline:</b>
R657-3b. Certification of Registration – Birds and Mammals
<b>3. Purpose of the new rule or reason for the change:</b>
The new Rule R657-3b largely contains the same content as the repealed Rule R657-3. However, some differences include the separation of general requirements into new Rule R657-3a, and Fish, Mollusks, and Crustaceans into new Rule R657-3c.
The new rules clarify that all species are prohibited unless already classified as controlled or noncontrolled and simplifies the reclassification process.
<b>4. Summary of the new rule or change:</b>
The filing of R657-3b covers the regulation of Birds and Mammals classified as noncontrolled, controlled, and prohibited. (EDITOR'S NOTE: The proposed repeal of Rule R657-3, ID 55462, and the new proposed rules of R657-3a, ID 55463, and R657-3c, ID 55465, are in this issue, July 1, 2023, of the Bulletin.)

## **Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
The implementation of the new Rule R657-3b are administrative in nature, the Division of Wildlife Resources (DWR) determines that implementing this new rule can be initiated within the current workload and resources of the DWR, therefore, DWR does not believe that these

amendments would create a cost or savings impact to the state budget or the DWR's budget since the changes will not increase workload and can be carried out with existing budget.

**B) Local governments:**

Since the proposed new rule simplifies an existing program this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because this rule does not create a situation requiring services from local governments.

**C) Small businesses** ("small business" means a business employing 1-49 persons):

The proposed new rule will not directly impact small businesses because a service is not required of them.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

The proposed new rule will not directly impact non-small businesses because a service is not required of them.

**E) Persons other than small businesses, non-small businesses, state, 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**):

The DWR determines that the repeal of Rule R657-3 and the implementation of Rule R657-3b will not create additional costs for those participating in Collection, Importation or Transportation of classified species because it is not establishing any new requirements.

The repeal of Rule R657-3 and the placement of Rule R657-3a, Rule R657-3b, and Rule R657-3c is an administrative adjustment and does not require additional costs or savings to those wishing to participate in the program.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

The DWR determines that the repeal of Rule R657-3 and the implementation of Rule R657-3b will not create additional costs for those participating in Collection, Importation or Transportation of classified species because it is not establishing any new requirements.

The repeal of Rule R657-3 and the placement of Rule R657-3a, Rule R657-3b, and Rule R657-3c is an administrative adjustment and does not require additional costs or savings to those wishing to participate in the program.

**G) Regulatory Impact Summary Table** (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 will be included in narratives above.)

**Regulatory Impact Table**

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$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>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

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

**Citation Information**

**6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 23-13-2		
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**Incorporations by Reference Information**

**7. Incorporations by Reference:**

**A) This rule adds, updates, or removes the following title of materials incorporated by references:**

<b>Official Title of Materials Incorporated (from title page)</b>	Bird and Mammal Classification Table 3b
<b>Publisher</b>	Utah Division of Wildlife Resources
<b>Issue Date</b>	May 1, 2023
<b>Issue or Version</b>	3b-1

**Public Notice Information**

**8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	07/31/2023
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<b>9. This rule change MAY become effective on:</b>	08/07/2023
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Justin Shirley, DWR Director	<b>Date:</b>	06/14/2023
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**R657. Natural Resources, Wildlife Resources.****R657-3b. Certification of Registration -- Birds and Mammals.****R657-3b-1. Purpose and Authority.**

(1) Under Title 23, Wildlife Resources Code of Utah, this rule governs the collection, importation, possession, and propagation of birds and mammals in Utah.

(2) The importation, distribution, relocation, holding in captivity or possession of coyotes and raccoons in Utah is governed by the Agricultural and Wildlife Damage Prevention Board and is prohibited under Section 4-23-11 and Rule R58-14, except as permitted by the Utah Department of Agriculture and Food.

(3) Domestic animals not governed by this rule are listed in Bird and Mammal Classification Table 3b-1, May 1, 2023.

**R657-3b-2. Definitions.**

(1) Terms used for purposes of this rule are defined in Section 23-13-2, Section R657-3a-2, and Subsection (2) through Subsection (5).

(2) "Resident Canada Goose" means Canada geese that nest within Utah in urban environments during the months of March, April, May or June.

(3) ""Bird" means an animal from the Class of Aves, including hybrid species or subspecies of birds and viable embryos or gametes of species or subspecies of birds.

(4) "Mammal" means an animal from the Class of Mammalia, including hybrid species or subspecies of mammals and viable embryos or gametes of species or subspecies of mammals.

(5) "Nuisance bird or mammal" means a bird or mammal damaging personal or real property, or when concentrated in such numbers and manner that constitutes a health hazard or other nuisance.

**R657-3b-3. Liability.**

(1)(a) Any person who accepts a certificate of registration assumes all liability and responsibility for the collection, importation, transportation, possession, and propagation of the authorized animal and for any other activity authorized by the certificate of registration.

(b) To the extent provided under Title 63g, Chapter 7, the Utah Governmental Immunity Act of Utah, the division, the Department of Agriculture and Food, and the Department of Health and Human Services shall not be liable in any civil action for:

(i) any injury, disease, or damage caused by or to any animal, person, or property as a result of any activity authorized under this rule or a certificate of registration; or

(ii) the issuance, denial, suspension, or revocation of or by the failure or refusal to issue, deny, suspend, or revoke any certificate of registration or similar authorization.

(2) It is the responsibility of any person who obtains a certificate of registration to read, understand and comply with this rule and all other applicable federal, state, county, city, or other municipality laws, regulations, and ordinances governing animals.

**R657-3b-4. Prohibited Activities.**

(1) A person may not take, possess, import, export, transfer, or release to the wild a bird or mammal or their parts in Utah, or attempt to undertake such activity, except as provided in this rule or in a proclamation or guidebook issued by the Wildlife Board.

(2)(a) A person may not release from captivity any bird or mammal, including domestic or other animals for hunting purposes, without first obtaining written authorization from the division.

(b) Any peace officer, division representative, or authorized animal control officer may seize, euthanize, or dispose of any live bird or mammal that is released from or escapes from captivity.

(c) The division may keep custody of any recaptured bird or mammal until the costs of recapture or care have been paid by its owner or keeper.

(3) A person may not collect a native or naturalized bird or mammal species from the wild for personal possession except as otherwise authorized under Title 23, the Wildlife Resources Code of Utah, or Title R657.

(4) The following species are prohibited from collection, possession, and importation into Utah without first obtaining a certificate of registration from the division, a federal permit from the U.S. Fish and Wildlife Service, and an entry permit number from the Department of Agriculture and Food if importing:

(a) any species which have been determined by the U.S. Fish and Wildlife Service to be endangered or threatened pursuant to the federal Endangered Species Act, as amended; and

(b) any species of migratory birds protected under the Migratory Bird Treaty Act.

**R657-3b-5. Application and Renewal Procedures -- Amendments -- Expiration -- Fees.**

(1)(a) Initial and renewal applications for certificates of registration are available from, and must be submitted to, the Wildlife Registration Office in Salt Lake City or any regional division office.

(b) Applications may require a minimum of 45 days for review and processing from the date the application is received.

(c) Applications that are incomplete, completed incorrectly, or submitted without the appropriate fee or other required information may be returned to the applicant.

(2)(a) Upon or before the expiration date of a certificate of registration, the holder must apply for a renewal of the certificate of registration to continue the activity.

(b) The division may use the criteria provided in Section R657-3b-6 in determining whether to renew the certificate of registration.

(c) It is unlawful for a person to possess an animal for which a certificate of registration is required if that person:

(i) does not have a valid certificate of registration authorizing possession of the animal; or

(ii) fails to submit a renewal application to the division before the expiration of an existing certificate of registration authorizing possession of the animal.

(d) If a renewal application is not submitted to the division by the expiration date, live or dead animals held in possession under the expired certificate of registration shall be considered unlawfully held and may be seized by the division.

(e) If a renewal application is submitted to the division before the expiration date of the existing certificate of registration, continued possession of the animal under the expired certificate of registration shall remain lawful while the renewal application is pending.

(3)(a) Certificates of registration are not transferable and expire December 31 of the year issued, except as otherwise designated on the certificate of registration.

(b) If the holder of a certificate of registration is a representative of an institution, organization, business, or agency, the certificate of registration shall expire effective upon the date of the representative's discontinuation of association with that entity.

(c) Certificates of registration do not provide the holder any rights of succession and any certificate of registration issued to a business or organization shall be void upon the termination of the business or organization or upon bankruptcy or transfer or death of the COR holder.

(4) Failure to submit timely, accurate, or valid reports as required under this rule or the terms of a certificate of registration may disqualify a person from renewing an existing certificate of registration or obtaining a new certificate of registration.

#### **R657-3b-6. Issuance and Renewal Criteria.**

(1) The following factors shall be considered before the division may issue or renew a certificate of registration for the collection, importation, transportation, possession, or propagation of an animal:

(a) the health, welfare, and safety of the public;

(b) the health, welfare, safety, and genetic integrity of wildlife, domestic livestock, poultry, and other animals;

(c) ecological and environmental impacts;

(d) the suitability of the applicant's holding facilities;

(e) the experience of the applicant for the activity requested; and

(f) ecological or environmental impact on other states.

(2) In addition to the criteria provided in Subsection (1), the division shall use the following criteria for the issuance or renewal of a certificate of registration for a scientific use of an animal:

(a) the validity of the objectives and design;

(b) the likelihood the project will fulfill the stated objectives;

(c) the applicant's qualifications to conduct the research, including education or experience;

(d) the adequacy of the applicant's resources to conduct the study; and

(e) whether the scientific use is in the best interest of the animal, wildlife management, education, or the advancement of science without unnecessarily duplicating previously documented scientific research.

(3) In addition to the criteria provided in Subsection (1), the division may use the following criteria for the issuance or renewal of a certificate of registration for an educational use of an animal:

(a) the objectives and structure of the educational program;

(b) whether the applicant has written approval from the appropriate official if the activity is conducted in a school or other educational facility; and

(c) whether the individual is in possession of the required federal permits.

(4) The factors in Subsection (1) do not apply to the following:

(a) the commercial use of a dead coyote, jackrabbit, muskrat, raccoon, or its parts;

(b) a business entity that has obtained a certificate of registration from the division to conduct nuisance wildlife control or carcass removal; and

(c) dead animals sold or traded for educational use.

(5) The division may deny issuing or renewing a certificate of registration to any applicant, if:

(a) the applicant has violated Title 23, the Wildlife Resources Code of Utah, Title R657, proclamation or guidebook, a certificate of registration, an order of the Wildlife Board or any other law that when considered with the functions and responsibilities of collecting, importing, possessing, or propagating an animal bears a reasonable relationship to the applicant's ability to safely and responsibly carry out such activities;

(b) the applicant has previously been issued a certificate of registration and failed to submit any report or information required by this rule, the division, or the Wildlife Board;

(c) the applicant misrepresented or failed to disclose material information required in connection with the application; or

(d) holding the animal at the proposed location violates federal, state, or local laws.

(6) The collection or importation and subsequent possession of an animal may be granted only upon a clear demonstration that the criteria established in this section have been met by the applicant.

(7) The division, in making a determination under this section, may consider any available facts or information that is relevant to the issuance or renewal of the certificate of registration, including independent inquiry or investigation to verify information or substantiate the qualifications asserted by the applicant.

(8) If an application is denied, the division shall provide the applicant with written notice of the reasons for denial.

#### **R657-3c-7. Noncontrolled, Controlled, and Prohibited Species.**

(1)(a) The noncontrolled, controlled, and prohibited bird and mammal animal species classification table entitled Birds and Mammals Classification Table 3b-1, dated May 1, 2023 is incorporated by reference.

(b) Table 3b-1 can be accessed in person or by contacting the Salt Lake division office located at 1594 West North Temple, Salt Lake City, Utah 84114, and on the division's Certificates of

Registration web page at <https://wildlife.utah.gov/licenses/certificates-of-registration.html>.

**R657-3b-8. Collection of Bird and Mammal Species.**

(1) A person shall obtain a certificate of registration before collecting any bird and mammal species or bird and mammal species parts classified as prohibited or controlled, except as otherwise provided in this rule, statute, or rules and orders of the Wildlife Board.

(2) A certificate of registration is not required to collect any bird and mammal species classified as noncontrolled.

(3) A person may take a raptor species for falconry as provided in Rule R657-20.

**R657-3b-9. Nuisance Bird and Mammal Species.**

(1) A person is not required to obtain a certificate of registration or a federal permit to kill a house sparrow (*Passer domesticus*), European starling (*Sturnus vulgaris*), or domestic pigeon or rock pigeon (*Columba livia*) when found damaging personal or real property, or when concentrated in such numbers and manner as to constitute a health hazard or other nuisance when:

(a) an attempt to control the birds using non-lethal methods occurs before using lethal methods;

(b) applicable local, state, and federal laws are strictly complied with; and

(c) none of the birds killed, nor their plumage, are sold or offered for sale.

(2) A person is not required to obtain a certificate of registration or a federal permit to kill a Brewer's blackbird (*Euphagus cyanocephalus*), Red-winged blackbird (*Agelaius phoeniceus*), Yellow-headed blackbird (*Xanthocephalus xanthocephalus*), Boat-tailed grackle (*Quiscalus major*), Common grackle (*Quiscalus quiscula*), Great-tailed grackle (*Quiscalus mexicanus*), Black-billed magpie (*Pica hudsonia*), American crow (*Corvus brachyrhynchos*), bronzed cowbird (*Molothrus aeneus*), brown-headed cowbird (*Molothrus ater*), or shiny cowbird (*Molothrus bonariensis*) that is committing or about to commit depredations on ornamental or shade trees, agricultural crops, livestock, or wildlife, or when concentrated in such numbers and manner as to constitute a health hazard or other nuisance when:

(a) an attempt to control the birds using non-lethal methods occurs before using lethal methods;

(b) applicable local, state, and federal laws are strictly complied with; and

(c) none of the birds killed, nor their plumage, are sold or offered for sale.

(3) Any person that takes a nuisance bird pursuant to Subsections (1) and (2) must provide to the appropriate U.S. Fish and Wildlife Service, Regional Migratory Bird Permit Office an annual report for each species taken.

(4) A person may not take nuisance birds with bait, explosives, or poisons.

(5) A person shall dispose of dead nuisance birds at a landfill that accepts wildlife carcasses, or burned or incinerated.

(6) Neither a federal permit nor a state certificate of registration is required to destroy the nests and eggs of resident Canada geese if the landowner or agent qualifies, registers, and complies with all the Federal Nest and Egg Registry.

(7) A person may kill coyote, field mouse, gopher, ground squirrel, jackrabbit, muskrat, and raccoon at any time.

(8) A person may kill nuisance furbearers as provided in Rule R657-11

(9) A person may kill nongame mammals as provided in Rule R657-19.

**R657-3b-10. Importation of Bird and Mammal Species.**

(1) A person shall obtain a certificate of registration before importing any bird or mammal species, or bird or mammal species parts, classified as prohibited or controlled, except as otherwise provided in this rule, statute or rules and orders of the Wildlife Board.

(2) A certificate of registration is not required to import any bird or mammal species classified as noncontrolled.

**R657-3b-11. Transportation of Bird and Mammal Species.**

(1) A person shall obtain a certificate of registration before transporting any bird or mammal species, or bird or mammal species parts, classified as prohibited or controlled, except as otherwise provided in this rule, statute, or rules and orders of the Wildlife Board.

(2) A certificate of registration is not required to transport any bird and mammal species classified as noncontrolled.

**R657-3b-12. Possession of Bird and Mammal Species.**

(1) A person shall obtain a certificate of registration before possessing any bird or mammal species, or bird or mammal species parts, classified as prohibited or controlled, except as otherwise provided in this rule, statute, or rules and orders of the Wildlife Board.

(2) A certificate of registration is not required to possess any bird or mammal species classified as noncontrolled.

(3) Any bird or mammal held in possession under the authority of a certificate of registration shall be maintained under humane and healthy conditions, including the humane handling, care, confinement, transportation, and feeding.

(4) A person shall protect the public from harm when possessing any bird or mammal.

(5) The division may impose specific requirements on the certificate of registration holder consistent with industry standards or generally accepted animal husbandry practices deemed necessary for the safe and humane handling and care of the animal involved, including requirements for veterinary care, cage or holding pen sizes and standards, feeding requirements, social grouping requirements, and other requirements considered necessary by the division for the health and welfare of the animal or the public.

(6) A person may possess gamebirds as provided in Rule R657-4.

(7) A person may possess a raptor species for falconry as provided in Rule R657-20.

**R657-3b-13. Propagation of Bird and Mammal Species.**

(1) A person shall obtain a certificate of registration before propagating any bird or mammal species classified as prohibited or controlled, except as otherwise provided in this rule, statute, or rules and orders of the Wildlife Board.

(2) A certificate of registration is not required to propagate any bird or mammal species classified as noncontrolled.

(3) A certificate of registration may contain stipulations to prevent detrimental impacts to wild populations, the environment, or human health or safety.

(4) A person may propagate raptors only as provided in Rule R657-20 and 50 CFR 21.85.



**KEY:** wildlife, animal protection, import restrictions, zoological animals  
**Date of Last Change:** 2023  
**Authorizing, and Implemented or Interpreted Law:** 23-14-18; 23-14-19; 23-20-3; 23-13-14; 63G-7-101 et seq.

NOTICE OF PROPOSED RULE		
TYPE OF FILING: New		
Rule or Section Number:	R657-3c	Filing ID: 55465

#### Agency Information

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Wildlife Resources	
<b>Room number:</b>	Suite 2110	
<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 146301	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6301	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Staci Coons	801-450-3093	stacicoons@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

#### General Information

2. Rule or section catchline:
R657-3c. Certification of Registration – Fish, Mollusks, and Crustaceans
3. Purpose of the new rule or reason for the change:
The new Rule R657-3c largely contains the same content as the repealed Rule R657-3. However, some differences include the separation of general requirements into new Rule R657-3a, and Birds and Mammals into new Rule R657-3b. The new rules clarify that all species are prohibited unless already classified as controlled or noncontrolled and simplifies the reclassification process.
4. Summary of the new rule or change:
The filing of Rule R657-3c covers the regulation of Fish, Mollusks, and Crustaceans classified as noncontrolled, controlled, and prohibited. (EDITOR'S NOTE: The proposed repeal of Rule R657-3, ID 55462, and the new proposed rules of R657-3a, ID 55463, and R657-3b, ID 55464, are in this issue, July 1, 2023, of the Bulletin.)

#### Fiscal Information

##### 5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

###### A) State budget:

The implementation of the new Rule R657-3c are administrative in nature, the Division of Wildlife Resources (DWR) determines that implementing this new rule can be initiated within the current workload and resources of the DWR, therefore, the DWR does not believe that these amendments would create a cost or savings impact to the state budget or the DWR's budget since the changes will not increase workload and can be carried out with existing budget.

###### B) Local governments:

Since the proposed new rule simplifies an existing program this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

###### C) Small businesses ("small business" means a business employing 1-49 persons):

The proposed new rule amendments will not directly impact small businesses because a service is not required of them.

###### D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

The proposed new rule amendments will not directly impact non-small businesses because a service is not required of them.

###### E) Persons other than small businesses, non-small businesses, state, 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**):

The DWR determines that the repeal of Rule R657-3 and the implementation of Rule R657-3c will not create additional costs for those participating in Collection, Importation or Transportation of classified species because it is not establishing any new requirements.

The repeal of Rule R657-3 and the placement of Rule R657-3a, Rule R657-3b, and Rule R657-3c is an administrative adjustment and does not require additional costs or savings to those wishing to participate in the program.

###### F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

The DWR determines that the repeal of Rule R657-3 and the implementation of Rule R657-3c will not create additional costs for those participating in Collection,



Importation or Transportation of classified species because it is not establishing any new requirements.

The repeal of Rule R657-3 and the placement of Rule R657-3a, Rule R657-3b, and Rule R657-3c is an administrative adjustment and does not require additional costs or savings to those wishing to participate in the program.

**G) Regulatory Impact Summary Table** (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 will be included in narratives above.)

**Regulatory Impact Table**

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$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>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

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

**Citation Information**

**6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 23-13-2		
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**Incorporations by Reference Information**

**7. Incorporations by Reference:**

**A) This rule adds, updates, or removes the following title of materials incorporated by references:**

<b>Official Title of Materials Incorporated (from title page)</b>	Aquatics Species Classification Table 3c
<b>Publisher</b>	Utah Division of Wildlife Resources
<b>Issue Date</b>	May 1, 2023
<b>Issue or Version</b>	3c-1

**Public Notice Information**

**8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 07/31/2023

**9. This rule change MAY become effective on:** 08/07/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Justin Shirley, DWR Director	<b>Date:</b>	06/14/2023
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**R657. Natural Resources, Wildlife Resources.**

**R657-3c. Certification of Registration -- Fish, Mollusks, and Crustaceans.**

**R657-3c-1. Purpose and Authority.**

Under Title 23, Wildlife Resources Code of Utah, this rule governs the collection, importation, possession, and propagation of aquatic animals in Utah.

**R657-3c-2. Definitions.**

(1) Terms used for purposes of this rule are defined in Section 23-13-2, Section R657-3a-2, and Subsection (2) through Subsection (10).

(2) "Aquaculture" means the husbandry, production, harvest, and use of aquatic organisms under controlled, artificial conditions.

(3) "Aquaculture facility" means any tank, canal, raceway, pond, off-stream reservoir, or other structure used for aquaculture as defined under Title 4, Chapter 37, the Aquaculture Act and the rules promulgated there under.

(4) "Aquatic animal" means a member of any species of fish, mollusk, or crustacean, including their eggs or sperm.

(5) "Baitfish" means aquatic animal species authorized for use as bait in Section R657-13-12.

(6) "Fee fishing facility" means a body of water used for holding or rearing fish to provide fishing for a fee or for pecuniary consideration or advantage as described in Title 4, Chapter 37, the Aquaculture Act.

(7) "Food fish" means aquatic animal species cultured or harvested from the wild for human consumption.

(8)(a) "Marine aquatic animal" means a member of any species of fish, mollusk, or crustacean, including their eggs and sperm, that spends its entire life cycle in a marine environment.

(b) "Marine aquatic animal" does not include:

(i) anadromous aquatic animal species;

(ii) species that temporarily or permanently reside in brackish water; and

(iii) species classified as invasive or nuisance by state or federal law.

(9)(a) "Ornamental aquatic animal species" means any species of fish, mollusk, or crustacean that is sold for display.

(b) "Ornamental aquatic animal species" does not mean:

(i) Sport fish;

(ii) Baitfish;

(iii) Aquatic animal species that are native to Utah;

(iv) Aquatic animals and marine aquatic animals prohibited for importation or possession under federal law; or

(v) Aquatic animals and marine aquatic animals listed as prohibited or controlled in Subsection R657-3c-5(1).

(10) "Sport fish" means aquatic animal species regulated for angling and harvest for recreation or sport from any state in the United States, excluding Peacock Bass (*Cichla ocellaris*).

### **R657-3c-3. Liability.**

(1)(a) Any person who accepts a certificate of registration assumes all liability and responsibility for the collection, importation, transportation, possession and propagation of the authorized animal and for any other activity authorized by the certificate of registration.

(b) To the extent provided under the Title 63g, Chapter 7, the Governmental Immunity Act of Utah, the division, the Department of Agriculture and Food, and the Department of Health and Human Services shall not be liable in any civil action for:

(i) any injury, disease, or damage caused by or to any animal, person, or property as a result of any activity authorized under this rule or a certificate of registration; or

(ii) the issuance, denial, suspension, or revocation of or by the failure or refusal to issue, deny, suspend, or revoke any certificate of registration or similar authorization.

(2) It is the responsibility of any person who obtains a certificate of registration to read, understand and comply with this rule and all other applicable federal, state, county, city, or other municipality laws, regulations, and ordinances governing animals.

### **R657-3c-4. Prohibited Activities.**

(1)(a) Except as provided in this rule, the rules of the Wildlife Board, including Section R657-13-12, Rule R657-14, and Rule R657-59, or Title 4, Chapter 37, the Aquaculture Act, noncontrolled, controlled, or prohibited animals may not be released into the wild or any public or private waters without first obtaining authorization from the division.

(b) A violation of this section is punishable under Section 23-13-14.

(c) A person may not release or transplant a live terrestrial or aquatic wildlife into the wild. A person who violates this subsection is guilty of a class A misdemeanor.

(d) A person who knowingly and without lawful authority imports, transports, or releases a live species of wildlife that the person knows is listed as threatened or endangered, or is a candidate to be listed under the Endangered Species Act, 16 U.S.C. Sec. 1531 et seq., with the intent to establish the presence of that species in an area of the state not currently known to be occupied by a reproducing population of that species is guilty of a third degree felony.

(2) The division may seize or dispose of any illegally held animal.

(3)(a) Any peace officer, division representative, or authorized animal control officer may seize or dispose of any live animal that escapes from captivity.

(b) The division may retain custody of any recaptured animal until the costs of recapture or care have been paid by its owner or keeper.

### **R657-3c-5. Noncontrolled, Controlled, and Prohibited Species.**

(1)(a) The noncontrolled, controlled, and prohibited aquatic animal species classification table entitled Aquatics Species Classification Table 3c-1, dated May 1, 2023 is incorporated by reference.

(b) Table 3c-1 can be accessed in person or by contacting the Salt Lake division office located at 1594 West North Temple, Salt Lake City, Utah 84114, and on the division's Certificates of Registration web page at <https://wildlife.utah.gov/licenses/certificates-of-registration.html>.

(2) A person may collect and possess live aquatic animals of controlled species if:

(a) They possess a valid certificate of registration;

(b) Successfully complete the Fish, Mollusk, and Crustacean education course;

(c) Satisfy the mandatory reporting requirements established in Section R657-3c-6; and

(d) The number of individuals of a species in a person's possession may not exceed the limits established under that person's certificate of registration.

(3) All native species and naturalized sportfish species are classified as controlled except those species that are classified as prohibited.

(4) Some species are classified as noncontrolled when stocked in a private fish pond, short-term fishing event, or aquaponics facility, as allowed in Rule R657-59.

(5) Triploid Grass Carp can be stocked as allowed in Rule R657-59.

(6)(a) Exemptions may be granted to educational, scientific, and commercial organizations.

(b) An individual or entity must acquire a certificate of registration before engaging in an educational, scientific, or commercial use activity involving the collection or possession of a controlled or prohibited species.

(i) A scientific use certificate of registration is valid for the time-period identified in the research proposal and approved by the division.

(ii) An educational use certificate of registration is valid for 3 years and authorize wildlife related instructional activities identified on the certificate of registration.

(iii) A commercial use certificate of registration is valid for 3 years and authorize commercial use activities identified on the certificate of registration.

**R657-3c-6. Reporting Requirements for the Collection of Controlled Species.**

(1) A person must report to the division within 72 hours of collecting a controlled species.

(2) Mandatory reporting must be completed using a division approved reporting platform, and shall include:

(a) Universal Transverse Mercator (UTM) or latitude/longitude coordinates of the collection point location;

(b) number of individuals or specimens collected;

(c) morphological measurements and descriptions of individuals or specimens; and

(d) photographic documentation.

(3) A person who fails to complete mandatory reporting as required in this rule may be:

(a) considered in unlawful possession of unreported animals; and

(b) deemed ineligible to obtain a certificate of registration for the collected species until such reporting is completed.

(4) Mandatory reporting for commercial use, scientific use, and educational use certificates of registration will be established as part of the certificate of registration approval process.

**R657-3c-7. Application and Renewal Procedures -- Fees -- Expiration.**

(1)(a) Initial and renewal applications for certificates of registration are available from, and must be submitted to, the Wildlife Registration Office in Salt Lake City or any regional division office.

(b) Applications may require a minimum of 45 days for review and processing from the date the application is received.

(c) Applications that are incomplete, completed incorrectly, or submitted without the appropriate fee or other required information may be returned to the applicant.

(2)(a) Upon or before the expiration date of a certificate of registration, the holder must apply for a renewal of the certificate of registration to continue the activity.

(b) The division may use the criteria provided in Section R657-3c-6 in determining whether to renew the certificate of registration.

(c) It is unlawful for a person to possess an animal for which a certificate of registration is required if that person:

(i) does not have a valid certificate of registration authorizing possession of the animal; or

(ii) fails to submit a renewal application to the division before the expiration of an existing certificate of registration authorizing possession of the animal.

(d) If a renewal application is not submitted to the division by the expiration date, live or dead animals held in possession under the expired certificate of registration shall be considered unlawfully held and may be seized by the division.

(e) If a renewal application is submitted to the division before the expiration date of the existing certificate of registration, continued possession of the animal under the expired certificate of

registration shall remain lawful while the renewal application is pending.

(3)(a) Certificates of registration are not transferable and expire December 31 of the year issued, except as otherwise designated on the certificate of registration.

(b) If the holder of a certificate of registration is a representative of an institution, organization, business, or agency, the certificate of registration shall expire effective upon the date of the representative's discontinuation of association with that entity.

(c) Certificates of registration do not provide the holder any rights of succession and any certificate of registration issued to a business or organization shall be void upon the termination of the business or organization or upon bankruptcy or transfer or death of the certificate of registration holder.

(4) Failure to submit timely, accurate, or valid reports as required under this rule or the terms of a certificate of registration may disqualify a person from renewing an existing certificate of registration or obtaining a new certificate of registration.

**R657-3c-8. Issuance and Renewal Criteria.**

(1) The following factors shall be considered before the division may issue or renew a certificate of registration for the collection, importation, transportation, possession, or propagation of an animal:

(a) the health, welfare, and safety of the public;

(b) the health, welfare, safety, and genetic integrity of wildlife, domestic livestock, poultry, and other animals;

(c) ecological and environmental impacts;

(d) the suitability of the applicant's holding facilities;

(e) the experience of the applicant for the activity requested; and

(f) ecological or environmental impact on other states.

(2) In addition to the criteria provided in Subsection (1), the division shall use the following criteria for the issuance or renewal of a certificate of registration for a scientific use of an animal:

(a) the validity of the objectives and design;

(b) the likelihood the project will fulfill the stated objectives;

(c) the applicant's qualifications to conduct the research, including education or experience;

(d) the adequacy of the applicant's resources to conduct the study; and

(e) whether the scientific use is in the best interest of the animal, wildlife management, education, or the advancement of science without unnecessarily duplicating previously documented scientific research.

(3) In addition to the criteria provided in Subsection (1), the division may use the following criteria for the issuance or renewal of a certificate of registration for an educational use of an animal:

(a) the objectives and structure of the educational program;

(b) whether the applicant has written approval from the appropriate official if the activity is conducted in a school or other educational facility; and

(c) whether the individual is in possession of the required federal permits.

(4) The division may deny issuing or renewing a certificate of registration to any applicant, if:

(a) the applicant has violated Title 23, the Wildlife Resources Code of Utah, Title R657, proclamation or guidebook, a certificate of registration, an order of the Wildlife Board or any other law that when considered with the functions and responsibilities of

collecting, importing, possessing, or propagating an animal bears a reasonable relationship to the applicant's ability to safely and responsibly carry out such activities;

(b) the applicant has previously been issued a certificate of registration and failed to submit any report or information required by this rule, the division, or the Wildlife Board;

(c) the applicant misrepresented or failed to disclose material information required in connection with the application; or

(d) holding the animal at the proposed location violates federal, state, or local laws.

(5) The collection or importation and subsequent possession of an animal may be granted only upon a clear demonstration that the criteria established in this section have been met by the applicant.

(6) The division, in making a determination under this section, may consider any available facts or information that is relevant to the issuance or renewal of the certificate of registration, including independent inquiry or investigation to verify information or substantiate the qualifications asserted by the applicant.

(7) If an application is denied, the division shall provide the applicant with written notice of the reasons for denial.

#### **R657-3c-9. Collection of Aquatic Animal Species.**

(1) A person shall obtain a certificate of registration before collecting any aquatic animal species or aquatic animal species parts classified as prohibited or controlled, except as otherwise provided in this rule, statute, or rules and orders of the Wildlife Board.

(2) A certificate of registration is not required to collect any aquatic animal species classified as noncontrolled.

#### **R657-3c-10. Importation of Aquatic Animal Species.**

(1)(a) A person shall obtain a certificate of registration before importing any aquatic animal species or aquatic animal species parts classified as prohibited or controlled, except as otherwise provided in this rule, statute, or rules and orders of the Wildlife Board.

(b) A person shall provide the Division copies of U.S. Fish and Wildlife Service form 3-177, upon request, for ornamental aquatic animal species imported from outside the United States.

(c) A person shall have the U.S. Fish and Wildlife Service import license number for the entity that imported ornamental aquatic animal species in their possession.

(2) A certificate of registration is not required to import any aquatic animal species classified as noncontrolled.

(3)(a) All live aquatic animals, including marine aquatic animals, imported into Utah and not destined for an aquaculture facility or fee fishing facility must be accompanied by the following documentation:

(i) common or scientific names of the aquatic animals;

(ii) name and address of the consignor and consignee;

(iii) origin of shipment;

(iv) final destination;

(v) number of aquatic animals shipped; and

(vi) certificate of veterinary inspection, Utah entry permit number issued by the Utah Department of Agriculture and Food, and any other health certifications.

(b) A person may import live fish destined for an aquaculture facility or fee fishing facility only as provided by Title 4, Chapter 37, the Aquaculture Act and the rules promulgated there under.

(4) Subsection (1) does not apply to dead fish or crayfish caught in Lake Powell, Bear Lake, or Flaming Gorge reservoirs under

the authority of a valid fishing license and in accordance with Rule R657-13 and the proclamation of the Wildlife Board for taking fish and crayfish.

(5) Any water used to hold or transport fish shall not be emptied into a stream, lake, or other natural body of water.

#### **R657-3c-11. Transportation of Aquatic Animal Species.**

(1) A person shall obtain a certificate of registration before transporting any aquatic animal species or aquatic animal species parts classified as prohibited or controlled, except as otherwise provided in this rule, statute, or rules and orders of the Wildlife Board.

(2) A certificate of registration is not required to transport any aquatic animal species classified as noncontrolled.

#### **R657-3c-12. Possession of Aquatic Animal Species.**

(1) A person shall obtain a certificate of registration before possessing any aquatic animal species or aquatic animal species parts classified as prohibited or controlled, except as otherwise provided in this rule, statute, or rules and orders of the Wildlife Board.

(2) A certificate of registration is not required to possess any aquatic animal species classified as noncontrolled.

#### **R657-3c-13. Propagation of Aquatic Animal Species.**

(1) A person shall obtain a certificate of registration before propagating any aquatic animal species classified as prohibited or controlled, except as otherwise provided in this rule, statute, or rules and orders of the Wildlife Board.

(2) A certificate of registration is not required to propagate any aquatic animal species classified as noncontrolled.

#### **R657-3c-14. Brine Shrimp and Brine Shrimp Eggs.**

(1) A certificate of registration is not required to collect, transport, or possess brine shrimp and brine shrimp eggs for personal use, provided:

(a) the brine shrimp and brine shrimp eggs are collected, transported, and possessed together with water in a container no larger than one gallon;

(b) no more than a one gallon container of brine shrimp and brine shrimp eggs, including water, is collected during any consecutive seven day period; and

(c) the brine shrimp or brine shrimp eggs following possession are not released live into the Great Salt Lake, Sevier River, or any of their tributary waters.

**KEY: wildlife, animal protection, import restrictions, zoological animals**

**Date of Last Change: 2023**

**Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19; 23-20-3; 23-13-14; 63G-7-101 et seq.**

#### **NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

**Rule or Section Number:**

**R657-5**

**Filing ID:**  
**55467**

#### **Agency Information**

**1. Department:** Natural Resources

**Agency:** Wildlife Resources

## NOTICES OF PROPOSED RULES

<b>Room number:</b>	Suite 2110	
<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 146301	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6301	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Staci Coons	801-450-3093	stacicoons@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

### General Information

<b>2. Rule or section catchline:</b>
R657-5. Taking Big Game
<b>3. Purpose of the new rule or reason for the change:</b>
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' (DWR) rule pursuant to taking Big Game.
<b>4. Summary of the new rule or change:</b>
The proposed amendments to this rule: 1) places the rule in line with H.B. 469, Wildlife Amendments, 2023 General Session which restricts the use of Trail Cameras.

### Fiscal Information

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
The amendments to Rule R657-5 are administrative in nature, the DWR determines that these changes can be initiated within the current workload and resources of the DWR, therefore, the DWR does not believe that these amendments would create a cost or savings impact to the state budget or the DWR's budget since the changes will not increase workload and can be carried out with existing budget.
<b>B) Local governments:</b>
Local governments are not directly or indirectly impacted by these proposed amendments because this rule does not create a situation requiring services from local governments.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):

The proposed rule amendments will not directly impact small businesses because a service is not required of them.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

The proposed rule amendments will not directly impact non-small businesses because a service is not required of them.

**E) Persons other than small businesses, non-small businesses, state, 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**):

The proposed rule amendments do not have the potential to impact other persons that hunt big game in Utah, nor is a service required of them.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

The DWR determines that this amendment may not create additional costs for those individuals wishing to hunt big game in Utah because it regulates the use of Trail Cameras during specified months of the year and does not require an increased service for those wishing to participate.

**G) Regulatory Impact Summary Table** (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 will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$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>
<b>H) Department head comments on fiscal impact and approval of regulatory impact analysis:</b>			
After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a measurable fiscal impact to businesses.			
The Executive Director of the Department of Natural Resources, Joel Ferry, has reviewed and approved this fiscal analysis.			

**Citation Information**

<b>6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</b>		
Section 23-14-18	Section 23-14-19	

**Public Notice Information**

<b>8. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	07/31/2023

<b>9. This rule change MAY become effective on:</b>	08/07/2023
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Justin Shirley, Division Director	<b>Date:</b>	06/14/2023
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**R657. Natural Resources, Wildlife Resources.****R657-5. Taking Big Game.****R657-5-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established:

(a) this rule for taking deer, elk, pronghorn, moose, bison, bighorn sheep, and Rocky Mountain goat.

(b) appropriate weapons or devices to take big game and restrictions to weapons or devices to take big game.

(2) Specific dates, areas, methods of take, requirements, and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking big game.

**R657-5-2. Definitions.**

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

(2) In addition:

(a) "Antlerless deer" means a deer without antlers or with antlers five inches or shorter.

(b) "Antlerless elk" means an elk without antlers or with antlers five inches or shorter.

(c) "Antlerless elk control permit" means a permit allowing an individual to harvest an antlerless elk on an antlerless elk control unit.

(d) "Antlerless moose" means a moose with antlers shorter than its ears.

(e) "Arrow quiver" means a portable arrow case that completely encases all edges of the broadheads.

(f) "Buck deer" means a deer with antlers longer than five inches.

(g) "Buck pronghorn" means a pronghorn with horns longer than five inches.

(h) "Bull elk" means an elk with antlers longer than five inches.

(i) "Bull moose" means a moose with antlers longer than its ears.

(j) "Cow bison" means a female bison.

(k) "Doe pronghorn" means a pronghorn without horns or with horns five inches or shorter.

(l) "Draw-lock" means a mechanical device used to hold and support the draw weight of a conventional or compound bow at any increment of draw until released by the archer using a trigger mechanism and safety attached to the device.

(m) "Drone" means an autonomously controlled, aerial vehicle of any size or configuration that is capable of controlled flight without a human pilot aboard.

(n)(i) "Night Vision Device" means any device that enhances visible or non-visible light, including: night vision, thermal imaging, infrared imaging, or electronics that enhance the visible or non-visible light spectrum.

(ii) "Night Vision Device" does not include trail cameras as defined in Subsection (x).

(o) "Ewe" means a female bighorn sheep or any bighorn sheep younger than one year of age.

(p) "Hunter's choice" means either sex may be taken.

(q) "Immediate family member" means the landowner's or lessee's spouse, child, son-in-law, daughter-in-law, father, mother, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, stepchild, grandchild, grandfather, and grandmother.

(r) "Limited entry hunt" means any hunt published in the hunt tables of the guidebook of the Wildlife Board for taking big game, which is identified as limited entry and does not include general or once-in-a-lifetime hunts.

(s) "Limited entry permit" means any permit obtained for a limited entry hunt by any means, including conservation permits, wildlife expo permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

(t) "Once-in-a-lifetime hunt" means any hunt published in the hunt tables of the guidebook of the Wildlife Board for taking big game, which is identified as once-in-a-lifetime, and does not include general or limited entry hunts.



## NOTICES OF PROPOSED RULES

(u) "Once-in-a-lifetime permit" means any permit obtained for a once-in-a-lifetime hunt by any means, including conservation permits, wildlife expo permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

(v) "Ram" means a male desert bighorn sheep or Rocky Mountain bighorn sheep older than one year of age.

(w) "Spike bull" means a bull elk which has at least one antler beam with no branching above the ears. Branched means a projection on an antler longer than one inch, measured from its base to its tip.

(x) "Stalking" means when game has been located and the hunter engages in deliberate movements, on foot, in an effort to harvest the located game.

(y) "Trail camera" means a device that is not held or manually operated by a person and is ~~used to capture~~ capable of capturing images, video, or location data of wildlife using heat, or motion to trigger the device.

### R657-5-7. Prohibited Weapons and Devices.

(1) A person may not use any weapon or device to take big game other than those expressly permitted in this rule.

