

Section 8

Denials, Terminations, and Appeals

Table of Contents

Disputes	2
Application Denials	2
Terminations	3
Contracting Entity’s Failure to Reapply	3
Termination by Mutual Consent	3
Termination for Cause	3
Appeal Process for CEs	4
Submittal to TDA	5
Hearing	5
Program Violations	6
Violations by Participants.....	6
Violations by CEs and Sites	6
CEs, Sites, and CSFP Funds.....	6
CEs, Sites, and USDA Foods.....	6
Participant Violations Not Involving Fraud.....	7
Participant Violations Involving Fraud.....	7
Three Fraudulent Violations	7
Claims against Participants for Fraud.....	7
Pursuing Claims for Fraud	8
Notification of Disqualification from the CSFP.....	8
Appeal for Fair Hearing	8
Appeal Rights.....	9
Request for a Fair Hearing.....	9
Time Restriction for Request	9
Denial or Dismissal of Request	9
Continuation of Benefits	9
Hearing Details	10
Hearing Official	10
Conducting the Hearing.....	10
Hearing Decisions	10

Section 8

Denials, Terminations, and Appeals

Disputes

If a contracting entity (CE) has a dispute or disagrees with the Commodity Supplemental Food Program (CSFP) guidance, policies or procedures, notify¹ the Food and Nutrition Program Specialist by telephone or in writing. The Food and Nutrition Program Specialist coordinates the resolution of the dispute in consultation with the Texas Department of Agriculture (TDA) management.

Application Denials

A denial occurs when the Texas Department of Agriculture (TDA) determines that the contracting entity's (CE's) application² does not meet, at a minimum, the following application criteria:

1. The ability of the CE to operate the program in accordance with federal and state requirements.
2. The necessity for the program in the projected service area of the CE.
3. The resources available (caseload and funds) for initiating a program in the service area.
4. For nonprofit agencies: tax exempt status, with appropriate documentation.

In addition, TDA may deny an application to participate in CSFP if TDA determines at any time that an organization:

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

If the application is denied, TDA must provide 1) a written explanation for the denial and 2) notification of the CE's right to appeal the decision.

¹ Email the Food and Nutrition program specialist at commodityoperations@texasagriculture.gov or call 1-877-TEX-MEAL (1-877-839-6325).

² See *CSFP Handbook*, Section 2, *Program Application* for details about the CSFP application.

Terminations

TDA will terminate the CSFP Agreement if it is determined that there is cause for termination or if the CE mutually consents to the termination.

The CE may terminate participation in the CSFP by written notification to TDA. The notification must give the reasons and effective date of the termination.

Both TDA and the CE must provide at least 30 days' written notice of termination of CSFP participation.

Contracting Entity's Failure to Reapply

If a CE fails to reapply to participate in CSFP, the CSFP Agreement will be terminated.

Termination by Mutual Consent

A CE and TDA may mutually consent to terminate the CSFP Agreement at any time. Termination by mutual consent generally occurs as a result of a CE's decision to withdraw from CSFP and can occur at any time during the program year, including at the time of reapplication. The two parties must agree upon the conditions of the termination, including, but not limited to, the effective date.

NOTE: Termination by mutual agreement is not an adverse action; therefore, a CE cannot appeal this determination.

Termination for Cause

TDA may terminate the CSFP Agreement if a CE does any of the following:

- Fails to resolve CSFP noncompliance as detailed in a corrective action document (CAD).
- Submits falsified documents or fraudulent billings.
- Fails to provide services specified in the CSFP Agreement and *Application or Participation/Plan of Operation*.
- 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 CSFP operations.
- Fails to comply with applicable federal or state regulations in its administration of CSFP.

NOTE: Indications of fraud, embezzlement, abuse, or misuse of funds must be reported to TDA. Based on the report, TDA may determine whether to refer the incident either to the U.S.

Department of Agriculture (USDA) Southwest Regional Office or to the USDA Office of Inspector General for investigation.³

Before terminating the CSFP Agreement for cause, TDA will consider the following:

- The severity of the noncompliance
- The reason for the noncompliance
- Efforts to correct the noncompliance
- Whether providing or arranging additional training or technical assistance would help to correct the problem

If the CSFP Agreement is terminated, TDA will notify the CE in writing of the specific reason for termination. The notification will also include the effective date and provide the CE with the opportunity to appeal.

Appeal Process for CEs

The adverse action must be postponed until the hearing is complete. The following definitions are pertinent to the discussion below.

adverse action – A decision, action, or inaction that negatively affects participation in CSFP. For a CE or site, adverse action may include, but is not limited to, the following:

- Agreement termination or suspension before the stated expiration date
- Denial of payment or rejection of a statement of costs, in whole or in part
- Demands for settlement or repayment of funds

Administrative Review Official (ARO) – An impartial person that presides over the hearing of an adverse action. The ARO is 1) appointed by TDA, 2) familiar with CSFP requirements, and 3) not involved in the action that is being appealed. The ARO makes a final determination in the case.

