

# 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).