

Utah Code -- Title 04 -- Chapter 02 -- Department - State Chemist - Enforcement

4-2-1. Department created.

There is hereby created within state government the Department of Agriculture and Food which is responsible in this state for the administration and enforcement of all laws, services, functions, and consumer programs related to agriculture as assigned to the department by the Legislature.

4-2-2. Functions, powers, and duties of department -- Fees for services -- Marketing orders -- Procedure.

(1) The department has and shall exercise the following functions, powers, and duties:
(a) to inquire into and promote the interests and products of agriculture and its allied industries;

(b) to promote methods for increasing the production and facilitating the distribution of the agricultural products of the state;

(c) (i) to inquire into the cause of contagious, infectious, and communicable diseases among livestock and the means for their prevention and cure; and

(ii) to initiate, implement, and administer plans and programs to prevent the spread of diseases among livestock;

(d) to encourage experiments designed to determine the best means and methods for the control of diseases among domestic and wild animals;

(e) to issue marketing orders for any designated agricultural product to:

(i) promote orderly market conditions for any product;

(ii) give the producer a fair return on the producer's investment at the marketplace; and

(iii) only promote and not restrict or restrain the marketing of Utah agricultural commodities;

(f) to administer and enforce all laws assigned to the department by the Legislature;

(g) to establish standards and grades for agricultural products and fix and collect reasonable fees for services performed by the department in conjunction with the grading of agricultural products;

(h) to establish operational standards for any establishment which manufactures, processes, produces, distributes, stores, sells, or offers for sale any agricultural product;

(i) to promulgate, subject to Title 63, Chapter 46a, Utah Administrative Rulemaking Act, rules necessary for the effective administration of the agricultural laws of the state;

(j) to make investigations, subpoena witnesses and records, conduct hearings, issue orders, and make recommendations concerning all matters related to agriculture;

(k) (i) to inspect any nursery, orchard, farm, garden, park, cemetery, greenhouse, or any private or public place which may become infested or infected with harmful insects, plant diseases, noxious or poisonous weeds, or other agricultural pests;

(ii) to establish and enforce quarantines;

(iii) to issue and enforce orders and regulations for the control and eradication of pests, wherever they may exist within the state; and

(iv) to perform other duties relating to plants and plant products considered advisable and not contrary to law;

(l) to inspect apiaries for diseases inimical to bees and beekeeping;

(m) to take charge of any agricultural exhibit within the state, if considered necessary by the department, and award premiums at that exhibit;

(n) to assist the Soil Conservation Commission in the administration of Title 4, Chapter 18, Soil Conservation Commission Act, and administer and disburse any funds which are available for the purpose of assisting soil conservation districts in the state in the conservation of the state's soil and water resources; and

(o) to perform any additional functions, powers, and duties provided by law.

(2) Unless otherwise provided by statute, the department may adopt a schedule of fees

assessed for services provided by the department. The fee shall be reasonable and fair, and shall be submitted to and approved by the Legislature as part of the department's annual appropriations request. The department may not charge or collect any fee proposed in this manner without approval by the Legislature.

(3) (a) No marketing order issued under Subsection (1)(e) is effective until:

(i) notice of the proposed order is given to the producers and handlers of the affected product;

(ii) a hearing conducted by the commissioner is held on the proposed order; and

(iii) at least 50% of the registered producers and handlers of the affected products vote in favor of the proposed order.

(b) The department may establish boards of control to administer marketing orders and the proceeds derived from any order. It shall be the responsibility of a board of control to:

(i) ensure that all proceeds are placed in an account in the name of the board of control in a depository institution; and

(ii) ensure that the account is annually audited by an accountant approved by the commissioner.

(4) Funds collected by grain grading, as provided by Subsection (1)(g), shall be deposited in the General Fund as nonlapsing dedicated credits for the grain grading program.

4-2-3. Administration by commissioner.

Administration of the department is under the direction, control, and management of a commissioner appointed by the governor with the consent of the Senate. The commissioner shall serve at the pleasure of the governor. The governor shall establish the commissioner's compensation within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.

4-2-4. Organization of divisions within department.

The commissioner shall organize the department into divisions, as necessary, for the efficient administration of the department's business.

4-2-5. Submission of department's budget.

The commissioner, on or before October 1 of each year, shall submit an itemized budget for the department to the governor. The proposed budget shall contain a complete plan of proposed expenditures and estimated revenues for the ensuing fiscal year and

shall be accompanied by a statement setting forth the revenues and expenditures for the fiscal year next preceding, and the current assets and liabilities of the department, including restricted revenue accounts and dedicated credits.

4-2-6. Official seal -- Authentication of records.

