

NOTICE OF PUBLIC RULEMAKING HEARING

FOR ADOPTION OF

“Rules Pertaining to the Colorado Agricultural Future Loan Program” 8 CCR 1207-5

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

DATE: November 18, 2021
TIME: 1:00 pm
LOCATION: This hearing will be held via [Zoom](#)
CALL INFORMATION: 1-253-215-8782
MEETING ID: 899 3204 8249
PASSCODE: 230729

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. 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 create the program, including eligibility requirements; and application processes and procedures for application review, repayment of servicing loans, and for revolved funds.

The statutory authority for these rules § 35-1.2-103(7)(a), (b), 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. A copy of the proposed rule is available on the Department of Agriculture’s website at 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 THE COLORADO AGRICULTURAL FUTURE LOAN PROGRAM

8 CCR 1207-5

Part 1. The Colorado Agricultural Future Loan Program

- 1.1. Section 35-1.2-103, C.R.S., established the Colorado Agricultural Future Loan Program. These rules implement that program.
- 1.2. The Colorado Department of Agriculture (CDA or Department) shall administer the Loan Program. See section 35-1.2-103, C.R.S.
- 1.3. The Loan Program is a revolving loan and grant fund to support the future of agriculture in Colorado. Except as otherwise provided in this rule, money received as loan payments on loans issued from the Loan Program, including interest payments will be credited to the Colorado Agricultural Loan Cash Fund (Fund) created in section 35-1.2-105, C.R.S., and shall be reused on a continuing basis to support the Loan Program as set forth in C.R.S. 35-1.2-101, et seq.) and the provisions of this rule.
- 1.4. The Department shall, to the extent practicable, attempt to award or distribute a total of at least \$5 million but no more than \$10 million in the form of Farm-to-Market Infrastructure Loans or Farm-to-Market Infrastructure Grants to Eligible Farmers and Ranchers and Eligible Businesses by June 30, 2022. The Department also shall, to the extent practicable, attempt to award or distribute a total of at least \$10 million but no more than \$20 million in the form of Low-Interest Loans to Eligible Farmers and Ranchers and Eligible Businesses by December 31, 2022.
- 1.5. The Department shall to the extent practicable prioritize the provision of loans to eligible farmers or ranchers who apply for loans or grants from the Loan Program and who have owned or operated a farm or ranch for less than ten years or who represent a population that is underserved or underrepresented in Colorado agriculture.

Part 2. Definitions

- 2.1. "Agriculture" means the science and art of production of plants and animals useful to humans, including, to a variable extent, the preparation of these products for human 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.
- 2.2. "Agricultural Processing" means the transforming, packaging, sorting, storage, or grading of Colorado livestock, livestock products, agricultural commodities, plants, or plant products.
- 2.3. "Colorado Agricultural Future Loan Program" or "Loan Program" is a loan and grant program administered by the Department as established in section 35-1.2-103, C.R.S.
- 2.4. "Commissioner" means the Commissioner of Agriculture.

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- 2.5. "Department" or "CDA" means the Department of Agriculture created in section 35-1-103, C.R.S.
- 2.6. "Eligible Business" means a business that earns a majority of its revenue from agricultural processing; and in the judgment of the Department: (a) has managers and employees who possess sufficient education, training, and experience to operate the business; and (b) provides an economic benefit to Colorado farmers or ranchers.
- 2.7. "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: (1) possesses sufficient education, training, and experience to operate the farm or ranch; and (2) possesses or has access to sufficient working capital, farm machinery, livestock, or land to operate the farm or ranch.
- 2.8. "Farm-to-Market Infrastructure Grant" means a grant of money from the Fund, which money is used for Agricultural processing.
- 2.9. "Farm-to-Market Infrastructure Loan" means a loan from the Loan Program used for the purpose of Agricultural Processing.
- 2.10. "Financial Entity" means a bank, nondeposit community development financial institution, business development corporation, or other entity with agricultural lending experience and with which the Department contracts to help administer the Loan Program.
- 2.11. "Fund" means the Colorado Agricultural Future Loan Cash Fund created in section 35-1.2-105, C.R.S.
- 2.12. "Loan Program" means the Colorado Agricultural Future Loan program created in section 35-1.2-103, C.R.S.
- 2.13. "Low-Interest Loan" means a loan from the Loan Program, the interest rate of which is generally considered to be at or below market rate.
- 2.14. "Operator of a farm or ranch" means a person who makes management or operational decisions related to all or a portion of a farm or ranch, or is a hired manager, renter or tenant of land used for a farm or ranch, cash tenant, share tenant, or partner.
- 2.15. "Owner of a farm or ranch" means a person that owns an agricultural business or land used for farming or ranching.
- 2.16. "Underserved" or "Underrepresented" means a farmer or rancher who is from a population, race, ethnic group, gender, or geographic location that has been socially disadvantaged due to discrimination or prejudice or that historically has participated in agricultural programs at a level that is disproportionately lower than its representation in the population of Colorado.

