



## **NOTICE OF PUBLIC RULEMAKING HEARING**

### **FOR ADOPTION OF**

### **“Rules Pertaining to Farm to Market Infrastructure Grants” 8 CCR 1207-4**

Notice is hereby given pursuant to § 24-4-103 C.R.S. that the Department of Agriculture will hold a public rulemaking hearing:

DATE: October 20, 2021  
TIME: 9:30 am  
LOCATION: This hearing will be held via [Zoom](#)  
CALL INFORMATION: 1-253-215-8782  
MEETING ID: 886 3225 5457  
PASSCODE: 455474

In order to maintain a proper hearing record you are encouraged to pre-register by completing this [Google form](#). If you do not have access to Google you may send your name and telephone number to [Jenifer.Gurr@state.co.us](mailto:Jenifer.Gurr@state.co.us). Pre-registration is not required to participate in the hearing.

The purposes of these proposed rules are to fulfill the requirements of SB 21-248, which created a new “Colorado Agricultural Future Loan Program.” These rules establish the program, including specifying the application process, the payment process, and the criteria to be used to fund farm-to-market grants.

The statutory authority for these rules § 35-1.2-103(7)(a) and (c), C.R.S.

Any interested party may file written comment with the Commissioner’s office prior to the hearing, or present at the aforementioned hearing written data, views or arguments. Emailed comments should be sent to the hearing officer at [Jenifer.Gurr@state.co.us](mailto:Jenifer.Gurr@state.co.us). A copy of the proposed rule is available on the Department of Agriculture’s website at [www.colorado.gov/ag](http://www.colorado.gov/ag) or may be obtained by calling 303-869-9004. The proposed rule shall be available for public inspection at the Colorado Department of Agriculture at 305 Interlocken Parkway, Broomfield, Colorado during regular business hours.



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## DEPARTMENT OF AGRICULTURE

### Agriculture Commissioner's Office

## RULES PERTAINING TO FARM-TO-MARKET INFRASTRUCTURE GRANTS

### 8 CCR 1207-4

#### Part 1. Definitions

- 1.1. "Agriculture" has the same meaning as set forth in 35-1-102(1) C.R.S., which is: "the science and art of production of plants and animals useful to man, including, to a variable extent, the preparation of these products for man's use and their disposal by marketing or otherwise, and includes horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bee, and any and all forms of farm products and farm production."
- 1.2. "Agricultural Processing" means the transforming, packaging, sorting, storage, or grading of Colorado livestock, livestock products, agricultural commodities, plants, or plant products.
- 1.3. "Award Effective Date" means the date on which the Commissioner of Agriculture, or her designee, sends written communication, whether by e-mail or post, that an applicant's grant application has been approved for a Grant Award.
- 1.4. "Award Period" means the period of time during which the Department will receive grant applications to process for consideration of grant awards.
- 1.5. "Commissioner" means the Commissioner of Agriculture.
- 1.6. "Department" means the Department of Agriculture created in 35-1-103 C.R.S.
- 1.7. "Eligible Business" means a business that: (a) earns a majority of its revenue from agricultural processing; and (b) in the judgment of the Department has managers and employees who possess sufficient education, training, and experience to operate the business; and provides an economic benefit to Colorado farmers or ranchers.
- 1.8. "Eligible Expense" means an expense that an applicant identified in its grant application and that an awardee incurred within the contract period as part of completing its awarded project.
- 1.9. "Eligible Farmer or Rancher" means an individual who: (a) is at least eighteen years of age; (b) is a resident of Colorado; (c) is an owner or operator in fact of a farm or ranch; and (d) in the judgment of the Department: possesses sufficient education, training, and experience to operate the farm or ranch; and possesses or has access to sufficient working capital, farm machinery, livestock, or land to operate the farm or ranch.
- 1.10. "Farm-to-Market Infrastructure Grant" means a grant of money from the fund, which money is used for the purpose of agricultural processing.
- 1.11. "Fund" means the Colorado Agricultural Future Loan Program Cash Fund created in 35-1.2-105 C.R.S.
- 1.12. "Grant Award" means an award of money from the Fund that the Department grants to an eligible business, eligible rancher, or eligible farmer for the exclusive purpose of agricultural processing.

