

MARYLAND REGISTER

Emergency Action on Regulations

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1. COMAR Codification

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2. Name of Promulgating Authority

Department of Agriculture

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Title 15
DEPARTMENT OF AGRICULTURE

Subtitle 01 OFFICE OF THE SECRETARY

15.01.18 Farmers' Market Nutrition Program—Appeal Procedure

Authority: Agriculture Article, §2-103, Annotated Code of Maryland

Notice of Emergency Action

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The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to the Maryland Department of Agriculture

Emergency status began:

Emergency status expires:

Comparison to Federal Standards

There is no corresponding federal standard to this emergency action.

Estimate of Economic Impact

The emergency action has no economic impact.

Economic Impact on Small Businesses

The emergency action has minimal or no economic impact on small businesses.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 22

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

Yes

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

Federal Funds

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly:

If a farmer appeals an adverse action that the Department has taken against this person and prevails, the farmer may continue participating in the program. The Department has administered this program for many years and has never had need to take an adverse action against a farmer.

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

Consistent with recently enacted legislation, the proposed action authorizes the Department to impose certain administrative penalties on farm operators who fail to comply with State law (e.g., those operators who: (a) fail to comply with their operations' nutrient management plan, (b) fail to file an Annual Implementation Report in a timely manner, and (c) knowingly apply phosphorus to a field that is prohibited from receiving it).

G. Response to small business worksheet:

1a. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

1b. Households will not be affected by the proposed action.

1c. Businesses that may be affected by the proposed action are farm operators who fail to meet certain requirements imposed under State law. In such cases, the Maryland Department of Agriculture may impose certain administrative penalties. Farm operators who comply with State law will not be affected.

2a. None.

2b. None.

3. There is no long-term economic impact.

4. (1) There is no anticipated effect on the cost of providing goods and services; (2) There is no anticipated effect on the work force; (3) There is no anticipated effect on the cost of housing; (4) There is no anticipated effect on efficiency in production and

marketing; (5) There is no anticipated capital investment, taxation, competition, and economic development; and (6) There is no anticipated effect on consumer choice.

Attached Document:

Title 15 MARYLAND DEPARTMENT OF AGRICULTURE

Subtitle 01 Office of the Secretary

Chapter 18 Farmers' Market Nutrition Program—Appeal Procedure

Authority: Agriculture Article, §2-103, Annotated Code of Maryland

.01 Purpose.

A. *This chapter sets forth the appeal procedure for the Senior Farmers' Market Nutrition Program (SFMNP) and the WIC Farmer's Market Nutrition Program (WIC FMNP). The SFMNP and the WIC FMNP are segments of the Farmers' Market Nutrition Program (FMNP). The Maryland Department of Agriculture administers SFMNP in the State. The Maryland Department of Agriculture and the Maryland Department of Health jointly administer the WIC FMNP in the State. The FMNP, a Federal-State partnership with USDA, is designed to:*

- (1) Provide FMNP recipients with access to locally grown fruits, vegetables, honey, and herbs; and*
- (2) Increase the domestic consumption of agricultural commodities through farmers' markets, roadside stands, and community supported agricultural programs.*

B. *This chapter, as required under 7 CFR 248.16 for the WIC FMNP and 7 CFR 249.16 for the SFMNP, establishes a procedure for the following persons to appeal certain adverse actions of the Maryland Department of Agriculture in its administration of the FMNP:*

- (1) SFMNP applicants and recipients;*
- (2) Local agencies assisting in implementing the SFMNP; and*
- (3) Farmers participating in the SFMNP and the WIC FMNP.*

C. *The Maryland Department of Health has adopted a procedure for the following persons to appeal certain adverse actions it takes in administering its portion of the WIC FMNP:*

- (1) WIC FMNP recipients; and*
- (2) Local agencies assisting in implementing the WIC FMNP.*

.02 Definitions.

A. *In this chapter, the following terms have the meanings indicated.*

B. *Terms Defined.*

- (1) "Department" means the Maryland Department of Agriculture.*
- (2) "Secretary" means the Secretary of the Maryland Department of Agriculture*
- (3) "Farmers' Market Nutrition Program" or "FMNP" means the Senior FMNP and the WIC FMNP.*
- (4) "Local Agency" means a nonprofit entity or local government agency that certifies eligible SFMNP recipients, issues SFMNP coupons, or provides nutrition education or information on operational aspects of the SFMNP to SFMNP recipients.*
- (5) "Senior Farmers' Market Nutrition Program" or "SFMNP" means the Federal-State partnership between USDA and the Department in which USDA provides federal funds to the Department to administer a program designed to:*
 - (a) Provide SFMNP recipients access to locally grown fruits, vegetables, honey, and herbs; and*
 - (b) Increase the domestic consumption of agricultural commodities through farmers' markets, roadside stands, and community supported agricultural programs.*
- (5) "SFMNP Recipient" means an individual, as defined under 7 CFR 249.6, as amended, who is eligible to receive benefits under the SFMNP.*
- (6) "USDA" means the United States Department of Agriculture, Food and Nutrition Service.*

(7) "WIC FMNP" means a Federal-State partnership that USDA has with the Maryland Department of Agriculture and the Maryland Department of Health in which USDA provides federal funds to these departments to administer a program designed to:

(a) Provide WIC FMNP recipients access to locally grown fruits, vegetables, honey, and herbs; and
(b) Increase the domestic consumption of agricultural commodities through farmers' markets, roadside stands, and community supported agricultural programs.

