

DEPARTMENT OF AGRICULTURE AND FOOD

AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: David Ure

LONG TITLE

General Description:

This bill modifies the Agriculture Code by amending provisions relating to weights and measures, registration fees, and the sale of raw milk.

Highlighted Provisions:

This bill:

- ▶ amends conditions under which raw milk may be sold;
- ▶ requires food establishments and entities using weights and measures in commerce or trade to be registered by the Department of Agriculture and Food;
- ▶ enacts conditions for registration and allows the Department of Agriculture and Food to charge registration fees;
- ▶ designates fees as dedicated credits;
- ▶ designates information regarding food security assessments as a protected record under the Government Records Access and Management Act; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

4-3-14, as last amended by Chapter 1, Laws of Utah 1980

4-5-2, as last amended by Chapter 157, Laws of Utah 1990

- 4-5-3, as last amended by Chapter 157, Laws of Utah 1990
- 4-5-9, as enacted by Chapter 2, Laws of Utah 1979
- 4-9-1, as enacted by Chapter 2, Laws of Utah 1979
- 4-9-3, as enacted by Chapter 2, Laws of Utah 1979
- 4-9-4, as enacted by Chapter 2, Laws of Utah 1979
- 4-9-5, as enacted by Chapter 2, Laws of Utah 1979
- 4-9-5.2, as enacted by Chapter 19, Laws of Utah 1985
- 4-9-5.3, as enacted by Chapter 19, Laws of Utah 1985
- 4-9-5.4, as enacted by Chapter 19, Laws of Utah 1985
- 4-9-6, as last amended by Chapter 28, Laws of Utah 1995
- 4-9-12, as last amended by Chapter 19, Laws of Utah 1985
- 63-2-304, as last amended by Chapters 60 and 131, Laws of Utah 2003

ENACTS:

4-9-15, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 4-3-14 is amended to read:

4-3-14. Sale of raw milk prohibited -- Exceptions -- Suspension of producer's permit.

(1) [~~The sale of raw~~] Raw milk [~~is prohibited unless~~] may be sold if:

(a) the producer [~~holds~~] obtains a permit [~~issued by~~] from the department to produce milk under Subsection 4-3-8(2);

(b) the sale and delivery of the milk is made upon the premises where the milk is produced;

(c) [~~the sale~~] it is sold to consumers for household use and not for resale;

(d) [~~the milk~~] it is bottled or [~~otherwise contained~~] packaged under sanitary conditions and in sanitary containers on the premises where the milk is produced [~~in sanitary containers furnished by the producer under sanitary conditions;~~];

(e) it is labeled "raw milk[-]" and meets the [other] labeling requirements under 21 C.F.R. Parts 101 and 131 and rules established by the department;

[~~(e)~~] (f) [the milk] it is:

(i) cooled to 50 degrees Fahrenheit or a lower [Fahrenheit] temperature within one hour after being drawn from the [cow and] animal;

(ii) further cooled to 41 degrees Fahrenheit within two hours of being drawn from the animal; and

(iii) maintained at [~~such~~] 41 degrees Fahrenheit or a lower temperature until it is delivered to the consumer;

[~~(f)~~] (g) the bacterial [plate] count of the milk does not exceed;

(i) 20,000 colony forming units per [~~e.c.~~] milliliter, or [the] if individual colonies are counted, a direct microscopic count [~~of which does not exceed~~] in excess of 20,000 colony forming units per [~~e.c. if individual colonies are counted,~~] milliliter; or

(ii) if individual organisms are counted, 80,000 bacteria per [~~e.c. if individual organisms are counted~~] milliliter; [and meets]

(h) the bacterial plate count and the coliform count of the milk meet the [~~coliform count, and~~] bacterial and coliform enforcement standards for grade A pasteurized milk;

[~~(g)~~] (i) the production of the milk conforms [~~in all other particulars to state law and~~] to departmental [~~regulations~~] rules for the production of grade A milk;

[~~(h)~~] (j) all dairy animals on the premises are [~~identified by a mark or breed registration papers and are~~];

(i) permanently and individually identifiable; and

(ii) free of tuberculosis, brucellosis, and other diseases carried through milk; and

[~~(i)~~] (k) [~~all persons~~] any person on the premises performing any work in connection with the production, bottling, handling, or sale of the raw milk [~~are~~] is free from communicable disease.

[~~(2) If the department finds that the production, handling, or sale of milk or the bacteria counts violate those allowed by this section, or that the health of any person or dairy animal offends this section, the permit of such raw milk producer shall be suspended until such time as~~

compliance is had with this section.]

(2) (a) The department shall suspend a permit to produce raw milk issued under Subsection 4-3-8(2) if a milk producer violates any provision of Subsection (1).

