

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

Pyramid Grocery,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0209954

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is insufficient evidence to support a finding that a permanent disqualification from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against Pyramid Grocery (hereinafter “Pyramid Grocery” or “Appellant”) by the Retailer Operations Division of FNS. However, the evidence supports a one-year disqualification from the SNAP for the extension of credit to SNAP customers.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(e)(1)(i) in its administration of the SNAP, when it imposed a permanent disqualification against Pyramid Grocery.

AUTHORITY

7 U.S.C. 2023 and its implementing regulations at 7 CFR § 279.1 provide that “[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 July 13, 2018, the Retailer Operations Division informed the Appellant that Pyramid Grocery was in violation of the terms and conditions of the SNAP regulations, 7 CFR § 270 –282, based on EBT SNAP benefit transactions that "establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm." The letter also noted that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt under the conditions specified in 7 CFR § 278.6(i). Per

UPS confirmation of delivery, the charge letter was delivered to the Appellant at the store address of record on July 16, 2018.

The record indicates that via letter of July 25, 2018, the Appellant's counsel requested information and documents from FNS with regard to the agency's case against Pyramid Grocery pursuant to the Freedom of Information Act (FOIA). In a letter dated February 14, 2019, FNS provided the Appellant's counsel with a response to the initial FOIA request. The Appellant's counsel appealed the FOIA request in a letter received on May 16, 2019. In a letter dated February 2, 2021, FNS provided the Appellant's counsel with a response to the FOIA appeal. On February 5, 2021, the Retailer Operations Division sent a 10 day letter to counsel providing the opportunity to respond to the letter of charges. The record indicates that the 10-day letter was delivered to the Appellant/counsel on February 8, 2021.

The record reflects that on February 9, 2021, counsel requested an extension in time for providing a response to the letter of charges. Via letter of February 11, 2021, the Retailer Operations Division granted counsel's time extension request to March 5, 2021. In that letter, counsel was informed that the time to request a civil money penalty in lieu of permanent disqualification and to provide the documentation to support such a request could not be extended per SNAP regulations.

In responses to the Retailer Operations Division of March 5, 2021, May 5, 2021, December 17, 2021, and December 30, 2021, the Appellant, through counsel, replied to the letter of charges citing credit extension and other various explanations for the transactions noted in the charge letter. The record reflects that the Retailer Operations Division received and considered the information provided prior to making a determination.

After considering the Appellant's responses and the evidence in the case, the Retailer Operations Division issued a determination letter dated April 5, 2022, informing the Appellant that Pyramid Grocery was being permanently disqualified from participation in the SNAP in accordance with 7 CFR § 278.6(e)(1) for trafficking violations. The letter also stated that the Appellant was not eligible for a trafficking civil money penalty (CMP) in accordance with 7 CFR § 278.6(i) as the Appellant did not submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter postmarked April 15, 2022, the Appellant, through counsel, requested an administrative review of the Retailer Operations Division's decision to permanently disqualify the firm from participation in the SNAP. FNS granted the Appellant's request for administrative review by letter dated April 19, 2022. Via email correspondence of May 10, 2022, the Appellant, through counsel, submitted additional information in support of the request for administrative review.

STANDARD OF REVIEW

In appeals of adverse actions, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That means the Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

CONTROLLING LAW

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, amended, 7 U.S.C. § 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 2021, Part 278.6(a) and Part 278.6(e)(1)(i) of the Regulations establish the authority upon which a permanent disqualification may be imposed upon a retail food store or wholesale food concern. There also exist FNS policy memoranda and clarification letters which further explain the conditions necessary in order to permanently disqualify retail stores.

7 U.S.C. § 2021(b)(3)(B) states, inter alia:

... a disqualification under subsection (a) shall be ... permanent upon ... the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards ...

7 CFR § 278.6(a) states, inter alia:

FNS may disqualify any authorized retail food store ... if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system ... [Emphasis added].

7 CFR § 278.6(e)(1)(i) states:

Disqualify a firm permanently if: Personnel of the firm have trafficked as defined in § 271.2.