(7) "WIC FMNP recipient" means a woman, infant over four months of age, or child who receives benefits or is waiting to receive benefits under the WIC Program authorized under § 17 of the Child Nutrition Act of 1966, as amended.

.03 Appealing Adverse Actions to the Secretary. The following adverse actions of the Department in its administration of the SFMNP may be appealed to the Secretary.

A. SFMNP applicants. A SFMNP applicant may appeal the denial of certification of SFMNP benefits unless the denial is solely because of the lack of sufficient funding to provide SFMNP benefits to all eligible applicants. While awaiting the hearing, the SFMNP applicant may not receive SFMNP benefits.

B. SFMNP Participants.

(1) A SFMNP recipient may appeal the disqualification or suspension of SFMNP benefits.

(2) Excepting a SFMNP recipient whose certification period has already expired or who become otherwise ineligible for SFMNP benefits, a SFMNP recipient who appeals the termination of benefits within the period of time provided under Regulation .05 shall continue to receive SFMNP benefits until the Secretary reaches a decision or the certification period expires, whichever occurs first.

(3) A SFMNP recipient who becomes ineligible during a certification, or whose certification period expires, may appeal the termination. While awaiting the hearing, the SFMNP recipient may not receive benefits.

C. A local agency may appeal an action disqualifying it from participating in the SFMNP.

D. A farmer may appeal an action:

(1) Denying that person's application to participate in the WIC FMNP or SFMNP;

(2) Imposing a sanction under the WIC FMNP or SFMNP; or

(3) Disqualifying that person from participating in the WIC FMNP or SFMNP.

.04 A farmer or local agency may not appeal the expiration of a contract or agreement with the Department in connection with the WIC FMNP or SFMNP under this chapter.

.05 Time limit for requesting a hearing. If the Department takes one of the adverse actions listed in Regulation .03, the person against whom the action is taken (e.g., the SFMNP applicant or recipient, a local agency, or a farmer) shall request a hearing within 30 days from the date that the Department mails or otherwise issues the notice of the action.

.06 Postponement pending decision. If the Department finds that an adverse action that affects a local agency or farmer may unduly inconvenience SFMNP or WIC FMNP recipients, the Department may postpone the action until a decision in the appeal is rendered.

.07 Procedure. If the Department takes one of the adverse actions listed in Regulation .03, it shall provide the person affected (e.g., the SFMNP applicant or recipient, a local agency, or a farmer) with the following:

A. Three days in advance of the effective date of the adverse action, written notification of the adverse action, the cause for the action, and the effective date of the action, including the Department's determination of whether the action shall be postponed under Regulation .06 if it is appealed, and the opportunity for a hearing;

B. The opportunity to appeal the action within 30 days from the date that the Department mails or otherwise issues the notice of adverse action;

C. Adequate advance notice of the time and place of the hearing to provide all parties involved sufficient time to prepare for the hearing;

D. The opportunity to present the person's case and at least one opportunity to reschedule the hearing date upon specific request;

E. The opportunity to confront and cross-examine adverse witnesses;

F. The opportunity to be represented by counsel or, in the case of a SFMNP recipient, by a representative designated by the recipient, if desired;

G. The opportunity to review the case record before the hearing; and

H. Written notification of the decision in the appeal, within 60 days from the date of receipt of the request for a hearing by the Department.

.08. The Department's action shall rest solely on the evidence presented at the hearing and the statutory and regulatory provisions governing such hearings. The basis for the Department's decision shall be stated in writing.

.09 Continuing responsibilities. When a farmer or local agency appeals an adverse action, and is permitted to continue in the FMNP while its appeal is pending, this person continues to be responsible for compliance with the terms of the written agreement or contract with the Department.

.10 Judicial review. If the Secretary renders a decision against a SFMNP applicant or recipient, a local agency, or a farmer and this person expresses an interest in pursuing a further review of the Secretary's decision, the person may file a petition for judicial review in the appropriate circuit court as required by the Maryland Rules of Procedure.

.11 Mediation. If a person affected by an adverse action of the Department has filed an appeal with the Secretary, the person may request that the appeal process be paused for sixty days to attempt to resolve the matter through the Department's Mediation Program. If the matter is not resolved through mediation when this period expires, the appeal process shall resume.