

# **Texas Department of Agriculture**



## **Farmers' Market Nutrition Program Handbook**

# Farmers' Market Nutrition Program Handbook

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# Section 1000

# Introduction

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## Section 1000 Introduction

### 1100 Program Description

The Texas Department of Agriculture (TDA) offers the Farmers' Market Nutrition Program (FMNP) to clients participating in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). Using farmers' markets, this program is designed to increase consumption of fresh fruits and vegetables by WIC clients and provide opportunities for farmers to sell their produce locally.

### 1200 Administration

TDA has an agreement with the United States Department of Agriculture (USDA) to administer the FMNP in Texas, and does so in accordance with federal and state requirements. The contracting entity (CE) may reference these requirements in the following sources:

- Title 7 Code of Federal Regulations (CFR) Part 248, *WIC Farmers' Market Nutrition Program*
- 7 CFR Part 246, *Special Supplemental Nutrition Program for Women, Infants and Children*
- 2 CFR Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*

TDA provides administrative funds, if available, to contracting entities (CEs), such as nonprofit organizations and public agencies that participate in the FMNP.

TDA's responsibilities include the following activities:

- Administering the FMNP in Texas
- Disbursing administrative funds
- Assisting CEs in the operation and management of the FMNP
- Monitoring the FMNP to ensure that reimbursement is used for FMNP purposes.

CEs' responsibilities include the following activities:

- Complying with the terms of FMNP Agreement(s) and Addendum(s), if applicable
- Implementing and operating an approved financial management system
- Distributing vouchers to eligible participants
- Maintaining FMNP records

- Submitting vouchers for reimbursement
- Distributing funds to farmers' market associations
- Monitoring to ensure the FMNP is operating according to regulations.

**NOTE:** The CE may find forms for operating the FMNP 'on the TDA website. Access the TDA website at <http://www.squaremeals.org/>, go to "Programs," click on "Farmers' Market Nutrition Program," choose FMNP Administration and Forms," then input the form title or form number in the appropriate search field. TDA will notify CEs when it posts new or revised forms and instructions on the website.

For any required form that does not have an electronic version; TDA will provide a paper version for CEs' use.

## **1300 Other Programs**

TDA administers the FMNP through agreements with nonprofit organizations or public agencies in Texas. TDA also administers the following USDA nutrition programs:

- Child and Adult Care Food Program (CACFP)
- Commodity Supplemental Food Program (CSFP)
- Food Distribution Program (FDP) for Child Nutrition Programs
- National School Lunch Program (NSLP)
  - Afterschool Care Program (ASCP)
  - Seamless Summer Option (SSO)
  - Fresh Fruit and Vegetable Program (FFVP)
- School Breakfast Program (SBP)
- Senior Farmer's Market Nutrition Program (SFMNP)
- Special Milk Program (SMP)
- Summer Food Service Program (SFSP)
- The Emergency Food Assistance Program (TEFAP)

CEs may receive additional information about these programs on the TDA website at <http://www.squaremeals.org/>. For CEs that do not have internet access, please contact TDA at (877) TEX-MEAL.

If a CE is approved to participate in more than one program, it must ensure that it

- Maintains separate records for each program, and
- Attributes costs to the appropriate program.

## **1400 Funding**

Each year, USDA grants administrative funding to TDA to administer and operate the FMNP in Texas.

## **1500 Appeals**

CEs have the right to appeal certain actions TDA takes that adversely affects their participation in the FMNP, including the denial of applications. Refer to Section 8000, *Denials, Terminations and Appeals*, for additional information regarding appeal rights.

# Section 2000

## Eligibility and Application Requirements

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## Section 2000

# Eligibility and Application Requirements

### 2100 Eligibility Requirements

Organizations must demonstrate adequate administrative and financial responsibility to manage an efficient and effective voucher distribution and redemption system to be considered a potential FMNP CE. An organization may be eligible to participate as an FMNP CE if it

- Accepts final administrative and financial responsibility for FMNP operations.
- Is a nonprofit organization or a public agency.
- Attends all required TDA trainings.
- Provides adequate supervisory and operational personnel to effectively manage and monitor FMNP operations.
- Restricts employees from securing additional employment that interferes with their FMNP responsibilities and duties (for example, scheduling or conflict-of-interest issues).
- Has a satisfactory performance record if it participates or has participated in other TDA administered nutrition programs.

For complete details, organizations interested in applying should contact the USDA Foods Program Specialist who handles the FMNP at [CommodityOperations@TexasAgriculture.gov](mailto:CommodityOperations@TexasAgriculture.gov) or at 1-877-TEX-MEAL (1-877-839-6325).

### 2110 Contracting Entity Selection Criteria

Selection of CEs is considered annually. FMNP Agreements are not permanent. The term takes effect upon signature by both TDA and the CE and expires based on a three year cycle for new and returning CEs. The selection criteria are:

1. The organization must have an existing network in place to reach eligible Special Supplemental Nutrition Program for Women, Infants and Children (WIC) participants and to distribute vouchers to eligible participants in the geographical contract area.
2. There should be a significant number of WIC participants eligible for the FMNP in the contract area. Consideration will also be given to the poverty level of participants in the selected geographical contract area.
3. The organization should be able to reach the maximum number of eligible WIC participants in the geographical contract area. Consideration will be given to the organizations best suited to make maximum use of the caseload availability.



4. TDA certified farmers' markets must be in the geographical contract area and accessible to FMNP participants.
5. Administrative funds for the FMNP are limited and will not cover all expenses. The CE must have the ability to meet FMNP objectives without total administrative funding from the United States Department of Agriculture (USDA).

## **2120 Organizational Structure and General Requirements**

### **2120.1 Organizational Structure**

Organizations are eligible to participate in the FMNP as a CE only if they are nonprofit organizations with tax-exempt status or a public agency.

### **2120.2 Tax Exemption**

Nonprofit organizations must acquire and maintain tax-exempt status from the U.S. Internal Revenue Service (IRS) either individually or as part of a group ruling. If a nonprofit organization acquired tax-exempt status under a group ruling, it must submit proof of affiliation with the parent organization that was given tax-exempt status. Churches are not required to provide proof of tax exemption. However, an organization must ensure that it qualifies as a church in accordance with IRS Publication 557, *Tax Exempt Status for Your Organization* and IRS Publication 1828, *Tax Guide for Churches and Religious Organizations*. Organizations that represent themselves as a church but do not meet the qualifications of a church will be required to submit to TDA proof of tax exempt status.

If the IRS has awarded nonprofit organization tax-exempt status, the applying organization must submit either a

- Formal determination of tax-exempt status from the IRS, **or**
- Proof of participation in another federally-funded program that requires an IRS determination of tax-exempt status.

If an organization does not submit this proof of tax-exempt status, the FMNP application will be denied. If the IRS revokes tax-exempt status, the CE must notify TDA immediately.

The IRS has specific filing requirements for small tax-exempt organizations whose gross receipts are normally \$50,000 or less. The Pension Protection Act of 2006 (PPA) requires these organizations to file Form 990-N, *Electronic Notice (e-Postcard) for Tax-Exempt Organizations Not Required to File Form 990 or 990-EZ*. Failure to comply with the PPA could result in revocation of an organization's tax-exempt status.

Additional information about the filing requirements, as well as how to apply for tax-exempt status, may be found at <http://www.irs.gov/>.

#### *IRS Automatic Revocation of Exemption List*

Nonprofit CEs must maintain their tax-exempt status. To ensure that nonprofit FMNP CEs meet the tax-exempt requirements, TDA reviews annually the IRS Automatic Revocation of Exemption List to determine whether any FMNP CEs in Texas are listed. The list, which is organized by State, may be found at <https://www.irs.gov/charities-non-profits/exempt-organizations-select-check>. Failure to maintain tax-exempt status may result in termination of the CE from the FMNP.

### **2120.3 Single Audit Requirements**

Organizations must submit one or more of the following forms to verify their compliance with Single Audit requirements in 2 CFR Part 200:

- A copy of an organization-wide or program-specific audit that has been determined to meet the Single Audit requirements.
- A completed *Annual Audit* form certifying that the CE will obtain, if required, an acceptable audit that meets the Single Audit requirements.

Refer to Item 5200, *Audits*, for specific information related to audit requirements.

### **2120.4 Debarment Certification**

Each CE must not make or permit any award, subaward, subgrant, or contract with an individual or entity that is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs.

TDA will deny an FMNP application or terminate an FMNP Agreement if a CE fails to obtain debarment certification by one of the three methods for any sub-agency, organization, or entity that meets the above criteria. Any contract containing federal assistance held by a CE that is excluded from entering into such contracts will be considered void, effective upon the date of exclusion.

For a copy of *Certification Regarding Debarment Suspension, Ineligibility and Voluntary Exclusion for Covered Contracts* (Form H2048), access the TDA website at <http://www.squaremeals.org/>, go to “Programs,” click on “Farmers’ Market Nutrition Program,” choose “FMNP Administration and Forms,” then input the form title or form number in the appropriate search field.

For additional information on Debarment and Suspension Certification, refer to Item 7350.2, *Debarment and Suspension Certification*.

## **2120.5 Unique Entity Identifier Number**

As of April 4, 2022, the federal government stopped using the Dun & Bradstreet Data Universal Numbering System (DUNS) number as the identifier for entities doing business with the federal government. A Unique Entity Identifier (UEI) has replaced the DUNS number for all CEs. This transition allows the government to streamline the entity identification and validation process, making it easier and less burdensome for entities to do business with the federal government.

All CEs must complete the following steps:

1. Register and obtain a UEI from SAM.gov
2. Once your organization has a UEI, please email the number to [nslp-sbp.bops@texasagriculture.gov](mailto:nslp-sbp.bops@texasagriculture.gov)

For more information, go to SAM.gov. Please note that TDA does not administrate the SAM.gov website. All requests for technical help should be directed to SAM.gov.

Note also that the UEI number will not replace the Employer Identification Number (EIN).

## **2130 Training Requirements**

### **2130.1 Contracting Entity Training**

Each year, CEs will receive written notification of specific mandatory training requirements for the Program Year. TDA is required to conduct interactive (face-to-face or online) training for CEs, FMAs, and farmers new to the FMNP.

Refer to Item 4410, *Contracting Entity Training*, for specific information.

### **2130.2 Staff Training**

After an FMNP application has been approved, CEs must conduct training for administrative and site personnel before they assume any FMNP duties. Refer to Item 4411, *Staff Training*, for specific information. CEs must train each staff member during each program year thereafter. Training must include the required civil rights curriculum.

As part of the FMNP application, the CE must provide a list of planned training topics and the proposed training dates.

**NOTE:** CEs must document efforts to train staff and retain this documentation with its FMNP records.

### **2130.3 Nutrition Education**

FMNP regulations in 7 CFR Part 248 require the integration of nutrition education for participants into the FMNP operations. Nutrition education must emphasize the relationship of proper nutrition to the total concept of good health, including the importance of consuming fresh fruits and vegetables (7 CFR § 248.9(a)). TDA accepts nutrition education provided by the WIC program as meeting the requirement for nutrition information to be given to FMNP participants. CEs and farmers' markets may provide supplemental nutrition education with recipes, cooking demonstrations, handouts or other methods of instruction.

## **2200 Application Requirements**

### **2210 Application Process**

Applicants complete and submit all necessary forms and supporting documentation to TDA. In the application, the applicant must provide information about the organization and how it plans to operate the program.

As part of the application process, applicants must do the following:

- Provide proof of tax-exempt status if organization is a non-profit organization.
- Demonstrate adequate administrative and financial responsibility to manage an effective program.
- Identify and execute agreements with sub-agencies,<sup>1</sup> farmers' market associations, and farmers that will be responsible for distributing vouchers, redeeming vouchers, providing produce, and submitting vouchers for reimbursement.
- Visit each site, including sub-agencies and farmers' markets, before operating the FMNP at the sites (in any capacity).
- Submit a complete management plan that includes staffing needs and an administrative budget.
- Certify the CE will train administrative and site personnel prior to the start of FMNP operations.

If an applicant submits an incomplete or incorrect application, TDA will request in writing that the organization submit the information needed within 30 days. After review and approval of

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<sup>1</sup> For additional information on sub-agency, please refer to Item 3120, *Agreements between Contracting Entity and Sub-Agencies*.

the CE's initial application, TDA will complete and sign the FMNP Agreement.<sup>2</sup> This is a legally binding document that specifies the rights and responsibilities of both the CE and TDA. The CE must have an approved or approvable *Plan of Operation* (Form H1406) prior to the FMNP Agreement being executed between the CE and TDA. Upon execution of the FMNP Agreement, CEs will receive copies of the FMNP Agreement, as signed by both TDA and the CE, and supporting documents needed to operate the FMNP. TDA will not issue reimbursement funds for administrative costs before approving an FMNP Agreement that is signed by a CE's authorized representative. The USDA Foods Program Specialist who handles the FMNP may be contacted at [CommodityOperations@TexasAgriculture.gov](mailto:CommodityOperations@TexasAgriculture.gov) or at 1-877-TEX-MEAL (1-877-839-6325) to answer questions and provide technical assistance.

For additional information on FMNP Agreements, please see Item 3100, *FMNP Agreements*.

## **2220 Application/Plan of Operation**

Applicants and returning CEs must complete and submit the *Plan of Operation* (Form H1406) for review and approval every year. For a copy of Form H1406 access the TDA website at <http://www.squaremeals.org/>, go to "Programs," click on "Farmers' Market Nutrition Program," choose "FMNP Administration and Forms," then input the form title or form number in the appropriate search field.

Form H1406 is used to provide TDA with the following information:

- Organization information
- Nonprofit status
- Budget information including an estimate of all FMNP costs for which the CE plans to claim reimbursement during the applicable Program Year.
- Complete management plan that list all administrative personnel responsible for managing and monitoring the FMNP operations
- Training topics and proposed dates for conducting the training
- Site information including a description of the geographic area that will be served
- Name and contact information for the FMNP Authorized Representative

The completed application and supporting documents may be submitted via email to TDA at [CommodityOperations@TexasAgriculture.gov](mailto:CommodityOperations@TexasAgriculture.gov). The email subject should include "FMNP Plan of Operation" and the name of the CE. For CEs that do not have access to email, please contact TDA at (877) TEX-MEAL.

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<sup>2</sup> The agreement is effective upon signature by the parties and expires in accordance with its terms at the end of a three year cycle.

## 2220.1 Budget

A CE must submit on Form H1406, *Plan of Operation*, an estimate of all FMNP costs for which it plans to claim reimbursement during the Program Year. A CE's budget is reviewed by TDA to ensure that individual line items in the budget are:

- Approved uses of funds,
- Reasonable, and
- Necessary.

In general, a cost item will be deemed allowable if it is reasonable and necessary for FMNP purposes and otherwise satisfies allowability criteria set forth in 2 CFR Part 200, subpart E and USDA implementing regulations in 2CFR Parts 400 and 415 and 7 CFR Part 248. (7 CFR § 248.12)

Refer to Item 7600, *Administrative Costs* for guidance when completing this portion of the *Plan of Operation*.

If TDA determines that a budget includes excessive or unnecessary costs, the CE will be asked to revise the budget or provide additional information. TDA will not approve an application without an approved annual budget.

An approved budget is the maximum amount of reimbursement for administrative costs that are incurred during operation of the FMNP. The approved budget does not imply in any way that a CE will be reimbursed for the full amount of each budgeted item; rather, it specifies the areas of administrative costs that are allowable and reasonable. If a CE determines that the approved budget is inadequate, the budget may be amended with approval from TDA.

Any change in an approved budget is an amendment of the *Plan of Operation*. Refer to Item 2230.3, *Amendments to an Application*, for instructions related to changing the approved budget.

## 2220.2 Management Plan

A CE must submit a management plan on Form H1406, *Plan of Operation*, which includes detailed information about administrative staff. This includes all administrative personnel who will be responsible for managing and monitoring the FMNP operation. It does not include site supervisors. At a minimum, a CE must indicate

- The title for each position,
- The number of individuals in each position,
- The specific FMNP duties performed in each position.

During an administrative review, TDA will review the CE's Management Plan to evaluate whether the CE has sufficient staff to efficiently and effectively administer the FMNP.

### **2220.3 Training**

CEs must train each of its staff members before they assume any FMNP duties at one or more sites. Further, CEs must train each staff member during each Program Year thereafter. At a minimum, the CEs training must include the required Civil Rights curriculum. CEs must also provide Civil Rights training to the farmers' market associations and farmers in accordance with TDAs guidance. Refer to Item 11500, *TDA Civil Rights Training Materials* for more information.

A CE must submit on Form H1406, *Plan of Operation*, a list of planned training topics and the proposed dates when the CE will conduct the training.

NOTE: CEs must document their training and retain the documentation with its FMNP records.

### **2220.4 Voucher Distribution, Site Information, and Market Locations**

CEs must submit site information on Form H1406, *Plan of Operation*. FMNP CEs must have an identifiable service area that is accessible to local farmers' markets where vouchers are distributed to FMNP participants (qualified WIC clients). A description of the geographic area to be served must be described on Form H1406.

Additionally, CEs must complete and sign Form H1420, *Farmers' Market Locations and Site Information*, which includes information on each farmers' market location as well as each site where vouchers will be distributed. Prior to operating the FMNP at one of the listed sites, the CE must conduct a visit of each site to verify that it will operate in full compliance with the requirements set forth in the Agreement between TDA and the CE. For a copy of Form H1420, access the TDA website at <http://www.squaremeals.org/>, go to "Programs," click on "Farmers' Market Nutrition Program," choose "FMNP Administration and Forms," then input the form title or form number in the appropriate search field.

Refer to Item 4310, *Site Requirements*, for additional information.

