



NOTICE OF PUBLIC RULEMAKING HEARING

FOR THE ADOPTION OF NEW RULES

“Rules Pertaining to the Small Food Business Recovery and Resiliency Tax Credit”

8 CCR 1204-10

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

DATE: December 15, 2023
TIME: 10:00 a.m.
LOCATION: This hearing will be held via [Zoom](#)
CALL INFORMATION: 1-719-359-4580
Meeting ID: 816 2223 2925
Passcode: 215233

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 deadlines and identify the order in which the Department will issue tax credits in accordance with HB 23-1008. Also, to provide general direction to applicants for both letters of eligibility and tax credit certificates related to deadlines, required documentation, and methods of demonstrating effects on improving lower prices for healthy foods in low-income and underserved areas of the state.

The statutory authority for these rules is §§ 39-22-549(4)(a), (5)(e), and (9), 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.



DEPARTMENT OF AGRICULTURE

Markets Division

RULES PERTAINING TO THE SMALL FOOD BUSINESS RECOVERY AND RESILIENCY TAX CREDIT

8 CCR 1204-10

1. Definitions

- 1.1. "Amount Certain Spent by the Member of the Consortium on Completing its Duties and Responsibilities of the Consortium" or "Amount Certain" means the amount spent on pallet, pallet break, distribution, and delivery fees that is eligible for a subsidy from the Consortium but is not otherwise covered by the Consortium.
- 1.2. "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.
- 1.3. "Community Food Consortium (Consortium)" means the community food consortium created in section 35-1-117(8)(a), C.R.S.
- 1.4. "Department" or "CDA" means the Colorado Department of Agriculture created in section 35-1-103, C.R.S.
- 1.5. "Duties and Responsibilities" means the duties and responsibilities of the members of the consortium pursuant to section 35-1-117(2)(a), C.R.S.
- 1.6. "Farm Direct Operation" means a farm that produces and sells Colorado grown or raised products directly to consumers.
- 1.7. "Grant Award" means a contractual award of funds through the Small Food Business Recovery and Resilience Grant Program.
- 1.8. "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.
- 1.9. "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.
- 1.10. "Member of the Consortium" means any member of the community food consortium for small food retailers and Colorado-owned and Colorado-operated farms created in section 35-1-117(2)(a), C.R.S.
- 1.11. "Purchase Price" means the amount actually paid by the purchaser for the small food business recovery and resilience grant program equipment, including charges for sales tax and freight, but not including any charges for assembly, installation, other construction services, or permit fees.
- 1.12. "Purchaser" means a small food retailer or small family farm that purchases small food business recovery and resilience grant program equipment.

- 1.13. “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.
- 1.14. “Rural” means any population, housing, or territory not in an urban area as defined in this rule.
- 1.15. “Small Family Farm” has the same meaning as set forth in section 35-1-117(8)(d), C.R.S.
- 1.16. “Small food business recovery and resilience grant program equipment” or “Equipment” means the items listed in section 35-1-117(3)(a)(II) and(3)(a)(IV), C.R.S.
- 1.17. “Small Food Retailer” has the same meaning as set forth in section 35-1-117(8)(e), C.R.S.
- 1.18. “SNAP” means the supplemental nutrition assistance program established in part 3 of article 2 of title 26 of the Colorado Revised Statutes.
- 1.19. “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>.
- 1.20. “WIC” has the meaning set forth in section 35-1-117(8)(g), C.R.S.

2. Tax Credit Certificates Annual Allocation

- 2.1. The Department may issue up to \$10 million annually in Tax Credits Certificates commencing on or after January 1, 2024, but before January 1, 2031, in accordance with section 39-22-549 (3)(a), C.R.S.
- 2.2. On the first of each month, the Department will post on the Community Food Access Program website, www.ag.colorado.gov/CFA, the total aggregate amount of Tax Credit Certificates issued for each calendar year and the total amount of aggregate tax credit applications currently under review. Applicants are encouraged to check the availability of tax credits for each calendar year frequently and before incurring any Amounts Certain or expenses for Equipment.

3. Tax Credit Letter of Eligibility — Submission, Review, and Issuance

- 3.1. A Member of the Consortium or a Purchaser may submit an application to the Department for a letter of eligibility for a tax credit certificate to determine whether any proposed expense would qualify before incurring that expense.
- 3.2. The application must include a certification that the applicant is either:
 - 3.2.1. a Purchaser who is a small food retailer or small family farm that purchased small food business recovery and resilience grant program equipment; or

