

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Finance



P.O. Box 113200
Juneau, AK 99811-3200
(907) 465-3795
www.legfin.akleg.gov

MEMORANDUM

DATE: December 6, 2022

TO: Legislative Budget and Audit Committee

FROM: Alexei Painter, Director 

SUBJECT: Preparation for the December 14, 2022 LB&A Meeting

OMB submitted the following FY23 RPLs for consideration at the December 14, 2022 Legislative Budget and Audit Committee meeting. These RPLs, along with Legislative Finance comments, are posted on our website at <http://www.legfin.akleg.gov>.

RPL#	Agency	Allocation/Program	Amount	Fund Source
08-2023-0175	DCCED	USDA Seafood Processors Pandemic Response and Safety Block Grant Program	\$10,000,000	Federal Receipts (1265) Operating
08-2023-0194	DCCED	USDA Seafood Processors Pandemic Response and Safety Block Grant Program	\$10,000,000	Federal Receipts (1265) Operating

If you have any questions that you want an agency to address at the meeting, please call us so we can help ensure the agency has a response prepared.

**Department of Commerce, Community, and Economic Development
Executive Administration and Development
Commissioner's Office**

Subject of RPL: USDA Seafood Processors Pandemic Response and Safety Block Grant Program	ADN/RPL #: 08-2023-0175
Amount requested: \$10,000,000	Appropriation Authority: Chapter 11 SLA 2022 Page 4 Line 28 (HB281)
Funding source: Federal Receipts (1265)	Statutory Authority: AS 44.33

PURPOSE

The U.S. Department of Agriculture (USDA), Agricultural Marketing Service (AMS), through the Consolidated Appropriations Act of 2021, established a \$50 million grant program to defray expenses incurred by the seafood processing industry in preparing for, preventing exposure to, and responding to the COVID-19 pandemic. Costs must have been incurred between January 27, 2020 and December 31, 2021, and of the \$50 million for this program, \$30.7 million is allocated to Alaska.

Seafood processors operating in Alaska incurred substantial and unanticipated costs to protect communities, keep workers safe, and continue operations throughout the COVID-19 pandemic in 2020 and 2021. The industry has largely been omitted from COVID-19 relief programs to date. These companies have significant, documented, previously incurred expenses resulting from Federal, State, and local mandates that have thus far been borne almost solely by industry members.

The State's application for this program was developed cooperatively by the Department of Fish and Game and the Department of Commerce, Community, and Economic Development (DCCED). The program will provide pro-rated reimbursement of costs incurred by seafood processors and processing vessels, as defined by the USDA, for:

- Workplace Safety Measures: Workplace safety measures, including, but not limited to, personal protective equipment, sanitizer, hand washing stations, air filters, thermometers, cleaning supplies, or similar items.
- Market Pivots: Market pivots such as transition to virtual/online sales costs (online platform development and fees, online marketing, credit card processing fees), supplies, and new signage.
- Retrofitting Facilities: Retrofitting facilities for worker and consumer safety (retrofitting harvester vessels for onboard vessel processing to maximize open-air activities, plexiglass, walk up windows, heat lamps, fans, tents, propane, weights, tables, and chairs).
- Transportation: Additional transportation costs incurred to maintain social distancing.
- Worker Housing: Additional worker housing costs incurred to maintain social distancing or to allow for quarantining of new or exposed employees.
- Medical: Unreimbursed costs associated with providing or enabling vaccinations, testing, or healthcare treatment of infected employees, including any paid leave.

PREVIOUS LEGISLATIVE CONSIDERATION

This project was previously approved by the Legislative Budget and Audit Committee as RPL 08-2022-0188. That approval increased the fiscal year 2022 operating authority.

On November 2, 2022, the Legislative Budget and Audit Committee approved RPL 08-2023-0165, which authorized \$10,000,000 in authority for this program in the FY2023 operating budget of the Division of Community and Regional Affairs.

