

# TEXAS POLICY

In Texas, organizations that contract directly with Texas Department of Agriculture's USDA federally funded nutrition programs are called Contracting Entities or CEs. The Summer Food Service Program (SFSP) is identified as a nutrition program and, as such, sponsors are considered CEs.

Each year, the USDA publishes the SFSP *Administrative Guidance for Sponsors (AGS)* which provides program information and federal policy and program guidance for all CEs that participate or plan to participate in SFSP. In order to facilitate program participation and compliance, TDA occasionally issues Texas Policy that supplements federal policy found in the AGS.

## Denials, Terminations and Appeal Rights

### Application Denial and/or Termination

The Texas Department of Agriculture (TDA) will deny a pending application and may terminate a CE's Food and Nutrition Division Permanent Agreement (Permanent Agreement) if the agency determines at any time that the CE:

- Is ineligible to participate in the SFSP;
- Is determined to be seriously deficient in the ability to comply with program requirements in any child nutrition program, including SFSP and the Child and Adult Care Food Program (CACFP);
- Fails to submit a complete and correct application by the applicable deadline;
- Fails to provide services specified in the Permanent Agreement;
- Submitted falsified information, documents, or claims to TDA;
- Failed to return an advance payment that exceeds the amount earned for serving approved meals, or an unearned reimbursement;
- Owes a debt to TDA;
- Fails to meet basic eligibility requirements;
- Did not comply with meal service times;
- Failed to maintain required records;
- Failed to adjust meal orders to conform to variations in the number of participants;
- Claimed reimbursement for meals that did not meet program meal pattern requirements;
- Claimed reimbursement from multiple programs for the same meal served to the same child or claimed a child more than once per individual meal in the SFSP (concurrent participation);
- Claimed reimbursement for meals that were not served to participating/eligible children;
- Regularly allowed the off-site consumption of SFSP meals;
- Continued to purchase meals from a food service management company (FSMC) that does not comply with state and local health codes;
- Fails to resolve Program noncompliance, as detailed in a corrective action plan;
- Has an outstanding or unresolved single audit; or
- Failed to comply with procurement standards or contract requirements.

## Terminations

The Permanent Agreement may be terminated in whole or in part. A termination in part applies to situations in which a CE participates in more than one program and withdraws from or is determined to be ineligible for **at least one but not all** of the programs.

If a CE is determined to be ineligible to participate in a program as a result of serious deficiency in the ability to comply with program requirements, the CE's Permanent Agreement must be terminated in whole.

TDA must terminate a CE's Permanent Agreement if the agency determines that there is cause for termination or if the CE mutually consents to terminate its agreement.

## Contracting Entity's Failure to Reapply

If a CE fails to reapply to participate in the SFSP, its Permanent Agreement will be amended or terminated, as appropriate.

## Termination by Mutual Consent

TDA and the CE may mutually consent to terminate the CE's Permanent Agreement at any time. Termination by mutual consent generally occurs as a result of the CE's decision to withdraw from a program and can occur at any time during the program year, including at the time of reapplication.

**NOTE:** Termination by mutual consent is not an adverse action. Therefore, this termination is not subject to appeal.

## Termination for Cause

Before terminating an agreement for cause, TDA will consider:

- The severity of the non-compliance/s;
- The reason for the non-compliance/s;
- The CE's efforts to correct the non-compliance/s; and
- Whether providing or arranging additional training or technical assistance would help the CE to correct the problem/s.

If the Permanent Agreement is terminated, TDA will notify the CE in writing of the specific reason/s for termination. TDA's termination of a CE's Permanent Agreement for cause is subject to appeal.

## Appeals

TDA notifies CEs in writing of any adverse action taken against their participation in the SFSP. This written notification will include the following information, as applicable:

- A description of the adverse action (or action which adversely affects a CE's participation in the program);
- The agency's basis for the action (for example, failure to comply with program requirements); and
- An explanation of appeal rights and appeal request procedures.

If the agency's adverse action includes the termination or amendment of a CE's Permanent Agreement, the notification will advise the CE whether they will be eligible for SFSP payments during the period of appeal.

CEs always have the right to review all information upon which the agency based the adverse action.

## Actions Subject to Appeal

The following TDA actions are subject to appeal:

- Denial of an application for participation;
- Termination from the program of a CE or a site;
- Denial of a request for an advance payment;
- Refusal by TDA to forward to the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) an exception request by the CE for payment of a late claim or a request for upward adjustment to a claim;
- Denial of a claim for reimbursement (except for late submission);
- Denial of a CE application for a specific site; or
- Claim against the CE for remittance or settlement of any overpayment.

**EXCEPTION:** CE cannot appeal the termination by mutual consent of the Permanent Agreement. Additionally, a USDA FNS decision to deny the payment of a late claim or upward adjustment cannot be appealed.

## Appeal Process

A timely request for appeal must be received by the TDA Docket Clerk no later than 5:00 P.M. on the tenth (10<sup>th</sup>) day after the receipt, or deemed receipt, of notification of an adverse action. The appeal must:

- Be in writing;
- Clearly identify the action being appealed; and
- Include a legible photocopy of the letter notifying the CE of the adverse action.

If a CE wishes to have an in-person hearing, it must request a hearing at the time it files a written appeal request. If a CE does not include a written hearing request in your appeal, the CE waives the right to a hearing and the appeal will be decided upon review of the documents in the record, unless the Administrative Review Official (ARO) determines that the failure to make a timely request was due to circumstances beyond the control of the appellant.

An appeal must be mailed or faxed to:

**FOOD AND NUTRITION APPEALS  
TEXAS DEPARTMENT OF AGRICULTURE  
LEGAL DIVISION  
ATTN: DOCKET CLERK  
P.O. BOX 12847  
AUSTIN, TEXAS 78711  
FAX (800) 909-8520**

An appeal may be hand-delivered or submitted via overnight/special delivery to the following address:

**TEXAS DEPARTMENT OF AGRICULTURE  
LEGAL DIVISION  
1700 NORTH CONGRESS, 11<sup>TH</sup> FLOOR  
AUSTIN, TEXAS 78701**

The rules regarding the appeal procedures for SFSP are found in Title 4 of the Texas Administrative Code Sections 1.1010 and 1.1011.

**Note:** Documentation a CE wishes to have considered by the Administrative Review Official in consideration of its appeal must be submitted to the address above within seven (7) days after the CE submits the request for appeal. Documentation can be submitted with a request for appeal, or separately.