



NOTICE OF PUBLIC RULEMAKING HEARING

FOR THE ADOPTION OF NEW RULES

“Rules Pertaining to the Small Food Business Recovery & Resiliency Grant as Part of the Community Food Access Program”

8 CCR 1204-9

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 18, 2023
TIME: 9:00 a.m.
LOCATION: This hearing will be held via [Zoom](#)
CALL INFORMATION: 1-719-359-4580
Meeting ID: 863 4968 6909
Passcode: 556768

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 Hollis.Glenn@state.co.us
Pre-registration is not required to participate in the hearing.

The purpose of these rules is to establish general eligibility requirements for application for a grant; to establish the application process and procedures for grant applicants; and to establish processes and procedures to direct the review of applications and the award of funds.

The statutory authority for these rules is §§ 35-1-117(7), 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 Hollis.Glenn@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.



Editing comments: This is a new permanent rule to replace an emergency rule. Changes from the emergency rule are indicated in ~~strike~~ for removal and underline for additions. If you are able to view this document in color the changes are also indicated in red. Changes as a result of the rulemaking hearing are indicated in blue.

DEPARTMENT OF AGRICULTURE

Markets Division

RULES PERTAINING TO THE SMALL FOOD BUSINESS RECOVERY AND RESILIENCY GRANT AS PART OF THE COMMUNITY FOOD ACCESS PROGRAM

8 CCR 1204-9

1. Definitions

- 1.1. "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.
- 1.2. "Advisory Committee " means the committee created in section 35-1-117(3)(b)(i), C.R.S., to recommend to and assist the Department with the development of grant applications for the Grant Program, a disbursement timeline for the grants; a rubric to evaluate grant applications, the evaluation of grant applications, and awarding grant money to eligible recipients.
- 1.3. "Award Period" means the period of time during which the Department will receive applications in support of Grant Awards from the Grant Program and includes the Department's time to process such applications.
- 1.4. "Awardee" means an applicant for a Grant Award that has been offered, or has received, a Grant Award from the CFA Grant Program. Also known as a beneficiary for purposes of SLFRF funding.
- 1.5. "BIPOC" means Black, Indigenous and People of Color. Pronounced "bye-pock," this is a term specific to the United States, intended to center the experiences of Black and Indigenous groups and demonstrate solidarity between communities of color.
- 1.6. "Commissioner" means the Commissioner of Agriculture or the Commissioner's designee.
- 1.7. "Community Food Access Program (CFA Program or Program)" means the program created in section 35-1-117, C.R.S., to improve access to and lower prices for healthy foods in low-income and underserved areas of the state by supporting small-food retailers through grants and the Consortium.
- 1.8. "Community Food Consortium (Consortium)" means the community food consortium created in section 35-1-117(8)(a), C.R.S., to support small-food retailers and Colorado-owned and Colorado-operated farms by connecting them to resources, subsidizing distribution fees, and performing value chain coordination.
- 1.9. "Department" or "CDA" means the Colorado Department of Agriculture created in section 35-1-103, C.R.S.
- 1.10. "Direct Impact" means an increase in the distribution or sale of healthy food for a LILA community, or lowered price of healthy food for a LILA community, which can be reasonably attributed as an output from a Grant Award.