(2) A person may not use the following prohibited weapons or devices to take big game:

(a) a firearm capable of being fired fully automatic;

(b) any light enhancement device or aiming device that casts a visible beam of light;

(c) a firearm equipped with a computerized targeting system that marks a target, calculates a firing solution and automatically discharges the firearm at a point calculated most likely to hit the acquired target; or

(d) a projectile for which the path can be altered or electronically tracked after it is sent in motion~~[or]~~.

(3) Nothing in this section shall be construed as prohibiting laser range finding devices or illuminated sight pins for archery equipment.

(4) The following restrictions are placed on the use of specialized hunting technologies and equipment.

(a) A person may not use any night vision device to locate or attempt to locate a big game animal between July 31 and January 31;

(b) A person may not:

(i) ~~[A person shall not]~~ place, maintain, or use ~~[any]~~ a trail camera ~~[or non-handheld device capable of capturing image, video, location, time, or date data in the field to take, attempt to take, or aid in the take or attempted take of big game between July 31 and December 31]~~ as prohibited in Section 23-13-18;

(ii) ~~[E]~~engage in the sale or purchase of trail camera or other non-handheld device media, including images, video, location, time or date data to take, aid in the take or attempted take of big game; or

(iii) ~~[E]~~engage in the storage and sale or purchase of stored media, including images, video, location, time, or date data to take, aid in the take or attempted take of big game.

(c) ~~[The prohibition on the use of trail cameras does not apply to:~~

~~(i) private landowners monitoring or protecting their property from trespass;~~

~~(ii) monitoring active agricultural operations;~~

~~(iii) to aid in the take of bear and cougar depredating livestock; and~~

~~(iv) municipalities participating in the Urban Deer Program.~~

~~(d) trail cameras and other non-handheld devices described in Subsection 5-7(4)(b)(i) on private property cannot be used to take, attempt to take, or aid in the take or attempted take of big game between July 31 and December 31.~~

~~(e) A person may not:~~

~~(i) use visual enhancement technology, such as nanotechnology, except for basic devices used solely for magnification;~~

~~([f]ii) [A person may not] use pattern recognition technology, such as artificial intelligence;~~

~~([g]iii) [a person may not] use live feed aerial imagery; or~~

~~([h]iv) [a person may not] use electronically amplified calls or sounds.~~

**KEY: wildlife, game laws, big game seasons**

**Date of Last Change: 2023[February 14, 2023]**

**Notice of Continuation: September 8, 2020**

**Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19; 23-16-5; 23-16-6**

### NOTICE OF PROPOSED RULE

**TYPE OF FILING:** Amendment

**Rule or Section Number:**

**R657-6**

**Filing ID:**  
**55468**

### Agency Information

<b>1. Department:</b>	Natural Resources
<b>Agency:</b>	Wildlife Resources
<b>Room number:</b>	Suite 2110
<b>Building:</b>	Department of Natural Resources
<b>Street address:</b>	1594 W North Temple
<b>City, state and zip:</b>	Salt Lake City, UT 84116
<b>Mailing address:</b>	PO Box 146301
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6301
<b>Contact persons:</b>	
<b>Name:</b>	<b>Phone:</b> <b>Email:</b>
Staci Coons	801-450-3093 stacicoons@utah.gov

**Please address questions regarding information on this notice to the persons listed above.**

### General Information

#### 2. Rule or section catchline:

R657-6. Taking Upland Game

#### 3. Purpose of the new 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' rule pursuant to the take of Upland Game.

#### 4. Summary of the new rule or change:

The proposed amendments to this rule: 1) authorizes airguns as a legal weapon; 2) prohibits dog training near sage-grouse and sharp-tailed grouse lek; 3) prohibits night vision devices, drones and robotic decoys; 4) clarifies language outlining the purchasing or selling of wild turkey parts; and 5) makes technical corrections.

### Fiscal Information

#### 5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

##### A) State budget:

The amendments to Rule R657-6 allow for additional types of legal weapons to be used for the taking of Upland Game and do not restrict currently allowed weapons or require the use of additional equipment the remaining amendments are administrative in nature, and as such, the DWR determines that these changes can be initiated within the current workload and resources of the DWR; therefore, the DWR does not believe that these amendments would create a cost or savings impact to the state budget or the DWR's budget since the changes will not increase workload and can be carried out with existing budget.

##### B) Local governments:

Since the proposed amendments allow for additional types of legal weapons to be used for the taking of Upland Game and do not restrict currently allowed weapons or require the use of additional equipment this filing does not create any direct cost or savings impact to local governments.

Nor are local governments indirectly impacted because this rule does not create a situation requiring services from local governments.

##### C) Small businesses ("small business" means a business employing 1-49 persons):

The proposed rule amendments will not directly impact small businesses because a service is not required of them.

##### D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

The proposed rule amendments will not directly impact non-small businesses because a service is not required of them.

##### E) Persons other than small businesses, non-small businesses, state, 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**):

These amendments do not have the potential to create a cost impact to those individuals wishing to participate in the hunting of Upland Game in Utah.

These amendments allow for additional opportunity for those wishing to hunt with air rifles but do not limit that as the only weapon allowed.

The prohibition of night vision devices, drones and robotic decoys place this rule in line with other species rules and creates consistency, this will not have a cost impact on those wishing to participate in hunting Upland Game.

#### F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

The DWR determines that this amendment will not create additional costs for those participating in the upland game hunts because there are no mandatory cost increases to participate.

The use of air rifles is an additional opportunity but not the only authorized weapon.

The prohibition of night vision devices, drones and robotic decoys place this rule in line with other species rules and creates consistency, it does not increase costs.

#### G) Regulatory Impact Summary Table (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 will be included in narratives above.)

##### Regulatory Impact Table

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

## NOTICES OF PROPOSED RULES

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>
<b>H) Department head comments on fiscal impact and approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Natural Resources, Joel Ferry, has reviewed and approved this fiscal analysis.			

### Citation Information

**6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 23-14-18	Section 23-14-19	
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### Public Notice Information

**8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	07/31/2023
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<b>9. This rule change MAY become effective on:</b>	08/07/2023
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

### Agency Authorization Information

<b>Agency head or designee and title:</b>	Justin Shirley, DWR Director	<b>Date:</b>	06/14/2023
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### R657. Natural Resources, Wildlife Resources.

#### R657-6. Taking Upland Game.

##### R657-6-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 and in accordance with 50 CFR 20, 2004 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking upland game.

(2) Specific season dates, bag and possession limits, areas open, number of permits and other administrative details that may change annually are published in the guidebook of the Wildlife Board for taking upland game and wild turkey.

##### R657-6-2. Definitions.

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

(a) "Bait" means shelled, shucked or unshucked corn, wheat or other grain, salt or other feed that lures, attracts or entices upland game.

(b) "Baiting" means the direct or indirect placing, exposing, depositing, distributing, or scattering of salt, grain, or other feed that could serve as a lure or attraction for upland game to, on, or over any areas where hunters are attempting to take them.

(c) "CFR" means the Code of Federal Regulations.

(d) "Falconry" means the sport of taking quarry by ~~means of~~ a trained raptor.

(e) "Landowner" means any individual, family or corporation who owns property in Utah and whose name appears on the deed as the owner of eligible property or whose name appears as the purchaser on a contract for sale of eligible property.

(f) "Migratory game bird" means, for the purposes of this rule, American crow, mourning dove, white-winged dove, band-tailed pigeon, and Sandhill crane.

(g) "Night vision device" means any device that enhances visible or non-visible light, including: night vision, thermal imaging, infrared imaging, or electronics that enhance the visible or non-visible light spectrum.

(h) "Pre-charged pneumatic air rifle" means a rifle that fires a single projectile with compressed air released from a chamber:

(i) built into the rifle; and

(ii) pressurized at a minimum of 2,000 pounds per square inch from an external high compression device or source, such as a hand pump, compressor, or scuba tank firing a single:

(A) broadhead tipped bolt or arrow; or

(B) pellet or slug during fall turkey season that:

(I) is .25 caliber or larger;

(II) weighs 18 grains or more; and

(III) is fired at a velocity to produce at least 30 foot-pounds of energy at the muzzle.

(i) "Transport" means to ship, carry, export, import, receive or deliver for shipment, conveyance, carriage, exportation or importation.

(h)(j) "Upland game" means pheasant, California quail, Gambel's Quail, chukar partridge, gray partridge, greater sage-grouse, ruffed grouse, dusky grouse, sharp-tailed grouse, cottontail rabbit, snowshoe hare, white-tailed ptarmigan, ~~and the following migratory game birds:~~ American crow, mourning dove, white-winged dove, band-tailed pigeon, and Sandhill crane.

(j) "Youth group" means any organization in which youth are enrolled; FFA, Scouts, 4H.

#### R657-6-3. Migratory Game Bird Harvest Information Program.

(1) A person must obtain a Migratory Game Bird Harvest Information Program (HIP) registration number to hunt migratory game birds.

(2)(a) A person may ~~call the telephone number or~~ register online as published in the guidebook of the Wildlife Board for taking upland game and wild turkey to obtain their HIP registration number.

(b) A person must write their HIP registration number on their current valid hunting license.

(3) Any person obtaining a HIP registration number will be required to provide their:

(a) hunting license number;

(b) hunting license type;

(c) name;

(d) address;

(e) phone number;

(f) birth date; and

(g) information about the previous year's migratory game bird hunts.

(4) Lifetime license holders will receive a sticker every three years from the Division to write their HIP number on and place on their lifetime license card.

(5) Any person hunting migratory game birds will be required, while in the field, to possess a hunting or combination license with the HIP registration number recorded on the license, demonstrating they have registered and provided information for the HIP program.

#### **R657-6-4. Permits for Band-tailed Pigeon, Greater Sage-grouse, Sharp-tailed Grouse and White-tailed Ptarmigan.**

(1)(a) A person may not take or possess:

(i) Band-tailed pigeon without first obtaining a ~~[Band]~~band-tailed pigeon permit;

(ii) Greater sage-grouse without first obtaining a ~~[Greater]~~greater sage-grouse permit;

(iii) Sharp-tailed grouse without first obtaining a ~~[Sharp]~~sharp-tailed grouse permit; or

(iv) White-tailed ptarmigan without first obtaining a ~~[White]~~white-tailed ptarmigan permit.

(b) A person may obtain only one permit for each species listed in Subsection (1)(a), except a falconer with a valid Falconry Certificate of Registration may obtain one additional two-bird ~~[Greater]~~greater sage-grouse permit beginning on the date published in the guidebook of the Wildlife Board for taking upland game and wild turkey, if any permits are remaining.

(2)(a) A limited number of two-bird ~~[Greater]~~greater sage-grouse permits are available in the areas published in the guidebook of the Wildlife Board for taking upland game and wild turkey.

(b) A Greater sage-grouse permit may only be used in one of the open areas as published in the guidebook of the Wildlife Board for taking upland game and wild turkey.

(c) Greater sage-grouse permits will be issued pursuant to Section R657-62-21.

(3)(a) A limited number of two-bird, ~~[Sharp]~~sharp-tailed grouse permits are available.

(b) A ~~[Sharp]~~sharp-tailed grouse permit may only be used in one of the open areas as published in the guidebook of the Wildlife Board for taking upland game and wild turkey.

(c) Sharp-tailed grouse permits will be issued pursuant to Section R657-62-21.

(4) ~~[Band]~~Band-tailed pigeon and ~~[White]~~white-tailed ptarmigan permits are available from Division offices, through the mail, and through the Division's ~~[F]~~internet address by the first week in August, free of charge.

#### **R657-6-6. Authorized Weapons.**

(1) A person may not use any weapon or device to take upland game except as provided in this section.

~~(2)(a)~~ Upland game may be taken with archery equipment, including a draw-lock, a crossbow, a shotgun no larger than 10 gauge, or a handgun. Loads for shotguns and handguns must be one-half ounce or more of shot size ranging between no. 2 and no. ~~[8]~~9, except:

~~(i)~~(a) migratory game birds may not be taken with a handgun, or a shotgun capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells;

~~(i)~~(b) cottontail rabbit and snowshoe hare may be taken with;

~~(i)~~ any firearm not capable of being fired fully automatic; and

~~(ii)~~ A pre-charged pneumatic air rifle.

~~(i)~~(3) Sandhill crane may be taken with any size of nontoxic shot.

~~(3)~~(4) A person may not use:

(a) a firearm capable of being fired fully automatic; or

(b) any light enhancement device or aiming device that casts a visible beam of light.

#### **R657-6-7. Nontoxic Shot.**

(1) Only nontoxic shot may be used to take Sandhill crane.

(2) Except as provided in Subsection (3), nontoxic shot is not required to take any species of upland game, except Sandhill crane.

(3) A person may not possess or use lead shot or any other shot that has not been approved as nontoxic by the U.S. Fish and Wildlife Service while on federal refuges or the following state waterfowl or wildlife management areas: Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Lee Kay Dog Training Area, Locomotive Springs, Manti Meadows, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Scott M. Matheson Wetland Preserve, Stewart Lake, Timpie Springs, and Utah Lake Wetland Preserve.

#### **R657-6-10. Shooting Hours.**

(1)(a) Except as provided in Subsection (b), shooting hours for upland game are as follows:

(i) American crow, band-tailed pigeon, mourning dove, white-winged dove, and Sandhill crane may be taken only between one-half hour before official sunrise through official sunset.

(ii) ~~[Greater]~~Greater sage-grouse, ruffed ~~[Grouse]~~grouse, dusky grouse, sharp-tailed grouse, white-tailed ptarmigan, chukar partridge, gray partridge, pheasant, California quail, Gambel's quail, cottontail rabbit, and snowshoe hare may be taken only between one-half hour before official sunrise through one-half hour after official sunset.

~~(b)(i)~~ A person must add to or subtract from the official sunrise and sunset depending on the geographic location of the state.

~~(ii)~~ Specific ~~[times are]~~shooting hours shall be provided in a time zone map in the guidebook of the Wildlife Board for taking upland game and wild turkey.

(2) A person may not discharge a firearm on state owned lands adjacent to the Great Salt Lake, state waterfowl management areas or on federal refuges between official sunset through one-half hour before official sunrise.

#### **R657-6-11. State Parks.**

(1) Hunting of any wildlife is prohibited within the boundaries of all state park areas, except those areas designated open to hunting by the Division of ~~[Parks and Recreation in]~~Parks in ~~[Rule]~~Section R651-614-4.

(2) Hunting with rifles and handguns in park areas designated open is prohibited within one mile of all park facilities including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.

(3) Hunting with shotguns, crossbow, or archery tackle is prohibited within one-quarter mile of the above stated areas.

**R657-6-12. Falconry.**

(1)(~~a~~) Falconers must obtain an annual hunting or combination license and a valid ~~[f]~~Falconry ~~[e]~~Certificate of ~~[f]~~Registration or license to hunt upland game and must also obtain:

(~~b~~)a) ~~[a-Band]~~a band-tailed pigeon permit before taking ~~[Band]~~band-tailed pigeon;

(~~e~~)b) ~~[a-Greater]~~a greater sage-grouse permit before taking ~~[Greater]~~greater sage-grouse;

(~~d~~)c) ~~[a-Sharp]~~a sharp-tailed grouse permit before taking ~~[Sharp]~~sharp-tailed grouse;

(~~e~~)d) ~~[a-White]~~a white-tailed ptarmigan permit before taking ~~[White]~~white-tailed ptarmigan; or

(~~f~~)e) a Sandhill crane permit before taking Sandhill crane.

(2) Areas open and bag and possession limits for falconry are provided in the guidebook of the Wildlife Board for taking upland game and wild turkey.

**R657-6-13. Baiting.**

(1) A person may not hunt upland game by the aid of baiting, or on or over any baited area where a person knows or reasonably should know that the area is or has been baited. An area is considered baited for 10 days after bait is removed, or 10 days after all bait in an area is eaten. This section does not prohibit:

(a) the taking of any migratory game bird on or over the following lands or areas that are not otherwise baited areas:

(i) standing crops or flooded standing crops, ~~[including aquatics]~~, standing, flooded or manipulated natural vegetation, flooded harvested croplands, or lands or areas where seeds or grains have been scattered solely as the result of a normal agricultural planting, harvesting, post-harvest manipulation or normal soil stabilization practice;

(ii) from a blind or other place of concealment camouflaged with natural vegetation;

(iii) from a blind or other place of concealment camouflaged with vegetation from agricultural crops, as long as such camouflaging does not result in the exposing, depositing, distributing or scattering of grain or other feed; or

(iv) standing or flooded standing agricultural crops where grain is inadvertently scattered solely as a result of a hunter entering or exiting a hunting area, placing decoys or retrieving downed birds.

(b) The taking of any upland game, except Sandhill crane, on or over lands or areas that are not otherwise baited areas, and where grain or other feed has been distributed or scattered solely as the result of manipulation of an agricultural crop or other feed on the land where grown or solely as the result of a normal agricultural operation.

**R657-6-15. Possession of Live Protected Wildlife.**

It is unlawful for any person to hold in captivity at any time any protected wildlife, except as provided by Title 23, Wildlife Resources Code or any rules ~~[and regulations]~~of the Wildlife Board.~~[Protected wildlife that is wounded must]~~ Every upland game animal wounded by hunting and reduced to possession by the hunter shall be immediately killed and ~~[shall be included in]~~become part of the [hunter's]daily bag limit.

**R657-6-16. Tagging Requirements.**

(1) A person that takes a ~~[sandhill]~~Sandhill crane, greater sage-grouse, or sharp-tailed grouse must tag the carcass, as provided in Section 23-20-30, immediately upon taking possession of the carcass.

(2) To tag a carcass, a person shall:

(a) completely detach the tag from the license or permit;

(b) completely remove the appropriate notches to correspond with the date the animal was taken; and

(c) attach the tag to the carcass so that the tag remains securely fastened and visible.

(3) A person may not:

(a) remove more than one notch indicating the date; or

(b) tag more than one carcass using the same tag.

(4) A person may not hunt or pursue a ~~[sandhill]~~Sandhill crane, greater sage-grouse, or sharp-tailed grouse after:

(a) shooting and retrieving birds equal to the ~~[bird]~~number of unused permits in possession, or daily bag limit;

(b) the tag is detached from the permit; or

(c) any of the notches have been removed from the tag.

**R657-6-19. Utah Pheasant Project.**

(1) ~~[Boy Scouts, Girl Scouts, or youth enrolled in 4-H or FFA]~~Youth groups may collect and rear pheasants from eggs in nests destroyed by normal hay mowing operations. The ~~[4-H club leader, FFA adviser or Scout Master]~~administrator of the youth group shall first apply for and obtain a certificate of registration for this activity.

(2) Landowners or operators of mowing equipment may collect the eggs and possess them for no more than 24 hours for pick up by a person with a certificate of registration.

(3) Pheasants must be released by 16 weeks of age.

(4) These pheasants remain the property of the state~~[of Utah]~~.

**R657-6-20. Use of Dogs.**

(1) An individual may not use or permit a dog to harass, pursue, or take protected wildlife unless otherwise allowed for in Title 23, the Wildlife Resources Code of Utah, ~~[administrative]~~or the rules ~~[issued under Wildlife Code, or]~~outlined in a guidebook of the Wildlife Board.

(2) Dogs may be used to locate and retrieve upland game during open upland game hunting seasons.

(3) Dogs are generally allowed on state wildlife management and waterfowl management areas, subject to the following conditions.

(a) dogs are not allowed on the following state wildlife management areas and waterfowl management areas between March 10 and August 31 annually or as posted by the ~~[D]~~division:

- (i) Annabella;
- (ii) Bear River Trenton Property Parcel;
- (iii) Bicknell Bottoms;
- (iv) Blue Lake;
- (v) Browns Park;
- (vi) Bud Phelps;
- (vii) Clear Lake;
- (viii) Desert Lake;
- (ix) Farmington Bay;
- (x) Harold S. Crane;
- (xi) Hatt's Ranch;
- (xii) Howard Slough;
- (xiii) Huntington;
- (xiv) James Walter Fitzgerald;
- (xv) Kevin Conway;
- (xvi) Locomotive Springs;
- (xvii) Manti Meadows;
- (xviii) Mills Meadows;
- (xix) Montes Creek;
- (xx) Nephi;

- (xxi) Ogden Bay;
- (xxii) Pahvant;
- (xxiv) Public Shooting Grounds;
- (xxv) Redmond Marsh;
- (xxvi) Richfield;
- (xxvii) Roosevelt;
- (xxviii) Salt Creek;
- (xxix) Scott M. Matheson Wetland Preserve;
- (xxx) Steward Lake;
- (xxxi) Timpie Springs;
- (xxxii) Topaz Slough;
- (xxxiii) Utah Lake Wetland Preserve;
- (xxxiv) Vernal; and
- (xxxv) Willard Bay.

(b) ~~the~~ ~~the~~ ~~division~~ may establish special restrictions for Division-managed properties, such as on-leash requirements and temporary or locational closures for dogs, and post them at specific ~~division~~ properties and at Regional offices;

(c) ~~organized events or group gatherings of twenty-five (25) or more individuals that involve the use of dogs, such as dog training or trials, that occur on Division properties may require a special use permit as described in Rule R657-28; and~~

(d) ~~dog training may be allowed in designated areas on Lee Kay Center and Willard Bay WMA by the Division without a special use permit; and~~

(e) dogs are only allowed on the Nature Trail within the Hasenyager Nature preserve, and must be on a leash.

(4) A person may train a dog on live wild game birds provided:

(a) the dog, or the person training the dog, may not harass, catch, capture, kill, injure, or at any time, possess any wild game birds, except during legal hunting seasons as provided in the Upland Game or Waterfowl proclamations of the Wildlife Board;

(b) the use of dogs complies with Rules R657-6, R657-9, and R657-54;

(c) the person training a dog on live wild game birds, except during legal hunting seasons:

(i) must comply with city and county ordinances pertaining to the discharge of any firearm; and

(ii) must obtain written permission from the landowner for training on properly posted private property.

(5) The firearm restrictions set forth in this section do not apply to a person licensed to carry a concealed weapon in accordance with Section 53-5-701, et seq., provided the person is not utilizing the concealed weapon to hunt or take wildlife.

(6) A person may not train dogs or otherwise harass game birds within ½ mile of sage-grouse or sharp-tailed grouse leks, or other concentrations of sage-grouse or sharp-tailed grouse from March 1 to May 31.

(7) Dogs may be used to locate upland game as part of Division sanctioned survey efforts.

#### **R657-6-21. Closed Areas.**

A person may not hunt upland game in any area posted closed by the Division or any of the following areas:

(1) The Salt Lake International Airport boundaries as posted.

~~(2) Incorporated municipalities: Many incorporated municipalities prohibit the discharge of firearms and other weapons. Check with the respective city officials for specific boundaries and limitations.~~

~~(3) Wildlife Management Areas:~~

(a) Waterfowl management areas are open for hunting upland game only during designated waterfowl hunting seasons or as authorized by the Division, including: Blue Lake, Clear Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Manti Meadows, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Scott M. Matheson Wetland Preserve, Stewart Lake, and Timpie Springs.

(b) All National Wildlife Refuges unless declared open by the managing authority.

(c) The Goshen Warm Springs ~~is closed to upland game hunting~~.

~~([4]3) Military installations, including Camp Williams except as otherwise provided under Rule R657-66, are closed to hunting and trespassing.~~

#### **R657-6-22. Live Decoys and Electronic Calls.**

A person may not take ~~migratory~~ any upland game birds by the use or aid of live or robotic decoys, night vision devices, drones, recorded or electronically amplified bird calls or sounds, or recorded ~~or recorded~~ or electronically amplified imitations of bird calls or sounds.

#### **R657-6-23. Shipping or Exporting.**

(1) No person may transport upland game by the Postal Service or a common carrier unless the package or container has the name and address of the shipper and the consignee and an accurate statement of the numbers of each species of birds contained therein clearly and conspicuously marked on the outside of the container.

(2) A shipping permit issued by the Division must accompany each package containing upland game within or from the state.

(3) A person may export upland game or their parts from Utah only if:

(a) the person who harvested the upland game accompanies it and possess a valid license or permit corresponding to the tag, if applicable; or

(b) the person exporting the upland game or its parts, if it is not the person who harvested the upland game, has obtained a shipping permit from the Division.

#### **R657-6-24. Spotlighting.**

(1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight or other artificial light to locate protected wildlife while having in possession a firearm, falconry bird, or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to:

~~(a) the use of the headlights of a motor vehicle or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or~~

~~(b) 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 wildlife.]~~

#### **R657-6-25. Purchasing or Selling Upland Game Parts.**

(1) A person may only purchase, sell, offer or possess for sale, barter, exchange or trade any upland game or its parts as follows:

## NOTICES OF PROPOSED RULES

(a) Untanned or tanned hides, feather, bone, nail, or beak of legally taken upland game or turkey may only be sold by the hunter who harvested the individual animals.

(b) An individual hunter may only sell one possession limit as defined by the Wildlife Board and guidebook for upland game and turkey per year.

(c) Resale may only occur as derivative products such as artificial fishing flies.

(2) A person selling or purchasing untanned or tanned hides, feather, bone, nail, or beak of legally taken upland game shall keep transaction records stating:

(a) the name and address of the person who harvested the animal;

(b) the transaction date; and

(c) the hunting license number of the person who harvested the animal.

### **R657-6-26. Season Dates, Bag and Possession Limits, and Areas Open.**

Season dates, bag and possession limits, areas open, and number of permits for taking upland game are provided in the guidebook of the Wildlife Board for taking upland game and wild turkey.

**KEY: wildlife, birds, rabbits, game laws**

**Date of Last Change: 2023[August 9, 2021]**

**Notice of Continuation: May 18, 2020**

**Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19**

### **NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R657-9</b>	<b>Filing ID:</b> <b>55469</b>
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### **Agency Information**

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Wildlife Resources	
<b>Room number:</b>	Suite 2110	
<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 146301	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6301	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Staci Coons	801-450-3093	stacicoons@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

### **General Information**

#### **2. Rule or section catchline:**

R657-9. Taking Waterfowl, Snipe and Coot

#### **3. Purpose of the new 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' (DWR) rule regulating the take of Waterfowl.

#### **4. Summary of the new rule or change:**

The proposed amendments to this rule: 1) allows electronic duck stamps; 2) clarifies the stipulations for dogs allowed at Farmington Bay; 3) clarifies swan permits as tundra swan only; and 4) makes technical corrections.

### **Fiscal Information**

#### **5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:**

##### **A) State budget:**

The amendments to Rule R657-9 are administrative in nature, the DWR determines that these changes can be initiated within the current workload and resources of the DWR, therefore, the DWR does not believe that these amendments would create a cost or savings impact to the state budget or the DWR's budget since the changes will not increase workload and can be carried out with existing budget.

The issuance of an electronic duck stamp does not increase the fee, nor create a cost impact to the DWR.

The requirement to leash dogs while at the Hasenyager Nature Center will result in a cost to post signage but can be carried out with existing budget.

##### **B) Local governments:**

Local governments are not directly nor indirectly impacted by these amendments because this rule does not create a situation requiring serves from them.

##### **C) Small businesses** ("small business" means a business employing 1-49 persons):

The proposed rule amendments will not directly impact small businesses because a service is not required of them.

##### **D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

The proposed rule amendments will not directly impact non-small businesses because a service is not required of them.



**E) Persons other than small businesses, non-small businesses, state, 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**):

These amendments do not have the potential to create a cost impact to those individuals wishing to participate in the hunting of Waterfowl in Utah, the issuance of an electronic duck stamp does not increase the fee, nor create a cost impact to the hunter.

The requirement to leash dogs while at the Hasenyager Nature Center will also have no additional cost to those wishing to take their dog on the trails.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

The DWR determines that this amendment will not create additional costs for those participating in the waterfowl hunts. The issuance of an electronic duck stamp does not increase the fee, nor create a cost impact to the hunter.

The requirement to leash dogs while at the Hasenyager Nature Center will also have no additional cost to those wishing to take their dog on the trails.

**G) Regulatory Impact Summary Table** (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 will be included in narratives above.)

**Regulatory Impact Table**

<b>Fiscal Cost</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$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>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

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

**Citation Information**

**6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 23-14-18	Section 23-14-19	Section 23-32-101 et seq.
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**Public Notice Information**

**8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 07/31/2023

**9. This rule change MAY become effective on:** 08/07/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Justin Shirley, DWR Director	<b>Date:</b>	06/14/2023
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**R657. Natural Resources, Wildlife Resources.**

**R657-9. Taking Waterfowl, Snipe and Coot.**

**R657-9-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, and in accordance with 50 CFR 20, 50 CFR 32.64 and 50 CFR 27.21, 2004 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking waterfowl, snipe, and coot.

(2) Specific dates, areas, limits, requirements and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking waterfowl, snipe and coot.

**R657-9-2. Definitions.**

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

(b) The terms provided in Subsections 58-79-102(1) through (7) are incorporated by reference.



(2) In addition:

(a) "Bait" means shelled, shucked or unshucked corn, wheat or other grain, salt or other feed that lures, attracts or entices birds.

(b) "Baiting" means the direct or indirect placing, exposing, depositing, distributing, or scattering of salt, grain, or other feed that could serve as a lure or attraction for migratory game birds to, on, or over any areas where hunters are attempting to take them.

(c) "CFR" means the Code of Federal Regulations.

(d) "Daily Bag Limit" means the maximum number of migratory game birds of a single species or combination, aggregate, of species permitted to be taken by one person in any one day during the open season in any one specified geographic area for which a daily bag limit is prescribed.

(e) "Dark geese" means the following species: cackling, Canada, and brant.

(f) "Light geese" means the following species: snow, blue and Ross'.

(g) "Live decoys" means tame or captive ducks, geese or other live birds.

(h) "Migratory bird" means any bird that migrating game bird, such as waterfowl, snipe, coot, American crow, band-tailed pigeon, mourning dove, white-winged dove, and Sandhill crane.

(i) "Off-highway vehicle" means any motor vehicle designed for or capable of travel over unimproved terrain.

(j) "Permanent waterfowl blind" means any waterfowl blind that is left unattended overnight and that is not a portable structure capable of immediate relocation.

(k) "Possession limit" the maximum number of migratory game birds of a single species or a combination of species permitted to be possessed by any one person when lawfully taken in the United States in any one specified geographic area for which a possession limit is prescribed.

(l) "Sinkbox" means any type of low floating device, having a depression, affording the hunter a means of concealment beneath the surface of the water.

(m) "[snipe]Snipe" means the following species: common, Jack, pin-tailed, solitary, Swinhoe's and Wilson's snipe.

(n) "Transport" means to ship, export, import or receive or deliver for shipment.

(o) "Waterfowl" means ducks, mergansers, geese, and tundra swans.

(p) "Waterfowl blind" means any manufactured place of concealment, including boats, rafts, tents, excavated pits, or similar structures, which have been designed to partially or completely conceal a person while hunting waterfowl.

(q) "Waterfowl Management Area" means the following properties owned or managed by the division primarily for the conservation, production, or recreational harvest of ducks, mergansers, geese, and tundra swans, and other waterfowl:

(i) Bicknell Bottoms;

(ii) Blue Lake;

(iii) Brown's Park;

(iii) Blue Lake

(iv) Clear Lake;

(v) Desert Lake;

(vi) Farmington Bay;

(vii) Fitzgerald;

(viii) Harold Crane;

(ix) Howard Slough;

(ix) Harold Crane

(x) Locomotive Springs;

(xi) Mallard Springs;

(xii) Manti Meadows;

(xiii) Mills Meadows;

(xiv) Ogden Bay;

(xiv) Powell Slough;

(xv) Public Shooting Grounds;

(xv) Powell Slough

(xvi) Redmond Marsh;

(xvii) Rock Island;

(xviii) Salt Creek;

(xix) Stewart Lake;

(xx) Timpie Springs;

(xxi) Topaz;

(xxii) Warm Springs; and

(xxiii) Willard Spur.

### **R657-9-3. Stamp Requirements.**

(1) Any person 16 years of age or older ~~[may not hunt waterfowl without first obtaining]~~ must obtain a federal migratory bird hunting and conservation stamp before hunting waterfowl, and ~~[having]~~ must have the physical stamp or proof of electronic stamp in possession when hunting waterfowl.

(2) ~~[The]~~ A physical federal migratory bird hunting and conservation stamp must be validated by the hunter's signature in ink across the face of the stamp.

(3) A electronic federal migratory bird hunting and conservation stamp does not need to be signed.

(4) A federal migratory bird hunting and conservation stamp is not required for any person under the age of 16.

(5) Federal migratory bird hunting and conservation stamps are non-transferrable.

### **R657-9-4. Permit Applications for Tundra Swan.**

~~[(1) Swan]~~ Tundra swan permits ~~[will be]~~ are issued pursuant to Section R657-62-22.

### **R657-9-5. Tagging Tundra Swans.**

(1)(a) A person that takes a tundra swan must tag the carcass, as provided in Section 23-20-30, immediately upon taking possession of the carcass and reaching a location listed ~~[below]~~ in Subsections (i) through (iii), that is closest to the place where the carcass was first retrieved by the hunter, another person, or a dog:

(i) the blind or fixed location in the field where the person taking the tundra swan was set up and from where they shot at the tundra swan;

(ii) a vessel available to the person; or

(iii) the first area of land free from standing water.

(b) "Vessel" means, for the purposes of this subsection, any type of watercraft used or capable of being used as a means of transportation on water.

(2) To tag a tundra swan carcass, a person shall:

(a) completely detach the tag from the license or permit;

(b) completely remove the appropriate notches to correspond with the date the ~~[animal]~~ tundra swan was taken; and

(c) attach the tag to the tundra swan carcass so that the tag remains securely fastened and visible.

(3) A person may not:

(a) remove more than one notch indicating the date; or

(b) tag more than one tundra swan carcass using the same

tag.

(4) A person may not hunt or pursue a tundra swan after:

(a) shooting and retrieving the tundra swan;

- (b) the tag is detached from the permit; or
- (c) any of the notches have been removed from the tag.

#### **R657-9-6. Return of Tundra Swan Harvest and Hunt Information.**

(1) ~~[Swan]~~Tundra swan permit holders who do not hunt or are unsuccessful in taking a tundra swan must respond to the tundra swan questionnaire through the division's ~~[Internet]~~internet address, or by telephone, within 30 calendar days of the conclusion of the prescribed tundra swan hunting season.

(2) Within three days of harvest, tundra swan permit holders successful in taking a ~~[swan]~~tundra swan, or who incidentally take another swan species, must personally present the swan or its head for measurement to the division or the Bear River Migratory Bird Refuge and further provide all harvest information requested by the division or Refuge.

(3) Hunters who fail to comply with the requirements of Subsection[s] (1) or (2) shall be ineligible to:

- (a) obtain a tundra swan permit the following season; and
- (b) obtain a tundra swan permit after the first season of ineligibility until the swan orientation course is retaken.

(4) ~~[late]~~Late tundra swan questionnaires may be accepted pursuant to ~~[Rule]~~Subsection R657-42-9(3). ~~[Swan]~~Tundra swan permit holders are still required to present the swan or its head for measurement to a division office.

#### **R657-9-8. Nontoxic Shot.**

(1) Only nontoxic shot may be in possession or used while hunting waterfowl, snipe, and coot.

(2) A person may not possess or use lead shot:

(a) while hunting waterfowl, snipe or coot in any area of the state;

(b) on federal refuges;

(c) on the following waterfowl management areas: Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Manti Meadow, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Stewart's Lake, Timpie Springs, Willard Spur; or

(d) on the Scott M. Matheson or Utah Lake ~~[w]~~Wetland ~~[p]~~Preserve.

#### **R657-9-9. Use of Weapons on State Waterfowl Management Areas.**

(1) A person may not discharge a firearm, crossbow, or archery tackle on the Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Stewart's Lake, Timpie Springs and Topaz Waterfowl Management areas or Utah Lake Wetland Preserve during any time of the year~~[, except]~~.

(2) The following exceptions apply to Subsection (1):

(a) the use of authorized weapons as provided in Section R657-9-7 during waterfowl hunting seasons for lawful hunting activities;

(b) as otherwise authorized by the ~~[Division]~~division in a special use permit, certificate of registration, ~~[administrative]~~rule, proclamation, or order of the Wildlife Board; or

(c) for lawful purposes of self-defense.

#### **R657-9-10. Airborne, Terrestrial, and Aquatic Vehicles.**

(1) Migratory game birds may not be taken:

~~[(1)]~~a from ~~[or by means of any]~~a motorboat or other craft having a motor attached~~[, or]~~;

~~[(b)]~~from a sailboat unless the motor has been completely shut off or sails furled and its progress has ceased~~[; provided, that a craft under power may be used to retrieve dead or crippled birds; however, crippled birds may not be shot from such craft under power]~~; or

~~[(2)]~~c by means or aid of any motor driven land, water or air conveyance, or any sailboat used ~~[for the purpose of]~~to or resulting in the concentrating, driving, rallying or stirring up of any migratory bird.

~~[(2)]~~A craft under power may be used to retrieve dead or crippled birds; however, crippled birds may not be shot from such craft under power.

#### **R657-9-11. Airboats.**

(1) Air-thrust or air-propelled boats and personal watercraft are not allowed in designated parts of the following areas for the purposes of waterfowl hunting:

(a) Box Elder County: Box Elder Lake, Bear River, that part of Harold S. Crane within one-half mile of all dikes and levees, Locomotive Springs, Public Shooting Grounds and Salt Creek, that part of Bear River Migratory Bird Refuge north of "D" line dike, and outside Units 1, 3, 4 and 5 as posted.

(b) Daggett County: Brown's Park;

(c) Davis County: Howard Slough, Ogden Bay and Farmington Bay within diked units or as posted;

(d) Emery County: Desert Lake;

(e) Millard County: Clear Lake, Topaz Slough;

(f) Tooele County: Timpie Springs;

(g) Uintah County: Stewart's Lake;

(h) Utah County: Powell Slough;

(i) Wayne County: Bicknell Bottoms; and

(j) Weber County: Ogden Bay within diked units or as posted and the portion of Harold S. Crane Waterfowl Management Area that falls within the county line.

(2) "Personal watercraft" means, for purposes of this section, a motorboat that is:

(a) less than 16 feet in length;

(b) propelled by a water jet pump; and

(c) designed to be operated by a person sitting, standing or kneeling on the vessel, rather than sitting or standing inside the vessel.

#### **R657-9-12. Motorized Vehicle Access.**

(1) "Motorized vehicle" means, for ~~[the]~~purposes of this section~~[means]~~, a vehicle that is self-propelled or possesses the ability to be self-propelled. This does not include vehicles moved solely by human power, motorized wheelchairs, or an electric personal assisted mobility device.

(2) Motorized vehicle travel is restricted to county roads, improved roads, and parking areas.

(3) Off-highway vehicles are not permitted on state waterfowl management areas, except as marked and posted open.

(4) Off-highway vehicles are not permitted on Bear River Migratory Bird Refuge.

(5) Motorized ~~[boat]~~vehicle use is restricted on waterfowl management areas as specified in the guidebook of the Wildlife Board for taking waterfowl, snipe and coot.

## NOTICES OF PROPOSED RULES

(6) Electric-assisted bicycles propelled in part by electrical assistance are only permitted on state waterfowl management areas if they meet the Class 1 definition provided in Subsections 41-6a-102(8) and (17).

### **R657-9-16. Baiting.**

(1) A person may not take migratory game birds by the aid of baiting, or on or over any baited area where a person knows or reasonably should know that the area is or has been baited.

(2) This section does not prohibit the following:

(a) ~~the taking~~ The taking of any migratory game bird on or over the following lands or areas that are not otherwise baited areas:

(i) standing crops or flooded standing crops ~~{}~~including aquatics~~}~~, standing, flooded or manipulated natural vegetation, flooded harvested croplands, or lands or areas where seeds or grains have been scattered solely as the result of a normal agricultural planting, harvesting, post-harvest manipulation or normal soil stabilization practice;

(ii) from a blind or other place of concealment camouflaged with natural vegetation;

(iii) from a blind or other place of concealment camouflaged with vegetation from agricultural crops, as long as such camouflaging does not result in the exposing, depositing, distributing or scattering of grain or other feed; or

(iv) standing or flooded standing agricultural crops where grain is inadvertently scattered solely as a result of a hunter entering or exiting a hunting area, placing decoys or retrieving downed birds.

~~(b) 3~~ (b) The taking of any migratory game bird, except waterfowl, coots and cranes, is legal on or over lands or areas that are not otherwise baited areas, and where grain or other feed has been distributed or scattered solely as the result of manipulation of an agricultural crop or other feed on the land where grown or solely as the result of a normal agricultural operation.

### **R657-9-23. Custody~~[-of Birds]~~ of Another Person's Migratory Game Bird.**

No person may receive or have in custody any migratory game birds belonging to another person unless such birds are tagged as required by Section R657-9-21.

### **R657-9-26. Migratory Bird Preservation Facilities.**

(1) "Migratory bird preservation facility" means, for purposes of this section:

(i) Any person who, at their residence or place of business and for hire or other consideration;~~[-or]~~

(ii) Any taxidermist, cold-storage facility or locker plant which, for hire or other consideration; or

(iii) Any hunting club which, in the normal course of operations; receives, possesses, or has in custody any migratory game birds belonging to another person for purposes of picking, cleaning, freezing, processing, storage or shipment.