### **2220.5 Authorized Representatives**

Applicants must complete form FND-135, *User Access Manager Form*, to name an authorized representative. An authorized representative is any person who is individually authorized on behalf of the CE to

- Make written agreements with TDA,
- Sign documents or reports about the agreement, and
- Present claims for reimbursement, when appropriate.

An authorized representative must be an employee of the organization.

## **2230 Review of FMNP Applications**

TDA will notify an organization of the approval or denial of a complete Form H1406, *Plan of Operation*, within 30 days of receipt. If TDA denies the application, TDA will notify the organization in writing of the reasons and explain the right to appeal.

Refer to Section 8000, *Denials, Terminations, and Appeals*, for additional information.

### **2230.1 Pre-Approval Visit**

TDA conducts pre-approval visits of CEs' administrative offices and sites to 1) assess the potential for successful program operations and 2) verify information provided on the Form H1406, *Plan of Operation*. Before approving the FMNP application, TDA will visit all

- CEs that did not participate in the program during the previous Program Year.
- CEs and/or sites that, as a result of operational problems noted during the previous Program Year, have been determined by TDA to need a pre-approval visit before being approved in the current Program Year.

For returning CEs, prior to the start of operations, TDA will visit any new Farmers' Market or FMAs added by that CE in order to conduct in-person training.

### **2230.2 Approval of Contracting Entities**

TDA will only approve the participation of a CE that has submitted Form H1406, *Plan of Operation*, with sufficient information to enable a determination of eligibility.

### **2230.3 Amendments to an Application**

The FMNP Agreement stipulates that a CE will perform according to the application, supporting documents, and approved amendments. Therefore, approved amendments to an application do not require an amendment to the FMNP Agreement. CEs must include all supporting documentation to complete the amendment request. CEs must request an application amendment whenever they want to



- Add or remove a site,
- Change the address of an approved site,
- Add or remove an authorized representative,  
**NOTE:** CEs must also complete and submit form **FND-135, User Access Manager Form**, when adding or removing an authorized representative.
- Alter an item in the approved budget, or
- Make any other change that affects reimbursement or FMNP operation.

Reimbursement for claims may be delayed or negatively affected if the CE fails to properly request an amendment in advance. TDA must approve **all** amendments to a budget.

**Example:** If a CE wants to increase expenditures on postage for program outreach by an additional \$100 per year and reduce expenditures on program training by \$100 per year, TDA must approve each proposed change in advance even though the total budget would remain unaffected.

TDA will not approve retroactive budget amendments that increase individual budgeted line items or the total budget for any claim month before the month in which the request was received. TDA must have sufficient time to review and approve each request. All budget changes are effective for an entire claim month (that is, these changes will not be prorated for part of a month).

For more information or assistance in requesting an application amendment, CEs should contact the Food and Nutrition Program Specialist who handles the FMNP at [CommodityOperations@TexasAgriculture.gov](mailto:CommodityOperations@TexasAgriculture.gov) or at 1-877-TEX-MEAL (1-877-839-6325).

## 2240 State Match Funds

States that participate in the FMNP are required to provide matching funds of at least 30% of the total administrative cost. These may be state, local, or private funds. State, local, or private funds for similar programs may count toward the matching requirement. Funds used to provide in-kind services may also count toward the matching requirement. TDA may require CEs to count in-kind services toward the matching funds. For example, the difference between what a CE claims for reimbursement and what TDA pays the CE would count toward the required matching funds. The costs incurred by the CE to operate the FMNP that are not reimbursed by TDA are considered by TDA as in-kind services that count toward the matching requirement. CEs must provide documentation of the cost of all in-kind services.

**Example:** If the CE provides brochures to program participants, the cost of the printing may be used as an in-kind service. The CE must provide documentation of the printing costs with an invoice.

# Section 3000

# Program Agreement

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## **3100 FMNP Agreements**

### **3110 FMNP Agreement between Texas Department of Agriculture and Contracting Entity**

If an organization is approved to participate in the FMNP, the CE and TDA will complete and sign the *Agreement between Texas Department of Agriculture and Contracting Entity* (FMNP Agreement) (FMNP-01). The agreement is effective upon signature by the parties and expires in accordance with its terms at the end of a three year program year cycle. This agreement provides the terms and conditions for participation in the FMNP and is a legally binding agreement between TDA and the CE. The terms and conditions relate to the following topics:

- Accountability,
- Distribution and redemption of vouchers,
- Debarment, suspension, ineligibility, or voluntary exclusion for covered contracts,
- Federal lobbying,
- Subcontracts for goods and services,
- Civil rights,
- Information technology,
- Appeals,
- Program payments

**NOTE:** TDA may terminate an FMNP Agreement, as provided by federal regulations, state rules, and the terms and conditions of the agreement. Additionally, the FMNP Agreement may be terminated with 30 days' notice by mutual consent or by TDA, without mutual consent, for material breach of the Agreement. If funds for the continued fulfillment of the agreement by TDA are at any time unavailable or are insufficient, through failure of any entity to appropriate funds or otherwise, then TDA has the right to terminate the agreement at no additional cost and with no penalty by giving written notice documenting the lack of funding.

After TDA has approved an FMNP Agreement, it can only be amended with TDA's consent.

If the CE owns and fully operates and controls the FMA, TDA and the CE will execute an Addendum to the FMNP Agreement (FMNP-01A).

## **3120 Agreements between Contracting Entity and FMA and Agreement between Farmer and FMA**

If a CE is unable to fulfill one or more of the requirements identified in the FMNP Agreement, a CE may be able to enter into a written agreement with a sub-agency to fulfill these requirements. In FMNP, a sub-agency is a Farmer's Market Association (FMA). TDA provides the following agreements in FMNP:

- FMNP-02, *Farmers' Market Nutrition Program Agreement Between [CE] and [Farmers' Market Association]*.
- FMNP-03, *Farmers' Market Nutrition Program Farmer's Profile and Agreement Between [Farmer] and [Farmers' Market Association]*.

An agreement between the CE and FMA (sub-agency) is effective upon signature by the parties and expires in accordance with its terms at the end of a three year program year cycle. The agreement provides the terms and conditions for participation in the FMNP and is a legally binding agreement between the CE and FMA (sub-agency). These agreements are subject to TDA approval. TDA will approve or deny these agreements during the application process or during the program year.

Further, only farmers authorized by TDA or that have a valid agreement with an authorized farmers' market may redeem vouchers (7 CFR §248.10(b)). Farmers' markets are required to enter into a written agreement with each farmer within the market that is participating in the FMNP. TDA provides an agreement with the required terms which must be used (7 CFR §248.10(c)).

## **3200 Program Payments**

### **3210 Claims for Reimbursement**

TDA reimburses CEs for their actual, allowable costs as administrative funds are available, according to the terms and conditions of the FMNP Agreement. Refer to Section 4000, Managing the Program and Section 7000, *Financial Management*, for additional information.

# Section 4000

## Managing the Program

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## 4100 General Administration

### 4110 Program Year Period

The Farmers' Market Nutrition Program (FMNP) operates from January through November. Vouchers may only be distributed to participants between February 1 and September 30 of the program year. Participants may redeem current vouchers from the date of issuance through October 31 of the program year.

Contracting Entities (CEs) may submit claims for reimbursement to TDA from February through December 15 of each program year. Claims for reimbursement must be submitted within thirty days of the end of the month in which the expense was incurred. Refer to Item 4115, *Voucher Redemption/Submission Deadlines*, for more information.

### 4111 Program Operations

TDA provides vouchers to CEs. These vouchers are redeemable by the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) participants at qualifying local farmers' markets and roadside stands. CEs will distribute vouchers to eligible WIC participants. CEs may delegate distribution of the vouchers to the Farmers' Market Association (FMA) or sub-agency if the FMA (or sub-agency) is properly trained to distribute vouchers.

#### 4111.1 Voucher Management Procedures

CEs must establish and maintain written procedures for the management, distribution, security, and accountability of vouchers. TDA will review the CEs' process/procedure for adequacy to ensure they cover, at a minimum:

- Receipt, storage, and security of voucher booklets prior to issuance;
- Transportation and security of voucher booklets from the CE to distribution site(s), if applicable;
- Security and issuance instructions for voucher booklets at the site(s);
- Distribution of vouchers to participants; and
- System for detecting and resolving voucher issuance problems at the site(s).

### 4112 Vouchers

Each participant receives five vouchers valued at \$30.00 in increments of \$6.00 per voucher. CEs, farmers, and farmers' market associations should only accept vouchers that are valid. Each

voucher must include a unique number with the current year printed on it and dated at the time of redemption. Vouchers are printed in a different color each year to help identify valid vouchers.

#### **4113 Voucher Security**

CEs, sub-agencies, Farmers' Market Associations (FMA) and farmers are all responsible for voucher security. CEs must keep vouchers in a secure area before distribution, during transfer from the CE to market, and after they are returned from FMAs for reimbursement.

CEs must record the series of unique numbers on the cover of the voucher booklet received from TDA. If a sub-agency or FMA is used for the distribution of vouchers, they must record the voucher numbers received from the CE. Refer to Item 4212, *Voucher Distribution*, for more information.

At the time of redemption by WIC participants, farmers and FMAs should always make sure the vouchers are valid (see Item 4114, *Voucher Reconciliation and Redemption* and Item 4115, *Voucher Reimbursement/Submission Deadlines*). The redeemed vouchers must be kept in a safe place.

#### **4114 Voucher Reconciliation and Redemption**

Farmers must enter their vendor numbers on the redeemed vouchers to assure proper identification for reimbursement.

Farmers submit their redeemed vouchers to the FMA **on a weekly or monthly basis**. The FMA must confirm the validity of the redeemed vouchers by ensuring they are dated, and the farmer's vendor number is entered on each voucher. Redeemed vouchers that are missing the date or vendor number may be rejected by the CE for payment. The FMA will complete the *Farmers' Voucher Redemption List* form **and submit it to the CE along with the properly redeemed vouchers**.

CEs verify and reconcile the redeemed vouchers to the *Farmers' Vouchers Redemption List* after they have been submitted by the FMAs or sub-agency. CEs must reconcile vouchers by identifying the disposition of all vouchers as properly redeemed, lost or stolen, or not matching issuance records. CEs must verify:

- Unique numbers on the vouchers are valid,
- Dates on the vouchers are current, and
- Farmer vendor identification number is valid.



#### 4114.1 Voucher Reconciliation/Redemption Procedures

CEs must establish and maintain written procedures for the reconciliation and redemption of vouchers. TDA will review the CE's procedures for adequacy to ensure they cover, at a minimum:

- Process to determine whether each voucher is validly redeemed, lost or stolen, expired, or inconsistent with issuance records;
  - This should include a process to reduce the number of errors in transactions, where possible.
- Process for handling redeemed vouchers that cannot be traced back to a record of issuance;
- Process for disposing of vouchers that were not issued and/or redeemed;
- Process for voucher redemption.

#### 4115 Voucher Reimbursement/Submission Deadlines

Voucher issuance occurs February 1 through September 30 of each program year. FMNP participants may redeem vouchers at participating farmers' markets and roadside stands on February 1 through no later than October 31 of each program year. Farmers have until November 15th to submit redeemed vouchers to the FMAs. FMAs should submit redeemed vouchers at least monthly to their CE, with all vouchers being submitted no later than November 30. Failure to submit vouchers by the November 30 deadline will result in non-payment to the farmers.

Voucher Issuance and Redemption/Submission Deadlines	
First Day Vouchers may be Issued to Participants and Redeemed at Farmers' Markets/Roadside Stands	February 1
Last Day Vouchers may be Issued to Participants	September 30
Last Day Participants may Redeem Vouchers at Farmers' Markets/Roadside Stands	October 31
Farmers Submit Redeemed Vouchers to Farmers Market Association	November 15
Farmers Market Association Submit Redeemed Vouchers to CE	November 30
Last Day CEs Submit Claim for Reimbursement to TDA	December 15

The CE submits a monthly *FMNP Claim for Reimbursement* to TDA for payment via TX-UNPS<sup>1</sup> within 30 days from when the expense was incurred. TDA will process the claim and issue payment through the Comptroller of Public Accounts to the CEs. The Comptroller will reimburse CEs according to its payment procedures. The CEs will reimburse the FMAs. The FMAs will reimburse the farmers for the amounts submitted for the redeemed vouchers.

The final *FMNP Claim for Reimbursement* must be submitted to TDA no later than December 15 of each year. It is important that FMAs send the redeemed vouchers to their CE no later than November 30 to ensure the CE has time to verify and reconcile the vouchers. Also, CEs must submit any requests for claim adjustments to TDA on or before December 15<sup>th</sup> of the program year.

TDA will conduct Administrative Reviews of submitted claims and/or redeemed vouchers to determine compliance. See Section 5000, *Visits, Reviews, and Audits*, for additional information.

#### **4116 Negligence, Fraud or Abuse**

CEs assume financial liability for negligent or fraudulent administration of the FMNP, if aware of such activity. CEs and other FMNP stakeholders must immediately report suspected fraud or misuse of funds or vouchers, and other major criminal activity to TDA. They can notify TDA at [CommodityOperations@TexasAgriculture.gov](mailto:CommodityOperations@TexasAgriculture.gov) or (877)-TEX-MEAL. CEs should include information related to the amount involved, location of the incident, suspected parties and other details and facts.

TDA will notify the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) Regional Office of suspected illegal activity. The FNS Regional Office reports the case to the USDA Office of Inspector General for investigation.

#### **4117 Administrative Funding and Claim Reimbursement**

FMNP CEs accept final administrative and financial responsibility for all sites which they operate or delegate (to an approved sub-agency) program activities. FMNP administrative funds may not cover all of a CE's actual costs.

CEs should submit claims for administrative costs and voucher reimbursement monthly using TX-UNPS. Claims for administrative funds must include all actual and allowable costs for operating the program. Reimbursement for administrative costs is based on distribution and/or redemption of vouchers. CE's administrative costs, which exceed available administrative funding, are counted toward the state matching fund requirement. See Item 2240, *State Matching Funds*, for an explanation of the state matching funds requirement.

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<sup>1</sup> TX-UNPS is the web-based application and claims processing system for all food and nutrition programs administered by TDA.

If funding is available, there will be a reallocation at the end of the program year, providing additional administrative funds to CEs. The number of vouchers each CE distributed and/or redeemed will provide the basis for calculating the reallocation of funds.

## **4200 Enrolling Participants and Issuing Vouchers**

### **4210 Participant Eligibility (7 CFR §248.6)**

The Texas Department of State Health Services (DSHS) certifies participants in the WIC. DSHS will provide eligibility information of WIC participants to TDA in the areas of the state where FMNP is available. Vouchers are provided to WIC participants on a first come, first served basis. Eligible WIC participants include:

- Pregnant women,
- Breastfeeding women,
- Postpartum women,
- Infants over 4 months old, and
- Children aged 1 - 5 years.

Participants must currently take part in the WIC program or are on the waiting list to receive benefits from WIC to be eligible for FMNP vouchers. (7 CFR §248.6(a))

### **4211 Dual Participation Not Permitted**

Participants may not receive FMNP vouchers from more than one service area during a program year and are limited to \$30.00 per program year. However, participants may redeem their vouchers at any participating FMA.

### **4212 Voucher Distribution**

Vouchers are provided to the participants by the CEs directly or through the CE's FMA or sub-agency, as applicable. Five vouchers, \$6.00 each, are given to each participant. Vouchers are for a onetime benefit and are numbered sequentially. To promote voucher security, staff must enter the voucher booklet number on the *Participant Voucher Issuance Log* at the time the vouchers are distributed.

When vouchers are distributed to participants, the participants' name and the voucher booklet number must be recorded on the *Participant Voucher Issuance Log*. If a proxy is receiving a voucher booklet on behalf of a participant, the participant's name must still be listed on the form. The participant category, as found on the eligibility documentation (or "shopping list")

must be recorded on the *Participant Voucher Issuance Log*. The eligibility category must be recorded for each FMNP participant, with the two letters indicated for each category as follows:

- Pregnant
- Breastfeeding
- Postpartum
- Child
- Infant

The staff or volunteer person issuing the voucher to the participant must initial on the line of the *Participant Voucher Issuance Log*, where the participant's (or proxy's) name is recorded.

NOTE: Participants may use a proxy (or authorized representative) when using vouchers. CEs must establish procedures regarding the use of a proxy. The procedures should include, at a minimum, any requirements regarding designation or use of a proxy and the number of proxies a participant may have.

CEs must ensure that all vouchers are distributed to eligible participants without regard to race, color, national origin, sex, age, or disability. Refer to Section 6000, *Civil Rights* for additional information.

CEs must have a written procedure documenting its process for distributing vouchers. These procedures must be distributed to the FMA or sub-agency if they are distributing vouchers on behalf of the CE.

#### **4213 Confidentiality**

CEs must protect the confidentiality of any information that has been provided for eligible WIC participants. CEs may only use the information to determine eligibility for FMNP benefits. The CEs must not release any information that contains a participant's name or other individual information except on a need-to-know basis for the operation of the FMNP. CEs may release summary information that does not identify individual participants, such as the number of program participants eligible for benefits. (7 CFR §246.26 and 7 CFR §248.24)

#### **4214 Written Notifications**

At the time the vouchers are distributed, CEs (or FMAs or sub-agencies that distribute vouchers for CEs) must perform the following notification responsibilities:

- Each participant shall receive **instructions** on how to redeem vouchers, including locations **and names** of farmers' markets/**roadside stands** at which FMNP vouchers may be redeemed. (7 CFR §248.10(i)(1))

- Each participant shall receive a description of eligible foods and the prohibition against cash change. (7 CFR §248.10(i)(2))
- Each participant shall be informed during voucher distribution of the CE's complaint procedures about improper farmer/farmers' market practices regarding FMNP responsibilities and the process for making such a complaint, the right to a fair hearing, and the illegality of participation in the FMNP with more than one CE. CEs must have written grievance procedures for addressing and processing complaints.