TIMING ISSUES

This funding was planned to be fully expended during fiscal year 2022. This request is to extend the budgetary authority to fiscal year 2023 to allow for final grant issuance.

The Seafood Processors Pandemic Response and Safety Block Grant is a new program for the department. Department staff were charged with developing the entire grant program and review process during an exceedingly short timeframe with limited and delayed federal guidance. The department has placed a high priority on ensuring equitable treatment of applications, which has been time consuming given a wide variety in types of applications received. DCCED has been limited in staff capacity for this task.

DCCED originally expected USDA to make award announcements in December 2021, but grant awards for states were not made public until February 14, 2022. Based on the USDA press release and award information, DCCED determined eligibility criteria, created the program webpage, and finalized the application and instructions. DCCED information technology staff developed the online application portal as quickly as possible but were limited by staff capacity and a simultaneous priority of altering the Alaska- American Rescue Plan Act Business Relief Program application to open it for a second round in mid-March 2022.

DCCED announced the grant program to the public on March 21 and the program was opened for applications on April 5. The original application period closing date of May 5 was extended to May 20 based on feedback received from grantees that the timeline was too short given the volume of expense documentation that seafood processors needed to compile for their applications.

Applications received for the grant program greatly exceeded the amount of federal funding available. Grants will be awarded based on a pro-rated portion of eligible expenditures to ensure that all eligible applicants receive some amount of funding. However, this approach does require extensive review of eligible expenses prior to grant issuance which has resulted in an extended process. Significant expenses of unclear eligibility will be checked with USDA grant staff for a final determination, which adds to processing time.

Grant application review is complete and grant agreements are in progress. Grant payments are anticipated to be issued in December 2022.

BUDGETARY ISSUES

The fiscal year 2022 RPL expired on June 30, 2022. DCCED was not able to fully complete the review and award process prior to the original expiration date. The total amount of grant awards to be distributed is \$30,694,746. \$10,000,000 of authority for a first tranche of grants was authorized in the Division of Community and Regional Affairs via RPL 08-2023-0165. This amendment adds \$10,000,000 authority in the Commissioner's Office to issue an additional tranche of grants. An additional \$10,000,000 authority is requested in the Division of Investments in RPL 08-2023-0194 to issue an additional tranche of grants. \$694,746 of existing federal authority in the Division of Community and Regional Affairs will be used to fully fund these grants.

Agency Contact: Hannah Lager, Acting Administrative Services Director, (907) 465-5533

LFD Contact: Alexei Painter, Legislative Fiscal Analyst, (907) 465-5413

This funding aligns with the mission of the department to support Alaska's economy. This award does not require state match, and will be fully federally funded. The Division of Community and Regional Affairs will administer the grant agreements.

Legislative Fiscal Analyst Comment: This RPL and RPL 08-2023-0194 are both related to RPLs that the Legislative Budget and Audit Committee considered at the November 2, 2022 meeting. At that meeting, the Committee approved a \$10 million RPL for the same purpose in the Community and Regional Affairs appropriation within the Department of Commerce, Community and Economic Development, but several other related RPLs were withdrawn.

There are two basic questions for this RPL: are any further RPLs for the USDA Seafood Processor grants allowable, regardless of the appropriation that is being modified? Second, if so, does this RPL provide an increase to an appropriate appropriation?

This RPL seeks to expand the budgeted authority of the Commissioner's Office allocation within the Executive Administration and Development appropriation in HB 281. Section 77(e) of that bill provides limitations on the RPL process, and reads in part:

"(e) ... an appropriation item for the fiscal year ending June 30, 2023, may not be increased under AS 37.07.080(h)...
(2) by more than \$10,000,000."

The RPL approved in November provided a \$10 million increase to the Community and Regional Affairs appropriation. These two RPLs seek to increase different appropriations, but for the same underlying purpose and from the same specific federal grant. Unlike the withdrawn RPLs from November, these RPLs increase separate appropriation items. It is possible that *any* method of providing increased receipt authority for this same source of funds would be seen as an attempt to get around the restriction of 77(e)(2) and would therefore be problematic. Legislative Finance cannot weigh the relative legal merits of these arguments.

