



Food and
Nutrition
Service

Retailer and Issuance Policy and Innovation Division, SNAP
Policy Memorandum 2021-01

1320
Braddock
Place
Alexandria
VA 22314

- Subject:** **Administrative and Judicial Review**
- Legislation:** Food and Nutrition Act, Section 14 [7 U.S.C. 2023] Administrative and Judicial Review
- Regulations:** 7 CFR 279
- Supersedes:** RIPID (formerly RPMD) Policy Memos 2014-01 and 2020-01, “Administrative and Judicial Review”

Implementation: Upon Publication

Any firm may request administrative and judicial review, if it is aggrieved by any of the actions described in section 279.1(a) of the Supplemental Nutrition Assistance Program (SNAP) regulations. The Administrative Review Branch (ARB) ensures that the Food and Nutrition Service (FNS) follows the provisions of the Food and Nutrition Act (the Act), SNAP regulations, and agency retailer policy, and that the agency's administrative actions are equitable and consistent.

Administrative reviews are conducted by designated Administrative Review Officers who make independent decisions that are not subject to amendment or reversal except through judicial review proceedings. The decision of the review officer shall take effect 30 days after the date of delivery of the Final Agency Decision to the firm.

A firm aggrieved by an administrative review decision may request judicial review of the Agency's determination. Pursuant to the Act, requests for judicial review may be filed either in Federal district court or in a state court of competent jurisdiction.

Non-appealable Actions

- Denial of request that a period of disqualification already imposed be converted to a Civil Money Penalty (CMP);
- Imposition of (the remaining balance of) a period of disqualification as a result of failure to make payments on a previously imposed CMP, or for failure to acquire

or maintain a required bond or letter of credit (LOC) following imposition of a CMP;

- Withdrawal for failure to maintain a required bond or LOC;
- Disqualification from SNAP as a reciprocal action resulting from a disqualification from the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). However, the denial of a hardship CMP (HCMP), or the amount of an HCMP involving such a reciprocal action is appealable; and,
- Voluntary withdrawal of an authorized firm.

ADMINISTRATIVE REVIEW

Requesting Review

Firms that are subject to an adverse administrative action are informed of their review rights, and the procedures for exercising those rights, in the notices of adverse action in accordance with sections 279.2 and 279.3 of the regulations. As provided in 279.1(a), such adverse actions include: denial, withdrawal, disqualification, imposition of a CMP or fine, assertion of a fiscal claim established by FNS, denial of a claim submitted by a firm, and forfeiture of a collateral bond or drawdown of a letter of credit. The firm is advised on how to request administrative review and the information the firm is required to provide, such as:

- Who has the authority to request review on behalf of the firm;
- What must be included in the request;
- When the deadline is for submitting the request; and,
- Where the request should be sent.

Review requests may be filed by mail or by e-mail as follows:

- By mail to:
1320 Braddock Place, 5th Floor
Alexandria, VA 22314
- By email to: SM.fn.SNAP-ARB@usda.gov

Timeliness of Requests

A request for review shall be determined to be timely if either the delivery date to FNS, the postmark, or the date of fax or hand-delivery is no later than midnight of the 10th calendar day after the notice of adverse action is received by the firm. If the 10th day falls on a Saturday, Sunday, or Federal (legal) holiday, the time period within which a request will be considered timely will be extended to the next day which is not a Saturday, Sunday, or Federal (legal) holiday. Other than a request for review being misdirected through the mail system or internally through FNS, untimely requests shall not be accepted for review. In such circumstances, the effective date of the adverse action will remain at no earlier than 10 days from receipt of the determining office's original notice (except for permanent disqualifications for trafficking and denials of applications, which become effective immediately upon receipt of the determining office's original notice).

Adverse Actions Held in Abeyance Pending Review Completion

If the administrative appeal involves a term disqualification, permanent disqualification for falsification, imposition of a CMP, or withdrawal of authorization (even permanent withdrawal), the adverse action shall be held in abeyance, and the firm may continue to accept SNAP benefits while its timely appeal is under review. The only exception to holding an action in abeyance pending the outcome of the administrative appeal is permanent disqualification for trafficking. In accordance with 7 CFR 279.4, a permanent disqualification for trafficking shall not be held in abeyance, and shall be effective immediately upon the firm's receipt of the determination letter. Also, a denial of a firm's application to participate in SNAP shall remain in effect until a Final Agency Decision is rendered by the review officer. The following actions are held in abeyance pending the reviewer's final decision on the matter: the denial of a fiscal claim brought by a firm against FNS; the forfeiture of a collateral bond; the draw down on an irrevocable letter of credit; approval of the firm for SNAP participation; paying any part of a disputed claim; and, any bond forfeiture or irrevocable letter of credit withdrawal.

Information in Support of the Request

A firm's request for an administrative review, with no accompanying information in support of its position in the matter, is not sufficient to start the administrative review process. Virtually any contention may meet the requirement to provide information in support of the request for review. Firms shall be given three weeks following the firm's receipt of FNS's letter acknowledging that the review request was timely to submit supporting information. Except for extensions requested solely due to a FOIA request or appeal, extensions of time may be granted if, in the reviewer's judgment, additional time is required for the firm to fully present information in support of its position. However, no extension of the 10-day time frame for filing a request for review may be made. If no information in support of the firm's position is submitted, no administrative review can be conducted, and the action of the determining office shall be final.