The CE's appeal must be received by TDA within 15 days of receiving notification of an adverse action. The appeal must meet the following criteria:

1. Be in writing.
2. State the basis for the appeal.
3. Include a legible copy of TDA's adverse action letter.
4. Request for a hearing, if the CE wants a hearing.
 - The appeal must include a request for the CE (or a representative) to attend the hearing in person *if* the CE wants to attend.
 - The CE waives the right to a hearing when the written appeal does not include a request for a hearing. Rather, the ARO will conduct the hearing by reviewing the documents in the record.

³ For more details on fraud and misuse, see *CSFP Handbook, Section 3, Managing the Program*.

NOTE: There are occasions when a CE is unable to timely request a hearing. In such a case, the ARO might determine that the failure to make a timely request was due to circumstances beyond the CE’s control. Otherwise, the ARO shall deny a request for a hearing if the request is filed after TDA receives the appeal.

Submittal to TDA

The CE may submit documentation to be considered at the hearing. The CE must submit documentation either 1) with the written appeal or 2) separately, within 30 days of the receipt of adverse action. The written appeal and hearing documentation, if any, must be submitted to TDA by the following methods.

Submittal of Appeal and Documentation to TDA	
<i>Mail</i>	Food and Nutrition Appeals Texas Department of Agriculture Legal Division Attn: Docket Clerk PO BOX 12847 Austin TX 78711
<i>Fax</i>	(800) 909-8530
<i>Hand-delivery, Overnight Delivery Service, and Special delivery service</i>	Texas Department of Agriculture Legal Division 1700 North Congress, 11 th Floor Austin TX 78701

CEs that wish to confirm receipt of the appeal request may contact the Legal Division at 512-463-4075.

Hearing

The hearing⁴ shall be conducted by the ARO, who must make a decision that is based solely on the evidence presented at the hearing, as well as on CSFP legislation and regulations. The ARO’s decision must be made within 60 days from the date of the CE’s appeal, and the decision must be provided in writing to the CE.

⁴ The CSFP hearing follows TDA’s typical hearing procedures, which are found in the Texas Administrative Code, Title 4, Part 1, Chapter 26, Subchapter E.

Program Violations

Violations by Participants

Program violations are actions taken by applicants, participants, or their caregivers to improperly obtain or use CSFP benefits. Program violations may result in a participant's termination from the CSFP.

Program violations include, but are not limited to, the following actions:

1. Intentionally making false statements orally or in writing.
2. Intentionally concealing information that pertains to eligibility.
3. Selling CSFP foods.
4. Trading CSFP foods for non-food items.
5. Physically abusing, or threatening physical abuse of, program staff.
6. Participating simultaneously at multiple sites.

CEs must report negligence, fraud, embezzlement, or other abuses of the CSFP. If a CE is aware of such activity but fails to notify TDA, the CE assumes financial liability for the activity. Based on a CE's notification, TDA may determine whether to refer the incident either to the USDA Food and Nutrition Service or to the USDA Office of Inspector General for investigation.

Violations by CEs and Sites

Negligence and Fraud

Negligence is misuse or improper distribution of USDA Foods or failure to properly store, handle, or care for the food.

Fraud includes intentionally making false or misleading statements; intentionally withholding information to obtain USDA Foods; or selling or exchanging USDA Foods obtained through CSFP for non-food items.

A CE must immediately report suspected fraud or misuse of USDA Foods to TDA. Include information related to the amount of USDA Foods involved; location of the incident; suspected parties; and other details and facts. If a CE does not immediately report it, the CE is liable for the fraud.

CEs, Sites, and CSFP Funds

If a CE or its sites misuse CSFP funds through negligence, fraud, theft, embezzlement, or other causes, TDA must initiate and pursue a claim against the entity to repay the amount of the misused funds.

CEs, Sites, and USDA Foods

TDA must initiate and pursue claims against any entity that misuses USDA Foods in the CSFP. Misused USDA Foods include foods improperly distributed, lost, spoiled, stolen, or damaged as a result of improper storage, care, or handling.

Participant Violations Not Involving Fraud

TDA may require CEs to disqualify participants for up to one year if applicants, participants, or their caregivers commit one of the following program violations:

1. Physically abusing, or threatening physical abuse of, program staff
2. Participating simultaneously at multiple sites.

NOTE: If the eligibility specialist concludes that a serious health risk will result from disqualification from the CSFP and the participant is currently eligible, then the disqualification shall be waived.

Participant Violations Involving Fraud

Fraud includes the following actions:

- Intentionally making false or misleading statements, orally or in writing, to obtain USDA Foods
- Intentionally withholding information to obtain USDA Foods
- Selling USDA Foods
- Trading USDA Foods for non-food items

TDA requires CEs to disqualify applicants and participants from participating in the CSFP for up to one year if applicants, participants, or their caregivers commit program violations that include fraud.

NOTE: If the eligibility specialist concludes that a serious health risk will result from disqualification from the CSFP and the participant is currently eligible, then the disqualification shall be waived.

