

## Chapter 2 Department - State Chemist - Enforcement

### Part 1 Department Organization

#### 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.

Amended by Chapter 82, 1997 General Session

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

(1) The department shall:

- (a) inquire into and promote the interests and products of agriculture and its allied industries;
- (b) promote methods for increasing the production and facilitating the distribution of the agricultural products of the state;
- (c)
  - (i) inquire into the cause of contagious, infectious, and communicable diseases among livestock and the means for their prevention and cure; and
  - (ii) initiate, implement, and administer plans and programs to prevent the spread of diseases among livestock;
- (d) encourage experiments designed to determine the best means and methods for the control of diseases among domestic and wild animals;
- (e) 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) administer and enforce all laws assigned to the department by the Legislature;
- (g) 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) establish operational standards for any establishment that manufactures, processes, produces, distributes, stores, sells, or offers for sale any agricultural product;
- (i) adopt, according to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, rules necessary for the effective administration of the agricultural laws of the state;
- (j) when necessary, make investigations, subpoena witnesses and records, conduct hearings, issue orders, and make recommendations concerning all matters related to agriculture;
- (k)
  - (i) inspect any nursery, orchard, farm, garden, park, cemetery, greenhouse, or any private or public place that may become infested or infected with harmful insects, plant diseases, noxious or poisonous weeds, or other agricultural pests;
  - (ii) establish and enforce quarantines;
  - (iii) issue and enforce orders and rules for the control and eradication of pests, wherever they may exist within the state; and

- (iv) perform other duties relating to plants and plant products considered advisable and not contrary to law;
  - (l) inspect apiaries for diseases inimical to bees and beekeeping;
  - (m) take charge of any agricultural exhibit within the state, if considered necessary by the department, and award premiums at that exhibit;
  - (n) assist the Conservation Commission in the administration of Title 4, Chapter 18, Conservation Commission Act, and administer and disburse any funds available to assist conservation districts in the state in the conservation of the state's soil and water resources;
  - (o) participate in the United States Department of Agriculture certified agricultural mediation program, in accordance with 7 U.S.C. Sec. 5101 and 7 C.F.R. Part 785;
  - (p) promote and support the multiple use of public lands; and
  - (q) perform any additional functions, powers, and duties provided by law.
- (2) The department, by following the procedures and requirements of Section 63J-1-504, may adopt a schedule of fees assessed for services provided by the department.
- (3)
- (a) No marketing order issued under Subsection (1)(e) shall take effect until:
    - (i) the department gives notice of the proposed order to the producers and handlers of the affected product;
    - (ii) the commissioner conducts a hearing 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)
    - (i) The department may establish boards of control to administer marketing orders and the proceeds derived from any order.
    - (ii) The board of control shall:
      - (A) ensure that all proceeds are placed in an account in the board of control's name in a depository institution; and
      - (B) 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 dedicated credits for the grain grading program.

Amended by Chapter 383, 2011 General Session

#### **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.

Amended by Chapter 176, 2002 General Session

#### **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.

Amended by Chapter 15, 1987 General Session

**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.

Enacted by Chapter 2, 1979 General Session

**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.

Amended by Chapter 67, 1984 General Session

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

(1) There is created the Agricultural Advisory Board composed of 21 members, with each member representing one 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 Pork Producer's Association;
- (g) egg and poultry producers;
- (h) Utah Veterinary Medical Association;
- (i) Livestock Auction Marketing Association;
- (j) Utah Association of Conservation Districts;
- (k) the Utah horse industry;
- (l) the food processing industry;
- (m) the fruit and vegetable industry;
- (n) the turkey industry;
- (o) manufacturers of food supplements;
- (p) a consumer affairs group;
- (q) dean of the College of Agriculture and Applied Science and vice president of extension from Utah State University;
- (r) urban and small farmers;
- (s) Utah Elk Breeders Association;
- (t) Utah Beekeepers Association; and
- (u) Utah Fur Breeders Association.

(2)

- (a) The Agricultural Advisory Board shall advise the commissioner regarding:
  - (i) the planning, implementation, and administration of the department's programs; and

- (ii) the establishment of standards governing the care of livestock and poultry, including consideration of:
  - (A) food safety;
  - (B) local availability and affordability of food; and
  - (C) acceptable practices for livestock and farm management.
- (b) The Agricultural Advisory Board shall fulfill the duties described in Title 4, Chapter 2, Part 5, Horse Tripping Awareness.
- (3)
  - (a) Except as required by Subsection (3)(c), members are appointed by the commissioner to four-year terms of office.
  - (b) The commissioner shall appoint representatives of the organizations cited in Subsections (1) (a) through (h) to the Agricultural Advisory Board 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 11 members at a duly called meeting constitutes a quorum for the transaction of official business.
- (6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
  - (a) Section 63A-3-106;
  - (b) Section 63A-3-107; and
  - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 19, 2016 General Session