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## **Part 2. General Eligibility**

- 2.1. Eligible businesses, eligible farmers, and eligible ranchers as defined in 1.7 and 1.9 above may apply to the Department for a Farm-to-Market Infrastructure Grant. The intent of the Department is to award grants totaling \$2 million by June 30, 2022.
- 2.2. Eligible businesses, eligible farmers, and eligible ranchers applying for a Farm-to-Market Infrastructure Grant must have a physical operation(s) in the state of Colorado and the project for which the applicant requests such funds must also be located in Colorado.
- 2.3. Eligible businesses must be registered and in “good standing” with the Colorado Secretary of State.
- 2.4. Eligible farmers and eligible ranchers must be residents of Colorado and actively engaged in agriculture.
- 2.5. Grant Awards may be used only for projects that constitute Agricultural Processing, as that term is defined in 1.2 above.
- 2.6. The maximum Grant Award amount that the Department will award for any one project is \$150,000.
- 2.7. Awardees shall have not more than two (2) years from the effective date of the Grant Award to fully complete the project.

## **Part 3. Application for a Grant**

- 3.1. Eligible businesses, eligible farmers, and eligible ranchers interested in participating may apply to the Department at any time using the application processes and procedures on the Department’s web site at <https://ag.colorado.gov/>
- 3.2. While applications may be submitted at any time, the Department will adhere to the following schedule for review of applications:
  - 3.2.1. Applications received prior to the close of business on November 30, 2021 (Award Period #1) will be reviewed and awardees selected no later than January 30, 2022. The intent of the Department will be to award \$1 million in grants to applications received during this period.
  - 3.2.2. Applications received prior to the close of business on February 28, 2022 (Award Period #2) will be reviewed and awardees selected no later than April 30, 2022. The intent of the Department will be to award \$1 million in grants to applications received during this period.
  - 3.2.3. Applications received after February 28, 2022 will be reviewed and awards made contingent upon the availability of grant funds.
- 3.3. Applicants not selected to receive a grant in an Award Period may resubmit their application or submit a new application for consideration in any subsequent Award Period.
- 3.4. At the time of application to the Department, an applicant must provide general eligibility information about the applicant, a description of the proposed project and business plan, project timeline, project budget, the grant amount being requested, identification of which expenses the grant funds would be used for, the applicant’s contribution (financial or otherwise) to the project,

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the extent to which the proposed project will strengthen resiliency within Colorado's food and agricultural industry, and any projected changes to employment and sales/volume growth.

- 3.4.1. Applications from Eligible Businesses must also demonstrate that the Eligible Business earns greater than fifty (50) percent of its revenues from agricultural processing.
- 3.5. Applications will be reviewed by a panel inclusive of Department staff and the Colorado Value-Added Development Board. This panel will evaluate the merit of each application on the basis of criteria, including, but not limited to, the amount of funds requested, the applicant's contribution (financial or otherwise) to the project, the project's expected economic impact, potential for new job creation, and the extent to which the project will strengthen resiliency within Colorado's food and agricultural industry.
- 3.6. The review panel will make its recommendations to the Commissioner of projects proposed for selection and the Grant Award proposed to be awarded to fund such projects. To optimize the utilization of funds available, the review panel may recommend Grant Awards less than the amount of funds an applicant requests. The Commissioner of Agriculture, or the Commissioner's designee, will review such recommendations and make any final awards and grant amounts as deemed appropriate.
- 3.7. The Department will inform each applicant of the Department's decision regarding an applicant's request for a Grant Award via e-mail within 30 days of the end of each Award Period.

#### **Part 4. Award of Funds**

- 4.1. Grant Awards will be made available to awardees as a Small Dollar Grant Award (purchase order grant).
- 4.2. Grant Awards are subject to the State of Colorado Small Dollar Grant Award Terms and Conditions (incorporated by reference herein, effective July 1, 2019). Material incorporated by reference does not include any later amendments or editions of the incorporated material. Copies of material incorporated by reference are available for public inspection during regular business hours and may be obtained at a reasonable charge or examined by contacting the Markets Division, Colorado Department of Agriculture, 305 Interlocken Parkway, Broomfield, CO 80021. Further, the incorporated material may be examined at no cost on the Internet at: <https://osc.colorado.gov/spco/ccu/purchase-order-terms-conditions>
- 4.3. The Department will provide a copy of this material to any eligible business, eligible rancher, or eligible farmer who receives a Grant Award along with the notification of award.
- 4.4. A Grant Award is not a guarantee of funds as all disbursement of funds is contingent on the awardee's agreeing to and complying with all requirements as determined by the Department.
- 4.5. Funding from a Grant Award will be paid upon completion of the following milestones:
- 4.5.1 Milestone One – "Kick-Off Conference." After an awardee has had its initial meeting with the Department, the "Kick-Off Conference," an awardee may submit an initial invoice in an amount up to fifty (50) percent of the total Grant Award to receive an initial payment to start the project. If the Department makes such initial payment, or any portion of the requested initial payment, to the awardee for those non-incurred expenses, any remaining amount to be reimbursed from the Grant Award shall be reduced by the amount of that initial payment.