(b) The department may reissue a permit to produce raw milk which has been suspended under Subsection (2)(a) if the producer has complied with all of the requirements of Subsection (1).

Section 2. Section **4-5-2** is amended to read:

4-5-2. Definitions.

As used in this chapter:

(1) "Advertisement" means ~~[all representations]~~ a representation, other than by labeling, ~~[for the purpose of inducing]~~ made to induce the purchase of food.

(2) (a) "Color additive" means a dye, pigment, or other substance not exempted under the federal act that, when added or applied to a food, is capable of imparting color. "Color" includes black, white, and intermediate grays.

(b) "Color additive" does not ~~[apply to any]~~ include a pesticide chemical, soil or plant nutrient, or other agricultural chemical which imparts color solely because of its effect, before or after harvest, in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of any plant life~~[-, whether before or after harvest].~~

(3) (a) "Consumer commodity" means~~[-, except as otherwise specifically provided by this subsection, any]~~ a food, as defined by this act, or by the federal act.

(b) "Consumer commodity" does not include:

(i) ~~[any]~~ a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Sec. 136 et seq.~~[-, the Federal Insecticide, Fungicide, and Rodenticide Act or 21 U.S.C. 151 et seq., the Virus-Serum-Toxin Act];~~

(ii) ~~[any]~~ a commodity subject to Title 4, Chapter 16, [the] Utah Seed Act;

(iii) ~~[any]~~ a meat or meat product[-]; subject to the Federal Meat Inspection Act, 21 U.S.C. Sec. 601 et seq.;

(iv) a poultry or poultry product~~[, or]~~ subject to the Poultry Inspection Act, 21 U.S.C. Sec. 451 et seq.;

(v) a tobacco or tobacco product; or

~~[(iv)]~~ (vi) [any] a beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act, 27 U.S.C. Sec. 201, et seq.~~[, the Federal Alcohol Administration Act.]~~

(4) "Contaminated" means not securely protected from dust, dirt, or foreign or injurious agents.

(5) "Federal act" means the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq.~~[, the Federal Food, Drug and Cosmetic Act.]~~

(6) "Food" means:

(a) ~~[articles]~~ an article used for food or drink for ~~[man or animals]~~ human or animal consumption or the components of ~~[those articles]~~ the article;

(b) chewing gum or its components; or

(c) a food ~~[supplements]~~ supplement for special dietary ~~[uses]~~ use which ~~[exist by reason]~~ is necessitated because of a physical, physiological, pathological, or other condition.

(7) (a) "Food additive" means ~~[any]~~ a substance, the intended use of which results in [it] the substance becoming a component, or otherwise affecting the characteristics, of [any] a food [including any]. "Food additive" includes a substance or source of radiation intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food~~[, if that substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures to be safe under the conditions of its intended use. In the case of a substance used in a food prior to January 1, 1958, its safety may be demonstrated through either scientific procedures or experience based on its common use in food].~~

(b) "Food additive" does not include:

(i) a pesticide chemical in or on a raw agricultural commodity;

(ii) a pesticide chemical ~~[to the extent]~~ that [it] is intended for use or is used in the

production, storage, or transportation of ~~[any]~~ a raw agricultural commodity; or

~~[(iii) a color additive; or]~~

~~[(iv) any]~~ (iii) a substance used in accordance with a sanction or approval granted pursuant to ~~[the federal act]~~ the Poultry Products Inspection Act, 21 U.S.C. Sec. 451 et seq.~~[-the Poultry Products Inspection Act,]~~ or the Federal Meat Inspection Act, 21 U.S.C. Sec. 601 et seq.~~[-the Meat Inspection Act.]~~

(8) (a) "Food establishment" means a grocery store, bakery, candy factory, food processor, bottling plant, sugar factory, cannery, rabbit processor, meat processor, flour mill, cold or dry warehouse storage, or other facility where food products are manufactured, canned, processed, packaged, stored, transported, prepared, sold, or offered for sale.

(b) "Food establishment" does not include a dairy farm, a dairy plant, or a meat establishment, which is subject to the Poultry Products Inspection Act, 21 U.S.C. Sec. 451 et seq., or the Federal Meat Inspection Act, 21 U.S.C. Sec. 601 et seq.

~~[(8)]~~ (9) "Label" means a ~~[display of]~~ written, printed, or graphic ~~[matter upon]~~ display on the immediate container of ~~[any]~~ an article of food. ~~[A requirement made by or under the authority of this chapter that any word, statement, or other information appear on the label may not be considered to be complied with unless the word, statement, or other information also appears]~~ The department may require that a label contain specific written, printed, or graphic information which is:

(a) displayed on the outside container or wrapper~~[-if any,]~~ of ~~[the]~~ a retail package of ~~[the]~~ an article~~[-];~~ or ~~[is]~~

(b) easily legible through the outside container or wrapper.

