

**R51. Agriculture and Food, Administration.**

**R51-2. Administrative Procedures for Informal Proceedings Before the Utah Department of Agriculture and Food.**

**R51-2-1. Authority.**

A. These rules establish and govern the administrative proceedings before the Utah Department of Agriculture and Food, as required by Sections 63G-4-203 and 4-1-104.

B. These rules govern all adjudicative proceedings commencing on or after January 1, 1988. Adjudicative proceedings commencing prior to January 1, 1988, are governed by procedures presently in place.

**R51-2-2. Designation of Formal and Informal Proceedings.**

A. Emergency Orders: The Department may issue an order on an emergency basis without complying with these rules under the circumstances and procedures set forth in Section 63G-4-502.

B. All adjudicative proceedings of the Utah Department of Agriculture and Food here designated will be conducted as informal proceedings including the following, under the Utah Agricultural Code, Title 4:

1. Applications for permits, licenses, or certifications which include:

- Produce Dealer
- Dealer's Agent
- Broker/Agent
- Produce Broker
- Livestock Dealer
- Livestock Dealer/Agent
- Livestock Auction Market
- Auction Weighperson
- Temporary Livestock Sale
- Manufacturers of Bedding or Upholstered Furniture
- Wholesale Dealer
- Supply Dealer
- Manufacturers of Quilted Clothing
- Upholsterer With Employees
- Upholsterer Without Employees
- Test Milk For Payment
- Operate Milk Manufacturing Plant
- Make Butter
- Haul Farm Bulk Milk
- Make Cheese
- Operate a Pasteurizer
- Operate a Milk Processing Plant
- Weighing and Measuring Devices/Individual Servicemen
- Weighing and Measuring Devices/Agency
- Nursery
- Nursery Agent
- Nursery Outlet
- Commercial Feed
- Custom Mixing of Feeds
- Pesticide Product Registration
- Pesticide Dealers
- Pesticide Applicators
- Fertilizer Registration
- Fertilizer Blenders
- Beekeepers
- Salvage Wax
- Control Atmosphere
- Farm Custom Slaughter
- Feed Garbage To Swine
- Operate Hatchery
- Meat Packing Plant
- Custom Exempt Plant
- Custom Slaughter Plant
- Horse Show and Seasonal Permits
- Cattle Show and Seasonal Permits
- Lifetime Horse Permit
- Lifetime Transfer Horse Permit
- Brand Recording
- Brand Transfer
- Brand Renewal

2. Actions contesting initial agency determinations of eligibility for any of the permits, licenses, or certifications listed in R51-2-2(B)(1).

2(B)(1). 3. All adjudicative proceedings to deny, revoke, suspend, modify, annul, withdraw or amend any permit, license, or certification listed in R51-2-

103. 4. All adjudicative proceedings commenced pursuant to any notice of violation or order for corrective action outlined in Section 4-2-302 or 4-2-

5. All categories not designated as formal will be conducted as informal proceedings.

**R51-2-3. Definitions.**

A. "Adjudicative Proceeding" means a department action or proceeding that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all Department actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend the authority, right, or license; and judicial review of all actions. Any matters not governed by Title 63G, Chapter 4 shall not be included within this definition.

B. "Department" means the Utah Department of Agriculture and Food.

C. "Staff" means the Utah Department of Agriculture and Food staff.

D. "Commissioner" means the Commissioner of the Utah Department of Agriculture and Food.

E. "Person" means an individual group of individuals, partnership, corporation, association, political subdivision or its units, governmental subdivisions or its units, public or private organization or entity of any character, or other agency.

F. "Presiding Officer" means the Commissioner or an individual or body of individuals designated by the Commissioner, by the Department's rules, or by statute to conduct a particular adjudicative proceeding.

G. "Party" means the Department or other person commencing an adjudicative proceeding, all respondents, and all persons authorized by statute or agency rule to participate as parties in an adjudicative proceeding.

H. "Respondent" means any person against whom an adjudicative proceeding is initiated, whether by the Department or any other person.

I. "Application" means any application for a license, permit or certification.

J. "Applicant" is a person filing an application.

K. The meaning of any other words used herein relating to agriculture shall be as defined in Title 4, or any rules promulgated thereunder.

**R51-2-4. Construction.**

A. These rules shall be construed in accordance with Title 63G, Chapter 4.

B. These rules shall be liberally construed to secure just, speedy, and economical determination of all issues presented to the Department.

C. Deviation from Rules

The Department may permit a waiver from these rules if:

1. The waiver is not precluded by statute;

2. No party will be prejudiced by the waiver;

3. When no health hazard will result; and

4. The Department determines that it would be in the best interest or temporary convenience of the State.

D. Computation of Time

All adjudicative proceedings commenced by this rule and which incorporate a time frame, shall have the time frame measured in calendar days. The time frame shall be measured by excluding the first day and including the last, unless the last day is a Saturday, Sunday or State holiday, and then it is excluded and the period runs until the end of the next day which is neither a Saturday, Sunday nor State holiday.

