

Representative Marc K. Roberts proposes the following substitute bill:

FOOD REVISIONS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Marc K. Roberts

Senate Sponsor: Scott D. Sandall

LONG TITLE

General Description:

This bill creates permitting guidelines for agritourism food establishments and amends provisions relating to food handler and food safety permits.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ clarifies provisions related to the certification requirements for an individual who is a certified educator and who teaches a food program;
- ▶ clarifies provisions related to local health departments' documentation process for certified food safety managers;
- ▶ grants administrative authority to the Department of Health to make rules regarding sanitation, equipment, and maintenance requirements for microenterprise home kitchens; and
- ▶ grants administrative authority to local health departments to:
 - create and issue agritourism food establishment permits;
 - charge fees for issuing permits and inspecting premises; and
 - inspect agritourism food establishments, including inspecting the locations where food is prepared.



26 **Money Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **26-15-5**, as repealed and reenacted by Laws of Utah 2013, Chapter 444

33 **26-15a-106**, as last amended by Laws of Utah 2000, Chapter 86

34 ENACTS:

35 **26-15b-101**, Utah Code Annotated 1953

36 **26-15b-102**, Utah Code Annotated 1953

37 **26-15b-103**, Utah Code Annotated 1953

38 **26-15b-104**, Utah Code Annotated 1953

39 **26-15b-105**, Utah Code Annotated 1953



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

42 Section 1. Section **26-15-5** is amended to read:

43 **26-15-5. Requirements for food handlers -- Training program and testing**
44 **requirements for permit -- Rulemaking.**

45 (1) As used in this section:

46 (a) "Approved food handler training program" means a training program described by
47 this section and approved by the department.

48 (b) "Food handler" means a person who works with unpackaged food, food equipment
49 or utensils, or food-contact surfaces for a food service establishment.

50 (c) "Food handler permit" means a permit issued by a local health department to allow
51 a person to work as a food handler.

52 (d) "Food service establishment" has the same meaning as provided in Section
53 **26-15a-102**.

54 (e) "Instructor" means an individual who is qualified to instruct an approved food
55 handler program on behalf of a provider.

56 [~~e~~] (f) "Provider" means a person or entity that provides an approved food handler

57 training program.

58 (2) A person may not work as a food handler for a food service establishment unless
59 the person:

60 (a) successfully completes an approved food handler training program within 14 days
61 after the day on which the person begins employment that includes food handler services; and

62 (b) obtains a food handler permit within 30 days after the day on which the person
63 begins employment that includes food handler services.

64 (3) An approved food handler training program shall include:

65 (a) at least 75 minutes of training time;

66 (b) an exam, which requires a passing score of 75% and, except as provided in
67 Subsection (11), consists of:

68 (i) 40 multiple-choice questions developed by the department, in consultation with
69 local health departments; and

70 (ii) four content sections designated by rule of the department with 10 randomly
71 selected questions for each content section; and

72 (c) upon completion, the awarding of a certificate of completion that is valid with any
73 local health department in the state for 30 days after the day on which the certificate is issued:

74 (i) to a student who:

75 (A) completes the training; and

76 (B) passes the exam described in this Subsection (3) or an exam approved by the
77 department in accordance with Subsection (11); and

78 (ii) which certificate of completion:

79 (A) includes student identifying information determined by department rule; and

80 (B) is delivered by mail or electronic means.

81 (4) (a) A person may obtain a food handler permit by:

82 (i) providing a valid certificate of completion of an approved food handler training
83 program and an application, approved by the local health department, to a local health
84 department; and

85 (ii) paying a food handler permit fee to the local health department.

86 (b) (i) A local health department may charge a food handler permit fee that is
87 reasonable and that reflects the cost of managing the food safety program.

88 (ii) The department shall establish by rule the maximum amount a local health
89 department may charge for the fee described in Subsection (4)(b)(i).

90 (5) A person working as a food handler for a food service establishment shall obtain a
91 food handler permit:

92 (a) before handling any food;

93 (b) within 30 days of initial employment with a food service establishment; and

94 (c) within seven days of the expiration of an existing food handler permit.

95 (6) (a) A person who holds a valid food handler permit under this section may serve as
96 a food handler throughout the state without restriction.

97 (b) A food handler permit granted after June 30, 2013, is valid for three years from the
98 date of issuance.

99 (7) ~~[A person]~~ An individual may not serve as an instructor ~~[of an approved food~~
100 ~~handler training program]~~, unless ~~[the person is registered with a local health department as an~~
101 ~~instructor]~~ the provider includes the individual on the provider's list of instructors.