#### **4215 Fair Hearing Request**

TDA will provide fair hearings for participants, farmers, and farmers' markets. See Item 8500, *Appeals Procedures*, for instructions on requesting a hearing, also known as an "appeal." CEs must provide notification to participants of their right to a fair hearing, as applicable.

#### **4216 FMNP Benefits Excluded from Consideration as Income**

The value of benefits or assistance, such as vouchers, under the FMNP must not be counted as income or resources of participants or their families for any purpose under any federal, state, or local law. FMNP benefits are excluded from determination of eligibility for other means tested programs, e.g., Supplemental Nutrition Assistance Program (SNAP). (7 CFR §248.24(a))

### **4300 Sites**

#### **4310 Site Requirements**

CEs that utilize sites for the operation of the FMNP (that is, for voucher distribution) must accept final administrative and financial responsibility. During the application process, CEs are required to visit each site as provided in Item 2220.4, *Voucher Distribution, Site Information and Market Locations*. Refer to Item 4412, *Monitoring Contracting Entities' Sites*, for specific instructions related to these visits.

#### **4311 Adding and Deleting Sites**

During the program year, a CE may wish to add or delete a site. The addition or deletion of a site is a change (that is, an amendment) to *Plan of Operation* (Form H1406). If a CE wishes to add a new site, it must:

- Visit the site to verify that it will operate in full compliance with the requirements mandated in the *FMNP Agreement*,
- Complete *Farmers' Market Locations and Site Information* (Form H1420), for each site where vouchers will be distributed, and

- Submit Form H1420 to TDA, as appropriate and include an explanation that clearly details the reason for the change.

If a CE wishes to eliminate a site, the CE must provide notification to TDA of the change **when requested to do so.**

#### **4312 Authorizing Farmers, Farmers' Markets, and Roadside Stands**

**Only farmers, farmers' markets, and roadside stands that are authorized to participate in the FMNP may redeem vouchers.** Farmers' markets wanting to take part in the FMNP must be certified by TDA.<sup>2</sup> Farmers, farmers' markets, **and roadside stands** may only sell eligible foods to participants using the vouchers. If participants want to purchase disallowed produce or goods, they must use other means of payment. Eligible foods must be grown in Texas, New Mexico, Oklahoma, Arkansas, or Louisiana. Food from Mexico or other countries is not permitted in the FMNP. For the list of eligible foods, see Item 11100, *Allowed/Disallowed Foods in the FMNP*. The majority of the food being sold must be grown by the farmer; wholesalers are not eligible to participate in the FMNP. If farmers' markets already take part in the Senior Farmers' Market Nutrition Program (SFMNP), they are automatically authorized to participate in the FMNP.

**During the redemption period, farmers, farmers' markets, and roadside stands must display posters advertising that they will accept FMNP vouchers. Voucher distribution and redemption periods may vary according to growing seasons in different areas of the state.**

Farmers must have a written agreement with the FMA to redeem FMNP vouchers. FMAs must have a written agreement with the TDA CE to participate in the FMNP. Refer to Section 3000, *Program Agreement*, for additional information.

The CE must ensure there is no conflict of interest between the CE and any participating farmer or farmer's market. For example, employees or volunteers of the CE must not participate in any activity that conflicts with their performance of FMNP duties. Refer to Section 7000, *Financial Management*, for additional information on financial conflicts of interest.

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<sup>2</sup> A certified farmers' market must have at least two produce growers who are growing and selling their own produce. For information on becoming a Certified Farmers Market, please go to <https://www.texasagriculture.gov/Grants-Services/Certified-Farmers>.

## 4400 Training and Monitoring

### 4410 Contracting Entity Training

CEs must attend FMNP training sessions required by TDA. CEs will be notified, in writing, of all mandatory training requirements. TDA is required to conduct interactive (face-to-face or online) training for CEs, FMAs, and farmers new to the FMNP. (7 CFR § 248.10(a)(4) and (d))

If the CE's staff fails to complete mandatory training, TDA may suspend the CE from participating for the program year.

### 4411 Staff Training

After a CE's application has been approved, the CE must conduct training for administrative and site personnel, including volunteers and farmers, before they assume any FMNP duty, and host an annual training thereafter. Training topics must include, but are not limited to, the following topics:

- Identification of eligible foods
- Proper voucher redemption procedures, including deadlines for submission of vouchers
- Equal treatment of participants
- Voucher security, storage, and distribution
- Voucher cancellation procedures
- Civil rights compliance and guidelines
- Record keeping and document retention requirements.

CEs must maintain a record of trainings and attendees (sign-in sheets) which includes:

- Date of training
- Location of training
- Training topics
- Name(s) and signature(s) of attendees and
- Name of trainer.

CEs must keep this documentation with FMNP records.

When developing the training curricula, CEs will benefit from reviewing the information provided in Item 4200, *Enrolling Participants and Issuing Vouchers*; Item 4300, *Sites*; and Section 6000, *Civil Rights*.

In addition to providing FMNP training to its FMAs, sub-agencies, and other organizations, as applicable, CEs must provide technical assistance to these entities upon request.

CEs provide annual training for the FMAs. At a minimum, the training will include:

- Eligible food choices,
- FMNP voucher redemption procedures,
- Fair and equitable treatment of FMNP participants, including availability of foods that are the same quality and cost as those sold to other customers,
- Civil Rights compliance and guidelines,
- Guidelines for storing FMNP vouchers safely, and
- Guidelines for redeeming FMNP vouchers.

Other topics may include:

- Written agreements,
- Purpose of FMNP, and
- Qualification of FMNP participants.

#### **4412 Monitoring Contracting Entities' Sites**

CEs must monitor their administrative and site personnel to:

- Ensure program compliance,
- Investigate reported problems, and
- Determine whether to operate a site during the following program year.

If problems are identified, CEs must take action as provided in Item 5120, *Findings*.

Independently or in coordination with TDA, CEs will review the distribution sites to:

- Evaluate their operations and activities, and
- Ensure program compliance according to the terms and conditions of their agreements, including, but not limited to:
  - Distributing vouchers,
  - Adhering to non-discrimination requirements,
  - Record keeping requirements, and
  - Voucher security.



## **4500 Program Administration by Farmers' Market Associations and Farmers**

### **4510 Agreements with FMNP Contracting Entities**

To accept FMNP vouchers, FMAs must sign agreements with the CEs. Farmers' markets must also have agreements with the farmers in the association so that the farmers may accept the FMNP vouchers.

### **4511 Voucher Accountability**

FMNP participants redeem their vouchers by surrendering them to the farmer to purchase eligible foods. Farmers may not give change. If the participant does not purchase \$6.00 of food, the farmer must provide additional food to meet the value of the voucher. Farmers must record the date of redemption on the voucher.

Farmers turn in the redeemed vouchers to the FMAs. FMAs must accept only valid vouchers. A valid voucher will state the dates of use. The FMA prepares the vouchers for payment, identifying valid vouchers and ensures the farmers have included their vendor identification numbers directly on the vouchers. The FMA will list all FMNP redeemed vouchers on the *Farmers' Voucher Redemption List* form. The FMA sends the vouchers to the CE by registered mail, UPS, or any other delivery service that uses a tracking system. Voided, expired, lost or stolen vouchers will not be paid.

### **4512 Vendor Identification Number**

After the farmer signs an agreement with the FMA, a vendor identification number will be assigned to the farmer by the FMA. The farmer is required to put this number on the prescribe lines on the front of each voucher redeemed by the participant. A stamp may be used for this purpose. Vouchers without a farmer's vendor identification number will be invalid and will not be reimbursed.

### **4513 Monitoring Farmers' Market Associations, Farmers, and Roadside Stands**

CEs are required to monitor farmers, FMAs, and roadside stands annually. Monitoring includes reviewing the market and the farmers' functions at the market during operation and the processing of FMNP vouchers. CEs must conduct on-site reviews of a minimum of 10 percent of farmers, 10 percent of farmers' markets, and 10 percent of roadside stands, including those farmers and farmers' markets identified as being the highest risk. High-risk indicators for program violations for farmers and farmers' markets include, but are not limited to:

- A high volume of FMNP vouchers redeemed by one farmer in a farmers' market,

- Participant complaints, and/or
- First year participation of farmers and farmers' market.

CEs may use the *Farmers' Market Review* form when monitoring farmers, FMAs, and roadside stands to ensure compliance with FMNP requirements. For a copy of the *Farmers' Market Review* form, access the TDA website at <http://www.squaremeals.org/>, go to "Programs," click on "Farmers' Market Nutrition Program," choose "FMNP Administration and Forms," then input the form title in the search field.

During monitoring, CEs must, at a minimum, review the following topics:

- Produce is locally grown,
- Wholesalers are not selling to FMNP participants,
- Vouchers are properly managed and redeemed under the requirements,
- Only eligible foods are being sold to FMNP participants, and
- Training.

Compliance, or test buys, may be performed to make sure vendors are observing all regulations regarding sales to FMNP participants. The monitor will check that only eligible fresh fruits, vegetables, and herbs are being sold and that no change is being given. The monitor completes the *Vendor Integrity Evaluation Report* for TDA.

For additional information, refer to Item 4412, *Monitoring Contracting Entities' Sites* and Item 4515, *Sanctions*.

#### **4513.1 Monitoring Procedures**

CEs must develop and follow written monitoring procedures that describe how the CE will monitor farmers' markets and farmers and administer sanctions when infractions are found. These procedures, at a minimum, must include:

- Monitoring and evaluation, including development of a review schedule that uses high-risk factors,
- Compliance buys,
- Sanctioning,
- Written Notice,
- Corrective Action, and
- Appeals.

#### **4514 Farmers' Market Associations (FMA) Responsibilities**

In addition to the guidance already provided in this section, FMAs participating in the FMNP must:

- Provide only fresh, nutritious, unprepared fruits and vegetables grown by farmers in Texas, New Mexico, Oklahoma, Arkansas, or Louisiana. Fruits and vegetables allowed under the FMNP are identified in the list of eligible fruits and vegetables provided by TDA.
- Provide fruits and vegetables to FMNP participants that are of the same quality and cost charged as that sold to other customers. Charging a higher price for eligible foods than that charged to other customers for the same foods may result in sanctions.
- Ensure that individual farmers prominently display a sign stating that they are authorized to redeem FMNP vouchers and that individual farmers display prices for FMNP eligible foods.
- Ensure that when farmers sell both FMNP eligible and ineligible produce, the ineligible produce is displayed separately and marked as not eligible for FMNP purchases.
- Redeem FMNP vouchers for no less than their value and do not provide cash change for purchases.
- Do not bill or attempt to collect from FMNP participants any charges from any FMNP vouchers submitted to TDA for reimbursement but not paid by TDA.
- Notify TDA if any farmer or farmers' market ceases operation prior to the end of the authorization period.
- Notify CE and/or TDA of any market cancellation at least 15 days before market day.
- Abide by FMNP policies. The FMA has a duty to become familiar with the contents of its Agreement with its CE (FMNP-02), the FMNP policies and guidance, and all subsequent revisions.
- Cooperate with periodic compliance monitoring, as conducted by the CE, TDA, and/or USDA.
- Provide access to FMNP records, including vouchers, upon request by any monitoring agency.
- Agree to administer FMNP as required by FMNP regulations in 7 CFR Part 248.

For a comprehensive list, CEs and FMAs should refer to its signed Agreement (FMNP-02).

## 4515 Sanctions

The CE may disqualify any farmer or FMA from participation in the FMNP if the sanction score reaches 15 points or more during the year of participation. The maximum number of points may be assessed for a single serious abuse or for cumulative penalties for several less serious abuses, or they may come from several abuses occurring at different times during the program year. The disqualification periods are:

Total Number of Points	Disqualification Period	
15 Points	1 Year	May not accept vouchers for the current program year
20 Points	2 Years	May not accept vouchers for the current program year and the next program year
25 Points	3 Years	May not accept vouchers for the current program year and the next two program years

During a disqualification period, a farmer may not take part in the FMNP at another authorized FMA.

Farmers and FMAs have the right to appeal sanctions.

Infractions include, but are not limited to:

Infraction		Explanation/Example	Points
1	Redemption of invalid vouchers: <ul style="list-style-type: none"> <li>• Redeemed after end date</li> </ul>	Must not exceed 5% of redeemed vouchers	1 Point
2	Providing unauthorized food or goods, except for firearms, ammunition, or controlled substances as defined in 21 USC 802 (including alcohol and tobacco), which have a higher points penalty. See #9 below.	Nuts or Clothing	5 Points
3	Charging FMNP customers more than other customers	\$6.00 worth of food for a participant is less than for a non-participant	5 Points
4	Requiring cash to be paid by FMNP participants in addition to voucher		5 Points
5	Asking FMNP participants to pay for vouchers not redeemed by TDA		5 Points
6	Falsifying information on vouchers	Date redeemed	5 Points
7	Charging for food items not received	Rain checks	5 Points

Infraction		Explanation/Example	Points
8	Providing false information on farmer/farmers' market application		15 Points
9	Exchanging vouchers for money or non-food items	Alcohol, tobacco, firearms, ammunition, or other controlled substance	25 Points
10	Refusing to provide access to records, prices, or redeemed vouchers to TDA staff or contracting entities		15 Points

CEs must provide written notification of adverse action to participating farmers and FMAs of any violations of FMNP requirements that require sanctions. CEs must sanction farmers and FMAs for sanctionable violations of FMNP requirements as set forth above.

Refer to Item 4514.1, *Monitoring Procedures*, for more information on the requirement that CEs have a written monitoring procedure covering the monitoring of farmers' markets and farmers and administration of sanctions when infractions are found.

#### **4516 Prohibition on Collecting Sales Tax**

State or local sales tax collection is prohibited on the purchase of foods bought with FMNP vouchers. Farmers' markets are not required to pay sales tax on food purchased with vouchers and must not charge sales tax to FMNP participants.

#### **4600 Program Documentation**

TDA can only observe the daily operation of the FMNP when conducting Administrative Reviews. Therefore, TDA must rely on the records that CEs maintain to determine its compliance with FMNP requirements and verify the reimbursement to which CEs are entitled.

If a CE's records do not support eligibility for voucher reimbursement, the CE must repay any amount received improperly.

#### **4610 Retention Period**

CEs must maintain complete records related to FMNP operations, such as information pertaining to financial operations, voucher issuance and redemption, civil rights procedures, claims and supporting documents that are specific to a particular program year until February 1st, after the third fiscal year of program participation. (7 CFR § 248.23(a)(1))

**Example:** Records for fiscal year 2020 must be kept until February 1, 2024.

Retention Periods:

Program Fiscal Year End:	Retain Records Until...
September 30, 2018	February 1, 2022
September 30, 2019	February 1, 2023
September 30, 2020	February 1, 2024

**EXCEPTION:** If any litigation, claim, negotiation, audit or other action involving records has started before the end of the 3-year period, the records must be kept until all issues are resolved, or until the end of the regular 3-year period, whichever is longer. (7 CFR § 248.23(a)(2)) These issues are resolved when a final order is issued in litigation, or when the CE and TDA sign a written agreement.

**4620 Availability of Records**

CEs and sites must allow TDA, USDA, the Government Accountability Office (GAO) and representatives of other appropriate agencies to inspect facilities and records and to audit, examine and copy records during normal working hours.

CEs must maintain separate records for each site, and FMNP records must be maintained separately from records of other programs.

**NOTE:** If the *FMNP Agreement* is terminated or not renewed, the CE must retain all records according to the record retention requirements and make them available upon request.

# Section 5000

## Administrative Reviews and Audits

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## Section 5000

### Administrative Reviews and Audits

#### 5100 Administrative Reviews

At least once every two years, TDA will conduct an administrative review of a CE's FMNP operations. TDA personnel will visit CE's administrative office and sites to

- Ensure the overall operation complies with FMNP requirements, including:
  - Voucher distribution and security,
  - Civil rights compliance,
  - Financial management systems,
  - Approval and monitoring of sub-agencies,
  - Reporting and record keeping, and
  - Other aspects of their programs, as determined by TDA.
- Assist and advise CEs on issues related to FMNP operations.

The review of FMNP operations generally includes an observation of the voucher distribution process and an examination of record keeping at the site. As part of an administrative review, TDA will evaluate the CE's methods for reconciling vouchers for reimbursement and examine the records maintained by the CE. CEs must allow TDA and the U.S. Department of Agriculture (USDA) representatives to inspect facilities and examine and/or copy records during normal business hours. Further, CEs must implement any corrective action that TDA or USDA requires.

NOTE: CEs are required to annually monitor farmers and FMAs. For additional information, refer to Item 4514, *Monitoring Farmers' Market Associations and Farmers*.

#### 5110 Examination of Records

As part of an administrative review, TDA examines the *Plan of Operation* (Form H1406), to determine whether the CE is operating the FMNP consistent with the information provided to TDA at the time of application and any subsequent amendments. During an administrative review, a CE must make all program records available to the reviewers, including, but not limited to:

- Documents concerning a CE's application for participation,
- All required FMNP forms,
- Records of voucher distribution,
- Records of training,
- Records of spent FMNP funds,
- Cost allocation records,
- Records of subcontracting,



- Claims and redeemed vouchers,
- Procurement records,
- Health and sanitation documentation,
- Single audit records,
- Written processes and procedures related to the operation of the FMNP; and
- Civil rights compliance.

### **5110.1 Review of Claims and/or Redeemed Vouchers**

TDA may deem submitted claims and/or redeemed vouchers as invalid for payment for any of the following reasons:

- Request for payment from CE to TDA is postmarked after December 15<sup>th</sup> of the applicable program Year.
- Any required dates are missing or determined by TDA to be improperly altered.
- The voucher has been accepted for transaction before or after the “Dates of Use” printed on the voucher.
- Unauthorized foods, non-food items, and/or cash have been issued in exchange for the voucher.
- Voucher has been accepted for less than its stated value.
- The FMNP vendor number is missing from the voucher or determined by TDA to be improperly altered.