~~[(9)]~~ (10) "Labeling" means ~~[all labels]~~ a label and other written, printed, or graphic ~~[matter]~~ display:

(a) ~~[upon]~~ on an article of food or ~~[any of]~~ its containers or wrappers; or

(b) accompanying the article of food.

~~[(10)]~~ (11) "Official compendium" means the official documents or supplements to the:

(a) United States Pharmacopoeia;

(b) National Formulary ~~[, official]; or~~

(c) Homeopathic Pharmacopoeia of the United States ~~[, or any supplement to them].~~

~~[(11)]~~ (12) (a) "Package" means ~~[any]~~ a container or wrapping in which ~~[any]~~ a consumer commodity is enclosed for use in the delivery or display of the consumer commodity to retail purchasers.

(b) "Package" does not include:

(i) package liners;

(ii) shipping containers or wrapping used solely for the transportation of consumer commodities in bulk or in quantity to manufacturers, packers, processors, or wholesale or retail distributors; or

(iii) shipping containers or outer wrappings used by retailers to ship or deliver ~~[any]~~ a consumer commodity to retail customers, if the containers and wrappings bear no printed ~~[matter pertaining]~~ information relating to the consumer commodity.

~~[(12)]~~ (13) (a) "Pesticide ~~[chemical]~~" means ~~[any]~~ a substance ~~[which]~~ intended:

~~[(a) alone, in chemical combination, or in formulation with one or more other substances is a pesticide within the meaning of 7 U.S.C., Sec. 136(u), the Federal Insecticide, Fungicide, and Rodenticide Act; and]~~

~~[(b) is used in the production, storage, or transportation of raw agricultural commodities;]~~

~~(i) to prevent, destroy, repel, or mitigate a pest, as defined under Subsection 4-14-2(20);~~

or

~~(ii) for use as a plant regulator, defoliant, or desiccant.~~

(b) "Pesticide" does not include:

(i) a new animal drug, as defined by 21 U.S.C. Sec. 321, that has been determined by the United States Secretary of Health and Human Services not to be a new animal drug by federal regulation establishing conditions of use of the drug; or

(ii) animal feed, as defined by 21 U.S.C. Sec. 321, bearing or containing a new animal drug.

~~[(13)]~~ (14) "Principal display panel" means that part of a label that is most likely to be

displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

~~[(14)]~~ (15) "Raw agricultural commodity" means ~~[any]~~ a food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled, natural form prior to marketing.

(16) "Registration" means the issuance of a certificate by the commissioner to a qualified food establishment.

Section 3. Section **4-5-3** is amended to read:

4-5-3. Unlawful acts specified.

(1) ~~[The following acts are prohibited]~~ A person may not:

(a) ~~[the]~~ manufacture, ~~[sale, delivery, holding, or offering]~~ sell, deliver, hold, or offer for sale ~~[of any]~~ a food that is adulterated or misbranded;

(b) ~~[the adulteration or misbranding of any]~~ adulterate or misbrand food;

(c) ~~[the distribution]~~ except as provided in Subsection (2), distribute, in commerce ~~[of]~~, a consumer commodity ~~[which is contained in a package or bears a label that does not conform to]~~ inconsistent with the packaging and labeling requirements of this chapter, or the rules made under this chapter;

(d) ~~[the sale, delivery]~~ sell, deliver for sale, ~~[holding]~~ hold for sale, or ~~[offering]~~ offer for sale ~~[of any]~~ an article in violation of Section 4-5-9;

(e) ~~[the dissemination of any]~~ disseminate false ~~[advertisement]~~ advertising;

(f) ~~[the removal]~~ remove or ~~[disposal]~~ dispose of detained or embargoed food in violation of Section 4-5-5;

(g) ~~[the alteration, mutilation, destruction, obliteration, or removal of]~~ adulterate, mutilate, destroy, obliterate, or remove the food label ~~[of any food, if that act is done while the food is held for sale and]~~ which results in the food being misbranded or adulterated while the food is for sale;

(h) ~~[forging, counterfeiting, simulating, or falsely representing, or without proper authority, using any]~~ forge, counterfeit, simulate, or misrepresent a label or information, by the

~~unauthorized use of a mark, stamp, tag, label, or other identification device [authorized or required by rules made under this chapter]; [and]~~

(i) ~~[the] use or [revelation by any person of any] reveal a method, process, or information which is [entitled to protection] protected as a trade secret[-];~~

~~(j) operate a food establishment without a valid registration issued by the department; and~~

~~(k) refuse entry to an authorized agent of the department in a food establishment as required under Section 4-5-18.~~

(2) Subsection (1)(c) does not apply to ~~[persons] a person~~ engaged in the wholesale or retail distribution of consumer commodities ~~[except to the extent those persons] unless that person:~~

(a) ~~[are] is~~ engaged in the packaging or labeling of consumer commodities; or

(b) ~~[prescribe] prescribes or [specify by any means] specifies~~ the manner in which consumer commodities are packaged or labeled.