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- 1.11. “Eligible Use” means an applicant’s or Awardee’s expense that qualifies as:
 - 1.11.1. a necessary operating expense;
 - 1.11.2. costly equipment purchase;
 - 1.11.3. point of sales systems; or
 - 1.11.4. accounting and book management necessary to fulfill an Awardee’s requirements as set forth in Part 3 of this rule.
- 1.12. “Eligible Business” means a Small Family Farm or a Small Food Retailer that has been awarded a Grant Award for an Eligible Use.
- 1.13. “Farm Direct Operation” means a farm that sells Colorado grown or raised products directly to consumers.
- 1.14. “Grant Award” means a contractual award of funds to an Eligible Business through the Small Food Business Recovery and Resilience Grant Program.
- 1.15. “Grant Program” or “CFA Grant Program” means the Small Food Business Recovery and Resilience Grant Program created in section 35-1-117(3)(a), C.R.S.
- 1.16. “Healthy Food” means fresh, frozen, unprocessed or minimally processed produce; locally grown or raised products; other food items that may not be normally present in a particular location but that serve the culinary and health needs of a particular population; nutrient dense proteins and grains; or other foods meeting a local definition of “healthy” and that provide nutritional value for human health. Healthy food does not include prepared foods or hot and ready foods.
- 1.17. “Limited Supermarket Access Area” means an area where households have inadequate and inequitable access to supermarkets, based on income, distance to existing stores, and car ownership rates.
- 1.18. “Low-income, low-access community (LILA community)” means a residential area (rural, urban, semi-urban) whose residents are primarily low-income and who have limited access to affordable, healthy food.
- 1.19. “Minimally processed food” means a food that has been slightly altered for the main purpose of preservation, but which does not substantially change the nutritional content of the food. Examples include cleaning and removing inedible or unwanted parts, grinding, refrigeration, pasteurization, fermentation, freezing, and vacuum-packaging to permit food to be stored for a greater amount of time and remain safe to eat.
- 1.20. “Prepared Foods” means foods that are hot at the point of sale, or packaged food intended to be consumed immediately.
- 1.21. “Qualified Census Tract” means any census tract that is designated by the Secretary of Housing and Urban Development and, for the most recent year for which census data are available on household income in such tract, either in which 50 percent or more of the households have an income that is less than 60 percent of the area median gross income for such year or that has a poverty rate of at least 25 percent.

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- 1.22. “Rural” means any population, housing, or territory not in an urban area as defined in this rule.
- 1.23. “Season extension” means any action or investment by a small family farmer or small food retailer that extends their growing season to support both the production and sale of healthy local food during times of the year when healthy local food is not traditionally available.
- 1.24. “Small Family Farm” means a farm that is Colorado-owned and Colorado-operated and has an annual gross revenue below three hundred fifty thousand dollars, as set forth in section 35-1-117(8)(d).
- 1.25. “Small Food Retailer” has the same meaning as set forth in section 35-1-117(8)(e)(I) and (II), C.R.S.
- 1.26. “SNAP” means the Supplemental Nutrition Assistance Program established in Part 3 of Article 2 of Title 26 of the Colorado Revised Statutes.
- 1.27. “Staple food” means food in the following categories: meat, poultry, or fish; bread or cereals; vegetables or fruits; and dairy products. The meat, poultry, or fish category also includes up to three types of plant-based protein sources (i.e., nuts/seeds, beans, and peas) as well as varieties of plant-based meat analogues (e.g., tofu). The dairy category also includes varieties of plant-based dairy alternative staple food items such as, but not limited to, almond milk and soy yogurt. Hot foods do not qualify as staple foods. Commercially processed foods and prepared mixtures with multiple ingredients that do not represent a single staple food category shall only be counted in one staple food category. “Staple food” does not include accessory food items, such as coffee, tea, cocoa, carbonated and uncarbonated drinks, candy, condiments, and spices.
- 1.28. “Technical Assistance” means direct support provided to an applicant for a Grant Award or an Awardee to complete and submit an application for a Grant Award; to identify and gather required documentation to receive a Grant Award; to comply with reporting and invoicing requirements after a Grant Award is offered; and to provide assistance with any other direct support that advances funding of a Grant Award or use of a Grant Award. Technical Assistance may include translation and interpretation services upon request and as the Department determines necessary.
- 1.29. “Unprocessed food” means the natural edible food parts of plants and animals.
- 1.30. “Urban” means a densely settled core of census blocks that encompasses at least 2,000 housing units or that has a population of at least 5,000 people or that is identified in the 2020 “Census Qualifying Urban Areas and Final Criteria Clarifications,” adopted by reference herein (87 Federal Register Vol. 87, No. 249, 80114; effective December 29, 2022). 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://www.federalregister.gov/documents/2022/12/29/2022-28286/2020-census-qualifying-urban-areas-and-final-criteria-clarifications>.

