# **01-001 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY**

**Chapter 8: RULES FOR DEPARTMENTAL GRANT AWARDS AND APPEALS**

**Summary**: This chapter defines the procedures and criteria to be used in all of the Department of Agriculture, Conservation and Forestry grant program awards, including those funded through emergency relief funds, bequests, gifts, or contributions from any person, corporation, or government, for the purpose of economic opportunity, business growth, and other strategic investment. The chapter describes procedures to be used in grant solicitations, award procedures, hearings and appeals, and how appellants will be notified of final agency action pursuant to 5 M.R.S. §§ 9051–9064.

**Section 1. DEFINITIONS**

1. GRANT SOLICITATION: Means a formal solicitation for a grant application to accomplish specific program or emergency relief objectives, and that indicates the estimated amount of funds set aside.

2. REVIEW COMMITTEE: Means the committee that reviews grant applications and ultimately scores and recommends grant awardees to the Commissioner of the Department. Review committee members shall attest on forms provided by the Department that they do not have a conflict of interest with the applicants.

3. GRANT: Means an award, typically financial, given by the State to an individual or a company to facilitate performance of an activity that furthers particular goals of the State. Grants shall include those funded through emergency relief funds, bequests, gifts, or contributions from any person, corporation, or government, including for the purpose of economic opportunity, business growth, and other strategic investment.

4. HEARING OFFICER: Means an individual appointed by the Commissioner of the Department, who must not have a direct or indirect personal, professional, or financial conflict of interest in the appeal and cannot be an employee of the bureau or program overseeing the grant.

5. AGGRIEVED PERSON: Means a person who applied for but did not receive a grant award and who is adversely affected financially, professionally, or personally by that decision.

6. DEPARTMENT: Means the Department of Agriculture, Conservation and Forestry.

7. COST BENEFIT RATIO: Means the expected value (benefit) of a particular grant application compared to the amount requested.

**Section 2. GRANT SOLICITATION PROCEDURE**

1. All grant programs within the Department shall follow a grant solicitation process. Criteria and individual scoring metrics shall be determined by the Department as specified in the grant solicitation. To the extent that existing grant program rules have different requirements than this chapter, the rules for that grant program shall control.
2. At a minimum, the grant solicitation documentation must contain a clear scope of the grant, defined terms, eligibility criteria (including budget), evaluation criteria, and relative scoring weights to be applied, the application deadline, and the agency contact person. Where specific criteria for any particular grant program is required by new statute or other rule, those criteria shall control.
	1. When applicable, in instances of emergency funding for relief activities or other time-sensitive programming (including but not limited to weather-related events, crop disease, etc.), the Department may determine that only eligibility and evaluation criteria are necessary to dispense with the funding and that scoring weights are not relevant for such grant solicitations. The Department shall clearly document that only the eligibility and evaluation criteria shall be utilized in such instances.
3. Grant solicitations must be publicly posted and available online. The Department shall publicly notice, either through newspaper publication or other method reasonably calculated to provide notice to persons who are likely to want to file grant applications, the issuance of the grant solicitation at least fourteen (14) calendar days prior to the application submittal opening date.
4. Applicant conferences are allowed but not required. These conferences are used to ensure that all applicants have an equal understanding of the grant program’s scope, eligibility, and evaluation criteria.
	1. If held, applicant conferences must be referenced in the grant solicitation, including date, time, and location (including virtual). The conference(s) must be scheduled a minimum of two weeks prior to the deadline for submitting a grant application.
	2. If held, applicant conferences must be open to the public, questions raised must be documented in writing, and responses must be written and publicly posted at least seven (7) calendar days prior to the grant submission deadline. The grant solicitation shall include the website to access the written responses.
5. When applicable, the Department may utilize a third-party grant administrator to help manage the grant solicitation and management process. In all instances, award decision-making rests with the Department, as outlined in Section 3.

**Section 3. AWARD PROCEDURE**

1. The Review Committees for grant programs within the Department shall be responsible for reviewing all grant applications based on the criteria established within the grant solicitation. Review Committees shall document the scoring and the substantive information that supports the scoring and provide the Commissioner with recommendations on grant awards.
	1. Written records must be kept by each person reviewing or ranking applications. These records must be made available upon request, subject to applicable confidentiality and Maine Freedom of Access Act rules and regulations.
2. Final decision-making authority for awarding grants rests with the Commissioner, based upon the grant criteria set forth by the grant solicitation and the recommendations of the Review Committee.
3. The Review Committee or the Commissioner may reopen the record where new information relevant to the application is obtained (e.g., litigation, financial default, etc.). The applicant shall have the opportunity to discuss this information with the Review Committee and/or Commissioner before a final decision is made.
4. The issuance of a grant solicitation or any grant award decision does not obligate the Department to make any award. Nor does it obligate the Department to make an award in the amount requested, provided that in such instances where the amount awarded is different than what was sought by the applicant, the Department will provide a written explanation for the record.
5. Grant applicants will be informed in writing of the final grant award decisions.