Section 4. Section **4-5-9** is amended to read:

4-5-9. Registration of food establishments -- Fee -- Suspension and reinstatement of registration -- Inspection for compliance.

~~[(1) Whenever the department finds after investigation that the distribution in Utah of any class of food may, by reason of contamination with microorganisms during manufacture, processing, or packing in any locality, be injurious to health, and that such injurious nature cannot be adequately determined after such articles have entered commerce, it shall promulgate regulations providing for the issuance of permits to the manufacturers, processors, or packers of such class of food stating the conditions governing the manufacture, processing, or packing of such class of food, for such temporary period as may be necessary to protect the public health; and after the effective date of such regulations and during such temporary period, no person shall introduce or deliver for introduction into commerce any such class of food unless such manufacturer, processor, or packer holds a permit issued by the department.]~~

(1) (a) Pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the department shall establish rules providing for the registration of food establishments to protect

public health and ensure a safe food supply.

(b) The owner or operator of a food establishment shall register with the department before operating a food establishment.

(c) Prior to granting a registration to the owner or operator of a food establishment, the department shall inspect and assess the food establishment to determine whether it complies with the rules established under Subsection (1)(a).

(d) An applicant shall register with the department, in writing, using forms required by the department.

(e) The department shall issue a registration to an applicant, if the department determines that the applicant meets the qualifications of registration established under Subsection (1)(a).

(f) If the applicant does not meet the qualifications of registration, the department shall notify the applicant, in writing, that the applicant's registration is denied.

(g) (i) If an applicant submits an incomplete application, a written notice of conditional denial of registration shall be provided to an applicant.

(ii) The applicant must correct the deficiencies within the time period specified in the notice to receive a registration.

(h) (i) The department may, as provided under Subsection 4-2-2(2), charge the food establishment a registration fee.

(ii) The department shall retain the fees as dedicated credits and shall use the fees to administer the registration of food establishments.

(2) (a) A registration, issued under this section, shall be valid from the date the department issues the registration, to December 31 of the year the registration is issued.

(b) A registration may be renewed for the following year by applying for renewal by December 31 of the year the registration expires.

(3) A registration, issued under this section, shall specify:

(a) the name and address of the food establishment;

(b) the name of the owner or operator of the food establishment; and

(c) the registration issuance and expiration date.

~~[(2)]~~ (4) (a) The department ~~[is authorized to]~~ may immediately suspend ~~[immediately upon notice any permit]~~ a registration, issued under ~~[authority of]~~ this section, if ~~[it is found that]~~ any of the conditions of ~~[the permit]~~ registration have been violated.

(b) (i) The holder of a ~~[permit so]~~ registration suspended ~~[shall be privileged at any time to]~~ under Subsection (4)(a) may apply for the reinstatement of ~~[such permit, and]~~ a registration.

(ii) ~~If the department [shall, immediately after prompt hearing and an inspection of the establishment, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued, or as amended] determines that all registration requirements have been met, the department shall reinstate the~~ registration.

~~[(3)]~~ (5) (a) ~~[Any officer or employee duly designated by]~~ A food establishment, registered under this section, shall allow the department ~~[shall]~~ to have access to ~~[any factory or the food establishment[, the operator of which holds a permit from the department for the purpose of ascertaining whether or not] to determine if the [conditions of the permit are being complied with, and denial of]~~ food establishment is complying with the registration requirements.

(b) ~~If a food establishment denies access for [such] an inspection [shall be ground for suspension of the permit] required under Subsection (5)(a), the department may suspend the food establishment's registration until [such] the department is allowed access [is freely given by the operator] to the food establishment's premises.~~

Section 5. Section **4-9-1** is amended to read:

4-9-1. Definitions.

As used in this chapter:

(1) "Correct" ~~[as, when]~~ when used in connection with weights and measures, means conformance to ~~[all]~~ applicable requirements of this chapter~~[:]~~.

(2) "Package" means ~~[any]~~ a commodity put up or packaged ~~[in any manner in advance of] before sale in [units suitable for] either wholesale or retail sale[:]~~units.

