

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 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 7450.2, *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

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,¹ 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

¹ 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.² 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 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* for review and approval every year. **The *Plan of Operation* must be completed in TDA's online system.**

The *Plan of Operation* 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

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

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

- 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 **may** conduct 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 **may** 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 operation, TDA will either visit any new farmers' markets or FMAs added by that CE to conduct in-person training or will conduct this training in an online interactive format.

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 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.