(2) No migratory bird preservation facility shall:

(a) receive or have in custody any migratory game bird unless accurate records are maintained that can identify each bird received by, or in the custody of, the facility by the name of the person from whom the bird was obtained, and show:

(i) the number of each species;

(ii) the location where taken;

(iii) the date such birds were received;

(iv) the name and address of the person from whom such birds were received;

(v) the date such birds were disposed of; and

(vi) the name and address of the person to whom such birds were delivered; or

(b) destroy any records required to be maintained under this section for a period of one year following the last entry on record.

(3) Record keeping as required by this section will not be necessary at hunting clubs that do not fully process migratory birds by removal of the head and wings.

(4) No migratory bird preservation facility shall prevent any person authorized to enforce this part from entering such facilities at all reasonable hours and inspecting the records and the premises where such operations are being carried out.

### **R657-9-27. Importation.**

A person may not:

(1) import migratory game birds belonging to another person; or

(2) import migratory game birds ~~[in excess of]~~ over the following importation limits:

(a) From any country except Canada and Mexico, during any one calendar week beginning on Sunday, not to exceed ~~[40]~~ ten ducks, singly or in the aggregate of all species, and five geese ~~[including brant]~~, singly or in the aggregate of all species;

(b) From Canada, not to exceed the maximum number to be exported by Canadian authorities;

(c) From Mexico, not to exceed the maximum number permitted by Mexican authorities in any one day: provided that if the importer has ~~[his]~~ a Mexican hunting permit date-stamped by appropriate Mexican wildlife authorities on the first day ~~[he]~~ the importer hunts in Mexico, ~~[he]~~ the importer may import the applicable Mexican possession limit corresponding to the days actually hunted during that particular trip.

### **R657-9-28. Use of Dogs.**

(1) An individual may not use or permit a dog to harass, pursue, or take protected wildlife unless otherwise allowed for in the Wildlife Code, administrative rules issued under Wildlife Code, or a guidebook of the Wildlife Board.

(2) Dogs may be used to locate and retrieve turkey during open turkey hunting seasons.

(3) Dogs are generally allowed on state wildlife management and waterfowl management areas, subject to the following conditions.

(a) ~~[D]~~ dogs are not allowed on the following state wildlife management areas and waterfowl management areas between March 10 and August 31 annually or as posted by the ~~[D]~~ division:

(i) Annabella;

(ii) Bear River Trenton Property Parcel;

(iii) Bicknell Bottoms;

(iv) Blue Lake;

(v) Browns Park;

(vi) Bud Phelps;

(vii) Clear Lake;

(viii) Desert Lake;

(ix) Farmington Bay;

(x) Harold S. Crane;

(xi) Hatt's Ranch;

(xii) Howard Slough;

(xiii) Huntington;

(xiv) James Walter Fitzgerald;

(xv) Kevin Conway;

(xvi) Locomotive Springs;

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# NOTICES OF PROPOSED RULES

<b>Mailing address:</b> PO Box 146301		
<b>City, state and zip:</b> Salt Lake City, UT 84114-6301		
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Staci Coons	801-450-3093	stacicoons@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

## General Information

<b>2. Rule or section catchline:</b>
R657-10. Taking Cougar
<b>3. Purpose of the new rule or reason for the change:</b>
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' (DWR) rule regulating the take of cougar in Utah.
<b>4. Summary of the new rule or change:</b>
The proposed amendments to this rule places the rule in line with H.B. 469, Wildlife Amendments, 2023 General Session, which restrict the use of Trail Cameras and removes the requirement to have a permit for the take of Cougar.

## Fiscal Information

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
The amendments to Rule R657-10 are administrative in nature and any costs involved were offset in a fiscal note attached to the bill, the DWR determines that these changes can be initiated within the current workload and resources of the DWR, therefore, the DWR believes that these amendments can be enacted without a cost or savings impact to the state budget or the DWR's budget.
<b>B) Local governments:</b>
Since the proposed amendments do not require a service from local governments this filing does not create any direct or indirect cost or savings impact to local governments.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
The proposed rule amendments will not directly impact small businesses because a service is not required of them.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

The proposed rule amendments will not directly impact non-small businesses because a service is not required of them.

**E) Persons other than small businesses, non-small businesses, state, 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**):

These amendments do not have the potential to create a cost impact to those individuals wishing to participate in the hunting of cougar in Utah because the loss of revenue for cougar permits was incorporated into the fee of hunting and combination licenses.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

The DWR determines that this amendment will not create additional costs for those participating in the take of cougar.

The loss of revenue for cougar permits was incorporated into the fee of hunting and combination licenses.

**G) Regulatory Impact Summary Table** (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 will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$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>
<b>H) Department head comments on fiscal impact and approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Natural Resources, Joel Ferry, has reviewed and approved this fiscal analysis.			

**Citation Information**

<b>6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</b>		
Section 23-14-18	Section 23-14-19	

**Public Notice Information**

<b>8. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	07/31/2023

<b>9. This rule change MAY become effective on:</b>	08/07/2023
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Justin Shirley, DWR Director	<b>Date:</b>	06/14/2023
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**R657. Natural Resources, Wildlife Resources.****R657-10. Taking Cougar.****R657-10-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for taking and pursuing cougar.

(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 cougar.

**R657-10-2. Definitions.**

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

(2) In addition:

(a) "Canned hunt" means that a cougar is treed, cornered, held at bay or its ability to escape is otherwise restricted to allow a

person who was not a member of the initial hunting party to arrive and take the cougar.

(b) "Compensation" means anything of economic value ~~in excess of~~ over \$100 that is paid, loaned, granted, given, donated, or transferred to a dog handler for or in consideration of pursuing cougar for any purpose.

(c) "Cougar" means Puma concolor, commonly known as mountain lion, lion, puma, panther or catamount.

~~[(d) "Cougar pursuit permit" means a permit that authorizes a person to pursue cougar during designated seasons.~~

~~[(e) " ]~~ (d) "Dog handler" means the person in the field that is responsible for transporting, releasing, tracking, controlling, managing, training, commanding and retrieving the dogs involved in the pursuit. The owner of the dogs is presumed the dog handler when the owner is in the field during pursuit.

~~[(f) ]~~ (e) "Evidence of sex" means the sex organs of a cougar, including a penis, scrotum or vulva.

~~[(g) ]~~ (f) "Green pelt" means the untanned hide or skin of any cougar.

~~[(h) ]~~ (g) "Harvest objective" means an identified limit on the number of cougars that may be harvested during the season on a particular unit.

~~[(i) "Harvest objective permit" means any permit that can be obtained without entering a drawing and is valid on all units during non-limited entry seasons. A person may use dogs to hunt cougars with this permit.~~

~~[(j) " ]~~ (h) "Immediate family member" means a livestock owner's spouse, child, son-in-law, daughter-in-law, father, mother, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, stepchild and grandchild.

~~[(k) ]~~ (i) "Kitten" means a cougar that has obvious spots on its sides or its back or has obvious leg barring coloration.

~~[(l) "Limited entry season" means any season listed in the hunt tables of the guidebook of the Wildlife Board for taking cougar, which is identified as limited entry and a person must draw a permit to hunt that season.~~

~~[(m) "Limited entry permit" means any permit obtained for a limited entry season by any means, including conservation permits and sportsman permits. Limited entry permits may only be used on the specific unit they are issued for during the limited entry season. Limited entry permits may be used on any unit open to cougar hunting once the limited entry season for which the permit is valid ends.~~

~~[(n) " ]~~ (j) "Location of Harvest" means the exact location that the cougar is killed. GPS coordinates are preferred.

~~[(o) ]~~ (k) "Private lands" means any lands that are not public lands, excluding Indian trust lands.

~~[(p) ]~~ (l) "Public lands" means any lands owned by the state, a political subdivision or independent entity of the state, or the United States, excluding Indian trust lands, that are open to the public for purposes of engaging in pursuit.

~~[(q) ]~~ (m) "Pursue" means to chase, tree, corner or hold a cougar at bay.

~~[(r) "Spot and stalk permit" means a cougar permit available over the counter for seasons and units designated by the Division Director as per Statute 23-16-10. A hunter who obtains this permit may not use dogs to take a cougar.~~

~~[(s) "Predator management unit" means a unit managed under direction of DWR W1AG 4 to reduce cougar densities. This type of unit does not have a limit on the number of cougars that may be harvested during the season.~~

~~\_\_\_\_\_ (t) "Trail Camera" means a device that is not held or manually operated by a person and is used to capture images, video, or location data of wildlife using heat or motion to trigger the device.~~

~~\_\_\_\_\_ (u) "Waiting period" means a specified period that a person who has obtained a cougar permit must wait before applying for any other limited entry cougar season.]~~

~~\_\_\_\_\_ (v) "Written permission" means written authorization from the owner or person in charge to enter upon private lands and must include:~~

- ~~(i) the name and signature of the owner or person in charge;~~
- ~~(ii) the address and phone number of the owner or person in charge;~~
- ~~(iii) the name of the dog handler given permission to enter the private lands;~~
- ~~(iv) a brief description of the pursuit activity authorized;~~
- ~~(v) the appropriate dates; and~~
- ~~(vi) a general description of the property.~~

### **R657-10-3. ~~[Permits]~~License for Taking Cougar.**

~~\_\_\_\_\_ (1)(a) To harvest a cougar, a person must first obtain a valid limited entry cougar permit, harvest objective cougar permit, or spot and stalk permit, for the specified management units as provided in the guidebook of the Wildlife Board for taking cougar.~~

~~\_\_\_\_\_ (b) Any] Pursuant to Title 23, Chapter 19 Licenses, Permits, and Tags, any person who first obtains a [limited entry cougar season permit, harvest objective cougar permit, or spot and stalk permit,] valid hunting or combination license may hunt, pursue, or trap cougar during the [season]time period for which the [permit]license is valid.~~

~~\_\_\_\_\_ (2) A person may not apply for or obtain more than one cougar permit for the same season, except:~~

- ~~\_\_\_\_\_ (a) as provided in Subsection R657-10-25(3);~~
- ~~\_\_\_\_\_ (b) if the person is unsuccessful in the limited entry drawing, the person may purchase a harvest objective or spot and stalk permit; or~~
- ~~\_\_\_\_\_ (c) a person may acquire and use a permit issued pursuant to Section 23-16-10 in addition to another lawfully acquired cougar permit.~~

~~\_\_\_\_\_ (3) Any cougar permit purchased after the season opens is not valid until three days after the date of purchase.~~

~~\_\_\_\_\_ (4) To obtain a cougar limited entry permit, harvest objective permit, spot and stalk permit, or pursuit permit, a person must possess a Utah hunting or combination license.]~~

### **R657-10-4. ~~[Permits for Pursuing Cougar.~~**

~~\_\_\_\_\_ (1)(a) To pursue cougar without a limited entry, harvest objective permit, the dog handler must:~~

- ~~\_\_\_\_\_ (i) obtain a valid cougar pursuit permit from a division office; or~~
- ~~\_\_\_\_\_ (ii) possess the documentation and certifications required in Subsection R657-10-25(2) to pursue cougar for compensation.~~

~~\_\_\_\_\_ (b) A cougar pursuit permit or exemption there from does not allow a person to kill a cougar.~~

~~\_\_\_\_\_ (2) Residents and nonresidents may purchase cougar pursuit permits consistent with the requirements of this rule and the guidebooks of the Wildlife Board.~~

~~\_\_\_\_\_ (3) To obtain a cougar pursuit permit, a person must possess a Utah hunting or combination license.~~

### **~~R657-10-5.]Hunting Hours.~~**

~~Except as provided in Rule R657-11, Taking Furbearers and Trapping, Cougar may be taken or pursued only between one-half hour before official sunrise through one-half hour after official sunset.~~

### **~~R[657-10-6]657-10-5. Firearms, Archery Equipment, Crossbows, and Airguns.~~**

~~\_\_\_\_\_ (1)A person may only use weapons identified in Sections R657-5-8 through R657-5-11.~~

### **~~R[657-10-7]657-10-6. Traps and Trapping Devices.~~**

~~\_\_\_\_\_ (1)Cougar may [not]be taken [with a trap, snare or any other trapping device, except as authorized by the Division of Wildlife.~~

~~\_\_\_\_\_ (2) Cougar accidentally caught in any]by trapping [device must be released unharmed, and must not be pursued or taken.~~

~~\_\_\_\_\_ (3)(a) Authorization must be obtained from a division representative to remove the carcass of a cougar from any trapping device.~~

~~\_\_\_\_\_ (b) The carcass shall remain the property of the state and must be surrendered to the division]provided a person complies with all rules set forth in Rule R657-11, Taking Furbearers and Trapping.~~

### **~~R[657-10-8]657-10-7. State Parks.~~**

~~(1) Hunting of wildlife is allowed within the boundaries of all state park areas except for those areas and hunts specifically closed by the Division of State Parks [and Recreation]in Section R651-614-4.~~

~~(2) State laws regarding possession and discharge of dangerous weapons apply in state park areas open to hunting.~~

### **~~R[657-10-9]657-10-8. Prohibited Methods.~~**

~~(1) Cougar may be taken or pursued only during open seasons and using methods prescribed in this [rule]Rule R657-11, Taking Furbearer and Trapping, and the guidebook of the Wildlife Board for taking cougar. Otherwise, under the Wildlife Resources Code, it is unlawful for any person to pursue, possess, capture, kill, injure, drug, rope, trap, snare or in any way harm or transport cougar.~~

~~(2)(a) A person may not pursue a single cougar in repeated pursuits such that it renders the cougar physically unable to escape.~~

~~(b) After a cougar has been pursued, chased, treed, cornered or held at bay, a person may not, in any manner, restrict or hinder the animal's ability to escape if the person does not intend to harvest the cougar.~~

~~(c) A person must make reasonable efforts to call dogs off of a cougar that has been cornered or held at bay.~~

~~(3) A person must not engage in a canned hunt.~~

~~(4) A person may not take any wildlife from an airplane or any other airborne vehicle or device or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles.~~

~~(5) Electronic locating equipment may not be used to locate cougars wearing electronic radio devices.~~

~~(6)(a) A person [shall]may not place, maintain, or use [any]a trail camera [or non handheld device capable of capturing image, video, location, time or date data in the field to take, attempt to take, or aid in the take or attempted take of cougar between July 31 and December 31]as prohibited in Section 23-13-18;~~



(b) ~~[E]ngage in the sale or purchase of trail camera or other non-handheld device media, including images, video, location, time, or date data to take, attempt to take, or aid in the take or attempted take of cougar; or~~

(c) ~~[E]ngage in the storage and sale or purchase of stored media, including image, video, location, time or date data to take, attempt to take, or aid in the take or attempted take of cougar.~~

~~[(d) The prohibition on the use of trail cameras does not apply to:~~

~~(i) private landowners monitoring or protecting their property from trespass;~~

~~(ii) monitoring active agricultural operations;~~

~~(iii) to aid in the take of bear and cougar depredating livestock; and~~

~~(iv) municipalities participating in the Urban Deer Program.~~

~~(e) Trail cameras and other non-handheld devices described in Subsection (6)(a) on private property cannot be used to take, attempt to take, or aid in the take or attempted take of cougar between July 31 and December 31.]~~

#### **R[657-10-10]657-10-9. Spotlighting.**

(1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.

(2) ~~[The provisions of t]~~This section does not apply to~~[:]~~

~~[(a)] the use of the headlights of a motor vehicle or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife, [or]~~

~~[(b) 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 weapon to hunt or take wildlife.]~~

#### **R[657-10-11]657-10-10. Party Hunting.**

A person may not take a cougar for another person.

#### **R[657-10-12]657-10-11. Use of Dogs.**

(1) Dogs may be used to take or pursue cougar only during open seasons as provided in the guidebook of the Wildlife Board for taking cougar.

(2) A dog handler may pursue cougar provided ~~[he or she]~~they possess:

(a) a valid ~~[cougar permit]~~ hunting or combination license issued to the dog handler; or

~~[(b) a valid cougar pursuit permit; or~~

~~[(c)]~~ (b) the documentation and certifications required in Subsection R657-10-25(2) to pursue cougar for compensation.

(3) When dogs are used in the pursuit of a cougar, the licensed hunter intending to take the cougar 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 cougar and there is not an open pursuit season, the dog handler must have:

(a) a valid ~~[cougar permit]~~ hunting or combination license ~~issued to the dog handler for the unit being hunted;~~

~~[(b)(i) a valid cougar pursuit permit; and~~

~~[(ii) be accompanied, as provided in Subsection (3), by a hunter possessing a cougar permit for the area]; or~~

~~[(e)]~~ (i) the documentation and certifications required in Subsection R657-10-25(2) to pursue cougar for compensation; and

(ii) be accompanied, as provided in Subsection (3), by a paying client possessing a ~~[valid cougar permit for the area]~~ hunting or combination license.

(5) A dog handler may pursue cougar under:

(a) a ~~[cougar pursuit permit only]~~ valid hunting or combination license during the season and in the areas designated by the Wildlife Board in the guidebook open to pursuit; or

~~[(b) a valid cougar permit only during the season and in the area designated by the Wildlife Board in the guidebook for that permit; or~~

~~[(c)]~~ (b) the pursuit for compensation provisions in this rule only during the seasons and in the areas designated by the Wildlife Board in the guidebook open to pursuit.

(6)(a) An individual may not:

(i) release into the field more than the maximum number of dogs allowed in a single pursuit;

(ii) pursue a cougar with more than the maximum number of dogs allowed in a single pursuit, regardless of whether the individual owns or controls the dogs encountered in the field; or

(iii) harvest a cougar that was pursued using more than the allowable maximum number of dogs.

(b) An individual may not pursue or take a cougar using more than 16 dogs in a single pursuit.

(c) The maximum number of dogs allowed in a single pursuit is cumulative across all members of a hunting party, even if multiple members of the hunting party possess authorization to use dogs to pursue cougar.

(7)(a) A dog handler pursuing cougar may retrieve dogs that separate from the pack, provided the dog handler:

(i) takes reasonable steps to keep the pack together before and during pursuit;

(ii) separates from the ~~[permit]~~ license holder exclusively to retrieve stray dogs and does not attempt to actively pursue cougar during the retrieval process; and

(iii) immediately releases any cougar incidentally treed or held at bay by the stray dogs.

(b) Dogs that separate from the pack continue to count toward[s] the maximum number of dogs allowable in pursuit.

(c) A dog handler retrieving stray dogs under this subsection must still possess the documentation initially required to use dogs to pursue cougar as provided in this rule.

#### **R[657-10-13]657-10-12. Tagging Requirements.**

~~[(1) The carcass of a cougar must be tagged with a temporary possession tag before the carcass is moved from or the hunter leaves the site of kill as provided in Section 23-20-30.~~

~~[(2) A person may not hunt or pursue a cougar after any of the notches have been removed from the tag or the tag has been detached from the permit.~~

~~[(3) The temporary possession tag:~~

~~[(a) must remain attached to the pelt or unskinned carcass until the permanent possession tag is attached; and~~

~~[(b) is only valid for 48 hours after the date of kill.~~

~~[(4)]~~ A person may not possess a cougar pelt or unskinned carcass without a valid permanent possession tag affixed to the pelt or unskinned carcass. This provision does not apply to a person in possession of a properly tagged carcass or pelt within 48 hours after

## NOTICES OF PROPOSED RULES

the kill, provided the person was issued and is in possession of a valid ~~[permit]~~hunting or combination license.

### **~~R[657-10-14]~~657-10-13. Evidence of Sex and Age.**

(1) Evidence of sex must remain attached to the carcass or pelt of each cougar until a permanent tag has been attached by the division.

(2) The pelt and skull must be presented to the division in an unfrozen condition to allow the division to gather management data.

(3) It is mandatory that a tooth (PM1) be removed by the division at the time of permanent tagging to be used for aging purposes.

(4) The division may seize any pelt not accompanied by its skull or not having sufficient evidence of biological sex designation attached.

### **~~R[657-10-15]~~657-10-14. Permanent Tag.**

(1)(a) Each cougar must be taken by the ~~[permit]~~license holder to a conservation officer or division office within 48 hours after the date of kill to have a permanent possession tag affixed to the pelt or unskinned carcass and for the removal of a tooth.

(b) After regular business hours, on weekends, or on holidays, a conservation officer may be reached by contacting the local police dispatch office.

(2) A person may not possess a green pelt after the 48-hour check-in period, or 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.

### **~~R[657-10-16]~~657-10-15. Transporting Cougar.**

~~[Cougar that have been legally taken may be transported by the permit holder provided the cougar is properly tagged and the permittee possesses the appropriate permit.]~~

~~(1) Within 48 hours of legally harvesting a cougar, a person may transport the cougar if they possess a valid license.~~

~~(2) A person transporting a cougar beyond 48 hours after legal harvesting a cougar, they must possess a valid license and a permanent possession tag described in Section R657-10-13.~~

### **~~R[657-10-17]~~657-10-16. Exporting Cougar from Utah.**

(1) A person may export a legally taken cougar or its parts if that person has a valid ~~[permit]~~license and the cougar is properly tagged with a permanent possession tag.

(2) A person may not ship or cause to be shipped from Utah, a cougar pelt without first obtaining a shipping permit issued by an authorized division representative.

### **~~R[657-10-18]~~657-10-17. Donating.**

(1) A person may donate protected wildlife or their parts to another person as provided in Section 23-20-9.

(2) A green pelt of any cougar donated to another person must have a permanent possession tag affixed.

(3) The written statement of donation must be retained with the pelt.

### **~~R[657-10-19]~~657-10-18. Purchasing or Selling.**

(1) Legally obtained, tanned cougar hides may be purchased or sold.

(2) A person may not purchase, sell, offer for sale, or barter a tooth, claw, paw, or skull of any cougar.

### **~~R[657-10-20]~~657-10-19. Waste of Wildlife.**

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or their parts.

(2) The skinned carcass of a cougar may be left in the field and does not constitute waste of wildlife.

### **~~R[657-10-21]~~657-10-20. Livestock Depredation and Human Health and Safety.**

(1) If a cougar is harassing, chasing, disturbing, harming, attacking or killing livestock, or has committed such an act within the past 96 hours:

(a) in depredation cases, the livestock owner, an immediate family member or an employee of the owner on a regular payroll, and not hired specifically to take cougar, may kill the cougar;

(b) a landowner or livestock owner may notify the division of the depredation or human health and safety concerns, who shall authorize a local hunter to take the offending cougar or notify a USDA, Wildlife Services specialist; or

(c) the livestock owner may notify a USDA, Wildlife Services specialist of the depredation who may take the depredating cougar.

(2) Depredating cougar may be taken at any time by a USDA, Wildlife Services specialist, supervised by the Wildlife Services program, while acting in the performance of the person's assigned duties and in accordance with procedures approved by the division.

(3)(a) A depredating cougar may be taken by those persons authorized in Subsection (1)(a) with:

(i) any weapon authorized for taking cougar; or  
(ii) with the use of traps or snares~~[only with written authorization from the director of the division and subject to each condition and restriction set out in the written authorization.]~~

~~(b) The option in Subsection (3)(a)(ii) may only be authorized in the case of a chronic depredation situation where numerous livestock have been killed by a depredating cougar and must be verified by Wildlife Services or division personnel.~~

~~(4)(a) The division may issue depredation permits to take cougar on specified private lands and public land grazing allotments with a chronic depredation situation where numerous livestock have been killed by cougar.~~

~~(b) The division may:~~

~~(i) issue one or more depredation permits to the affected livestock owner or a designee, provided the livestock owner does not receive monetary consideration from the designee for the opportunity to use the depredation permit;~~

~~(ii) determine the legal weapons and methods of take allowed; and~~

~~(iii) specify the area and season that the permit is valid.~~

~~(5) (4)(a) Any cougar taken under Subsection (1)(a) or (4)(a) shall remain the property of the state and must be reported to a division office or employee within 96 hours.~~

(b) The division may issue a cougar damage permit to a person who has killed a depredating cougar under Subsection (1)(a) that authorizes the person to keep the carcass.

(c) A person that takes a cougar under Subsection (1)(a) or (4)(a) may acquire and use a ~~[limited entry permit or harvest objective cougar permit]~~hunting or combination license in the same year.

~~[(d) Notwithstanding Subsections (5)(b) and (5)(c), a person may retain no more than one cougar annually taken with a cougar depredation permit.~~

~~[(6)(a) A hunter interested in taking depredating cougar as provided in Subsection (1)(b) may contact the division.~~

~~[(b) Hunters will be contacted by the division to take depredating cougar as needed.]~~

#### **R[657-10-22]657-10-21. Survey.**

Each ~~[permittee]~~license holder who is contacted for a survey about their cougar hunting experience should participate in the survey regardless of success. Participation in the survey helps the division evaluate population trends, harvest success and collect other valuable information.

#### **R[657-10-23]657-10-22. Taking Cougar.**

~~[(1)(a) For each permit issued, a person may only take one cougar during the season and from the area specified on the permit.~~

~~[(b) A limited entry permit may be obtained by following the application procedures provided in this rule and the guidebook of the Wildlife Board for taking cougar.~~

~~[(c) A harvest objective permit may be purchased on a first-come, first-served basis as provided in guidebook of the Wildlife Board for taking cougar.~~

~~[(2)]~~ (1) A person may not:

(a) take or pursue a female cougar with a kitten; or

(b) repeatedly pursue, chase, tree, corner, or hold at bay, the same cougar during the same day after the cougar has been released.

~~[(3)]~~ (2) Any cougar may be taken during the prescribed seasons, except a kitten or any cougar accompanied by one or more kittens.

~~[(4)]~~ (3) A person may not take a cougar wearing a radio or ~~[gps]~~GPS collar on any unit identified~~[-in the guidebook of the Wildlife Board for taking cougar as being closed to the take of collared animals.~~

~~[(5) The division may authorize a hunter who has obtained a valid cougar permit to take cougar in a specified area of the state in the interest of protecting wildlife from depredation.~~

~~[(6) Season dates, closed areas, harvest objective areas, predator management units, and limited entry season areas are published in the guidebook of the Wildlife Board for taking cougar.~~

~~[(7)(a) A person who obtains a limited entry cougar permit may hunt on all open units after the end date of the limited entry season. Limited entry season dates are provided in the guidebook of the Wildlife Board for taking cougar.~~

~~[(b) A person who obtains a limited entry cougar permit and chooses to hunt on any open unit after the transition date is subject to all harvest objective unit closure requirements provided in Section R657-10-29.~~

#### **R657-10-24. Extended and Preseason Hunts.**

~~[(1) An extended or preseason hunt may be authorized by the division on selected cougar management units to control depredation or nuisance problems.~~

#### **R657-10-25. Cougar Pursuit.**

~~[(1)(a) Except as provided in Subsection R657-10-3(1)(b) and Subsection (2), cougar may be pursued only by persons who have obtained a cougar pursuit permit.~~

~~[(b) The cougar pursuit permit does not allow a person to:~~

~~[(i) kill a cougar; or~~

~~[(ii) pursue cougar for compensation.~~

~~[(c) A person may pursue cougar for compensation only as provided in Subsection (2).~~

~~[(d) To obtain a cougar pursuit permit, a person must possess a Utah hunting or combination license.~~

~~[(2)(a) A person may pursue cougar on public lands for compensation, provided the dog handler:~~

~~[(i) receives compensation from a client or customer to pursue cougar;~~

~~[(ii) is a licensed hunting guide or outfitter under Title 58, Chapter 79, Hunting Guides and Outfitters Registration Act and authorized to pursue cougar;~~

~~[(iii) possesses on the person the Utah hunting guide or outfitter license;~~

~~[(iv) possesses on the person all permits and authorizations required by the applicable public lands managing authority to pursue cougar for compensation; and~~

~~[(v) is accompanied by the client or customer at all times during pursuit.~~

~~[(b) A person may pursue cougar on private lands for compensation, provided the dog handler:~~

~~[(i) receives compensation from a client or customer to pursue cougar;~~

~~[(ii) is accompanied by the client or customer at all times during pursuit; and~~

~~[(iii) possesses on the 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 cougar on public lands and private lands while acting within the scope of their employment.~~

~~[(3) A pursuit permit is not required to pursue cougar under Subsection (2).~~

~~[(4)(a) A person pursuing cougar 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 cougar.~~

~~[(b) Any violation of, or failure to comply with Title 23, Wildlife Resources Code of Utah, this rule, or the guidebooks of the Wildlife Board may be grounds for suspension of the privilege to pursue cougar for compensation under this subsection, as determined by a division hearing officer.~~

~~[(5) A cougar pursuit permit authorizes the holder to pursue cougar with dogs on any unit open to pursuing cougar during the seasons and under the conditions prescribed by the Wildlife Board in guidebook.~~

~~[(6) A person may not:~~

~~[(a) take or pursue a female cougar with a kitten;~~

~~[(b) repeatedly pursue, chase, tree, corner or hold at bay, the same cougar during the same day;~~

~~[(c) If eligible, a person who has obtained a cougar pursuit permit may also obtain a limited entry season permit, harvest objective cougar permit, or spot and stalk permit.~~

~~[(7) Cougar may be pursued on any units open to cougar hunting during the dates provided in the guidebook of the Wildlife Board for taking cougar.~~

~~[(8) A cougar pursuit permit is valid on a calendar year basis.~~

~~[(9) A person must possess a valid hunting or combination license to obtain a cougar pursuit permit.~~

**~~R657-10-26. Limited Entry Cougar Permit Application Information.~~**

~~(1) Limited entry cougar permits are issued pursuant to R657-62-24.~~

**~~R657-10-27. Harvest Objective Permit General Information.~~**

~~(1) Harvest objective permits are valid only for open harvest objective management units or predator management units and for the specified seasons published in the guidebook of the Wildlife Board for taking cougar.~~

~~(2) Harvest objective permits are not valid in a specified management unit after the harvest objective has been met for that unit.~~

**~~R657-10-28. Harvest Objective Permit Sales.~~**

~~(1) Harvest objective permits are available on a first come, first served basis beginning on the date published in the guidebook of the Wildlife Board for taking cougar.~~

~~(2) Any cougar permit purchased after the season opens is not valid until three days after the date of purchase unless specifically authorized by the division.~~

~~(3) A person must possess a valid hunting or combination license to obtain a Harvest objective permit.~~

**~~R657-10-29. Units with Harvest Objective Closures.~~**

~~(1) To hunt in a unit with a harvest objective, a hunter must visit the division's website to verify that the harvest objective unit is still open. The website will be updated each day by 12 noon. Updates become effective the following day 30 minutes before official sunrise.~~

~~(2) Units with harvest objective are open to hunting until:~~

~~(a) the harvest objective for that unit is met and the division closes the unit; or~~

~~(b) the end of the hunting season as provided in the guidebook of the Wildlife Board for taking cougar as being closed to the take of collared animals.~~

~~(3) Upon closure of a unit with a harvest objective, a hunter may not take or pursue cougar except as provided in Section R657-10-25.~~

**~~R657-10-30. Harvest Objective Unit Reporting.~~**

~~(1) Any person taking a cougar on a unit with a harvest objective must report to the division, within 48 hours, the location of harvest and have a permanent tag affixed pursuant to Section R657-10-15.~~

~~(2) Failure to accurately report the correct unit where the cougar was killed is unlawful.~~

~~(3) Any conviction for failure to accurately report, or aiding or assisting in the failure to accurately report as required in Subsection (1) shall be considered probable cause evidence of a knowing, intentional or reckless violation for purposes of permit suspension.~~

**~~R657-10-31~~**R657-10-23. Wildlife Management Areas.****

~~(1) A person may not use motor vehicles on division-owned wildlife management areas closed to motor vehicle use during the winter without first obtaining written authorization from the appropriate division regional office.~~

~~(2) The division may, in its sole discretion, authorize limited motor vehicle access to its wildlife management areas closed to such use during the winter provided:~~

~~(a) the person seeking access [possesses] to retrieve a [valid] cougar [permit for] in the area;~~

~~(b) motor vehicle access is necessary to effectively [utilize the] hunt or pursue a cougar [permit]; and~~

~~(c) motor vehicle access will not interfere with wintering wildlife or wildlife habitat.~~

**~~R657-10-32. Poaching Reported Reward Permits.~~**

~~(1) Cougar poaching reported reward permits are issued pursuant to Rule R657-51 Poaching Reported Reward Permits.]~~

**KEY: wildlife, cougar, game laws**

**Date of Last Change: 2023[May 2, 2022]**

**Notice of Continuation: July 2, 2021**

**Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19**

**NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R657-11</b>	<b>Filing ID:</b> <b>55471</b>
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**Agency Information**

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Wildlife Resources	
<b>Room number:</b>	Suite 2110	
<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 146301	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6301	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Staci Coons	801-450-3093	stacicoons@utah.gov

**Please address questions regarding information on this notice to the persons listed above.**

**General Information****2. Rule or section catchline:**

R657-11. Taking Furbearers and Trapping

**3. Purpose of the new 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' (DWR) rule regulating the take of furbearers in Utah.

**4. Summary of the new rule or change:**

The proposed amendments to this rule places the rule in line with H.B. 469, Wildlife Amendments, 2023 General Session, which removes the requirement to have a permit for the taking of cougar.

**Fiscal Information****5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

The amendments to Rule R657-11 are administrative in nature and any costs involved were offset in a fiscal note attached to the bill, the DWR determines that these changes can be initiated within the current workload and resources of the DWR, therefore, the DWR believes that these amendments can be enacted without a cost or savings impact to the state budget or the DWR's budget.

**B) Local governments:**

Since the proposed amendments do not require a service from local governments this filing does not create any direct or indirect cost or savings impact to local governments.

**C) Small businesses** ("small business" means a business employing 1-49 persons):

The proposed rule amendments will not directly impact small businesses because a service is not required of them.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

The proposed rule amendments will not directly impact non-small businesses because a service is not required of them.

**E) Persons other than small businesses, non-small businesses, state, 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**):

These amendments do not have the potential to create a cost impact to those individuals wishing to participate in the trapping of furbearer in Utah because the loss of revenue for cougar permits was incorporated into the fee of hunting and combination licenses.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

The DWR determines that this amendment will not create additional costs for those participating in the trapping of furbearer, the loss of revenue for cougar permits was incorporated into the fee of hunting and combination licenses.

**G) Regulatory Impact Summary Table** (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 will be included in narratives above.)

**Regulatory Impact Table**

<b>Fiscal Cost</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$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>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

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

**Citation Information****6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 23-14-18	Section 23-14-19	
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**Public Notice Information**

**8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	07/31/2023
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<b>9. This rule change MAY become effective on:</b>	08/07/2023
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

#### Agency Authorization Information

<b>Agency head or designee and title:</b>	Justin Shirley, DWR Director	<b>Date:</b>	06/14/2023
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### R657. Natural Resources, Wildlife Resources.

#### R657-11. Taking Furbearers and Trapping.

##### R657-11-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for taking furbearers and trapping.

(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 furbearers.

(3) Take of coyotes and raccoons is regulated by the Department of Agriculture and Food pursuant to Title 4, Chapter 23, Agricultural and Wildlife Damage Prevention Act. The division, through the Wildlife Board, is charged in Sections 23-14-1 and 23-14-18 to conserve protected wildlife and establish ~~regulations~~ rules considered necessary to accomplish that directive, including regulating the means by which protected wildlife may be taken. The trapping device use regulations in this rule concerning coyotes and raccoons are intended solely to minimize take of nontargeted protected wildlife, maximize potential for successful release of nontargeted protected wildlife, detect illegal trap sets targeting protected wildlife, and protect compliant trappers from criminal liability otherwise applicable to taking nontargeted protected wildlife in a trapping device.

##### R657-11-3. License, Permit and Tag Requirements.

(1) A person who has a valid furbearer license may take furbearers during the established furbearer seasons published in the guidebook of the Wildlife Board for taking furbearers.

(2) A person who has a valid furbearer license and valid bobcat permits may take a bobcat during the established bobcat season published in the guidebook of the Wildlife Board for taking furbearers.

(3) A person who has a valid furbearer license and valid marten trapping permit may take marten during the established marten season published in the guidebook of the Wildlife Board for taking furbearers.

(4) A person who has a valid trap registration license may use a trapping device to take furbearers, cougars, coyotes, or raccoons, as authorized in the Wildlife Code, this rule and the guidebooks of the Wildlife Board.

(5) Any license, permit, or tag that is mutilated or otherwise made illegible is invalid and may not be used for taking or possessing furbearers.

##### R657-11-8. Trap Registration Numbers.

(1)(a) Except as provided in Subsection (1)(a)(ii), a person must possess a valid trap registration license before using any trapping device to take a furbearer, coyote, or raccoon.

(i) A trap registration license is required in addition to any other license, permit, or tag required by this rule to take a furbearer.

(ii) A trap registration license is not required for trapping a coyote, or raccoon when the trapping device is set within 600 feet of a building or structure occupied or utilized by humans or domestic livestock, provided the trapping device is set with the landowner's or lessee's permission.

(b) To obtain a trap registration license, a person must:

(i) provide the following information when requested by the division:

- (A) full name;
- (B) complete home address;
- (C) email address;
- (D) phone number;
- (E) date of birth; and
- (F) any other information requested by the division; and
- (ii) pay a \$10 license fee.

(c) The division may deny issuing a trap registration license if the applicant;

(i) is subject to an administrative or judicial order suspending any hunting, trapping or fishing privilege;

(ii) has violated any provision in Title 23 ~~[of the Utah Code]~~ Wildlife Resources Code of Utah, or rules or guidebooks of the Wildlife Board; or

(iii) fails to pay the one-time \$10 license fee.

(d) The division may suspend a trap registration license, as provided in Sections 23-19-9, 23-25-5, and 23-25-6.

(e) The trap registration license must be carried on the person of the individual it is issued to while setting, checking or moving trapping devices.

(f) A trap registration license shall include a unique trap registration number printed on its face that is permanently assigned to the licensee.

(2)(a) Each trapping device used to take a furbearer, cougar, coyote, or raccoon ~~[-]~~ must be permanently, legibly, and indelibly marked or tagged with the trap registration number of the owner.

(b) A trap registration number is not required on a trapping device set within 600 feet of a building or structure occupied or utilized by humans or domestic livestock, provided the trapping device is set:

- (i) to capture a coyote or raccoon; and
- (ii) with the landowner~~[']~~'s or lessee~~[']~~'s permission.

(3) No more than one trap registration number may be on a single trapping device.

(4) Each individual is issued only one trap registration number.

(5) Except as provided in Section R657-11-9, a person may not take a furbearer, coyote, or raccoon with any trapping device marked with the trap registration number of another person.

(6) A person may not lend, transfer, sell, give, or assign a trap registration license or trap registration number to another person or entity.

(7) Any person who has obtained a trap registration number must notify the division within 30 days of any:

- (a) change in address; or
- (b) theft of trapping devices.

**R657-11-9. Trapping Devices.**

(1) Any foothold traps used to take a furbearer, cougar, coyote, or raccoon must have spacers on the jaws which leave an opening of at least 3/16 of an inch when the jaws are closed, except;

- (a) rubber-padded jaw traps[~~;~~];
- (b) traps with jaw spreads less than 4.25 inches[~~;~~]; and
- (c) traps that are completely submerged under water when

set.

(2)(a) Any cable devices, [~~(i.e.)~~such as snares~~;~~], used to take a furbearer, cougar, coyote, or raccoon, except those set in water or with a loop size less than 3 inches in diameter, must be equipped with a breakaway lock device that will release when any force greater than 300 lbs. is applied to the loop.

(b) Breakaway cable devices must be fastened to an immovable object solidly secured to the ground.

(c) The use of drags is prohibited.

(3) On the middle section of the Provo River, between Jordanelle Dam and Deer Creek Reservoir, the Green River, between Flaming Gorge Dam and the Utah Colorado state line; the Colorado River, between the Utah Colorado state line and Lake Powell; and the Escalante River, between Escalante and Lake Powell, trapping for a furbearer, coyote, or raccoon within 600 yards of either side of these rivers, including their tributaries from the confluences upstream 1/2 mile, is restricted to the following devices:

(a) Nonlethal-set foot hold traps with a jaw spread less than 5 1/8 inches, and nonlethal-set padded foot hold traps. Drowning sets with these traps are prohibited.

(b) Body-gripping, killing-type traps with body-gripping area less than 30 square inches.

(c) Nonlethal dry land cable devices equipped with a stop-lock device that prevents it from closing to less than a six-inch diameter.

(d) Size 330, body-gripping, killing-type traps modified by replacing the standard V-trigger assembly with one top side parallel trigger assembly, with the trigger placed within one inch of the side, or butted against the vertical turn in the Canadian bend.

(4) A person may not disturb or remove any trapping device, except:

- (a) the owner of the trapping device;
- (b) peace officers in the performance of their duties;
- (c) the landowner where the trapping device is set;
- (d) the owner of a domestic pet caught in the device may disturb the device to remove the domestic pet; or[~~;~~]
- (e) as provided in Subsection (6).

(5) A person may not kill or remove wildlife caught in any trapping device, except:

(a) the owner of the trapping device who possesses the permit, license, tag, or legal authorization required for the species that is captured;

- (b) a peace officer in the performance of their duties;
- (c) as provided in Subsection (6); or
- (d) as provided in Section R657-11-11.