**R51-2-5. Commencement of Proceedings.**

A. Proceedings commenced by the Department.

All informal adjudicative proceedings commenced by the Department shall be initiated as provided by applicable statute, and Section 63G-4-201.

B. Proceedings Commenced by Persons Other Than the Department.

All informal adjudicative proceedings commenced by persons other than the Department shall be commenced by submitting in writing a request for agency action in accordance with Subsection 63G-4-201(3).

**R51-2-6. Hearings.**

A. The Department or a presiding officer shall hold a hearing if a hearing is required by statute, or if a hearing is permitted by statute and is requested by a party within 30 days of the commencement of the adjudicative proceeding. The Department or a presiding officer may at their discretion initiate a hearing to determine matters within their authority.

B. Notice of the hearing shall be mailed to all parties by regular mail at least ten days prior to the hearing.

C. If no hearing is held in a particular adjudicative proceeding, the presiding officer shall within a reasonable time issue a decision pursuant to Subsection 63G-4-203(1)(i).

**R51-2-7. Intervention.**

Intervention is prohibited except where a federal statute or rule requires that a state permit intervention.

**R51-2-8. Pre-hearing Procedure.**

The presiding officer may, upon written notice to all parties of record, hold a pre-hearing conference for the purposes of formulating or simplifying the issues, obtaining admissions of fact and of documents which will avoid unnecessary proof, arranging for the exchange of proposed exhibits, and agreeing to other matters as may expedite the orderly conduct of the proceedings or the settlement thereof.

**R51-2-9. Continuance.**

If application is made to the presiding officer within a reasonable time prior to the date of hearing, upon proper notice to the other parties, the presiding officer may grant a continuance of the hearing.

**R51-2-10. Parties to a Hearing.**

A. All persons defined as a "party" are entitled to participate in hearings before the Department.

B. All parties shall be entitled to introduce evidence, examine and cross-examine witnesses, make arguments, and fully participate in the proceeding. The presiding officer can, for good cause, limit evidence, examination, and cross examination of witnesses and arguments.

**R51-2-11. Appearances and Representation.**

A. Taking Appearances

Parties shall enter their appearances at the beginning of a hearing or at a time as may be designated by the presiding officer by giving their names and addresses and stating their positions or interests in the proceeding.

**B. Representation of Parties**

1. An individual who is a party to a proceeding, or an officer designated by a partnership, corporation, association or governmental subdivision or agency which is a party to a proceeding, may represent interest in the proceeding.

2. Any party may be represented by an attorney licensed to practice in the State of Utah.

**R51-2-12. Testimony, Evidence and Argument.**

**A. Testimony**

At the hearing, the presiding officer shall accept oral or written testimony from any party. Further, the presiding officer shall have the right to question and examine any witnesses called to present testimony at a hearing.

**B. Order of Presentation of Evidence**

Unless otherwise directed by the presiding officer at a hearing, the presentation of evidence shall be as follows:

1. When agency action is initiated by a person other than the Department:

- a. the applicant,
- b. respondent,
- c. staff.

2. When the Department initiates agency action:

- a. staff,
- b. respondent,
- c. other interested parties.

During any hearing a party may offer rebuttal evidence.

**C. Rules of Evidence**

A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Irrelevant, immaterial and unduly repetitious evidence shall be excluded. The weight to be given to evidence shall be determined by the presiding officer. Any relevant evidence may be admitted if it is the type of evidence commonly relied upon by prudent persons in the conduct of their affairs. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible in a judicial proceeding.

**D. Documentary Evidence**

Duplicate copies may be received as documentary evidence. However, upon request, parties shall be given an opportunity to compare the copy with the original, if available.

**R51-2-13. Decisions and Orders.**

**A. Report and Order**

After the presiding officer has reached a final decision upon any adjudicative proceeding, he shall make and enter a signed order in writing that states the decision, the reasons for the decision, a notice of the rights of the parties to request Department reconsideration or judicial review, as appropriate, and notice of the time limits for filing a request for reconsideration or a judicial review. The order shall be based on the facts appearing in any of the Department's files and on the facts presented in evidence at any hearings.

**B. Service of Decisions**

A copy of the presiding officer's order shall be promptly mailed by regular mail to each of the parties.

**R51-2-14. Request for Reconsideration.**

**A. Who may file**

Within ten days after the date that an order on review is issued, any aggrieved party may file a request for reconsideration by following the procedures of Section 63G-4-302 and the following additional rules. A request is not a prerequisite for judicial review.

**B. Action on the Request.**

The Commissioner shall issue a written order granting or denying the request for reconsideration. If an order is not issued within 20 days after the filing of the request, the request for rehearing shall be considered denied. Any order granting rehearing shall be strictly limited to the matter specified in the order.

**KEY: government hearings, appellate procedures**

**Date of Enactment or Last Substantive Amendment: 1988**

**Notice of Continuation: January 3, 2017**

**Authorizing, and Implemented or Interpreted Law: 4-1-104; 63G-4-203**