(3) "Primary standards" mean the physical standards of the state, described in Section 4-9-4, which ~~[serve as]~~ are the legal reference from which all other standards and weights and

measures are derived[;].

(4) "Sale from bulk" means the sale of commodities, when the quantity is determined at the time of sale[;].

(5) "Secondary standards" ~~[mean]~~ means a physical [standards] standard which ~~[are]~~ is traceable to primary standards through comparisons, using acceptable laboratory procedures[;].

(6) "Weighing and measuring" means the use of weights and measures.

~~[(6)]~~ (7) "Weight" means net weight, unless the label declares that the product is sold by drained weight, in which [event, it] case, "weight" means net drained weight[; and].

~~[(7)]~~ (8) "Weights and measures" [mean all] means weights and measures [of every kind], and [any instrument or device] instruments or devices used for weighing or measuring [together with any], including an appliance or accessory associated with [such an] the instrument or device.

(9) "Weights and measures registration" means the issuance of a certificate by the commissioner to a weights and measures user.

(10) "Weights and measures user" means a person who uses weights and measures in trade or commerce.

Section 6. Section **4-9-3** is amended to read:

4-9-3. Weights and measures -- Systems used -- Basic units, tables, and equivalents as published by National Institute of Standards and Technology.

~~[The]~~ (1) The department shall use the same system of weights and measures [in customary use] that is customarily used in the United States, and the metric system of weights and measures [are jointly recognized, and either one or both of these systems shall].

(2) Either system may be used for [all] commercial purposes in [this] the state.

(3) The definitions of basic units of weight and measure, the tables of weight and measure, and the weights and measures equivalents published by the National [Bureau] Institute of Standards and Technology, shall ~~[govern]~~ determine the weights and measures systems used within [this] the state.

Section 7. Section **4-9-4** is amended to read:

4-9-4. Weights and measures -- Primary state standards -- Secondary state

standards -- Verification.

(1) Weights and measures that are traceable to the United States prototype standards supplied by the federal government, or approved as being satisfactory by the National ~~[Bureau]~~ Institute of Standards and Technology, shall be the state primary standards, and shall be maintained in ~~[such] the~~ calibration ~~[as]~~ prescribed by the National ~~[Bureau]~~ Institute of Standards ~~[prescribes]~~ and Technology.

(2) Secondary standards may be prescribed by the department and shall be verified upon their initial receipt, and as often after initial receipt as ~~[deemed]~~ is considered necessary by the department.

Section 8. Section **4-9-5** is amended to read:

4-9-5. Weights and measures -- Specifications, tolerances, and technical data published in National Institute of Standards and Technology Handbook govern.

~~[The]~~ Unless modified by the department, Handbook 44, Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices, National Institute of Standards and Technology, adopted by the National Conference on Weights and Measures, including supplements or revisions to Handbook 44, shall determine the specifications, tolerances, and other technical requirements for devices used for:

(1) commercial weighing and measuring~~[-, for]~~;

(2) law enforcement~~[-, for]~~;

(3) data gathering~~[-];~~ and ~~[for]~~

(4) other weighing and measuring ~~[devices adopted by the National Conference on Weights and Measures and published in National Bureau of Standards Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," and supplements or revisions of such handbook, shall govern devices for weights and measures in the state used for any official purpose, except as modified by regulation of the department]~~ purposes.

Section 9. Section **4-9-5.2** is amended to read:

4-9-5.2. Adopting uniform packaging and labeling regulation.

~~[The]~~ Unless modified by the department, the Uniform Packaging and Labeling Regulation, [as] adopted by the National Conference on Weights and Measures ~~[and published in the National Bureau of Standards' Handbook 130 "Uniform Laws and Regulations" is applicable]~~ in Handbook 130, Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality, National Institute of Standards and Technology, shall apply to packaging and labeling in the state~~[- unless modified by the department].~~

Section 10. Section **4-9-5.3** is amended to read:

4-9-5.3. Adopting uniform regulation for the method of sale of commodities.

~~[The]~~ Unless modified by the department, the Uniform Regulation for the Method of Sale of Commodities, [as] adopted by the National Conference on Weights and Measures, ~~[and published by the National Conference on Weights and Measures in the National Bureau of Standards' Handbook 130 "Uniform Laws and Regulations" is applicable]~~ in Handbook 130, Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality, National Institute of Standards and Technology, shall apply to the method of sale of commodities in the state~~[- unless modified by the department].~~

Section 11. Section **4-9-5.4** is amended to read:

4-9-5.4. Adopting uniform regulation for the voluntary registration of servicepersons and service agencies for commercial weighing and measuring devices.