The second question is whether the Commissioner's Office is an appropriate place for this RPL. The Department has the statutory authority to administer grants, and the Commissioner's Office has frequently received funding for grant programs. For example, in the FY23 budget, the legislature added \$125.0 of UGF funding for a small business grant in this allocation. On the other hand, there are no existing federal grants in this appropriation, so a narrow interpretation of the RPL statute could still find fault in this RPL.

As with the November 2 RPLs, the Committee should weigh any legal and policy concerns about these RPLs against the timing issues with these grants.

**Department of Commerce, Community, and Economic Development
Division of Investments**

Subject of RPL: USDA Seafood Processors Pandemic Response and Safety Block Grant Program	ADN/RPL #: 08-2023-0194
Amount requested: \$10,000,000	Appropriation Authority: Chapter 11 SLA 2022 Page 6 Line 6 (HB281)
Funding source: Federal Receipts (1265)	Statutory Authority: AS 44.33

PURPOSE

The U.S. Department of Agriculture (USDA), Agricultural Marketing Service (AMS), through the Consolidated Appropriations Act of 2021, established a \$50 million grant program to defray expenses incurred by the seafood processing industry in preparing for, preventing exposure to, and responding to the COVID-19 pandemic. Costs must have been incurred between January 27, 2020 and December 31, 2021, and of the \$50 million for this program, \$30.7 million is allocated to Alaska.

Seafood processors operating in Alaska incurred substantial and unanticipated costs to protect communities, keep workers safe, and continue operations throughout the COVID-19 pandemic in 2020 and 2021. The industry has largely been omitted from COVID-19 relief programs to date. These companies have significant, documented, previously incurred expenses resulting from Federal, State, and local mandates that have thus far been borne almost solely by industry members.

The State's application for this program was developed cooperatively by the Department of Fish and Game and the Department of Commerce, Community, and Economic Development (DCCED). The program will provide pro-rated reimbursement of costs incurred by seafood processors and processing vessels, as defined by the USDA, for:

- Workplace Safety Measures: Workplace safety measures, including, but not limited to, personal protective equipment, sanitizer, hand washing stations, air filters, thermometers, cleaning supplies, or similar items.
- Market Pivots: Market pivots such as transition to virtual/online sales costs (online platform development and fees, online marketing, credit card processing fees), supplies, and new signage.
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PREVIOUS LEGISLATIVE CONSIDERATION

This project was previously approved by the Legislative Budget and Audit Committee as RPL 08-2022-0188. That approval increased the fiscal year 2022 operating authority.

On November 2, 2022, the Legislative Budget and Audit Committee approved RPL 08-2023-0165, which authorized \$10,000,000 in authority for this program in the FY2023 operating budget of the Division of Community and Regional Affairs.

TIMING ISSUES

This funding was planned to be fully expended during fiscal year 2022. This request is to extend the budgetary authority to fiscal year 2023 to allow for final grant issuance.

The Seafood Processors Pandemic Response and Safety Block Grant is a new program for the department. Department staff were charged with developing the entire grant program and review process during an exceedingly short timeframe with limited and delayed federal guidance. The department has placed a high priority on ensuring equitable treatment of applications, which has been time consuming given a wide variety in types of applications received. DCCED has been limited in staff capacity for this task.

DCCED originally expected USDA to make award announcements in December 2021, but grant awards for states were not made public until February 14, 2022. Based on the USDA press release and award information, DCCED determined eligibility criteria, created the program webpage, and finalized the application and instructions. DCCED IT staff developed the online application portal as quickly as possible but were limited by staff capacity and a simultaneous priority of altering the Alaska- American Rescue Plan Act Business Relief Program application to open it for a second round in mid-March 2022.