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

- (1) The commissioner with the permission of the governor, may appoint other advisory committees on a temporary basis to offer technical advice to the department.
- (2) A member of a committee serves at the pleasure of the commissioner.
- (3) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
  - (a) Section 63A-3-106;
  - (b) Section 63A-3-107; and
  - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 383, 2011 General Session

**4-2-8.5 Salinity Offset Fund.**

- (1) As used in this section, "Colorado River Salinity Offset Program" means a program, administered by the Division of Water Quality, allowing oil, gas, or mining companies and other entities to provide funds to finance salinity reduction projects in the Colorado River Basin by purchasing salinity credits as offsets against discharges made by the company under permits issued by the Division of Water Quality.
- (2)
  - (a) There is created an expendable special revenue fund known as the "Salinity Offset Fund."
  - (b) The fund shall consist of:
    - (i) money received from the Division of Water Quality that has been collected as part of the Colorado River Salinity Offset Program;
    - (ii) grants from local governments, the state, or the federal government;
    - (iii) grants from private entities; and
    - (iv) interest on fund money.
- (3)
  - (a) The department shall:
    - (i) subject to the rules established under Subsection (3)(a)(ii), distribute fund money to farmers, ranchers, mutual irrigation companies, and other entities in the state to assist in financing irrigation, rangeland, and watershed improvement projects that will, in accordance with the Colorado River Salinity Offset Program, reduce salinity in the Colorado River; and
    - (ii) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules establishing:
      - (A) a project funding application process;
      - (B) project funding requirements;
      - (C) project approval criteria; and
      - (D) standards for evaluating the effectiveness of funded projects in reducing salinity in the Colorado River.
  - (b) The department may require entities seeking fund money to provide matching funds.
  - (c) The department shall submit to the Division of Water Quality proposed funding projects for the division's review and approval.
  - (d) The Division of Water Quality and the department shall establish a committee to review and approve projects, as funding allows.
- (4)
  - (a) Except as provided in Subsection (4)(b), the department may use fund money for the administration of the fund, but this amount may not exceed 10% of the receipts to the fund.
  - (b) The department may not use earned interest for administration of the fund.

Amended by Chapter 411, 2014 General Session

**4-2-8.6 Cooperative agreements and grants to rehabilitate areas infested with or threatened by invasive species.**

After consulting with the Department of Natural Resources and the Conservation Commission, the department may:

- (1) enter into a cooperative agreement with a political subdivision, a state agency, a federal agency, or a federal, state, tribal, a county weed board, a cooperative weed management area, a university, or private landowner to:
  - (a) rehabilitate or treat an area infested with, or threatened by, an invasive species; or
  - (b) conduct research related to invasive species;
- (2) expend money from the Invasive Species Mitigation Account created in Section 4-2-8.7; and

- (3) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules to:
- (a) administer this section; and
  - (b) give grants from the Invasive Species Mitigation Account.

Amended by Chapter 411, 2014 General Session

**4-2-8.7 Invasive Species Mitigation Account created.**

- (1) As used in this section, "project" means an undertaking that:
- (a) rehabilitates or treats an area infested with, or threatened by, an invasive species; or
  - (b) conducts research related to invasive species.
- (2)
- (a) There is created a restricted account within the General Fund known as the "Invasive Species Mitigation Account."
  - (b) The restricted account shall consist of:
    - (i) money appropriated by the Legislature;
    - (ii) grants from the federal government; and
    - (iii) grants or donations from a person.
- (3)
- (a) After consulting with the Department of Natural Resources and the Conservation Commission, the department may expend money in the restricted account:
    - (i) on a project implemented by:
      - (A) the department; or
      - (B) the Conservation Commission; or
    - (ii) by giving a grant for a project to:
      - (A) a state agency;
      - (B) a federal agency;
      - (C) a federal, state, tribal, or private landowner;
      - (D) a political subdivision;
      - (E) a county weed board;
      - (F) a cooperative weed management area; or
      - (G) a university.
  - (b) The department may use up to 10% of restricted account funds appropriated under Subsection ( 2)(b)(i) on:
    - (i) department administration; or
    - (ii) project planning, monitoring, and implementation expenses.
  - (c) A project that receives funds from the Invasive Species Mitigation Account may not spend more than 10% of an award of funds on planning and administration costs.
  - (d) A federal landowner that receives restricted account funds for a project shall match the funds received from the restricted account with an amount that is equal to or greater than the amount received from the restricted account.
- (4) In giving a grant, the department shall consider the effectiveness of a project in the rehabilitation or treatment of an area infested with, or threatened by, an invasive species.

Amended by Chapter 411, 2014 General Session

**Part 2**

## State Chemist

### **4-2-9 Appointment.**

The state chemist shall be appointed by the commissioner.