~~[The]~~ Unless modified by the department, the Uniform Regulation for the Voluntary Registration of Servicepersons and Service Agencies for Commercial Weighing and Measuring Devices, [as] adopted by the National Conference on Weights and Measures~~[- and published in the National Bureau of Standards' Handbook 130 "Uniform Laws and Regulations" is applicable]~~ in Handbook 130, Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality, National Institute of Standards and Technology, shall apply to the registration of servicepersons and service agencies in the state~~[- unless modified by the department].~~

Section 12. Section **4-9-6** is amended to read:

4-9-6. Department duties -- Seizure of incorrect weights and measures.

(1) The department may:

~~[(1)]~~ (a) ~~[promulgates]~~ establish weights and measures standards, specifications, and tolerances for ~~[any and]~~;

(i) all commodities~~[-, standards of]~~;

(ii) the fill for any commodity contained in a package~~[-, standards and specifications for]~~;

(iii) labels or labeling of ~~[any]~~ a commodity~~[-]; and [standards, specifications, and tolerances for]~~

(iv) weights and measures used commercially;

~~[(2)]~~ (b) ~~[inspects]~~ inspect and ~~[tests]~~ test weights and measures kept, offered, or exposed for sale to determine if they are correct;

~~[(3)]~~ (c) ~~[inspects]~~ inspect and ~~[tests]~~ test weights and measures commercially used to determine if they are correct;

~~[(4)]~~ (d) ~~[tests]~~ test all weights and measures used ~~[in checking]~~ to check the receipt or disbursement of supplies used by ~~[any]~~ a state agency or institution funded by the state;

~~[(5)]~~ (e) ~~[inspects and tests, according to]~~ in accordance with sampling procedures recognized and designated in ~~[the]~~ Handbook 133, Checking the Net Contents of Packaged Goods, National [Bureau] Institute of Standards [Handbooks 67 and 133, "Checking Prepackaged Commodities,"] and Technology, inspect and test any packaged commodity kept, offered, or exposed for sale, sold, or in the process of delivery, to determine if the package contains the amount represented;

~~[(6)]~~ (f) ~~[prescribes]~~ determine the appropriate term or unit of weight or measure to be used for container sizes, if ~~[it]~~ the department determines that an existing practice of declaring the quantity by weight, measure, count, or any combination of ~~[such]~~ these practices, hinders value comparisons by consumers;

~~[(7)]~~ (g) ~~[approves]~~ approve correct weights and measures ~~[for use as correct]~~ and ~~[rejects]~~ reject and ~~[marks]~~ mark as "rejected," weights and measures ~~[found incorrect]~~ that are incorrect;

~~[(8)]~~ (h) ~~[allows]~~ allow reasonable variations from ~~[the]~~ a stated weight or measure caused by loss or gain due to;

(i) moisture during the course of ~~[good]~~ acceptable distribution ~~[practice]~~ practices; or
[by]

(ii) unavoidable deviations in ~~[good]~~ acceptable manufacturing ~~[practice]~~ practices;

~~[(9)]~~ (i) ~~[grants]~~ grant an exemption from the requirements of this chapter or from any ~~[regulation published as authorized by]~~ rule promulgated under this chapter, when ~~[appropriate]~~ the department determines that the exemption is necessary for the maintenance of ~~[good]~~ acceptable commercial practices;

~~[(10)]~~ (j) ~~[maintains]~~ maintain on file, for public inspection, a copy of each handbook prepared by the National ~~[Bureau]~~ Institute of Standards and Technology which is used to enforce this chapter; and

~~[(11)]~~ (k) ~~[establishes]~~ establish and ~~[charges]~~ charge fees as authorized under ~~[Section 63-38-3.2]~~ Subsection 4-2-2(2) for the inspection of weights and measures. ~~[Weights]~~

(2) The department may seize weights and measures that ~~[have been rejected may be seized if]~~ are:

(a) incorrect and are not corrected within ~~[the]~~ a reasonable time specified ~~[or if]~~ by the department; or

(b) used or disposed of in a manner not ~~[specifically]~~ authorized~~[-The]~~ by the department ~~[shall condemn and may seize weights and measures found to be incorrect that are not capable of being corrected].~~

Section 13. Section **4-9-12** is amended to read:

4-9-12. Unlawful acts specified.

~~[It is unlawful for any]~~ A person ~~[to]~~ may not:

(1) sell, offer, or ~~[expose]~~ present for sale ~~[any]~~ a commodity whose weight and measure is less than the weight and measure represented as being sold, offered, or exposed for sale;

(2) misrepresent the price of ~~[any]~~ a commodity sold, advertised, exposed, or offered for sale by weight, measure, or count, or to represent the price in ~~[any]~~ a manner ~~[tending to mislead or deceive]~~ that misleads or deceives a person;

(3) use or possess ~~[any incorrect]~~ an incorrect weight or measure in commerce;

(4) remove [any] a tag, seal, or mark from [any] a weight or measure without specific written authorization from the department; [or]

(5) hinder or obstruct [any] an agent of the department dealing with weights and measures in the performance of the agent's duties[-]; or

(6) operate weights and measures in trade or commerce for the purpose of determining the weight or measure of a commodity without a valid weights and measures registration issued by the department.