7 CFR § 271.2 states, inter alia:

Trafficking means...The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone...

7 CFR § 278.6(f)(1) states, inter alia:

A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification.

7 CFR § 278.6(i) states, inter alia:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking as defined in § 271.2 if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations ...

7 CFR § 278.6(b)(2) states, inter alia:

(ii) Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence as specified in § 278.6(i), that establishes the firm's eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in § 278.6(i). This information and evidence shall be submitted within 10 days, as specified in § 278.6(b)(1). [Emphasis added].

(iii) If a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified in § 278.6(b)(1), the firm shall not be eligible for such penalty. [Emphasis added].

SUMMARY OF CHARGES

The Appellant was charged and determined to be trafficking based on an analysis of EBT transaction data from January 2018 through May 2018. This involved the following SNAP transactions patterns which are indicative of trafficking:

- Multiple transactions were made from the accounts of individual SNAP households within a set time period; and
- Excessively large purchase transactions were made from recipient accounts.

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that questionable transactions were the result of trafficking.

APPELLANT'S CONTENTIONS

The following represents a brief summary of the Appellant's contentions in this matter. Please be assured, however, that in reaching a decision, full attention and consideration was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

In the replies to the charge letter, in the administrative review request, and in subsequent correspondence, the Appellant, through counsel, stated the following summarized contentions, in relevant part:

- The Appellant denies the trafficking charges. The charge letter transactions reflect legitimate purchases by the store's SNAP customers. At no time did the Appellant exchange SNAP benefits for cash, alcohol, tobacco, drugs, or ineligible items.
- At no time did the Appellant restrict customers who use SNAP benefits to pay for items to shop only at certain times, did not charge them higher prices, and did not require minimum purchases.
- Prior to receipt of the charge letter, the Appellant was not ever charged with any SNAP violations.
- At no time has FNS ever warned the Appellant that SNAP violations may be occurring at the store.

- Since being authorized to participate in the SNAP on October 24, 2014, the Appellant has at all times displayed its SNAP benefits poster, FNS-132.
- FNS's SNAP regulations are silent as to what might constitute an excessively large SNAP transactions or what multiple transactions from individual households within a set period of time means. Absent a precise set of rules or standards to adhere, retailers have no ability to conform their conduct to FNS's vague and undisclosed trafficking enforcement standards.
- Neither the charge letter nor the Case Analysis Document (CAD) explains why the transactions identified in Attachments 1 and 2 are believed by FNS to be indicative of trafficking. More importantly, the charge letter does not identify why FNS believes that "repetitive patterns" can support a store's permanent disqualification from the SNAP, especially since a SNAP authorized retailer is not allowed to treat SNAP beneficiaries differently from cash customers.
- The charge letter includes 294 alleged violations which purport to total \$13,767.34 in illegal transactions. This figure is not reflective of the aggregate value of alleged violations under any construct. For example, nearly all of the alleged violations in Attachment 1 appear to be duplicates of alleged violations in Attachment 2.
- After excluding duplicates and transactions under \$50.00, the aggregate value of the remaining allegedly illegal transactions is an insignificant percentage of the store's EBT transactions during the review period.
- During the review period, the Appellant did a substantial amount of business, including \$23,204.21 in SNAP redemptions.
- The CAD incorrectly characterizes the Appellant as a convenience store. The Appellant is a small grocery store that serves the impoverished 5 U.S.C. § 552 (b)(6) & (b)(7)(C) neighborhood in 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The majority of the store's customers are SNAP recipients.
- The Appellant sells many different SNAP-eligible foods. It sells dozens of staple food items, including high dollar items such as 10-pound rolls of ground beef, large bags of chicken wings, bags of shrimp, boxes of crab legs, infant formula, bread, milk, cheese, butter, fresh fruits and vegetables, seafood, cereals, canned fruits and vegetables, juice, and eggs.
- Many of the Appellant's customers shop there because of its proximity to their homes. Additionally, the prices for staples and other SNAP-eligible food items are reasonable, especially when considering the closest SNAP-authorized store is approximately ¾ mile away.
- The store has one register and one EBT terminal. During the review period, the store's register was not a sophisticated one and was not integrated with the credit/debit/EBT terminal. At that time, the register was not able to generate detailed register receipts that listed the specific items purchased. Following the completion of a SNAP transaction, the Appellant provided all customers with receipts. The Appellant is not aware of any requirement under Federal or State law or regulation (including FNS's SNAP regulations) that required or requires the Appellant to keep register receipts. At that time, no FNS guidance, including the *SNAP Training Guide for Retailers*, suggested that SNAP retailers obtain a sophisticated point-of-sale system that could generate itemized receipts at any time.
- During the review period, more than half of the store's customers used SNAP benefits to purchase eligible food items. Approximately 80% of the store's gross receipts during 2018 were for SNAP-eligible food items. The Appellant's federal tax return established that the Appellant averaged approximately \$9,000.00 in monthly sales of food items and just over \$4,600.00 in monthly SNAP redemptions. The Appellant's SNAP customers also frequently purchased non-food items with cash, credit, or debit.