### **5120 Findings**

If a TDA reviewer finds violations in the operation of a CE’s program, the CE will receive a documentation of review findings that includes:

- Each violation found,
- The factors contributing to each violation,
- Recommendations for corrective action,
- Timetables for completion, and claims action to be pursued, if any, and
- Provisions to monitor or evaluate progress and the effectiveness of corrective action(s).

The documentation may be presented at the end of the review, mailed, or e-mailed to the CE.

CEs must correct violations of FMNP requirements. A CE will be instructed to write a corrective action plan (CAP) by a designated date to address the violation(s). The plan must state how the CE will correct any FMNP violations and include:

- An outline of actions to be taken,
- The expected outcome of each action,
- The target date for implementation of each action, and
- If there is more than one violation, the date by which each violation will be eliminated.

Violations include, but are not limited to:

- Failure to maintain adequate site or administrative records,
- Failure to follow competitive bid procedures,
- Failure to comply with civil rights laws and regulations,
- Submittal of false information to TDA, and
- Claims for reimbursement for administrative costs that were unrelated to FMNP operations.

## **5200 Audits**

This section provides an overview of the Federal Audit requirements as found in 2 CFR Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*. It is not meant to be a comprehensive treatment of the Federal Audit requirements. For more specific guidance in this area, please see 2 CFR Part 200 and the latest *Compliance Supplement*. The *Compliance Supplement* may be found at <https://www.whitehouse.gov/wp-content/uploads/2018/05/2018-Compliance-Supplement.pdf>.

The CE's audit covers the entire scope of its operations and is conducted to determine whether:

- Financial operations are conducted properly;
- Expenditures of program funds comply with applicable laws and regulations;
- Internal procedures meet the objectives of federally assisted programs;
- Financial statements are correct; and
- Financial reports contain accurate information.

With the *Plan of Operation* (Form H1406), a CE must submit a completed *Annual Audit* form, which provides assurance that the CE will procure an audit that meets the single audit requirements. Based on the information provided on the *Annual Audit* form, TDA will notify the CE of the audit's due date six (6) months and again at eight (8) months after the fiscal year for which the audit is due. However, failure to receive such notifications does not relieve a CE of the responsibility to submit a completed audit if required.

TDA will notify a CE that

- Audit information must be submitted, by the due date, to the Federal Audit Clearinghouse at <https://harvester.census.gov/facweb/> and a copy (paper or electronic format) sent to TDA. Notification will include submittal information for TDA.
- If a CE's audit is not submitted by the specified due date, the *FMNP Agreement* will be terminated effective the first day of the month following the month in which the audit was due; and
- A CE has the right to appeal the termination.

## 5210 General Audit Policy

The frequency and scope of audits of nonprofit organizations are determined by the amount and source of federal financial assistance expended in any year. Non-Federal CEs that expend \$750,000 or more during their fiscal year in Federal awards<sup>1</sup> must have a single or program-specific audit conducted for that year (2 CFR §200.501(a)). CEs subject to audit requirements in 2 CFR Part 200, subpart F must be audited on a single (organization-wide) audit basis by independent auditors. If a CE expends Federal awards under only one Federal program (such as FMNP), it may elect to have a program-specific audit if certain requirements are met (2 CFR §200.501(c)). If the federal financial assistance expended in one year is less than \$750,000, then the CE is not subject to the single audit requirement. All audits must be conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS).

In procuring audit services, the CE must follow the procurement standards in 2 CFR Part 200 (2 CFR §§200.509 and 200.317 through 200.326). The objective is to obtain high-quality audits. In requesting proposals for audit services, the audit's objectives and scope must be clear and the CE must request a copy of the audit organization's peer review report, which the auditor is required to provide under GAGAS.

Factors CEs should consider in evaluating each proposal for audit services include:

- Responsiveness to the request for proposal;
- Relevant experience;
- Availability of staff with professional qualifications and technical abilities;
- Results of peer and external quality control reviews; and
- Price.

Whenever possible, the CE must make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises.

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<sup>1</sup> As used in this section, "Federal Award" means federal financial assistance and Federal cost-reimbursement contracts that non-Federal entities (CEs) receive directly from Federal agencies or indirectly from pass-through entities. TDA is a pass-through entity for the FMNP (2 CFR §200.38).

## 5220 Scope of Audit

### CE Responsibilities

The CE must provide auditors with access to:

- Personnel
- Accounts
- Books
- Records
- Supporting documentation
- Other information as needed to perform the audit  
(2 CFR § 200.508(d))

The CE must prepare:

- Financial statements that reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited (2 CFR § 200.510(a)).
- Schedule of Expenditures of Federal Awards (SEFA) for the period covered by the CE's financial statements, which must include the total Federal awards expended (2 CFR § 200.510(b)). At a minimum, the schedule must:
  - List individual Federal programs by Federal agency;
  - Name of the pass-through entity (TDA) and identifying number assigned by TDA;
  - Total Federal awards expended for each individual Federal program and the Catalog of Federal Domestic Assistance (CFDA) number or other identifying number when the CFDA information is not available;
  - Total amount provided to subrecipients from each Federal program; and
  - Notes that describe the significant accounting policies used in preparing the schedule and whether the CE elected to use the 10% de minimis indirect cost rate
- Summary schedule of prior audit findings must report the state of all audit findings included in the prior audit's schedule of findings and questioned costs (2 CFR § 200.511(a) and (b)).
- Corrective action plan<sup>2</sup> to address each audit finding included in the current year auditor's report (2 CFR § 200.511(c)). The corrective action plan must provide:
  - Name(s) of the contact person(s) responsible for corrective action;
  - Corrective action planned; and
  - Anticipated completion date.

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<sup>2</sup> The corrective action plan, as described in 2 CFR Part 200, subpart F, is used to address each audit finding. This corrective action plan should not be confused with a corrective action required by TDA as a result of an administrative review.

**NOTE:** If the CE does not agree with the audit findings or believes corrective action is not required, then the corrective action plan must include an explanation and specific reasons. (2 CFR § 200.511(c)).

<b>Overview of CE's Responsibilities (2 CFR § 200.508)</b>
<ul style="list-style-type: none"><li>• Arrange for Audit (2 CFR § 200.509)</li><li>• Prepare Financial Statements</li><li>• Prepare SEFA</li><li>• Provide Auditor with Access</li><li>• Take Corrective Actions on Findings</li><li>• Prepare Summary of the Prior Audit Findings</li><li>• Prepare Corrective Action Plan</li></ul>

The CE must establish and maintain effective internal controls over the Federal award. Internal Controls provide reasonable assurance that the CE is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award (2 CFR §200.303).

Auditor Responsibilities

The auditor must report the following as audit findings (2 CFR § 200.516):

- Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs.
- Material noncompliance with Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program.
- Known questioned costs that are greater than \$25,000 for a type of compliance requirement for a major program.
- Known questioned costs that are greater than \$25,000 for a Federal program which is not audited as a major program.
- The circumstances concerning why the auditor's report on compliance for each major program is other than an unmodified opinion, unless such circumstances are otherwise reported as audit findings in the schedule of findings and questioned costs for Federal awards.
- Known or likely fraud affecting a Federal award, unless such fraud is otherwise reported as an audit finding in the schedule of findings and questioned costs for Federal awards.
- Instances where the results of audit follow-up procedures disclosed that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding.

The auditor's report must include (2 CFR § 200.515):

- An opinion (or disclaimer of opinion) whether the financial statements are presented fairly materially in accordance with generally accepted accounting principles and an opinion (or disclaimer of opinion) whether the schedule of expenditure of Federal awards is fairly stated materially in relation to the financial statements as a whole.
- A report on internal control over financial reporting and compliance with provisions of laws, regulations, contracts, and award agreements, noncompliance with which could have a material effect on the financial statements.
- A report on compliance for each major program and a report on internal control over compliance.
- A schedule of findings and questioned costs.

<b>Overview of Auditor's Responsibilities (2 CFR § 200.514)</b>
<ul style="list-style-type: none"><li>• Determine if financial statements are fairly presented</li><li>• Report on SEFA</li><li>• Understand and test internal control over compliance</li><li>• Determine whether CE complied</li><li>• Follow up on prior audit findings</li><li>• Report findings</li><li>• Complete and sign Data Collection Form</li></ul>

## **5230 Procedures for Compliance with Audit Requirements**

As a condition of eligibility for participation in the FMNP, TDA requires CEs to submit the documentation of compliance with single audit requirements. The audit must be completed and submitted by the CE to the Federal Audit Clearinghouse (FAC) either 30 days after receiving the auditor's report, or nine months after the end of the CE's fiscal year, whichever comes earlier.

The CE must submit to the FAC the data collection form (Form SF-SAC) which is found on the FAC website and a reporting package. The reporting package must include:

- Financial statements and schedule of expenditures of Federal awards;
- Summary of schedule of prior audit findings;
- Auditor's report(s); and
- Corrective action plan.

(2 CFR § 200.11(b) and (c)). The CE must retain one copy each of the data collection form and reporting package on file for three years from the date of submission to the FAC (2 CFR § 200.511(f)).

The FAC website provides detailed information on how to upload a single audit at <https://harvester.census.gov/facweb/>. The audit also must be submitted to TDA, and copies of the audit report must be available to the public. CEs and auditors must ensure that protected, personally identifiable information is not made public (2 CFR § 200.512).

Audits must be submitted to the FAC at <https://harvester.census.gov/facweb/> and a copy must be submitted to TDA. CEs should review and accept the completed audit before submitting the audit to the FAC and TDA. If corrective action is necessary, the CE should work with the auditing firm to develop a CAP to address each audit finding (2 CFR § 200.511(c)).

If the audit is organization-wide but the FMNP is not specifically audited, the CE must submit a letter to TDA from the auditor stating that the program was included in the random sampling process but was not selected for audit.

The proportional share of costs of required audits in accordance with 2 CFR Part 200, subpart F is allowable (2 CFR § 200.425). Projected costs of required audits must be included in the approved FMNP budget to be allowable.

## **5240 Sanctions for Noncompliance**

TDA must receive an acceptable audit either 30 days after receiving the auditor's report or within nine months of the last day of the CE's:

- Current fiscal year if submitting an annual audit, or
- Second fiscal year included in the biennial audit period if submitting a biennial audit.

TDA may terminate an *FMNP Agreement*, effective on the first day of the month following the month in which the audit was due if:

- FAC and TDA do not receive the audit by the specified due date;
- The CE submits an audit that does not meet the regulatory requirements. TDA will notify the CE in writing that the audit is unacceptable. The CE must submit an acceptable audit within 30 calendar days of the date of the notice;
- A CE requests, but is not granted, an extension of the audit due date and the CE does not submit an acceptable audit as required; and
- The CE requests and is granted an extension of the due date but fails to submit an acceptable audit by the extended due date.

If TDA determines that extenuating circumstances resulted in a CE's inability to submit an acceptable audit, TDA may conduct an audit, either directly or through contract with a third party. The CE must pay for all costs associated with such an audit.

Once the *FMNP Agreement* has been terminated for failure to comply with the single audit requirement, a CE must provide an acceptable audit for any outstanding audit year(s) and

comply with the Federal audit requirements to be eligible to reapply to participate in TDA's nutrition programs.

#### **5250 Other Audits**

TDA retains, both for the agency and the federal government, the right to conduct additional audits as necessary.

If violations such as fraud or misuse of funds occur and corrective action would not be practical, TDA will immediately terminate the *FMNP Agreement*.



# Section 6000

# Civil Rights

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## 6000 Civil Rights

All nutrition assistance programs and activities that receive Federal funding are protected and subject to civil rights oversight. CEs are responsible for ensuring that all qualifying persons have equal access to the FMNP by complying with the civil rights and nondiscrimination requirements of USDA. (7 CFR §248.7)

In the USDA nutrition programs administered by TDA, there are six bases protected against discrimination. A protected basis refers to any person or group of people who have characteristics for which discrimination is prohibited based on law, regulation, or executive order. Protected bases in the USDA nutrition assistance programs administered by TDA are:

- Race
- Color
- National origin
- Sex (including gender identity and sexual orientation)
- Age
- Disability

Reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA is also prohibited.

A CE must strictly adhere to and enforce the provisions of the Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act (ADA), both within the CEs administrative office and if a sponsor, within the sites it sponsors.

Refer to USDA Food and Nutrition Service (FNS) Instruction 113-1, *Civil Rights Compliance and Enforcement – Nutrition Programs and Activities* for additional information.

### **6100 Title VI of the Civil Rights Act of 1964**

#### **6110 Public Notification**

CEs must have a public notification system to inform applicants, participants, and potentially eligible person of the FMNP availability, FMNP rights and responsibilities, the policy of nondiscrimination, and the procedure for filing a complaint. CEs must make FMNP information available to the public upon request. CEs also must be able to provide informational materials related to the FMNP in languages other than English, if the need exists. Refer to Item 6130, *Limited English Proficiency* for additional information.

CEs must convey the message of equal opportunity in all photographic and other graphics that are used to provide information related to FMNP. Specifically, when human likenesses are used in such materials, reasonable efforts must be made to depict an ethnic and racial balance.

**NOTE:** In FMNP, public notification of the FMNP, FMNP rights and responsibilities, the policy of nondiscrimination, and procedures for filing a complaint is also handled at the WIC clinic.

### **6110.1 And Justice for All Posters**

CEs and each contracted site must prominently display the USDA nondiscrimination poster ("And Justice For All") in a place where it may be read by participants at all times. All "And Justice for All" posters must be displayed in a specific size: 11 inches width x 17 inches height. More information about the "And Justice for Poster" may be found on USDA's web site at [www.fns.usda.gov/cr/and-justice-all-posters-guidance-and-translations](http://www.fns.usda.gov/cr/and-justice-all-posters-guidance-and-translations).

### **6110.2 Nondiscrimination Statement**

CEs must provide the following nondiscrimination statement and complaint-filing procedures in all FMNP information intended for participants:

In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language), should contact the responsible state or local agency that administers the program or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a Complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form which can be obtained online at: <https://www.usda.gov/sites/default/files/documents/ad-3027.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

- (1) mail: U.S. Department of Agriculture  
Office of the Assistant Secretary for Civil Rights

1400 Independence Avenue, SW  
Washington, D.C. 20250-9410; or

- (2) fax: (833) 256-1665 or (202) 690-7442; or
- (3) email: [program.intake@usda.gov](mailto:program.intake@usda.gov).

This institution is an equal opportunity provider.

In Spanish the nondiscrimination and complaint-filing procedure is:

De acuerdo con la ley federal de derechos civiles y las normas y políticas de derechos civiles del Departamento de Agricultura de los Estados Unidos (USDA), esta entidad está prohibida de discriminar por motivos de raza, color, origen nacional, sexo (incluyendo identidad de género y orientación sexual), discapacidad, edad, o represalia o retorsión por actividades previas de derechos civiles.

La información sobre el programa puede estar disponible en otros idiomas que no sean el inglés. Las personas con discapacidades que requieren medios alternos de comunicación para obtener la información del programa (por ejemplo, Braille, letra grande, cinta de audio, lenguaje de señas americano (ASL), etc.) deben comunicarse con la agencia local o estatal responsable de administrar el programa o con el Centro TARGET del USDA al (202) 720-2600 (voz y TTY) o comuníquese con el USDA a través del Servicio Federal de Retransmisión al (800) 877-8339.

Para presentar una queja por discriminación en el programa, el reclamante debe llenar un formulario AD-3027, formulario de queja por discriminación en el programa del USDA, el cual puede obtenerse en línea en: <https://www.usda.gov/sites/default/files/documents/ad-3027s.pdf>, de cualquier oficina de USDA, llamando al (866) 632-9992, o escribiendo una carta dirigida a USDA. La carta debe contener el nombre del demandante, la dirección, el número de teléfono y una descripción escrita de la acción discriminatoria alegada con suficiente detalle para informar al Subsecretario de Derechos Civiles (ASCR) sobre la naturaleza y fecha de una presunta violación de derechos civiles. El formulario AD-3027 completado o la carta debe presentarse a USDA por:

- (1) correo: U.S. Department of Agriculture  
Office of the Assistant Secretary for Civil Rights  
1400 Independence Avenue, SW  
Washington, D.C. 20250-9410; o
- (2) fax: (833) 256-1665 o (202) 690-7442; o

(3) correo electrónico: [program.intake@usda.gov](mailto:program.intake@usda.gov)

Esta institución es un proveedor que ofrece igualdad de oportunidades.

The nondiscrimination statement must be printed in its entirety on all FMNP documents that are intended for the public. FMNP-related written materials must be provided to all participants with the nondiscrimination statement and complaint-filing procedures included. The nondiscrimination statement cannot be modified.

If the FMNP material is too small to permit the full statement to be included, the material must, at a minimum, in print no smaller than text, state: "This institution is an equal opportunity provider."

The entire nondiscrimination statement does not have to be included on every page of a CE's FMNP information website; at minimum the nondiscrimination statement or a link to the statement must be included on the CE's home page.

**NOTE:** Whenever Congressional legislation specifies or sets restrictions on program eligibility, those provisions take precedence over certain protected bases. Section 17 of the Child Nutrition Act of 1966, as amended, defines the purpose of the WIC program to provide benefits specifically to pregnant, breastfeeding, and postpartum women, and infants and children to five years of age. Therefore, any reference to age and sex in the nondiscrimination statement as it relates to the WIC and FMNP is subject to these qualifications.

## **6120 Compliance Reviews**

Compliance reviews help ensure that civil rights requirements are fulfilled at each level of FMNP administration, including the CE application approval process and the federal and state monitoring efforts.