- 3.2.2. a Member of the Consortium that spent an Amount Certain on completing its duties and responsibilities.
- 3.3. The application must also include detailed information regarding:
 - 3.3.1. the Purchase Price that would be incurred by a Purchaser and the date on which the purchase would be made, including any portion covered by a Grant Award received through the Small Food Business Recovery Resilience Grant Program or other grant, loan, or funding source; or
 - 3.3.2. an itemized total of the Amount Certain that a Member of the Consortium would spend on completing its Duties and Responsibilities, minus any amount already provided by the Consortium, and the date or dates on which the Member of the Consortium would spend the amounts.
- 3.4. Interested individuals will find applications for a Letter of Eligibility on the Community Food Access Program website at www.ag.colorado.gov/CFA.
- 3.5. A Letter of Eligibility does not guarantee that an applicant for a Tax Credit Certificate will receive a Tax Credit Certificate. Applicants must submit a full application for a tax-credit certificate separately, pursuant to Part 4 of this rule, for the Department's review and consideration after the applicant has incurred the proposed expense.
- 3.6. An applicant must submit a complete Letter of Eligibility application and provide all required supporting documentation before the Department may determine if the Duties and Responsibilities or Equipment purchased would qualify for a tax credit certificate if purchased. The Department will notify applicants in writing if their application is incomplete.
- 3.7. The Department will review the Letter of Eligibility application and issue a decision in writing to approve, deny, or seek additional clarification from the applicant. If the Department requests additional clarification or documentation, the applicant will have 10 business days to provide the requested information, after which the Letter of Eligibility application will be deemed abandoned by the applicant and denied. Applicants can request an extension of this deadline in writing or submit a revised application for a Letter of Eligibility at a later date. Any such request must be made in writing (by e-mail or post) and received by the Department no later than three business days before the deadline to provide the requested information.
- 3.8. Decisions based on statutory requirements are not appealable.

4. Tax Credit Certificate Application – Submission, Review, and Issuance

- 4.1. The Department will post the application for a Tax Credit Certificate on the Community Food Access Program website: www.ag.colorado.gov/CFA.
- 4.2. There will be three application periods in each calendar year, as determined by the Department and announced on the Department's website: ag.colorado.gov/CFA upon the effective date of this rule and thereafter no later than January 1 of each calendar year.
- 4.3. Pursuant to subsection 5, this section 4.3 sets forth the order in which the Department will issue Tax Credit Certificates within each application period.
 - 4.3.1. Group 1: Members of the Consortium for completing their Duties and Responsibilities; rural applications will be reviewed before urban applications;

- 4.3.2. Group 2: Purchasers that have not received any other tax credits as a result of purchasing small food business recovery and resilience grant program equipment and that can demonstrate the greatest improvement to access to and lower prices for healthy foods in low-income and underserved areas of the state; rural applications will be reviewed before urban applications;
 - 4.3.3. Group 3: Purchasers that have not yet received a tax credit as a result of purchasing small food business recovery and resilience grant program equipment in the calendar year for which the tax credit is sought and that can demonstrate the greatest improvement to access to and lower prices for healthy foods in low-income and underserved areas of the state; rural applications will be reviewed before urban applications; and
 - 4.3.4. Group 4: All other applications, in order of who can demonstrate the greatest improvement to access to and lower prices for healthy foods in low-income and underserved areas of the state, in order from smallest amount requested to largest; rural applications will be reviewed before urban applications.
 - 4.3.5. Group 5: Any applicant that previously received a Tax Credit Certificate but mis-used Equipment in a way that did not conform to the applicant's intent as provided in its application or performed Duties and Responsibilities of the Consortium in a manner that did not conform to the actual Duties and Responsibilities of the Consortium.
- 4.4. Within each category listed in 4.3, applications will be reviewed in the order received, based on the date and time the Department receives a complete application.
 - 4.5. An applicant must submit a complete Tax Credit Certificate application and provide all required supporting documentation before the application deadline. After the application deadline, the Department will notify applicants in writing if their application is incomplete.
 - 4.5.1. An applicant will have 15 business days from the day the Department notifies the applicant that the applicant's application is incomplete to correct any deficiencies, after which the Department will deny the application in full. An applicant must then resubmit the applicant's application with complete documentation during the next application cycle, which will then be reviewed based on the new date and time received by the Department.
 - 4.6. To receive a Tax Credit Certificate, an applicant must provide supporting documentation of the following:
 - 4.6.1. The income tax year in which the applicant will claim a tax credit; and
 - 4.6.2. The price and date of any equipment purchased, including any portion of covered by a Grant Award, received through the Small Food Business Recovery Resilience Grant Program; or
 - 4.6.3. An itemized total and date or dates of purchase of any amount spent by a Member of the Consortium on pallet, pallet break, distribution, or delivery fees that are not otherwise covered by the Consortium.
 - 4.6.3.1. Costs related to pallet, pallet break, distribution and delivery fees must be verified with supporting documentation, such as an itemized invoice, price sheet, or contract with a distributor.
 - 4.7. If applicable, an applicant may submit the applicant's Letter of Eligibility along with a Tax Credit Certificate application.

- 4.8. The Department will inform an applicant of the Department's decision to approve or deny a Tax Credit Certificate by email within 90 calendar days from the date a completed application is received.
- 4.9. The Department will deny applications for a Tax Credit Certificate in any tax year in which the Department has committed ten million dollars. An eligible business may only receive a tax credit in the year in which the applicant incurred the eligible expense.
- 4.10. Upon approval, the Department will issue a Tax Credit Certificate with a designated reference number, which the applicant must attach to the applicant's state tax filing return for the applicable tax year. An applicant is responsible for submitting all necessary documents to the Colorado Department of Revenue to receive a tax credit. Tax Credit Certificates are not transferable.
- 4.11. Decisions based on statutory requirements are not appealable.