- The monetary amount of the store's redemptions and number of SNAP transactions were generally consistent, except during January 2018 when they were lower than average, and otherwise ranged from \$4,312.42 during May 2018 to \$5,428.75 during February 2018 and from 336 transactions (during May 2018) to 389 transactions (during March 2018). The store's transaction history also did not change dramatically after the charge letter was issued. The store's average SNAP transaction also did not vary materially during the review period, ranging from \$12.83 during May 2018 to \$16.06 during February 2018.
- With regard to the transactions documented in Attachment 1, most of these transactions were hours apart and numerous ones were on different days. It is not a violation of the Food and Nutrition Act or any SNAP regulations for beneficiaries to shop at a store multiple times daily or redeem all of their monthly benefits at one time, even if all such benefits are redeemed for the same item.
- Attachment 1 contains only 22 sets (53 total transactions) of allegedly suspicious transactions during the five month review period. That averages to just over four per month or approximately one set of SNAP transactions per week. One pair of "rapid" transactions by a SNAP household weekly in this busy store, which conducted 1,662 SNAP transactions during the five month review period, is hardly suspicious, is not a pattern, and is not indicative of trafficking.
- Only 14 unique households conducted these transactions and nine were involved in only one such transaction over the five month review period. Three other households were only involved in two such transactions. These limited transactions involving a small number of SNAP households over the review period constitute outliers, not a pattern of engaging in suspicious SNAP transaction activity.
- Only four sets of transactions took place under three minutes (transactions 1 through 8). Two of these households shopped at the Appellant on two occasions the same day their benefits were replenished (transactions 3-4 and 5-6) and one shopped at the Appellant during two days after receiving their benefits (transactions 1-2). These pairs took place infrequently, less than once per month. All of the transactions were under \$53.71, which could easily be a small number of items.
- Most of the Attachment 1 transactions were more than an hour apart. This is not surprising considering the hundreds of residents who live at 5 U.S.C. § 552 (b)(6) & (b)(7)(C), the large apartment complex located just to the west of the store and in the surrounding neighborhood. These SNAP beneficiaries often make numerous trips to the Appellant hours apart or on different days, especially considering that most walk to the store and/or purchased heavy items like water and soda.
- Because FNS has incorrectly characterized the Appellant as a convenience store, its analysis is flawed. There is no basis for FNS's belief that deeming \$75.00 in SNAP benefits within 18 hours or \$100.00 within 24 hours is suspicious or evidence of trafficking, especially when a SNAP authorized retailer is the only one in the vicinity and when it carries a substantial array of eligible food products. See unredacted submitted Administrative Record produced by the United States in *Dashmesh v. United States*. And to the extent that FNS contends that the Appellant engaged in trafficking because its average SNAP redemption is higher than other SNAP authorized convenience stores in 5 U.S.C. § 552 (b)(6) & (b)(7)(C), its contention is unsupportable because it is based on data associated with convenience stores, not small groceries that sell substantial amounts of staple food items in areas with no other stores within reasonable walking distance.
- Many of the transactions in Attachment 1 took place shortly after those households received their monthly SNAP benefit allotment. 5 U.S.C. § 552 (b)(6) & (b)(7)(C)'s Division of