102 (8) The department, in consultation with local health departments, shall:

103 (a) approve the content of an approved food handler training program required under
104 Subsection (3);

105 (b) approve, as qualified, each provider; and

106 (c) in accordance with applicable rules made under Subsection (12), provide a means to
107 authenticate:

108 (i) documents used in an approved food handler training program;

109 (ii) the identity of an approved instructor; and

110 (iii) an approved provider.

111 (9) An approved food handler training program shall:

112 (a) provide basic instruction on the Centers for Disease Control and Prevention's top
113 five foodborne illness risk factors, including:

114 (i) improper hot and cold holding temperatures of potentially hazardous food;

115 (ii) improper cooking temperatures of food;

116 (iii) dirty or contaminated utensils and equipment;

117 (iv) poor employee health and hygiene; and

118 (v) food from unsafe sources;

119 (b) be offered through:
120 (i) a trainer-led class;
121 (ii) the Internet; or
122 (iii) a combination of a trainer-led class and the Internet;
123 (c) maintain a system to verify a certificate of completion of an approved food handler
124 training program issued under Subsection (3) to the department, a local health department, and
125 a food service establishment; and

126 (d) provide to the department unrestricted access to classroom training sessions and
127 online course materials at any time for audit purposes.

128 (10) (a) A provider that provides an approved food handler training program may
129 charge a reasonable fee.

130 (b) If a person or an entity is not approved by the department to provide an approved
131 food handler training program, the person or entity may not represent, in connection with the
132 person's or entity's name or business, including in advertising, that the person or entity is a
133 provider of an approved food handler training program or otherwise represent that a program
134 offered by the person or entity will qualify an individual to work as a food handler in the state.

135 (11) (a) Subject to the approval of the department every three years, a provider may use
136 an exam that consists of questions that do not conform with the provisions of Subsection
137 (3)(b), if:

138 (i) the provider complies with the provisions of this Subsection (11);

139 (ii) the provider pays a fee every three years to the department, which fee shall be
140 determined by the department and shall reflect the cost of the review of the alternative test
141 questions; and

142 (iii) an independent instructional design and testing expert provides a written report to
143 the department containing a positive recommendation based on the expert's analysis as
144 described in Subsection 11(b).

145 (b) (i) A provider may request approval of a different bank of test questions other than
146 the questions developed under Subsection (3) by submitting to the department a proposed bank
147 of at least 200 test questions organized by learning objective in accordance with Subsection
148 (9)(a).

149 (ii) A provider proposing a different bank of test questions under this Subsection (11)

150 shall contract with an independent instructional design and testing expert approved by the
151 department at the provider's expense to analyze the provider's bank of test questions to ensure
152 the questions:

153 (A) effectively measure the applicant's knowledge of the required learning objectives;
154 and

155 (B) meet the appropriate testing standards for question structure.

156 (c) If the department provides written notice to a provider that any test question of the
157 provider's approved exam under this Subsection (11) inadequately tests the required learning
158 objectives, the provider shall make required changes to the question within 30 days after the
159 day on which written notice is received by the provider.

160 (d) A food handler exam offered by a provider may be:

161 (i) a written exam;

162 (ii) an online exam; or

163 (iii) an oral exam, if circumstances require, including when an applicant's language or
164 reading abilities interfere with taking a written or online exam.

165 (e) A provider shall routinely rotate test questions from the test question bank, change
166 the order of test questions in tests, and change the order of multiple-choice answers in test
167 questions to discourage cheating.

168 (12) (a) When exercising rulemaking authority under this section the department shall
169 comply with the requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

170 (b) The department shall, by rule, establish requirements designed to inhibit fraud for
171 an approved food handler training program described in this section.

172 (c) The requirements described in Subsection (12)(b) may include requirements to
173 ensure that:

174 (i) an individual does not attempt to complete the program or exam in another
175 individual's place;

176 (ii) an individual taking the approved food handler training program is focused on
177 training material and actively engaged throughout the training period;

178 (iii) if the individual is unable to participate online because of technical difficulties, an
179 approved food handler training program provides technical support, such as requiring a
180 telephone number, email, or other method of communication to allow an individual taking the

181 online course or test to receive assistance;

182 (iv) an approved food handler training program provider maintains a system to reduce
183 fraud as to who completes an approved food handler training program, such as requiring a
184 distinct online certificate with information printed on the certificate that identifies a person
185 taking an online course or exam, or requiring measures to inhibit duplication of a certificate of
186 completion or of a food handler permit;

187 (v) the department may audit an approved food handler training program;

188 (vi) an individual taking an online course or certification exam has the opportunity to
189 provide an evaluation of the online course or test;

190 (vii) an approved food handler training program provider track the Internet protocol
191 address or similar electronic location of an individual who takes an online course or
192 certification exam;

193 (viii) an individual who takes an online course or exam uses an electronic signature; or

194 (ix) if the approved food handler training program provider learns that a certificate of
195 completion does not accurately reflect the identity of the individual who took the online course
196 or certification exam, an approved food handler training program provider invalidates the
197 certificate of completion.

