

DEPARTMENT OF STATE

DIVISION OF SMALL BUSINESS

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

FINAL

ORDER

The Delaware Grocery Initiative

SUMMARY OF THE EVIDENCE

1. Senate Substitute No. 1 for Senate Bill 254 of the 152nd General Assembly and 29 **Del.C.** §8705A authorize the Department of State, Division of Small Business to promulgate regulations in relation to the powers, duties, and functions for the administration of The Delaware Grocery Initiative.
2. Pursuant to this authority, the Division of Small Business is responsible to and intends to promulgate regulations regarding the process, procedures, and requirements concerning the initiative.
3. The Division of Small Business will administer the initiative.
4. Notice of the proposed regulations was published in the December 1, 2024 edition of the *Delaware Register of Regulations*, and the public was given 30 days to provide written comment.
5. The Division did not receive any comments.
6. Having provided the opportunity for public comment on the proposed regulations in accordance with the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101, et. seq., this is the Order adopting the proposed regulations published previously with non-substantive changes.

FINDINGS OF FACT

1. The Director of the Division of Small Business finds that it is necessary to promulgate the proposed regulations published previously, in order to comply with Senate Substitute No. 1 for Senate Bill 254 regarding The Delaware Grocery Initiative.

IMPACT ON GREENHOUSE GAS EMISSIONS

An assessment of the impact of the proposed regulations on the achievement of the State's greenhouse gas emissions reduction targets is not practical for The Delaware Grocery Initiative.

DECISION AND ORDER

For the foregoing reasons, the Director concludes that it is appropriate to promulgate regulations regarding The Delaware Grocery Initiative and in which the text of the final regulation shall be in the form referenced herein. Therefore, the regulations shall be adopted in accordance with this Order. The effective date of this Order shall be 10 days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED this 13th day of January, 2025.

Regina Mitchell, Director
Division of Small Business
Department of State

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.