2. Grant Award Application Process

- 2.1. Application Process

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- 2.1.1. An applicant may apply for a grant during the Award Period(s) announced by the Department. Award Periods may start as early as August 15, 2023, and will be completed no later than December 31, 2024.
 - 2.1.2. Announcement of the Award Period will include the length of time to apply and the maximum amount of grant dollars to be distributed in that period.
 - 2.1.3. Announcements of Award Periods are at the Commissioner's discretion, in consultation with the Advisory Committee, and are based on available grant funding.
 - 2.1.4. Announcement of an Award Period will be made on the CFA website: ag.colorado.gov/CFA.
 - 2.1.5. Grant applications may be obtained at any time online by visiting the Department's website: www.ag.colorado.gov/CFA or a paper application can be mailed to 305 Interlocken Parkway, Broomfield, CO, 80021, if requested no fewer than ten (10) calendar days before the end of an application period.
 - 2.1.6. The grant application will be provided in English and Spanish. Translation to another language is available upon request, but no later than ten (10) calendar days before the end of an application period.
 - 2.1.7. A written application may be submitted in person to the Department during normal business hours, by mail, or online at any time such that it is received by the Department before the closing time and date.
- 2.2. Application Process Guidance and Technical Assistance
- 2.2.1. Applicants must ensure applications are compliant with this rule. CDA maintains a supplemental guidance document to aid in the application process. This guidance document and additional information can be found on the CFA website: ag.colorado.gov/CFA.
 - 2.2.2. An applicant must submit a completed application and identify, in the application, how it meets the eligibility requirements, including by:
 - 2.2.2.1. Completing an approved application form;
 - 2.2.2.2. Identifying each proposed Eligible Use of a requested Grant Award;
 - 2.2.2.3. Providing a budget and budget narrative;
 - 2.2.2.4. Describing the proposed project; and
 - 2.2.2.5. Analyzing the extent to which the proposed project will have a direct impact on increasing access to healthy food in LILA communities, including the projected increase in availability of healthy food or extent to which the proposed project will lower the price of healthy food.
 - 2.2.3. An applicant whose application the Department has identified as meeting eligibility requirements, but whose project is not funded in a given Award Period, may revise and resubmit an application for consideration in a subsequent Award Period.

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3. Grant Eligibility Requirements

3.1. LILA Requirement

3.1.1. An applicant for a Grant Award must demonstrate that the applicant's proposed project will have a Direct Impact on a LILA community. An applicant may demonstrate that its project will have such an effect in one of the following ways:

3.1.1.1. Define the geographical area that the project will affect to show that the project will be placed in an area that:

3.1.1.1.1. Has at least 500 people, or 33 percent of the population, living more than 1 mile (an urban area) from the nearest supermarket, supercenter, or large grocery store or

3.1.1.1.2. Has at least 500 people, or 33 percent of the population, living more than 10 miles (a rural area) from the nearest supermarket, supercenter, or larger grocery store; and

3.1.1.1.3. Is within a United States census tract whose poverty rate is 20 percent or greater; or

3.1.1.1.4. Is within a United States census tract where the median family income is less than or equal to 80 percent of Colorado's state-wide median family income; or

3.1.1.1.5. Is within a United States census tract is in a metropolitan area where the median family income is less than or equal to 80 percent of that metropolitan area's median family income.

3.1.1.2. Identify that the project is located in a census tract adjacent to a census tract meeting the above criteria with median family income less than or equal to 120 percent of area median family income;

3.1.1.3. Identify that the project is located in a Limited Supermarket Access Area;

3.1.1.4. Identify that the project is operated by a Tribal government or on Tribal Lands;

3.1.1.5. Identify the Qualified Census Tract in which the project is located; or

3.1.1.6. Provide a narrative explanation to establish any other factors that the applicant believes should qualify its project as located in or serving a low-income, low-access community, including by use of locally aggregated data.