TDA will determine whether the CEs and their sites comply with civil rights requirements before approval of a CE's application to participate. TDA determines compliance by examining *Plan of Operation* (Form H1406) and supporting documentation. During administrative reviews, TDA will also evaluate compliance with civil rights requirements.

## **6130 Limited English Proficiency**

CEs must take “reasonable steps” to ensure meaningful access to their programs by participating persons with disabilities and for persons with Limited English Proficiency (LEP). People with LEP are those who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English.

CEs have an obligation to reduce language barriers that can prevent meaningful access by LEP persons to important benefits, programs, information, and services of the FMNP. CEs that fail to take reasonable steps may be discriminating on the basis of national origin. Reasonable steps to ensure meaningful access is contingent on a number of factors, including:

- The number or proportion of LEP persons eligible to be served or likely to be encountered by the FMNP;
- The frequency with which LEP individuals come in contact with the FMNP;
- The nature and importance of the FMNP to people's lives; and
- The resources available to the CE and costs.

Elements that may be helpful in designing an LEP policy or plan:

- Identifying LEP persons who need language assistance
- Identifying ways in which language assistance will be provided
- Training staff
- Providing notice to LEP persons
- Monitoring and updating LEP policy

## **6140 Data Collection and Reporting**

Because racial and ethnic participation data are collected at the time women, infants, and children are certified to participate in the WIC Program, USDA has determined that the WIC data collection effort is sufficient to fulfill the racial and ethnic data collection requirement for the FMNP. Therefore, FMNP CEs are not required to collect additional racial and ethnic data. (7 CFR §248.7)

## **6200 Section 504 of the Rehabilitation Act of 1973**

### **6210 Program Accessibility**

The FMNP, when viewed in its entirety, must be accessible to and usable by persons with one or more disabilities, including persons with impaired vision or hearing. CEs are not required to make every part of existing sites physically accessible to disabled persons, but must ensure that programs at those sites are accessible. Sites must offer the most integrated setting possible to enable persons with disabilities to fully benefit from the FMNP. CEs can make the FMNP accessible to persons with disabilities by

- Moving to accessible buildings,
- Assigning aides to assist participants,
- Delivering services at alternate accessible sites (for facilities with 15 or fewer employees),
- Redesigning equipment,
- Changing the schedule of service hours,
- Altering existing facilities, and
- Constructing new, accessible facilities.

CEs should develop transition plans to ensure FMNP accessibility if structural changes to buildings are necessary.

If CEs cannot provide services to a person with disabilities because a part of a site where services are provided is not accessible, they must

- Inform persons with disabilities of alternate sites where they can receive services, and
- Pay all or part of any additional cost the person with disabilities incurs as a result of being transported to the alternate site. (There are some circumstances when CEs are not required to pay these costs. Contact TDA if additional information is needed.)

### **6220 Public Notification**

CEs must have a public notification system to inform applicants, participants and potential participants of the FMNP availability, FMNP rights and responsibilities, the policy of nondiscrimination, and the procedure for filing a complaint. The public notification system must include the following three basic elements:

1. **FMNP Availability.** CEs must take specific action to inform participants of their rights and responsibilities.
2. **Complaint Information.** CEs must advise participants of the right to file a complaint, how to file a complaint, and the complaint procedures.

3. Nondiscrimination Statement. CEs must ensure all information materials and sources, including websites, used to inform the public about the FMNP contain the nondiscrimination statement located in Item 6110.2, *Nondiscrimination Statement*.

**NOTE:** In FMNP, public notification of the FMNP, FMNP rights and responsibilities, the policy of nondiscrimination, and procedures for filing a complaint is also handled at the WIC clinic.

### **6230 Employment**

CEs are prohibited from discriminating against any qualified person based on a disability. CEs must make reasonable accommodations for the known physical or mental limitations of an otherwise qualified applicant or employee with disabilities. CEs are not expected to make accommodations that impose an undue hardship on the operation of the program.

### **6240 Nondiscrimination Statement (Assurances)**

The statement of nondiscrimination is contained in the *FMNP Agreement*.

### **6250 Designation of Section 504 Coordinator**

If a CE employs 15 or more people, the CE must designate one or more persons to coordinate compliance with Section 504 regulations. CEs may designate an existing employee to perform this function. (7 CFR §15b.6)

### **6260 Complaint/Grievance Procedures**

If a CE employs 15 or more people, the CE must maintain procedures to process grievances and complaints. Procedures that are required by a program other than the FMNP may satisfy this requirement if they comply with due process standards and provide for prompt and equitable resolution of complaints. (7 CFR §15b.6(b))

### **6270 Self-Evaluation of Services**

CEs must evaluate the quality and availability of their services to people with disabilities, and begin to correct any inequitable policies or practices. The evaluation should be made with the assistance of people with disabilities or organizations that advocate for people with disabilities. CEs must maintain a list of interested persons with whom they consulted, a description of areas that they examined and the problems that they identified, and descriptions of modifications that they made.

CEs must retain the results of a self-evaluation study in accordance with FMNP record-keeping requirements. Refer to Item 4700, *Program Documentation*, for additional guidance.



## **6300 Americans with Disabilities Act (ADA)**

### **6310 Introduction**

The Americans With Disabilities Act (ADA) became effective January 26, 1992. This Act and Section 504 of The Rehabilitation Act of 1973 combine to prevent a wide range of discriminatory actions against disabled persons. The ADA, however, does not replace Section 504. The ADA applies to all persons and is not limited solely to persons who receive federal financial participation.

The ADA comprises the following subjects:

- Non-discriminatory practices
- Reasonable accommodation

The ADA applies to the following areas:

- Services
- Employment

### **6320 Services**

When CEs evaluate the services that they and their sites offer, CEs should consider the following questions:

- Can a person with disabilities get to a site with reasonable ease?
- If the person can reach the location, can the person enter the facility and access the specific location where services are provided?
- If the person can access the location where services are provided, is there an accessible bathroom?
- If the person can access the location where services are provided, are necessary accommodations made for the person's particular disability?

### **6330 Employment**

In accordance with the ADA, CEs

- Cannot discriminate against a person with a disability when hiring or promoting staff if the person is otherwise qualified for the job.
- Can inquire about a person's ability to perform a job but cannot ask whether a person has a disability nor subject a person to tests that screen out people with disabilities.
- Must provide reasonable accommodations to persons with disabilities (for example, job restructuring and modification of equipment).

**NOTE:** CEs are not required to provide accommodations that impose an undue hardship on their businesses. CEs faced with such a request are encouraged to contact TDA for further assistance.

## 6400 Complaints

CEs and sites must have written grievance procedures for addressing and processing complaints. Administrative and site personnel must be able to provide documentation of the procedures and an explanation of the complaint process. If a complaint is filed with a CE or sites, the CE must forward it to TDA immediately. CEs are also required to provide the complainants with contact information for USDA for filing a civil rights complaint (see Item 6110.2, *Nondiscrimination Statement*) and explain that a complaint of violation of their civil rights may be made directly to USDA. The CE may incorporate the FMNP grievance procedures into existing organization-wide complaint procedures rather than develop standalone grievance procedures for the FMNP.

## 6500 Training

Administrative and site personnel must be trained in all aspects of civil rights before assuming any FMNP duty and annually thereafter.

Volunteers who regularly interact (i.e., have contact at recurring normal intervals) with FMNP participants must receive full civil rights training on an annual basis. Volunteers who handle the personal information of participants must also receive full training. Full training, according to USDA, includes but is not limited to, the following:

- Collection and use of data
- Effective public notification systems
- Complaint procedures
- Compliance review techniques
- Resolution of noncompliance
- Requirements for reasonable accommodations of persons with disabilities
- Requirements for language assistance
- Conflict resolution
- Customer service

Volunteers who do not handle personal information and only infrequently interact (i.e., seldom or rarely) with FMNP participants must receive, at a minimum, limited civil rights training (i.e., customer service and any other subject matter applicable to each volunteer's role and responsibilities). As not all the subjects for full civil rights training are required, this training may be less time-intensive than the full training provided to the frontline staff and volunteers who regularly interact with or handle personal information of FMNP participants.

Volunteers who do not interact in any way with FMNP participants and who do not handle personal information do not need civil rights training.

If there is a concern that any volunteer cannot understand and/or abide by the training and civil rights requirements, then that volunteer should not interact in any way with FMNP participants or handle personal information.

Refer to Item 11500, *TDA Civil Rights Training Materials*, for information on how to access civil rights training.

# Section 7000

## Financial Management

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## Section 7000 Financial Management

### 7100 Financial Controls

A CE must comply with all applicable financial management requirements in 2 CFR Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, 7 CFR Part 248, *WIC Farmers' Market Nutrition Program (FMNP)*, and TDA policies, and must provide for the following:

- Identification, in its accounts, of the Federal awards received and expended, and the Federal programs under which they were received. Federal program and Federal award identification must include (2 CFR §200.302(b)(1)):
  - The Catalog of Federal Domestic Assistance (CFDA) title and number, for example, Farmers' Market Nutrition Program #10.572;
  - Federal Award Identification Number (FAIN) and year;
  - Name of the Federal agency<sup>1</sup>; and
  - Name of the pass-through entity<sup>2</sup>, if any.
- Accurate, current, and complete disclosure of the financial result of each Federal award or program (2 CFR §200.302(b)(2)).
  - Up-to-date correct information supported by documentation
  - Accounts for all elements of the Program
  - Complies with generally accepted accounting principles (GAAP)
- Records that identify adequately the source and applications of funds for federally-funded activities. The records must contain information pertaining to the Federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation (2 CFR § 200.302(b)(3)).
  - Source documentation includes, but is not limited to cancelled checks, paid bills, payroll, purchase orders, and contract and subcontract award documents.
- Effective control over, and accountability for, all funds, property, and other assets (2 CFR § 200.302(b)(4)). The CE must adequately safeguard all assets and assure that they are used solely for authorized purposes (2 CFR §§ 200.302(b)(4) and 303).
- Comparison of expenditures with budget amounts for each Federal award (2 CFR § 200.302(b)(5)).

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<sup>1</sup> USDA is the Federal agency for FMNP.

<sup>2</sup> TDA is the pass-through entity for FMNP.

- Written procedures for determining if costs are allowable in accordance with 2 CFR Part 200, Subpart E (2 CFR § 200.302(b)(7)).
- Internal controls that ensures the CE (2 CFR § 200.303):
  - *Manages* the FMNP in compliance with Federal statutes, Federal regulations, TDA rules, policies, and guidance.
  - *Complies* with Federal statutes, Federal regulations, TDA rules, policies, and guidance.
  - *Evaluates and monitors* its compliance with Federal statutes, Federal regulations, TDA rules, policies, and guidance.
  - *Takes prompt action* when instances of noncompliance are identified, including noncompliance identified in audit findings.
  - *Safeguards* to protected personally identifiable and other information.

These internal controls should be in compliance with guidance in “[Standards for Internal Control in the Federal Government](#)” issued by the Comptroller General of the United States<sup>3</sup> or the “[Internal Control Integrated Framework](#)” issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).<sup>4</sup>

Federal awards include, but are not limited to, reimbursement for participation in any of the child nutrition and food distribution programs administered by TDA.

## **7200 Conflicts of Interest and Ethical Standards**

Organizations participating in the FMNP are required to disclose and identify any conflicts of interest and potential conflicts of interest including related party transactions, less-than-arms-length transactions, ownership interest in equipment, supplies, vehicles and facilities, or disclose any other information that inhibits TDA from making an informed assessment of whether a particular cost is allowable.

Related parties include, but are not limited to, the following relationships:

- Brothers/sisters
- Spouse
- Parents/grandparents
- Children/grandchildren
- Half-brothers/sisters

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<sup>3</sup> <https://www.gao.gov/products/GAO-14-704G>

<sup>4</sup> <https://www.coso.org/Pages/ic.aspx>

- Domestic partners and parents thereof
- Any individual related by blood or affinity whose close association is the equivalent of a family relationship
- Affiliates of the organization
- Principal owners of the organization and immediate members of their families
- Management of the organization and immediate members of their families

A less-than-arms-length transaction is one that is not between independent, unrelated, well-informed parties acting independently in their own interests. In a related party transaction, one party to the transaction may be able to control or substantially influence the actions of the other(s). Such transactions include, but are not limited to, those between divisions of an organization; organizations under common control through common officers, directors or members; and an organization and a director, trustee, officer, key employee of the organization or immediate family, either directly or through corporations, trusts or similar arrangements in which a controlling interest is held, or one in which one party stands to benefit more than the other from the transaction. All related-party transactions are less-than-arms-length transactions.

A CE cannot allow a conflict of interest or potential conflicts of interest when procuring goods and services and must have written policies and procedures against conflicts of interest. No officer, agent, consultant, contractor, volunteer, or other employee of a CE may engage in any activity which causes or could cause or cause the appearance of a conflict of interest in the operation of the FMNP, including, but not limited to, to the following:

- Renting or leasing from a firm in which any officer, agent, consultant, or employee (or relative) has an interest and this related party transaction has not been fully disclosed. Rental costs under less-than-arm's-length" leases must meet the requirements in 2 CFR §200.465.
- Soliciting or accepting gratuities, favors, or anything of monetary value from contractors, potential contractors, sites, or parties to subcontracts.
- Soliciting donations or fees from the participating farmers' markets and farmers.
- Asking farmers' markets or farmers to engage in any kind of business on the CE's behalf.



CE's must disclose annually any conflicts of interest or potential conflicts of interest including related party transactions, less-than-arms-length transactions, and any ownership interest in equipment, supplies, vehicles and facilities when it submits its budget to TDA as part of its application packet for participation in the FMNP. At a minimum, the following information must be submitted to TDA:

- Budget item(s) impacted
- Amount of the contract or cost for the item(s)
- Relationship or ownership interest to the CE
- Any other information that inhibits TDA from making an informed assessment of whether a particular cost is allowable

Information regarding conflicts of interest or potential conflicts of interests may be submitted in writing to TDA via email at [CommodityOperations@TexasAgriculture.gov](mailto:CommodityOperations@TexasAgriculture.gov). The email subject should include "FMNP Conflict of Interest Disclosure" and the name of the CE. For CEs that do not have access to email, please contact TDA at (877) TEX-MEAL.

This disclosure must be made in each program year's budget or each time before the cost is incurred. The disclosure must be made although it was previously disclosed to TDA. Conflict of Interest Disclosures require prior approval from TDA each year or before each occurrence of a transaction. When the conflict of interest or potential conflict of interest is properly disclosed, approval of the budget by TDA meets the requirement for prior approval unless TDA specifically disallows the cost in writing.

## **7210 Written Code of Standards – Ethical Conduct**

In accordance with 2 CFR §§ 200.318 and 400.2, a CE must establish and maintain a written code of standards of conduct which govern the performance of its officers, employees, or agents who participate in the selection, award, and administration of contracts. The written code will prohibit conflicts of interest and potential conflicts of interest. This written code must:

- Prohibit owners, members, officers, or employees from soliciting gifts, travel packages, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.
- Prohibit owners, members, officers, or employees from accepting gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.
- Prohibit an owner, member, officer, or employee from participating in the selection, award, and administration of any contract in which the owner, member, officer or employee is related to a party to the contract or has a financial interest in the entity which is a party to the contract.

- Set standards when financial interest is not substantial or the gift is an unsolicited item of nominal value, and therefore may be acceptable.
- Provide for disclosure and prior written approval by TDA for all less-than-arms-length transactions.
- Provide for penalties, sanctions, or other disciplinary actions to be applied for violations of the standards.

For CEs having a parent, affiliate, or subsidiary organization that is not a state or local government, the CE must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest mean that because of the relationships with a parent company, affiliate, or subsidiary organization, the CE is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

## **7300 Procurement**

### **7310 Overview**

Procurement is the orderly process of acquiring, by lease or purchase, goods and services such as facilities, equipment, bookkeeping, and auditing. FMNP CEs must comply with state and federal procurement requirements. These requirements enable CEs to purchase goods and services at the best available price and avoid conflicts of interest when making purchases.

Procurements must be conducted in a manner that allows for full and open competition meaning that everyone is on a *“level playing field”* and has the same opportunity to compete. Procurement ensures:

- Vendor participation
- Competitive cost of goods and services
- Quality goods and services

Improper procurements may lead to disallowed costs, withholding or recovery of reimbursements, corrective action, or termination from future FMNP participation.

## 7320 The Procurement Process: A Multi-step Approach

A CE must follow the procurement process in order to ensure that all procurement requirements are met. As the process may take many months to complete, advanced planning and execution is strongly recommended. CEs are required to develop written procurement procedures. A CE's written procurement procedures will address how the CE will accomplish each step of the procurement process.

An overview of the procurement process is as follows:

1. **Writing** procurement procedures
2. **Forecasting** quantities needed/**Scheduling** when quantities are needed
3. **Selecting** the proper procurement method
4. **Developing** a solicitation
5. **Advertising** the solicitation
6. **Evaluating** proposals and offers
7. **Awarding** the contract
8. **Managing** the contract

<b>Procurement Procedures: Why a CE Must Have Them</b>
<ul style="list-style-type: none"><li>• Required by regulations (2 CFR § 200.319(c))</li><li>• Ensure full and open competition</li><li>• Help identify potential suppliers for goods and/or services procured using the corresponding procurement method</li><li>• Help the CE to determine which procurement method(s) will be used</li><li>• Identify parties that will address issues raised throughout the procurement process</li><li>• Prohibit conflicts of interest</li><li>• Ensure ethical standards with a written code of conduct</li></ul>

## 7330 Written Procurement Procedures

A CE must use its own documented procurement procedures which reflect applicable state, local, and tribal laws and regulations, provided that the procurements conform to applicable federal law (2 CFR §§ 200.318 and 200.319(c)).