Section 14. Section **4-9-15** is enacted to read:

4-9-15. Registration of commercial establishments using weights and measures -- Application -- Fee -- Expiration -- Renewal.

(1) (a) Pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the department shall establish rules providing for the registration of weights and measures users and issuance of certification of weights and measures devices to ensure the use of correct weights and measures in commerce or trade.

(b) A weights and measures user shall register with the department.

(c) Prior to granting a registration to a weights and measures user, the department shall determine whether the weights and measures user complies with the rules established under Subsection (1)(a).

(d) An applicant shall register with the department, in writing, using forms required by the department.

(e) The department shall issue a registration to an applicant, if the department determines that the applicant meets the qualifications of registration established under Subsection (1)(a).

(f) If the applicant does not meet the qualifications of registration, the department shall notify the applicant, in writing, that the applicant's registration is denied.

(g) (i) If an applicant submits an incomplete application, a written notice of conditional denial of registration shall be provided to an applicant.

(ii) The applicant must correct the deficiencies within the time period specified in the notice to receive a registration.

(h) (i) The department may, as provided under Subsection 4-2-2(2), charge the weights and measures user a registration fee.

(ii) The department shall retain the fees as dedicated credits and shall use the fees to administer the registration of weights and measures users.

(2) (a) A registration, issued under this section, shall be valid from the date the department issues the registration, to December 31 of the year the registration is issued.

(b) A registration may be renewed for the following year by applying for renewal by December 31 of the year the registration expires.

(3) A registration, issued under this section, shall specify:

(a) the name and address of the weights and measures user;

(b) the registration issuance and expiration date; and

(c) the number and type of weights and measures devices to be certified.

(4) (a) The department may immediately suspend a registration, issued under this section, if any of the requirements of Section 4-9-12 are violated.

(b) (i) The holder of a registration suspended under Subsection (4)(a) may apply for the reinstatement of a registration.

(ii) If the department determines that all requirements under Section 4-9-12 are being met, the department shall reinstate the registration.

(5) (a) A weights and measures user, registered under this section, shall allow the department access to the weights and measures user's place of business to determine if the weights and measures user is complying with the registration requirements.

(b) If a weights and measures user denies access for an inspection required under Subsection (5)(a), the department may suspend the weights and measures user's registration until the department is allowed access to the weights and measures user's place of business.

Section 15. Section **63-2-304** is amended to read:

63-2-304. Protected records.

The following records are protected if properly classified by a governmental entity:

(1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret

has provided the governmental entity with the information specified in Section 63-2-308;

(2) commercial information or nonindividual financial information obtained from a person if:

(a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;

(b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and

(c) the person submitting the information has provided the governmental entity with the information specified in Section 63-2-308;

(3) commercial or financial information acquired or prepared by a governmental entity to the extent that disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the governmental entity or cause substantial financial injury to the governmental entity or state economy;

(4) records the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, a commercial project entity as defined in Subsection 11-13-103(4);

(5) test questions and answers to be used in future license, certification, registration, employment, or academic examinations;

(6) records the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except that this Subsection (6) does not restrict the right of a person to see bids submitted to or by a governmental entity after bidding has closed;

(7) records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition before any rights to the property are acquired unless:

(a) public interest in obtaining access to the information outweighs the governmental entity's need to acquire the property on the best terms possible;

(b) the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(c) in the case of records that would identify property, potential sellers of the described property have already learned of the governmental entity's plans to acquire the property; or

(d) in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the governmental entity's estimated value of the property;

(8) records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real or personal property including intellectual property, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property, unless:

(a) the public interest in access outweighs the interests in restricting access, including the governmental entity's interest in maximizing the financial benefit of the transaction; or

(b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(9) records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records:

(a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;

(b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;

(c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;

(d) reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of

government if disclosure would compromise the source; or

(e) reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement or audit efforts;

(10) records the disclosure of which would jeopardize the life or safety of an individual;

(11) records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental recordkeeping systems from damage, theft, or other appropriation or use contrary to law or public policy;

(12) records that, if disclosed, would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender's incarceration, treatment, probation, or parole;

(13) records that, if disclosed, would reveal recommendations made to the Board of Pardons and Parole by an employee of or contractor for the Department of Corrections, the Board of Pardons and Parole, or the Department of Human Services that are based on the employee's or contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;