3.2. Eligible Business Requirements

3.2.1. A person or business that desires to apply for a Grant Award must demonstrate eligibility for a Grant Award by meeting the following minimum requirements:

3.2.1.1. A Small Family Farm must:

3.2.1.1.1. Be Colorado-owned and Colorado-operated; and

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3.2.1.1.2. Have an annual gross revenue below \$350,000.

3.2.1.2. A Small Food Retailer must:

3.2.1.2.1. Be an independent or nonprofit-managed retailer and must:

3.2.1.2.1.1. Be Colorado-owned and Colorado-operated;

3.2.1.2.1.2. Have less than 10,000 square feet of retail space;

3.2.1.2.1.3. Carry at least three categories of staple foods; and

3.2.1.2.1.4. Be located in or provide food to low-income, low-access communities; or

3.2.1.2.2. Be a farmer's market or farm-direct operation that is already or demonstrates an intent to become SNAP- and WIC-authorized where allowed.

3.3. Eligible Use Requirements

3.3.1. An Applicant must demonstrate in its application for a Grant Award that its proposed project will use any awarded funds on Eligible Uses; and

3.3.2. An Awardee may only use funds from a Grant Award on Eligible Uses.

3.3.3. For an expense to qualify as an Eligible Use, it must reasonably demonstrate a Direct Impact toward increasing healthy food access or lowering healthy food prices in a LILA community, and

3.3.4. Fit within one of four categories:

3.3.4.1. Operating Expenses (set forth below in part 3.4);

3.3.4.2. Equipment (set forth below in part 3.5);

3.3.4.3. Accounting and Book Management (set forth below in part 3.6); or

3.3.4.4. Point of Sales Equipment (set forth below in part 3.7);

3.3.5. An applicant for a Grant Award may identify multiple proposed Eligible Uses in its application, up to the maximum of \$50,000 per calendar year.

3.3.6. The Department reserves the right to qualify, in consultation with the Advisory Committee, other expenses as Eligible Uses of a Grant Award if such uses demonstrate similarity in nature and effect to those identified in Part 3.3.

3.3.7. Applicants must demonstrate how any proposed equipment purchases will result in increased access to healthy food or lower prices of healthy food in a LILA community.

3.3.8. An applicant may, at the time of application, provide additional, proposed uses of a requested Grant Award. To do so, the applicant must adequately justify in its application

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how the additional purchase or expense is similar and how the additional use will increase access to healthy food in a LILA community. It is in the Commissioner's sole discretion to approve a proposed Eligible Use.

- 3.3.9. Grantees are responsible for maintaining compliance with all food safety standards and operating within the scope of their permit type. In some cases, adding additional equipment to an existing facility may require a regulatory review.

3.4. Operating Expenses

3.4.1. Eligible Distribution Expenses:

- 3.4.1.1. Inventory tracking systems;

- 3.4.1.2. Mileage to deliver to small food retailers;

- 3.4.1.3. Shipping costs, pallet rates, and other delivery fees from distributors;

- 3.4.1.4. Packaging materials and incidental costs associated with distribution;

- 3.4.1.5. Shipping costs for culturally relevant healthy food -- does not include the cost of the food;

- 3.4.1.6. Contract delivery services, including last-mile delivery; and

- 3.4.1.7. Direct to consumer online order systems and delivery costs.