Maintaining and following written procurement procedures ensures that a CE will conduct all purchases

- Efficiently and effectively;
- In compliance with federal, state, and local regulations; and

- While preventing fraud, waste, and abuse.

Written procurement procedures must include the position(s) which are responsible for carrying out each step, as well as the timing the actions will take place. The procedures must provide that proposed procurement actions will be reviewed by the CE's officials to avoid the purchase of unnecessary or duplicative items, and where appropriate an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine which approach would be the most economical. (2 CFR § 200.318(d)). The procedures must encompass each procurement method discussed in this handbook. The level of detail should be reflective of the CE's operations.

At a minimum, a CE's written procedures must address the following elements of the procurement process:

- **Forecasting and Scheduling**

CEs plan procurements by evaluating resources, projecting expenses, and determining needs prior to initiating a procurement process by assessing the following:

- Current approach
- Storage capacity
- Equipment
- Resources, such as income, revenue, and staff
- Other operational needs

- **Selecting a Proper Procurement Method**

The aggregate amount of the goods or services will determine the procurement method to be used; however, a CE may consider other factors as well.<sup>5</sup> A CE should consider the following:

- Any factors, other than the aggregate amount of the procured goods and services, which will determine the procurement method to be used
- How to avoid the acquisition of unnecessary or duplicative items (2 CFR § 200.318(d))
- How to obtain a more economical purchase, considering the consolidation or breaking out of procurements (2 CFR § 200.318(d))
  - **NOTE:** A CE may not break up a procurement that exceeds the small purchase threshold for the sole purpose of avoiding following formal procurement procedures. This would be a violation of federal requirements and may result in unallowable costs and/or findings.

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<sup>5</sup> See *Procurement Methods* in this section for more information.

- Cost Analysis/Equitable Distribution—How the CE will perform a cost analysis with every procurement action in excess of the small purchase threshold, including contract modifications.
  - While a formal cost analysis is not required for micro-purchases, a CE must document how such purchases will be rotated **among qualified suppliers** and equitably distribute purchases.
  - Small purchase procedures also do not require a formal cost analysis; however, CEs must still obtain **at least three price quotes** from an adequate number of qualified sources.

- **Solicitation Development**

When developing specifications, requirements, invitations for bids, or requests for proposals, CEs must consider the following:

- Type of contract
- Contract duration
- Goods and services specifications must correspond with items and/or services being procured; specifications may include product name, variety, grade, size, quantity, cleanliness, packaging, delivery, and other product/service requirements.
- Full and open competition is maintained when using all procurement methods.
- CEs may *not* create specifications which would eliminate or unduly restrict full and open competition, which would include, but are not limited to, the following situations ( 2 CFR § 200.319 (a)):
  - Specifying a brand name product instead of allowing an equal product to be offered limits full and open competition
  - Product specifications which are too detailed, restricting competition
  - Placing unreasonable requirements on bidders
  - Requiring unnecessary experience and/or excessive bonding
  - Noncompetitive pricing practices between firms or between affiliated companies
  - Noncompetitive contracts to consultants/contractors that are on retainer contracts with the CE already
  - Organizational conflicts of interest
  - Any arbitrary action in the procurement process
- Solicitations must be clearly stated so bidders can fully understand the need for goods and services (2 CFR § 200.319(c)(1))

- Solicitations must clearly outline requirements the bidder must fulfill in order to be responsive (2 CFR § 200.319(c)(2))
- Renewal options
- Modification and change procedures, considering:
  - Communication of changes to contractor regarding initial estimated needs and actual needs
- Default and breach provisions, remedies, penalties
  - This includes how protests and disputes will be handled by the CE.
  - Supply copies of dispute resolution procedures to all potential bidders that includes name and address of person who will make a determination whether the protest should be sustained.
  - Disclose information regarding all protests to TDA.
- CEs must ensure contractors do not develop any specifications, requirements, statements of work, IFBs, RFPs, contract terms and conditions, or any other procurement documents. CEs must draft their own specifications and procurement documents.
  - If a CE does allow a contractor to create any procurement documents, a CE must indicate in its procedures how that contractor will not compete for the contract or award.
  - If a CE chooses to use a contractor's information or assistance in developing procurement documents and the contractor is then allowed to compete for the award, the CE must not use any FMNP funds for the resulting award.
- Local or geographic preference (if applicable and allowed)
  - A CE must include a definition(s) of "local" in its written policies and procedures if applying a geographic preference. However, this definition of "local" may not be so limiting so as to restrict full and open competition.
- Evaluation and scoring factors, with cost as the primary factor.

**NOTE:** CEs must draft their own specification and procurement documents. Any CE that copies a list of features or evaluation and ranking criteria drafted by a potential contractor and then permits that potential contractor to submit a bid has violated federal and state procurement regulations.

- **Advertising/Publicizing the Bid**

A CE must advertise competitive bids and must publicize competitive proposals (e.g., through advertisements) (2 CFR § 200.320). CEs should consider the following:

- Due dates — Time needed for pre-bid and award meetings, etc.
- Advertisements must provide sufficient information for potential bidders such as:

- The general nature of the goods or services to be procured
- Method of procurement that will be used
- Ways the bidder can obtain the solicitation or more information
- Due date for solicitation response
- Methods of advertisement to allow for full and open competition. This will vary from city to city, and a CE must be able to document how the method of advertisement will ensure circulation of the bid/proposal to the general public for the type of goods/services which are being acquired, as well as ensure that the CE is receiving an adequate number of bidders
  - State, regional, or nation-wide newspapers
  - Trade periodicals
  - Designated internet sites
  - Direct mailing (for small purchase procurement method only)
  - Other print media that serves the business community and general public
- CEs must take all necessary affirmative steps to ensure that minority businesses, women’s business enterprises, and labor surplus area firms are utilized when possible. (2 CFR 200.321).
  - Include qualified small and minority businesses and women’s business enterprises on solicitation lists.
  - Assuring that small and minority businesses and women’s business enterprises are solicited whenever they are potential resources.
  - When economically feasible, divide total requirements into smaller tasks or quantities to permit maximum small and minority business and women’s business enterprises participation.
  - Where the requirement permits, establish delivery schedules which will encourage participation of small and minority businesses and women’s business enterprises.
  - Use the services of the Small Business Administration and the Minority Business Enterprise of the Department of Commerce.
  - If subcontracts are to be let, require the prime contractor to take the affirmative steps above.

- **Evaluating responses**

The CE must ensure that the solicitation is awarded to a responsive and responsible vendor. CEs must consider the following:

- *Responsive* means the contractor's goods or services meet all of the CE's specifications as outlined in the solicitation
- *Responsible* means a contractor can and has the ability to successfully fulfill the terms and conditions of the proposed procurement (2 CFR § 200.318(h)). A CE should determine whether a contractor is responsible by investigating the contractor's:
  - Integrity
  - Compliance with public policy
  - Record of past performance
  - Financial and technical resources
- Pre-qualified lists of persons, firms, or products used in acquiring goods and services are current and include enough qualified sources so as to ensure full and open competition (2 CFR § 200.319(d))
  - Potential responsive and responsible bidders not included in these pre-qualified lists cannot be excluded from bidding
  - *NOTE:* While pre-qualified lists may not be common for FMNP CEs to have and use, if an FMNP CE has a list of pre-qualified bidders, they must follow this requirement to allow for full and open competition.
- Contractors that are determined not to be responsible are ineligible for contract award
  - The CE must document this decision and supporting reasons as to why the contractor(s) was not responsible
- Cost must be used as the primary factor
- Bids must be evaluated without consideration of any included unallowable cost provisions
- Any and all bids may be rejected if there is a sound documented reason

- **Ethical Conduct**

A CE cannot allow a conflict of interest or potential conflicts of interest when procuring goods and services. See 7200, *Conflicts of Interest and Ethical Standards* for more information.

**NOTE:** In the absence of a written code of standards, or when TDA determines that a violation of the code has occurred, TDA will issue a finding and require corrective action.



- **Awarding and Managing the Contract**

The CE must award and effectively manage the contract (2 CFR § 200.318(h)). A CE must consider the following:

- Must be awarded to the lowest responsive and responsible bidder whose proposal is most advantageous to the FMNP with price as the primary factor
- The contract is a
  - formal, legally enforceable agreement
  - record of the procurement transaction
  - a dispute resolution mechanism
- The CE must first receive TDA approval of an award to a contractor that is not the lowest bidder prior to awarding the contract (for competitive sealed bids)
- The CE must monitor the contractor performance to ensure the following:
  - Performs in accordance with the terms, conditions, and specifications of the contract
  - Receives quantity and quality of the goods and services requested
  - Receives the goods and services on time
  - Is charged the correct prices as bid and within budget
- The CE is responsible for settling any contractual and administrative issues which may arise after an award. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. (2 CFR § 200.318(k)).
  - The CE must specify dispute resolution measures for any action that diminishes full and open competition. Procedures must be provided to all potential bidders including the name and address of the person who will handle protests. The CE must disclose information regarding all protests to TDA.

**REMINDER:** CEs are responsible for maintaining up-to-date procedures and training staff on these procedures prior to the start of FMNP operations, and as needed throughout the program year (e.g., when there is a change to a procedure). Procedures are subject to review by TDA. TDA may issue a finding(s) and/or require corrective action(s) if a CE's procedures do not comply with FMNP regulations and/or if a CE is not following its own procedures.

## 7400 Procurement Methods

CEs must use the appropriate procurement method depending on the cost of the good(s) or service(s) they need to procure. The types of procurement methods a CE must use when procuring (e.g., purchasing) goods and services are discussed in detail below and include (2 CFR § 200.320):

- Informal Procurement Methods
  - Micro-purchase
  - Small Purchase
- Formal Procurement Methods
  - Competitive sealed bids (Invitation for Bid (IFB))
  - Competitive proposals (Request for Proposal (RFP))

Whenever a CE is purchasing goods or services using federal funds in support of the FMNP program, the appropriate procurement method must be followed.

## 7410 Simplified Acquisition Threshold

The simplified acquisition threshold, also called *small purchase threshold*, is the highest total cost that can be procured using the informal procurement methods.

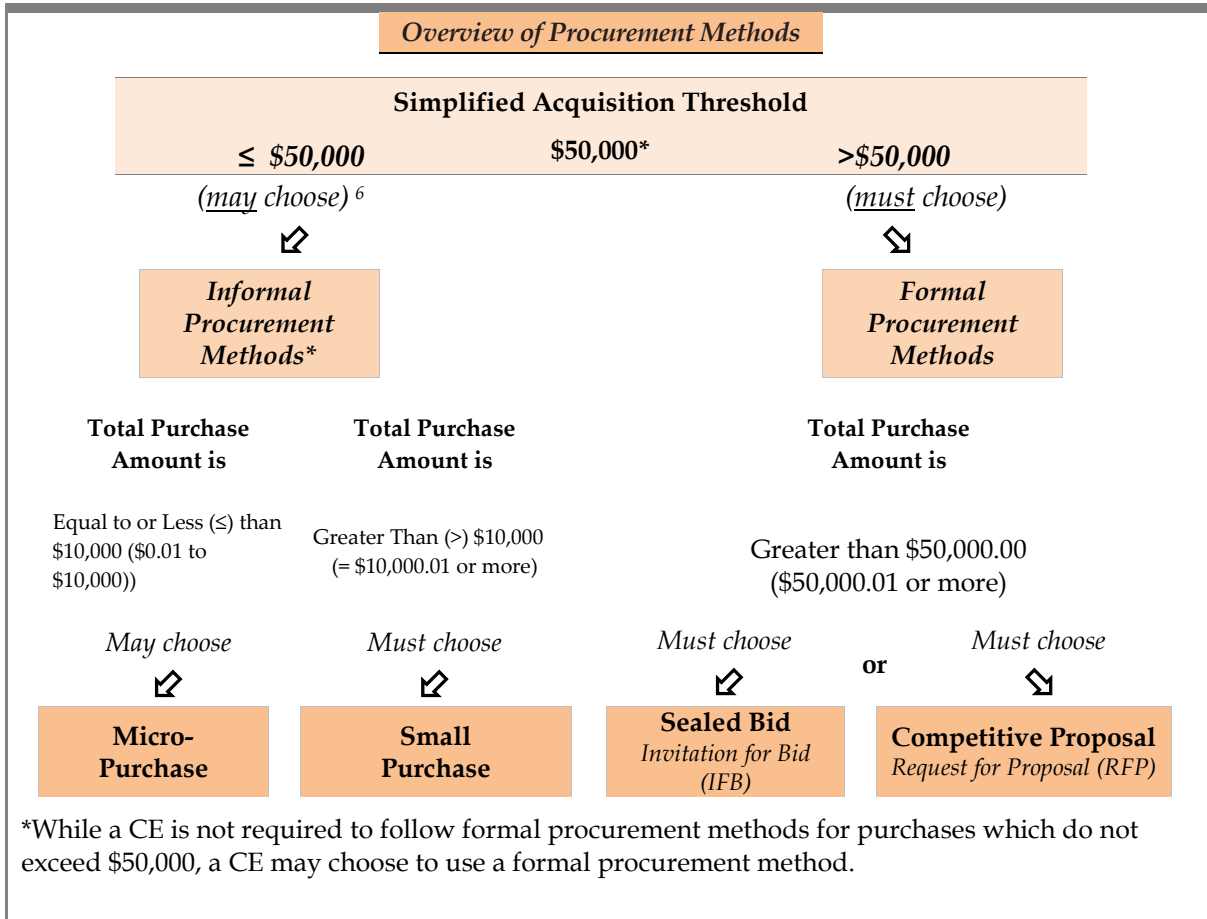
- If the purchase is *equal to or less* than the simplified acquisition threshold, the purchase may be made using an informal or formal method.
- If the purchase is *greater than* (exceeds) the simplified acquisition threshold, the purchase must be made using the formal process.

The aggregate amount of the goods/services will determine which procurement method will be used. While the federal simplified acquisition purchase threshold is set at \$150,000, TDA has set a more restrictive threshold of \$50,000.

## 7420 Overview of Procurement Methods

Procurement regulations allow certain methods to be used by CEs to procure goods and services. Those methods are determined by aggregate amount of the contract award based on the value of the purchase, scope, and need of the good and service. Procurement methods are divided into two categories; informal and formal. Informal procurement methods may be used when the total cost is equal to or less than the simplified acquisition threshold, or \$50,000. Formal methods must be used when the estimated cost of the goods and services exceeds the \$50,000 simplified acquisition threshold.

With the exception of the noncompetitive proposal, the chart below provides an overview of the types of procurement methods a CE must use when conducting the procurement of goods and services.



### 7420.1 Informal Procurement Method: Micro-purchase

A micro-purchase is the acquisition or purchase of goods and/or services that have an aggregate cost that does not exceed \$10,000. The \$10,000 aggregate total for a micro-purchase amount is the total cost for a single invoice for a single purchase or transaction. It is not an accumulation of weekly, month, or annual purchases. Rather, it is an individual purchase with an individual invoice.

<sup>6</sup> CE may choose to use a formal procurement procedure for a total cost that is equal to or less than the simplified acquisition threshold in order to get a better price.

A formal cost analysis is not required when a CE uses the micro-purchase method. However, the CE must have a method to document that the cost of the good and/or service is reasonable.<sup>7</sup> Acceptable documentation includes, but is not limited to, the following:

- Newspaper advertisements from various suppliers/vendors
- Online advertisements from various suppliers/vendors
- Documentation of phone quotes from various suppliers to include the following:
  - Supplier/vendor name
  - Name of the person providing information
  - Date(s) of contact
  - Information provided, including product and pricing
- Other documentation that allows TDA to determine the cost was reasonable if price was not the determining factor, such as:
  - Maps showing distance between vendors when distance is the factor
  - Procedures that specify micro-purchase must be used because space is a factor, such as refrigeration/storage space

Purchases must be distributed equitably among all suppliers. The CE cannot make all of its micro-purchases from one supplier and must, when feasible, “share the wealth” among suppliers. However, CEs that are located in rural areas may be limited in their ability to distribute purchases equitably among a number of merchants or suppliers because it is not economically feasible to do so, i.e. cost and time of travel. In these cases, the CE must document the reasons it is not feasible for the CE to distribute purchases among a variety of suppliers.

Routine purchases must not be broken into smaller purchase amounts in order to qualify for micro-purchasing. If the CE is routinely using the micro-purchase method for the same items, the CE must maintain documentation that demonstrates why this is the most suitable method for purchasing these goods and/or services and why the use of another procurement method is not possible or reasonable. If the CE breaks larger purchases into smaller amounts to qualify as a micro-purchase, then the costs are unallowable.

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<sup>7</sup> 2 CFR § 200.404 states, “A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.”

## 7420.2 Informal Procurement Method: Small Purchase

If purchasing services, supplies or other property with an aggregate cost that is greater than \$10,000 and less than or equal to \$50,000, a CE may use small purchase procedures, or a formal procurement method. The \$50,000 aggregate limit applies to the following:

- Single items (for example, rent), and
- Many items of the same general type (office supplies).

CEs cannot circumvent the procurement process by using small purchase procedures to award multiple contracts under \$50,000 to different vendors for a single item or many items of the same general type.

Small purchase procedures require CEs to obtain at least three price quotations from an adequate number of qualified sources. Price quotations must be documented; the CE must document the date, vendors consulted, and quotes received (including for verbal quotes). USDA also allows for store advertisements to be used as documentation when receiving quotes.

When receiving price quotations, the CE must provide the vendor with a full and accurate description of the type of goods/services needed, so potential vendors can properly respond with an accurate quote.

If a CE is unable to obtain at least three price quotations, the CE must evaluate whether it has limited competition in any way. If the CE is able to document that it was unable to receive at least three price quotations after attempts to receive more quotes from qualified vendors, then the CE must document this.