198 (13) An instructor is not required to satisfy any additional training requirements if the
199 instructor:

200 (a) is an educator in a public or private school; and

201 (b) teaches a food program that includes food safety in a public or private school in
202 which the instructor is an educator.

203 Section 2. Section **26-15a-106** is amended to read:

204 **26-15a-106. Certified food safety manager.**

205 (1) Before a person may manage a food service establishment as a certified food safety
206 manager, that person shall submit documentation in the format prescribed by the department to
207 the appropriate local health department indicating a passing score on a department-approved
208 examination.

209 (2) To continue to manage a food service establishment, a certified food safety
210 manager shall:

211 (a) successfully complete, every three years, renewal requirements established by

212 department rule which are consistent with original certification requirements; and

213 (b) submit documentation in the format prescribed by the department within 30 days of
214 the completion of renewal requirements to the appropriate local health department.

215 (3) A local health department may deny, revoke, or suspend the authority of a certified
216 food safety manager to manage a food service establishment or require the completion of
217 additional food safety training courses for any one of the following reasons:

218 (a) submitting information required under Subsection (1) or (2) that is false,
219 incomplete, or misleading;

220 (b) repeated violations of department or local health department food safety rules; or

221 (c) operating a food service establishment in a way that causes or creates a health
222 hazard or otherwise threatens the public health, safety, or welfare.

223 (4) A determination of a local health department made pursuant to Subsection (3) may
224 be appealed by a certified food safety manager in the same manner provided for in Subsection
225 26-15a-104(4).

226 (5) No person may use the title "certified food safety manager," or any other similar
227 title, unless the person has satisfied the requirements of this chapter.

228 (6) A local health department:

229 (a) may not charge a fee to accept or process the documentation described in
230 Subsections (1) and (2);

231 (b) shall accept photocopies or electronic copies of the documentation described in
232 Subsections (1) and (2); and

233 (c) shall allow an individual to submit the documentation described in Subsections (1)
234 and (2) by mail, email, or in person.

235 Section 3. Section 26-15b-101 is enacted to read:

236 **CHAPTER 15b. AGRITOURISM FOOD ESTABLISHMENT ACT**

237 **26-15b-101. Title.**

238 This chapter is known as the "Agritourism Food Establishment Act."

239 Section 4. Section 26-15b-102 is enacted to read:

240 **26-15b-102. Definitions.**

241 As used in this chapter:

242 (1) "Agricultural tourism activity" means the same as that term is defined in Section

243 [78B-4-512.](#)

244 (2) "Agritourism" means the same as that term is defined in Section [78B-4-512.](#)

245 (3) "Agritourism food establishment" means a non-commercial kitchen facility where
246 food is handled, stored, or prepared to be offered for sale on a farm in connection with an
247 agricultural tourism activity.

248 (4) "Agritourism food establishment permit" means a permit issued by a local health
249 department to the operator for the purposes of operating an agritourism food establishment.

250 (5) "Farm" means a working farm, ranch, or other commercial agricultural,
251 aquacultural, horticultural, or forestry operation.

252 (6) "Food" means:

253 (a) a raw, cooked, or processed edible substance, ice, nonalcoholic beverage, or
254 ingredient used or intended for use or for sale, in whole or in part, for human consumption; or

255 (b) chewing gum.

256 (7) "Local health department" means the same as that term is defined in Section
257 [26A-1-102.](#)

258 (8) "Operator" means a person who owns, manages, or controls, or who has the duty to
259 manage or control, the farm.

260 (9) "Time/temperature control food" means food that requires time/temperature
261 controls for safety to limit pathogenic microorganism growth or toxin formation.

262 Section 5. Section **26-15b-103** is enacted to read:

263 **26-15b-103. Permitting -- Fees.**

264 (1) A farm may not operate an agritourism food establishment unless the farm obtains a
265 permit from the local health department that has jurisdiction over the area in which the farm is
266 located.