3.4.2. Eligible Personnel Expenses:

- 3.4.2.1. Services or staff time associated with the installation of eligible equipment;

- 3.4.2.2. Staff time associated with becoming SNAP or WIC authorized, maintaining authorization, or managing an ongoing healthy food incentive program;

- 3.4.2.3. Services or staff time associated with small construction projects or build outs related to expanding access to healthy food;

- 3.4.2.4. Services or staff time related to creating educational ~~or promotional~~ material highlighting new healthy food offerings;

- ~~3.4.2.5. Services or staff time related to hosting events promoting new healthy food offerings; and~~

- ~~3.4.2.6. Services or staff time associated with maintaining supply, stocking, proper storage, and rotation of new perishable healthy food offerings.~~

- 3.4.3. Eligible Packaging and Storing Supply Expenses: 3.4.2.5. New staff to maintain supply, stock, ensure proper storage, and ensure rotation of new perishable healthy food offerings.

- 3.4.3.1. Packaging materials for healthy foods;

- 3.4.3.2. Contract services for packing and storing; and

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3.4.3.3. Construction of buildings for storage.

3.4.4. Eligible Education ~~and Promotion~~ Expenses:

3.4.4.1. Educational material related to healthy food that directly targets LILA ~~communities in Colorado (statewide education would be eligible);~~

3.4.4.2. Translation and interpretation services;

~~3.4.4.3. Educational consultants or community organizations to specifically target LILA communities in Colorado;~~

~~3.4.4.4. Events promoting healthy food education;~~

3.4.4.5. Signage related to healthy food promotion, SNAP, WIC, Double Up Food Bucks, or any healthy food incentive program;

3.4.4.6. Signage/educational materials for local products and local producers; and

~~3.4.4.7. Costs associated with media promotion of new healthy food offerings.~~

3.4.5. Eligible Retail Operating Expenses:

3.4.5.1. Remodeling to accommodate display and storage of healthy foods;

3.4.5.2. Increased utility expenses related to recent (within one year of grant application opening) or new purchase of equipment to expand healthy food access/options; and

3.4.5.3. Equipment for mobile stands to sell healthy foods at temporary locations, including tents, coolers, and tables.

3.4.6. Eligible Operating Expenses Associated with Becoming Authorized to offer SNAP, WIC, or another Incentive Program:

3.4.6.1. Technical Assistance (contractors) to support becoming or remaining authorized;

3.4.6.2. Tuition or registration for education and training;

3.4.6.3. Subscription for SNAP or WIC payment processing application; and

3.4.6.4. Other operating expenses the Commissioner determines qualify as directly improving food access to LILA communities.

3.4.7. Non-Eligible Operating Expenses:

3.4.7.1. Direct purchase of food;

3.4.7.2. Existing and recurring retail and farm operation expenses that do not directly provide increased access to healthy food for LILA communities;

3.4.7.3. Down payments, mortgages, or lease payments;

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3.4.7.4. Loan repayment;

3.4.7.5. Utility expenses unrelated to expansion of healthy food access;

3.4.7.6. Taxes and insurance;

3.4.7.7. Travel expenses (lodging, meals, and transportation);

3.4.7.8. Salaries for new employees not related to expanding capacity to increase access to or lower prices for healthy foods for LILA communities;

3.4.7.9. Salaries or bonuses for existing staff not related to expanding capacity to increase access to or lower prices for healthy foods for LILA communities;

3.4.7.10. Expenses related to alcohol or cannabis products; and

3.4.7.11. Funds cannot be used to satisfy settlements or judgments and payments of debt services, make deposits into pension funds, or fund programs, services, or capital expenditures that include terms or conditions that undermine the effort to stop the spread of Covid-19.

