

**U.S. Department of Agriculture
Food and Nutrition Service
Administrative Review Branch**

AM/PM Mini Mart #05507,

Appellant,

v.

**Office of Retailer Operations and
Compliance,**

Respondent.

Case Number: C0256144

FINAL AGENCY DECISION

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), finds that there is insufficient evidence to support the determination by the Office of Retailer Operations and Compliance to withdraw the authorization of AM/PM Mini Mart #05507 (“Appellant”) to participate as an authorized retailer in the Supplemental Nutrition Assistance Program.

ISSUE

The purpose of this review is to determine whether the Office of Retailer Operations and Compliance took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.1(n), in its administration of the Supplemental Nutrition Assistance Program (SNAP) when it withdrew Appellant’s authorization to participate as a retailer in SNAP on June 17, 2022.

AUTHORITY

According to 7 U.S.C. § 2023 and its implementing regulations at 7 CFR § 279.1, “A food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 . . . may . . . file a written request for review of the administrative action with FNS.”

CASE CHRONOLOGY

In a letter dated May 18, 2022, the Office of Retailer Operations and Compliance requested additional information from Appellant. In accordance with regulation, each SNAP-authorized firm is required to undergo a periodic reauthorization process to determine whether or not the firm still meets eligibility requirements.

Having not received a response from Appellant, in a letter dated June 7, 2022, the Office of Retailer Operations and Compliance withdrew Appellant's authorization to participate as a retailer in SNAP. This withdrawal was based on failure to provide sufficient information to determine the firm's eligibility for continued authorization.

The Office of Retailer Operations and Compliance determined that the firm failed to respond to its inquiry in a reasonable period of time.

On June 17, 2022, Appellant appealed the Office of Retailer Operations and Compliance decision and requested an administrative review of this action. The appeal was granted and implementation of the withdrawal has been held in abeyance pending completion of this review.

STANDARD OF REVIEW

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means Appellant has the burden of providing relevant evidence that a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than untrue.

CONTROLLING LAW

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2018), and implemented through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.1(m) establishes the authority upon which the authorization of any firm to participate in SNAP may be withdrawn if it fails to meet established eligibility requirements.

7 CFR § 278.1(b) relays specific program requirements for retail food store participation, which reads, in part:

An applicant shall provide sufficient data and information on the nature and scope of the firm's business for FNS to determine whether the applicant's participation will further the purposes of the program. Upon request, an applicant shall provide documentation to FNS to verify information on the application. Such information may include, but is not limited to, State and local business licenses, Social Security cards, drivers' licenses, photographic identification cards, bills of sale, deeds, leases, sales contracts, State certificates of incorporation, sales records, invoice records and business-related tax records. Retail food stores and wholesale food concerns and other entities eligible for authorization also shall be required to sign a release form which will authorize FNS to verify all relevant business related tax filings with appropriate agencies. In addition, they must obtain corroborating documentation from other sources as deemed necessary to ensure the legitimacy of applicant firms, as well as the accuracy of information provided by the stores and concerns. Failure to comply with any request for information or failure to sign a written release form shall result in denial of the application for authorization or withdrawal of a firm or concern from the program...

7 CFR § 278.1(m) states:

FNS may withdraw or deny the authorization of any firm which: (1) Refuses to accept correspondence from FNS; (2) Fails to respond to inquiries from FNS within a reasonable time; or (3) Cannot be located by FNS with reasonable effort.

7 CFR § 278.1(n) states:

Periodic reauthorization. At the request of FNS a retail food store or wholesale food concern will be required to undergo a periodic reauthorization determination by updating any or all of the information on the firm's application form. Failure to cooperate in the reauthorization process will result in withdrawal of the firm's reauthorization process will result in the withdrawal of the firm's approval to participate in the program.

APPELLANT'S CONTENTIONS

A review of the evidence does not support the Office of Retailer Operations and Compliance's determination in this case. Accordingly, it is unnecessary to address Appellant's contentions in this matter.

This administrative review decision is based on the specific circumstances of this case as documented by materials provided by Appellant and the Office of Retailer Operations and Compliance. In addition, this administrative review decision does not establish policy or supersede federal law or regulations.

Nothing in this decision prevents the Office of Retailer Operations and Compliance from requesting additional information regarding Appellant's eligibility for authorization. Should Appellant be subject to a subsequent sanction, Appellant will be notified of its appeal rights at that time.

RIGHTS AND REMEDIES

Under the Freedom of Information Act, we are releasing this information in a redacted format as appropriate. FNS will protect, to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy.

RICH PROULX
ADMINISTRATIVE REVIEW OFFICER

September 26, 2022