5. An applicant may demonstrate improvement to access and lower prices for healthy foods in low-income and underserved areas of the state by:

- 5.1. Demonstrating that the geographical area the applicant serves:
 - 5.1.1. Has no access to a grocery store at less than half-mile intervals in an urban area; or
 - 5.1.2. Has no access to a grocery store at less than 10 miles in a rural area and is within a United States census tract whose poverty rate is 20 percent or greater; or
 - 5.1.3. 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
 - 5.1.4. Is within a United States census tract 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.
- 5.2. Demonstrating whether the applicant operates or serves areas 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;
- 5.3. Demonstrating whether the applicant operates or serves areas located in a Limited Supermarket Access Area;
- 5.4. Demonstrating whether the applicant operates or serves an area operated by a Tribal government or on Tribal Lands;
- 5.5. Demonstrating whether the applicant operates or serves a particular Qualified Census Tract; or
- 5.6. Providing a narrative explanation to establish any other factors that the applicant believes should qualify as operating or serving in a low-income, low-access community, including by use of locally aggregated data.

6. Tax Credit Certification Requirements

- 6.1. At the time of application for a tax credit, a Purchaser or Member of the Consortium must certify that the applicant is either:
 - 6.1.1. A Member of the Consortium that spent an Amount Certain on completing its duties and responsibilities; or

6.1.2. A Purchaser who is a small food retailer or small family farm that purchased Equipment.

7. Eligible and non-eligible costly small food business recovery and resilience grant program equipment purchases include:

7.1. Eligible Equipment Expenses:

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

7.1.2. Display shelving and display cases;

7.1.3. Produce scales;

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

7.1.5. Deli slicers and meat grinders for fresh meat;

7.1.6. Dry storage containers;

7.1.7. Delivery trucks that will be primarily used for the transportation of healthy food to low-income, underserved areas of the state (refrigerated or standard vehicles); and

7.1.8. New or used farming and ranching equipment including but not limited to equipment that is essential for planting, raising food-producing animals, harvesting, packing, storing, extending the growing season, and shipping healthy food.

7.1.9. Equipment the Commissioner determines will contribute to the state's effort 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.

7.2. Non-Eligible Equipment Purchases:

7.2.1. Storage or retail display equipment for alcoholic beverages, soft drinks, sports and energy drinks or cannabis products;

7.2.2. Vending machines that do not offer healthy food;

7.2.3. Storage or equipment for prepared foods.

7.3. Purchasing or Updating Point of Sales (POS) Equipment for Food Incentive Programs

7.3.1. Eligible Purchasing or Updating Point of Sales Equipment

7.3.1.1. 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; and

7.3.1.2. Upgrades to existing POS systems.

7.3.2. Non-Eligible Purchasing or Updating Point of Sales Equipment for Food Incentive Programs:

7.3.2.1. POS systems that are not equipped to accept SNAP or WIC.

8. General Provisions

- 8.1. Applicants are responsible for complying with any applicable local, state, or federal food safety standards and for operating within the scope of any necessary license, registration, or permit. Applicants are responsible for obtaining any necessary local, state, or federal regulatory review for any improvements made to any existing facilities.
- 8.2. A Purchaser of Equipment that receives a Tax Credit Certificate understands and agrees that the Department may conduct a site inspection to confirm that the Purchaser's use of the Equipment conforms to the Purchaser's intent, as provided in its application.

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

- 9.1 Adopted January 17, 2024; Effective March 16, 2024

The Commissioner of Agriculture adopts these rules pursuant to the authority granted the Department of Agriculture at 39-22-549(4)(a), (5)(e), and (9), C.R.S.

HB 23-1008, created a tax credit to induce designated tax-payer behavior, specifically: purchasing and use of small food business recovery and resilience grant program equipment and increasing the activities of the community food consortium for small food retailers and Colorado-owned and Colorado-operated farms. This tax credit is designed to contribute to the state's efforts 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. See 3-22-549(1)(a)(I) and (1)(a)(II), C.R.S.

These rules establish the deadlines both for applications for letters of eligibility and for applications for tax credit certificates. A letter of eligibility permits those who may incur costs to determine, in advance, whether such costs would qualify for a tax credit. A tax-credit certificate is an approval issued by the Department after any eligible equipment purchase has been made and which may be applied by the applicant as a credit against that person's income taxes for the tax year in which the purchase was made. Section 39-22-549(4)(a) and (5)(a), C.R.S.

These rules identify the order in which the Department will issue tax credits, identifying an order that will permit the Department to organize its awards based on factors that prioritize Duties and Responsibilities of Consortium members; rural- over urban-related expenses; applicants who have not received any previous tax credits; and applicants who can demonstrate the greatest improvement to and lower prices for healthy foods in low-income and underserved areas of the state, consistent with the state's efforts 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.

Finally, these rules provide general direction to applicants for both letters of eligibility and tax credit certificates related to deadlines, required documentation, and methods of demonstrating effects on improving lower prices for healthy foods in low-income and underserved areas of the state.