Routine purchases must not be broken into smaller purchase amounts in order to qualify for the small purchase method. If the CE is routinely using the small purchase method for the same items, the CE must maintain documentation that demonstrates 1) why this is the most suitable method for purchasing these goods and services and 2) why the use of another procurement method is not possible or reasonable.

**NOTE:** If the CE routinely uses the small purchase method for the same goods or services, formal competitive bids may provide lower costs.

If the small purchase solicitation results in a contract, the CE must meet all requirements related to the development and use of a contract described in this handbook.

### **7420.3 Formal Procurement Method: Competitive Sealed Bids (Invitation for Bid)**

For purchases with an aggregate amount that exceeds the small purchase threshold, or \$50,000, CEs are required to follow formal procurement procedures (2 CFR § 200.320). One formal procurement method is competitive sealed bids.

CEs following this procurement method must ensure the following conditions are met:

- Bids are publicly solicited, using an IFB and are formally advertised to the general public
- Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids;
- The IFB will include:
  - any specifications and pertinent attachments, and
  - must define the items or services in order for the contractor/bidder to properly respond;
- Bids will be opened publicly at the time and place prescribed in the invitation for bids;
- A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. When specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
- Any or all bids may be rejected if there is a sound documented reason.

### **7420.4 Formal Procurement Method: Competitive Proposals (Request for Proposal)**

Competitive proposals are another type of formal procurement method used when a contract award exceeds \$50,000. Competitive proposals are used when the conditions are not appropriate for the use of competitive sealed bids such as when several factors are of equal or greater importance than price. A RFP is used to solicit responses with this method.

CEs following this procurement method must ensure the following conditions are met:

- RFPs must
  - Be publicized
  - Identify all the evaluation factors and their relative importance
  - Be solicited from an adequate number of qualified sources (e.g., more than one vendor must submit an offer)

- The CE must have a written method for conducting technical evaluations of the proposals received and for selecting vendors
  - RFPs are generally more qualitative in nature
    - In addition to price, the following factors may be considered: technical expertise, past experience, years in business, marketing capabilities, etc.
  - Price must be the primary consideration when awarding a contract; however, a contract may be awarded to a proposal that is not the lowest in price
- A firm fixed price contract or a cost reimbursable contract will be awarded to the proposal that is most advantageous to the program, with price and other factors considered

### **7420.5 Additional Steps for Competitive Procurement**

The following steps must be followed when soliciting competitive sealed bids:

- Publicly announce the proposed contract at least once and not less than 14 calendar days before the opening of bids. Include the time and place of the bid opening in the public announcement.
- Notify TDA about the time and place of bid opening at least 14 days before the bids are opened.
- Open the bids publicly at the time and place stated on the invitation for bid.
- Obtain TDA approval before awarding the contract, if required. Refer to Item 7500, *Texas Department of Agriculture Approval of Contracts*.
- Before program operations begin, CEs must
- Submit copies of all bids that were received, the name of and reason for selecting the contractor, a copy of the awarded contract and certification of independent price determination.
- Notify the chosen contractor by telephone, and then in writing, to provide the contractor with the necessary time to prepare an acceptance letter.
- Notify the rejected bidders, in writing, of the name of the selected contractor.

All required documentation should be submitted via email to TDA at [CommodityOperations@TexasAgriculture.gov](mailto:CommodityOperations@TexasAgriculture.gov). The email subject should include “FMNP Documentation” and the name of the CE. For CEs that do not have access to email, please contact TDA at 1-877-TEX-MEAL (1-877-839-6325).

## **7430 Noncompetitive Procurement Methods**

Procurement by a noncompetitive method is an appropriate method of procurement when one or more of the following circumstances apply:

- Inadequate Competition
- Sole Source
- Public Emergency or Unexpected Emergency Situation

### **7430.1 Inadequate Competition**

After the CE actively and appropriately attempted to solicit offers from a number of sources, competition is deemed inadequate – that is, the number of offers that met the solicitation specification and technical requirements (i.e., responsible and responsive offers) were less than expected. This would include when a CE receives only one responsible and responsive offer.

One example of when a noncompetitive proposal may be used is when a CE is so remotely located that there is a very limited number of qualified sources in the area. In this case, a CE may pursue a noncompetitive procurement if it has 1) ensured that the specifications in the original IFB or RFP are not too restrictive, thereby, limiting other potentially qualified bidders, and 2) the solicitation has been publicized.

After engaging in competitive purchasing procedures, the CE does not need TDA approval to award a noncompetitive bid when there are a limited number of offers as long as documentation is retained by the CE demonstrating that the CE did not limit competition. Documentation would include, but is not limited to, the following:

- Proof of due diligence in ensuring that competition was not limited, which may include:
  - Performing reviews of the solicitation and advertising process
  - Surveying suppliers, distributors, or manufacturers to determine why a bid was not submitted
  - Copies of the solicitation, advertising, mailing lists, communication documents, contact logs, and other relevant documentation to support their findings.

### **7430.2 Sole Source**

The good and/or service is available only from a single (sole) source distributor, supplier, or manufacturer. For sole source method to be used there must be only one possible source for the good and/or service. Sole source noncompetitive procurement requires TDA approval.

Before offering a sole source noncompetitive contract, a CE must verify that the good and/or service can only be procured from a single source. A solicitation where there is only one offer is not necessarily sole source. There may be other suppliers, distributors, or manufacturers that could have submitted an offer but chose not to.



**EXAMPLE:** There are three companies that commonly provide the type of equipment that a CE is attempting to procure. Company A chooses not to bid because it is unable to meet the delivery timeline. Company B no longer distributes the line of products that would have met the specifications and technical requirements. Therefore, Company C is the only offeror. In this situation, the single offer submitted is not sole source. Rather, it is an inadequate competitive response to the solicitation. The CE must follow the guidance above for inadequate competition.

For a sole source method to be used there must be only one possible source for the good and/or service. A CE cannot accept a statement from the supplier, distributor, or manufacturer as verification that the good and/or service is only available from a single source. In order to determine if the good and/or service is sole source, a CE must do the following:

- Attempt to solicit offers from other suppliers, distributors, or manufacturers
- Retain records that demonstrate its efforts to solicit offers for the good and/or service from other suppliers, distributors, or manufacturers.

TDA must approve all sole source procurement transactions before the award of the contract. To request approval to use a sole source contract, the CE must submit a request to TDA in writing (paper, fax, or email). In its written request, the CE must include the following information:

- Description of the CE's actions to ensure that the supplier, distributor, or manufacturer is sole source
  - CE's actions may include questioning other vendors of similar goods/services to determine if those vendors can meet the precise needs of the CE. If not, written justification should be provided to TDA as to why a particular vendor would not qualify as a source.
- Copies of the CE's solicitation, advertising, and other relevant documentation that demonstrate that the supplier, distributor, or manufacturer is a sole source.

When there is a compelling need to purchase a specific brand product and/or service, such as compatibility with current equipment, the CE must have documentation that demonstrates other available brands are not compatible with the CE's:

- Current equipment,
- Replacement part inventory, and
- Maintenance staff's expertise.

However, even if the CE meets the brand name sole source purchase criteria listed above, the CE must still determine if there is more than one supplier for the brand of equipment or the services. If there are multiple suppliers, the CE must follow normal procurement processes in awarding a contract.

**NOTE:** In some cases, suppliers for specific brands may be affiliated or associated suppliers which may result in collaboration among the suppliers and may restrict competition. CEs will need to address this as appropriate to ensure full and open competition.

TDA will provide written notification of approval or disapproval.

### **7430.3 Public Emergency or Unexpected Emergency Situation**

A public emergency (exigency) or unexpected emergency situation<sup>8</sup> will not permit a delay resulting from the additional time required for a competitive solicitation for the good and/or service. Emergency noncompetitive procurement requires TDA approval.

To request approval to use a noncompetitive method during an emergency, the CE must submit a request to TDA in writing (paper, fax, or email). In cases of extreme emergency, a CE may call TDA directly to alert TDA about the situation. The request must still be submitted in writing, but a phone call will raise TDA's awareness of the need for an expedited response. In its written request, the CE must include the following information:

- Explanation of the circumstances that require an emergency purchase
- A detailed description of the goods and/or services to be procured
- Supplier, distributor, or manufacturer from whom the good and/or services will be procured
- Period of time the CE plans to use the noncompetitive method for the emergency

TDA will provide written notification of approval or disapproval.

Requests for TDA's review and approval of noncompetitive procurement processes may be submitted in writing to TDA via email at [CommodityOperations@TexasAgriculture.gov](mailto:CommodityOperations@TexasAgriculture.gov). The email subject should include "FMNP Noncompetitive Procurement Request" and the name of the CE. For CEs that do not have access to email, please contact TDA at (877) TEX-MEAL.

### **7440 Documentation of Procurement Action and Submittal to TDA**

CEs must document and maintain records that sufficiently detail the procurement process (2 CFR § 200.318(i)). These records must include, but are not limited to, the following:

- The reasons for choosing the specific method of procurement.
- Copies of all opened bids, a certificate of independent price determination and an explanation for selecting a particular contractor.

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<sup>8</sup> An unexpected emergency situation might include a supplier cancelling a contracted delivery without adequate notice or a presidentially declared disaster.

- List of contractors to whom a copy of the IFB was sent.
- List of newspapers, magazines or other method of public notification in which advertisements were placed and the dates that they appeared.
- Copy of the contract.
- Basis for the cost or price of a contract.

CEs must submit the following items to TDA:

- Notification of the date, time and location for bid opening a minimum of 14 calendar days before the bid opening date (for competitive bidding).
- Copies of all opened bids, a certificate of independent price determination and CE explanation for selecting a particular contractor.
- The list of contractors to whom a copy of the IFB was sent.
- A list of newspapers, magazines or other method of public notification in which advertisements were placed and the dates that they appeared.
- A copy of the contract between the contractor and CE before the start of program operations.
- A copy of the award letter and a copy of each letter sent to all rejected bidders after the bid award has been determined.

All required documentation should be submitted via email to TDA at [CommodityOperations@TexasAgriculture.gov](mailto:CommodityOperations@TexasAgriculture.gov). For CEs that do not have access to email, please contact TDA at 1-877-TEX-MEAL (1-877-839-6325).

## **7450 Contract Provisions**

### **7450.1 Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards**

All contracts using federal funds must contain the contract provisions identified in 2 CFR Part 200, Appendix II, *Contract Provisions for Non-Federal Entity Contracts Under Federal Awards*. While all provisions may not be applicable to all contracts, CEs must ensure the appropriate provisions are included in all contracts.

## 7450.2 Debarment and Suspension Certification

TDA requires CEs to obtain debarment certifications for covered contracts. The three types of covered contracts are:

1. Any non-procurement transaction that involves federal funds of any amount.
2. Any procurement contract for goods or services above the small-purchase threshold of \$50,000.
3. Any procurement contract for goods or services where a person or entity will have a critical influence on or substantive control over the covered transaction. Such a person or entity includes, but is not limited to, the following:
  - a. consultant,
  - b. principal investigator,
  - c. provider of audit services required by TDA or a federal funding source, or
  - d. researcher.

In its written procedures, the CE must define how it will obtain a debarment and suspension certification from each of its contractors. The certification must ensure that the federal contract award will not be made to a contractor (vendor) listed on the government wide exclusions in the System for Award Management (SAM). A CE may provide the debarment certification by having the contractor (vendor) do one of the following:

- Include the following debarment and suspension certification in the written agreement with the contractor:
  - (1) The prospective contractor certifies to the best of its knowledge and belief that it and its principals:
    - (a) Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
    - (b) Have not within a three-year period preceding this agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this agreement had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) Where the prospective contractor is unable to certify to any of the statements in this certification, such prospective contractor shall attach an explanation to this proposal.

- Require the contractor to sign and submit the *TDA Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion for Covered Contracts* (H2048); or
- Print the page from the System for Award Management (SAM) which indicates the contractor is not presently debarred or otherwise excluded from participation in the contract by any federal department or agency or by the State of Texas and maintain that document on file with the subcontract documents. The System for Award Management can be accessed at: <https://www.sam.gov> .

For a copy of *Certification Regarding Debarment Suspension, Ineligibility and Voluntary Exclusion for Covered Contracts* (Form H2048), access the TDA website at <http://www.squaremeals.org/>, go to “Programs,” click on “Farmers’ Market Nutrition Program,” choose “FMNP Administration and Forms,” then input the form title or form number in the appropriate search field.

### **7450.3 Lobbying Certification (Applicable to contracts over \$100,000)**

Contractors that apply or bid for an award exceeding \$100,000 must provide the required *Certification Regarding Federal Lobbying* (Form H2049).<sup>9</sup>

If applicable, a contractor must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award; in this case, a contractor must complete and submit *Standard Form – LLL, Disclosure of Lobbying Activities*.<sup>10</sup>

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<sup>9</sup> This may be viewed and downloaded at <http://www.squaremeals.org/Programs/FarmersMarketNutritionProgram/FMNPAdministrationForms.aspx>

<sup>10</sup> This may be viewed and downloaded at <http://www.squaremeals.org/Programs/FarmersMarketNutritionProgram/FMNPAdministrationForms.aspx>

#### **7450.4 Civil Rights Statement**

FNS Instruction 113-1, *Civil Rights Compliance and Enforcement – Nutrition Programs and Activities* requires all vendor agreements include an assurance of nondiscrimination.

#### **7450.5 Other Provisions**

Other required contract provisions include:

1. Notice of awarding agency requirements and regulations pertaining to reporting.
2. Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention that arises or is developed in the course of or under such contract.
3. Awarding agency requirements and regulations pertaining to copyrights and rights in data.
4. A provision to allow for the audit, examination, excerpt, and transcription of records that are pertinent to the contract by the USDA, the Comptroller of the United States, TDA and their authorized representatives.
5. The mandatory retention of all required records for three years and four months after the end of the contract period. If any litigation, claim, negotiation, audit or other action involving the records has been started before the end of the retention period, the records shall be kept until all issues are resolved.
6. A requirement that mandates compliance with the energy efficiency standards and policies contained in the Texas Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

#### **7500 Texas Department of Agriculture Approval of Contracts**

A CE must forward the bid(s) to TDA for approval before awarding a contract if one or more of the following conditions apply:

- Only one bid was received in response to the solicitation,
- The bid selected was not the lowest bid that was received. The CE must also include an explanation for the award decision.

TDA responds to the request for contract approval within 5 working days of receipt. Requests for TDA approval may be submitted in writing to TDA via email at [CommodityOperations@TexasAgriculture.gov](mailto:CommodityOperations@TexasAgriculture.gov). The email subject should include “FMNP Contract Review” and the name of the CE. For CEs that do not have access to email, please contact TDA at (877) TEX-MEAL.

## **7600 Additional Guidance**

### **7610 Compensation for Purchased Services**

If a CE agrees or contracts with a consultant or subcontractor for the purchase of a service, the CE will compensate the consultant or subcontractor for that service based on the provisions of the contract or agreement. When a contract or agreement identifies a fee or compensation that is based on a set percentage, the subcontractor or consultant cannot require additional fees from the CE.

**EXAMPLE:** A subcontractor or consultant cannot charge sales tax on services in addition to a set percentage that is assessed for that service as stated in the contract or agreement. If a subcontractor or consultant charges sales tax on the service provided, the tax must be extracted from the compensation (set percentage) that is stated in the contract or agreement.

### **7620 Disputes**

It is a CE's responsibility to obtain legal counsel for the resolution of any disputes arising from participation in a third-party arrangement outside of the FMNP Agreement.

### **7700 Administrative Costs**

Administrative costs are limited to the CE's allowable expenses for planning, organizing and managing the FMNP. These costs are approved as part of the CE's *Plan of Operation* (Form H1406) annual budget and whenever budget amendments are submitted to TDA.

### **7710 Allowable Costs**

This section provides an overview of the Federal cost principle requirements as found in 2 CFR part 200, subpart E which establishes the principles for determining the allowable costs incurred by CEs as part of FMNP. Additional guidance in this area can be found in:

- 7 Code of Federal Regulations (CFR) Part 248, *WIC Farmers' Market Nutrition Program*,
- 2 CFR Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*
- Other applicable federal and state rules, regulations, and guidance for financial management systems including the CEs Agreement with TDA.

## 7710.1 Determining Allowable Costs

Allowable costs must be:

- Reasonable and Necessary
- Allocable
- Consistent

Costs that do not conform to the cost principles summarized in this section are unallowable. Reimbursement must be used only for those costs that are **reasonable** and **necessary** for FMNP purposes and otherwise satisfy the allowability criteria set forth in 2 CFR Part 200, subpart E and USDA implementing regulations in 2 CFR Parts 400 and 415. FMNP purposes include the administration and operation of the FMNP. (7 CFR §248.12(a)) All costs must be budgeted in the approved FMNP *Plan of Operation* (Form H1406). All costs must be allowable expenditures under the FMNP and any other applicable Federal, State, or local law and regulations or guidance.

A CE's costs must meet the following general criteria in order to be allowable under FMNP (2 CFR §200.403):

- Necessary and reasonable for proper and efficient performance and administration of the FMNP.
- Be allocable to the FMNP under the Federal cost principles in 2 CFR Part 200.
- Be authorized or not prohibited under Texas State or local laws and regulations.
- Conform to any FMNP-specific limitations or exclusions in 7 CFR Part 248 as well as any limitations or exclusion in 2 CFR Part 200.
- Be consistent with the policies and procedures that apply uniformly to all activities of the CE.
- Be accorded consistent treatment. A cost may not be assigned to the FMNP as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the FMNP as an indirect cost.
- Be determined in accordance with generally accepted accounting principles (GAAP).
- Not be included as a cost or used to meet cost sharing or matching requirements of any other Federal award in either the current or prior period.
- Be net of all applicable credits (purchase discounts, rebates, allowances, etc.) (2 CFR §200.406).
- Be adequately documented.