Family and Children Services uses a scheduled based on the last two digits of the household's EBT card number and SNAP benefit accounts are replenished between the 5th and the 23rd of the month. For example, the EBT card for the household identified in transactions 2-3 and 4-5 ended in "66." For SNAP beneficiaries whose EBT cards ended in numbers between 60 and 69, they received their benefits on the 17th of the month. It is therefore not surprising, and not evidence of trafficking, that this household shopped at the store twice on the 17th of January and on the 17th of April.

- SNAP beneficiaries are permitted to utilize all of their monthly benefits at any SNAP authorized store they choose. They can choose to use all of their benefits at one time as well. FNS's data shows that SNAP beneficiaries typically redeem most of their monthly benefits at the beginning of the benefit cycle. <https://www.fns.usda.gov/snap/benefit-redemption-patterns-snap-fy-2017>.
- Additionally, during the review period the store occasionally extended credit to a small number of SNAP customers who lacked sufficient benefits on their EBT card to feed their families. They returned the following month, after their benefits had been replaced, and the amount owed was processed in one EBT transaction and then additional purchased items were processed immediately thereafter in a second transaction. This can be done in quick succession and is most likely what took place during transactions 3 through 8. The Appellant submits ledger book entries evidencing credit extension to numerous customers. At this time and without production of the names and contact information of those SNAP beneficiaries whose EBT cards were referenced in Attachment 1, the Appellant cannot procure declarations from these customers substantiating credit extension to them. The Appellant requests that FNS provide such information in its possession or available via the State Administration Terminal so that the store can supplement its response.
- Transaction 2 appears to be an erroneous transaction duplicative of transaction 1.
- Many of the Appellant's customers come into the store with friends and/or relatives and, on occasion, use their SNAP card to buy items for them. In that event, these customers would ask the Appellant to provide a sub-total for their items, as well as a sub-total for their friend's items. In that event, two EBT transactions would be processed in quick succession, occasionally under three minutes. This is true regardless of whether the form of tender was via cash, credit, debit, or EBT.
- Many of the store's customers, especially SNAP recipients, did not have vehicles and did not have the ability to transport on foot substantial amounts of food items from other SNAP authorized stores to their homes. This is especially true considering that the closest SNAP authorized store is Family Dollar which is approximately $\frac{3}{4}$ mile from the Appellant. Although the SNAP Retailer Locator asserts that Family Dollar is 0.6 miles away, that measurement does not reflect that railroad tracks and numerous city blocks prevent SNAP beneficiaries from walking there in a straight line.
- With regard to the transactions documented in Attachment 2, only five transactions exceeded \$100.00 and only 79 exceeded \$50.00 during the review period.
- The Appellant has no control over SNAP customers' purchasing habits.
- The allegedly high dollar value transactions are routine and unexceptional given that the store is a small grocery store and sold substantial amounts of eligible food items, including high dollar staple food items, and is not a convenience store.
- SNAP retailers are prohibited from refusing to sell eligible food items to SNAP beneficiaries or otherwise discriminate against them for using SNAP benefits.
- Attachment 2 transactions represent a relatively small percentage, under 15%, of SNAP redemptions at the store during the review period. Only 79 SNAP transactions—less than

5% of the store's total SNAP transactions during the review period—exceeded \$50.00. The transactions that exceeded \$50.00 during the review period amounted to approximately 15 transactions per month or only one every two days. Only five transactions exceeded \$100.00 and represent only 0.3% of the store's SNAP transactions.