(6)(a) A person, other than the owner, may possess, set, disturb or remove a trapping device; or temporarily possess, kill or remove wildlife caught in a trapping device provided:

(i) the trapping device is appropriately marked with the owner's trap registration number;

(ii) the person possesses a valid furbearer license and appropriate permits or tags when working with furbearer sets;

(iii) the person's trap registration license or furbearer license are neither denied nor suspended; and

(iv) the person has obtained written authorization from the owner of the trapping device with the following information printed on the authorization in permanent ink:

- (A) date written authorization was obtained;
- (B) name, address, and phone number of the owner;
- (C) owner's trap registration number;
- (D) the name of the individual being given authorization;

and

(E) signature of owner.

(b) Nothing in Subsection (6)(a) authorizes a person to use the owner's trap registration license, furbearer license, permit or tag.

(7) The owner of any trapping device providing written authorization to another person under Subsection (6) may be criminally liable and civilly responsible under Section 23-19-9 for any violations of Title 23 Wildlife Resources Code of Utah, this rule, or applicable guidebooks resulting from the use of the trapping device by the authorized person.

(8) The owner of any trapping device providing written authorization to another person under Subsection (6) must keep a record of all persons obtaining written authorization and furnish a copy of the record upon request from a conservation officer.

(9)(a) A person may not set any trapping device on posted private property without the landowner's or lessee's written permission.

(b) Wildlife officers should be informed as soon as possible of any illegally set trapping devices.

(10) Peace officers in the performance of their duties may seize all trapping devices and wildlife used or held in violation of this rule.

(11) Except as provided in Subsection (6), a person may not possess any trapping device that is not permanently marked or tagged with that person's trap registration number while setting, checking, or moving a trapping device targeting a furbearer, coyote, or raccoon.

(12) All trapping devices used to take a furbearer, coyote, or raccoon must be checked and animals removed at least once every 48 hours, except;

- (a) killing traps striking dorso-ventrally;
- (b) drowning sets; and
- (c) lethal cable devices that are set to capture on the neck, that have a nonrelaxing lock, without a stop, and are anchored to an immoveable object; which must be checked every 96 hours.

(13)(a) A person may not remove from a trapping device and thereafter transport or possess:

- (i) live protected wildlife; or
- (ii) a live coyote or raccoon in violation of Section 4-23-111.

(b) Any live animal found in a trapping device must be:

(i) euthanized and removed from the device by the trapper within the 48-hour trap check period in Subsection R657-11-9(12); or

(ii) released immediately by the trapper unharmed.

(14) The trapping restrictions in Subsections (1), (2), and (3) do not apply to a trapping device set within 600 feet of a building or structure occupied or utilized by humans or domestic livestock, provided the trapping device is set:

- (a) to capture a coyote or raccoon; and
- (b) with the landowner's or lessee's permission.



## NOTICES OF PROPOSED RULES

### R657-11-10. Use of Bait.

(1) A person may not use protected wildlife or its parts as bait or scent to take a furbearer, cougar, coyote, or raccoon, except for the following;

(a) White-bleached bones of protected wildlife with no hide or flesh attached; and

(b)(i) parts of legally taken furbearers; and

(ii) nonprotected wildlife.

(2) Trapping devices used to take furbearer, cougar, coyote, or raccoon;

(a) may not be set within 30 feet of any exposed bait;

(b) may ~~not~~ be placed near carcasses of protected wildlife provided the carcass has not been moved for ~~[the purpose of]~~ trapping and the trapping device is not located within 30 feet of the carcass.

(3) White-bleached bones with no hide or flesh attached may be set within 30 feet of a trapping device.

(4)(a) Bait used inside an artificial cubby set must be placed at least eight inches from the opening.

(b) Artificial cubby sets must be placed with the top of the opening even with or below the bottom of the bait so that the bait is not visible from above.

(c) A person using bait is responsible if it becomes exposed for any reason.

(5) The trapping restrictions in Subsections (2) and (4) do not apply to a trapping device set within 600 feet of a building or structure occupied or utilized by humans or domestic livestock, provided the trapping device is set;

(a) to capture a coyote, or raccoon; and

(b) with the landowner's or lessee's permission.

**KEY:** wildlife, furbearers, game laws, wildlife law

**Date of Last Change:** 2023 January 24, 2019

**Notice of Continuation:** June 1, 2020

**Authorizing, and Implemented or Interpreted Law:** 23-14-18; 23-14-19; 23-13-17

### NOTICE OF PROPOSED RULE

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R657-13</b>	<b>Filing ID:</b> <b>55472</b>
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### Agency Information

<b>1. Department:</b>	Natural Resources
<b>Agency:</b>	Wildlife Resources
<b>Room number:</b>	Suite 2110
<b>Building:</b>	Department of Natural Resources
<b>Street address:</b>	1594 W North Temple
<b>City, state and zip:</b>	Salt Lake City, UT 84116
<b>Mailing address:</b>	PO Box 146301
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6301

### Contact persons:

Name:	Phone:	Email:
Staci Coons	801-450-3093	stacicoons@utah.gov

**Please address questions regarding information on this notice to the persons listed above.**

### General Information

#### 2. Rule or section catchline:

R657-13. Taking Fish and Crayfish

#### 3. Purpose of the new 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' (DWR) fishing management program.

#### 4. Summary of the new rule or change:

This rule is being amended to add four species to the list of dead fish that may be used as bait where permitted.

### Fiscal Information

#### 5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

##### A) State budget:

This amendment adds additional opportunities for fishermen to use harvested fish as bait, therefore the DWR determines that these amendments do not create a cost or savings impact to the state budget or the DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

##### B) Local governments:

Since this amendment only adds opportunities for fishermen, this should have little to no effect on local governments. 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.

##### C) Small businesses ("small business" means a business employing 1-49 persons):

This rule does not impose any additional financial requirements on small businesses, nor generate a cost or saving impact to small businesses because this rule does not create a situation requiring services from them.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

This rule does not impose any additional financial requirements on non-small businesses, nor generate a cost or saving impact to non-small businesses because this rule does not create a situation requiring services from them.

**E) Persons other than small businesses, non-small businesses, state, 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**):

This rule does not impose any additional financial requirements on other persons, nor generate a cost or saving impact to other persons because this rule does not create a situation requiring services from them.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

The DWR determines that this amendment will not create additional costs for those individuals wishing to participate in fishing in Utah because there is no cost associated with using dead fish as bait.

**G) Regulatory Impact Summary Table** (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 will be included in narratives above.)**Regulatory Impact Table**

<b>Fiscal Cost</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$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>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

The Executive Director of the Department of Natural Resources, Joel Ferry, has reviewed and approved this regulatory impact analysis.

**Citation Information****6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 23-14-18	Section 23-14-19	
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**Public Notice Information****8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 07/31/2023

**9. This rule change MAY become effective on:** 08/07/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Justin Shirley, Division Director	<b>Date:</b>	06/14/2023
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**R657. Natural Resources, Wildlife Resources.****R657-13. Taking Fish and Crayfish.****R657-13-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for taking fish and crayfish.

(2) Specific dates, areas, methods of take, requirements and other administrative details which may change annually and are pertinent are published in the proclamation of the Wildlife Board for taking fish and crayfish.

**R657-13-12. Bait.**

(1) Use or possession of corn while fishing is lawful, except as otherwise prohibited by the Wildlife Board in the Fishing Guidebook.

(2) Use or possession of live baitfish while fishing is unlawful, except as authorized by the Wildlife Board in the Fishing Guidebook.

## NOTICES OF PROPOSED RULES

(3) Use or possession of tiger salamanders, live or dead, while fishing is unlawful.

(4) Use or possession of any bait while fishing on waters designated artificial fly and lure only is unlawful.

(5) Use or possession of artificial baits which are commercially embedded or covered with fish or fish parts while fishing is unlawful.

(6) Use or possession of bait in the form of fresh or frozen fish or fish parts while fishing is unlawful, except as provided below and in Subsections (7) and (8).

(a) Dead Bonneville cisco may be used as bait only in Bear Lake.

(b) Dead yellow perch may be used as bait only in: Bear River from Cutler Reservoir Dam downriver to the Great Salt Lake, Big Sand Wash, Deer Creek, Echo, Fish Lake, Gunnison, Hyrum, Johnson, Jordanelle, Mantua, Mill Meadow, Newton, Pineview, Red Fleet, Rockport, Starvation, Utah Lake, Willard Bay and Yuba reservoirs.

(c) Dead white bass may be used as bait only in Utah Lake and the Jordan River.

(d) Dead shad, from Lake Powell, may be used as bait only in Lake Powell. Dead shad must not be removed from the Glen Canyon National Recreation Area.

(e) Dead striped bass, from Lake Powell, may be used as bait only in Lake Powell.

(f) Dead fresh or frozen salt water species including sardines and anchovies may be used as bait in any water where bait is permitted.

(g) Dead mountain sucker, desert sucker, white sucker, Utah sucker, redbreast shiner, longnose dace, speckled dace, mottled sculpin, Paiute sculpin, fat head minnow[~~-~~]~~--~~ all color variants including rosy red minnows, Utah ~~[chub]~~ Chub, golden shiner, and common carp may be used as bait in any water where bait is permitted.

(h) Dead burbot, from Flaming Gorge Reservoir, may be used as bait only in Flaming Gorge Reservoir.

(7) Commercially prepared and chemically treated baitfish or their parts may be used as bait in any water where bait is permitted.

(8) The eggs of any species of fish caught in Utah, except prohibited fish, may be used in any water where bait is permitted. However, eggs may not be taken or used from fish that are being released.

(9) Use of live crayfish for bait is legal only on the water where the crayfish is captured. It is unlawful to transport live crayfish away from the water where captured.

(10) Manufactured, human-made items that may not be digestible, that are chemically treated with food stuffs, chemical fish attractants, or feeding stimulants may not be used on waters where bait is prohibited.

(11) On any water declared infested by the Wildlife Board with an aquatic invasive species, or that is subject to a closure order or control plan under Rule R657-60, it shall be unlawful to transport any species of baitfish, live or dead, from the infested water for use as bait in any other water of the [S]tate. Baitfish are defined as those species listed in Subsections (5)(b), (5)(c), (5)(f) and (8).

**KEY: fish, fishing, wildlife, wildlife law**

**Date of Last Change:** 2023~~December 8, 2022~~

**Notice of Continuation:** August 24, 2022

**Authorizing, and Implemented or Interpreted Law:** 23-14-18; 23-14-19; 23-19-1; 23-22-3

### NOTICE OF PROPOSED RULE

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R657-14</b>	<b>Filing ID:</b> <b>55473</b>
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### Agency Information

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Wildlife Resources	
<b>Room number:</b>	Suite 2110	
<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 146301	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6301	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Staci Coons	801-450-3093	stacicoons@utah.gov

**Please address questions regarding information on this notice to the persons listed above.**

### General Information

<b>2. Rule or section catchline:</b>
R657-14. Commercial Harvesting of Protected Aquatic Wildlife
<b>3. Purpose of the new rule or reason for the change:</b>
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' (DWR) commercial harvesting of protected aquatic wildlife management program.
<b>4. Summary of the new rule or change:</b>
This rule is being amended to add eight species to the list of protected aquatic wildlife that may be legally harvested.

### Fiscal Information

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This amendment adds additional opportunities for fishermen to harvest protected aquatic wildlife, therefore, the DWR determines that these amendments do not create a cost or savings impact to the state budget or the DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

**B) Local governments:**

Since this amendment only adds opportunities for fishermen, this should have little to no effect on the local governments.

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.

**C) Small businesses** ("small business" means a business employing 1-49 persons):

This rule does not impose any additional financial requirements on small businesses, nor generate a cost or saving impact to small businesses because this rule does not create a situation requiring services from them.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

This rule does not impose any additional financial requirements on non-small businesses, nor generate a cost or saving impact to non-small businesses because this rule does not create a situation requiring services from them.

**E) Persons other than small businesses, non-small businesses, state, 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**):

This rule does not impose any additional financial requirements on other persons, nor generate a cost or saving impact to other persons because this rule does not create a situation requiring services from them.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

The DWR determines that this amendment will not create additional costs for those individuals wishing to participate in fishing in Utah because there is no associated fee with adding opportunity to the species of fish that can be harvested.

**G) Regulatory Impact Summary Table** (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 will be included in narratives above.)**Regulatory Impact Table**

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0

Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$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>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

The Executive Director of the Department of Natural Resources, Joel Ferry, has reviewed and approved this regulatory impact analysis.

**Citation Information****6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 23-14-18	Section 23-14-19	Section 23-13-13
Section 23-15-7	Section 23-15-8	Section 23-15-9
Section 23-14-3		

**Public Notice Information****8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 07/31/2023

**9. This rule change MAY become effective on:** 08/07/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Justin Shirley, Division Director	<b>Date:</b>	06/14/2023
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**R657. Natural Resources, Wildlife Resources.****R657-14. Commercial Harvesting of Protected Aquatic Wildlife.****R657-14-1. Purpose and Authority.**

(1)(a) Under authority of Sections 23-14-3, 23-14-18, and 23-14-19, and Sections 23-15-7 through 23-15-9, this rule provides the procedures, standards, and requirements for:

(i) harvesting protected aquatic wildlife for use as fish bait; and

(ii) seining protected aquatic wildlife.

(b) The commercial harvesting of brine shrimp and brine shrimp eggs is regulated under Rule R657-52.

**R657-14-7. Species of Protected Aquatic Wildlife That May Be Harvested.**

(1)(a) The division may authorize a person to harvest or sell the following nongame fish:

(i) Utah Chub (*Gila atraria*);

(ii) Carp (*Cyprinus carpio*);

(iii) Mountain sucker (*Catostomus platyrhynchus*);

(iv) Utah sucker (*Catostomus ardens*);~~[-øf]~~

(v) Redside shiner (*Richardsonius batteatus*);

(vi) ~~Desert sucker (*Catostomus clarkii*);~~

(vii) ~~Fathead minnow (*Pimephales promelas*);~~

(viii) ~~Golden shiner (*Notemigonus crysoleucas*);~~

(ix) ~~Longnose dace (*Rhinichthys cataractae*);~~

(x) ~~Mottled sculpin (*Cottus bairdii*);~~

(xi) ~~Paiute sculpin (*Cottus beldingii*);~~

(xii) ~~Speckled dace (*Rhinichthys osculus*); or~~

(xiii) ~~White sucker (*Catostomus commersonii*).~~

(b) The division may authorize a person to harvest or sell overabundant nuisance game species, as determined by the division.

(c) The certificate of registration shall identify those species of protected aquatic wildlife that may be harvested or sold.

(2) Any species of protected aquatic wildlife caught that is not authorized for harvest must be immediately returned alive and unharmed to the water from which it was harvested.

**R657-14-11. Transportation, Purchase, or Sale of Live Protected Aquatic Wildlife.**

(1) A person may not have in possession any live species of protected aquatic wildlife, except as provided in Rules R657-3a, R657-3c, or R657-16.

(2) A person may not purchase any live protected aquatic wildlife from or sell any live protected aquatic wildlife to any person or entity who has not obtained a certificate of registration to possess or sell live protected aquatic wildlife, except as provided in Subsection R657-14-3(3).

**KEY:** game laws, bait dealers, commercialization of aquatic wildlife

**Date of Last Change:** ~~2023~~ December 8, 2022

**Notice of Continuation:** May 17, 2022

**Authorizing, and Implemented or Interpreted Law:** 23-14-18; 23-14-19; 23-13-13; 23-15-7; 23-15-8; 23-15-9; 23-14-3

**NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

**Rule or Section Number:** R657-20

**Filing ID:** 55474

**Agency Information**

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Wildlife Resources	
<b>Room number:</b>	Suite 2110	
<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 146301	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6301	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Staci Coons	801-450-3093	stacicoons@utah.gov

**Please address questions regarding information on this notice to the persons listed above.**

**General Information****2. Rule or section catchline:**

R657-20. Falconry

**3. Purpose of the new 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' (DWR) rule regulating the sport of Falconry.

**4. Summary of the new rule or change:**

The proposed amendments to this rule remove Section R657-20-26 and places it in Rule R657-4, Possession and Release of Pen-reared Gamebirds, to aid in simplification by condensing the requirements for pen-reared gamebirds into one rule.

**Fiscal Information****5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

The amendments to Rule R657-20 are administrative in nature, the DWR determines that these changes can be initiated within the current workload and resources of the



DWR, therefore, the DWR does not believe that these amendments would create a cost or savings impact to the state budget or the DWR's budget since the changes will not increase workload and can be carried out with existing budget.

**B) Local governments:**

Since the proposed amendments only move the requirements from one rule to another this filing does not create any direct cost or savings impact to local governments.

Nor are local governments indirectly impacted because this rule does not create a situation requiring services from local governments.

**C) Small businesses** ("small business" means a business employing 1-49 persons):

The proposed rule amendments will not directly impact small businesses because a service is not required of them.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

The proposed rule amendments will not directly impact non-small businesses because a service is not required of them.

**E) Persons other than small businesses, non-small businesses, state, 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**):

These amendments do not have the potential to create a cost impact to those individuals wishing to participate in the sport of Falconry in Utah because they are not new requirements, they are simply being moved to a different rule.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

The DWR determines that this amendment will not create additional costs for those participating in the sport of Falconry because they are not requirements, they are simply being moved to a different rule.

**G) Regulatory Impact Summary Table** (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 will be included in narratives above.)

**Regulatory Impact Table**

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0

Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$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>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

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

**Citation Information**

**6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 23-17-7	16 U.S.C. 703-12	16 U.S.C. 668-668d
50 CFR 21	50 CFR 22	50 CFR 10.13
Section 23-19-9		

**Public Notice Information**

**8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 07/31/2023

**9. This rule change MAY become effective on:** 08/07/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

### Agency Authorization Information

<b>Agency head or designee and title:</b>	Justin Shirley, DWR Director	<b>Date:</b>	06/14/2023
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### R657. Natural Resources, Wildlife Resources.

#### R657-20. Falconry.

##### R657-20-1. Purpose and Authority.

(1) Under authority of Section 23-17-7 and in accordance with the Migratory Bird Treaty Act in 16 U.S.C. 703-12 (50 CFR 21 10/01/2000), and Bald the Bald and Golden Eagle Protection Act in 16 U.S.C. 668-668d (50 CFR 22), which is incorporated by reference, the Wildlife Board has established this rule for the practice of falconry in the state~~[of Utah]~~.

(2) Take and or possession of any raptor species for the practice of falconry must be in compliance with these ~~[regulations]~~ rules.

(3) Raptor species possessed under the authority of this rule must be trained in the pursuit of wild game and used in hunting, unless specifically noted otherwise in special provisions granted under this rule.

(4) A federal falconry permit is no longer required for practicing the sport of falconry in the state~~[of Utah]~~.

(5) The Federal Migratory Bird Treaty Act prohibits any person from taking, possessing, purchasing, bartering, selling, or offering to purchase, barter, or sell, among other things, raptors listed in Code of Federal Regulations 50 CFR 10.13, unless the activities are allowed under ~~[provisions of]~~ this rule, or are permitted by other applicable state or Federal regulations.

(a) This rule covers all avian species in the Order Accipitriformes ~~[(i.e.,)]~~including vultures, California Condor, kites, eagles and hawks~~]~~, Order Falconiformes ~~[(i.e.,)]~~including caracaras, and falcons~~]~~ and Order Strigiformes ~~[(i.e.,)]~~such as owls~~]~~, and hybrids thereof, and applies to any person who possesses one ~~[(1)]~~or more wild-caught, captive-bred, or hybrid raptors to use in falconry.

(b) The Bald and Golden Eagle Protection Act in 16 U.S.C. 668-668d and 54 Stat. 250 provides for the taking of golden eagles from the wild to use in falconry, and specifies that the only golden eagles that may be used for falconry are those that would be taken because of depredations on livestock or wildlife (16 U.S.C. 668a).

(6) Specific season dates, possession limits, open and closed areas, number of permits or CORs for birds available for take in a given season, and other administrative matters pertaining to the practicing of falconry are available online at <http://wildlife.utah.gov>.

(7) Possession of any raptor, raptor egg, shell fragment, semen, or any raptor part without a valid and applicable state COR or Federal permit is probable cause that the raptor, raptor egg, shell fragment, semen, or any raptor part was illegally taken and is illegally held in possession.

(8)(a) Pursuant to ~~[Utah Code]~~Section 23-19-9, the Division has the authority to suspend or revoke any or all ~~[of]~~the privileges granted under this rule.

(b) A permittee whose falconry COR has been suspended may reapply for a COR, pursuant to the application procedures in this rule at the end of the suspension period.

(9) Nothing in this rule shall be construed as to allow the intentional taking of protected wildlife in violation of federal or state laws, rules, regulations, or guidebooks.

#### **R657-20-26. ~~[Use of Pen-Reared Game Birds for Meets, Trials and Training:~~**

~~\_\_\_\_\_ (1) Any falconer using pen-reared game birds for meets, trials or training must have an invoice or bill of sale or a copy thereof in their possession showing lawful personal possession or ownership of such birds.~~

~~\_\_\_\_\_ (2) Pen-reared game birds may be held in possession no longer than 60 calendar days unless the person possessing the pen-reared game birds first obtains a private aviculture COR as provided in Rule R657-4.~~

~~\_\_\_\_\_ (3)(a) Each pen-reared game bird must be marked with an aluminum leg band or other permanent marking before being released except as provided in Subsection (d).~~

~~\_\_\_\_\_ (b) Aluminum leg bands may be purchased at any Division office.~~

~~\_\_\_\_\_ (c) The aluminum leg band or other permanent marking must remain attached to the pen-reared game bird.~~

~~\_\_\_\_\_ (d) Each pen-reared game bird used on a commercial hunting area, as defined in R657-22, may be released without marking.~~

~~\_\_\_\_\_ (4) Pen-reared game birds used for a meet may be released only on the property specified and only during the dates approved for the falconry meet.~~

~~\_\_\_\_\_ (5) Released pen-reared game birds may be taken using falconry raptors, as follows:~~

~~\_\_\_\_\_ (a) By the individual who released the pen-reared game birds, or by any individual participating in the meet; and~~

~~\_\_\_\_\_ (b) Only during the approved dates of the meet.~~

~~\_\_\_\_\_ (6) Once released, any pen-reared game birds that leave the property where the meet is held or are not retrieved at the conclusion of the meet become the property of the State of Utah and may not be recaptured or taken, except as prescribed in the Upland Game or Waterfowl proclamations of the Wildlife Board.~~

~~\_\_\_\_\_ (7) Pen-reared game birds used for training raptors or for a trial that escape or are not recovered on the day of the training or trial, or pen-reared game birds that escape, become property of the State of Utah and may not be recaptured or taken, except as prescribed in the Upland Game and Waterfowl proclamations of the Wildlife Board and elsewhere in this rule.~~

#### **R657-20-27. ~~[Use of Feathers and Carcasses.~~**

~~\_\_\_\_\_ (1)(a) Feathers that a falconry bird or birds molt may be used for imping.~~

~~\_\_\_\_\_ (b) Flight feathers for each species of raptor currently in possession or previously held may be kept for imping for as long as needed by a falconer with a valid falconry COR.~~

~~\_\_\_\_\_ (c) Feathers for imping purposes may be received from or provided to other licensed falconers, wildlife rehabilitators, or propagators in the United States.~~

~~\_\_\_\_\_ (d) Licensed falconers may not buy, sell, or barter molted raptor feathers.~~

~~\_\_\_\_\_ (e) Molted feathers from a falconry bird, except Golden Eagle feathers, may be donated to any person or institution with a valid permit for possession.~~

~~\_\_\_\_\_ (f) Except for primary or secondary wing feathers or rectrix (tail) feathers from a Golden Eagle, a falconer is not required to gather feathers that are molted or otherwise lost by a falconry bird held under a valid COR.~~



(g) Molted feathers may be left where they fall, stored for imping, or destroyed.

(h)(i) A licensed falconer possessing a Golden Eagle must collect any molted flight feathers and rectrices.

(ii) Collected Golden Eagle feathers that are not to be retained for imping must be sent to the National Eagle Repository at U.S. Fish and Wildlife Service, National Eagle Repository, Rocky Mountain Arsenal, 6550 Gateway Road, Building 128, Commerce City, Colorado 80022 (303-287-2110).

(j) Once a falconry COR expires and is not renewed or is revoked, the falconer must donate molted feathers of any species of falconry raptor to any person or institution authorized by permit to acquire and possess the feathers.

(k) Molted feathers that are not donated must be burned, buried, or otherwise destroyed.

(2) Disposition of carcasses of falconry birds that die.

(a) The entire carcass of a Golden Eagle held for falconry that dies, including all feathers, talons, and other parts, must be sent to the National Eagle Repository at U.S. Fish and Wildlife Service, National Eagle Repository, 6550 Gateway Road, Rocky Mountain Arsenal, Building 128, Commerce City, Colorado 80022 (303-287-2110).

(b) The body or feathers of any other species of falconry raptor may be donated to any person or institution authorized by permit to acquire and possess raptor parts or raptor feathers.

(c) A falconry raptor, except a Golden Eagle, that was either banded or micro chipped ~~[prior to]~~ before its death may be retained by the licensed falconer.

(d)(i) The body of the raptor may be kept so that the feathers are available for imping, or the body may be mounted by a taxidermist.

(ii) The mounted raptor may be used in conservation education programs.

(iii) If the falconry raptor was banded, the band must be left in place on the mounted raptor body.

(iv) If the falconry raptor has an implanted microchip, the microchip must be left in place on the mounted raptor body.

(e) The body and feathers of a deceased falconry raptor that are not donated or retained must be burned, buried, or otherwise destroyed within ~~[10]~~ten calendar days of the death of the bird or after final examination by a veterinarian to determine cause of death.

(f) A licensed falconer that does not wish to donate or destroy the flight feathers of a deceased raptor or have the body mounted by a taxidermist, may possess the flight feathers for as long as they possess a valid falconry COR, provided:

(i) the feathers are not be bought, sold, or bartered; and

(ii) the paperwork documenting lawful possession of the deceased raptor is retained.

#### **~~R[657-20-28]~~657-20-27. Other Uses of Raptors.**

(1) Transfer of wild raptors captured for falconry to other permitted uses.

(a) A wild-caught falconry raptor may be transferred to a person authorized to possess raptors for propagation purposes only after the raptor has been used in falconry for at least:

(i) 12 months from the date of capture for a Sharp-shinned Hawk, Cooper's Hawk, Merlin, or American Kestrel; and

(ii) 24 months from the date of capture for all other falconry raptors.

(b) The time periods imposed in Subsection (1)(a) for transferring a wild-caught falconry raptor to a person authorized to possess raptors for propagation purposes may be waived by the

Division Director or designee if the raptor has been injured and a veterinarian or permitted wildlife rehabilitator has determined that the raptor can no longer be flown for falconry.

(c) ~~[In order to]~~To permanently transfer an injured raptor to a propagation permit, the falconer must provide the Division and the Federal Migratory Bird Permits Office that administers propagation permits a certification from the treating veterinarian or rehabilitator stating that the raptor is injured and cannot be used in falconry.

(d) Upon transfer of a wild raptor to a propagation permit, the falconer must provide a copy of the 3-186A form documenting acquisition of the raptor by the propagator to the Division and the Federal Migratory Bird Permits Office that administers propagation permits.

(2) Transfer of captive-bred falconry raptors to other permitted uses.

(a) Captive-bred falconry raptors may be transferred to another person if the recipient is authorized for possession.

(3) Use of raptors possessed for falconry in captive propagation.

(a) Raptors possessed for falconry may be bred in captivity if the falconer or the person overseeing the propagation has the necessary permits and facilities.

(b) Formal transfer of a raptor from a falconry permit to a captive propagation permit is required if the raptor is to be permanently used for propagation.

(c) Formal transfer of a raptor from a falconry permit to a captive propagation permit is not required if the raptor is used for propagation less than eight ~~[(8)]~~months in a year.

(d) The licensed propagator must have a signed and dated statement from the falconer authorizing the temporary possession, plus a copy of the falconer's original FWS Form 3-186A for that raptor.

(4) Use of falconry raptors in conservation education programs.

(a) A General or Master Class falconer may use a falconry raptor in conservation education programs presented in public venues.

(b) A Federal education permit is not required to conduct conservation education activities using a falconry raptor held under a Utah falconry COR.

(c) ~~[In order to]~~To permanently transfer an injured raptor to an education permit, the falconer must provide the Division and the Federal migratory bird permits office that administers education permits a certification from the treating veterinarian or rehabilitator stating that the raptor is injured and cannot be used in falconry.

(d) Conservation programs may be presented by an Apprentice Falconer who is accompanied by their General or Master Class sponsor.

(e) Raptors used to present conservation programs must primarily be used for falconry.

(f) A falconer may charge a fee for presentation of a conservation education program, however the fee charged may not exceed the amount required to recoup costs of presenting the conservation education program.

(g) When presenting conservation education programs, the falconer must provide information about the biology, ecological roles, and conservation needs of raptors and other migratory birds, although not all ~~[of]~~the~~[se]~~ topics must be addressed in every presentation.

## NOTICES OF PROPOSED RULES

(h)(i) A falconer may not give presentations using a falconry raptor that do not address falconry and conservation education.

(ii) The falconer is responsible for all liability associated with conservation education activities undertaken.

(5) Other educational uses of falconry raptors.

(a) A falconer may allow photography, filming, or other similar uses of falconry raptors to make movies or other sources of information on the practice of falconry or on the biology, ecological roles, and conservation needs of raptors and other migratory birds.

(b) A falconer may not be paid or otherwise compensated for such activities.

(c) A falconer may not use falconry raptors or permit the use of falconry raptors to make movies, commercials, or in other commercial ventures that are not related to the practice of falconry or the biology, ecological roles, and conservation needs of raptors and other migratory birds.

(c) Falconry raptors may not be used for:

(i) Commercial entertainment for advertisements;

(ii) Promoting or endorsing any business, company, corporation, or other organization; or

(iii) Promoting or endorsing any product, merchandise, good, service, meeting, or fair, except for products related directly to falconry, such as hoods, telemetry equipment, giant hoods, perches, and materials for raptor facilities.

(6) Assisting in rehabilitation of raptors in preparation for release.

(a) A General or Master Class Falconer may assist a permitted migratory bird rehabilitator in conditioning raptors in preparation for their release to the wild.

(i) The falconer may keep the raptor being rehabilitated in their facilities up to 180 calendar days.

(ii) The rehabilitator must provide the falconer with a letter or form that identifies the raptor and explains that the falconer is assisting in the rehabilitation of the raptor to be released.

(iii) Facilities where the raptor will be temporarily housed must adhere to standards outlined in Section[s] R657-20-6 of this rule.

(iv) The falconer is not required to add any raptor possessed for rehabilitation to their COR; the raptor will remain under the permit of the rehabilitator.

(v) The falconer must permanently release any raptor capable of sustaining itself in the wild or return it to the rehabilitator within the 180-day timeframe in which the rehabilitator [is authorized to] may possess the raptor, unless the Division authorizes the falconer to [retain]keep the bird for longer than 180 calendar days.

(7) Using falconry raptors in abatement activities.

(a) Abatement activities may only be conducted with captive bred raptors.

(b) A Master Class falconer may conduct abatement activities with raptors possessed for falconry and receive compensation for such activities, if the falconer is in possession of a Special Purpose Abatement Permit issued by the Service.

(c) A General Class falconer may conduct abatement activities only as a subpermittee of a Master Class falconer that possesses an abatement permit.

(d) An Apprentice Class falconer may not conduct abatement activities.

(8) A person who possesses a raptor for any purpose other than falconry, including raptor propagation, educational uses, and rehabilitation, shall obtain the appropriate authorization from the Division as provided in Rule R657-3 and the appropriate authorization from the Service.

**KEY: wildlife, birds, falconry**

**Date of Last Change: 2023[August 21, 2017]**

**Notice of Continuation: November 4, 2021**

**Authorizing, and Implemented or Interpreted Law: 23-17-7; 50 CFR 21**

### NOTICE OF PROPOSED RULE

**TYPE OF FILING:** Repeal

<b>Rule or Section Number:</b>	<b>R657-22</b>	<b>Filing ID:</b> <b>55475</b>
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### Agency Information

<b>1. Department:</b>	Natural Resources
<b>Agency:</b>	Wildlife Resources
<b>Room number:</b>	Suite 2110
<b>Building:</b>	Department of Natural Resources
<b>Street address:</b>	1594 W North Temple
<b>City, state and zip:</b>	Salt Lake City, UT 84116
<b>Mailing address:</b>	PO Box 146301
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6301
<b>Contact persons:</b>	
<b>Name:</b>	<b>Phone:</b> <b>Email:</b>
Staci Coons	801-450-3093 stacicoons@utah.gov

**Please address questions regarding information on this notice to the persons listed above.**

### General Information

#### 2. Rule or section catchline:

R657-22. Commercial Hunting Areas

#### 3. Purpose of the new rule or reason for the change:

Commercial Hunting Areas will now be regulated by Rule R657-4, Possession and Release of Pen-reared Gamebirds, the provisions are generally unchanged.

#### 4. Summary of the new rule or change:

Rule R657-22 is no longer necessary and is being repealed in its entirety.

**Fiscal Information****5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

The repeal of Rule R657-22 will have no impact on the Division of Wildlife Resources (DWR) since the rule language is being moved to Rule R657-4 and the program will continue as it currently is. The program has been managed within the current workload and resources of the DWR, therefore, the DWR does not believe that the repeal of this rule would create a cost or savings impact to the state budget or the DWR's budget since the changes will not increase workload and can be carried out with existing budget.

**B) Local governments:**

The repeal of Rule R657-22 and placement in Rule R657-4 is an administrative adjustment and does not require the services directly or indirectly from the local governments, therefore, it will not cause a cost impact to the local governments.

**C) Small businesses** ("small business" means a business employing 1-49 persons):

The proposed rule amendments will not directly impact small businesses because a service is not required of them.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

The proposed rule amendments will not directly impact non-small businesses because a service is not required of them.

**E) Persons other than small businesses, non-small businesses, state, 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**):

This rule does not have the potential to create a cost impact to those individuals wishing to participate in a commercial hunting area because it is not establishing any new requirements.

The repeal of Rule R657-22 and the placement in Rule R657-4 is an administrative adjustment and does not require additional costs or savings to those wishing to participate in the program.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

The DWR determines that this amendment will not create additional costs for those participating in Commercial Hunting Areas because it is not establishing any new requirements.

The repeal of Rule R657-22 and the placement in Rule R657-4 is an administrative adjustment and does not require additional costs or savings to those wishing to participate in the program.

**G) Regulatory Impact Summary Table** (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 will be included in narratives above.)

**Regulatory Impact Table**

<b>Fiscal Cost</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$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>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

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

**Citation Information****6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 23-17-6		
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**Public Notice Information**

**8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 07/31/2023

**9. This rule change MAY become effective on:** 08/07/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Justin Shirley, DWR Director	<b>Date:</b>	06/14/2023
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**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.~~
- ~~(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) Detailed maps depicting boundaries, game bird holding facilities and ownership of all parcels within the CHA; and~~

- ~~(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 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) 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.~~**

~~(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 season the game birds are released; and~~

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

~~(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 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 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 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 5,760 acres.~~

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

#### **~~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 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 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)(c), 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, 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 during hunting activities in any manner other than dizzying or tucking heads under wings before release.~~

~~(2) A minimum of 100 game birds of each authorized species, 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) 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) Hunting on CHA areas is permitted from September 1 through March 31.~~

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



**~~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.~~~~(2) Any person hunting within the state on any CHA must meet 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 Last Change:** March 25, 2019~~~~**Notice of Continuation:** April 4, 2022~~~~**Authorizing, and Implemented or Interpreted Law:** 63G-4-203; 23-17-6]~~**NOTICE OF PROPOSED RULE****TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R657-33</b>	<b>Filing ID:</b> <b>55476</b>
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**Agency Information**

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Wildlife Resources	
<b>Room number:</b>	Suite 2110	
<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 146301	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6301	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Staci Coons	801-450-3093	stacicoons@utah.gov

Please address questions regarding information on this notice to the persons listed above.

**General Information****2. Rule or section catchline:**

R657-33. Taking Bear

**3. Purpose of the new 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' (DWR) rule regulating the taking of bear in Utah.

**4. Summary of the new rule or change:**

The proposed amendments to this rule place the rule in line with H.B. 469, Wildlife Amendments, 2023 General Session, which restricts the use of Trail Cameras.

**Fiscal Information****5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

The amendments to Rule R657-33 are administrative in nature and any costs involved were offset in a fiscal note attached to the bill, the DWR determines that these changes can be initiated within the current workload and resources of the DWR, therefore, the DWR believes that these amendments can be enacted without a cost or savings impact to the state budget or the DWR's budget.

**B) Local governments:**

Since the proposed amendments do not require a service from local governments this filing does not create any direct or indirect cost or savings impact to local governments.

**C) Small businesses** ("small business" means a business employing 1-49 persons):

The proposed rule amendments will not directly impact small businesses because a service is not required of them.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

The proposed rule amendments will not directly impact non-small businesses because a service is not required of them.

**E) Persons other than small businesses, non-small businesses, state, 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**):

These amendments do not have the potential to create a cost impact to those individuals wishing to participate in the hunting of bear in Utah because the loss of revenue for cougar permits was incorporated into the fee of hunting and combination licenses.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

The DWR determines that this amendment will not create additional costs for those participating in the taking of bear.

The loss of revenue for cougar permits was incorporated into the fee of hunting and combination licenses.



**G) Regulatory Impact Summary Table** (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 will be included in narratives above.)

**Regulatory Impact Table**

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$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>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

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

**Citation Information**

**6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 23-14-18	Section 23-14-19	
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**Public Notice Information**

**8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 07/31/2023

**9. This rule change MAY become effective on:** 08/07/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Justin Shirley, DWR Director	<b>Date:</b>	06/14/2023
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**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, 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.

**R657-33-9. Prohibited Methods.**

(1) Bear may be taken or pursued only during open seasons and using methods prescribed in this rule and the guidebook of the Wildlife Board for taking and pursuing bear. Otherwise, under the Wildlife Resources Code, it is unlawful for any person to pursue, possess, capture, kill, injure, drug, rope, trap, snare, or in any way harm or transport bear.

(2)(a) A person may not pursue a single bear in repeated pursuits such that it renders the bear physically unable to escape.

(b) After a bear has been pursued, chased, treed, cornered, legally baited or held at bay, a person may not, in any manner, restrict or hinder the animal's ability to escape.

(c) A person must make reasonable efforts to call dogs off a bear that has been cornered or held at bay.

(3) A person may not engage in a canned hunt.

(4) A person may not take any wildlife from an airplane or any other airborne vehicle or device or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles.

(5)(a) A person ~~[shall]~~may not place, maintain, or use ~~[any]~~a trail camera ~~[or non-handheld device capable of capturing image, video, location, time or date data in the field to take, attempt to take, or aid in the take or attempted take of bear between July 31 and December 31]~~as prohibited in Section 23-13-18;

(b) ~~[E]~~engage in the sale or purchase of trail camera or other non-handheld device media, including images, video, location, time, or date data to take, attempt to take, or aid in the take or attempted take of bear; or

(c) ~~[E]~~engage in the storage and sale or purchase of stored media, including images, video, location, time, or date data to take, attempt to take, or aid in the take or attempted take of bear[;].

~~[(d) The prohibition on the use of trail cameras does not apply to:~~

~~— (i) private landowners monitoring or protecting their property from trespass;~~

~~(ii) monitoring active agricultural operations;]~~  
~~(iii) to aid in the take of bear and cougar depredating livestock; and~~  
~~(iv) municipalities participating in the Urban Deer Program.~~  
~~(e) Trail cameras and other non-handheld devices described in Subsection (5)(a) on private property cannot be used to take, attempt to take, or aid in the take or attempted take of bear between July 31 and December 31.]~~

**KEY:** wildlife, bear, game laws

Date of Last Change: ~~2023~~ **March 24, 2023**

Notice of Continuation: October 31, 2022

Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19; 23-13-2

## NOTICE OF PROPOSED RULE

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R657-37</b>	<b>Filing ID:</b> <b>55477</b>
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### Agency Information

<b>1. Department:</b>	Natural Resources
<b>Agency:</b>	Wildlife Resources
<b>Room number:</b>	Suite 2110
<b>Building:</b>	Department of Natural Resources
<b>Street address:</b>	1594 W North Temple
<b>City, state and zip:</b>	Salt Lake City, UT 84116
<b>Mailing address:</b>	PO Box 146301
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6301
<b>Contact persons:</b>	
<b>Name:</b>	<b>Phone:</b> <b>Email:</b>
Staci Coons	801-450-3093 stacicoons@utah.gov

Please address questions regarding information on this notice to the persons listed above.

### General Information

#### 2. Rule or section catchline:

R657-37. Cooperative Wildlife Management Units for Big Game or Turkey

#### 3. Purpose of the new 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' (DWR) rule regulating the operations of Cooperative Wildlife Management Units (CWMUs).

#### 4. Summary of the new rule or change:

The proposed amendments to this rule place the rule in line with H.B. 469, Wildlife Amendments, 2023 General Session, which sets season dates for CWMUs, as well as permit quotas based on acreage and number of companion hunters per permit.

### Fiscal Information

#### 5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

##### A) State budget:

The amendments to Rule R657-37 are administrative in nature and any costs involved were offset in a fiscal note attached to the bill, the DWR determines that these changes can be initiated within the current workload and resources of the DWR, therefore, the DWR believes that these amendments can be enacted without a cost or savings impact to the state budget or the DWR's budget.

##### B) Local governments:

Since the proposed amendments do not require a service from local governments, this filing does not create any direct or indirect cost or savings impact to local governments.