267 (2) In accordance with Section [26A-1-121](#), and subject to the restrictions of Section
268 [26-15b-105](#), a local health department shall make standards and regulations relating to the
269 permitting of an agritourism food establishment.

270 (3) In accordance with Section [26A-1-114](#), a local health department shall impose a fee
271 for an agritourism food establishment permit in an amount that reimburses the local health
272 department for the cost of regulating the agritourism food establishment.

273 Section 6. Section **26-15b-104** is enacted to read:

274 **26-15b-104. Safety and health inspections and permits.**

275 (1) A local health department with jurisdiction over an area in which a farm is located
276 may grant an agritourism food establishment permit to the farm.

277 (2) Nothing in this section prevents a local health department from revoking an
278 agritourism food establishment permit issued by the local health department if the operation of
279 the agritourism food establishment violates the terms of the permit or Section [26-15b-105](#).

280 Section 7. Section **26-15b-105** is enacted to read:

281 **26-15b-105. Permit requirements.**

282 (1) A farm may qualify for an agritourism food establishment permit if:

283 (a) poultry products that are served at the agritourism establishment are slaughtered
284 and processed in compliance with the Poultry Products Inspection Act, 21 U.S.C. Sec. 451 et
285 seq., and the applicable regulations issued pursuant to that act;

286 (b) meat not described in Subsection (1)(a) that is served at the agritourism food
287 establishment is slaughtered and processed in compliance with the Federal Meat Inspection
288 Act, 21 U.S.C. Sec. 601 et seq., and the applicable regulations issued pursuant to that act;

289 (c) a kitchen facility used to prepare food for the agritourism food establishment meets
290 the requirements established by the department;

291 (d) the farm operates the agritourism food establishment for no more than 14
292 consecutive days at a time; and

293 (e) the farm complies with the requirements of this section.

294 (2) The department shall, in accordance with Title 63G, Chapter 3, Utah
295 Administrative Rulemaking Act, make rules regarding sanitation, equipment, and maintenance
296 requirements for agritourism food establishments.

297 (3) A local health department shall:

298 (a) ensure compliance with the rules described in Subsection (2) when inspecting a
299 kitchen facility;

300 (b) notwithstanding Section [26A-1-113](#), inspect the kitchen facility of a farm that
301 requests an agritourism food establishment permit only:

302 (i) for an initial inspection, no more than one week before the agritourism food
303 establishment is scheduled to begin operation;

304 (ii) for an unscheduled inspection:

305 (A) of an event scheduled to last no more than three days if the local health department
306 conducts the inspection within three days before or after the day on which the agritourism food
307 establishment is scheduled to begin operation; or

308 (B) of an event scheduled to last longer than three days if the local health department
309 conducts the inspection within three days before or after the day on which the agritourism food
310 establishment is scheduled to begin operation, or conducts the inspection during operating
311 hours of the agritourism food establishment; or

312 (iii) for subsequent inspections if:

313 (A) the local health department provides the operator with reasonable advanced notice
314 about an inspection; or

315 (B) the local health department has a valid reason to suspect that the agritourism food
316 establishment is the source of an adulterated food or of an outbreak of illness caused by a
317 contaminated food; and

318 (c) document the reason for any inspection after the permitting inspection, keep a copy
319 of that documentation on file with the agritourism food establishment's permit, and provide a
320 copy of that documentation to the operator.

321 (4) An agritourism food establishment shall:

322 (a) take steps to avoid any potential contamination to:

323 (i) food;

324 (ii) equipment;

325 (iii) utensils; or

326 (iv) unwrapped single-service and single-use articles; and

327 (b) prevent an individual from entering the food preparation area while food is being
328 prepared if the individual is known to be suffering from:

329 (i) symptoms associated with acute gastrointestinal illness; or

330 (ii) a communicable disease that is transmissible through food.

331 (5) When making the rules described in Subsection (2), the department may not make
332 rules regarding:

333 (a) hand washing facilities, except to require that a hand washing station supplied with
334 warm water, soap, and disposable hand towels is conveniently located;

335 (b) kitchen sinks, kitchen sink compartments, and dish sanitation, except to require that

336 the kitchen sink has hot and cold water, a sanitizing agent, is fully operational, and that dishes
337 are sanitized between each use;

338 (c) the individuals allowed access to the food preparation areas, food storage, and
339 washing areas, except during food preparation;

340 (d) display guards, covers, or containers for display foods, except to require that any
341 food on display that is not protected from the direct line of a consumer's mouth by an effective
342 means is not served or sold to any subsequent consumer;