- Transactions totaling under \$50.00 are not suspicious or evidence of trafficking under any circumstances, especially when isolated SNAP retailers are located in an extreme food desert with no large retailers in the vicinity.
- Also, prices are higher in 5 U.S.C. § 552 (b)(6) & (b)(7)(C) than in rural parts of the country. To the extent FNS used national averages for Scan F transactions, this was inappropriate and resulted in transactions being improperly included. Upon information and belief, FNS now uses national averages, not state or county ones, for determining the monetary threshold for these types of transactions. This is an improper yardstick as wide variations in spending exist in different states, as well as between expensive urban areas and less expensive rural ones.
- Given that the store sells 100-piece bags of chicken wings at \$90.00, crab legs at \$40.00, large cans of infant formula at \$32.00, seafood platters at \$20.00, meat sold by the pound, including 10-pound rolls of ground beef at \$30.00, Pick-5 grocery packages at \$20.00, shrimp at \$15.00 and other high priced items, these are routine transactions and not the result of trafficking. Virtually no convenience store, in 5 U.S.C. § 552 (b)(6) & (b)(7)(C) or elsewhere, sells staples in these volumes and at these prices.
- The Appellant is a busy small grocery store with substantial gross receipts and expenditures.
- During 2018, the owner routinely picked up eligible food items for the store. The owner typically ordered SNAP-eligible food items at least weekly.
- The volume of goods sold by the Appellant and purchase invoices strongly support the propriety of legitimacy of these transactions. Per the submitted tax return for 2018, the Appellant had \$105,337.00 in gross receipts. Thus, during the review period, the Appellant had, on average, just under \$9,000.00 in gross receipts per month. The store averaged \$7,000.00 in monthly sales of eligible food items.
- The Appellant purchased most of the eligible food items sold at the store from other SNAP authorized retailers such as Publix, Kroger, Piggly Wiggly, and several other retailers. Unfortunately, most of the receipts for those items were printed on thermal paper and have faded substantially or entirely since 2018.
- The submitted purchase invoices demonstrate that the store purchased and sold a substantial volume of eligible food items. These invoices show that the cost of goods sold greatly exceeded the store's volume of SNAP transactions. The Appellant had more than sufficient sales to support the volume of SNAP redemptions at the store during the review period.
- The Appellant does not have a uniform markup on items it sells. Items purchased from wholesalers are typically marked up by 35%. The Appellant also purchases items from supermarkets and super stores that are on sale, especially "buy one get one free" or similar deeply discounted items. Those items are typically marked-up by 125-150%.
- The Appellant requests that the permanent SNAP disqualification be dismissed or in the alternative, disqualify the firm for one year based on the extension of credit to SNAP customers.
- The charge letter is not based upon any direct evidence that trafficking took place at the Appellant. It is founded upon circumstantial evidence from FNS's ALERT system. The fact that the ALERT system may flag patterns of allegedly suspicious transactions that FNS deems "unusual, irregular, or inexplicable" does not support the determination that the store engaged in trafficking in SNAP benefits absent substantial additional investigation. The ALERT system is replete with bias and is not subject to proper statistical and other controls.

The permanent disqualification of the Appellant pursuant to FNS's ALERT system and without supporting direct evidence is arbitrary and capricious. With the exception of a single store visit lasting under an hour, FNS primarily relies entirely on the store and household transaction data in deciding whether to disqualify SNAP retailers. FNS does not typically interview any SNAP beneficiaries who redeemed benefits at the store during the review period and whose transactions are identified in the Attachments regarding their shopping habits. This represents an abdication of FNS's responsibility to adjudicate SNAP retailer disqualification proceedings fairly and equitably.

- The transactions in Attachments 1 and 2 reflect that many SNAP beneficiaries exercised their right to redeem their SNAP benefits in varying amounts and at different times at the Appellant. However, because FNS refused to provide the Appellant with the names and other contact information of those beneficiaries whose EBT card were utilized in these allegedly illegal transactions, there is no way for the Appellant to locate and establish through the best evidence possible---the sworn testimony of its customers---that they utilized their SNAP benefits to purchase eligible food items.
- To the extent that the Appellant's responses are deemed insufficient, the Appellant requests additional information about these transactions, including identification of information about the SNAP beneficiary or household that made the purchase so that it can prepare a comprehensive response.
- Despite requesting all records in FNS's possession related to the charge letter, FNS declined, to date, to produce a complete copy of the entire unredacted investigatory record, including the unredacted CAD. FNS's failure to provide the Appellant with the complete administrative record when it is faced with permanent SNAP disqualification violates due process clause of the Constitution of the United States. The Appellant never had the benefit of reviewing the same records and was never provided with a full and fair opportunity to review and respond to the "evidence" that FNS reviewed and relied on in deciding to permanently disqualify the store from the SNAP. FNS's refusal to produce all relevant records to retailers facing permanent disqualification is arbitrary, capricious, and unconstitutional.

