

**DEPARTMENT OF STATE
DIVISION OF SMALL BUSINESS**

Statutory Authority: 29 Delaware Code, Section 8705A (29 **Del.C.** §8705A)

PROPOSED

PUBLIC NOTICE

The Delaware Grocery Initiative

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of 29 **Del.C.** §8705A, the Division of Small Business ("Division") proposes to promulgate new regulations regarding criteria and procedures governing The Delaware Grocery Initiative.

In accordance with 29 **Del.C.** §10116, persons wishing to submit written comments, suggestions, briefs, and compilations of data or other written materials concerning the proposed modifications should direct them to the following address:

Business Finance Unit
Division of Small Business
99 Kings Highway
Dover, DE 19901

Comments may also be directed via electronic mail to business_finance@delaware.gov. Any written submission in response to this notice and relevant to the proposed rules must be received by the above contact at the Division of Small Business no later than 4 p.m. EST, January 3, 2025.

The action concerning determination of whether to adopt the proposed regulations will be based upon the Division's consideration of the written comments and any other written materials filed by the public.

Statutory Authority 29 Del.C. §8705A.

29 **Del.C.** §8705A enables the Division of Small Business to establish and promulgate such rules and regulations governing the administration and operation of the Division as may be deemed necessary by the Director and which are not inconsistent with the laws of the State of Delaware.

Background

Senate Substitute No.1 for Senate Bill No. 254 of the 152nd General Assembly created the Delaware Grocery Initiative (the "Initiative"). The purpose of the Initiative is to expand access to healthy foods in food deserts in Delaware and areas at risk of becoming food deserts in Delaware by providing grants and other forms of financial assistance to an eligible food resource, nonprofit food resource, local governmental unit food resource, or specialty grocer. The Initiative will be administered by the Division of Small Business, a division within the Department of State. 29 **Del.C.** §8703A.

The Delaware Grocery Initiative

1.0 Enabling Legislation

- 1.1 The Delaware Grocery Initiative was established pursuant to Senate Substitute No. 1 for Senate Bill 254, which directs the Division of Small Business to prescribe such regulations as may be necessary to implement the Initiative.
- 1.2 The Initiative will be administered by the Division, subject to appropriation, and in consultation with the Delaware Council on Farm & Food Policy.
- 1.3 This regulation has been adopted by the Division pursuant to its authority in 29 **Del.C.** §8705A.

2.0 Purpose and Intent

- 2.1 The purpose of the Initiative to expand access to healthy foods in food deserts in Delaware and areas at risk of becoming food deserts in Delaware by providing grants and other forms of financial assistance to an eligible food resource, nonprofit food resource, local governmental unit food resource, or specialty grocer.
- 2.2 This regulation contains procedures governing the process for applying to the Division for a grant under the Initiative, pre-closing and post-closing procedures and criteria for the Division's approval or disapproval of an application for a grant under the Initiative.

3.0 Definitions

The following words and terms, when used in this regulation, have the following meaning:

"Applicant" means any food resource, nonprofit food resource, local governmental unit food resource, or specialty grocer, as defined in this regulation, that applies for an award of grants or other financial assistance under the Initiative, including the First State Food System Program.

"Application" means an application made to the Division of Small Business on the form or forms, together with all relevant attachments, and signed by an authorized officer or representative of the applicant, as the Division may, in its sole discretion, require in connection with administration of grants and other forms of financial assistance under the Initiative, including the First State Food System Program.

"Council" means the Delaware Council on Farm & Food Policy, a convening of state and non-state food system stakeholders that advise the Delaware Secretary on Agriculture on food system topics.

"Division" means the Division of Small Business created by 29 Del.C. §8703A.

"First State Food System Program" means the program established by the Delaware Department of Agriculture, using State funds from the American Rescue Plan Act, to award grants to food resources.

"Food desert" means locations where the residential population lacks adequate access to affordable nutritious foods, typically lower-income areas where there is no access to a grocery store within at least ½ mile in urban areas or at least 10 miles in non-urban areas.

"Food resource" means any source that provides or enables access, availability, or affordability of healthy food products including food retailers, food banks, food pantries, specialty grocers, supermarkets, corner stores, restaurants, state benefits offices, food box voucher programs, or other mechanisms that enable healthy food access in food desert communities.