Part 3. Loan Application Requirements

- 3.1. Eligible Farmers or Ranchers and Eligible Businesses may apply to the Department for a loan from the Loan Program at any time during the year.
- 3.2. Loan applications are available at the Department during normal business hours at 305 Interlocken Parkway, Broomfield, Colorado, or may be obtained at any time on-line by visiting the

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Department's website: www.ag.colorado.gov. Loan applications may also be made available by an authorized Financial Entity.

- 3.3. Each loan application must include all required information at the time of submission for consideration, including any required documentation. The Department, working in coordination with a Financial Entity, will return incomplete applications prior to any consideration.
- 3.4. A written application may be submitted in-person to the Department during normal business hours, by mail, or on-line at any time by visiting the Department's website: www.ag.colorado.gov.
- 3.5. Any Eligible Business that applies for a loan must provide a completed application and the following information, at the time of application:
 - 3.5.1. For a Farm-to-Market Instructure Loan, a description of the type of Agricultural Processing the applicant conducts;
 - 3.5.2. Financial documentation to support that the applicant earns a majority of its revenue from Agricultural Processing;
 - 3.5.3. Documentation to identify the experience, training, and education related to operation of the applicant's business;
 - 3.5.4. A description, with financial documentation if possible, to indicate the economic benefit the applicant's business provides to Colorado farmers or ranchers;
 - 3.5.5. Evidence that the applicant's business is registered and in "good standing" with the Colorado Secretary of State; and
 - 3.5.6. Any other information the Department, in coordination with a Financial Entity, determines is necessary to review, evaluate, and process the application.
- 3.6. Any Eligible Farmer or Rancher or any Operator of a farm or ranch who applies for a loan from the Loan Program must provide a completed application and the following information, at the time of application:
 - 3.6.1. Proof that the applicant is at least 18 years of age;
 - 3.6.2. Proof that the applicant is a resident of Colorado;
 - 3.6.3. Information indicating that the applicant is an owner or operator in fact of a farm or ranch;
 - 3.6.4. Documentation to identify the experience, training, and education of the applicant to exhibit the applicant's ability to operate the farm or ranch;
 - 3.6.5. Financial or other documentation showing that the applicant possesses or has access to sufficient working capital, farm machinery, livestock, or land to operate the farm or ranch; and
 - 3.6.6. The Department or a Financial Entity may request additional information at any time to supplement or complete any application.

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Part 4. Application Review and Approval

- 4.1. The Department will review submitted loan applications on a rolling basis throughout the calendar year.
- 4.2. The Department will use the following criteria in considering applications and awarding loans:
 - 4.2.1. Whether all eligibility requirements for participating in the Loan Program are satisfied;
 - 4.2.2. Priority will be given to applicants who are Underserved or Underrepresented, as those terms are defined in Part 2 of this rule;
 - 4.2.3. Priority will be given to applicants who have owned or operated a farm or ranch for less than ten years;
 - 4.2.4. The anticipated economic impact from the use of the loan funds, including the number of new jobs estimated to be created in Colorado, the amount of new revenue generated, and the overall impact on the continued success of Colorado agriculture;
 - 4.2.5. Whether the loan will be used to fill a gap or need in Colorado agriculture, including a need for new or expanded processing capacity;
 - 4.2.6. Whether the loan will be used to advance energy conservation, improve soil health, mitigate the impacts of drought or climate change, or promote good stewardship practices on the land;
 - 4.2.7. The likelihood of success of the proposed project or investment; and
 - 4.2.8. The applicant's ability to obtain alternative sources of funding, including through commercial lending.

Part 5. Terms and Conditions for Loan Program Loans

- 5.1. Unless otherwise provided in this rule, the provisions of this Part 5 apply to any loan awarded by the Department as part of the Loan Program.
- 5.2. Loans will be originated and serviced by one or more Financial Entities upon approval by the Department.
- 5.3. The maximum amount that may be loaned by the Loan Program to any applicant or group of applicants who have combined to submit an application, regardless of whether the applicant is an Eligible Farmer or Rancher or an Eligible Business, is \$750,000.
 - 5.3.1. The maximum amount does not apply to or include any grant funds that may be awarded by the Department or other sources of funding or financing the applicant may obtain.
 - 5.3.2. The Commissioner may allow loan funds to be awarded in an amount above the maximum amount for loans needed to purchase land or in other exceptional circumstances, including but not limited to, circumstances in which five or more of the criteria specified in Part 4 of this rule are satisfied in the judgment of the Commissioner.