DCCED announced the grant program to the public on March 21 and the program was opened for applications on April 5. The original application period closing date of May 5 was extended to May 20 based on feedback received from grantees that the timeline was too short given the volume of expense documentation that seafood processors needed to compile for their applications.

Applications received for the grant program greatly exceeded the amount of federal funding available. Grants will be awarded based on a pro-rated portion of eligible expenditures to ensure that all eligible applicants receive some amount of funding. However, this approach does require extensive review of eligible expenses prior to grant issuance which has resulted in an extended process. Significant expenses of unclear eligibility will be checked with USDA grant staff for a final determination, which adds to processing time.

Grant application review is complete and grant agreements are in progress. Grant payments are anticipated to be issued in December 2022.

BUDGETARY ISSUES

The fiscal year 2022 RPL expired on June 30, 2022. DCCED was not able to fully complete the review and award process prior to the original expiration date. The total amount of grant awards to be distributed is \$30,694,746. \$10,000,000 of authority for a first tranche of grants was authorized in the Division of Community and Regional Affairs via RPL 08-2023-0165. This amendment adds \$10,000,000 authority in the Division of Investments. An additional \$10,000,000 authority is requested in the Commissioner's Office via RPL 08-2023-0175 to issue an additional tranche of grants. \$694,746 of existing federal authority in the Division of Community and Regional Affairs will be used to fully fund these grants.

Agency Contact: Hannah Lager, Acting Administrative Services Director, (907) 465-5533

LFD Contact: Alexei Painter, Legislative Fiscal Analyst, (907) 465-5413

This funding aligns with the mission of the department to support Alaska's economy and the Division of Investment's mission to "Promote economic development opportunities". This award does not require state match, and will be fully federally funded. The Division of Community and Regional Affairs will administer the grant agreements.

Legislative Fiscal Analyst Comment: This RPL and RPL 08-2023-0175 are both related to RPLs that the Legislative Budget and Audit Committee considered at the November 2, 2022, meeting. At that meeting, the committee approved a \$10 million RPL for the same purpose in the Community and Regional Affairs appropriation within the Department of Commerce, Community and Economic Development, but several other related RPLs were withdrawn.

There are two basic questions for this RPL: are any further RPLs for the USDA Seafood Processor grants allowable, regardless of the appropriation that is being modified? Second, if so, does this RPL provide an increase to an appropriate appropriation?

This RPL seeks to expand the budgeted authority of the Investments allocation within the appropriation of the same name in HB 281. Section 77(e) of that bill provides limitations on the RPL process, and reads in part:

"(e) ... an appropriation item for the fiscal year ending June 30, 2023, may not be increased under AS 37.07.080(h)...
(2) by more than \$10,000,000."

The RPL approved in November provided a \$10 million increase to the Community and Regional Affairs appropriation. These two RPLs seek to increase different appropriations, but for the same underlying purpose and from the same specific federal grant. Unlike the withdrawn RPLs from November, these RPLs increase separate appropriation items. It is possible that *any* method of providing increased receipt authority for this same source of funds would be seen as an attempt to get around the restriction of 77(e)(2) and would therefore be problematic. Legislative Finance cannot weigh the relative legal merits of these arguments.

The second question is whether the Division of Investments is an appropriate place for this RPL. The Department has the statutory authority to administer federal grants. According to the Governor's budget book for this division, the core services are to provide business financing, inter-agency services, and financial management. Specifically, this division administers revolving loan programs (mainly for the seafood industry), distributes seafood assessments, and assists with administration of other grants. The division's operating budget is entirely funded by various revolving loan funds and inter-agency receipts. While the division is clearly involved in providing financing to the seafood industry, grant funds have not historically been appropriated to this division. Therefore, LFD would view this as a questionable location for the USDA Seafood Processor grant – it's not clear that this grant fits into the existing purpose of the program well enough to be considered an increase to an appropriation item rather than a new appropriation for a new purpose.

As with the November 2 RPLs, the Committee should weigh any legal and policy concerns about these RPLs against the timing issues with these grants.