"Initiative" means the Delaware Grocery Initiative, an initiative that aims to expand access to healthy foods in food deserts and areas at risk of becoming food deserts in the state of Delaware.

"Initiative funds" means grants or other financial assistance under this Initiative.

"Initiative Review Panel" or **"Panel"** means the group of individuals designated by the Division to review applications for grants and other financial assistance under the Initiative.

"Nonprofit" means an organization or institution that is organized as a nonprofit nonstock corporation according to the General Corporation Law of Title 8 of the Delaware Code.

"Recapture" means repayment of Initiative funds by an applicant.

"Recapture period" means an extension of time necessary to realize the objectives of the award of Initiative funds.

"Specialty grocer" means a food resource that provides or enables the access, availability, or affordability of culturally diverse food products, including independent retail operations.

4.0 Initiative Review Panel

- 4.1 The Initiative is administered by the Division, subject to appropriation and consultation with the Council. To facilitate with administering the Initiative, the Division will designate the Initiative Review Panel with input from the Council, who will review and score applications, and recommend the award of grants and other financial assistance pursuant to the Initiative, including the First State Food System Program.
- 4.2 The Panel may recommend the award of grants and other financial assistance to eligible applicants based on poverty rates, income, geographic diversity, local ownership, access to food resources in the area surrounding proposed project locations, and other factors as determined by the Panel.
- 4.3 The Panel may request documents or information from an applicant, in its sole discretion, in addition to the application.
- 4.4 If an application or requested document or information is incomplete, inaccurate, or provided untimely, the Division will inform the applicant and further consideration of the application will be stayed and taken out of the order in which the application was originally received, if and until the requested documents or information are received by the Division.
- 4.5 All applications shall be submitted to the Panel for review, and the Panel shall make a recommendation with respect to the application to the Director.
- 4.6 Upon recommendation by the Panel, the application shall be submitted to the Director for consideration and final approval or disapproval. If approved, such approval shall be final. The Panel will issue its determination to approve or not approve an application, in whole or in part, and the Division will notify an applicant in writing about the determination.

5.0 Eligibility

- 5.1 An applicant must satisfy the following criteria, to be determined by the Initiative Review Panel:
 - 5.1.1 Be a food resource, nonprofit food resource, local governmental unit food resource, or specialty grocer, as those terms are defined in Section 3.0 of this regulation.
 - 5.1.2 Advance the stated goals of the Delaware Grocery Initiative's enabling legislation.

6.0 Grants and Other Financial Assistance

- 6.1 The Division, subject to appropriation and consultation with the Council, may determine Initiative fund amount thresholds and may place limits on the size of the food resources that are eligible for Initiative funds.
- 6.2 Initiative funds may be used for any 1 or more of the following: equipment, capital expenses, operational expenses, administrative expenses, supplies, or other costs as determined by the Division.
- 6.3 Recapture Provision
 - 6.3.1 The Division shall determine, in its sole discretion, those circumstances in which an applicant must repay all or part of the Initiative funds.
 - 6.3.2 Reasons for recapture may include substantial or complete cessation of operations by the applicant, or failure to reach the stated goals of the application in a timely manner.
 - 6.3.3 The recapture obligation shall be consistent with the purposes and should extend for the number of years necessary to realize the objectives for which Initiative funds have been awarded.
 - 6.3.4 Should an applicant fail to begin incurring eligible expenses within 3 years, beginning on January 1 of the calendar year following receipt of the funds, the Division has the right to recapture the Initiative funds.
- 6.4 Annual Reporting. Annually, for a period equal to the recapture period, the applicant shall submit to the Division a progress report on the status of the stated goals of the application. The report shall be in a form acceptable to the Division. This reporting period may be extended or reduced, as appropriate, by the Division in its sole discretion. Annual reports should be submitted to the Division no later than June 30 of each year.
- 6.5 Before Initiative funds are issued, the applicant must enter into a written agreement in the form required by the Division. Failure to enter into a timely agreement may result in the Division rescinding its approval.

28 DE Reg. 441 (12/01/24) (Prop.)