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TITLE 250 – DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

CHAPTER 90 – MARINE FISHERIES

SUBCHAPTER 00 – N/A

PART 20 – Emergency Regulations Governing the Administration of the Seafood Processors Pandemic Response and Safety Block Grant Provided to the State of Rhode Island by the U.S. Department of Agriculture, Agricultural Marketing Service under Title VII, subtitle B, section 751 of the Consolidated Appropriations Act, 2021, Pub. L. 116-260 (H.R. 133) in response to the ongoing COVID-19 pandemic.

20.1 Purpose

The purpose of these rules and regulations is to administer the \$371,412 grant provided to the State of Rhode Island by the U.S. Department of Agriculture (USDA), Agricultural Marketing Service (AMS) via the Seafood Processors Pandemic Response and Safety Block Grant Program. The grant will be used to provide reimbursements to eligible beneficiaries to help defray eligible expenses incurred to prepare for, prevent exposure to, and respond to the COVID-19 pandemic during the period between January 27, 2020 and December 31, 2021.

20.2 Authority

These rules and regulations are adopted pursuant to R.I. Gen. Laws Title 20, Chapter 42-17.1, and promulgated in accordance with R.I. Gen. Laws Chapter 42-35.

20.3 Application

The terms and provisions of these rules and regulations shall be liberally construed to permit the Department to effectuate the purposes of state law, goals, and policies.

20.4 Definitions

"AMS" means the Agricultural Marketing Service in the U.S. Department of Agriculture.

"ASMFC" means the Atlantic States Marine Fisheries Commission.

"At-sea processor" means a vessel or other platform that floats and can be moved from one location to another, whether in State waters or water of the exclusive economic zone (EEZ), receiving fish and operating as a processor.

"CAA" means the federal Consolidated Appropriations Act, 2021, Pub. L. 116-260 (H.R. 133).

"Dealer" means an entity that first receives fish by way of purchase and sells directly to restaurants, markets, other dealers, processors, or consumers without substantially altering the product.

"Department" means the Rhode Island Department of Environmental Management.

"Processor" means the owner, operator, dealer, or agent responsible for any activity that changes the physical condition of a fisheries resource suitable for human consumption, retail sale, industrial uses, or long-term storage, including cooking, canning, smoking, salting, drying, shucking, filleting, freezing, or rendering into meal or oil. Any owner, operator, dealer, or agent exclusively gutting, gilling, heading, or icing seafood without performing any of the above activities is not considered a processor.

"RFA" means the Request for Applications issued by the Agricultural Marketing Service in the USDA on September 23, 2021 pursuant to Section 751 of the CAA.

"Secretary" means the Secretary of the U.S. Department of Agriculture.

"SPRS" means the Seafood Processors Pandemic Response and Safety block grant program under the Agricultural Marketing Service in the USDA.

"USDA" means the U.S. Department Agriculture.

20.5 Findings

- A. On December 27, 2020, the President signed into law the Consolidated Appropriations Act, 2021, Pub. L. 116-260 (H.R. 133).
- B. The Seafood Processors Pandemic Response and Safety (SPRS) Block Grant Program is authorized and funded under Title VII, subtitle B, Section 751 of the CAA. Under Section 751, the Secretary is authorized to provide grants to seafood processing facilities and processing vessels to respond to COVID-19, including for measures to protect workers against COVID-19.
- C. On September 23, 2021, the Agricultural Marketing Service in the U.S. Department of Agriculture (AMS) issued a Request for Applications (RFA) pursuant to Section 751 of the CAA. The RFA provided the opportunity for a state agency from each eligible state to apply for funding in the form of a Seafood Processors Pandemic Response and Safety (SPRS) block grant, and then administer that grant to eligible beneficiaries within each state. The RFA set forth the block grant award amounts available to each state, eligibility criteria for applicants and beneficiaries, eligible uses for the grants funds, and the process for states to follow to apply for and receive the available grant allocations.

The RFA established a November 22, 2021 grant application deadline for all eligible states.