(14) records and audit workpapers that identify audit, collection, and operational procedures and methods used by the State Tax Commission, if disclosure would interfere with audits or collections;

(15) records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;

(16) records prepared by or on behalf of a governmental entity solely in anticipation of litigation that are not available under the rules of discovery;

(17) records disclosing an attorney's work product, including the mental impressions or legal theories of an attorney or other representative of a governmental entity concerning litigation;

(18) records of communications between a governmental entity and an attorney representing, retained, or employed by the governmental entity if the communications would be privileged as provided in Section 78-24-8;

(19) personal files of a legislator, including personal correspondence to or from a member of the Legislature, provided that correspondence that gives notice of legislative action or policy may not be classified as protected under this section;

(20) (a) records in the custody or control of the Office of Legislative Research and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or contemplated course of action before the legislator has elected to support the legislation or course of action, or made the legislation or course of action public; and

(b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the Office of Legislative Research and General Counsel is a public document unless a legislator asks that the records requesting the legislation be maintained as protected records until such time as the legislator elects to make the legislation or course of action public;

(21) research requests from legislators to the Office of Legislative Research and General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in response to these requests;

(22) drafts, unless otherwise classified as public;

(23) records concerning a governmental entity's strategy about collective bargaining or pending litigation;

(24) records of investigations of loss occurrences and analyses of loss occurrences that may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured Employers' Fund, or similar divisions in other governmental entities;

(25) records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest;

(26) records that reveal the location of historic, prehistoric, paleontological, or biological resources that if known would jeopardize the security of those resources or of valuable historic, scientific, educational, or cultural information;

(27) records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency;

(28) records of a public institution of higher education regarding tenure evaluations, appointments, applications for admissions, retention decisions, and promotions, which could be properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public Meetings, provided that records of the final decisions about tenure, appointments, retention, promotions, or those students admitted, may not be classified as protected under this section;

(29) records of the governor's office, including budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the governor's contemplated policies or contemplated courses of action before the governor has implemented or rejected those policies or courses of action or made them public;

(30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;

(31) records provided by the United States or by a government entity outside the state that are given to the governmental entity with a requirement that they be managed as protected records if the providing entity certifies that the record would not be subject to public disclosure if retained by it;

(32) transcripts, minutes, or reports of the closed portion of a meeting of a public body except as provided in Section 52-4-7;

(33) records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

(34) memoranda prepared by staff and used in the decision-making process by an administrative law judge, a member of the Board of Pardons and Parole, or a member of any other body charged by law with performing a quasi-judicial function;

(35) records that would reveal negotiations regarding assistance or incentives offered by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the governmental entity at a competitive disadvantage, but this section may not be

used to restrict access to a record evidencing a final contract;

(36) materials to which access must be limited for purposes of securing or maintaining the governmental entity's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets;

(37) the name of a donor or a prospective donor to a governmental entity, including a public institution of higher education, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:

(a) the donor requests anonymity in writing;

(b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified protected by the governmental entity under this Subsection (37); and

(c) except for public institutions of higher education, the governmental unit to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over the donor, a member of his immediate family, or any entity owned or controlled by the donor or his immediate family;

(38) accident reports, except as provided in Sections 41-6-40, 41-12a-202, and 73-18-13;

(39) a notification of workers' compensation insurance coverage described in Section 34A-2-205;

(40) (a) the following records of a public institution of education, which have been developed, discovered, or received by or on behalf of faculty, staff, employees, or students of the institution:

(i) unpublished lecture notes;

(ii) unpublished research notes and data;

(iii) unpublished manuscripts;

(iv) creative works in process;

(v) scholarly correspondence; and

(vi) confidential information contained in research proposals; and

(b) Subsection (40)(a) may not be construed to affect the ownership of a record;

(41) (a) records in the custody or control of the Office of Legislative Auditor General that

would reveal the name of a particular legislator who requests a legislative audit prior to the date that audit is completed and made public; and

(b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the Office of the Legislative Auditor General is a public document unless the legislator asks that the records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit be maintained as protected records until the audit is completed and made public;

(42) records that provide detail as to the location of an explosive, including a map or other document that indicates the location of:

(a) a production facility; or

(b) a magazine;

(43) information contained in the database described in Section 62A-3-311.1;

(44) information contained in the Management Information System and Licensing Information System described in Title 62A, Chapter 4a, Child and Family Services; ~~and~~

(45) information regarding National Guard operations or activities in support of the National Guard's federal mission[-]; and

(46) information regarding food security, risk, and vulnerability assessments performed by the Department of Agriculture and Food.