##### C) Small businesses ("small business" means a business employing 1-49 persons):

The proposed rule amendments will not directly impact small businesses because a service is not required of them.

##### D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

The proposed rule amendments will not directly impact non-small businesses because a service is not required of them.

##### E) Persons other than small businesses, non-small businesses, state, 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**):

These amendments do not have the potential to create a cost impact to those individuals wishing to participate in hunting in Utah on a CWMU because the rule amendments allow for set season dates and set permit quotas neither of which will have an impact on the hunters pursuing big game with a CWMU permit.

##### F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

The DWR determines that this amendment will not create additional costs for those participating in hunting in Utah on a CWMU because the rule amendments allow for set

season dates and set permit quotas neither of which will have an impact on the hunters pursuing big game with a CWMU permit.

**G) Regulatory Impact Summary Table** (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 will be included in narratives above.)

**Regulatory Impact Table**

<b>Fiscal Cost</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$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>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

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

**Citation Information**

**6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 23-23-3		
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**Public Notice Information**

**8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 07/31/2023

**9. This rule change MAY become effective on:** 08/07/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Justin Shirley, DWR Director	<b>Date:</b>	06/14/2023
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**R657. Natural Resources, Wildlife Resources.**

**R657-37. Cooperative Wildlife Management Units for Big Game or Turkey.**

**R657-37-1. Purpose and Authority.**

(1) Under authority of Section 23-23-3, this rule provides the standards and procedures applicable to Cooperative Wildlife Management Units organized for the hunting of big game or turkey.

(2) Cooperative Wildlife Management Units are established to:

- (a) increase wildlife resources;
- (b) provide income to landowners;
- (c) provide the general public access to private and public lands for hunting big game or turkey within a Cooperative Wildlife Management Unit;
- (d) create satisfying hunting opportunities;
- (e) provide adequate protection to landowners who open their lands for hunting; and
- (f) provide landowners an incentive to manage lands to protect and sustain wildlife habitat and benefit wildlife.

**R657-37-9. Permit Allocation.**

(1) The division shall issue CWMU permits for hunting big game or turkey to permittees:

- (a) qualifying through a drawing conducted for the general public as defined in Subsection R657-37-2(2)(c); or
- (b) named by the landowner association member or landowner association operator.

(2) CWMU landowners, presidents, operators, and their spouses and dependent children cannot apply for CWMU permits specific to their CWMU that are offered in the public drawing.

(3) A landowner association member or landowner association operator shall be issued vouchers that may be used to purchase hunting permits from division offices.

(4)(a) The Wildlife Board may establish the maximum number of permits that may be issued per acre, excepted as provided in Subsection 4(b).

(b) In accordance with Subsection 23-23-7(4), a CWMU unit shall issue one buck deer permit or less per every 320 acres to be eligible to receive buck deer permits.

(c) The division and the landowner association operator must, in accordance with Subsection (4), determine:

(i) the total number of permits to be issued for the CWMU; and

(ii) the number of permits that may be offered by the landowner association to the general public as defined in Subsection R657-37-2(2)(c).

(~~b~~)d In determining the total number of permits allocated under Subsection (4)(a), the division will consider:

(i) acreage and habitat conditions on the CWMU;

(ii) management objectives of the CWMU and surrounding wildlife management units;

(iii) classification and survey data;

(iv) depredation and nuisance conflicts; and

(v) other factors that may influence hunt quality and the division's ability to meet wildlife management objectives.

(~~e~~)g A CWMU may only offer a management buck permit for a public hunter if that CWMU lies entirely within a wildlife management unit that also offers management buck hunts.

(5) The Wildlife Board shall increase the number of permits or hunting opportunities made available to the general public to reflect the proportion of public lands to private lands within the CWMU.

(6)(a) Big game permits may be allocated using an option from:

(i) Table 1 for moose and pronghorn; or

(ii) Table 2 for elk and deer.

(b)(i) Over the term of the certificate of registration, and at all times during the its term, at least 40% of the total permits for bull moose and buck pronghorn and at least 60% of the antlerless moose and antlerless pronghorn permits will be allocated to the public and distributed via the public drawing.

(ii) Notwithstanding Subsection (b)(i) and Tables 1 and 2, if the proportion of permits allocated to the public over consecutive certificate of registration terms substantially deviates from that identified in Subsection (b)(i), the Wildlife Board may approve a modified permit distribution scheme that fairly allocates public and private permits.

(c) At least one buck or bull permit or at least 10% of the bucks or bulls permits, whichever is greater, must be made available to the general public through the big game drawing process.

(d) Permits shall not be issued for spike elk.

(e) Turkey permits shall be allocated in a ratio of 50% to the CWMU and 50% to the general public, with the public receiving the extra permit when there is an odd number of total permits.

Table 1 Moose and Pronghorn		
Cooperative Wildlife Management Unit's Share	Bucks/Bulls	Does/Antlerless
Option 1	60%	40%
Public's Share	Bucks/Bulls	Does/Antlerless
Option 1	40%	60%

Table 2 Elk and Deer		
Cooperative Wildlife Management Unit's share	Bucks/Bulls	Antlerless
Option 1	90%	0%
Option 2	85%	25%
Option 3	80%	40%

Option 4	75%	501%
Public's Share		
Option 1	10%	100%
Option 2	15%	75%
Option 3	20%	60%
Option4	25%	50%

(7)(a) The landowner association member or landowner association operator must meet antlerless harvest objectives established in the CWMU management plan under Subsection R657-37-4(3)(a)(ii).

(b) Failure to meet antlerless harvest objectives based on a three-year average may result in discipline under Section R657-37-14.

(8) A landowner association member or landowner association operator must provide access free of charge to any person who has received a CWMU permit through the general public big game or turkey drawings and at least one companion, except as provided in Section 23-23-11.

(9) If the division and the landowner association member disagree on the number of permits to be issued, the number of permits allocated, or the method of take, the Wildlife Board shall make the determination based on the biological needs of the big game or turkey populations, including available forage, depredation, and other mitigating factors.

(10) A CWMU permit entitles the holder to hunt the species and sex of big game or turkey specified on the permit and only in accordance with the certificate of registration and the rules and proclamations of the Wildlife Board.

(11) Vouchers for antlerless permits may be designated by a landowner association member to any eligible person as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game, and Rule R657-42.

(12)(a) If a landowner association has a CWMU voucher that is not redeemed during the previous year, a landowner association may donate that voucher to a 501(c)(3) tax exempt organization, provided the following conditions are satisfied:

(i) the voucher donation is approved by the director before transfer;

(ii) the voucher is donated for a charitable cause, and the landowner association does not receive compensation or consideration of any kind other than tax benefit; and

(iii) the recipient of the voucher is identified before obtaining the director's approval for the donation.

(b) A CWMU voucher approved for donation under this section may be extended no more than one year.

(c) The division must be notified in writing and the donation completed before August 1<sup>st</sup> the year the CWMU voucher is to be redeemed.

(d) Vouchers may be used in reciprocal hunting agreements in accordance with Subsection R657-7-(2)(b).

(13)(a) A complete list of the current CWMUs, and number of big game or turkey permits available for public drawing shall be published in the respective proclamations of the Wildlife Board for taking big game or turkey.

(b) The division reserves the exclusive right to list approved CWMUs in the proclamations of the Wildlife Board for taking big game or turkey. The division may unilaterally decline to list a CWMU in the proclamation where the unit is under investigation for wildlife violations, a portion of the property comprising the CWMU is transferred to a new owner, or any other condition or circumstance that calls into question the CWMUs ability

## NOTICES OF PROPOSED RULES

or willingness to allow a meaningful hunting opportunity to the public permit holders that would otherwise draw out on the public permits.

### **R657-37-12. Season Lengths.**

(1) A landowner association member or landowner association operator may arrange for permittees to hunt on the CWMU during the following dates:

(a) an archery buck deer season may be established beginning with the opening of the general archery deer season through August 31 and during the ~~[sixty-one]~~61 consecutive day buck deer season;

(b) an archery bull elk season may be established beginning with the opening of the general archery elk season through October 31 and during a bull elk season variance;

(c) an archery buck pronghorn season may be established beginning with the opening of the statewide limited entry archery buck pronghorn season through October 31;

(d) general season bull elk, buck pronghorn, and moose seasons may be established September 1 through October 31, unless a season variance is approved;

(e)(i) general buck deer seasons may be established for no longer than ~~[sixty-one]~~61 consecutive days from September 1 through November 10;

(ii) a landowner association member or landowner association operator ~~[electing to establish]~~that provides less than one buck deer ~~[hunting in November must]~~permit per every 640 acres may select the following season dates:

(A) ~~[meet the CWMU management plan objectives]~~beginning September 1 and ending on October 31; or

~~[(B) not exceed average hunter density exhibited on the surrounding deer wildlife management units;~~

~~[(C) provide positive hunter satisfaction; and~~

~~[(D) maintain a harvest success rate at least equal to the surrounding deer wildlife management units;~~

~~[(E) designate the CWMU's sixty-one consecutive day season in the application, or if the sixty-one day consecutive season is not designated the season shall begin September 1;]~~

(B) beginning on September 11 and ending on November 10.

(iii) A landowner association or landowner operator that provides more than one buck deer permit per every 640 acres may only have season dates beginning September 1 and ending October 31.

[(F)iv] A CWMU that elects for season dates extending into November under Subsection (1)(e)(ii)(B) must allow all public hunters the option to hunt in November;

(f) muzzleloader bull elk seasons may be established September 1 through October 31 annually, and during a bull elk season variance;

(g) antlerless elk seasons may be established August 1 through January 31;

(h) antlerless deer seasons may be established August 1 through December 31;

(i) doe pronghorn seasons may be established August 1 through October 31; and

(j) turkey seasons may be established the second Saturday in April through May 31.

(2)(a) The Wildlife Board may authorize bull elk hunting season variances only if the CWMU landowner association member or landowner association operator clearly demonstrates that November hunting is necessary on the CWMU.

(b) If a bull elk hunting season variance is authorized, the public hunters must be provided comparable hunting opportunity as private hunters.

(3) Notwithstanding the season length provisions in this section, any season described in Subsection (1) that begins on a Sunday will ~~[default to and commence]~~begin the Saturday before.

**KEY: wildlife, cooperative wildlife management unit**

**Date of Last Change: 2023[June 22, 2020]**

**Notice of Continuation: March 15, 2023**

**Authorizing, and Implemented or Interpreted Law: 23-23-3**

### **NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R657-42</b>	<b>Filing ID:</b> <b>55478</b>
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### **Agency Information**

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Wildlife Resources	
<b>Room number:</b>	Suite 2110	
<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 146301	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6301	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Staci Coons	801-450-3093	stacicoons@utah.gov

**Please address questions regarding information on this notice to the persons listed above.**

### **General Information**

#### **2. Rule or section catchline:**

R657-42. Fees, Exchanges, Surrenders, Refunds and Reallocation of Wildlife Documents

#### **3. Purpose of the new 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' (DWR) rule regulating the fees, exchanges, surrenders, refunds, and reallocations of Wildlife Documents.

#### **4. Summary of the new rule or change:**

The proposed amendments to this rule place the rule in line with H.B. 469, Wildlife Amendments, 2023 General Session.



**Fiscal Information****5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

The amendments to Rule R657-42 are administrative in nature and any costs involved were offset in a fiscal note attached to the bill, the DWR determines that these changes can be initiated within the current workload and resources of the DWR, therefore, the DWR believes that these amendments can be enacted without a cost or savings impact to the state budget or the DWR's budget.

**B) Local governments:**

Since the proposed amendments do not require a service from local governments, this filing does not create any direct or indirect cost or savings impact to local governments.

**C) Small businesses** ("small business" means a business employing 1-49 persons):

The proposed rule amendments will not directly impact small businesses because a service is not required of them.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

The proposed rule amendments will not directly impact non-small businesses because a service is not required of them.

**E) Persons other than small businesses, non-small businesses, state, 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**):

These amendments do not have the potential to create a cost impact to those individuals wishing to participate in the hunting of cougar in Utah because the loss of revenue for cougar permits was incorporated into the fee of hunting and combination licenses.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

The DWR determines that this amendment will not create additional costs for those participating in the taking of cougar, the loss of revenue for cougar permits was incorporated into the fee of hunting and combination licenses.

**G) Regulatory Impact Summary Table** (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 will be included in narratives above.)**Regulatory Impact Table**

<b>Fiscal Cost</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$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>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

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

**Citation Information****6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 23-19-1	Section 23-19-38	
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**Public Notice Information****8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	07/31/2023
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<b>9. This rule change MAY become effective on:</b>	08/07/2023
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Justin Shirley, DWR Director	<b>Date:</b>	06/14/2023
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**R657. Natural Resources, Wildlife Resources.****R657-42. Fees, Exchanges, Surrenders, Refunds, and Reallocation of Wildlife Documents.****R657-42-1. Purpose and Authority.**

(1) Under the authority of Sections 23-19-1 and 23-19-38 the division may issue wildlife documents in accordance with the rules of the Wildlife Board.

(2) This rule provides the standards and procedures for the:

- (a) exchange of permits;
- (b) surrender of wildlife documents;
- (c) refund of wildlife documents;
- (d) reallocation of permits; and
- (e) assessment of late fees.

**R657-42-2. Definitions.**

(1) Terms used in this rule are defined in Section 23-13-2 and the applicable rules and guidebooks of the Wildlife Board.

(2) In addition:

(a) "Alternate drawing lists" means a list of persons who have not already drawn a permit and would have been the next person in line to draw a permit.

(b) "CWMU" means cooperative wildlife management unit.

(c) "Deployed or mobilized" means that a person provides military or emergency services in the interest of national defense or national emergency pursuant to the demand, request, or order of their employer.

(d) "General season permit" means any:

- (i) bull elk, buck deer, or turkey permit identified in the guidebooks of the Wildlife Board as a general season permit;
- (ii) antlerless permit for elk, deer, or pronghorn antelope;

or  
[~~\_\_\_\_\_ (iii) harvest objective cougar permit.~~]

(e) "Landowner association operator" for purposes of this rule, means:

(i) a landowner association or any of its members eligible to receive limited entry landowner permits as provided in Rule R657-43; or

(ii) CWMU - landowner association or its designated operator as provided in Rule R657-37.

(f) "Limited entry permit" means any permit, including a CWMU, conservation, expo, sportsman, or limited entry landowner permit, identified in the guidebooks of the Wildlife Board as limited entry or premium limited entry for the following:

(i) bull elk, buck deer, buck pronghorn, bear, [~~cougar~~] or turkey; and

(ii) antlerless moose.

(g) "Once-in-a-lifetime permit" means any permit, including a CWMU, conservation, expo, sportsman, or limited entry

landowner permit, identified in the guidebooks of the Wildlife Board as once-in-a-lifetime for the following:

(i) bison, bull moose, Rocky Mountain goat~~;~~ and

(ii) desert bighorn sheep, and Rocky Mountain bighorn sheep.

(h) "Wildlife document" means any license, permit, tag, or certificate of registration issued by the division.

**R657-42-3. Exchanges.**

(1)(a) Any person who has obtained a general buck deer or a general bull elk permit may exchange that permit for any other available general permit if both permits are for the same species and sex.

(b) A person must make general buck deer and general bull elk permit exchanges at any division office [~~prior to~~]before the season opening date of the permit to be exchanged.

[~~\_\_\_\_\_ (2) Any person who has obtained a cougar harvest objective unit permit may exchange that permit for any other available cougar harvest objective unit permit as provided in Rule R657-10.~~]

([~~3~~]2) Any person who has obtained a limited entry bear any weapon or limited entry bear archery permit may exchange that permit for a limited entry bear archery or limited entry bear any weapon permit, respectively.

([~~4~~]3) The division may charge a handling fee for the exchange of a permit.

**R657-42-5. Refunds.**

(1) The refund of a license, certificate of registration or permit shall be made in accordance with:

- (a) Section 23-19-38 and Rule R657-50;
- (b) Section 23-19-38.2 and Subsection (3); or
- (c) Section 23-19-38 and this section.

(2)(a) An application for a refund may be obtained from any division office.

(b) All refunds must be processed through the Salt Lake Division office.

(c) Except for an individual applying for a refund under Subsection (3), an individual may apply for a refund up to 90 days after the expiration of the wildlife document.

(d) The division may reject an application for a refund that is incomplete.

(3) A person may receive a refund for a wildlife document if that person was deployed or mobilized on or after September 11, 2001, in the interest of national defense or national emergency and is thereby completely precluded from participating in the hunting or fishing activity authorized by the wildlife document, provided:

(a) the refund request is made to the division within one year of the end of the hunting or fishing season authorized by the wildlife document;

(b) the person surrenders the wildlife document to the division, or signs an affidavit stating the wildlife document is no longer in the person's possession; and

(c) the person verifies that the deployment or mobilization completely precluded them from participating in the activity authorized by the wildlife document; and

(d) the person provides military orders, or a letter from an employment supervisor on official public health or public safety organization letterhead stating:

(i) the branch of the United States Armed Forces, or name of the public health organization or public safety organization from which they were deployed or mobilized; and



(ii) the nature and length of their duty while deployed or mobilized.

(4) The division may issue a refund for a wildlife document if the person to whom it was issued dies ~~[prior to]~~ before participating in the hunting or fishing activity authorized by the wildlife document, provided ~~[a]~~ ~~\_\_\_\_\_~~ (a) ~~T~~ the person legally entitled to administer the decedent's estate provides the division with:

(~~i~~) ~~a~~ picture identification;

(~~ii~~) ~~b~~ letters testamentary, letters of administration, or such other evidence establishing the person is legally entitled to administer the affairs of the decedent's estate;

(~~iii~~) ~~c~~ a photocopy of the decedent's certified death certificate; and

(~~iv~~) ~~d~~ the wildlife document for which a refund is requested.

(5)(a)(i) A person may receive a refund for a once-in-a-lifetime or limited-entry permit provided the permit is surrendered to the division no less than 30 days ~~[prior to]~~ before the season opening date identified on the permit.

(ii) A person may receive a refund for a general season permit that must be surrendered ~~[in order]~~ to accept a reallocated limited entry permit for the same species.

(b) The established wildlife document refund fee will not be assessed on general season permits surrendered under Subsection (5)(a)(ii).

(6) The ~~[director]~~ division may ~~[determine that a person did not have the opportunity to participate]~~ issue a refund for a wildlife document if the person to whom it was issued was precluded from participating in ~~[an]~~ the activity authorized by the wildlife document due to COVID-19 related personal health concerns or general public health restrictions imposed by the federal government, a state, or a local government.

~~\_\_\_\_\_~~ (7) ~~The~~ (7) The director may determine that a person did not have the opportunity to participate in an activity authorized by the wildlife document.

(8) Notwithstanding any other provision in this rule, the division may reinstate a bonus point or preference point, whichever ~~[is applicable]~~ applies, and waive waiting periods, if applicable, when issuing a refund in accordance with this section.

**KEY:** wildlife, permits

**Date of Last Change:** ~~2023~~ February 10, 2020

**Notice of Continuation:** March 15, 2023

**Authorizing, and Implemented or Interpreted Law:** 23-19-1; 23-19-38; 23-19-38.2

#### NOTICE OF PROPOSED RULE

**TYPE OF FILING:** Repeal

<b>Rule or Section Number:</b>	<b>R657-46</b>	<b>Filing ID:</b> <b>55479</b>
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#### Agency Information

<b>1. Department:</b>	Natural Resources
<b>Agency:</b>	Wildlife Resources
<b>Room number:</b>	Suite 2110
<b>Building:</b>	Department of Natural Resources
<b>Street address:</b>	1594 W North Temple

<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 146301	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6301	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Staci Coons	801-450-3093	stacicoons@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

#### General Information

##### 2. Rule or section catchline:

R657-46. The Use of Game Birds in Dog Field Trials and Training

##### 3. Purpose of the new rule or reason for the change:

Use of Game Birds in Dog Field Trials and Training will now be regulated by Rule R657-4, Possession and Release of Pen-reared Gamebirds, and Rule R657-6, Taking Upland Game, the provisions are generally unchanged.

##### 4. Summary of the new rule or change:

Rule R657-46 is no longer necessary and is being repealed in its entirety.

#### Fiscal Information

##### 5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

###### A) State budget:

The repeal of Rule R657-46 will have no impact on the Division of Wildlife Resources (DWR) since this rule language is being moved to Rules R657-4 and R657-6 and the program will continue as it currently is. The program has been managed within the current workload and resources of the DWR, therefore, the DWR does not believe that the repeal of this rule would create a cost or savings impact to the state budget or the DWR's budget since the changes will not increase workload and can be carried out with existing budget.

###### B) Local governments:

The repeal of Rule R657-46 and placement in Rule R657-4 and Rule R657-6 is an administrative adjustment and does not require the services directly or indirectly from the local governments, therefore, it will not cause a cost impact to the local governments.

###### C) Small businesses ("small business" means a business employing 1-49 persons):

## NOTICES OF PROPOSED RULES

The proposed rule amendments will not directly impact small businesses because a service is not required of them.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

The proposed rule amendments will not directly impact non-small businesses because a service is not required of them.

**E) Persons other than small businesses, non-small businesses, state, 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**):

This rule does not have the potential to create a cost impact to those individuals wishing to participate in dog training or trials because it is not establishing any new requirements. The repeal of Rule R657-46 and the placement in Rule R657-4 and Rule R657-6 is an administrative adjustment and does not require additional costs or savings to those wishing to participate in the program.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

The DWR determines that this amendment will not create additional costs for those participating in dog training or trials because it is not establishing any new requirements.

The repeal of Rule R657-46 and the placement in Rule R657-4 and Rule R657-6 is an administrative adjustment and does not require additional costs or savings to those wishing to participate in the program.

**G) Regulatory Impact Summary Table** (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 will be included in narratives above.)

#### Regulatory Impact Table

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0

<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$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>

#### H) Department head comments on fiscal impact and approval of regulatory impact analysis:

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

#### Citation Information

**6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 23-17-6		
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#### Public Notice Information

**8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	07/31/2023
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<b>9. This rule change MAY become effective on:</b>	08/07/2023
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

#### Agency Authorization Information

<b>Agency head or designee and title:</b>	Justin Shirley, DWR Director	<b>Date:</b>	06/14/2023
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**R657. Natural Resources, Wildlife Resources.****~~R657 46. The Use of Game Birds in Dog Field Trials and Training.~~****~~R657 46 1. Purpose and Authority.~~**

~~Under authority of Sections 23 14 18, 23 14 19 and 23 17 9 this rule provides the requirements, standards, and application procedures for the use of game birds in dog field trials and training.~~

**~~R657 46 2. Definitions.~~**

- ~~(1) Terms used in this rule are defined in Section 23 13 2.~~
- ~~(2) In addition:~~
  - ~~(a) "Field trial" means an organized event where the abilities of dog handlers and their dogs are evaluated, including the ability of the dogs to hunt or retrieve game birds.~~
  - ~~(b) "Game bird" means:~~
    - ~~(i) crane;~~
    - ~~(ii) dusky, ruffed, sage, sharp-tailed, and spruce grouse;~~
    - ~~(iii) chukar, red-legged, and gray partridges;~~
    - ~~(iv) pheasant;~~
    - ~~(v) band-tailed pigeon;~~
    - ~~(vi) northern bobwhite, California, Gambel's, Montezuma, mountain, and scaled quail;~~
    - ~~(vii) waterfowl;~~
    - ~~(viii) common ground, Inca, mourning, and white-winged dove;~~
    - ~~(ix) wild or pen-reared wild turkey of the following subspecies:~~
      - ~~(A) eastern;~~
      - ~~(B) Florida or Oseecola;~~
      - ~~(C) Gould's;~~
      - ~~(D) Merriam's;~~
      - ~~(E) ocellated; and~~
      - ~~(F) Rio Grande; and~~
      - ~~(x) ptarmigan;~~
    - ~~(c) "Quad flyer test" means throwing pen-reared game birds by hand from four fixed stations and shooting of the pen-reared game birds one immediately after the other.~~
    - ~~(d) "Train" or "training" means the informal handling, exercising, teaching, instructing, and disciplining of dogs in the skills and techniques of hunting and retrieving game birds characterized by absence of fees, judging, or awards.~~

**~~R657 46 3. Application for a Field Trial Certificate of Registration.~~**

- ~~(1)(a) A person may conduct a field trial using pen-reared game birds provided that person applies for and obtains a certificate of registration from the Division of Wildlife Resources, except as provided in Subsection (b).~~
- ~~(b) A person may conduct a field trial using pen-reared game birds on a commercial hunting area without obtaining a certificate of registration.~~
- ~~(2) Applications are available at any division office.~~
- ~~(3) The application must include written permission from the owner, lessee, or land management agency of the property where the field trial is to be conducted.~~
- ~~(4)(a) Applications must be submitted to the appropriate regional division office where the field trial is being held.~~
- ~~(b) Applications must be received at least 45 days prior to the date of the field trial.~~

~~(5) The division will not approve any application for an area where, in the opinion of the division, the field trial or the release of pen-reared game birds interferes with wildlife, wildlife habitat or wildlife nesting periods.~~

~~(6) Field trials may be held only during the dates and within the area specified on the field trial certificate of registration.~~

**~~R657 46 4. Use of Pen-Reared Game Birds for Field Trials.~~**

- ~~(1) Legally acquired pen-reared game birds may be possessed or used for field trials.~~
- ~~(2) Any person using pen-reared game birds must have an invoice or bill of sale in their possession showing lawful personal possession or ownership of such birds.~~
- ~~(3) Pen-reared game birds may not be imported into Utah without a valid veterinary health certificate as required in Rules R58-1 and R657 4.~~
- ~~(4)(a) Each pen-reared game bird must be marked with an aluminum leg band or other permanent marking before being released in the field trial, except as provided in Subsection (d).~~
- ~~(b) Aluminum leg bands may be purchased at any division office.~~
- ~~(c) The aluminum leg band or other permanent marking must remain attached to the pen-reared game bird.~~
- ~~(d) Each pen-reared game bird used in a field trial that is conducted on a commercial hunting area may be released without marking each pen-reared game bird, as with an aluminum leg band.~~
- ~~(5) Pen-reared game birds used for a field trial may be released only on the property specified in the certificate of registration where the field trial is conducted.~~
- ~~(6) After release, pen-reared game birds may be taken:~~
  - ~~(a) by the person who released the pen-reared game birds, or by any person participating in the field trial; and~~
  - ~~(b) only during the dates of the field trial event as specified in the certificate of registration.~~
- ~~(7) Wild game birds may be taken only during legal hunting seasons as specified in the Upland Game or Waterfowl proclamations of the Wildlife Board.~~
- ~~(8) Pen-reared game birds acquired for a field trial that are not released may be held in possession:~~
  - ~~(a) no longer than 60 days; or~~
  - ~~(b) longer than 60 days provided the person possessing the pen-reared game birds first obtains a private aviculture certificate of registration as provided in Rule R657 4.~~
- ~~(9) Pen-reared game birds that leave the property where the field trial is held at the end of the field trial shall become the property of the state of Utah and may not be taken, except during legal hunting seasons as specified in the Upland Game or Waterfowl proclamations of the Wildlife Board.~~

**~~R657 46 5. Use of Pen-Reared Game Birds for Dog Training.~~**

- ~~(1) A person may train a dog using legally acquired pen-reared game birds provided:~~
  - ~~(a) the person using the pen-reared game birds has an invoice or bill of sale in their possession showing lawful personal possession or ownership of the pen-reared game birds;~~
  - ~~(b) each pen-reared game bird must be marked with an aluminum leg band or other permanent marking before being released for training, except as provided in Subsection (3)(a);~~
  - ~~(c) any pheasant released during training must be marked with a visible streamer or tape at least 12 inches in length before being released, and any pheasant killed during training must have the streamer or tape attached when killed; and~~

## NOTICES OF PROPOSED RULES

~~(d) the use of dogs complies with Rules R657-6, R657-9, and R657-54.~~

~~(2) Aluminum leg bands may be purchased at any division office.~~

~~(3)(a) Each pen-reared game bird used for dog training that is conducted on a commercial hunting area may be released without marking each pen-reared game bird with an aluminum leg band or other permanent marking.~~

~~(b) Any pheasant released during training on a commercial hunting area may be released without marking as provided in Subsections (1)(b) and (1)(c).~~

~~(4) The training may not consist of more than four dogs at any time, except the training may consist of more than four dogs provided:~~

~~(a) the dogs exceeding four in number are eight months of age or younger; and~~

~~(b) no live ammunition is in possession of the person or persons engaged in training the dogs.~~

~~(5) A person or group of persons may not release more than ten pen-reared game birds per day or three pen-reared game birds per dog per day, whichever is greater.~~

~~(6) A person or group of persons may not use more than three firearms at any time, except four firearms may be used when training retrievers using the American Kennel Club quad flyer test.~~

~~(7) Pen-reared game birds acquired for training that are not released may be held in possession:~~

~~(a) no longer than 60 days; or~~

~~(b) longer than 60 days provided the person possessing the pen-reared game birds first obtains a private aviculture certificate of registration as provided in Rule R657-4.~~

~~(8) Pen-reared game birds that are not recovered on the day of the training or pen-reared game birds that escape shall become property of the state of Utah and may not be recaptured or taken, except during legal hunting seasons as specified in the Upland Game and Waterfowl proclamations of the Wildlife Board.~~

~~(9) A person training dogs on official dog training areas, designated by the division, is not required to comply with Subsection (1)(c) or Subsections (4), (5) or (6).~~

### **R657-46-6. Use of Wild Game Birds for Dog Training.**

~~(1) A person may train a dog on wild game birds provided:~~

~~(a) the dog, or the person training the dog, may not harass, catch, capture, kill, injure, or at any time, possess any wild game birds, except during legal hunting seasons as provided in the Upland Game or Waterfowl proclamations of the Wildlife Board;~~

~~(b) the use of dogs complies with Rules R657-6, R657-9, and R657-54;~~

~~(c) the person training a dog on wild game birds, except during legal hunting seasons:~~

~~(i) may not possess a firearm, except a pistol firing blank cartridges;~~

~~(ii) must comply with city and county ordinances pertaining to the discharge of any firearm;~~

~~(iii) must obtain written permission from the landowner for training on properly posted private property.~~

~~(2) The firearm restrictions set forth in this section 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 the concealed weapon to hunt or take wildlife.~~

**KEY: ~~wildlife, birds, dogs, training~~**

**Date of Last Change: ~~August 11, 2014~~**

**Notice of Continuation: ~~May 20, 2019~~**

**Authorizing, and Implemented or Interpreted Law: ~~23-14-18; 23-14-19~~**

### **NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R657-54</b>	<b>Filing ID:</b> <b>55480</b>
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### **Agency Information**

<b>1. Department:</b>	Natural Resources
<b>Agency:</b>	Wildlife Resources
<b>Room number:</b>	Suite 2110
<b>Building:</b>	Department of Natural Resources
<b>Street address:</b>	1594 W North Temple
<b>City, state and zip:</b>	Salt Lake City, UT 84116
<b>Mailing address:</b>	PO Box 146301
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6301
<b>Contact persons:</b>	
<b>Name:</b>	<b>Phone:</b> <b>Email:</b>
Staci Coons	801-450-3093 stacicoons@utah.gov

**Please address questions regarding information on this notice to the persons listed above.**

### **General Information**

#### **2. Rule or section catchline:**

R657-54. Taking Wild Turkey

#### **3. Purpose of the new 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' (DWR) rule pursuant to the taking of wild turkey.

#### **4. Summary of the new rule or change:**

The proposed amendments to this rule: 1) allows the use of airguns for the take of turkeys in the fall; 2) prohibits robotic decoys, night vision devices, and drones; 3) includes power poles and elevated structures as prohibited for the take of sitting or roosting turkeys; 4) clarifies language outlining the purchasing or selling of wild turkey parts; 5) sets a three permit limit for the fall turkey hunts; and 6) makes technical corrections.

**Fiscal Information****5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

The amendments to Rule R657-54 allow for additional types of legal weapons to be used for the taking of Wild Turkey and do not restrict currently allowed weapons or require the use of additional equipment the remaining amendments are administrative in nature, and as such, the DWR determines that these changes can be initiated within the current workload and resources of the DWR, therefore, the DWR does not believe that these amendments would create a cost or savings impact to the state budget or the DWR's budget since the changes will not increase workload and can be carried out with existing budget.

**B) Local governments:**

Since the proposed amendments allow for additional types of legal weapons to be used for the taking of Wild Turkey and do not restrict currently allowed weapons or require the use of additional equipment this filing does not create any direct cost or savings impact to local governments.

Nor are local governments indirectly impacted because this rule does not create a situation requiring services from local governments.

**C) Small businesses** ("small business" means a business employing 1-49 persons):

The proposed rule amendments will not directly impact small businesses because a service is not required of them.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

The proposed rule amendments will not directly impact non-small businesses because a service is not required of them.

**E) Persons other than small businesses, non-small businesses, state, 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**):

These amendments do not have the potential to create a cost impact to those individuals wishing to participate in the hunting of Wild Turkey in Utah.

These amendments allow for additional opportunity for those wishing to hunt with air rifles but do not limit that as the only weapon allowed.

The prohibition of night vision devices, drones, and robotic decoys place this rule in line with other species rules and creates consistency, this will not have a cost impact on those wishing to participate in hunting Wild Turkey.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

The DWR determines that this amendment will not create additional costs for those participating in the wild turkey hunts because there are no mandatory cost increases to participate.

The use of air rifles is an additional opportunity but not the only authorized weapon. The prohibition of night vision devices, drones, and robotic decoys place this rule in line with other species rules and creates consistency, it does not increase costs.

**G) Regulatory Impact Summary Table** (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 will be included in narratives above.)**Regulatory Impact Table**

<b>Fiscal Cost</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$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>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

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



## Citation Information

**6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 23-14-18	Section 23-14-19	
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## Public Notice Information

**8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	07/31/2023
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<b>9. This rule change MAY become effective on:</b>	08/07/2023
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

## Agency Authorization Information

<b>Agency head or designee and title:</b>	Justin Shirley, DWR Director	<b>Date:</b>	06/14/2023
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## R657. Natural Resources, Wildlife Resources.

## R657-54. Taking Wild Turkey.

## R657-54-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 and in accordance with 50 CFR 20, 2003 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking wild turkey.

(2) Specific season dates, bag and possession limits, areas open, number of permits and other administrative details that may change annually are published in the guidebook of the Wildlife Board for taking upland game and wild turkey.

## R657-54-2. Definitions.

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

(2) In addition:

(a) "Bait" means shelled, shucked or unshucked corn, wheat or other grain, salt or other feed that lures, attracts or entices wild turkey.

(b) "Baiting" means the direct or indirect placing, exposing, depositing, distributing, or scattering of salt, grain, or other feed that could serve as a lure or attraction for ~~[upland game]~~ wild turkey to, on, or over any areas where hunters are attempting to take them.

(c) "CFR" means the Code of Federal Regulations.

(d) "Falconry" means the sport of taking quarry by ~~[means of]~~ a trained raptor.

(e) "Fall season permit" means any wild turkey hunting permit having season dates on or between August 1 to March 14, excluding turkey permits issued pursuant to Rule R657-41 and turkey control permits issued pursuant to Section R657-69-6.

(f) "Night vision device" means any device that enhances visible or non-visible light, including: night vision, thermal imaging, infrared imaging, or electronics that enhance the visible or non-visible light spectrum.

(g) "Pre-charged pneumatic air rifle" means a rifle that fires a single projectile with compressed air released from a chamber:

(i) built into the rifle; and

(ii) pressurized at a minimum of 2,000 pounds per square inch from an external high compression device or source, such as a hand pump, compressor, or scuba tank firing a single:

(A) broadhead tipped bolt or arrow; or

(B) pellet or slug during fall turkey season that:

(I) is .25 caliber or larger;

(II) weighs 18 grains or more; and

(III) is fired at a velocity to produce at least 30 foot-pounds of energy at the muzzle.

(h) "Spring season permit" means any wild turkey hunting permit having season dates on or between March 15 to July 31, excluding turkey permits issued pursuant to Rule R657-41 and turkey control permits issued pursuant to Section R657-69-6.

(i) "Wild Turkey" as used in this rule means a wild, free-ranging turkey and does not include a privately-owned wild turkey, domestic turkey, or wild-domestic hybrids.

## R657-54-3. Obtaining Permits for Wild Turkey.

(1) A person must possess or obtain a valid hunting or combination license ~~[in order]~~ to apply for or obtain a wild turkey permit.

(2) General season wild turkey permits are issued over-the-counter consistent with this rule and the guidebook of the Wildlife Board for taking upland game and wild turkey.

(3) Limited entry permits for wild turkey are issued pursuant to Section R657-62-25.

(4) Wild turkey control permits and wild turkey control permit vouchers are issued pursuant to Rule R657-69.

(5) Wild turkey conservation and sportsman's permits are issued pursuant to Rule R657-41.

(6) Wild turkey permits available through the Expo are issued pursuant to Rule R657-55.

(7) Wild turkey poaching-reported reward permits are issued pursuant to Rule R657-51.

## R657-54-4. Authorized Weapons.

Wild turkey may be taken only with:

(~~[a]~~1) Archery equipment, including a draw-lock, or a crossbow using broadhead tipped arrows or bolts;

(~~[b]~~2) a shotgun, firing shot sizes BB and smaller diameter; ~~[or]~~

(~~[e]~~3) a rimfire firearm during any fall season permit; or

(4) a pre-charged pneumatic air rifle during any fall season permit.

## R657-54-5. Shooting Hours.

(1) Wild turkey may be taken only between one-half hour before official sunrise through one-half hour after official sunset.

(2) A person must add to or subtract from the official sunrise and sunset depending on the geographic location of the state.

(3) Specific ~~[times are]~~ shooting hours shall be provided in a time zone map in the guidebook of the Wildlife Board for taking upland game and wild turkey.

**R657-54-6. State Parks.**

(1) Hunting of any wildlife is prohibited within the boundaries of all state park areas, except those areas designated open to hunting by the Division of State Parks ~~[and Recreation]~~ in ~~[Rule]~~ Section R651-614-4.

(2) Hunting with rifles and handguns in state park areas designated open is prohibited within one mile of all park facilities including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.

(3) Hunting with shotguns, crossbows or archery tackle is prohibited within one-quarter mile of the ~~[above]~~ stated areas.

**R657-54-8. Live Decoys and Electronic Calls.**

A person may not take a wild turkey by the use or aid of live decoys, robotic decoys, night vision devices, drones, recorded turkey calls or sounds, or electronically amplified imitations of turkey calls.

**R657-54-10. Sitting or Roosting Turkeys.**

A person may not take or attempt to take ~~[any]~~ a wild turkey sitting or roosting in a tree, power pole, or other elevated structure.

**R657-54-11. Tagging Requirements.**

(1) A person that takes a wild turkey must tag the carcass, as provided in Section 23-20-3[-], immediately upon taking possession of the carcass.

(2) To tag a carcass, a person shall:

- (a) completely detach the tag from the license or permit;
- (b) completely remove the appropriate notches to

correspond with:

- (i) the date the ~~[animal]~~ wild turkey was taken;
- (ii) the sex of the ~~[animal]~~ wild turkey; and
- (c) attach the tag to the carcass so that the tag remains

securely fastened and visible.

(3) A person may not:

- (a) remove more than one notch indicating date or sex; or
- (b) tag more than one carcass using the same tag.

(4) A person may not hunt or pursue a wild turkey after:-

- (a) shooting and retrieving the bird;
- (b) the tag is detached from the permit;
- (c) any of the notches have been removed from the tag.

**R657-54-12. Identification of Species and Sex.**

~~[(1) During the spring seasons the]~~ The head and beard must remain attached to the carcass of a wild turkey while being transported.

~~[(2) During the fall season only the head must remain attached to the carcass of wild turkey while being transported.]~~

**R657-54-13. Use of Dogs.**

(1) An individual may not use or permit a dog to harass, pursue, or take ~~[protected wildlife]~~ wild turkey unless otherwise allowed for in Title 23, the Wildlife Resources Code ~~[of Utah, or the administrative rules issued under Wildlife Code, or a guidebook]~~ or guidebooks of the Wildlife Board.

(2) Dogs may be used to locate and retrieve wild turkey during open wild turkey hunting seasons.

(3) Dogs are generally allowed on state wildlife management and waterfowl management areas, subject to the following conditions[-]:

(a) dogs are not allowed on the following state wildlife management areas and waterfowl management areas between March 10 and August 31 annually or as posted by the ~~[Division]~~ division:

- (i) Annabella;
- (ii) Bear River Trenton Property Parcel;
- (iii) Bicknell Bottoms;
- (iv) Blue Lake;
- (v) Browns Park;
- (vi) Bud Phelps;
- (vii) Clear Lake;
- (viii) Desert Lake;
- (ix) Farmington Bay;
- (x) Harold S. Crane;
- (xi) Hatt's Ranch;
- (xii) Howard Slough;
- (xiii) Huntington;
- (xiv) James Walter Fitzgerald;
- (xv) Kevin Conway;
- (xvi) Locomotive Springs;
- (xvii) Manti Meadows;
- (xviii) Mills Meadows;
- (xix) Montes Creek;
- (xx) Nephi;
- (xxi) Ogden Bay;
- (xxii) Pahvant;
- (xxiv) Public Shooting Grounds;
- (xxv) Redmond Marsh;
- (xxvi) Richfield;
- (xxvii) Roosevelt;
- (xxviii) Salt Creek;
- (xxix) Scott M. Matheson Wetland Preserve;
- (xxx) Steward Lake;
- (xxxi) Timpie Springs;
- (xxxii) Topaz Slough;
- (xxxiii) Vernal; and
- (xxxiv) Willard Bay.