Amended by Chapter 10, 1997 General Session

Amended by Chapter 81, 1997 General Session

### **4-2-10 State chemist responsibilities.**

- (1) The state chemist shall:
  - (a) serve as the chief administrative officer of the Division of Laboratories; and
  - (b) supervise and administer all analytical tests required to be performed under this title or under any rule authorized by it.
- (2) The state chemist may perform analytical tests for other state agencies, federal agencies, units of local government, and private persons if:
  - (a) the tests and analytical work do not interfere with, or impede, the work required by the department; and
  - (b) a charge commensurate with the work involved is made and collected.
- (3) The state chemist shall perform any other official duties assigned by the commissioner.

Amended by Chapter 179, 2007 General Session

## **Part 3 Enforcement and Penalties**

### **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 17-18a-202 and 17-18a-203 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.

Amended by Chapter 237, 2013 General Session

### **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).

Amended by Chapter 79, 1996 General Session

**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.

Enacted by Chapter 104, 1985 General Session

**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 does not relieve the person assessed or convicted from civil liability for claims arising out of any act which was also a violation.

Amended by Chapter 378, 2010 General Session

**Part 4  
State Veterinarian**

**4-2-401 Appointment.**

The state veterinarian shall be appointed by the commissioner.

Enacted by Chapter 41, 2014 General Session

**4-2-402 State veterinarian responsibilities.**

- (1) The state veterinarian shall:
  - (a) coordinate the department's responsibilities for:
    - (i) the promotion of animal health;
    - (ii) the diagnosis, surveillance, and prevention of animal disease; and
    - (iii) livestock brand registration and inspection;
  - (b) aid the meat inspection manager, whose duties are specified by the commissioner, in the direction of the inspection of meat and poultry; and
  - (c) perform other official duties assigned by the commissioner.
- (2) The state veterinarian may not receive compensation for services provided while engaging in the private practice of veterinary medicine.
- (3) The state veterinarian shall be a veterinarian licensed under Title 58, Chapter 28, Veterinary Practice Act.

Amended by Chapter 18, 2016 General Session

## **Part 5 Horse Tripping Awareness**

### **4-2-501 Title.**

This part is known as "Horse Tripping Awareness."

Enacted by Chapter 128, 2015 General Session

### **4-2-502 Definitions.**

As used in this part:

- (1) "Board" means the Agricultural Advisory Board created in Section 4-2-7.
- (2) "Horse event" means an event in which horses are roped or tripped for the purpose of a specific event or contest.
- (3)
  - (a) "Horse tripping" means the lassoing or roping of the legs of an equine, or otherwise tripping or causing an equine to fall by any means, for the purpose of entertainment, sport, or contest, or practice for entertainment, sport, or contest.
  - (b) "Horse tripping" does not include accepted animal husbandry practices, customary farming practices, or commonly accepted practices occurring in conjunction with a sanctioned rodeo, animal race, or pulling contest.

Enacted by Chapter 128, 2015 General Session

### **4-2-503 Event reporting requirements.**

- (1) The owner of a venue holding a horse event shall:
  - (a) at least 30 days before the day on which the horse event is to be held, notify the board of the date, time, and name of the horse event; and
  - (b) no later than 30 days after the day on which the horse event is held, notify the board of:
    - (i) the number and type of competitions held at the horse event;
    - (ii) the number of horses used;
    - (iii) whether horse tripping occurred, and if so how many horses were used in horse tripping and how many times each horse was tripped; and
    - (iv) whether a veterinarian was called during the horse event, and if so:
      - (A) the name and contact information of the veterinarian;
      - (B) the outcome of the veterinarian's examination of a horse; and
      - (C) all veterinarian charges incurred.
- (2)
  - (a) The department shall compile all reports received pursuant to Subsection (1) and provide the information to the board.
  - (b) The board shall, at a meeting described in Subsection 4-2-7(5)(a):
    - (i) review the information described in Subsection (2)(a); and
    - (ii) if necessary, make recommendations for rules or legislation designed to prohibit horse tripping.

- (3) The department shall fine the owner of a venue that fails to fulfill the duties described in Subsection (1) \$500 per violation.
- (4) The department, in consultation with the board, shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to enforce this part.

Enacted by Chapter 128, 2015 General Session

**4-2-504 Horse tripping education -- Reporting requirements.**

- (1) The department, in conjunction with the board, shall:
  - (a) send a letter, annually, to venues that host horse events:
    - (i) outlining the reporting requirements of Section 4-2-503; and
    - (ii) providing educational information on the negative effects of horse tripping; and
  - (b) promote, as funding allows, policies regarding the safety and welfare of horses involved in horse events, such as horse roping and horse tripping.
- (2) The department and the board shall, by November 30, 2015, report to the Natural Resources, Agriculture, and Environment Interim Committee about:
  - (a) reported incidents of horse tripping;
  - (b) any recommendations made by the board pursuant to Subsection 4-2-503(2)(b); and
  - (c) the progress made in educating the public under Subsection (1).

Enacted by Chapter 128, 2015 General Session