TDA may require CEs to pursue claims against participants for fraudulent activity. See *Claims against Participants for Fraud* in this handbook section for more information.

Three Fraudulent Violations

TDA requires CEs to permanently disqualify participants and applicants that commit three fraudulent program violations.

Claims against Participants for Fraud

TDA must ensure that CEs pursue claims against participants when the value of USDA Foods fraudulently received is more than \$500. To begin the claims process, the CE must contact TDA with the participant's name and any supporting documentation.⁵

The CE must then provide the participant with the following information in writing:

1. The participant's opportunity to appeal the claim through the fair hearing process and

⁵ Supporting documentation includes, but is not limited to, notes or emails the CE makes when someone informs about a CSFP participant fraudulently receiving USDA Foods.

2. The participant's disqualification from the CSFP for up to one year.

NOTE: If the eligibility specialist concludes that a serious health risk will result from disqualification from the CSFP and the participant is currently eligible, then the disqualification shall be waived.

Pursuing Claims for Fraud

When pursuing a claim against a participant, the CE must take the following steps:

- 1) Issue a letter demanding repayment for the value of the USDA Food improperly received or used.
- 2) If repayment is not timely made, contact the Program Specialist ⁶ for additional collection actions that are cost-effective according to the TDA-established standards.
- 3) Maintain all records regarding claim actions taken.

Notification of Disqualification from the CSFP

Disqualification means the act of ending CSFP participation of a participant as a punitive sanction. Reasons for disqualification include, but are not limited to, fraud, which is:

- Intentionally making false or misleading statements to obtain CSFP commodities.
- Intentionally withholding information to obtain CSFP commodities.
- Selling CSFP commodities or exchanging them for non-food items.

Each CE must provide a disqualified participant with written notification at least 15 days before the effective date of disqualification. The notification must include all of the following information:

1. The effective date and length of disqualification.
2. The reason for the disqualification.
3. A statement that the participant may appeal the disqualification through the fair hearing process. (See *Appeal for Fair Hearing* in this handbook section for information regarding a fair hearing.)

Appeal for Fair Hearing

TDA maintains a hearing procedure through which any individual may appeal⁷ an action that results in the denial or termination of benefits.

⁶ Email CommodityOperations@TexasAgriculture.gov or call 877-TEX-MEAL (877-839-6325).

⁷ For definitions of terms, including, but not limited to, appeal, hearing, denial, and termination of benefits, see *CSFP Handbook, Section 9, Terms, Definitions, and Acronyms*.

Appeal Rights

At the time of initial certification as well as at denial or termination of benefits, CEs must notify an applicant in writing of the right to appeal and receive a fair hearing.

This notification must include the following information:

- The assurance of the right to a fair hearing.
- The method by which a hearing may be requested.
- An assurance that any positions or arguments on behalf of the individual may be presented personally or by a representative such as a relative, friend, legal counsel, or another spokesperson.

Notification is not required at the expiration of a certification period.

Request for a Fair Hearing

A request for a hearing is any clear expression by the individual or the individual's caretaker, or another representative, that an opportunity to present his or her case to a higher authority is desired. CEs must not limit or interfere with the individual's freedom to request a hearing.

Time Restriction for Request

An individual has the right to request a fair hearing at any time within 60 days of receiving notice of adverse action to deny or terminate benefits.

Denial or Dismissal of Request

A request for a hearing shall not be denied or dismissed unless the:

- Request is not received within the time identified in *Time Restriction for Request* in this handbook section;
- Request is withdrawn in writing by the individual or representative; or
- Individual or representative fails, without good cause, to appear at the scheduled hearing.

Continuation of Benefits

Participants must receive written notice within 15 days of the date that benefits will be discontinued. Participants who appeal (that is, request a fair hearing) the termination of benefits within the 15-day advance adverse notice period shall continue to receive CSFP benefits until the hearing official reaches a decision.

Applicants who are denied benefits at initial certification or at subsequent certifications may appeal the denial but shall not receive benefits while awaiting the hearing.

Hearing Details

Hearing Official

An ARO will be appointed by TDA. The official will be an individual who was not involved in the decision that the applicant, participant, or CE is appealing (referred to as “appellant”).

Conducting the Hearing

The hearing shall be accessible to the appellant and their representative, if applicable. TDA will provide the appellant with a minimum of 10 days advance written notice of the time and place of the hearing and shall enclose the rules of procedure. TDA will also provide the appellant or their representative, if applicable, an opportunity to take the following steps:

- Examine, before and during the hearing, the documents and records presented to support the decision under appeal.
- Be assisted or represented by an attorney or other persons.
- Bring witnesses.
- Advance arguments without undue interference.
- Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses.
- Submit evidence to establish all pertinent facts and circumstances in the case.

Hearing Decisions

The ARO makes a decision based on a complete review of the administrative record and sends a copy of the decision to the appellant by certified mail, return receipt requested. The decision shall be binding on the appellant and shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent regulations.