In support of these contentions, the Appellant, through counsel, submitted the following information for review:

- July 13, 2018 charge letter with Enclosures;
- April 5, 2022 determination letter;
- July 25, 2018 FOIA request from counsel;
- February 14, 2019 partial response to counsel's FOIA request;
- March 28, 2019 response to counsel's FOIA request
- February 2, 2021 response to counsel's FOIA appeal;
- Declaration of store owner dated March 5, 2021;
- A screenshot of the SNAP Retailer Locator showing stores within a mile of the Appellant;
- Redacted Case Analysis Document;
- Redated ALERT data for Scan B2 for the store Your Stop;
- 2018 U.S. Corporation tax return;
- Numerous inventory purchase invoices/receipts;
- Little Debbie list of total purchases, by date for January 2018 – April 2018 and June 2018;

- Produce list of total purchases, by date for January 2018 – July 2018 and June 2019 – August 2019;
- Publix list of total purchases, by date for January 2018 – July 2018;
- Bread list of total purchases, by date for January 2018 – April 2018, June 2018 – July 2018, and November 2017;
- Meat list of total purchases, by date for January 2018 – July 2018 and December 2017; and
- Samson Warehouse list of total purchases, by date for January 2018 - July 2018, May 2017 – December 2017, and March 2017.

ANALYSIS AND FINDINGS

A review of the evidence in this case does not support the Retailer Operations Division's determination of permanent disqualification. Accordingly, it is unnecessary to address the Appellant's contentions in this matter regarding trafficking.

The Appellant admitted to accepting SNAP benefits in payment for items sold on credit. Accepting SNAP benefits in payment for items sold on credit is a violation of the SNAP regulations and carries a penalty of a one-year SNAP disqualification. Accordingly, the determination is modified to a one-year disqualification in accordance with 7 CFR § 278.2(f) and § 278.6(e)(4)(ii).

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

FOIA Redactions

With regard to the Appellant's contentions with respect to FOIA redactions, the authority for redaction of certain information in investigation reports is based on the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended by P.L. 93-502, P.L. 94-409, and P.L. 99-570, 7 CFR 1.1 to 1.23, 7 CFR 295.1 to 295.10, and the Food and Nutrition Act of 2008, as amended. In response to counsel's FOIA request and appeal, the FNS FOIA office provided counsel with a copy of the administrative record with redacted information pertaining to the subject case. Certain information contained in the administrative record is protected under FOIA and shall not be released by FNS. What information is/is not provided to the Appellant/counsel with regard to the FOIA request and appeal is beyond the scope of this administrative sanction determination.

CONCLUSION

Based on a review of all available information in this case, the permanent disqualification against Pyramid Grocery is modified to a one-year disqualification due to the Appellant's violations of SNAP regulations pertaining to credit extension to SNAP customers.

The record shows that the permanent disqualification action took effect on April 6, 2022. As of the date of this Final Agency Decision, the disqualification sanction remains in effect. Accordingly, the firm may not reapply for SNAP authorization until one year after April 6, 2022, the implementation date of the disqualification decision.

In accordance with 7 CFR § 278.1(b)(4), at the time of any new application for participation in SNAP, the firm will be required to submit a collateral bond or irrevocable letter of credit as a condition for again being authorized to participate in the Program. This bond requirement is due to the firm's disqualification of a period longer than six months.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. 2023) and to Section 279.7 of the Regulations (7 CFR § 279.7) with respect to your right to a judicial review of this determination. Please note that if a judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which you reside or are engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

Under the Freedom of Information Act, FNS is 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.

LORIE L. CONNEEN
ADMINISTRATIVE REVIEW OFFICER

August 2, 2022