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4.5.2 Milestones Two through Final Milestone: As an awardee incurs expenses, the awardee may submit invoices for those actual, incurred expenses with supporting documentation and proof of payment to the Department for reimbursement. To the extent that documented expenses are eligible expenses, the funds will then be reimbursed.

4.5.3 Final Milestone: Once the awardee has completed its project, the awardee must submit a final invoice, which final invoice must be submitted not later than three years following the effective date of the Small Dollar Grant Award.

4.6. Awardees may submit invoices at any time as expenses are incurred and paid.

4.7. As a condition of receiving a Grant Award, an awardee shall agree to cooperate with the Department in evaluating the economic impact of the project and any changes to employment in Colorado as a result of completing the project.

## Part 5 through 9 Reserved

## Part 10. Statement of Basis, Specific Statutory Authority and Purpose

### 10.1. Emergency Rule Adopted September 8, 2021 – Effective September 8, 2021

#### Statutory Authority

The Commissioner of Agriculture adopts these rules pursuant to § 35-1.2-103(7)(a) and (c), C.R.S., and § 24-4-103(6), C.R.S.

#### Purpose

1. To create the Farm-to-Market Infrastructure Grant Program providing funds to businesses, farmers, and ranchers for the development and expansion of agricultural processing.
2. To establish general eligibility requirements for the Program.
3. To establish application processes and procedures for the Program.
4. To establish processes and procedures for the review of applications and award of grant funds.
5. To establish processes and procedures for reimbursement of expenses to participating businesses, farmers, and ranchers.

#### Factual and Policy Issues

This temporary emergency rule is necessary to enable the Commissioner of Agriculture to fulfill the requirements of SB 21-248, which created a new “Colorado Agricultural Future Loan Program.” SB 21-248 authorized the Commissioner to commence distributing between five and ten million dollars on or before January 1, 2022, in part, to fund farm-to-market grants. SB 21-248, codified at § 35-1.2-101, et seq., C.R.S., limits the period of time during which the Commissioner may issue such farm-to-market grants, which time period ends June 30, 2022. Further, before the Commissioner may receive an application for a grant or issue a grant, the Commissioner must adopt rules to govern the grant process.

Engaging in the normal rule-making process would not permit these rules to be effective until the start of the new year. Such a delay would result in the Commissioner’s inability to begin receiving and processing

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grant applications until after the new year. Such a delay would impair the Commissioner's ability to issue sufficient grants to comply with the statutory minimums before the statutory deadline of June 30, 2022.

Immediate adoption is therefore imperatively necessary to comply with state law and to enable the Commissioner to fulfill the General Assembly's desire to fund such farm-to-market infrastructure grants.

In developing these Rules, the Department reviewed policies and program guidelines of previous grant programs administered by the Markets Division within the Department of Agriculture. The Department also conducted listening sessions with agricultural stakeholders relating to the New Agricultural Future Loan Program, which encompasses the Farm-to-Market Infrastructure Grant Program.

## **10.2. Adopted November 10, 2021 – Effective December 30, 2021**

### Statutory Authority

The Commissioner of Agriculture adopts these rules pursuant to § 35-1.2-103(7)(a) and (c), C.R.S.

### Purpose

1. To create the Farm-to-Market Infrastructure Grant Program providing funds to businesses, farmers, and ranchers for the development and expansion of agricultural processing.
2. To establish general eligibility requirements for the Program.
3. To establish application processes and procedures for the Program.
4. To establish processes and procedures for the review of applications and award of grant funds.
5. To establish processes and procedures for reimbursement of expenses to participating businesses, farmers, and ranchers.

### Factual and Policy Issues

This Commissioner adopts this Rule to fulfill the requirements of SB 21-248, which created a new "Colorado Agricultural Future Loan Program." SB 21-248 authorized the Commissioner to commence distributing between five and ten million dollars on or before January 1, 2022, in part, to fund farm-to-market grants, and required the Commissioner to establish the program, including specifying the application process, the payment process, and the criteria to be used.

In developing these Rules, the Department reviewed policies and program guidelines of previous grant programs administered by the Markets Division within the Department of Agriculture. The Department also conducted listening sessions with agricultural stakeholders relating to the Colorado Agricultural Future Loan Program, which encompasses the Farm-to-Market Infrastructure Grant Program, as well as sought stakeholder input on this Rule as adopted to help inform this rulemaking process.

Finally, the Department revised provisions adopted in the emergency rule to clarify the reimbursement process and to amend an internal conflict related to reimbursement dates and deadlines.