

Section 8000

Denials, Terminations, and Appeals

Table of Contents

8100	Application Denials	2
8200	Termination of the SFMNP Agreement	2
8210	Termination by Mutual Consent	2
8220	Termination for Cause	2
8300	Actions Subject to Appeal	3
8400	Appeal Procedures	4
8500	Disputes	5

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 *SFMNP Agreement* if TDA determines at any time that a CE:

- Is ineligible to participate in the SFMNP,
- Submitted false information to TDA,
- Did not comply with SFMNP requirements,
- Failed to maintain adequate records,
- Claimed reimbursement for administrative costs that were not related to SFMNP operations,
- Fails to maintain integrity with respect to voucher redemption,
- Has an outstanding or unresolved audit, or
- Failed to comply with procurement standards or contract requirements.

8200 Termination of the SFMNP Agreement

TDA must terminate a CE's *SFMNP 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 *SFMNP 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 *SFMNP Agreement* if the CE

- Fails to resolve SFMNP noncompliance as detailed in a corrective action plan.
- Submits falsified documents or fraudulent billings.
- Fails to provide services specified in the *SFMNP 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 SFMNP operations.
- Has an outstanding or unresolved audit.

Before terminating the *SFMNP 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 *SFMNP Agreement* is terminated, TDA will notify the CE in writing of the specific reason for termination.

8300 Actions Subject to Appeal

CEs have the right to appeal any action that

- Denies an application for participation, imposes a sanction, or disqualifies it from participating in the SFMNP,
- Terminates operation of the SFMNP at a CE's sites,
- Terminates a CE's *SFMNP Agreement*,
- Denies or suspends SFMNP 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 SFMNP or claim for reimbursement.

Exception: A CE cannot appeal the termination by mutual consent of the *SFMNP Agreement*. (7 CFR §249.16(a))

An applicant may appeal denial of certification of SFMNP benefits, except that no appeal is available if certification is denied solely because of lack of sufficient funding to provide SFMNP benefits to all eligible applicants. A participant may appeal the disqualification/suspension of SFMNP benefits. (7 CFR §249.16(a)(1)(i) and (ii))

8400 Appeal Procedures

TDA is the responsible entity for conducting SFMNP appeals. TDA, CEs, sub-distributing agencies and farmers' market associations have authority to take adverse action pursuant to their roles in the program operation.

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 for adverse action,
- State the effective date of the action, including whether or not the adverse action will be postponed until an appeal decision is made, if applicable, and
- Include the procedure for requesting an appeal, if applicable.

The written notification must be provided not less than 15 calendar days before the effective date of the adverse action.

Requests for appeals must be in writing and postmarked within 10 calendar days of receiving the notice of adverse action. The request must clearly identify what is 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, 11th 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 a SFMNP 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 SFMNP. The ARO's decision is final.

8500 Disputes

If a CE disputes or disagrees with SFMNP guidance, policies or procedures, notify the TDA USDA Foods Specialist at CommodityOperations@TexasAgriculture.gov or at 1-877-TEX-MEAL (1-877-839-6325).