343 (e) outdoor display and sale of food, except to require that food is maintained at proper
344 holding temperatures;

345 (f) reuse by an individual of drinking cups and tableware for multiple portions;

346 (g) utensils and equipment, except to require that utensils and equipment used in the
347 home kitchen:

348 (i) retain their characteristic qualities under normal use conditions;

349 (ii) are properly sanitized after use; and

350 (iii) are maintained in a sanitary manner between uses;

351 (h) food contact surfaces, except to require that food contact surfaces are smooth,
352 easily cleanable, in good repair, and properly sanitized between tasks;

353 (i) non-food contact surfaces, if those surfaces are made of materials ordinarily used in
354 residential settings, except to require that those surfaces are kept clean from the accumulation
355 of residue and debris;

356 (j) clean-in-place equipment, except to require that the equipment is cleaned and
357 sanitized between uses;

358 (k) ventilation, except to require that gases, odors, steam, heat, grease, vapors, and
359 smoke are able to escape the kitchen;

360 (l) fixed temperature measuring devices or product mimicking sensors for the holding
361 equipment for time/temperature control food, except to require non-fixed temperature
362 measuring devices for hot and cold holding of food during storage, serving, and cooling;

363 (m) fixed floor-mounted and table-mounted equipment except to require that
364 floor-mounted and table-mounted equipment be in good repair and sanitized between uses;

365 (n) dedicated laundry facilities, except to require that linens used for the agritourism
366 food establishment are stored and laundered separately from household laundry and that soiled

367 laundry is stored to prevent contamination of food and equipment;

368 (o) water, plumbing, drainage, and waste, except to require that sinks be supplied with
369 hot water;

370 (p) the number of and path of access to toilet facilities, except to require that toilet
371 facilities are equipped with proper handwashing stations;

372 (q) lighting, except to require that food preparations are well lit by natural or artificial
373 light whenever food is being prepared;

374 (r) designated dressing areas and storage facilities, except to require that items not
375 ordinarily found in a home kitchen are placed or stored away from food preparation areas, that
376 dressing takes place outside of the kitchen facility, and that food items are stored in a manner
377 that does not allow for contamination;

378 (s) the presence and handling of animals, except to require that all animals are kept
379 outside of food preparation and service areas during food service and food preparation;

380 (t) food storage, floor, wall, ceiling, and toilet surfaces, except to require that surfaces
381 are smooth, of durable construction, easily cleanable, and kept clean and free of debris;

382 (u) kitchen facilities open to living areas, except to require that food is only prepared,
383 handled, or stored in kitchen and food storage areas;

384 (v) submission of plans and specifications before construction or remodel of a kitchen
385 facility;

386 (w) the number and type of time/temperature controlled food offered for sale;

387 (x) approved food sources, except those required by 9 C.F.R. 303.1;

388 (y) the use of an open air barbeque, grill, or outdoor wood-burning oven; or

389 (z) food safety certification, except any individual who is involved in the preparation,
390 storage, or service of food in the agritourism food establishment shall hold a food handler
391 permit as defined in Section [26-15-5](#).

392 (6) An operator applying for an agritourism food establishment permit shall provide to
393 the local health department:

394 (a) written consent to enter the premises where food is prepared, cooked, stored, or
395 harvested for the agritourism food establishment; and

396 (b) written standard operating procedures that include:

397 (i) all food that will be stored, handled, and prepared;

398 (ii) the proposed procedures and methods of food preparation and handling;
399 (iii) procedures, methods, and schedules for cleaning utensils and equipment;
400 (iv) procedures and methods for the disposal of refuse; and
401 (v) a plan for maintaining time/temperature controlled food at the appropriate
402 temperatures for each time/temperature controlled food.

403 (7) In addition to a fee charged under Section [26-15b-103](#), if the local health
404 department is required to inspect the farm as a source of an adulterated food or an outbreak of
405 illness caused by a contaminated food and finds, as a result of that inspection, that the farm has
406 produced an adulterated food or was the source of an outbreak of illness caused by a
407 contaminated food, the local health department may charge and collect from the farm a fee for
408 that inspection.

409 (8) An agritourism food establishment permit:
410 (a) is nontransferable;
411 (b) is renewable on an annual basis;
412 (c) is restricted to the location listed on the permit; and
413 (d) shall provide the operator the opportunity to update the food types and products
414 handled without requiring the operator to renew the permit.

415 (9) This section does not prohibit an operator from applying for a different type of food
416 event permit from a local health department.