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5.4. Interest rates for loans will be set at or below the current market rate. The Department, will determine an appropriate interest rate after considering relevant factors, including, but not limited to:

5.4.1. The dollar amount of the loan;

5.4.2. The applicant's ability to repay the loan, including interest; and

5.4.3. The applicant's ability to obtain alternative lending.

5.5. Loan Repayment

5.5.1. Loans issued under the Loan Program shall provide for a repayment period not to exceed twenty years unless the Commissioner determines in their sole discretion that it would be in the best interest of the Department and the State of Colorado to approve a longer repayment period.

5.5.2. Loan repayments shall be monthly unless the Department and the Financial Entity originating the loan determine that a different repayment schedule is appropriate.

5.5.3. Loan repayments, including interest, may be deferred for a period of up to 18 months for good cause as determined by the Commissioner.

5.6. Notwithstanding the provisions of Part 8 of this rule, the Department may enter into a contract with a Financial Entity, allowing such Financial Entity to earn as compensation a portion of the amount of loan repayment, interest, or other fees collected in connection with a loan originated and serviced by the Financial Entity.

Part 6. Permissible Uses of Money Awarded as a Low-Interest Loan

6.1. Permissible uses of money awarded by the Department to Eligible Farmers or Ranchers or Eligible Businesses as a Low-Interest Loan include, but are not limited to, the following:

6.1.1. The acquisition of property and equipment;

6.1.2. Paying costs associated with purchasing livestock;

6.1.3. Value-added improvements to real or personal property on a ranch or farm;

6.1.4. Operating expenses;

6.1.5. Conservation projects, including projects that improve soil health, reduce the use of or conserve water or energy, or help reduce or mitigate the impacts of drought or climate change;

6.1.6. Market analyses, studies, or other research and development costs; and

6.1.7. Expenses related to starting up or expanding agricultural technology in Colorado.

Part 7. Reporting

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7.1. On or before December 15, 2021, and by December 15 of every year thereafter, the Department shall submit a summarized annual report concerning the Loan Program to the Agriculture and Natural Resources Committee of the Senate and the Agriculture, Livestock, and Water Committee of the House or Representatives, or any successor committees.

7.2. When the Department contracts with one or more Financial Entities it shall promptly notify the Agriculture and Natural Resources Committee of the Senate and the Agriculture, Livestock, and Water Committee of the House or Representatives, or any successor committees, of such contracts.

Part 8. The Colorado Agricultural Future Loan Program Cash Fund

8.1. Except as otherwise provided in statute or this rule, money received as loan repayments on loans issued from the Loan Program, including interest, and any other money that may be appropriated or transferred to the Loan Program shall be credited to the Fund established in section 35-1.2-105, C.R.S., and defined in Part 2 of this rule.

8.2. Funds maintained by the Department in the Fund may be used on a revolving basis to make loans, grants, and for administrative expenses consistent with the provisions of the Loan Program as provided in section 35-1.2-101, et seq., C.R.S., and this rule.

Part 9. Statement of Basis, Specific Statutory Authority and Purpose

9.1. Adopted December 8, 2021 – Effective January 30, 2022

Statutory Authority

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

Purpose

To create the Colorado Agricultural Future Loan Program providing funds to businesses, farmers, and ranchers to support the future of agriculture in Colorado.

To establish general eligibility requirements for the Program.

To establish application processes and procedures for the Program.

To establish processes and procedures for the review of applications and award of loan funds.

To establish processes and procedures for repayment and servicing of loans.

To establish processes and procedures for revolved funds.

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 providing from \$5 million to \$10 million in Farm-to-Market Infrastructure Loans and

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Farm-to-Market Grants to Eligible Farmers and Ranchers and Eligible Businesses by June 30, 2022 and from \$10 million to \$20 million in Low Interest Loans to Eligible Farmers and Ranchers, and Eligible Businesses by December 31, 2022, and required the Commissioner to establish the program, including specifying the application process, the loan award and distribution process, and the criteria to be used.

In developing these Rules, the Department reviewed policies and program guidelines of previous loan programs administered by the Colorado Department of Agriculture as well as those administered by comparable entities. The Department also conducted listening sessions with agricultural stakeholders relating to the Colorado Agricultural Future Loan Program as well as sought stakeholder input on this Rule as adopted to help inform this rulemaking process.