- D. Pursuant to the RFA, Rhode Island was deemed an eligible state and allocated \$371,412.
- E. Pursuant to the RFA, eligible applicants include the state agencies, commissions, or departments in eligible states that are responsible for agriculture, fisheries, wildlife, seafood, commercial processing, or related commerce activities within the state.
- F. Pursuant to the RFA, eligible beneficiaries include seafood processing facilities and dealers, as well as processing vessels.
- G. Pursuant to the RFA, funds from the SPRS block grants awarded to each state must be used for the sole purpose of reimbursing eligible beneficiaries to help defray eligible expenses they incurred to prepare for, prevent exposure to, and respond to the COVID-19 pandemic during the period between January 27, 2020 and December 31, 2021. Eligible expenses pertain to costs associated with one or more of the following six categories of activities: workplace safety measures, market pivots, retrofitting facilities, transportation, worker housing, and/or medical. The RFA afforded states the opportunity to identify and target those categories that aligned with local conditions and industry needs.
- H. Following issuance of the RFA, the Rhode Island Department of Environmental Management (Department) was identified as the Rhode Island state agency that would apply for and administer Rhode Island's SPRS block grant.
- I. In accordance with the RFA, the Department conducted outreach with Rhode Island stakeholders to ensure eligible beneficiaries were aware of the program and understood the requirements of the funding opportunity; obtain input on the most effective use of the funds; obtain input on eligible funding categories and funding amounts per category, based on local conditions and industry needs.
- J. The Department held two public workshops regarding Rhode Island's SPRS block grant, on October 26, 2021 and November 11, 2021. At the workshops, RIDEM briefed stakeholders on the SPRS block grant program and solicited input on the development of Rhode Island's application to receive and administer the grant.
- K. As a component of the above-described public process, the Department sought and received input from stakeholders regarding the enactment of emergency regulations to govern the process of administering Rhode Island's SPRS block grant, upon approval by AMS. All stakeholders supported the use of emergency regulations to expedite implementation of the block grant, in recognition that the issues addressed by regulation would fundamentally be the same as the provisions set forth in the Rhode Island application.

- L. On November 19, 2021, the Department submitted Rhode Island's application for the SPRS block grant to AMS for review. The application set forth a proposal for implementation consistent with required AMS provisions in the RFA and public input provided at the two public workshops. In particular the application proposed to target, and limit, reimbursable COVID-19-related costs to three categories of activities: workplace safety measures, market pivots, and retrofitting facilities. The application also proposed to provide equitable opportunities to all eligible beneficiaries seeking reimbursement for eligible expenses.
- M. On January 24, 2022, the Rhode Island SPRS block grant application was approved by AMS.
- N. These emergency rules and regulations operationalize the process of disbursing Rhode Island's \$371,412 SPRS block grant, consistent with the provisions of the CAA, the guidance provided by AMS, and the approved Rhode Island application.

20.6 Assessment of Administrative Fees

- A. The Department will initially set aside \$28,662 from the Rhode Island SPRS block grant to cover the administrative costs of developing and implementing the Rhode Island program. This is a maximum amount. Actual administrative costs will be determined upon conclusion of the appeal process, as set forth herein under § 20.13 of this Part.
- B. If actual administrative costs are determined to be in excess of \$28,662, no additional amount will be deducted for such costs from the Rhode Island SPRS block grant.
- C. If actual administrative costs are determined to be less than \$28,662, the amount remaining from the set aside will be distributed proportionally among all qualified applicants.

20.7 Sub-Allocations

- A. Initially, \$342,750 will be equally allocated among the three categories of eligible expenses as follows:
 - 1. Workplace safety measures: \$114,250
 - 2. Market pivots: \$114,250
 - 3. Retrofitting facilities: \$114,250
- B. Upon completion of the appeals process, as set forth in § 20.13 of this Part, the Department will make any final adjustments to awards necessary to ensure that the total SPRS block grant of \$342,750 is fully distributed to all qualifying applicants. That is, any balances remaining in any category will be reallocated, proportionally, to other

category(s) incurring shortfall(s), and distributed, proportionally, to qualifying applicants in those category(s).

20.8 Eligibility Criteria

20.8.1 Applicants:

- A. All applicants must meet the following criteria:
1. Must be a resident of Rhode Island upon date of application;
 2. Must be 18 years of age or older upon date of application;
 3. Must have held a seafood dealer license issued by the Department and/or a seafood wholesaler license issued by the Rhode Island Department of Health, during some or all of the period between January 27, 2020 and December 31, 2021.
 4. Must have maintained a place of business in Rhode Island, during some or all of the period between January 27, 2020 and December 31, 2021, where eligible expenses were incurred.
 5. Must have incurred expenses to prepare for, prevent exposure to, and/or respond to the COVID-19 pandemic, above and beyond normal business expenses, during the period between January 27, 2020 and December 31, 2021 in any of the following three categories: workplace safety measures, market pivots, and retrofitting facilities.
 6. Must have on file and be able to produce upon request valid records/documentation; typically in the form of receipts, invoices, and/or purchase orders; verifying the eligible expenses.
 7. Must not be debarred from receiving federal funds.
 8. Must not be on the federal government's "do not pay" list.
 9. Licensed Rhode Island aquaculturists, including those holding a seafood dealer license issued by RIDEM and/or a seafood wholesaler license issued by the Rhode Island Department of Health, are not eligible applicants under this program.