3.5. Equipment Purchases:

3.5.1. Eligible Equipment Expenses:

3.5.1.1. Cold Storage: Refrigeration and freezer units (consumer-facing or storage);

3.5.1.2. Display shelving and display cases;

3.5.1.3. Produce scales;

3.5.1.4. Food preservation equipment in order to extend the availability of healthy food for customers beyond the local harvest or slaughter calendar;

3.5.1.5. Deli slicers and meat grinders for fresh meat;

3.5.1.6. Dry storage containers;

3.5.1.7. Major repairs or updates to existing equipment listed above;

3.5.1.8. Delivery trucks that will be primarily used for the transportation of healthy food to LILA communities (refrigerated or standard vehicles);

3.5.1.9. Major repairs or updates to delivery vehicles that provide transportation of healthy foods; and

3.5.1.10. New or used farming and ranching equipment that will demonstrably and significantly increase healthy food access in LILA communities, including but not limited to equipment that is essential for planting, raising food-producing animals, harvesting, packing, storing, extending the growing season, or shipping healthy food.

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- 3.5.2. Non-Eligible Equipment Expenses
 - 3.5.2.1. Storage or retail display equipment for alcoholic beverages, soft drinks, sports and energy drinks or cannabis products;
 - 3.5.2.2. Vending machines that do not offer healthy food;
 - 3.5.2.3. Storage or equipment for prepared foods; and
 - 3.5.2.4. Equipment that will not result in expanded access to or lowered prices for healthy food for LILA communities.
- 3.6. Accounting and Book Management Support
 - 3.6.1. Eligible Accounting and Book Management Support
 - 3.6.1.1. Online accounting systems; and
 - 3.6.1.2. Technical support through contracted services
 - 3.6.2. Non-Eligible Accounting and Book Management Support
 - 3.6.2.1. CPA financial audits not related to SNAP, WIC, or other healthy food incentive programs.
- 3.7. Purchasing or Updating Point of Sales (POS) Equipment for Food Incentive Programs
 - 3.7.1. Eligible Purchasing or Updating Point of Sales Equipment
 - 3.7.1.1. New POS systems, including software, hardware, monitors, printers, and incidental supplies that are directly related to implementing or improving SNAP, WIC, or other food incentive programs;
 - 3.7.1.2. Staff POS training expenses; and
 - 3.7.1.3. Upgrades to existing POS systems.
 - 3.7.2. Non-Eligible Purchasing or Updating Point of Sales Equipment for Food Incentive Programs:
 - 3.7.2.1. POS systems that are not equipped to accept SNAP or WIC.
- 4. Application Review and Award**
 - 4.1. Applications will be individually scored by a review panel appointed by the Commissioner. The review panel will evaluate each application to determine whether the applicant is an Eligible Business and whether the proposed activity constitutes an Eligible Use.
 - 4.2. The application review panel will consider the following criteria in evaluating an application for a Grant Award;
 - 4.2.1. Whether all eligibility requirements for receiving a Grant Award are satisfied;

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- 4.2.2. The degree to which the proposal will significantly and directly increase the capacity for a Small Food Retailer to offer healthy food in a LILA community or a Small Family Farm to distribute healthy food to LILA communities; and
- 4.2.3. The proposal's likelihood of success.
- 4.2.4. The ultimate geographic distribution of all Grant Awards to ensure that at least 30 percent of Grant Awards go to Eligible Businesses in Colorado's rural areas.
- 4.3. The application review panel will give priority scores to proposals that:
 - 4.3.1. Have the capacity to reach the greatest number of low-income Colorado residents, or, for low population areas, the greatest proportion of a LILA community;
 - 4.3.2. Have the capacity to substantially reduce the price of healthy food for low-income Colorado residents;
 - 4.3.3. Have the ability to create a lasting impact beyond the time period of funding;
 - 4.3.4. Result in dollars remaining in community (reducing "retail leakage");
 - 4.3.5. Promote comprehensive responses to local food access, farm, and nutrition issues;
 - 4.3.6. Are submitted by a member of an underserved area of the state; and
 - 4.3.7. Demonstrate a plan that advances or implements responsible environmental stewardship, including by reducing greenhouse-gas emissions.
- 4.4. To optimize the utilization of funds available, the evaluation committees, Advisory Committee, and Department may recommend a Grant Award less than the amount of funds an applicant requests. The Commissioner will review such recommendations and make the final determination on an application.
- 4.5. The Department will inform an applicant for a Grant Award of the Department's decision via email within 90 days of the end of each Award Period.
- 4.6. The Commissioner's decision on an application is final and may not be appealed.