(b) ~~[The Division]~~ the division may establish special restrictions for Division-managed properties, such as on-leash requirements and temporary or locational closures for dogs, and post them at specific ~~[Division]~~ division properties and at Regional offices;

(c) ~~[Organized]~~ organized events or group gatherings of ~~[twenty-five (25)]~~ or more individuals that involve the use of dogs, such as dog training or trials, that occur on Division properties may require a special use permit as described in Rule R657-28; ~~[-and]~~

(d) ~~[Dog]~~ dog training may be allowed in designated areas on Lee Kay Center and Willard Bay WMA by the ~~[Division]~~ division without a special use permit[-]; and

(e) dogs are only allowed on the Nature Trail within the Hasenyager Nature preserve and must be on a leash.

(4) Wild turkeys may not be used for any dog training exercises.

(5) Dogs may be used to locate wild turkey as part of division sanctioned survey efforts.

**R657-54-14. Closed Areas.**

A person may not hunt wild turkey in any area posted closed by the ~~[Division]~~ division or any of the following areas:

- (1) Salt Lake Airport boundaries as posted[-];
- (2) ~~[I]~~ incorporated municipalities[-];



## NOTICES OF PROPOSED RULES

(a) ~~[M]any~~ incorporated municipalities prohibit the discharge of firearms and other weapons. Check with the respective city officials for specific boundaries and limitations[-];

(3) ~~[A]ll~~ State Waterfowl Management Areas except Browns Park and Stewart Lake;

(4) ~~[A]ll~~ National Wildlife Refuges unless declared open by the managing authority[-]; and

(5) ~~[M]ilitary~~ installations, ~~[including Camp Williams]~~ except as otherwise provided under Rule R657-66, are closed to hunting and trespassing.

### R657-54-15. Possession of Live Protected Wildlife.

It is unlawful for any person to hold in captivity at any time any protected wildlife, except as provided by Title 23, the Wildlife Resources Code of Utah, or any rules ~~[and regulations]~~ of the Wildlife Board. ~~[Protected wildlife that is wounded must]~~ Every wild turkey wounded by hunting and reduced to possession by the hunter shall be immediately killed and ~~[shall be included in the hunter's bag limit]~~ tagged pursuant to Section R657-54-11.

### R657-54-16. Spotlighting.

(1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight, or other artificial light to locate ~~[protected wildlife]~~ wild turkeys while having in their possession a firearm or other weapon or device that could be used to take or injure ~~[protected wildlife]~~ wild turkey; and

(b) the use of a spotlight or other artificial light in a field, woodland or forest ~~[where protected wildlife]~~ where wild turkey are generally found is probable cause of attempting to locate protected wildlife.

(2) ~~[The provisions of]~~ This section does not apply to:

(a) the use of the headlights of a motor vehicle or other artificial light in a usual manner where there is no attempt or intent to locate protected ~~[wildlife; or]~~

~~[(b) 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] wildlife.~~

### R657-54-17. Exporting Wild Turkey from Utah.

(1) A person may export wild turkey or their parts from Utah only if:

~~[(1)]~~ (a) ~~[the]~~ The person who harvested the wild turkey accompanies it and possess a valid permit corresponding to the tag; or

~~[(2)]~~ (b) ~~[the]~~ The person exporting the wild turkey or its parts, if it is not the person who harvested the wild turkey, has obtained a shipping permit from the ~~[Division]~~ division.

### R657-54-18. Waste of Game.

(1) A person may not waste or permit to be wasted or spoiled ~~[any protected wildlife]~~ a wild turkey or their parts.

(2) A person shall not kill or cripple ~~[any]~~ a wild turkey without making a reasonable effort to retrieve the wild turkey.

### R657-54-19. Purchasing or Selling Wild Turkey Parts.

(1) A person may only purchase, sell, offer or possess for sale, barter, exchange or trade any wild turkey or its parts as follows:

(a) Untanned or tanned hides, feather, bone, nail, or beak of legally taken wild turkey may only be sold by the hunter who harvested the wild turkey.

(b) An individual hunter may only sell one possession limit as defined by the Wildlife

Board and guidebook for upland game and turkey per year.

(c) Resale may only occur as derivative products such as artificial fishing flies.

(2) A person selling or purchasing untanned or tanned hides, feather, bone, nail, or beak of legally taken wild turkey shall keep transaction records stating:

(a) the name and address of the person who harvested the wild turkey;

(b) the transaction date; and

(c) the hunting license number of the person who harvested the wild turkey.

### R657-54-20. Wild Turkey Poaching—Reported Reward Permits.

Wild turkey poaching-reported reward permits are issued pursuant to Rule R657-51.

### R657-54-20|657-54-21. Season Dates, Bag and Possession Limits, and Areas Open.

(1) Season dates, bag and possession limits, areas open, and number of permits for taking wild turkey are provided in the guidebook of the Wildlife Board for taking upland game and wild turkey.

(2) A person may not obtain or possess more than:

(a) one wild turkey permit during the spring season annually; and

(b) ~~[one]~~ three wild turkey permit during the fall season annually.

KEY: wildlife, wild turkey, game laws

Date of Last Change: 2023|August 8, 2022|

Notice of Continuation: August 5, 2019

Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19

## NOTICE OF PROPOSED RULE

TYPE OF FILING: Amendment

Rule or Section Number:

R657-59

Filing ID: 55481

## Agency Information

1. Department:	Natural Resources
Agency:	Wildlife Resources
Room number:	Suite 2110
Building:	Department of Natural Resources
Street address:	1594 W North Temple
City, state and zip:	Salt Lake City, UT 84116
Mailing address:	PO Box 146301
City, state and zip:	Salt Lake City, UT 84114-6301

Contact persons:		
Name:	Phone:	Email:
Staci Coons	801-450-3093	stacicoons@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

### General Information

<b>2. Rule or section catchline:</b>
R657-59. Private Fish Ponds, Short Term Fishing Events, Private Fish Stocking, and Institutional Aquaculture
<b>3. Purpose of the new rule or reason for the change:</b>
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' (DWR) private pond program.
<b>4. Summary of the new rule or change:</b>
This rule is being amended to: 1) reference new Rules R657-3a and R657-3c; 2) adds exclusions to the definition of "ornamental aquatic animal species" for clarification; and 3) makes technical corrections.

### Fiscal Information

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This amendment adds clarification for those owning ornamental aquatic species and references new rules, therefore, the DWR determines that these amendments do not create a cost or savings impact to the state budget or the DWR's budget, since the changes will not increase workload and can be carried out with existing budget.
<b>B) Local governments:</b>
Since this amendment only adds clarification and technical corrections, this should have little to no effect on the local governments. 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.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
This rule does not impose any additional financial requirements on small businesses, nor generate a cost or saving impact to small businesses because this rule does not create a situation requiring services from them.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

This rule does not impose any additional financial requirements on non-small businesses, nor generate a cost or saving impact to non-small businesses because this rule does not create a situation requiring services from them.

**E) Persons other than small businesses, non-small businesses, state, 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**):

This rule does not impose any additional financial requirements on other persons, nor generate a cost or saving impact to other persons because this rule does not create a situation requiring services from them.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

The DWR determines that this amendment will not create additional costs for those individuals wishing to participate in the private pond program as it clarifies the exclusions from ornamental aquatic species and references newly established rules for consistency.

**G) Regulatory Impact Summary Table** (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 will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$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>
<b>H) Department head comments on fiscal impact and approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Natural Resources, Joel Ferry, has reviewed and approved this regulatory impact analysis.			

**Citation Information**

**6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 23-15-9	Section 23-15-10	
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**Public Notice Information**

**8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	07/31/2023
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**9. This rule change MAY become effective on:** 08/07/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Justin Shirley, Division Director	<b>Date:</b>	06/14/2023
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**R657. Natural Resources, Wildlife Resources.****R657-59. Private Fish Ponds, Short-Term Fishing Events, Private Fish Stocking, and Institutional Aquaculture.****R657-59-1. Purpose and Authority.**

(1) Under the authority of Sections 23-15-9 and 23-15-10[~~of the Utah Code~~], this rule provides the standards and procedures for:

- (a) private fish ponds;
- (b) short-term fishing events;
- (c) aquaponics facilities;
- (d) private fish stocking; and
- (e) institutional aquaculture.

(2)(a) This rule does not regulate fee fishing or private aquaculture as provided in Title 4, Chapter 37 Aquaculture Act[~~of the Utah Code~~], and Department of Agriculture Rule R58-17.

(b) The display of aquatic wildlife in aquaria for personal, commercial, or educational purposes is regulated by Rules R657-3a and R657-3c.

(3) A person engaging in any activity provided in Subsection (1) must also comply with all requirements established by Title 4 Utah Agricultural Code[~~of Utah Code~~] and all rules promulgated by the Utah Department of Agriculture, including[, ~~but not limited to~~]:

(a) requirements for the importation of aquaculture products into Utah; and

(b) requirements for fish health approval for aquaculture products.

(4) Any violation of, or failure to comply with, [~~any provision of~~] Title 23 Wildlife Resources Code of Utah[~~of the Utah Code~~], this rule, or any specific requirement contained in a certificate of registration issued pursuant to this rule may be grounds for suspension of the certificate or denial of future certificates, as determined by the division.

**R657-59-2. Definitions.**

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

(2) In addition:

(a) "Aquaculture" means the husbandry, production, harvest, and use of aquatic organisms under controlled, artificial conditions.

(b) "Aquaculture facility" means any facility used for the husbandry, production, harvest, and use of aquatic organisms under controlled, artificial conditions that holds a valid Certificate of Registration from the Utah Department of Agriculture.

(c)(i) "Aquaculture product" means privately purchased, domestically produced aquatic organisms, or their gametes.

(ii) "Aquaculture product" does not include aquatic wildlife obtained from the wild.

(d) "Aquaponics facility" means a facility that combines fish and plant culture for a non-commercial purpose where:

(i) all water flowing into or through the facility is completely isolated from any other water source via a self-contained water transport system;

(ii) all water flowing from the facility is discarded into a permitted sewer or septic system;

(iii) the aquatic animals held within the facility are used for hobby purposes only;

(iv) no aquatic animals are transported from the facility alive; and

(v) the primary use of the facility is for food production and not for the general display of fish in aquaria.

(e) "Aquatic wildlife" for the purposes of this chapter are aquatic organisms that are conceived and born in public waters.

(f) "Certified sterile salmonid" means any salmonid fish or gamete that originates from a health certified source and is incapable of reproduction due to triploidy or hybridization, and is confirmed as sterile using the protocol described in Section R657-59-13.

(g) "FEMA" means Federal Emergency Management Administration.

(h)(i) "HUC" or "Hydrologic Unit Code" means a cataloging system developed by the US Geological Survey and the Natural Resource Conservation Service to identify watersheds in the United States.

(ii) HUCs are typically reported at the large river basin (6-digit HUC) or smaller watershed (11-digit and 14-digit HUC)-scale.

(iii) HUC maps and other associated information are available at <http://water.usgs.gov/wsc/sub/1602.html>.

(i) "Institutional aquaculture" means aquaculture engaged in by any institution of higher learning, school, or other educational program, or public agency.

(j)(i) "Ornamental aquatic animal species" means any species of fish, mollusk, or crustacean that is ~~[commonly]~~ cultured for display and sold in the United States' aquarium industry for display ~~[as defined in R657-3-4]~~.

(ii) "Ornamental aquatic animal species" does not mean:

(A) Sport fish;

(B) Baitfish;

(C) Aquatic animal species that are native to Utah;

(D) Aquatic animals and marine aquatic animals prohibited for importation or possession under federal law; or

(E) Aquatic animals and marine aquatic animals listed as prohibited or controlled in Subsection R657-3c-5(1).

(k) "Private fish pond" means a body of water or any fish culture system ~~that~~ <sup>which</sup>:

(A) is not located on a natural lake, natural flowing stream, or reservoir constructed on a natural stream channel;

(B) is contained entirely on privately owned land; and

(C) is used for holding or rearing fish for a private, noncommercial purpose.

(l) "Purchase" means to buy, or otherwise acquire or obtain through barter, exchange, or trade for pecuniary consideration or advantage.

(m) "Salmonid" means any fish belonging to the trout/salmon family.

(n) "Short-term fishing event" means any event where:

(i) privately acquired fish are held or confined for a period not to exceed ten days in a temporary structure or container;

(ii) for the purposes of providing fishing ~~[ar]~~ <sup>for</sup> recreational opportunity; and

(iii) no fee is charged as a requirement to fish.

(o) "Sterile" means the inability to reproduce.

### **R657-59-3. Certificate of Registration Not Required -- Private Fish Ponds, Short-Term Fishing Events, and Aquaponics Facilities.**

(1) A certificate of registration is not required to stock an aquatic animal in an aquaponics facility, provided:

(a) the aquatic animals stocked are accompanied by a valid health approval number issued by the Utah Department of Agriculture and Food pursuant to Chapter 4 Title 37 Aquaculture Act ~~[of Utah Code]~~; and

(b) the aquatic animals to be stocked belong to one of the following species:

(i) bluegill;

(ii) hybrid bluegill (bluegill x green sunfish);

(iii) redear sunfish;

(iv) green sunfish;

(v) striped bass;

(vi) white bass;

(vii) hybrid striped bass or wiper (white bass x striped bass);

(viii) largemouth bass;

(ix) smallmouth bass;

(x) channel catfish;

(xi) yellow perch;

(xii) fathead minnow;

(xiii) black crappie;

(xiv) white crappie;

(xv) rainbow trout;

(xvi) cutthroat trout;

(xvii) brown trout;

(xviii) brook trout;

(xix) tiger trout;

(xx) walleye;

(xxi) golden shiner; and

(xxii) any aquatic animal species classified as non-controlled for possession and importation under ~~[R657-3-22 or 23]~~ Section R657-3c-5.

(2) A certificate of registration is not required to receive and stock an aquaculture product in a private fish pond, provided:

(a) the private fish pond satisfies the screening requirements established in Section R657-59-10;

(b) if a screen is required, the aquaculture product received must be of sufficient size to be incapable of escaping the pond through or around the screen;

(c) the species, sub-species, and sterility of the aquaculture product received is authorized for stocking in the area where the private fish pond is located consistent with the requirements in Section R657-59-11;

(d) the aquaculture product is:

(i) delivered to the pond by a licensed aquaculture facility as defined in Title 4 Chapter 37 Aquaculture Act ~~[of Utah Code]~~; or

(ii) the owner, lessee, or operator of the private pond:

(A) possesses documentation from the aquaculture facility verifying the information itemized in Sections R657-59-6 and R58-17-14 during transport; and

(B) assumes legal responsibility for directly transporting the fish from the aquaculture facility to the private fish pond;

(e) the owner, lessee, or operator of the pond obtains from the aquaculture facility providing the aquaculture product a valid health approval number issued by the Utah Department of Agriculture and Food pursuant to Chapter 4 Title 37 Aquaculture Act ~~[of Utah Code]~~; and

(f) the owner or operator of the private fish pond provides the aquaculture facility a signed written statement that the pond and aquaculture product received are in compliance with this section.

(3) A certificate of registration is not required to receive and stock an aquaculture product in a short-term fishing event, provided:

(a) the temporary container or structure to be stocked is entirely separated from any public waterway or waterbody;

(b) the species, sub-species, and sterility of the aquaculture product received is authorized for stocking in the area where the short-term fishing event is located consistent with the requirements in Section R657-59-11;

(c) the aquaculture product is:

(i) delivered to the pond by a licensed aquaculture facility as defined in Chapter 4 Title 37 Aquaculture Act ~~[of Utah Code]~~; or

(ii) the owner, lessee, or operator of the short-term fishing event:

(A) possesses documentation from the aquaculture facility verifying the information itemized in Sections R657-59-6 and R58-17-14 during transport; and

(B) assumes legal responsibility for directly transporting the fish from the aquaculture facility to the short-term fishing event;

(d) the owner, lessee, or operator of the pond obtains from the aquaculture facility providing the aquaculture product a valid health approval number issued by the Utah Department of Agriculture and Food pursuant to Chapter 4 Title 37 Aquaculture Act ~~[of Utah Code]~~; and

## NOTICES OF PROPOSED RULES

(e) the operator of the short-term fishing event provides the aquaculture facility a signed written statement that the short-term fishing event and aquaculture product received are in compliance with this section.

### **R657-59-6. Acquiring, Importing, and Transferring Aquaculture Products.**

(1)(a) Species of aquaculture products that may be imported into the state are provided ~~[in Rule R657-3-23]~~ in Section R657-3c-5.

(b) Applications to import aquaculture products are available from all division offices and must be submitted to the division's Wildlife Registration Office in Salt Lake City.

(c) Complete applications may require up to 30 days for processing.

(2) Live aquaculture products, other than ornamental fish, may only be:

(a) purchased or acquired from sources approved by the Utah Department of Agriculture and Food to sell such products; and

(b) acquired, purchased or transferred from sources which have been health approved by the Utah Department of Agriculture and Food and assigned a number as provided in Title 4 Chapter 37 Aquaculture Act ~~[of Utah Code]~~.

(3)(a) Any person who has been issued a valid aquaculture certificate of registration may transport live aquaculture products as specified on the certificate of registration to a stocking location.

(b) All transfers or shipments of live aquaculture products must be accompanied by documentation of the source and destination of the product, including:

(i) name, address, certificate of registration number, and fish health approval number of the source;

(ii) number and weight being shipped, by species;

(iii) name, address, and certificate of registration number, if applicable, of the destination; and

(iv) a copy of the importation permit provided by the Utah Department of Agriculture.

(c)(i) Once stocked in a water body, aquaculture products may not be transferred or relocated live.

(4)(a) To import, transport, or stock live grass carp (*Ctenopharyngodon idella*), each fish must be verified as being sterile triploid by the U.S. Fish and Wildlife Service.

(b) The form verifying triploidy must be obtained from the supplier and be on file with the Wildlife Registration Office of the division in Salt Lake City ~~[prior to]~~ before importation.

(c) A copy of the triploidy verification form must also accompany the fish during transport.

(5)(a) Live aquaculture products may be shipped through Utah without a certificate of registration provided that:

(i) the aquatic wildlife or aquaculture products are not sold or transferred;

(ii) the aquatic wildlife or aquaculture products remain in the original container;

(iii) the water is not exchanged or discharged; and

(iv) the shipment is in Utah no longer than 72 hours.

(b) Proof of legal ownership and destination must accompany the shipment.

### **R657-59-8. Prohibited Activities.**

(1) Live aquatic wildlife may not be collected from the wild and used in stocking activities unless authorized by the ~~[Wildlife Board]~~ division consistent with the requirements in Rules R657-3a and R657-3c.

(2) A person may not release or transport any live aquaculture product received or held under ~~[the provisions of]~~ this rule without prior written authorization of the division and the Fish Health Policy Board.

**KEY:** wildlife, aquaculture, fish

**Date of Last Change:** 2023 ~~December 23, 2019~~

**Notice of Continuation:** July 19, 2018

**Authorizing, and Implemented or Interpreted Law:** 23-15-9; 23-15-10

### **NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R657-62</b>	<b>Filing ID:</b> <b>55482</b>
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### **Agency Information**

<b>1. Department:</b>	Natural Resources
<b>Agency:</b>	Wildlife Resources
<b>Room number:</b>	Suite 2110
<b>Building:</b>	Department of Natural Resources
<b>Street address:</b>	1594 W North Temple
<b>City, state and zip:</b>	Salt Lake City, UT 84116
<b>Mailing address:</b>	PO Box 146301
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6301
<b>Contact persons:</b>	
<b>Name:</b>	<b>Phone:</b> <b>Email:</b>
Staci Coons	801-450-3093 stacicoons@utah.gov

**Please address questions regarding information on this notice to the persons listed above.**

### **General Information**

#### **2. Rule or section catchline:**

R657-62. Drawing Application Procedures

#### **3. Purpose of the new 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' (DWR) rule pursuant to application procedures.

#### **4. Summary of the new rule or change:**

The proposed amendments to this rule: 1) makes technical corrections to specie names; 2) clarifies swan species as tundra; and 3) removes cougar hunting requirements in order to comply with H.B. 469, Wildlife Amendments, 2023 General Session.



**Fiscal Information****5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

The amendments to Rule R657-62 are administrative in nature and any costs involved were offset in a fiscal note attached to the bill, the DWR determines that these changes can be initiated within the current workload and resources of the DWR, therefore, the DWR believes that these amendments can be enacted without a cost or savings impact to the state budget or the DWR's budget.

**B) Local governments:**

Since the proposed amendments do not require a service from local governments this filing does not create any direct or indirect cost or savings impact to local governments.

**C) Small businesses** ("small business" means a business employing 1-49 persons):

The proposed rule amendments will not directly impact small businesses because a service is not required of them.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

The proposed rule amendments will not directly impact non-small businesses because a service is not required of them.

**E) Persons other than small businesses, non-small businesses, state, 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**):

These amendments do not have the potential to create a cost impact to those individuals wishing to participate in hunting in Utah because the loss of revenue for cougar permits was incorporated into the fee of hunting and combination licenses.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

The DWR determines that this amendment will not create additional costs for those participating in hunting in Utah, the loss of revenue for cougar permits was incorporated into the fee of hunting and combination licenses.

**G) Regulatory Impact Summary Table** (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 will be included in narratives above.)**Regulatory Impact Table**

<b>Fiscal Cost</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$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>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

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

**Citation Information****6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 23-14-18	Section 23-14-19	
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**Public Notice Information****8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	07/31/2023
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<b>9. This rule change MAY become effective on:</b>	08/07/2023
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Justin Shirley, DWR Director	<b>Date:</b>	06/14/2023
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**R657. Natural Resources, Wildlife Resources.****R657-62. Drawing Application Procedures.****R657-62-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for drawing applications and procedures.

(2) Specific season dates, bag and possession limits, areas open, number of permits and other administrative details that may change annually are published in the respective guidebooks of the Wildlife Board.

**R657-62-2. Definitions.**

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

(2) In addition:

(a) "Application" means a form required by the Division which must be completed by a person and submitted to the Division to apply for a hunting permit.

(b) "Landowner" means any individual, family or corporation who owns property in Utah and whose name appears on the deed as the owner of eligible property or whose name appears as the purchaser on an executed contract for sale of eligible property.

(c) "Limited entry hunt" means any hunt listed in the hunt tables published by the Wildlife Board and is identified as a premium limited entry hunt or limited entry hunt. "Limited entry hunt" does not include ~~cougar pursuit or~~ bear pursuit.

(d) "Limited entry permit" means any permit obtained for a limited entry hunt, including conservation permits, expo permits, and sportsman permits.

(e)(i) "Valid application" means an application:

(A) for a permit to take a species for which the applicant is eligible to possess;

(B) for a permit to take a species regardless of estimated permit numbers;

(C) for a certificate of registration; and

(D) containing sufficient information, as determined by the division, to process the application, including personal information, hunt information, and sufficient payment.

(ii) Applications missing any of the items in Subsection (i) may be considered valid if the application is timely corrected through the application correction process.

(f) "Waiting period" means a specified period that a person who has obtained a permit must wait before applying for the same permit type.

(g) "Once-in-a-lifetime hunt" means any hunt listed in the hunt tables published by the Wildlife Board and is identified as once-in-a-lifetime, and does not include general or limited entry hunts.

(h) "Once-in-a-lifetime permit" means any permit obtained for a once-in-a-lifetime hunt by any means, including conservation permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

(i) Voucher" means an authorization issued by the division that entitles the designated holder to purchase the hunting permit specified in the authorization.

**R657-62-3. Scope of Rule.**

(1) This rule sets forth the procedures and requirements for completing and filing applications to receive the following hunting permits and certificates of registrations:

- (a) Dedicated Hunter certificate of registrations;
- (b) limited-entry deer;
- (c) limited-entry elk;
- (d) limited-entry pronghorn;
- (e) once-in-a-lifetime;
- (f) public cooperative wildlife management unit;
- (g) general season deer, and youth elk;
- (h) limited-entry bear;
- (i) bear pursuit;
- (j) antlerless big game;
- (k) ~~sandhill~~ Sandhill crane;
- (l) sharp-tail and greater sage-grouse;
- (m) tundra swan;
- (n) ~~cougar~~;
- ~~(o) sportsman;~~
- ~~(p) turkey; and~~
- ~~(q) landowner buck deer.~~

**R657-62-8. Bonus Points.**

(1) Bonus points are used to improve odds for drawing permits.

(2)(a) A bonus point is awarded for:

(i) each valid unsuccessful application when applying for limited-entry permits; or

(ii) each valid application when applying for bonus points.

(b) Bonus points are awarded by species for:

(i) limited-entry deer including cooperative wildlife management unit buck deer and management buck deer;

(ii) limited-entry elk including cooperative wildlife management unit bull elk and management bull elk;

(iii) limited-entry pronghorn including cooperative wildlife management unit buck pronghorn;

(iv) once-in-a-lifetime species including cooperative wildlife management units;

(v) limited-entry bear;

(vi) restricted bear pursuit;

(vii) antlerless moose;

(viii) ewe Rocky Mountain bighorn sheep;

(xi) ewe desert bighorn sheep; and

(x) ~~cougar; and~~

~~(xi) turkey.~~

(3)(a) A person may not apply in the drawing for both a permit and a bonus point for the same species.

(b) A person may not apply for a bonus point if that person is ineligible to apply for a permit for the respective species.

(c) Group applications may be accepted when applying for bonus points.

(d) A person may apply for bonus points only during the applicable drawing application for each species.

(4)(a) Fifty percent of the permits for each hunt unit will be reserved for applicants with the greatest number of bonus points.

(b) Based on the applicant's first choice, the reserved permits will be designated by a random drawing number to eligible applicants with the greatest number of bonus points for each species.



(c) If reserved permits remain, the reserved permits will be designated by a random number to eligible applicants with the next greatest number of bonus points for each species.

(d) The procedure in Subsection (c) will continue until reserved permits are issued or no applications for that species remain.

(e) Any reserved permits remaining and any applicants who are not selected for

reserved permits will be returned to the applicable drawing.

(5)(a) Each applicant receives a random drawing number for:

- (i) each species applied for; and
- (ii) each bonus point for that species.

(6) Bonus points are forfeited if:

(a) a person obtains a permit through the drawing for that bonus point species including any permit obtained after the drawing; or

(b) a provision in a rule issued by the Wildlife Board specifically forfeits bonus points.

(7) Bonus points are not forfeited if:

(a) a person is successful in obtaining a conservation permit, expo permit, sportsman permit, or harvest objective bear permit;

(b) a person obtains a landowner or a cooperative wildlife management unit permit from a landowner; or

(c) a person obtains a poaching-reported reward permit.

(8) Bonus points are not transferable.

(9) Bonus points are averaged and rounded down when two or more applicants apply together on a group application.

(10)(a) Bonus points are tracked using social security numbers or division-issued customer identification numbers.

(b) The division shall retain electronic copies of applications from 1996 to the current drawings for ~~the purpose of~~ researching bonus point records.

(c) Any requests for researching an applicant's bonus point records must be submitted within the time frames provided in Subsection (b).

(d) Any bonus points on the division's records shall not be researched beyond the time frames provided in Subsection (b).

(e) The division may void or otherwise eliminate any bonus point obtained by fraud, deceit, misrepresentation, or in violation of law.

#### **R657-62-9. Preference Points.**

(1) Preference points are used in the applicable drawings to ensure that applicants who are unsuccessful in the drawing will have first preference in the next year's drawing.

(2)(a) A preference point is awarded for:

(i) each valid, unsuccessful application applying for a general buck deer, antlerless deer, antlerless elk, doe pronghorn, Sandhill ~~[Crane, Sharp]~~crane, sharp-tailed grouse, ~~[Greater]~~greater sage-grouse or ~~[Swan]~~tundra swan permit; or

(ii) each valid application when applying only for a preference point in the applicable drawings.

(b) Preference points are awarded by species for:

- (i) general buck deer;
- (ii) antlerless deer;
- (iii) antlerless elk;
- (iv) doe pronghorn;
- (v) Sandhill ~~[Crane, Sharp]~~crane;
- (vi) Sharp-tailed ~~[Grouse]~~grouse;
- (vii) Greater sage-grouse; and
- (viii) ~~[Swan]~~Tundra swan.

(3)(a) A person may not apply in the drawing for both a preference point and a permit for the species listed in Subsection (2)(b).

(b) A person may not apply for a preference point if that person is ineligible to apply for a permit.

(4) Preference points for the applicable species are forfeited if a person obtains a general buck deer, antlerless deer, antlerless elk, doe pronghorn, Sandhill ~~[Crane, Sharp]~~crane, sharp-tailed grouse, ~~[Greater]~~greater sage-grouse or ~~[Swan]~~tundra swan permit, whether obtained through a division drawing or over the counter, except points are not forfeited if a person obtains one or more of the following:

(a) youth archery buck deer permit;

(b) mitigation permits issued to a landowner Rule R657-44, including mitigation permit vouchers;

(c) antlerless elk control permits;

(d) a general landowner buck deer permit or landowner appreciation permit issued pursuant to Rule R657-43; and

(e) private land only antlerless elk permits.

(5) Preference points are not transferable.

(6) Preference points are averaged and rounded down when two or more applicants apply together on a group application.

(7)(a) Preference points are tracked using social security numbers or division-issued customer identification numbers.

(b) The division shall retain copies of electronic applications from 2000 to the current applicable drawings for researching preference point records.

(c) Any requests for researching an applicant's preference point records must be submitted within the time frames provided in Subsection (b).

(d) Any preference points on the division's records shall not be researched beyond the time frames provided in Subsection (b).

(e) The division may eliminate any preference point obtained by fraud, deceit, misrepresentation, or in violation of law.

#### **R657-62-21. Sandhill Crane, Sharp-Tailed and Greater Sage-Grouse.**

(1) Permit applications.

(a) A person may obtain only one Sandhill ~~[Crane]~~crane permit each year.

(b) A person must possess or obtain a valid hunting or combination license ~~in order~~ to apply for or obtain Sandhill ~~[Crane, Sharp-Tailed and Greater Sage-Grouse]~~crane, sharp-tailed and greater sage-grouse permit.

(c) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in ~~[Utah Code]~~Sections 23-19-24, 23-19-11 and 23-20-20.

(d) Applicants may select up to four hunt choices. Hunt unit choices must be listed in order of preference.

(2) Youth applications.

(a) For purposes of this section, "youth" means any person 17 years of age or younger on July 31 for ~~the purpose of~~ obtaining Sandhill ~~[Crane, Sharp]~~crane, sharp-tailed grouse and ~~[Greater Sage]~~greater sage-grouse permits.

(b) Fifteen percent of the Sandhill ~~[Crane, Sharp]~~crane, sharp-tailed grouse and ~~[Greater]~~greater sage-grouse permits are reserved for youth hunters.

(c) Youth applicants who apply for a Sandhill ~~[Crane, Sharp]~~crane, sharp-tailed grouse or ~~[Greater]~~greater sage-grouse permit as provided in this ~~[S]~~subsection, will automatically be considered in the youth drawing based upon their birth date.

## NOTICES OF PROPOSED RULES

- (3) Group Applications
- (a) Up to four people may apply together.
- (b) Up to four youth may apply together in a Group Application.
- (4) Waiting Periods do not apply.

### **R657-62-22. Tundra Swan.**

- (1) Permit applications.
- (a)(i) A person may obtain only one tundra swan permit each year.
- (ii) A person may not apply more than once annually.
- (b) A person must possess or obtain a valid hunting or combination license to apply for or obtain a [~~Swan~~]tundra swan permit.
- (c) The division shall issue no more than the number of tundra swan permits authorized by the U.S. Fish and Wildlife Service each year.
- (d)(i) A person must complete a swan orientation course annually before applying for a tundra swan permit, except as provided under Subsection R657-9-6(3)(b).
- (ii) Remaining tundra swan permits available for sale shall be issued only to persons having previously completed the orientation course.
- (e) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Sections 23-19-24, 23-19-11 and 23-20-20.
- (2) Youth applications.
- (a) For purposes of this section, "youth" means any person 17 years of age or younger on July 31<sup>st</sup> of the year in which the youth hunting day is held, as provided in the guidebook of the Wildlife Board for taking waterfowl, Wilson's snipe and coot.
- (b) 15% of the [~~Swan~~]tundra swan permits are reserved for youth hunters.
- (c) Youth who apply for a tundra swan permit will automatically be considered in the youth permit drawing based on their birth date.
- (3) Group applications.
- (a) Up to four people may apply together in a Group Application.
- (b) Up to four youth may apply together in a Group Application.
- (4) Any person who [~~harvest~~]harvests a trumpeter swan may not apply for or receive a tundra swan permit for a period of[~~2~~];
- (a) five seasons for adults; or
- (b) three seasons for youth.

### **R657-62-23. Reserved. [~~Cougar.~~**

- (1) ~~Permit Applications~~
- (a) ~~A person must possess or obtain a valid hunting or combination license to apply for or obtain a cougar limited entry permit.~~
- (b) ~~A person may not apply for or obtain more than one cougar permit for the same year.~~
- (c) ~~Limited entry cougar permits are valid only for the limited entry management unit and for the specified season provided in the hunt tables of the guidebook of the Wildlife Board for taking cougar.~~
- (d) ~~Applicants may select up to three management unit choices when applying for limited entry cougar permits. Management unit choices must be listed in order of preference.~~

~~(e) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation shall be done allowing cross-over usage of remaining resident and nonresident permit quotas.~~

~~(f) Any limited entry cougar permit purchased after the season opens is not valid until seven days after the date of purchase.~~

~~(g) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Utah Code 23-19-22.5, 23-19-11 and 23-20-20.~~

~~(2) Group applications are not accepted.~~

~~(3) Waiting periods.~~

~~(a) Any person who draws or purchases a limited entry cougar permit valid for the current season may not apply for a permit thereafter for a period of three seasons.~~

~~(b) Waiting periods are not incurred as a result of:~~

~~(i) purchasing cougar harvest objective permits; or~~

~~(ii) obtaining a cougar wildlife expo permit, as provided in R657-55-6.]~~

### **R657-62-24. Sportsman.**

- (1) Permit applications.
- (a) One sportsman permit is offered to residents for each of the following species:
  - (i) desert bighorn (ram);
  - (ii) bison (hunter's choice);
  - (iii) buck deer;
  - (iv) bull elk;
  - (v) Rocky Mountain bighorn (ram);
  - (vi) mountain goat (hunter's choice);
  - (vii) bull moose;
  - (viii) buck pronghorn;
  - (ix) black bear; and
  - (x) [~~cougar; and~~
  - ~~(xi) ]wild turkey.~~
- (b) Bonus points shall not be awarded or utilized when applying for or obtaining sportsman permits.
- (2) Group applications are not accepted.
- (3) Waiting Periods
- (a) Any person who applies for or obtains a Sportsman Permit is subject to all waiting periods and exceptions as applicable to the species pursuant to [~~rule~~]Rule R657-41.
- (b) Once-in-lifetime waiting periods
- (i) If [~~you~~]a person has[~~ve~~] obtained a once-in-a-lifetime permit through the sportsman drawing [~~you~~]they are ineligible to apply for that once-in-a-lifetime species through the big game drawing.
- (ii) If [~~you~~]a person has[~~ve~~] obtained a once-in-a-lifetime permit through the big game drawing [~~you~~]they are ineligible to apply for that once-in-a-lifetime species through the sportsman drawing.
- (c) Limited Entry waiting periods
- (i) Waiting periods do not apply to Sportsman deer, elk, pronghorn, or bear[~~or cougar~~].
- (ii) Waiting period will not be incurred for receipt of a Sportsman deer, elk, pronghorn, or bear[~~or cougar~~].

**KEY: wildlife, permits**

**Date of Last Change: 2023[February 14, 2023]**

**Notice of Continuation: April 9, 2019**

**Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19**

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Rule or Section Number:	R657-67	Filing ID: 55483

**Agency Information**

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Wildlife Resources	
<b>Room number:</b>	Suite 2110	
<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 146301	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6301	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Staci Coons	801-450-3093	stacicoons@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

2. Rule or section catchline:
R657-67. Utah Hunter Mentoring Program
3. Purpose of the new 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' (DWR) rule regulating the Hunter Mentoring Program.
4. Summary of the new rule or change:
The proposed amendments to this rule 1) place this rule in line with H.B. 237 Hunting Mentor Program, 2023 General Session, which allows nonresidents qualifying minors to participate in the Mentoring Program, as well as allowing the qualifying minor to use the permit if the Mentor passes away before the hunt.

**Fiscal Information**

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
The amendments to Rule R657-67 are administrative in nature, the DWR determines that these changes can be initiated within the current workload and resources of the DWR, therefore, the DWR does not believe that these amendments would create a cost or savings impact to the

state budget or the DWR's budget since the changes will not increase workload and can be carried out with existing budget.

**B) Local governments:**

Since the proposed amendments clarify requirements and restrictions this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

**C) Small businesses** ("small business" means a business employing 1-49 persons):

The proposed rule amendments will not directly impact small businesses because a service is not required of them.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

The proposed rule amendments will not directly impact non-small businesses because a service is not required of them.

**E) Persons other than small businesses, non-small businesses, state, 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**):

These amendments do not have the potential to create a cost impact to those individuals wishing to participate in the hunting of hunter mentoring program in Utah because it does not alter the price of the permit.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

The DWR determines that this amendment will not create additional costs for those participating in the hunter mentoring program because it does not alter the price of the permit.

**G) Regulatory Impact Summary Table** (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 will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

## NOTICES OF PROPOSED RULES

Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$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>
<b>H) Department head comments on fiscal impact and approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Natural Resources, Joel Ferry, has reviewed and approved this fiscal analysis.			

## Citation Information

<b>6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</b>		
Section 23-14-1	Section 23-14-3	Section 23-14-18
Section 23-14-19	Section 23-19-1	Section 23-19-50

## Public Notice Information

<b>8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)</b>	
<b>A) Comments will be accepted until:</b>	07/31/2023
<b>9. This rule change MAY become effective on:</b>	08/07/2023
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

## Agency Authorization Information

<b>Agency head or designee and title:</b>	Justin Shirley, DWR Director	<b>Date:</b>	06/14/2023
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## R657. Natural Resources, Wildlife Resources.

## R657-67. Utah Hunter Mentoring Program.

## R657-67-1. Purpose and Authority.

Under the authority of ~~[Utah Code Annotated]~~ Sections 23-14-1, 23-14-3, 23-14-18, 23-14-19, ~~and 23-19-1, and 23-19-50~~, this rule creates a ~~[h] Hunting~~ ~~[m] Mentor~~ program that will increase hunting opportunities for Utah families and provides the procedures under which a minor child may share the permit of another to take protected wildlife.

## R657-67-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and this ~~[S]~~ subsection.

(2) "Hunting Mentor" means a Resident or Nonresident individual possessing a valid permit issued by the Division to take protected wildlife in Utah and who is 21 years of age or older at the time of application for the Mentor Program.

(3) "Qualifying Minor" means a Utah Resident or Nonresident who is under 18 at the time of application for the Mentor Program and who is otherwise eligible to lawfully hunt.

(4) "Wildlife document" means a permit to hunt protected wildlife or Division-issued authorization to share such a permit.

## R657-67-4. Administrative Process for Sharing Permits.

(1) The Hunting Mentor shall submit a complete application for participation in the Mentor Program and receive the Division's written authorization ~~[prior to]~~ before sharing a permit.

(2) A complete application for the ~~[m] Mentor~~ ~~[p] Program~~ includes the following:

- (a) A handling fee as established by the Utah Legislature;
- (b) The Permit Number that is to be shared;
- (c) A physically identifying description of the Qualifying

Minors;

- (d) Each Qualifying Minor's hunter education number;
- (e) Written authorization from the Qualifying Minor's parent or legal guardian approving their participation in the hunting activity; and

(f) any wildlife document~~[f(s)]~~ that must be surrendered ~~[in order]~~ to qualify for the Hunter Mentoring Program.

(3) If a Qualifying Minor must surrender a wildlife document ~~[in order]~~ to qualify for the Mentor Program, that surrender must be done ~~[prior to]~~ before or at the time of their application to the Utah Hunter Mentoring Program as described in Section R657-67-6.

(4) If a Hunting Mentor wishes to change the Qualifying Minor with whom they share their permit, they must:

- (a) Surrender the authorization issued to the Qualifying Minor by the Division;
- (b) Reapply with the Division to have a new Qualifying Minor participate in the ~~[m] Mentor~~ ~~[p] Program~~ in the same manner as described in this ~~[S]~~ section.

(5) If the Hunting Mentor dies before the hunt authorized under this section, the Qualified Minor may use the permit pursuant to Section 23-19-50.