**Section 4. APPEALS PROCEDURE**

1. All Department grant programs shall follow the appeals process set forth in this rule chapter.
2. APPEAL REQUEST: An aggrieved person (hereinafter the “petitioner”) may request an appeal hearing on a grant award decision by submitting a request for appeal to the Commissioner, in writing, no later than fifteen (15) calendar days from the date of the award decision. The written request for appeal must describe the specific nature of the grievance, including the Appeal Criteria as defined in Section 5, Subsection 2 of this rule. The Commissioner shall grant an appeal hearing unless it is determined that:

A. The petitioner is not an aggrieved person; or

B. The written request for appeal was submitted more than fifteen (15) calendar days after notification of award.

3. NOTIFICATION: Notice of the appeal proceeding shall follow the requirements of 5 M.R.S. § 9051-A(2) and be provided to those entities as determined applicable by the Commissioner. The notification must include the date and location of the hearing and the name of the Hearing Officer. Appeal proceedings may be held in person, virtually, or in a hybrid format at the discretion of the Hearing Officer. Failure to appear for a scheduled hearing may be grounds for default.

**Section 5. APPEAL HEARINGS**

1. HEARING OFFICER: The Hearing Officer shall preside over the appeal hearing and shall control all aspects of the hearing, rule on points of order, rule on all objections, and may question witnesses.

2. APPEAL CRITERIA: The burden of proof within the hearing of appeal lies with the petitioner. The evidence presented must specifically address and be limited to one or more of the following:

A. Violation of law;

B. Irregularities creating fundamental unfairness; or

C. Arbitrary or capricious award.

Evidence of any type that cannot be related to this criteria may be ruled inadmissible by the Hearing Officer.

In the event multiple appeal hearing requests are granted on a single grant award, the Commissioner may assign the Hearing Officer to hear all petitioners within the same hearing as a combined appeal. Notwithstanding a combined appeal hearing process, the Hearing Officer may still decide each petitioner’s appeal separately based solely on the evidence presented by each respective petitioner.

3. PARTICIPANTS: The petitioner may participate alone or be represented by an attorney. The Department may be represented by staff and/or its attorney. Other parties of interest may petition to intervene. Such petition shall be presented in writing to the Hearing Officer, who shall determine and allow or disallow participation in writing within seven (7) calendar days of receipt of the request to intervene. Copies of this notification shall be sent to the petitioner and the Department.

4. PRESENTATION OF EVIDENCE: The petitioner must present evidence to substantiate the specific grievances stated in the appeal. The evidence shall be confined to the record upon which the Commissioner’s decision was based. The burden is on the petitioner to prove one or more of the appeal criteria under Section 5, Subsection 2 by clear and convincing evidence. Brief opening statements may be made by the petitioner, the Department, and any intervenors, in that order. All testimony shall be under oath.

A. The petitioner shall present evidence first, using exhibits and witnesses who may be cross-examined by the Department and the intervenors. Re-direct questioning related to issues raised during cross-examination only may be done by the petitioner, followed by re-cross-examination by the Department and intervenors.

B Witnesses may be called who can present factual information related directly to the appeal. All witnesses shall be sworn. Testimony of any witness may be pre-filed in written form. If used, pre-filed testimony must be made available to the Department, the Hearing Officer, and all intervenors a minimum of two (2) business days prior to the hearing. Every such witness must be present at the hearing and shall be subject to cross-examination.

C. EXHIBITS: Exhibits relating to any issue of fact in the proceeding may be presented. Documentary evidence may be incorporated into the record by reference when the materials so incorporated are made available for examination by the parties before being received in evidence.

(1) COPIES: A petitioner must furnish copies of all documentary evidence to the Hearing Officer, Department, and all intervenors, in all cases, no less than two (2) business days prior to the hearing. Any costs associated with this subparagraph are the responsibility of the petitioner and shall not be recovered by any judgment of the Commissioner.

5. DEPARTMENT/INTERVENOR EVIDENCE: The Department and all intervenors shall have the opportunity to submit evidence relevant to the appeal through witnesses and exhibits. The procedures for presenting this evidence are the same as those for the petitioner.

A. The order of examination and cross-examination when the Department presents evidence is as follows: Department, all intervenors, and the petitioner.

B. The order of the examination and cross-examination when an intervenor presents evidence shall be as follows: remaining intervenors (if any), the Department, and the petitioner.

6. RECORD: A recording of the appeal hearing shall be made by audio tape or other media. All evidence received or considered shall be part of the record. Evidence shall be admitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The Hearing Officer may exclude irrelevant or unduly repetitious evidence. No sworn written evidence shall be admitted unless the author is available for cross-examination or subject to subpoena, except for good cause shown.

**Section 6. APPEAL DECISIONS AND ACTIONS**

1. DECISION: The Hearing Officer shall make the final decision after consideration of the evidence in the record. The Hearing Officer shall look for clear and convincing evidence that one or more of the standards set forth in Section 5, Subsection 2, of these rules has been proven by the petitioner.

2. NOTIFICATION OF FINAL AGENCY ACTION: The Hearing Officer must issue a timely written decision and the reasons that support the decision. Such notification shall include the decision, an explanation of the reasons for the decision, and an explanation of the petitioner’s right to judicial review of final agency action.

A. This notification is considered final agency action.

STATUTORY AUTHORITY: 7 M.R.S. § 12; 12 M.R.S.A. § 5012

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