

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

**Choice Cuts Meat Company,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0217165**

**FINAL AGENCY DECISION**

The USDA, Food and Nutrition Service (FNS) finds that there is sufficient evidence to support the decision of the Retailer Operations Division to withdraw the authorization of Choice Cuts Meat Company to participate as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP). As a result, the Appellant may not reapply for six (6) months from the effective date of the withdrawal. However, if your business model remains the same and you reapply, your application may be denied for the same reason it was withdrawn this time.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, when it withdrew the authorization of the Appellant to participate as a SNAP retailer.

**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**

As part of a routine reauthorization process, the Appellant submitted an online reauthorization form FNS-252-R, entitled “Supplemental Nutrition Assistance Program Reauthorization Application for Stores” on October 12, 2018. During the reauthorization process, the Appellant provided documents requested by FNS including IRS Form 1099s issued to eight (8) individuals.

In a letter dated April 3, 2019, the Retailer Operations Division informed the Appellant that the firm did not meet the definition of a retail food store under 7 CFR 271.2 and 278.1(b)(1) as it

was an ineligible wholesale distributor. Therefore, the firm's authorization was withdrawn. The letter also informed the Appellant that it could not submit a new application to participate in SNAP for a period of six (6) months from the effective date of the withdrawal as provided by SNAP regulations at 7 CFR § 278.1(k)(2).

In a letter postmarked April 9, 2019, the Appellant requested an administrative review of the Retailer Operation Division's withdrawal of its SNAP authorization. The request for review was granted and implementation of the withdrawal was held in abeyance pending completion of this review.

### **STANDARD OF REVIEW**

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

### **CONTROLLING LAW AND REGULATIONS**

The controlling law in this matter is found in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2018), and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.1(k) provides the authority upon which FNS shall withdraw the authorization of any firm if it fails to meet SNAP eligibility criteria.

7 CFR § 278.1(l)(1)(ii) reads, in relevant part:

FNS shall withdraw the authorization of any firm authorized to participate in the program for any of the following reasons ... (ii) The firm fails to meet the specifications of paragraph (b), (c), (d), (e), (f), (g), (h), or (i) of this section ....

7 CFR § 278.1(b)(1)(i)(A) states:

An establishment or house-to-house trade route shall normally be considered to have food business of a nature and extent that will effectuate the purposes of the program if it sells food for home preparation and consumption and meets one of the following criteria: Offer for sale, on a continuous basis, a variety of qualifying foods in each of the four categories of staple foods as defined in § 271.2 of this chapter, including perishable foods in at least three of the categories (Criterion A); or have more than 50 percent of the total gross retail sales of the establishment or route in staple foods (Criterion B).

7 CFR § 278.1(c) states:

Wholesalers. A wholesale food concern may be authorized to accept coupons only from a specified customer or customers if it meets the requirements of paragraphs (a) and (b) of this section, and FNS determines it is required as a redemption outlet:

- (1) For one or more specified authorized drug addict or alcoholic treatment programs,
- (2) For one or more specified authorized group living arrangements,
- (3) For one or more specified authorized shelters for battered women and children,
- (4) For one or more specified authorized nonprofit cooperative food-purchasing ventures,
- (5) For one or more specified authorized public or private nonprofit homeless meal providers, or
- (6) For one or more specified authorized retail food stores which are without access to an insured financial institution which will redeem their coupons.

No firm may be authorized to accept and redeem coupons concurrently as both a retail food store and a wholesale food concern. Authorizations of wholesale food concerns granted prior to January 28, 1982 shall expire on May 31, 1982. Wholesale food concerns desiring to participate in the program after that date must reapply for authorization in accordance with the provisions of this paragraph.

7 CFR § 278.1(k)(2) reads, in relevant part:

... Any firm that has been denied authorization on these bases shall not be eligible to submit a new authorization for authorization in the program for a minimum period of six months from the effective date of the denial.

### **APPELLANT'S CONTENTIONS**

The Appellant made the following summarized contentions in its request for administrative review, in relevant part:

- The firm has never operated as a wholesale distributor in its history. Instead, it operates as a house-to-house trade route under 7 CFR § 278.1(b)(1)(i)(A).
- The firm does not now, nor has it ever, purchased food for other merchants who own other stores or their own companies to distribute.
- In the future, to address any confusion which may be created by the issuance of an IRS Form 1099, the firm is willing to offer independent contractors who receive 1099s a position with the firm as employees. If any independent contractor who receives a 1099 from the firm refuses an offer of employment, they will no longer be associated with Choice Cuts Meat Company.
- On occasion, the firm has run credit cards for others who may not have had the ability to accept a credit card for their own business. These individuals also received a 1099 from the firm. Choice Cuts Meat Company is willing to no longer offer that service to others.

The preceding may represent only a brief summary of the Appellant's contentions in this matter. However, in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

## **ANALYSIS AND FINDINGS**

In reaching its decision to withdraw the firm's authorization, the Retailer Operations Division reviewed documents received from the Appellant on March 29, 2019 which included IRS Form 1099s issued to eight (8) individuals. A review of the entire case record indicates by a preponderance of the evidence that the Retailer Operations Division properly determined that Choice Cuts Meat Company does operate as a wholesale distributor based on procedures established by FNS.

Delivery routes generally deliver and sell food at set locations and times, especially in rural areas. However, Choice Cuts Meat Company submitted 1099s for contracted workers associated with the firm. Although Choice Cuts Meat Company may not consider itself a wholesale distributor, under procedures established by FNS in November 2018, firms that submit 1099s are considered by FNS to be operating as a wholesale distributor, not a retailer, and are no longer considered eligible for authorization and such firms shall be withdrawn per 7 CFR § 278.1(l)(1)(ii).

### **Basis of Determination**

The Appellant states that it is willing to make changes to avoid the further issuance of form 099s including, but limited to, hiring its independent contractor(s) as a firm employee. With regard to this contention, it is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier determination of the Retailer Operations Division. This review is limited to what circumstances existed at the time of the determination which forms the basis of the Retailer Operations Division's decision. The Appellant may reapply six (6) months from the effective date of the withdrawal and any changes to its business model will be taken into consideration at that time.

## **CONCLUSION**

Based on the analysis above, the decision by the Retailer Operations Division to withdraw the SNAP authorization of Choice Cuts Meat Company is sustained. In accordance with 7 CFR § 278.1(k)(2), the Appellant shall not be eligible to submit a new application for SNAP authorization until six (6) months after the effective date of the withdrawal decision. However, if the business model remains the same and you reapply, your application may be denied for the same reasons it was withdrawn this time.

## **RIGHTS AND REMEDIES**

Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) addresses 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.

RONALD C. GWINN  
Administrative Review Officer

June 5, 2019