5. Grant Award: Terms, Conditions, and Reporting

- 5.1. A Grant Award is not a guarantee of funds.
- 5.2. Before a Grant Award will be issued, an Awardee must provide documentation to confirm that the applicant qualifies as an Eligible Business.
- 5.3. The Department will pay a Grant Award for an eligible expense only after the Awardee has submitted the invoice for the approved expense to the Department, along with any necessary supporting documentation,
- 5.4. The Department will advance a Grant Award for an eligible expense that the Awardee has not yet purchased only after the Department receives supporting documentation of the expected

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purchase price. Receipts proving the purchase of approved expenses or service provided must be submitted no later than 60 days after the purchase or receipt of service.

5.4.1. If the actual cost is less than the amount paid, Awardees must return the excess funds.

~~5.54.~~ As a condition of receiving a Grant Award, an Awardee shall agree to cooperate with the Department in evaluating the impact of the project through reporting requirements that document the impact of the Award progress towards increasing the distribution or purchasing capacity of healthy food in LILA communities.

~~5.65~~ As a further condition of receiving a Grant Award, an Awardee shall agree that any equipment purchases or infrastructure investments will be for the exclusive and on-going benefit of the Eligible Business to which the Grant Award has been issued and that no equipment or other purchases or investments purchased or paid for by a Grant Award may be sold for personal profit.

6. – 9. Reserved

10. Statement of Basis, Specific Statutory Authority and Purpose

10.1. Emergency Rule Adopted August 9, 2023 – Effective August 9, 2023

The Colorado Commissioner of Agriculture finds that immediate adoption of these rules is imperatively necessary to comply with the statutory deadlines for distribution of funds as set forth in section 35-1-117(2)(b)(III), C.R.S., which requires compliance with the “American Rescue Plan Act of 2021, “Pub. L 117-2, and that compliance with the rulemaking requirements of § 24-4-103, C.R.S., would be contrary to the public’s interest.

Specifically, the Commissioner finds that the Colorado General Assembly appropriated \$7 million dollars to the Department of Agriculture to be used to provide grants to small-family farms and small-food retailers, which money must be spent or obligated by December 30, 2024.

To ensure clarity of the program’s requirements to all applicants; to ensure a distribution of funds that reaches the broadest set of potential applicants; and to make the greatest strides toward improving access to and lowering prices for healthy foods in low-income and underserved areas of the state (section 35-1-117(1), C.R.S.), the Commissioner must adopt these rules immediately to comply with the provisions of state and federal law, to expedite the application process for interested applicants, and to ensure that the appropriated money is fully spent or obligated by December 30, 2024.

The purpose of these rules is to establish general eligibility requirements for application for a grant; to establish the application process and procedures for grant applicants; and to establish processes and procedures to direct the review of applications and the award of funds. These rules will support the statutory directive to improve access to and lower prices for healthy foods in low-income and underserved areas of the state by supporting small-food retailers and small-family farms in Colorado.

These rules are promulgated pursuant to the Commissioner’s authorities as set forth at §§ 35-1-117(7), C.R.S., and § 24-4-103(6)(a), C.R.S.

10.2. Adopted November 8, 2023 – Effective December 30, 2023

The Colorado Commissioner of Agriculture adopts these rules pursuant to their authority at section 35-1-117(7), C.R.S., which authorizes her to promulgate rules “as necessary for the implementation of [the Community Food Access Program].” Section 35-1-117(7), C.R.S.

Editing comments: This is a new permanent rule to replace an emergency rule. Changes from the emergency rule are indicated in ~~strike~~through for removal and underline for additions. If you are able to view this document in color the changes are also indicated in red. Changes as a result of the rulemaking hearing are indicated in blue.

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