20.8.2 Categories of Expenses

- A. Eligible expenses are limited to those incurred by the applicant to prepare for, prevent exposure to, and/or respond to the COVID-19 pandemic, above and beyond normal business costs, during the period between January 27, 2020 and December 31, 2021 in

any of the following categories. Expenses must be for activities as specified or for activities reasonably proximate to those specified:

1. Workplace safety measures -- including, but not limited to, personal protective equipment; sanitizer; hand washing stations; air filters; thermometers; cleaning supplies; or similar items.
2. Market pivots -- including, but not limited to, transition to virtual/online sales costs, such as online platform development and fees, online marketing, and credit card processing fees; supplies; new signage; or similar items.
3. Retrofitting facilities -- including, but not limited to, retrofitting facilities for worker and consumer safety, such as retrofitting harvester vessels for onboard vessel processing to maximize open-air activities, plexiglass, walk up windows, heat lamps, fans, tents, propane, weights, tables, chairs; or other similar items.

20.9 Application Procedures and Required Information, Certification and Documentation

- A. Consideration for reimbursement will only be afforded to those who meet the eligibility criteria set forth in § 20.8 of this Part, who apply to the Department pursuant to the application procedures set forth below, and who provide all required information, certification, and records/documentation.
- B. Application:
 1. Applicants must complete the application form titled "USDA-Seafood Processors Response and Safety (SPRS) Block Grant Program -- Affidavit and Application for Eligible Participants from Rhode Island," issued by the Department. The application form will be available at the following locations:
 - a. The Department's Office of Technical and Customer Assistance, located at 235 Promenade Street, Providence, Rhode Island 02908;
 - b. The Department's Division of Coastal Resources, located at 301 Great Island Road, Narragansett, Rhode Island 02882; and,
 - c. The Department's Division of Marine Fisheries, located at 3 Fort Wetherill Road, Jamestown, Rhode Island 02835.
 - d. Online at the Department's Marine Fisheries website at:
<http://www.dem.ri.gov/programs/marine-fisheries/Fisheries-CARES-Act.php#USDA>.
 2. Applications must be completed in full. Applications not completed in full will not be considered eligible.

3. Applications must be notarized prior to submission.
 4. Individual processing facilities or vessels may apply separately for reimbursement. Processors may only apply once for each location or vessel.
 5. Submission. Fully completed and notarized applications must be submitted in hard copy (i.e., hand delivered) during the application period, Monday through Friday, 8:30 am - 4:00 pm to either of the three offices set forth below. Neither mailed submission nor electronic submissions of application forms will be accepted.
 - a. The Department's Division of Coastal Resources, 301 Great Island Road, Narragansett, Rhode Island 02882;
 - b. The Department's Division of Marine Fisheries, 3 Fort Wetherill Road, Jamestown, Rhode Island 02835; or
 - c. The Department's Office of Technical and Customer Assistance, 235 Promenade Street, Providence, Rhode Island 02908.
- D. Application period: The application period is limited to the fifteen (15)-day period beginning on March X, 2022 and ending on March X, 2022. The application deadline is 4:00 pm on March X, 2022. No applications will be accepted or considered if submitted after the application deadline.
- E. Required Information, Certification, and Documentation:
1. All applicants must provide the following information as part of each application:
 - a. Verification that the applicant held a seafood dealer license issued by the Department and/or a seafood wholesaler license issued by the Rhode Island Department of Health, during some or all of the period between January 27, 2020 and December 31, 2021.
 - b. Verification that the applicant maintained a place of business in Rhode Island, during some or all of the period between January 27, 2020 and December 31, 2021, where eligible expenses were incurred.
 - c. Self-certification that the applicant incurred expenditures to prepare for, prevent exposure to, and/or respond to the COVID-19 pandemic during the period between January 27, 2020 and December 31, 2021 in any of the following three categories: workplace safety measures, market pivots, and retrofitting facilities.
 - d. Quantification of those eligible expenditures for which the applicant is seeking reimbursement, broken out by eligible category.