The department shall adopt and use an official seal, a description and impression of which shall be filed with the Division of Archives. Copies of official department records, documents, and proceedings may be authenticated with the seal attested by the commissioner.

4-2-7. Agricultural Advisory Board created -- Composition -- Responsibility -- Terms of office -- Compensation.

(1) There is created the Agricultural Advisory Board composed of 12 members representing each of the following:

- (a) Utah Farm Bureau Federation;
- (b) Utah Farmers Union;
- (c) Utah Cattlemen's Association;
- (d) Utah Wool Growers' Association;
- (e) Utah Dairymen's Association;
- (f) Utah Veterinary Medical Association;
- (g) Livestock Auction Marketing Association;
- (h) Utah Association of Conservation Districts;
- (i) the Utah horse industry;
- (j) the food processing industry;
- (k) manufacturers of food supplements; and
- (l) a consumer affairs group.

(2) The Agricultural Advisory Board shall advise the commissioner regarding the planning, implementation, and administration of the department's programs.

(3) (a) Except as required by Subsection (3)(c), members are appointed by the commissioner to four-year terms of office.

(b) Representatives of the organizations cited in Subsections (1)(a) through (1)(h) shall be appointed to the Agricultural Advisory Board by the commissioner from a list of nominees submitted by each organization.

(c) Notwithstanding the requirements of Subsection (3)(a), the commissioner shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(d) Members may be removed at the discretion of the commissioner upon the request of the group they represent.

(e) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(4) The board shall elect one member to serve as chair of the Agricultural Advisory Board for a term of one year.

(5) (a) The board shall meet four times annually, but may meet more often at the discretion of the chair.

(b) Attendance of seven members at a duly called meeting constitutes a quorum for

the transaction of official business.

(6) (a) Members shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections **63A-3-106** and **63A-3-107**.

(b) Members may decline to receive per diem and expenses for their service.

4-2-8. Temporary advisory committees -- Appointment -- Compensation.

The commissioner may request the governor to appoint other advisory committees on a temporary basis to offer technical advice to the department. Members of any such committee shall serve at the pleasure of the commissioner and be compensated at the rates established by the director of the Division of Finance under Sections **63A-3-106** and **63A-3-107**.

4-2-9. Appointment.

The state chemist shall be appointed by the commissioner.

4-2-10. Responsibilities.

The state chemist shall serve as the chief administrative officer of the Division of Laboratories and shall be responsible for the supervision and administration of all analytical tests required to be performed under this code or under any regulations promulgated pursuant to it. The state chemist may perform analytical tests for other state agencies, federal agencies, units of local government and private persons if such tests and analytical work do not interfere with, or impede, the work required by the department, and if a charge commensurate with the work involved is made and collected. The state chemist shall perform any other official duties assigned by the commissioner.

4-2-11. Attorney general legal advisor for department -- County or district attorney may bring action upon request of department for violations of title.

(1) The attorney general is the legal advisor for the department and shall defend the department and its representatives in all actions and proceedings brought against it.

(2) The county attorney or the district attorney as provided under Sections **17-18-1**, **17-18-1.5**, and **17-18-1.7** of the county in which a cause of action arises or a public offense occurs may bring civil or criminal action, upon request of the department, to enforce the laws, standards, orders, and rules of the department or to prosecute violations of this title. If the county attorney or district attorney fails to act, the department may request the attorney general to bring an action on behalf of the department.

4-2-12. Notice of violation -- Order for corrective action.

(1) Whenever the department determines that any person, or any officer or employee of any person, is violating any requirement of this title or rules adopted under this title, the department shall serve written notice upon the alleged violator which specifies the violation and alleges the facts constituting the violation.

(2) After serving notice as required in Subsection (1), the department may issue an order for necessary corrective action and request the attorney general or the county

attorney or the district attorney to seek injunctive relief and enforcement of the order as provided in Subsection **4-2-11** (2).

4-2-14. Violations of title unlawful.

It is unlawful for any person, or the officers or employees of any person, to willfully violate, disobey, or disregard this title or any notice or order issued under this title.

4-2-15. Civil and criminal penalties -- Costs -- Civil liability.

(1) Except as otherwise provided by this title, any person, or the officers or employees of any person, who violates this title or any lawful notice or order issued pursuant to this title shall be assessed a penalty not to exceed \$5,000 per violation in a civil proceeding, and in a criminal proceeding is guilty of a class B misdemeanor. A subsequent criminal violation within two years is a class A misdemeanor.

(2) Any person, or the officers or employees of any person, shall be liable for any expenses incurred by the department in abating any violation of this title.

(3) A penalty assessment or criminal conviction under this title shall not relieve the person assessed or convicted from civil liability for claims arising out of any act which was also a violation.