**KEY:** wildlife, game laws, hunter education  
**Date of Last Change:** 2023 February 7, 2018  
**Notice of Continuation:** February 4, 2019  
**Authorizing, and Implemented or Interpreted Law:** 23-14-1; 23-14-3; 23-14-18; 23-14-19; 23-19-1

NOTICE OF PROPOSED RULE		
<b>TYPE OF FILING:</b> Amendment		
<b>Rule or Section Number:</b>	<b>R657-69</b>	<b>Filing ID:</b> <b>55484</b>

#### Agency Information

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Wildlife Resources	
<b>Room number:</b>	Suite 2110	
<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 146301	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6301	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Staci Coons	801-450-3093	stacicoons@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

#### General Information

<b>2. Rule or section catchline:</b>
R657-69. Turkey Depredation
<b>3. Purpose of the new rule or reason for the change:</b>
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' (DWR) rule pursuant to the turkey depredation program.
<b>4. Summary of the new rule or change:</b>
The proposed amendments to this rule: 1) allow for three turkey vouchers per individual; 2) allow owners and operators of commercial facilities to apply for a Certificate of Registration to remove wild turkeys; 3) place the rule in line with H.B. 447, Transplant of Wildlife Amendments, 2023 General Session, which clarifies the mitigation plan process for reintroducing Wild Turkey into a new area; and 4) makes technical corrections.

#### Fiscal Information

##### 5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

###### A) State budget:

The amendments to Rule R657-69 are administrative in nature, the additional allowance of a turkey voucher per individual is a programming change, as well as the allowance of Commercial Facilities to apply for a COR.

The amendment outlining the process for specie mitigation plans can be handled internally and does not require outside support, therefore, the DWR determines that these changes can be initiated within the current workload and resources of the DWR. The DWR does not believe that these amendments would create a cost or savings impact to the state budget or the DWR's budget since the changes will not increase workload and can be carried out with existing budget.

###### B) Local governments:

Since the proposed amendments do not require a service or action from local governments this filing does not create any direct or indirect cost or savings impact to them.

###### C) Small businesses ("small business" means a business employing 1-49 persons):

The proposed rule amendments will not directly impact small businesses because a service is not required of them.

###### D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

The proposed rule amendments will not directly impact non-small businesses because a service is not required of them.

###### E) Persons other than small businesses, non-small businesses, state, 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**):

The DWR determines that this amendment will not create additional costs for those other persons participating in the removal of depredating turkeys.

These amendments outline mitigation plan processes, as well as add methods for the removal of depredating turkeys from commercial facilities making the process more concise and straightforward.

There is not a fiscal impact directly or indirectly on those wishing to participate.

###### F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

The DWR determines that this amendment will not create additional costs for those participating in the removal of depredating turkeys.

These amendments outline mitigation plan processes, as well as add methods for the removal of depredating turkeys from commercial facilities making the process more concise and straightforward.

There is not a fiscal impact directly or indirectly on those wishing to participate.

**G) Regulatory Impact Summary Table** (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 will be included in narratives above.)

**Regulatory Impact Table**

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$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>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

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

**Citation Information**

**6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 23-14-18	Section 23-14-19	Section 23-17-9
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**Public Notice Information**

**8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	07/31/2023
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<b>9. This rule change MAY become effective on:</b>	08/07/2023
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Justin Shirley, DWR Director	<b>Date:</b>	06/14/2023
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**R657. Natural Resources, Wildlife Resources.**

**R657-69. Turkey Depredation.**

**R657-69-1. Purpose and Authority.**

(1) Under authority of ~~Section~~ Sections 23-17-5.1, and 23-17-5.2, this rule provides:

(a) the procedures for responding to and verifying reports of material damage caused by turkey;

(b) the procedures, standards, requirements, and limits for addressing instances of material damage caused by turkeys; and

(c) a description of the various hunts that may be held to minimize future instances of material damage caused by turkeys.

**R657-69-2. Definitions.**

(1) As used in this rule, "turkey" means a wild, free-ranging turkey and does not include a privately-owned wild turkey, domestic turkey, or wild-domestic hybrids.

(2) "Alternate limited entry drawing list" means a chronological list, based upon the permit drawing procedures described in the Upland Game and Turkey Guidebook, of those persons who were unsuccessful in drawing a limited entry turkey hunting permit and would have been successful were additional permits available.

(3) "Commercial poultry or gamebird facility" means the building licensed by the Department of Agriculture (UDAF) facility licensed by the Department of Agriculture that raises more than 1,000 poultry or gamebirds per year.

(4) "Control permit" means a nontransferable turkey hunting permit issued by the division under Section R657-69-6 or R657-69-7 that authorizes the holder to take a turkey for personal use within the described permit boundaries and described dates.



([4]5) "Control permit voucher" means a document issued to a landowner or lessee that may be retained for personal use or transferred to a third party, and which allows the holder to purchase a turkey control permit from the division.

([5]6) "Depredation Hunt" means a turkey hunt organized pursuant to Section R657-69-5, the Wildlife Code, and proclamations of the Wildlife Board.

([6]7) "Director" means the director of the division.

(8) "Division" means the Utah Division of Wildlife Resources.

(9) "Employee" means an individual regularly employed by the landowner or lessee for purposes unassociated with hunting on the private property owned or managed by the landowner or lessee.

([7]10) "Gamebird" means any captive-raised animal identified as a "Pen-reared Gamebird" in Section R657-4-2.

(11) "Hatchery" means hatchery equipment on one premises operated or controlled by any person for the production of baby poultry, as defined in Rule R58-6.

(12) "Immediate family member" means the landowner's or lessee's spouse, child, son-in-law, daughter-in-law, father, mother, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, stepchild, and grandchild.

(8) "Infection zone" means any area within .25 mile of a commercial poultry or gamebird facility that poses a disease risk.

(14) "Landowner" means any person, partnership, or corporation who owns private property in Utah and whose name appears on a deed as the owner or whose name appears as the purchaser on a contract for sale of private property.

([9]15) "Lessee" means any person, partnership, or corporation whose name appears as the lessee on a written lease, for at least a one-year period, of private property, and who is in [actual] physical control of the private property.

([10]16) "Material damage" means physical impacts to private property caused by turkeys that are visible, persistent, and detrimental to the landowner or lessee's use of the private property.

([11]17) "Personal property" means any movable and tangible thing owned by the landowner or lessee.

([12]18) "Poultry" means domestic fowl including chickens, turkeys, guinea fowl, pea fowl, pigeons, and ratites or other captive-bred birds not listed in Subsection R657-4-2(2)(c) which are bred for the primary purposes of producing eggs or meat whether kept for production or exhibition.

(19) "Private property" means land in private fee ownership, structures located thereon, and personal property of the landowner or lessee on or adjacent to the land of the landowner or lessee, but not including tribal trust lands.

### **R657-69-3. Responding to Reports of Material Damage by Turkeys.**

(1) Upon discovering material damage to private property attributable to turkeys, a landowner or lessee may request that the division take action to mitigate that damage.

(2) A request for [action] response shall be delivered to a division representative in the appropriate regional office.

(3) A request for action may be made:

- (a) orally to expedite a field investigation; or
- (b) in writing.

(4)(a) The division will investigate a request for action within 72 hours after receiving the request.

(b) If after completing its investigation the division confirms that material damage did occur and it appears that material damage may continue, the division shall:

(i) remove or drive off turkeys causing material damage; or

(ii) with the written approval of the landowner or lessee, implement a damage mitigation and prevention plan in accordance with Section R657-69-4.

(5) A landowner or lessee may not harass, hunt, or otherwise take a turkey on private property unless:

(a)(i) they possess a valid turkey hunting permit authorizing them to hunt turkeys; or

(ii) a damage mitigation and prevention plan authorizes them to undertake such actions; and

(b) the landowner or lessee's actions are otherwise consistent with Title 23, the Wildlife Resources Code, [its implementing regulations,] of Utah, and the rules and proclamations of the Wildlife Board.

### **R657-69-4. Turkey Damage Mitigation and Prevention Plans.**

(1) A damage mitigation and prevention plan may authorize the division to undertake any [or all] of the following actions:

(a) provide educational materials regarding turkeys and turkey damage to the landowner or lessee, including strategies on how to alleviate damage;

(b) use, or allow the landowner or lessee to use, nonlethal methods to haze turkeys on private property experiencing material damage and, if necessary, provide the landowner or lessee equipment and supplies necessary to carry out hazing;

(c) exclude turkeys from areas in which material damage has occurred and is expected to continue to occur, using fencing, tarpaulins, or other similar materials;

(d) capture and relocate any turkeys causing, or reasonably likely to cause, material damage to the property to a location on the Wildlife Board approved turkey transplant list and according to the Wildlife Board approved mitigation plan;

(e) allow expanded harvest of turkeys by:

(i) increasing permit numbers during limited entry or general season hunts;

(ii) expanding or increasing the areas for turkey hunts;

(iii) enrolling the property in the division's Walk-In Access Program in accordance with Rule R657-56;

(iv) enrolling the property in the division's Cooperative Wildlife Management Unit Program in accordance with Rule R657-37;

(v) schedule and hold a depredation hunt[~~pursuant to R657-69-5~~];

[~~—~~ (vi) issue control permits] pursuant to [R657-69-6] Section R657-69-5; [or]

([~~vi~~]vi) issue control permits pursuant to Section R657-69-6; or

(vii) issue control permit vouchers[~~pursuant to~~] pursuant to Section R657-69-7;

(f) allow landowners or lessees to capture and relocate turkeys causing, or reasonably likely to cause, material damage to the property to a location on the Wildlife Board approved turkey transplant list;

(g) allow landowners or lessees to use weapons or methods otherwise prohibited to take a turkey if traditional weapons are unsuitable for the location of the property; and



## NOTICES OF PROPOSED RULES

(h) other reasonable measures aimed at reducing instances of material damage to the private property in question.

(2) Damage mitigation and prevention plans shall have:

(a) a description of the private property covered by the plan;

(b) a specific effective date and effective term for the plan;

(c) a description of the verified instances of material damage and the dates of occurrence; and

(d) an assurance by the landowner or lessee that members of the public holding a control permit or a turkey depredation permit may access the private property at no charge during the hunts for which they hold a permit.

(3) Damage mitigation and prevention plans may be amended or renewed with written consent of the division and the landowner or lessee during their effective term.

(4)(a) The landowner or lessee may unilaterally revoke and withdraw from a damage mitigation and prevention plan by providing the division 30 days prior written notice.

(b) A landowner or lessee's revocation of approval of a damage mitigation and prevention plan eliminates the division's obligations described in the plan.

(c) A landowner or lessee may not revoke approval of a damage mitigation and prevention plan after a depredation hunt has been scheduled on their private property until after the depredation hunt has taken place.

(~~[4]~~5) The division may unilaterally revoke and withdraw from a damage mitigation and prevention plan if:

(a) the landowner or lessee fails to exercise reasonable care and diligence to avoid loss or minimize the damage caused by turkeys;

(b) the landowner or lessee fails to comply with the terms of the damage mitigation and prevention plan; or

(c) in the division's discretion, the damage mitigation and prevention plan is not necessary.

(~~[5]~~6) The expiration or revocation of a damage mitigation and prevention plan does not preclude the landowner or lessee from making future requests for action.

(~~[6]~~7) The division shall not be financially liable for damage to private property caused by:

(a) turkeys;

(b) its efforts to remove or drive off turkeys in response to a request for action; or

(c) actions taken or authorized by a damage mitigation and prevention plan.

(~~[7]~~8) A landowner or lessee shall have a copy of the damage prevention and mitigation plan in their possession while undertaking any action authorized in the plan that otherwise violates Title 23, the Wildlife Resources Code of Utah, including, ~~[but not limited to,]~~ the hazing, capturing, and transplanting of turkeys.

### **R657-69-5. Depredation Hunts for Turkey.**

(1) Turkey depredation hunts are intended to:

(a) mitigate verified reports of material damage by turkeys and prevent future instances of material damage in the vicinity of the hunt area;

(b) be a focused response to verified reports of material damage;

(c) be a rapid response mechanism to verified reports of material damage; and

(d) have limited permit numbers.

(2) Turkey depredation hunts shall operate consistent with the following guidelines:

(a) turkey depredation hunts may be held August 1 through March 14;

(b) parameters for a turkey depredation hunt must comply with the provisions established in the current Wild Turkey Management Plan approved by the Wildlife Board; and

(c) the boundaries of the hunts, specific season dates, bag limits, sex of birds that may be taken, and allowable weapon types will be further defined in a depredation hunt plan by the division Regional Supervisor.

(3) Hunters will be selected to receive a depredation permit in the following order, based on permit availability:

(a) randomly selected individuals in the depredation hunter pool; and

(b) individuals on the alternate limited entry drawing list, in chronological order.

(4)(a) The turkey hunter depredation pool provides hunters an opportunity to be placed on a wait-list and become eligible to receive a depredation permit as the availability for depredation permits allows.

(b) Applications for the turkey hunter depredation pool must be submitted pursuant to instructions in the current year's Upland Game and Turkey Guidebook of the Wildlife Board for wild turkey.

(c) Applications must be received by the date published in the Upland Game and Turkey Guidebook of the Wildlife Board for wild turkey.

(d) Applications received after the date published in the proclamation Upland Game and Turkey Guidebook of the Wildlife Board for wild turkey may be used after the list of individuals within the depredation hunter pool and the alternate limited entry drawing list has been exhausted.

(5) If a hunter is successful in the depredation permit drawing and possesses a valid unfilled turkey permit for a hunt in the same calendar year as the depredation hunt, that hunter may receive a depredation permit at no cost.

(6) Hunters selected to receive a depredation permit who do not possess a valid unfilled turkey permit must purchase the appropriate permit ~~[prior to]~~before participating in the depredation hunt.

(7) Hunters selected to receive a depredation permit will not lose bonus points associated with the limited entry application process.

(8) Wild turkey depredation permits qualify toward[s] permit possession limits identified in Rule R657-54.

(9) Depredation permits may be withheld from persons who have violated ~~[this rule, any other wildlife rule]~~Title 23, the Wildlife Resources Code of Utah, this rule, any other rule, or proclamation of the Wildlife Board, or who are otherwise ineligible to receive a permit.

### **R657-69-6. Control Permits for Turkey.**

(1)(a) As part of a damage mitigation and prevention plan, the division may issue a turkey control permit at no cost directly to the affected landowner or lessee, or to their immediate family member or employee.

(b) No more than two control permits may collectively be issued per calendar year under each damage prevention and mitigation plan.

(2) A control permit allows the permit holder to take a single turkey of either sex within the boundaries designated in the damage mitigation and prevention plan.

(3) Control permit turkey hunts may be held August 1 through March 14.

(4)(a) ~~[In the event that]~~ If the landowner or lessee, or the landowner or lessee's immediate family member or employee, who receives the control permit does not possess a valid hunting or combination license, the division may issue a special turkey control license at no cost to the designated permit holder for the purposes of obtaining a control permit.

(b) A special turkey control license does not authorize the license holder to take any other protected wildlife or to obtain any other permit other than a turkey control permit.

(5) Hunters who receive a control permit will not lose any bonus points accrued as part of the limited entry turkey application process.

(6) Control permits may be withheld from persons who have violated ~~[this rule, any other wildlife rule]~~ Title 23, the Wildlife Resources Code of Utah, ~~this rule, any other rule or proclamation of the Wildlife Board,~~ or who are otherwise ineligible to receive a permit.

(7) Control permits issued under this section do not count toward[s] permit possession limits identified in Rule R657-54.

(8) Rimfire firearms may be used as a legal weapon for wild turkey permits issued pursuant to this section.

#### **R657-69-7. Control Permit Vouchers for Turkey.**

(1)(a) As part of the damage mitigation and prevention plan, the division may issue turkey control permit vouchers to the landowner or lessee.

(b) The number of control permit vouchers shall not exceed 10% of the documented turkeys on the private property or ~~[fifteen]~~ 15 vouchers per calendar year, whichever is less.

(2)(a) Control permit vouchers do not allow turkey hunting and must be redeemed for a control permit ~~[prior to]~~ before going afield.

(b) Control permit vouchers may be redeemed for a turkey control permit at a division office ~~[prior to]~~ before the closing date of the control permit turkey hunt for which the voucher was issued.

(c) Individuals shall pay the required fee ~~[in order]~~ to redeem a control permit voucher for a turkey control permit.

(3)(a) A landowner or lessee transferring control permit vouchers to another individual may not receive any form of compensation or remuneration for the transfer or for allowing access to the private land for turkey hunting under a control permit on the landowner or lessee's private property.

(b) Turkey control permit vouchers are only transferable between the landowner or lessee and an individual redeeming that voucher for a turkey control permit.

(c) Redeemed turkey control permit vouchers do not qualify toward[s] permit possession limits identified in Rule R657-54.

~~[(4)]~~ (4) An individual may redeem up to three control permit vouchers per fall season.

(5) Individuals redeeming a control permit voucher for a control permit will not lose accrued bonus points for limited entry turkey hunting as a result of redeeming the voucher.

#### **R657-69-8. Hunt Areas for Depredation and Control Permit Hunts.**

(1) The hunt area for depredation hunts and control permit hunts may include a buffer zone of up to 2 miles around the parcels of private property experiencing material damage.

(2) Buffer zones, if any, will be defined in the damage mitigation and prevention plan.

(3) Buffer zones may partially encompass or be adjacent to lands experiencing material damage.

(4) If a buffer zone includes the private land of multiple landowners, each affected landowner must be a signatory to the damage mitigation and prevention plan.

#### **R657-69-9. Removal of Turkeys from Commercial Poultry or Gamebird Facilities and Infection Zones.**

(1) An owner or operator of a lawfully permitted commercial poultry or gamebird facility that locates wild turkeys within the infection zone of their facility must immediately notify the division.

(2) Upon division confirmation that there are wild turkeys within the infection zone of a commercial poultry or gamebird facility, the owner or operator may apply for a certificate of registration under Section R657-3-11 authorizing lethal removal of the wild turkeys.

(3) As a condition of receiving a certificate of registration, the division may, in cooperation with the Utah Department of Agriculture, identify modifications or improvements to the commercial poultry or gamebird facility, or infection zone.

(4) Only the owner or operator, their employees, their immediate family members, may be authorized to lethally remove turkeys from a commercial poultry or gamebird facility, or infection zone.

(5) Wild turkey may only be taken with:

(a) archery equipment, including a draw-lock, or a crossbow using broadhead tipped arrows or bolts;

(b) a shotgun, firing shot sizes BB and smaller diameter; or

(c) a rimfire or centerfire firearm.

(6) Any individual authorized to act under a certificate of registration must:

(a) have passed a division authorized hunter education course;

(b) be eligible to legally possess and handle a firearm; and

(c) not be under an active suspension or revocation of any hunting privileges.

(7) The certificate of registration for removal of wild turkeys from a commercial poultry or gamebird facility or infection zone shall identify:

(a) the name of the contact information for the commercial poultry or gamebird facility;

(b) the number of wild turkeys to be lethally removed;

(c) the names of the individuals authorized to act under the certificate of registration;

(d) the dates authorized for lethal removal;

(e) the specified infection zones where wild turkeys may be removed;

(f) the reporting date for which the division must receive confirmation that all wild turkeys have been removed from the commercial poultry or gamebird facility or infection zone; and

(g) directions to the certificate of registration holder regarding carcass delivery to the division for disease sampling and any other provisions outlined in the certificate of registration.

(8) Neither the certificate of registration holder nor any individual acting under its authority may commercialize any wildlife or their parts removed from a commercial poultry or gamebird facility or infection zones.

**R657-69-10. Reporting Requirements and Disease Testing.**

(1) Every wild turkey lethally removed from a commercial poultry or gamebird facility or infection zones must be collected and provided to division promptly following removal.

(2) The certificate of registration holder must deliver each carcass to the division as directed in the certificate of registration.

**R657-69-11. Reservation of Division Authority.**

(1) Nothing in this rule shall preclude the division from unilaterally removing wild turkeys from commercial poultry or gamebird facilities or infection zones, consistent with statutory notification provisions.

(2) If the division determines that issuance of a certificate of registration for lethal removal is appropriate, the division may determine the number of turkeys that may be removed under a certificate of registration based upon the individual circumstances of each request, including:

- (a) the age and sex of the animals confined;
- (b) threats to wildlife resources; and
- (c) potential impacts to the owner or operator.

**R657-69-12. Appeal Procedures.**

~~[(1)]~~ Upon the petition of an aggrieved party to a final division action relative to material damage caused by turkeys and this rule, ~~a qualified hearing examiner shall take evidence and make recommendations to the Wildlife Board, who shall resolve the grievance in accordance with Rule R657-2]~~ the landowner or lessee may petition the mitigation review panel for relief as provided in Section R657-44-4.

**R~~657-69-10~~657-69-13. Hunting or Combination License Required.**

(1)(a) A person must possess or obtain a valid Utah hunting or combination license, or a special turkey control license, to receive a turkey control permit pursuant to Section R657-69-6.

(b) A person must possess or obtain a valid Utah hunting or combination license to:

- (i) receive a turkey depredation permit; or
- (ii) or redeem a control permit voucher for the corresponding permit.

(2)(a) Special turkey control licenses are only issued to landowners or lessees, immediate family members, and employees that are designated to receive a turkey control permit under Section R657-69-6 and do not possess a valid Utah hunting or combination license.

(b) Special turkey control licenses may not be used in lieu of a hunting or combination license to obtain a depredation permit or a control permit under a control permit voucher.

**KEY:** wildlife, turkey, depredation

**Date of Last Change:** 2023[August 9, 2018]

**Notice of Continuation:** October 22, 2019

**Authorizing, and Implemented or Interpreted Law:** 23-17-5.1; 23-17-5.2

**NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R990-300</b>	<b>Filing ID:</b> <b>55499</b>
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**Agency Information**

<b>1. Department:</b>	Workforce Services	
<b>Agency:</b>	Housing and Community Development	
<b>Building:</b>	Olene Walker Building	
<b>Street address:</b>	140 E 300 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 45244	
<b>City, state and zip:</b>	Salt Lake City, UT 84145-0244	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amanda B. McPeck	801-526-9653	ampeck@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule or section catchline:</b>
R990-300. Review Process for Plan for Moderate Income Housing Reports
<b>3. Purpose of the new rule or reason for the change:</b>
The passage of H.B. 364, Housing Affordability Amendments; S.B. 174, Local Land Use and Development Revisions; and S.B. 260, Transportation Funding Requirements, during the 2023 General Session modified the requirements for political subdivisions' moderate income housing reports to the Housing and Community Development Division within the Department of Workforce Services and required the Department to modify its rules concerning the review process for the reports.
<b>4. Summary of the new rule or change:</b>
This rule change describes the revised rule process for moderate income housing reports and makes other changes in conformance with H.B. 364, S.B. 174, and S.B. 260 (2023).

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
The rule change is not expected to have any fiscal impact on state government revenues or expenditures beyond any fiscal impact addressed in the fiscal notes of H.B. 364, S.B. 174, and S.B. 260 (2023).
<b>B) Local governments:</b>
The rule change is not expected to have any fiscal impact on local government revenues or expenditures beyond

any fiscal impact addressed in the fiscal notes of H.B. 364, S.B. 174, and S.B. 260 (2023).

**C) Small businesses** ("small business" means a business employing 1-49 persons):

The rule change is not expected to have any fiscal impact on small business revenues or expenditures beyond any fiscal impact addressed in the fiscal notes of H.B. 364, S.B. 174, and S.B. 260 (2023).

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

The rule change is not expected to have any fiscal impact on non-small business revenues or expenditures beyond any fiscal impact addressed in the fiscal notes of H.B. 364, S.B. 174, and S.B. 260 (2023).

**E) Persons other than small businesses, non-small businesses, state, 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**):

The rule change is not expected to have any fiscal impact on other persons' revenues or expenditures beyond any fiscal impact addressed in the fiscal notes of H.B. 364, S.B. 174, and S.B. 260 (2023).

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

The rule change requires no action or compliance by any persons beyond that required in H.B. 364, S.B. 174, and S.B. 260 (2023).

**G) Regulatory Impact Summary Table** (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 will be included in narratives above.)

**Regulatory Impact Table**

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits	FY2024	FY2025	FY2026

State Government	\$0	\$0	\$0
Local Governments	\$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>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

After conducting a thorough analysis, it was determined that this amendments rule will not result in a fiscal impact beyond what was addressed in the fiscal notes of H.B. 364, S.B. 174, and S.B. 260 (2023).

The Executive Director of the Department of Workforce Services, Casey Cameron, has reviewed and approved this regulatory impact analysis.

**Citation Information**

**6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 35A-8-803	Section 10-9a-408	Section 17-27a-408
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**Public Notice Information**

**8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 07/31/2023

**9. This rule change MAY become effective on:** 08/07/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Casey Cameron, Executive Director	<b>Date:</b>	06/15/2023
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**R990. Workforce Services, Housing and Community Development.**

**R990-300. Review Process for Plan for Moderate Income Housing Reports.**

**R990-300-2. Purpose.**

- (1) Pursuant to Subsection 35A-8-803(1), HCDD will:
  - (a) advise political subdivisions of serious housing problems existing within their jurisdiction that require concerted public action for solution;
  - (b) assist political subdivisions in defining housing objectives and preparing for adoption of a five-year action plan designed to accomplish housing objectives within their jurisdiction;
  - (c) for entities required to submit a ~~an annual~~ moderate income housing report to the Department as described in Sections 10-9a-408 and 17-27a-408:
    - (i) assist in the creation of the reports; and
    - (ii) review the reports for compliance with Sections 10-9a-408 and 17-27a-408; and
    - (d) establish and maintain a database of moderate income housing units located within the state; ~~and~~
    - ~~(e) on or before December 2, 2022, develop and submit to the Commission on Housing Affordability a methodology for determining whether a municipality or county is taking sufficient measures to protect and promote moderate income housing in accordance with Sections 10-9a-403 and 17-27a-403.~~

**R990-300-3. Definitions.**

Terms used in this rule are defined in Sections 10-9a-103, 10-9a-408, 17-27a-103, and 17-27a-408. In addition:

- (1) "[~~Annual in~~]Moderate income housing report" means a report, submitted annually in a form approved by the Department, ~~[for annually reporting]to document~~ progress of the moderate income housing element of the general plan.
- (2) "Plan for moderate income housing" means a written document adopted by an entity's legislative body that includes:
  - (a) an estimate of the existing supply of moderate income housing located within the entity's jurisdiction;
  - (b) an estimate of the need for moderate income housing in the entity's jurisdiction for the next five years;
  - (c) a survey of total residential land use;
  - (d) an evaluation of how existing land uses and zones affect opportunities for moderate income housing; and
  - (e) a description of the entity's program to encourage an adequate supply of moderate income housing.

**R990-300-4. Entities Required to Report.**

Entities required to submit a ~~an annual~~ moderate income housing report are described in Sections 10-9a-408 and 17-27a-408.

**R990-300-5. ~~[Review Process for Plan for]~~Moderate Income Housing Report Submissions.**

- (1) ~~[Beginning in 2022]~~Annually, on or before ~~[October]~~August 1 ~~[of each calendar year]~~, the legislative body of each entity described in Sections 10-9a-408 and 17-27a-408 shall complete ~~[an annual]~~either an initial or subsequent progress moderate income housing report and submit the completed report to HCDD.
  - (a) If August 1 falls on a Saturday, Sunday, or legal holiday, the entity shall submit the report on or before the next business day that is not a Saturday, Sunday, or legal holiday.
  - (b) A report must be submitted using the form posted to the HCDD website. The form will be available on the HCDD website no later than May 1 annually.

(c) The form is a virtual survey and must be completed and submitted online.

(d) The day of submission is determined by the time stamp on the virtual form submission. A report time stamped after 11:59:59 p.m. on August 1 is untimely.

(2) HCDD will ~~[review each annual moderate income housing report for completeness and compliance with Sections 10-9a-403, 10-9a-408, 17-27a-403, and 17-27a-408]~~issue a notice of noncompliance to an entity if its moderate income housing report is untimely. HCDD will not review the report further.

(a) The entity may request an appeal of the determination of noncompliance issued by HCDD.

(b) If the appeal board finds the report was submitted timely, the board may remand the matter to HCDD to review the report for compliance under Section R990-300-6.

(3) ~~[After reviewing a report, HCDD will provide notice as provided in Sections 10-9a-408 and 17-27a-408.]To be found compliant a subsequent progress report must be submitted timely and document progress on at least the minimum number and type of required strategies in Sections 10-9a-403, 10-9a-408, 17-27a-403, and 10-9a-408.~~

(4) ~~[Additional planning requirements are detailed in Title 10, Chapter 9a, Municipal Land Use, Development, and Management Act, and Title 17, Chapter 27a, County Land Use, Development, and Management Act. Certain planning requirements are not part of the plan for moderate income housing and are not subject to annual reporting to HCDD.]To identify in a subsequent progress report how the market has responded to an entity's selected strategies the entity may use state, local, or other data to describe the changes the entity experienced in implementing each strategy.~~

**R990-300-6. Review Process for the Moderate Income Housing Report.**

(1) HCDD will review each moderate income housing report for completeness and compliance with Sections 10-9a-403, 10-9a-408, 17-27a-403, and 17-27a-408.

(2) After reviewing a report, HCDD will provide notice as provided in Sections 10-9a-408 and 17-27a-408.

(3) Additional planning requirements are detailed in Title 10, Chapter 9a, Municipal Land Use, Development, and Management Act, Title 17, Chapter 27a, County Land Use, Development, and Management Act, or other sections of Utah Code. Although certain requirements are not part of the plan for moderate income housing or are not subject to review by HCDD, an entity may be required to demonstrate compliance with other requirements in its moderate income housing report, including station area plan requirements under Section 10-9a-403.1 or housing and transit reinvestment zone requirements under Title 63N, Chapter 3, Part 6, Housing and Transit Reinvestment Zone Act.

**R990-300-7. Cure Period.**

(1) An entity has no more than 90 calendar days after the day on which the notice of noncompliance is issued to cure deficiencies in the submitted moderate income housing report.

(2) If a deficiency described in the notice of noncompliance requires the entity to make a legislative change and the entity does not pursue the first appeal opportunity, the legislative change must be completed by the legislative body and effective within the 90-day cure period to cure the deficiency.

**R990-300-8. Procedure for Filing an Appeal to the Board.**

(1) An entity must request an appeal of HCDD's determination of noncompliance within ten calendar days after the day on which the notice of noncompliance is sent.

(2) An appeal of a notice of noncompliance must be in writing and include:

(a) the name of the entity filing the appeal and signature of its representative; and

(b) the grounds for appeal.

(3) In computing the period allowed for filing a timely appeal, the date as it appears on the notice of noncompliance is not included. The last calendar day of the appeal period is included in the computation, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the next business day that is not a Saturday, Sunday, or legal holiday.

(a) An appeal may be filed by email, facsimile, or physical delivery, including U.S. Mail, courier service, and hand-delivery.

(i) If an appeal is filed by email or facsimile, the date of filing is the date recorded on the email or facsimile.

(ii) If an appeal is filed by physical delivery, the date of filing is the date the appeal is received by HCDD.

(b) If an appeal is filed by physical delivery, the filing entity is solely responsible for meeting the deadline. Any delay caused by a delivery service or other physical means will not be considered an acceptable reason for a late filing.

(4) Upon receiving an entity's request for an appeal of a notice of noncompliance, HCDD will coordinate with the organizations identified in Sections 10-9a-408 and 17-27a-408 to designate appeal board representatives and facilitate the appeal board's review of the appeal.

(5) An entity requesting an appeal may submit additional supporting materials and argument to the appeal board within 15 calendar days of the date of the request for an appeal.

**R990-300-9. Appeal Board Review.**

(1) HCDD will provide administrative support to the appeal board and will provide each board member a copy of the record on appeal, including the appealing entity's moderate income housing report, moderate income housing element of the general

plan, notice of noncompliance, and any supporting materials or argument received from the appealing entity. The appeal board, in its discretion, may request additional information or evidence.

(2) Appeal board review is an informal proceeding for purposes of Title 63G, Chapter 4, Administrative Procedures Act.

(a) No hearing will be held on the entity's appeal.

(b) The appeal board meeting will include only the members of the board and HCDD staff.

(3) If the appeal board determines an appeal is not timely filed, the board will not have jurisdiction to consider the merits of the appeal and will dismiss the appeal.

(4) The appeal board may summarily dismiss an appeal if the board determines the appeal does not state adequate grounds for the appeal or fails to identify alleged errors in the notice of noncompliance.

(5) The appeal board will issue a written decision within 90 calendar days of the day on which the appeal is filed. HCDD will deliver a copy of the appeal board's decision, including an explanation of the right to judicial review, to interested parties.

**R990-300-10. Period of Noncompliance.**

(1) If an entity's moderate income housing report is noncompliant and the entity is ineligible for the funds as provided in Sections 10-9a-408 and 17-27a-408 and this rule, the entity's next opportunity to submit a compliant report will be during the next reporting cycle, which begins on May 1.

(2) An entity described in Subsection (1) will remain in noncompliant status until:

(a) the entity submits a moderate income housing report during the next reporting period for review by HCDD; and

(b)(i) HCDD issues a notice of compliance; or

(ii) the appeal board determines the report is compliant.

**KEY: moderate income housing reports**

**Date of Last Change: ~~October 11, 2022~~2023**

**Authorizing, and Implemented or Interpreted Law: 35A-8-803; 10-9a-408; 17-27a-408**

**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 July 31, 2023.

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 October 30, 2023, 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

NOTICE OF CHANGE IN PROPOSED RULE		
<b>Rule or Section Number:</b>	<b>R68-29</b>	<b>Filing ID: 55345</b>
<b>Date of Previous Publication:</b>	<b>05/15/2023</b>	

**Agency Information**

<b>1. Department:</b>	Agriculture and Food	
<b>Agency:</b>	Plant Industry	
<b>Building:</b>	TSOB South Bldg, Floor 2	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129-2128	
<b>Mailing address:</b>	PO Box 146500	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6500	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amber Brown	385-245-5222	ambermbrown@utah.gov
Cody James	385-515-1485	codyjames@utah.gov
Kelly Pehrson	385-977-2147	kwpehrson@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule or section catchline:</b>
R68-29. Quality Assurance Testing on Cannabis
<b>3. Reason for this change:</b>
A change in the proposed rule is needed to remove the text in the definition of "THC analog" and refer to the statutory definition instead. A typo in the definition was pointed out in a public comment and the Department of Agriculture and Food would prefer to refer to the statute to ensure consistency going forward.
<b>4. Summary of this change:</b>
In Subsection R68-29-2(30), the definition text for "THC analog" has been removed and replaced with a reference to the statutory definition in Subsection 4-41-103(23). (EDITOR'S NOTE: The original proposed amendment upon which this change in proposed rule (CPR) was based was published in the May 15, 2023, issue of the Utah State Bulletin, on page 38. 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.)

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There is no anticipated cost or savings to the state budget. This change is needed to correct a typo in this rule and make this rule consistent with statute.
<b>B) Local government:</b>
There is no anticipated cost or savings to local governments. This change is needed to correct a typo in this rule and make this rule consistent with statute.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
There is no anticipated cost or savings to small businesses. This change is needed to correct a typo in this rule and make this rule consistent with statute.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
There is no anticipated cost or savings to non-small businesses. This change is needed to correct a typo in this rule and make this rule consistent with statute.
<b>E) Persons other than small businesses, non-small businesses, or state or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):
There is no anticipated cost or savings to other persons. This change is needed to correct a typo in this rule and make this rule consistent with statute.
<b>F) Compliance costs for affected persons:</b>
Compliance costs for affected persons will not change because the change is just correcting a typo in this rule.
<b>G) Regulatory Impact Summary Table</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 will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$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>
<b>H) Department head comments on fiscal impact and approval of regulatory impact analysis:</b>			
The Commissioner of the Utah Department of Agriculture and Food, Craig W Butters, has reviewed and approved this regulatory impact analysis.			

**Citation Information**

<b>6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</b>		
Subsection 4-41a-701(3)		

**Public Notice Information**

<b>8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)</b>
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<b>A) Comments will be accepted until:</b>	07/31/2023
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<b>9. This rule change MAY become effective on:</b>	08/07/2023
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Craig W Butters, Commissioner	<b>Date:</b>	06/13/2023
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**R68. Agriculture and Food, Plant Industry.****R68-29. Quality Assurance Testing on Cannabis.****R68-29-1. Authority and Purpose.**

Pursuant to Subsection 4-41a-701(3), this rule establishes the standards for cannabis and cannabis product potency testing and sets limits for water activity, foreign matter, microbial life, pesticides, residual solvents, heavy metals, and mycotoxins.

**R68-29-2. Definitions.**

(1) "Adulterant" means any poisonous or deleterious substance in a quantity that may be injurious to health, including:

- (a) pesticides;
- (b) heavy metals;
- (c) solvents;
- (d) microbial life;
- (e) toxins; or
- (f) foreign matter.

(2) "Analyte" means a substance or chemical component that is undergoing analysis.

(3)(a) "Artificially derived cannabinoid" means a chemical substance that is created by a chemical reaction that changes the molecular structure of any chemical substance derived from the cannabis plant.

(b) "Artificially derived cannabinoid" does not include:

(i) a naturally occurring chemical substance that is separated from the cannabis plant by a chemical or mechanical extraction process; or

(ii) a cannabinoid that is produced by decarboxylation from a naturally occurring cannabinoid acid without the use of a chemical catalyst.

(4) "Batch" means a quantity of:

(a) cannabis concentrate produced on a particular date and time, following clean up until the next clean up during which the same lots of cannabis are used;

(b) cannabis product produced on a particular date and time, following clean up until the next clean up during which cannabis concentrate is used; or

(c) cannabis flower from a single strain and growing cycle packaged on a particular date and time, following clean up until the next clean up during which lots of cannabis are being used.

(5) "Cannabinoid" means any:

(a) naturally occurring derivative of cannabigerolic acid (CAS 25555-57-1); or

## NOTICES OF CHANGES IN PROPOSED RULES

(b) any chemical compound that is both structurally and chemically similar to a derivative of cannabigerolic acid.

(6) "Cannabis" means any part of the marijuana plant.

(7) "Cannabinoid concentrate" means:

(a) the product of any chemical or physical process applied to naturally occurring biomass that concentrates or isolates the cannabinoids contained in the biomass; or

(b) any amount of a natural or artificially derived cannabinoid.

(8) "Cannabis cultivation facility" means a person that:

(a) possesses cannabis;

(b) grows or intends to grow cannabis; and

(c) sells or intends to sell cannabis to a cannabis cultivation facility or a cannabis processing facility.

(9) "Cannabis cultivation byproduct" means any portion of a cannabis plant that is not intended to be sold as a cannabis plant product.

(10) "Cannabis derivative product" means a cannabis product made using cannabis concentrate.

(11) "Cannabinoid isolate" means a concentrated form of cannabinoid with less than a 0.3% combined concentration of THC or any THC analog that is intended for use as an ingredient in a cannabinoid product but is not grown by a Utah licensed cannabis cultivation facility.

(12) "Cannabis plant product" means any portion of a cannabis plant intended to be sold in a form that is recognizable as a portion of a cannabis plant.

(13) "Cannabis processing facility" means a person that:

(a) acquires or intends to acquire cannabis from a cannabis production establishment;

(b) possesses cannabis with the intent to manufacture a cannabis product;

(c) manufactures or intends to manufacture a cannabis product from unprocessed cannabis or cannabis concentrate; and

(d) sells or intends to sell a cannabis product to a medical cannabis pharmacy.

(14) "Cannabis product" means a product that:

(a) is intended for human use; and

(b) contains cannabis or delta 9-tetrahydrocannabinol.

(15) "CBD" means cannabidiol (CAS 13956-29-1).

(16) "CBDA" means cannabidiolic acid, (CAS 1244-58-2).

(17) "Certificate of analysis" (COA) means a document produced by a testing laboratory listing the quantities of the various analytes for the performed testing.

(18) "Delta-9-tetrahydrocannabinol" or "delta-9-THC" means the cannabinoid identified as CAS #1972-08-03, the primary psychotropic cannabinoid in cannabis.

(19) "Department" means the Utah Department of Agriculture and Food.

(20) "Final product" means a reasonably homogenous cannabis product in its final packaged form created using the same standard operating procedures and the same formulation.

(21) "Foreign matter" means:

(a) any matter that is present in a cannabis lot that is not a part of the cannabis plant; or

(b) any matter that is present in a cannabis or cannabinoid product that is not listed as an ingredient, including seeds.

(22) "Industrial hemp" means a cannabis plant that contains less than 0.3% total THC by dry weight.

(23) "Lot" means the quantity of:

(a) flower from a single strain of cannabis and growing cycle produced on a particular date and time, following clean up until the next clean up during which the same materials are used; or

(b) trim, leaves, or other plant matter from cannabis plants produced on a particular date and time, following clean up until the next clean up.

(24) "Pest" means:

(a) any insect, rodent, nematode, fungus, weed; or

(b) any other form of terrestrial or aquatic plant or animal life, virus, bacteria, or other microorganisms that are injurious to health or to the environment or that the department declares to be a pest.

(25) "Pesticide" means any:

(a) substance or mixture of substances, including a living organism, that is intended to prevent, destroy, control, repel, attract, or mitigate any insect, rodent, nematode, snail, slug, fungus, weed, or other forms of plant or animal life that are normally considered to be a pest or that the commissioner declares to be a pest;

(b) any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and

(c) any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, or emulsifying agent with deflocculating properties of its own, used with a pesticide to aid in the application or effect of a pesticide.

(26) "Sampling technician" means a person tasked with collecting a representative sample of a cannabis plant product, cannabis concentrate, or cannabis product from a cannabis production establishment who is:

(a) an employee of the department;

(b) an employee of an independent cannabis laboratory that is licensed by the department to perform sampling; or

(c) a person authorized by the department to perform sampling.