- e. The total amount of the applicant's claim for reimbursement.
- f. Identification of the specific type(s) of records/documentation available to verify eligible expenses for which the applicant is seeking reimbursement. Generally, such records/documentation will be in the form of receipts, purchase orders, and/or invoices.
- g. Self-certification that the applicant has available all relevant records/documentation to verify eligible expenses for which the applicant is seeking reimbursement; will produce those records/documentation to the Department upon request by the Department as part of the application process; will retain those records/documentation for at least three (3) years after the close of the primary grant award to the Atlantic States Marine Fisheries Commission, and will make the records/documentation available upon request from the State of Rhode Island, including but not limited to the Department, NOAA, or the Office of the Inspector General, if necessary, for purposes of conducting individual or programmatic audits.
- h. Self-certification that the applicant is in good standing with respect to the payment of all tax obligations owed to the State of Rhode Island; and acknowledgement and agreement that if the applicant is not current, or fails to remain current, with respect to such tax obligations, the Department may require the return of funds obtained pursuant to the application.
- i. Consent to allow the Department to make available to the Rhode Island Department of Revenue, Division of Taxation information pertaining to final award amounts, along with information specific to the applicant as set forth in the application by the applicant, and only this specific information, for the purpose of verifying compliance with state tax obligations.
- j. Determination as to how each applicant wishes to be notified regarding the Department's decision on each application by picking up and signing for the decision letter at the Department's Marine Fisheries Office in Jamestown or Coastal Resources Office in Galilee (Narragansett).

20.10 Evaluation

- A. Upon close of the application period, the Department will conduct an expeditious review of all applications.
- B. Drawing upon information available from the Department's Office of Boating Registration and Licenses, the Rhode Island Department of Health, and the Rhode Island

Department of State, the Department will validate each application with regard to each applicant's license status and business ownership status.

- C. As part of the evaluation process, the Department may require applicants to submit copies of records/documentation that verify the eligible expenses for which the applicant is seeking reimbursement.
- D. Pursuant to the Department's review of all applications, those applicants not meeting eligibility criteria, who submit incomplete applications, or who fail to provide copies of records/documentation upon request, will be issued letters of denial. Those receiving letters of denial may file an appeal to the finding no later than fifteen (15) calendar days following receipt of the letter, in accordance with § 20.13 of this Part.

20.11 Audit Procedures

- A. The Department will conduct random audits on a subset of applications received in accordance with the following provisions. The purpose of the audits is for the Department to confirm that applicants have retained the records they are required to provide pursuant to Section 20.9(E)(1) herein, and to confirm that the information contained in those documents is accurate.
 - 1. The Department will randomly target for audit 10 percent of all applications received.
 - 2. To randomly select the applications to be audited, the Department will use computer software to randomly generate numbers that will identify applications for audit.
 - 3. For all applications subject to audit:
 - a. The Department will notify the applicant in writing via certified mail and email that their application has been subject to audit and, pursuant thereto, the applicant must provide to the Department copies of records/documentation that verify the eligible expenses for which the applicant is seeking reimbursement.
 - b. Applicants must respond to the request for copies of records/documentation within fifteen (15) calendar days following the applicant's receipt of the written notification from the Department. The records/documentation must be submitted in hard copy (i.e., hand delivered) Monday through Friday, 8:30 am - 4:00 pm to either of the three offices set forth below. Neither mailed submission nor electronic submissions of records/documentation will be accepted.

- (1) The Department's Division of Coastal Resources, 301 Great Island Road, Narragansett, Rhode Island 02882;
 - (2) The Department's Division of Marine Fisheries, 3 Fort Wetherill Road, Jamestown, Rhode Island 02835; or
 - (3) The Department's Office of Technical and Customer Assistance, 235 Promenade Street, Providence, Rhode Island 02908.
- c. Failure to respond to the Department's written request for records/documentation within fifteen (15) calendar days following receipt of the request will result in the denial of the application.
 - d. An audited application found to have sufficient records/documentation that verify the eligible expenses for which the applicant is seeking reimbursement will be processed along with all other applications pursuant to § 20.12 of this Part.
 - e. An audited application found to have insufficient records/documentation that fail to verify the expenses for which the applicant is seeking reimbursement will be issued a letter of denial, and the applicant will be referred to the Department's Office of Law Enforcement for investigation. Those receiving letters of denial may file an appeal to the finding no later than fifteen (15) calendar days following receipt of the letter, in accordance with § 20.13 of this Part.
 - f. All applicants subject to audit will be notified in writing regarding the results of the audit.

20.12 Award and Notification

- A. Upon completion of the audit process set forth in § 20.13 of this Part, the Department will tally all claims within each category and, for each category, undertake the following process of determining payment amounts:
 1. For applicants seeking reimbursement for eligible expenses incurred for workplace safety measures:
 - a. If the total amount of claims is less than \$114,250, the Department will process payments for the full amount of each claim.
 - b. If the total amount of claims is more than \$114,250, the Department will calculate the percentage of the total shortfall and apply that percentage to each claim.