A cost is considered **reasonable** if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing when the decision was made to incur the cost. A cost is considered **necessary** if it is of a type generally recognized as ordinary and necessary for the CE's operations or the proper and efficient performance of the FMNP. (2 CFR § 200.405)

A cost is **allocable** to FMNP if the goods or services involved are chargeable or assignable to FMNP in accordance with the relative benefits received. (2 CFR § 200.405) A cost must be **consistent** with the policies and procedures that apply uniformly to both federally-financed and other activities of the CE.

## 7710.2 Allowable Costs in FMNP

The following costs are specifically identified as allowable in the FMNP (7 CFR §§ 248.2 in the definition of administrative costs and § 248.12(b)):

- Administration and start-up,
- FMNP voucher issuance, or participant education covering proper redemption procedures,
- Nutrition education services provided to participants and guardians of participants, and used for training site staff members,
- Interpreters and translators for FMNP materials,
- Outreach services,
- Voucher and farmers' market management,
- Training,
- Required reporting and recordkeeping,
- Preparing contracts for farmers and farmers' markets,
- Audits and fair hearings, and
- Monitoring and reviewing FMNP operations.

CEs must obtain prior approval in accordance with 2 CFR Part 200, subpart E and USDA implementing regulations in 2 CFR Parts 400 and 415 prior to charging to the FMNP any capital expenditure and other cost items designated by 2 CFR Parts 200, subpart E, 400 and 415 as requiring prior approval. (7 CFR §248.12(a)(2))

## 7720 Unallowable Costs

Federal regulations identify specific costs or categories of costs that cannot be charged to any federally funded program. These costs are never allowed. Unallowable costs are generally defined in 2 CFR Part 200, subpart E under “General Provisions for Selected Items of Cost” (2 CFR §§ 200.420-475). Expenditures by CEs that are not applicable to FMNP objectives are considered unallowable. (7 CFR §248.12(a)(3))

CEs are responsible for understanding the principles to be applied in establishing the allowability of certain items involved in determining cost. Failure to list a particular item of cost is not intended to imply that it is either allowable or unallowable; rather, determination as to allowability in each case should be based on the treatment provided for similar or related items of cost, and based on the principles described above and in 2 CFR §§ 200.402 – 411 (2 CFR §200.420).

Unallowable costs include, but are not limited to, the following:

- Administrative costs not approved by TDA,
- Bad debts,
- Contingencies,
- Contributions and donations,
- Entertainment,
- Fines and penalties,
- Fund raising,
- Interest and other financial costs, such as insufficient funds/returned check charges and late payment fees,
- Legislative expense,
- Political or partisan costs,
- Under-recovery of costs under grant agreements (these are costs exceeding income in other federal programs, including all grant agreements regardless of funding source or program year. Also included are disallowed costs in the current or prior program years.),
- Personal income taxes, corporate income taxes, and taxes resulting from non-FMNP operations,
- Constructing or operating a farmers’ market, and
- Use of FMNP funds to supplement congregate meal programs.

Unallowable costs may never be claimed for reimbursement or counted toward the State matching requirement.

# Section 8000

# Denials, Terminations, and Appeals

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## Section 8000 Denials, Terminations, and Appeals

### 8100 Application Denials

The Texas Department of Agriculture (TDA) will deny a CE's application and may terminate the *FMNP Agreement* if TDA determines at any time that a CE:

- Is ineligible to participate in the FMNP,
- Submitted false information to TDA,
- Did not comply with FMNP requirements,
- Failed to maintain adequate records,
- Claimed reimbursement for administrative costs that were not related to FMNP operations,
- Has an outstanding or unresolved single audit, or
- Failed to comply with procurement standards or contract requirements.

### 8200 Termination of the FMNP Agreement

TDA must terminate a CE's *FMNP Agreement* if it is determined that there is cause for termination or if TDA and the CE mutually consent to terminate the agreement.

#### 8210 Termination by Mutual Consent

TDA and a CE may mutually consent to terminate the *FMNP Agreement* with 30 days' notice. Termination by mutual consent generally occurs as a result of a CE's decision to withdraw from participation, and can occur at any time during the program year.

**NOTE:** Termination by mutual consent is not an adverse action. Therefore, a CE cannot appeal this termination.

#### 8220 Termination for Cause

TDA may terminate for cause the *FMNP Agreement* if the CE

- Fails to resolve FMNP noncompliance or violation as detailed in a corrective action plan.
- Submits falsified documents or fraudulent billings.
- Fails to provide services specified in the *FMNP Agreement*.
- Fails to submit a complete and correct application within the specified time.
- Fails to meet basic eligibility requirements.

- Fails to comply with applicable bid procedures.
- Fails to maintain required records.
- Fails to submit a balanced and reasonable budget.
- Claims reimbursement for administrative costs that are not related to FMNP operations.
- Fails to maintain integrity with respect to voucher redemption.
- Has an outstanding or unresolved single audit.

Before terminating the *FMNP Agreement* for cause, TDA will consider

- The severity of the noncompliance or violation,
- The reason for the noncompliance or violation,
- Efforts to correct the noncompliance or violation, and
- Whether providing or arranging additional training or technical assistance would help a CE to correct the problem.

If the *FMNP Agreement* is terminated, TDA will notify the CE in writing of the specific reason for termination.

## 8300 Actions Subject to Appeal

Contracting entities (CEs) have the right to appeal any action that

- Denies an application for participation,
- Terminates operation of the FMNP at a CE's site,
- Terminates a CE's *FMNP Agreement*,
- Denies or suspends FMNP payment,
- Denies a CE's application for a specific site,
- Demands the remittance or settlement of any overpayment, or
- Otherwise affects a CE's participation in the FMNP or claim for reimbursement.

**Exception:** A CE cannot appeal the termination by mutual consent of the *FMNP Agreement*. Also, the expiration of an Agreement to participate in the FMNP is not subject to appeal.

Farmers and farmers' market associations have the right to appeal a sanction or disqualification from participating in the FMNP.

A WIC participant in the FMNP may appeal disqualification/suspension of FMNP benefits.

(7 CFR §248.16 (a))

## 8400 Appeal Procedures

TDA, CEs and farmers' market associations have authority to take adverse action pursuant to their roles in the FMNP operation. TDA is the responsible entity for conducting FMNP appeals. Actions adversely affecting participation in FMNP that may be appealed are provided above in Section 8300.

Written notice of adverse action must be provided by the party taking action.

The written notice must:

- State the cause(s) for adverse action,
- State the effective date of the adverse action, including whether the adverse action will be postponed until an appeal decision, if applicable, and
- Include the procedure for requesting an appeal, if applicable.

The written notification must be provided not less than 15 calendar days in advance of the effective date of the adverse action.

Requests for appeals must be in writing and postmarked within ten calendar days from the date the notice of adverse action is received. The request must clearly identify the action being appealed and include a photocopy of the notice of adverse action.

The request for an appeal may be mailed or faxed to:

Texas Department of Agriculture  
Legal Division  
Attn: Docket Clerk  
P.O. Box 12847  
Austin, Texas 78711

Fax number: (800) 909-8530

Submit a request for appeal via overnight delivery to:

Texas Department of Agriculture  
Legal Division  
Attn: Docket Clerk  
1700 North Congress Avenue, 11<sup>th</sup> Floor  
Austin, Texas 78701

TDA will acknowledge the receipt of the request for an appeal within five days of its receipt of the appeal request.

TDA will schedule a hearing to be held within 14 calendar days of receiving the appeal request, unless there is a request to reschedule. The person or organization requesting the appeal will have one opportunity to reschedule the hearing date. A request to reschedule a hearing allows seven additional calendar days to reschedule the hearing.

The case record will be available for review prior to the hearing. At the hearing, both parties in the appeal are provided the opportunity to

- Question and cross-examine witnesses,
- Be represented by counsel, or
- Be represented by a designated representative, if the appeal is filed by an FMNP participant.

Within 60 calendar days of receipt of request for appeal, the TDA administrative review official (ARO) will issue a written decision that will be based solely on the evidence presented at the hearing and the statutory and regulatory provisions governing the FMNP. The ARO's decision is final.

## **8500 Disputes**

If a CE disputes or disagrees with program guidance, policies or procedures, notify the TDA USDA Foods Specialist at [CommodityOperations@TexasAgriculture.gov](mailto:CommodityOperations@TexasAgriculture.gov) or at 1-877-TEX-MEAL (1-877-839-6325).



# **Section 9000**

# **Terms, Definitions and**

# **Acronyms**

## **Table of Contents**

**9100 Terms and Definitions**

**9200 Acronyms**

## Section 9000 Terms, Definitions and Acronyms

### 9100 Terms and Definitions

**Administrative costs** —Direct and indirect costs (§ 248.12(b)), exclusive of food costs, which TDA determine to be necessary to support FMNP operations. For a list of allowable administrative costs, see Item 3121.

**Administrative review official (ARO)** — An independent and impartial official appointed by TDA and familiar with FMNP requirements who presides over an appeal. The ARO's decision is the final administrative determination of the appeal.

**Appeal** — A request for review of an adverse action through a fair and impartial hearing.

**Authorized representative** — An authorized representative is authorized on behalf of a CE to make written agreements with TDA to operate the FMNP, to sign documents or reports about the agreement, and to present claims for reimbursement, when appropriate, to TDA.

**Compliance buy** — A covert, onsite investigation in which an FMNP representative poses as an FMNP participant and attempts to transact one or more FMNP vouchers.

**Contracting entity (CE)** — A public agency or private nonprofit organization that enters into an agreement with TDA to administer the FMNP at the local level.

**Dual participation**— Simultaneous participation by an individual in the FMNP at more than one local service area. Dual participation is not permitted.

**Eligible foods** — Fresh, nutritious, unprepared, locally grown fruits, vegetables and herbs for human consumption. Eligible foods may not be processed or prepared beyond their natural state except for usual harvesting and cleaning processes.

**Family**— A group of related or nonrelated individuals who are living together as one economic unit, except that residents of a homeless facility or an institution shall not all be considered members of a single family.

**Farmer** — An individual authorized to sell produce (eligible foods) at participating farmers' markets.

**Farmers' market or farmers' market association**— An association of local farmers who assemble at a defined location for the purpose of selling their produce (eligible foods) directly to consumers.

**Fiscal year** – The period of 12 calendar months beginning October 1 of any calendar year and ending September 30 of the following calendar year.

**Food Costs** – The cost of eligible foods purchased at authorized farmers’ markets.

**Household** – Has the same definition of “family.” Each family shall constitute a separate household for FMNP benefit issuance purposes.

**Local agency** – Any nonprofit entity or local government agency that identifies eligible participants, issues FMNP vouchers, and arranges for distribution of eligible foods.

**Locally grown** – Produce grown within Texas borders or adjoining states; New Mexico, Oklahoma, Arkansas, or Louisiana.

**Nonprofit agency** – A private agency which is exempt from income tax under the Internal Revenue Code of 1986, as amended.

**Nutrition education** – Individual or group education sessions and information and educational materials designed to improve health status, achieve positive change in dietary habits, and emphasize relationships between nutrition and health, all in keeping with the individual’s personal, cultural, and socio-economic preferences.

**Participants** – WIC clients who are at or below the 185% poverty level who are receiving FMNP benefits.

**Program** – The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) Farmers’ Market Nutrition Program (FMNP).

**Roadside stand** – A location at which an individual farmer sells his/her produce directly to consumers. This is in contrast to a group or association of farmers selling their produce at a farmers’ market.

**Texas Unified Nutrition Programs System (TX-UNPS)** – The web-based application and claims processing system for all food and nutrition programs administered by TDA. See <https://txunps1.texasagriculture.gov/txunps>.

**Voucher** – A check or other negotiable financial instrument by which benefits under the FMNP are transferred to participants.

**WIC** – The Special Supplemental Nutrition Program for Women, Infants and Children.

## 9200 Acronyms

**ADA** – Americans with Disabilities Act

**ARO** – Administrative Review Official

**CACFP** – Child and Adult Care Food Program

**CAP** – Corrective action plan

**CE** – Contracting Entity

**CFR** – Code of Federal Regulations

**CSFP** – Commodity Supplemental Food Program

**FDP** – Food Distribution Program

**F&N** – Food and Nutrition Division of the Texas Department of Agriculture

**FMNP** – Farmers’ Market Nutrition Program

**FNS** – Food and Nutrition Service of the United States Department of Agriculture

**IFB** – Invitation for bid

**IRS** – U.S. Internal Revenue Service

**RFP** – Request for proposal

**SAO** – State Auditor’s Office

**SBP** – School Breakfast Program

**SFMNP** – Senior Farmers’ Market Nutrition Program

**SFSP** – Summer Food Service Program

**SMP** – Special Milk Program

**SNAP** – Supplemental Nutrition Assistance Program (formerly Food Stamps)

**TDA** – Texas Department of Agriculture

**TEFAP** – The Emergency Food Assistance Program

**TX-UNPS** – Texas Unified Nutrition Programs System

**USDA** – United States Department of Agriculture

**WIC** – Special Supplemental Nutrition Program for Women, Infants and Children.

# Section 10000

## Email Notification and

### *FMNP Handbook Online*

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## Section 10000

### Email Notification and *FMNP Handbook Online*

#### **Email Notification**

The Texas Department of Agriculture (TDA) emails notification when this handbook is revised. TDA emails the notification to the FMNP contact person<sup>1</sup> of each contracting entity.

#### **FMNP Handbook Online**

The *Farmers' Market Nutrition Program Handbook* is available online at <http://squaremeals.org/Programs/FarmersMarketNutritionProgram/FMNPPolicyHandbook.aspx>. Users may view and print the handbook, as needed.

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<sup>1</sup> The contracting entity provides the email address of its FMNP contact person in TX-UNPS.

# Section 11000

## Resources

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**Section 11000  
Resources**

**11100 Allowed/Disallowed Foods in the FMNP**

**Farmers' Market Nutrition Program Allowed Foods**

Apples	Cantaloupes	Figs	Limes	Pears	Strawberries
Apricots	Carambola/Star Fruit	Garlic	Melons	Peas (Shelled)	Sweet Potatoes
Artichokes	Carrots	Grapefruit	Micro Greens	Peppers	Swiss Chard
Asparagus	Cauliflower	Green Onions	Mushrooms	Persimmons	Table Grapes
Beans	Celery	Greens/tops	Mustard Greens	Plums	Tomatoes
Beets	Collard Greens	Head Lettuce	Nectarines	Potatoes	Turnips
Blackberries	Corn	Herbs (fresh cut)	Okra	Pumpkins	Watermelons
Blueberries	Cucumbers	Kale	Onions	Radishes	
Broccoli	Dates	Kohlrabi	Oranges	Raspberries	
Brussels Sprouts	Dewberries	Leaf Lettuce	Papaya	Spinach	
Cabbage	Dragon Fruit	Leeks	Parsnips	Sprouts	
Cactus/Nopales/ Prickly Pear	Eggplants	Lemons	Peaches	Squash	

**Farmers' Market Nutrition Program Disallowed Foods**

Dried Fruits	Flowers	Processed Foods
Aloe Vera	Honey, raw or processed	Roasted Peppers
Baked Goods	Jams	Seafood
Cheese	Meat	Seeds
Cider	Non-food items	Sun-dried Tomatoes
Decorative Gourds	Nuts of any kind	Syrup
Dried Chili Peppers	Pecans	Wild Rice
Dried/Potted Herbs	Picante Sauce	
Dried Fruits/Vegetables	Potted Fruits or vegetable plants	
Eggs	Preserves	



**11200 Sanctions**

**Texas Farmers/Farmers’ Market Sanction Policy**

<b>Infraction</b>		<b>Explanation/Example</b>	<b>Points</b>
1	Redemption of invalid vouchers: <ul style="list-style-type: none"> <li>• Redeemed after end date</li> </ul>	Must not exceed 5% of redeemed vouchers	1 Point
2	Providing unauthorized food or goods, except for firearms, ammunition, or controlled substances as defined in 21 USC 802 (including alcohol and tobacco), which have a higher points penalty. See #9 below.	Nuts or Clothing	5 Points
3	Charging FMNP customers more than other customers	\$6.00 worth of food for a participant is less than for a non-participant	4 Points
4	Requiring cash to be paid by FMNP participant in addition to voucher		5 Points
5	Asking FMNP participants to pay for vouchers not redeemed by TDA		5 Points
6	Falsifying information on vouchers	Date redeemed	5 Points
7	Charging for food items not received	Rain checks	5 Points
8	Providing false information on a farmer/farmers’ market application		15 Points
9	Exchanging vouchers for money or non-food items	Alcohol, tobacco, firearms, ammunition, or other controlled substance	25 Points
10	Refusing to provide access to records, prices, redeemed vouchers to TDA staff or contractors		15 Points

A CE may disqualify a farmer or farmers’ market from participation in the FMNP if the sanction score reaches 15 points or more during the year of participation. The disqualification periods are:

Total Number of Points	Disqualification Period	
15 Points	1 Year	May not accept vouchers for the current period
20 Points	2 Years	May not accept vouchers for the current period and the next year
25 Points	3 Years	May not accept vouchers for the current period and the next two years

Farmers and farmers’ markets have the right to appeal a decision for sanctions. For information on how to request an appeal, see Section 8000.

## 11300 TDA Civil Rights Training

The TDA online Civil Rights training is located at [www.squaremeals.org](http://www.squaremeals.org). Under Quick Links near the bottom of the home page, click on Civil Rights Training, select Civil Rights, and then select the Civil Rights course.

At the end of the civil rights course, there is a quiz and a certificate of completion to print and maintain in your FMNP files.