

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.

Denials, Terminations and Appeal Rights

Application Denial

The Texas Department of Agriculture (TDA) will deny your application and may terminate your Food and Nutrition Division (FND) Agreement if we determine at any time that you:

- Are ineligible to participate in the SFSP;
- Submitted false information to FND;
- Failed to return an advance payment that exceeds the amount earned for serving approved meals;
- Failed to return an unearned advance for administrative payments;
- Did not comply with the 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 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;
- Have an outstanding or unresolved single audit; or
- Failed to comply with procurement standards or contract requirements.

Terminations

The FND Agreement may be terminated in whole or in part. A termination in part applies to situations in which you participate in more than one program and withdraw from or are determined to be ineligible for at least one but not all of the programs.

If you are determined to be ineligible to participate in a program as a result of serious deficiency in the ability to comply with program requirements, your FND Agreement must be terminated in whole.

TDA must terminate your FND Agreement if we determine that there is cause for termination or if you mutually consent to terminate your agreement.

Contractor's Failure to Reapply

If you fail to reapply to participate in the SFSP, your FND Agreement will be amended or terminated, as appropriate.

Termination by Mutual Consent

The FND and you may mutually consent to terminate your FND Agreement at any time. Termination by mutual consent generally occurs as a result of your 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, you cannot appeal this termination.

Termination for Cause

We may terminate or amend your FND Agreement if you:

- Fail to resolve program noncompliance, as detailed in a corrective action plan;
- Are determined to be seriously deficient in the ability to comply with program requirements in the SFSP or the Child and Adult Care Food Program (CACFP);
- Submit falsified documents or claims;
- Fail to provide services specified in your FND Agreement;
- Fail to submit a complete and correct application within the specified time;
- Fail to meet basic eligibility requirements;
- Do not comply with applicable bid procedures;
- Fail to return an advance payment that exceeds the amount earned for serving approved meals, or an unearned reimbursement;
- Fail to maintain required records;
- Claim reimbursement for meals that were not served to participating children;
- Claim reimbursement for meals that did not meet program meal pattern requirements; or
- Claim 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).

Before terminating an agreement for cause, we will consider:

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

If your FND Agreement is terminated, we will notify you in writing of the specific reason for termination. You have the right to appeal any decision we make that adversely affects your participation in the program.

Appeals

FND will notify you in writing of any adverse action taken against your participation in the SFSP. This written notification will include the following information, as applicable:

- A description of the adverse action;
- The basis for the action (for example, failure to comply with program requirements), and
- An explanation of your appeal rights and the date by which you must submit an appeal.

If the adverse action includes the termination or amendment of your FND Agreement, the notification will advise you of the status of your FND Agreement pending the completion of the appeal (that is, whether you may continue to participate and expect the consideration of claim payment by FND). In either event, you have the right to review all information upon which the adverse action is based.

Actions Subject to Appeal

You have the right to appeal any action that:

- Denies an application for participation;
- Terminates your participation or that of one of your sites;
- Suspends your participation;
- Denies an advance payment;
- Denies or suspends program payment;
- Denies your application for a specific site;
- Denies or suspends all or part of any claim for reimbursement submitted not later than 60 days after the last day of the claim month;
- Demands the remittance or settlement of any overpayment; or
- Otherwise affects your participation in the SFSP or your claim for reimbursement.

You may also appeal a FND refusal to forward a denied late claim or a request for an upward adjustment to a claim to the USDA for consideration.

EXCEPTION: You cannot appeal the termination by mutual consent of your FND Agreement. Additionally, a USDA decision to deny the payment of a late claim cannot be appealed.

Appeal Process

Requests for an appeal must be received by TDA within 10 days of receipt of notification of an adverse action. The appeal must:

- Be in writing;
- State the basis for the appeal of the adverse action;
- Include a legible copy of the letter notifying you of the adverse action.

If you wish to have an in-person hearing, you must request a hearing at the time you file your written appeal. If you do not include a written hearing request in your appeal, you waive 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.

Your appeal must be mailed or faxed to:

**Food and Nutrition Appeals
Texas Department of Agriculture
Legal Division
P.O. Box 12847
Austin, Texas 78711
FAX (800) 909-8520**

You may hand deliver or submit your request for a hearing via overnight/special delivery to the following address:

**Texas Department of Agriculture
Legal Division
1700 North Congress, 11th Floor
Austin, Texas 78701**

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

If you have any questions or wish to confirm receipt of your appeal request, you may contact the Legal Division at (512) 463-4076.

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