2. For applicants seeking reimbursement for eligible expenses incurred for market pivots:
 - a. If the total amount of claims is less than \$114,250, the Department will process payments for the full amount of each claim.
 - b. If the total amount of claims is more than \$114,250, the Department will calculate the percentage of the total shortfall and apply that percentage to each claim.
 3. For applicants seeking reimbursement for eligible expenses incurred for retrofitting facilities:
 - a. If the total amount of claims is less than \$114,250, the Department will process payments for the full amount of each claim.
 - b. If the total amount of claims is more than \$114,250, the Department will calculate the percentage of the total shortfall and apply that percentage to each claim.
 4. Upon completion of the appeals process, as set forth in § 20.13 of this Part, the Department will make any final adjustments to awards necessary to ensure that the total SPRS block grant of \$342,750 is fully distributed to all qualifying applicants. That is, any balances remaining in any category will be reallocated, equally, to other category(s) incurring shortfall(s), and distributed, equally, to qualifying applicants in those category(s).
- B. The Department will issue letters of eligibility to all qualifying applicants. Letters will be distributed via certified mail or available for pickup at the Division of Coastal Resources or the Division of Marine Fisheries.
1. Each letter will include the individual award amount based on the process described above.
 2. All qualifying applicants may file an appeal to the individual award amounts no later than fifteen (15) calendar days following receipt of the letter of eligibility in accordance with § 20.13 of this Part.

20.13 Appeals

- A. Any applicant who submits an application during the application period, and is deemed ineligible for an award, may appeal that determination to the Director.
- B. Any applicant who submits an application during the application period, and is deemed eligible for an award, may appeal the determination of the amount of the award to the Director.

- C. Any applicant subject to audit may appeal the result of the audit to the Director.
- D. All appeals must be submitted in writing and be filed with the Department's Office of Legal Services no later than fifteen (15) calendar days following the applicant's receipt of the written notification from the Department regarding the application or the audit. All appeals shall include a cover letter setting forth the reason(s) the application should have been deemed eligible, or the reason(s) the award amount should be different, or the reason(s) the audit results should be different, and shall include any/all supporting documentation. The filing deadline may be met by hand delivering a written appeal to the Department, at the address provided below, no later than 3:59 pm on the deadline date, or submitting a written appeal to the Department, at the address provided below, via mail, with a postmark no later than the deadline date.
- E. Appeals shall be filed with the Department's Office of Legal Services, SPRS Grant Program, 235 Promenade Street, Providence, Rhode Island 02908.
- F. There will be no opportunity to appeal a determination of ineligibility if such determination is based on the submittal of an application following the close of the application period.
- G. The Director's Executive Counsel, or their designee, will review all appeals, determine whether the applicant/appellant has satisfied his/her burden of proving that the Department's determination was not consistent with the eligibility, audit, or award standards set forth in these regulations, and render final agency decisions based thereon.
- H. The Director shall provide all applicants/appellants with written notification of the final agency decision.

20.14 Final Awards and Issuance of Payments

- A. Upon completion of the appeals process, the Department will make any final adjustments to awards necessary to ensure that the total SPRS block grant of \$342,750 is fully distributed to all qualifying applicants. That is, any balances remaining in any category will be reallocated, equally, to other category(s) incurring shortfall(s), and distributed, equally, to qualifying applicants in those category(s).
- B. The Department will issue final letters of award, specifying the final amounts of each award, to all qualifying applicants in all four sectors.
- C. At the same time, the Department will forward the names, contact information, social security numbers and award amounts of all qualifying applicants to the Executive Director of the Atlantic States Marine Fisheries Commission (ASMFC), pursuant to a Cooperative Agreement between the Department and ASMFC that protects the confidentiality of information not subject to public disclosure. In turn, the ASMFC will

issue payments to all qualifying applicants in accordance with the award amounts. The payments will be accompanied by 1099 forms, given the taxable nature of the payments.

20.15 Termination of Program

The activities of this funding program will be completed, and the program will be terminated, once the complete list of all final award recipients has been provided to the Atlantic States Marine Fisheries Commission, the Commission has issued all payments in accordance with that list, the Rhode Island Department of Revenue, Division of Taxation has addressed and fully resolved any tax obligations applicable to any awardees, and at least three years have elapsed since the close of the primary grant award to the Atlantic States Fisheries Commission.