(27) "Standard operating procedure" (SOP) means a document providing detailed instruction for the performance of a task.

(28) "THC" means delta-9-tetrahydrocannabinol (CAS 1972-08-3).

(29) "THCA" means delta-9-tetrahydrocannabinolic acid (CAS 23978-85-0).

(30)(a) "THC analog" means the same as the term is defined in Subsection 4-41-102(23)~~[a substance that is structurally or pharmacologically substantially similar to, or is represented as being similar to, delta 9-THC.~~

~~(b) "THC analog" does not include the following substances or their naturally occurring acid forms:~~

~~(i) cannabichromene (CBC), CAS# 20675-51-8;~~

~~(ii) cannabicyclol (CBL), CAS# 21366-63-2;~~

~~(iii) cannabidiol (CBD), CAS# 13956-29-1;~~

~~(iv) cannabidivarin (CBDV), CAS# 24274-48-4;~~

~~(v) cannabielsoin (CBE), CAS# 52025-76-0;~~

~~(vi) cannabigerol (CBG), CAS# 25654-31-3;~~

~~(vii) cannabigerovarin (CBGV), CAS# 55824-11-8;~~

~~(viii) cannabinol (CBN), CAS# 521-35-7; or~~

~~(ix) cannabivarin (CBV), CAS# 33745-21-0.]~~

(31) "Total CBD" means the sum of the determined amounts of CBD and CBDA.

(32) "Total THC" means the sum of the determined amounts of delta-9-THC and delta-9-THCA, according to the formula: Total THC = delta-9-THC + (delta-9-THCA x 0.877).

(33) "Unit" means each individual portion of an individually packaged product.

(34) "Water activity" is a dimensionless measure of the water present in a substance that is available to microorganisms; calculated as the partial vapor pressure of water in the substance divided by the standard state partial vapor pressure of pure water at the same temperature.

### **R68-29-3. Required Cannabis, Cannabis Product, and Cannabinoid Isolate Tests.**

(1) Before the transfer of cannabis biomass from a cannabis cultivation facility to a cannabis processing facility, the cultivation facility shall make a declaration to the department that the biomass to be transferred is either a cannabis plant product or a cannabis cultivation byproduct.

(2) A representative sample of each batch or lot of cannabis plant product shall be tested by an independent cannabis testing laboratory to determine:

- (a) the water activity of the sample;
- (b) the amount of total THC, total CBD, and any THC analog known to be present in the sample; and
- (c) the presence of adulterants in the sample, as specified in Table 1.

(3) Required testing shall be performed either:

- (a) Before the transfer of the cannabis plant product to a cannabis processing facility; or
- (b) following the transfer of the cannabis plant product to a cannabis processing facility.

(4) If cannabis plant product is tested before being transferred to a cannabis processing facility, repeat testing for microbial contaminants and foreign matter shall be performed following the transfer.

(5) Cannabis cultivation byproduct shall either be:

- (a) chemically or physically processed to produce a cannabis concentrate for incorporation into cannabis derivative product; or

(b) destroyed pursuant to Section 4-41a-405.

(6) Before its incorporation into a cannabis derivative product, cannabis concentrate shall be tested by an independent cannabis testing laboratory to determine:

- (a) the amount of total THC, total CBD, and any THC analog known to be present in the sample; and
- (b) the presence of adulterants in the sample, as specified in Table 1.

(c) Any artificially derived cannabinoids present in the cannabis concentrate shall be isolated to a purity of greater than 95%, with a 5% margin of error, as determined by an independent cannabis testing laboratory using liquid chromatography-mass spectroscopy or an equivalent method.

(7) Before the transfer of a cannabis product to a medical cannabis pharmacy a representative sample of the product shall be tested by an independent cannabis testing laboratory to determine:

- (a) the water activity of the sample, as determined applicable by the department;

(b) the quantity of any cannabinoid or terpene to be listed on the product label; and

(c) the presence of adulterants in the sample, as specified in Table 1.

(8) Testing results for cannabis concentrate may be applied to cannabis product derived therefrom, provided that the processing steps used to produce the product are unlikely to change the results of the test, as determined by the department.

(9) Mycotoxin testing of a cannabis plant product, or cannabis product may be required if the department has reason to believe that mycotoxins may be present.

(10) Mycotoxin testing shall be required for cannabis concentrate.

(11) A cannabis plant product, cannabis concentrate, or cannabis product that fails any of the required adulterant testing standards may be remediated by a cannabis cultivation facility or cannabis processing facility after submitting and gaining approval for a remediation plan from the department.

(12) A remediation plan shall be submitted to the department within 15 days of the receipt of a failed testing result.

(13) A remediation plan shall be carried out and the cannabis plant product or cannabis concentrate shall be prepared for resampling within 60 days of department approval of the remediation plan.

(14) Resampling or retesting of a cannabis lot or batch that fails any of the required testing standards is not allowed until the lot or batch has been remediated.

(15) A cannabis lot or cannabis product batch that is not or cannot be remediated in the specified time period shall be destroyed pursuant to Section 4-41a-405.

(16) If test results cannot be retained in the Inventory Control System, the laboratory shall:

- (a) keep a record of test results;
  - (b) issue a COA for required tests; and
  - (c) keep a copy of the COA on the laboratory premises.
- (17) Cannabinoid isolate shall be tested for:
- (a) solvents;
  - (b) pesticides;
  - (c) microbials;
  - (d) heavy metals; and
  - (e) mycotoxins.

(18) Cannabinoid isolate shall be accompanied by a COA that complies with the standards included in Section R68-29-5 through Section -R68-29-12.

(19) Cannabinoid isolate shall receive cannabinoid testing from an independent cannabis testing laboratory before being used to create a cannabis derivative product.

**TABLE 1**  
**Required Test by Sample Type**

Test	Cannabis Plant Product	Cannabis Concentrate	Cannabis Product
Moisture Content	Required	X	X
Water Activity	Required	X	X
Foreign Matter	Required	Required	Required
Potency	Required	Required	Required

## NOTICES OF CHANGES IN PROPOSED RULES

Microbial	Required	Required	Required
Pesticides	Required	Required	Required
Residual Solvents	X	Required	Required
Heavy Metals	Required	Required	Required

### R68-29-4. Sampling Cannabis and Cannabis Products.

(1) The entity that requests testing of a cannabis plant product lot or cannabis concentrate batch, or cannabis product batch shall make the entirety of the lot or batch available to the sampling technician.

(2) The lot or batch being sampled shall be contained in a single location and physically separated from other lots or batches.

(3) The sample shall be collected by a sampling technician who is unaffiliated with the entity that requested testing of the cannabis lot or cannabis product batch unless an exception is granted by the department.

(4) The owner of the cannabis lot or cannabis product batch and any of their employees shall not assist in the selection of the sample.

(5) The sampling technician shall collect the representative sample in a manner set forth in a SOP, that is ISO 17025 compliant, maintained by the laboratory that will perform the testing.

(6) When collecting the representative sample, the sampling technician shall:

(a) use sterile gloves, instruments, and a glass or plastic container to collect the sample;

(b) place tamper proof tape on the container; and

(c) appropriately label the sample pursuant to Section R68-30-6.

(7) For cannabis plant product lots the minimum representative sample shall be taken according to the following schedule:

(a) 10 subunits with an average weight of one gram each for lots weighing 5 kilograms or less;

(b) 16 subunits with an average weight of one gram each for lots weighing 5.01-9 kilograms;

(c) 22 subunits with an average weight of one gram each for lots weighing 9.01-14 kilograms;

(d) 28 subunits with an average weight of one gram each for lots weighing 14.01-18 kilograms;

(e) 32 subunits with an average weight of one gram each for lots weighing 18.01-23 kilograms.

(8) For cannabis concentrate the minimum representative sample shall be taken according to the following schedule:

(a) 10 mL or grams for batches of one liter or kilogram or less; or

(b) 20 mL or grams for batches of four liters or kilograms or less.

(9) For cannabis products in their final product form the following minimum number of sample units must be taken, the combined total weight of which must be at least 10 grams, not including packaging materials:

(a) four units for a sample product batch with 5-500 products;

(b) six units for a sample product batch with 501-1000 products;

(c) eight units for a sample product batch with 1,001-5,000 products; and

(d) ten units for a sample product batch with 5,001-10,000 products.

(10) Additional material may be included in the representative sample if the material is necessary to perform the required testing.

### R68-29-5. Moisture Content Testing and Water Activity Standards.

(1) The moisture content of a sample and related lot of cannabis shall be reported on the COA as a mass over mass percentage.

(2) A sample and related lot of cannabis fail quality assurance testing if the water activity of the representative sample is found to be greater than 0.65.

(3) A sample and related cannabis or cannabinoid product batch intended for human consumption fail quality assurance testing if the water activity of the representative sample is greater than 0.65, unless water is a component of the product formulation and is listed as an ingredient.

### R68-29-6. Foreign Matter Standards.

(1) A sample and related lot or batch of cannabis, cannabis product, or cannabinoid product fail quality assurance testing if:

(a) the sample contains foreign matter visible to the unaided human eye;

(b) the sample is found to contain microscopic foreign matter considered to be harmful or estimated to comprise greater than 3% of the mass of the representative sample as determined by the testing laboratory; or

(c) foreign matter is found that is suspected to have been intentionally added to the sample to increase its visual appeal or market value.

### R68-29-7. Potency Testing.

A lot or batch of cannabis plant product, cannabis concentrate, or cannabis product shall have its potency determined and listed on a COA as total THC, total CBD, and the total concentration of any THC analog known to be present.

### R68-29-8. Microbial Standards.

(1) A sample and related lot or batch of cannabis plant product, cannabis concentrate, or cannabis product fail quality assurance testing for microbiological contaminants if the results exceed the limits as set forth in Table 2.

(2) Each sample and related lot or batch of cannabis plant product, cannabis concentrate, or cannabis product shall be tested for total aerobic microbial count and total combined yeast and mold. The specific pathogens listed in Table 2 may be tested for at the discretion of the department.

TABLE 2 Microbial Analytes and Action Levels	
Material	Microbial Limit Requirement (cfu)
Cannabis Plant Product	Total Aerobic Microbial Count ≤100,000 Absence of E. Coli and Salmonella spp.

	Absence of <i>Aspergillus fumigatus</i> , <i>Aspergillus flavus</i> , <i>Aspergillus niger</i> , and <i>Aspergillus terreus</i>
Cannabinoid Concentrate	Total Aerobic Microbial Count $\leq 10,000$ Total Combined Yeast and Mold Count $\leq 1,000$ Absence of STEC Absence of <i>Pseudomonas</i> Absence of Staph
Orally Consumable Products	Total Aerobic Microbial Count $\leq 10,000$ Total Combined Yeast and Mold Count $\leq 1,000$ Absence of <i>E. Coli</i> and <i>Salmonella</i> spp. Absence of Staph
Transdermal Products	Total Aerobic Microbial Count $\leq 250$ Total Yeast and Mold Count $\leq 250$ Absence of <i>Pseudomonas</i> Absence of Staph

**R68-29-9. Pesticide Standards.**

(1) Only pesticides allowed by the department may be used in the cultivation of cannabis.

(2) If an independent cannabis laboratory identifies a pesticide that is not allowed under Subsection R68-29-5(1) and is above the action levels provided in Subsection R68-29-5(3) that lot or batch from which the sample was taken has failed quality assurance testing.

(3) A sample and related lot or batch of cannabis, cannabis product, or cannabinoid product fail quality assurance testing for pesticides if the results exceed the limits as set forth in Table 3.

TABLE 3 Pesticide Analytes and Action Levels		
Analyte	Chemical Abstract Service (CAS) Registry number	Action Level ppm
Abamectin	71751-41-2	0.5
Acephate	30560-19-1	0.4
Acequinocyl	57960-19-7	2
Acetamiprid	135410-20-7	0.2
Aldicarb	116-06-3	0.4
Azoxystrobin	131860-33-8	0.2
Bifenazate	149877-41-8	0.2
Bifenthrin	82657-04-3	0.2
Boscalid	188425-85-6	0.4
Carbaryl	63-25-2	0.2
Carbofuran	1563-66-2	0.2
Chlorantraniliprole	500008-45-7	0.2
Chlorfenapyr	122453-73-0	1
Chlorpyrifos	2921-88-2	0.2
Clofentezine	74115-24-5	0.2
Cypermethrin	52315-07-8	1
Daminozide	1596-84-5	1
DDVP (Dichlorvos)	62-73-7	0.1
Diazinon	333-41-5	0.2
Dimethoate	60-51-5	0.2
Ethoprophos	13194-48-4	0.2

Etofenprox	80844-07-1	0.4
Etiozazole	153233-91-1	0.2
Fenoxycarb	72490-01-8	0.2
Fenpyroximate	134098-61-6	0.4
Fipronil	120068-37-3	0.4
Flonicamid	158062-67-0	1
Fludioxonil	131341-86-1	0.4
Hexythiazox	78587-05-0	1
Imazalil	35554-44-0	0.2
Imidacloprid	138261-41-3	0.4
Kresoxim-methyl	143390-89-0	0.4
Malathion	143390-89-0	0.2
Metalaxyl	57837-19-1	0.2
Methiocarb	2032-65-7	0.2
Methomyl	16752-77-5	0.4
Methyl parathion	298-00-0	0.2
MGK-264	113-48-4	0.2
Myclobutanil	88671-89-0	0.2
Naled	300-76-5	0.5
Oxamyl	23135-22-0	1
Paclobutrazol	76738-62-0	0.4
Permethrins	52645-53-1	0.2
Phosmet	732-11-6	0.2
Piperonyl butoxide	51-03-6	2
Prallethrin	23031-36-9	0.2
Propiconazole	60207-90-1	0.4
Propoxur	114-26-1	0.2
Pyrethrins	8003-34-7	1
Pyridaben	96489-71-3	0.2
Spinosad	168316-95-8	0.2
Spiromesifen	283594-90-1	0.2
Spirotetramat	203313-25-1	0.2
Spiroxamine	118134-30-8	0.4
Tebuconazole	80443-41-0	0.4
Thiacloprid	111988-49-9	0.2
Thiamethoxam	153719-23-4	0.2
Trifloxystrobin	141517-21-7	0.2

(4) Permethrins should be measured as cumulative residue of cis- and trans-permethrin isomers (CAS numbers 54774-45-7 and 51877-74-8).

(5) Pyrethrins should be measured as the cumulative residues of pyrethrin I (CAS 121-21-1), pyrethrin II (CAS 121-29-9), cinerin 1 (CAS 25402-06-6), and jasmolin 1 (CAS 4466-14-2).

(6) Abamectin is a composite of the amounts of avermectin B1a and avermectin B1b.

**R68-29-10. Residual Solvent Standards.**

(1) A sample and related lot or batch of cannabis plant product, cannabis concentrate, or cannabis product fails quality assurance testing for residual solvents if the results exceed the limits provided in Table 4 unless the solvent is:

- (a) a component of the product formulation;
- (b) listed as an ingredient; and
- (c) generally considered to be safe for the intended form of use.



## NOTICES OF CHANGES IN PROPOSED RULES

TABLE 4 List of Solvents and Action Levels			
Solvent	Chemical Service Registry number	Abstract (CAS)	Action level [P]ppm
1,2 Dimethoxyethane	110-71-4		100
1,4 Dioxane	123-9		380
1-Butanol	71-36-3		5,000
1-Pentanol	71-41-0		5,000
1-Propanol	71-23-8		5,000
2-Butanol	78-92-2		5,000
2-Butanone	78-93-3		5,000
2-Ethoxyethanol	110-80-5		160
2-methylbutane	78-78-4		5,000
2-Propanol (IPA)	67-63-0		5,000
Acetone	67-64-1		5,000
Acetonitrile	75-05-8		410
Benzene	71-43-2		2
Butane	106-97-8		5,000
Cumene	98-82-8		70
Cyclohexane	110-82-7		3,880
Dichloromethane	75-09-2		600
2,2-dimethylbutane	-75-83-2		290
2,3-dimethylbutane	-79-29-8		-290
1,2-dimethylbenzene	-95-47-6		See Xylenes
1,3-dimethylbenzene	108-38-3		See Xylenes
1,4-dimethylbenzene	-106-42-3		See Xylenes
Dimethyl sulfoxide	-67-68-5		-5,000
Ethanol	-64-17-5		5,000
Ethyl acetate	141-78-6		5,000
Ethylbenzene	-100-41-4		See Xylenes
Ethyl ether	60-29-7		5,000
Ethylene glycol	107-21-1		620
Ethylene Oxide	75-21-8		50
Heptane	142-82-5		5,000
n-Hexane	110-54-3		290
Isopropyl acetate	290		5,000
Methanol	67-56-1		3,000
Methylpropane	75-28-5		5,000
2-Methylpentane	107-83-5		290
3-Methylpentane	96-14-0		290
N,N-dimethylacetamide	127-19-5		1,090
N,N-dimethylformamide	68-12-2		880
Pentane	109-66-0		5,000

End of the Notices of Changes in Proposed Rules Section

Propane	74-98-6	5,000
Pyridine	110-86-1	100
Sulfolane	126-33-0	160
Tetrahydrofuran	109-99-9	720
Toluene	108-88-3	890
Xylenes	1330-20-7	2,170

- (2) Xylenes is a combination of the following:
- (a) 1,2-dimethylbenzene;
  - (b) 1,3-dimethylbenzene;
  - (c) 1,4-dimethylbenzene; and
  - (d) ethyl benzene.

#### R68-29-11. Heavy Metal Standards.

A sample and related lot or batch of cannabis plant product, cannabis concentrate, cannabis product, or vaporizer cartridges fail quality assurance testing for heavy metals if the results exceed the limits provided in Table 5.

TABLE 5 Heavy Metals	
Metals	Natural Health Products Acceptable limits in parts per million
Arsenic	<2
Cadmium	<0.82
Lead	<1.2
Mercury	<0.4

#### R68-29-12. Mycotoxin Standards.

A sample and related lot or batch of cannabis plant product, cannabis concentrate, or cannabis product fail quality assurance testing for mycotoxin if the results exceed the limits provided in Table 6.

TABLE 6 Mycotoxin	
Test	Specification
The Total of	
Aflatoxin B1,	
Aflatoxin B2,	
Aflatoxin G1, and	
Aflatoxin G2	<20 ppb of substance
Ochratoxin A.	<20 ppb of substance

**KEY: cannabis testing, quality assurance, cannabis laboratory**  
**Date of Last Change: 2023**  
**Authorizing, and Implemented or Interpreted Law: 4-41a-701(3)**

## FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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 [adminrules.utah.gov](http://adminrules.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.

### FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R277-461	Filing ID: 53322
Effective Date:	06/13/2023	

#### Agency Information

1. Department:	Education	
Agency:	Administration	
Building:	Board of Education	
Street address:	250 E 500 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 144200	
City, state and zip:	Salt Lake City, UT 84114-4200	
Contact persons:		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov

Please address questions regarding information on this notice to the persons listed above.

#### General Information

2. Rule catchline:
R277-461. Elementary School Counselor Grant Program
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule is authorized pursuant to the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board; Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and Section 53F-5-209, which directs the Board to make rules to administer the Elementary School Counselor Grant Program.

#### 4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

There were no public comments received.

#### 5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary because it provides an application procedure; criteria and procedures for awarding grants; and requirements for grant recipients. Therefore, this rule should be continued.

#### Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	06/13/2023
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### FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R277-613	Filing ID: 54657
Effective Date:	06/13/2023	

**Agency Information**

<b>1. Department:</b>	Education	
<b>Agency:</b>	Administration	
<b>Building:</b>	Board of Education	
<b>Street address:</b>	250 E 500 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the persons listed above.		

**General Information**

<b>2. Rule catchline:</b>
R277-613. LEA Policies and Training Regarding Bullying, Cyber-bullying, Hazing, Retaliation, and Abusive Conduct
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule is authorized pursuant to Section 53G-9-606, which directs the board to monitor LEA development and implementation of bullying and hazing policies; Section 53G-9-607, which directs the board to make rules that establish standards for high quality training related to bullying, cyber-bullying, hazing, and abusive conduct, and retaliation; Section 53E-3-501, which directs the Board to establish rules and minimum standards for the public schools governing discipline and control; Section 53G-8-209, which requires the Board, when making rules regarding student participation in co-curricular or extracurricular activities; the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board; and Subsection 53E-3-401(4)(a), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
There were no public comments received.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule is necessary because it specifies the requirements LEAs use to develop, update, and implement bullying, cyber-bullying, hazing, retaliation, and abusive conduct

policies at the school district and school level. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	06/13/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R277-619</b>	<b>Filing ID:</b>	<b>50516</b>
<b>Effective Date:</b>	<b>06/13/2023</b>		

**Agency Information**

<b>1. Department:</b>	Education	
<b>Agency:</b>	Administration	
<b>Building:</b>	Board of Education	
<b>Street address:</b>	250 E 500 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the persons listed above.		

**General Information**

<b>2. Rule catchline:</b>
R277-619. Student Leadership Skills Development
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule is authorized pursuant to the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board; Subsection 53E-3-401(4), which allows the Board to execute rules to carry out its duties and responsibilities under the Utah Constitution and state law; and Subsection 53F-2-508(4), which directs the Board to make rules for elementary school participation in this pilot grant program.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
There were no public comments received.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

This rule is necessary because it provides criteria, procedures and timelines for the Board to designate schools and grant awards to facilitate elementary school participation in the pilot Student Leadership Skills Development program. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	06/13/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R384-201</b>	<b>Filing ID:</b>	<b>52772</b>
<b>Effective Date:</b>	<b>06/06/2023</b>		

**Agency Information**

<b>c</b>	Health and Human Services	
<b>Agency:</b>	Disease Control and Prevention, Health Promotion	
<b>Building:</b>	Martha Hughes Cannon Building	
<b>Street address:</b>	288 N 1460 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 142107	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-2107	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
BettySue Hinkson	801-419-1078	bhinkson@utah.gov

Please address questions regarding information on this notice to the persons listed above.

**General Information****2. Rule catchline:**

R384-201. School-Based Vision Screening for Students in Public Schools

**3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:**

Rule R384-201 is authorized under Sections 26B-1-202, 26B-4-402, and 53G-9-404. Section 26B-1-202 gives the Department of Health and Human Services (Department) rulemaking authority to carry out the provisions of Title 26B, and Section 26B-4-402 charges the Department to

develop a plan for school health services, and to cooperate with the State Board of Education in developing the plan to coordinate activities between these agencies. The plan provides for delivery of health services in schools.

Subsection 53G-9-404 (7)(a) specifically charges the Department with creating rules, standards and procedures for vision screening in schools.

**4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

In July 2020, there was a revision that was passed to clarify Section R384-201-5. Since then, no comments have been received either in favor or in opposition to Rule R384-201.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

Rule R384-201 is necessary as it is required by statute and creates a uniform standard for vision screening students in Utah public schools. . Therefore, this rule should be continued.

Additionally, the Department anticipates amending this rule following the consolidation and recodification of the Department's statute.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Tracy S. Gruber, Executive Director	<b>Date:</b>	06/06/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R384-210</b>	<b>Filing ID:</b>	<b>50910</b>
<b>Effective Date:</b>	<b>06/06/2023</b>		

**Agency Information**

<b>1. Department:</b>	Health and Human Services		
<b>Agency:</b>	Disease Control and Prevention, Health Promotion		
<b>Building:</b>	Martha Cannon Building		
<b>Street address:</b>	288 N 1460 W		
<b>City, state and zip:</b>	Salt Lake City, UT 84116		
<b>Mailing address:</b>	PO Box 142106		
<b>City, state and zip:</b>	Salt Lake City, UT 84114-2106		

Contact persons:		
Name:	Phone:	Email:
Teresa Brechlin	801-814-5857	tbrechlin@utah.gov
Anna Fondario	385-258-8537	afondario@utah.gov
Janae Duncan	801-360-8536	janaeduncan@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

**General Information**

<b>2. Rule catchline:</b>
R384-210. Co-prescription Guidelines -- Reporting
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule establishes scientifically based guidelines for controlled substance prescribers to co-prescribe an opiate antagonist to a patient pursuant to Section 26B-4-513.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No written comments were received.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
Co-prescribing an opiate antagonist with an opioid has been shown to decrease opioid related deaths. When in rule, these evidence based guidelines may increase the number of prescribers who co-prescribe an opioid antagonist when prescribing an opioid. . Therefore, this rule should be continued.
The Department of Health and Human Services (Department) anticipates amending this filing in the near future due to the consolidation and recodification of the Department's statute.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Tracy S. Gruber, Executive Director	<b>Date:</b>	06/06/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Rule Number:</b>	<b>R398-2</b>	<b>Filing ID: 54203</b>
<b>Effective Date:</b>	<b>06/15/2023</b>	

**Agency Information**

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Family Health and Preparedness, Children with Special Health Care Needs	
<b>Room number:</b>	3032	
<b>Building:</b>	Multi-Agency State Office Building	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144610	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4610	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b> <b>Email:</b>	
Alexis Weight	801-273-2956	abweight@utah.gov
Stephanie McVicar	801-273-6600	smcvicar@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

**General Information**

<b>2. Rule catchline:</b>
R398-2. Newborn Hearing Screening: Early Hearing Detection and Intervention (EHDI) Program
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule is enacted in accordance with Section 26B-4-319 and is authorized by Section 26B-1-202 to ensure all infants receive timely hearing screening, diagnoses, and interventions.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No written comments were received.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>

This rule is essential as it defines the stakeholder requirements that are essential for carrying out the statute and to ensure that all infants receive timely hearing screenings, diagnoses, and interventions. . Therefore, this rule should be continued.

The Department of Health and Human Services (Department) anticipates amending this rule to update citations and outdated language following the consolidation and recodification of the Department's statute.

#### Agency Authorization Information

<b>Agency head or designee and title:</b>	Tracy S. Gruber, Executive Director	<b>Date:</b>	06/15/2023
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#### FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

<b>Rule Number:</b>	<b>R414-42</b>	<b>Filing ID:</b>	<b>52990</b>
<b>Effective Date:</b>	<b>06/14/2023</b>		

#### Agency Information

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Health Care Financing, Coverage and Reimbursement Policy	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 143102	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-3102	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

#### General Information

<b>2. Rule catchline:</b>
R414-42. Telehealth
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>

Section 26B-3-108 requires the Department of Health and Human Services (Department) to implement the Medicaid program through administrative rules, and Section 26B-1-213 grants the Department the authority to adopt, amend, or repeal these rules.

#### 4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

The Department did not receive any written comments regarding this rule.

#### 5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

The Department has determined that this rule is necessary because it sets forth coverage, limitations, and reimbursement for telehealth services. . Therefore, this rule should be continued.

The Department will file an amendment to update citations for recodification purposes.

#### Agency Authorization Information

<b>Agency head or designee and title:</b>	Tracy S. Gruber, Executive Director	<b>Date:</b>	06/12/2023
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#### FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

<b>Rule Number:</b>	<b>R590-247</b>	<b>Filing ID:</b>	<b>54696</b>
<b>Effective Date:</b>	<b>06/09/2023</b>		

#### Agency Information

<b>1. Department:</b>	Insurance	
<b>Agency:</b>	Administration	
<b>Room number:</b>	Suite 2300	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Mailing address:</b>	PO Box 146901	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6901	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-957-9322	sgooch@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		



**General Information**

<b>2. Rule catchline:</b>
R590-247. Universal Health Insurance Application Rule
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 31A-2-201 authorizes the insurance commissioner to write rules to implement Title 31A, Insurance Code.
Section 31A-2-212 requires the insurance commissioner to require a health insurer to comply with PPACA.
Section 31A-22-635 requires the insurance commissioner to adopt a uniform application and uniform waiver form by rule.
Section 31A-30-102 authorizes the insurance commissioner to write rules regarding a universal individual and small group health insurance application.
Section 31A-30-117 authorizes the insurance commissioner to write rules to regulate a health benefit plan described in Section 31A-2-212.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
The Department of Insurance has received no written comments regarding this rule during the past five years.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule allows an individual to complete and submit a single application for individual health insurance to multiple health insurance companies, instead of completing an application for each company. It saves time and effort for insurers and insureds alike. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Steve Gooch, Public Information Officer	<b>Date:</b>	06/09/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	R657-51	<b>Filing ID:</b>	51775
<b>Effective Date:</b>	06/15/2023		

**Agency Information**

<b>1. Department:</b>	Natural Resources
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<b>Agency:</b>	Wildlife Resources	
<b>Room number:</b>	Suite 2110	
<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 146301	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6301	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Staci Coons	801-450-3093	stacicoons@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule catchline:</b>
R657-51. Poaching-Reported Reward Permits
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule describing procedures the Division of Wildlife Resources may use in issuing permits to individuals who report unlawful taking of protected wildlife in Utah.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No written comments supporting or opposing Rule R657-51 were received since June 2018, when this rule was first enacted.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
Rule R657-51 is necessary to provide permits to individuals who report unlawful take of protected wildlife in Utah. The provisions adopted in this rule are effective. This rule is necessary in order to provide the public with permits for their assistance in stopping illegal take of wildlife. . Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Justin Shirley, Division Director	<b>Date:</b>	06/14/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R746-344</b>	<b>Filing ID: 51961</b>
<b>Effective Date:</b>	<b>06/02/2023</b>	

**Agency Information**

<b>1. Department:</b>	Public Service Commission	
<b>Agency:</b>	Administration	
<b>Building:</b>	Heber M Wells Building	
<b>Street address:</b>	160 E 300 S, 4th Floor	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 144558	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4558	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
John Delaney	801-530-6724	jdelaney@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule catchline:</b>
R746-344. Filing Requirements for Telephone Corporations with Less Than 5,000 Access Line Subscribers
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 54-7-12 governs rate changes of public utilities, including the information and schedules they submit to the Public Service Commission (PSC) justifying and showing their proposed rate changes.
This rule provides direction on what type of information may be submitted by small telephone corporations in order to simplify the submission of necessary information supporting proposed rate changes for the PSC's consideration.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
The PSC has received no written comments from any interested person supporting or opposing this rule since the last five-year review.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>

This rule is necessary because it provides small telephone corporations a way to submit the required information in a general rate case, which simplifies the proceedings, eliminates some expenses, and enhances the fact-finding process in general rate cases for small telephone corporations. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Thad LeVar, PSC Chair	<b>Date:</b>	06/02/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R746-500</b>	<b>Filing ID: 51987</b>
<b>Effective Date:</b>	<b>06/02/2023</b>	

**Agency Information**

<b>1. Department:</b>	Public Service Commission	
<b>Agency:</b>	Administration	
<b>Building:</b>	Heber M Wells Building	
<b>Street address:</b>	160 E 300 S, 4th Floor	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 144558	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4558	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
John Delaney	801-530-6724	jdelaney@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule catchline:</b>
R746-500. Americans With Disabilities Act Complaint Procedure
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule is required and authorized by 42 USC 12201, Section 54-1-1, and Subsection 63G-3-201(2), and provides a mechanism for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans with Disabilities Act of 1990.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>

# FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

The Public Service Commission (PSC) has received no written comments from any interested person supporting or opposing this rule since the last five-year review.

## 5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary so that an individual with a disability may know the complaint process if they believe they have been subjected to discrimination by the PSC, including being excluded from participation in, or being denied the benefits of, the services, programs, or activities of the PSC. Therefore, this rule should be continued.

## Agency Authorization Information

<b>Agency head or designee and title:</b>	Thad LeVar, PSC Chair	<b>Date:</b>	06/02/2023
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## FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

<b>Rule Number:</b>	<b>R746-600</b>	<b>Filing ID:</b>	<b>51992</b>
<b>Effective Date:</b>	<b>06/02/2023</b>		

## Agency Information

<b>1. Department:</b>	Public Service Commission
<b>Agency:</b>	Administration
<b>Building:</b>	Heber M Wells Building
<b>Street address:</b>	160 E 300 S, 4th Floor
<b>City, state and zip:</b>	Salt Lake City, UT 84111
<b>Mailing address:</b>	PO Box 144558
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4558
<b>Contact persons:</b>	

<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
John Delaney	801-530-6724	jdelaney@utah.gov

Please address questions regarding information on this notice to the persons listed above.

## General Information

### 2. Rule catchline:

R746-600. Postretirement Benefits other than Pensions

### 3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule is enacted under Section 54-4-1 and addresses the requirements of a public utility in their financial reporting of certain postretirement benefits, including how to account for, and when to make deposits for funding of, these benefits for current and future retirees.

### 4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

The Public Service Commission (PSC) has received no written comments from any interested person supporting or opposing this rule since the last five-year review.

### 5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary because it provides appropriate financial reporting, accounting, and funding timing guidance to public utilities in Utah with certain postretirement benefit obligations to current and future retirees. Therefore, this rule should be continued.

## Agency Authorization Information

<b>Agency head or designee and title:</b>	Thad LeVar, PSC Chair	<b>Date:</b>	06/02/2023
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End of the Five-Year Notices of Review and Statements of Continuation Section

## 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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NOTICE OF FIVE-YEAR REVIEW EXTENSION		
Rule Number:	R23-30	Filing ID: 55148
New Deadline Date:	11/08/2023	

### Agency Information

1. Department:	Government Operations		
Agency:	Facilities	Construction	and Management
Room number:	3626		
Building:	Taylorsville State Office Building		
Street address:	4315 S 2700 W, 3rd Floor		
City, state and zip:	Taylorsville, UT 84129		
Contact persons:			
Name:	Phone:	Email:	
Mike Kelley	801-957-7239	mkelley@agutah.gov	

Michelle Adams	801-957-7240	michelledadams@agutah.gov
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Please address questions regarding information on this notice to the persons listed above.

### General Information

2. Rule catchline:
R23-30. State Facility Energy Efficiency Fund
3. Reason for requesting the extension:
The Division of Facilities Construction and Management is filing this extension to keep the rule in place until the rule finishes the repeal process.

### Agency Authorization Information

Agency head or designee and title:	James Russell, Director	Date:	06/13/2023
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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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### Agriculture and Food

#### Animal Industry

No. 55320 (Amendment) R58-18: Elk Farming  
Published: 05/01/2023  
Effective: 06/13/2023

No. 55321 (Amendment) R58-20: Domesticated Elk  
Hunting Parks  
Published: 05/01/2023  
Effective: 06/13/2023

No. 55375 (New Rule) R58-28: Veterinarian Education  
Loan Repayment Program  
Published: 05/15/2023  
Effective: 06/22/2023

#### Marketing and Development

No. 55342 (Amendment) R65-11: Utah Sheep Marketing  
Order  
Published: 05/15/2023  
Effective: 06/22/2023

#### Plant Industry

No. 55315 (Amendment) R68-8: Utah Seed Law  
Published: 05/15/2023  
Effective: 06/22/2023

No. 55325 (Amendment) R68-27: Cannabis Cultivation  
Published: 05/01/2023  
Effective: 06/13/2023

No. 55343 (Amendment) R68-28: Cannabis Processing  
Published: 05/15/2023  
Effective: 06/22/2023

No. 55344 (Amendment) R68-30: Independent Cannabis  
Testing Laboratory  
Published: 05/15/2023  
Effective: 06/22/2023

### Commerce

#### Professional Licensing

No. 55326 (Amendment) R156-55c: Plumber Licensing Act  
Rule  
Published: 05/01/2023  
Effective: 06/20/2023

### Education

#### Administration

No. 55328 (Amendment) R277-301: Educator Licensing  
Published: 05/01/2023  
Effective: 06/07/2023

No. 55329 (Amendment) R277-312: Online Educator  
Licensure  
Published: 05/01/2023  
Effective: 06/07/2023

No. 55294 (Amendment) R277-419: Pupil Accounting  
Published: 04/15/2023  
Effective: 07/01/2023

No. 55330 (Repeal) R277-492: Math and Science  
Opportunities for Students and Teachers (MOST) Program  
Published: 05/01/2023  
Effective: 06/07/2023

No. 55331 (Amendment) R277-609: Standards for LEA  
Discipline Plans and Emergency Safety Interventions  
Published: 05/01/2023  
Effective: 06/13/2023

No. 55332 (Amendment) R277-800: Utah Schools for the  
Deaf and the Blind  
Published: 05/01/2023  
Effective: 06/07/2023

## NOTICES OF RULE EFFECTIVE DATES

No. 55333 (Amendment) R277-926: Certification of Residential Treatment Center Special Education Program  
Published: 05/01/2023  
Effective: 06/07/2023

### Government Operations

Human Resource Management  
No. 55359 (Amendment) R477-1: Definitions  
Published: 05/15/2023  
Effective: 07/01/2023

No. 55372 (Amendment) R477-2: Administration  
Published: 05/15/2023  
Effective: 07/01/2023

No. 55362 (Amendment) R477-4: Filling Positions  
Published: 05/15/2023  
Effective: 07/01/2023

No. 55363 (Amendment) R477-5: Probationary Period  
Published: 05/15/2023  
Effective: 07/01/2023

No. 55364 (Amendment) R477-6: Compensation  
Published: 05/15/2023  
Effective: 07/01/2023

No. 55365 (Amendment) R477-7: Leave  
Published: 05/15/2023  
Effective: 07/01/2023

No. 55366 (Amendment) R477-8: Working Conditions  
Published: 05/15/2023  
Effective: 07/01/2023

No. 55367 (Amendment) R477-10: Employee Development  
Published: 05/15/2023  
Effective: 07/01/2023

No. 55368 (Amendment) R477-12: Separations  
Published: 05/15/2023  
Effective: 07/01/2023

No. 55369 (Amendment) R477-13: Volunteer Programs  
Published: 05/15/2023  
Effective: 07/01/2023

No. 55370 (Amendment) R477-15: Workplace Harassment Prevention  
Published: 05/15/2023  
Effective: 07/01/2023

No. 55371 (Amendment) R477-16: Abusive Conduct Prevention  
Published: 05/15/2023  
Effective: 07/01/2023

### Health and Human Services

Population Health, Environmental Health  
No. 55300 (Amendment) R392-200: Sanitation and Safety of Schools  
Published: 04/15/2023  
Effective: 06/14/2023

Health Care Financing, Coverage and Reimbursement Policy  
No. 55340 (Amendment) R414-9: Federally Qualified Health Centers and Rural Health Clinics  
Published: 05/01/2023  
Effective: 06/12/2023

No. 55298 (Repeal) R414-100: Medicaid Primary Care Network Services  
Published: 04/15/2023  
Effective: 06/14/2023

Health Care Facility Licensing  
No. 55310 (Amendment) R432-31: Life with Dignity Order  
Published: 05/01/2023  
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Disease Control and Prevention, Laboratory Services  
No. 55266 (Amendment) R438-15: Newborn Screening  
Published: 03/15/2023  
Effective: 07/10/2023

### Higher Education (Utah Board of)

Administration  
No. 55255 (Repeal) R765-605: Higher Education Success Stipend Program  
Published: 03/15/2023  
Effective: 06/23/2023

### Insurance

Administration  
No. 55334 (Repeal and Reenact) R590-67: Proxy Solicitations and Consent and Authorization of Stockholders of Domestic Stock Insurers  
Published: 05/01/2023  
Effective: 06/09/2023

No. 55335 (Repeal and Reenact) R590-68: Insider Trading of Equity Securities of Domestic Stock Insurance Companies  
Published: 05/01/2023  
Effective: 06/09/2023

No. 55180 (Amendment) R590-102: Insurance Department Fee Payment Rule  
Published: 01/15/2023  
Effective: 06/21/2023

No. 55180 (Change in Proposed Rule) R590-102: Insurance Department Fee Payment Rule  
Published: 05/15/2023  
Effective: 06/21/2023

NOTICES OF RULE EFFECTIVE DATES

No. 55336 (Amendment) R590-216: Standards for  
Safeguarding Customer Information  
Published: 05/01/2023  
Effective: 06/09/2023

No. 55341 (Repeal and Reenact) R590-220: Submission of  
Accident and Health Insurance Filings  
Published: 05/01/2023  
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No. 55387 (Amendment) R590-237: Access to Health Care  
Providers in Rural Counties  
Published: 05/15/2023  
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No. 55389 (Amendment) R590-262: Health Data Authority  
Health Insurance Claims Reporting  
Published: 05/15/2023  
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No. 55337 (Amendment) R590-264: Property and Casualty  
Actuarial Opinion Rule  
Published: 05/01/2023  
Effective: 06/09/2023

No. 55338 (Amendment) R590-266: Utah Essential Health  
Benefits Package  
Published: 05/01/2023  
Effective: 06/09/2023

No. 55256 (Amendment) R590-283-6: Reporting  
Published: 03/15/2023  
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No. 55256 (Change in Proposed Rule) R590-283-6:  
Reporting  
Published: 05/01/2023  
Effective: 06/09/2023

Public Safety

Driver License

No. 55317 (New Rule) R708-55: Foreign Driver License  
Reciprocity  
Published: 05/01/2023  
Effective: 06/07/2023

Transportation

Operations, Traffic and Safety

No. 55374 (Amendment) R920-50-3: Governing Standards  
Published: 05/15/2023  
Effective: 06/21/2023

Workforce Services

Housing and Community Development

No. 55322 (Amendment) R990-200-3: Definitions  
Published: 05/01/2023  
Effective: 06/07/2023

**End of the Notices of Rule Effective Dates Section**