Note: The information in support of the firm's request must include a reference to information previously submitted, or new evidence/rationale in support of the firm's request for appeal. Information or documentation previously submitted to the determining office as part of a response to the charge letter will not be considered "Information in Support of the Request" as referenced above. Once the requirements to start an administrative review have been met, previously submitted information will be considered.

FOIA Requests and Appeals

Effective October 26, 2020, FNS shall not hold the administrative review process in abeyance solely on the basis of a pending FOIA request or appeal. In addition, an Administrative Review Officer may not grant extensions of time for a firm to submit supporting information solely on the basis of a pending FOIA request or appeal.

Moot Reviews

A review officer may close an administrative review as moot under the following circumstances:

- The firm withdraws its request for review. In such a case, the decision rendered by the determining office shall be final;
- There is no information in support of the review request; or,
- The determining office rescinds its original adverse action decision.

Making Determinations

Administrative review decisions are based on the following:

- Case file(s) containing information submitted by the determining office;
- Information submitted by the firm in support of its position; and,
- Any additional information obtained by the Administrative Review Officer from any other person or source having relevant information.

While not responsible for developing the case to support either the firm or the agency, the review officer may seek information to help clarify the record. This may include information obtained from authored websites, books, news articles, and statistical reports. The review officer's personal knowledge and experience, as well as hearsay testimony, may be considered for its probative value. After all the evidence is considered, a final administrative decision, based on the preponderance of the evidence, is rendered.

Note: The burden of proof in cases coming before a review officer rests first with the determining office which initiated the adverse action under review. The information furnished by that office must establish sufficiency to justify the adverse action taken. The firm then has the burden of presenting substantial, credible, and relevant evidence to refute the findings or conclusions of the determining office. The review officer must provide the determining office for their consideration any information not previously available to that office which, in the review officer's judgment, might have resulted in a different adverse action from the one imposed, or no adverse action at all, had that information been previously available. For example, new information might alter the determining office's previous judgment that a CMP was not warranted.

Scope of Determination

Administrative review decisions are rendered within the alternatives authorized by law and regulations. In addition, review officers may consider any agency retailer policy that is aligned with the law and regulations, if applicable to the action under review. Under no circumstances are penalties or other adverse actions to be made more severe by an administrative review decision. The basis for a Final Agency Decision sustaining, modifying, or reversing the determining office's initial determination is based on applying the applicable law, regulations and agency policy to the action under review.

Possible Determinations

Denial or Withdrawal of Authorization

Possible determinations for denial or withdrawal decisions include:

- Sustaining the action under review;
- Modifying the action under review by specifying a shorter period of time the action will remain effect; or,
- Directing that the action under review be reversed and the firm be authorized for participation if otherwise eligible.

A special circumstance arises when the determining office fails to evaluate a firm's eligibility for SNAP participation under both Criterion A and Criterion B. A firm may be deficient in one or several staple food categories under Criterion A, and denied participation on that basis alone. However, the determining office must also assess the firm's eligibility under Criterion B (i.e., whether staple food sales of the firm comprise more than 50 percent of its total gross retail sales). If the determining office did not assess the firm's eligibility under Criterion B, it has not been determined that the firm is not eligible under Criterion B. Therefore, in such cases, the lack of evidence that the firm does not meet Criterion B makes it appropriate for the six-month waiting period to be waived and the firm allowed to immediately reapply for SNAP participation. In such cases, the provision at 278.1(k)(2) and 278.1(l)(iii), requiring that a firm shall not be eligible to submit a new application for authorization in the program for a minimum period of six months, is not applicable.

Disqualification

Possible determinations for disqualification actions include:

- Sustaining the action under review;
- Modifying the action under review by specifying a shorter period of disqualification;
- Include the option of a hardship CMP (except for permanent disqualifications) if a disqualification would cause a hardship to SNAP households;
- Modifying a permanent disqualification for trafficking to include the option of a Trafficking CMP. This is appropriate if the firm had established and implemented a compliance policy and program, submitted substantial evidence of its fulfillment of four stated criteria, and requested consideration of a trafficking CMP, within the appropriate timeframe established by regulation;
- Modifying the disqualification to an Official Warning Letter; or,
- Directing that the action under review be reversed.

Civil Money Penalty

Possible determinations for action involving a CMP include:

- Sustaining the action under review (either the CMP assessed or, in the case of a WIC/SNAP reciprocal disqualification, the denial of a CMP);
- Specifying a reduced CMP based on a finding that either the original sanction period or the calculation of the amount of the penalty, or both, was incorrect;

- Modifying the CMP to an Official Warning Letter; or,
- Directing that the action under review be reversed.

Denial of Fiscal Claim Submitted by Firm

Possible determinations for the denial of a claim submitted by the firm include:

- Sustaining the action under review;
- Specifying the amount of the claim to be paid by FNS; or,
- Directing that the action under review be reversed.

Assertion of Fiscal Claim by FNS

Possible determinations for the assertion of a claim by FNS include:

- Sustaining the action under review;
- Specifying a reduced amount based on a finding that the claim amount initially asserted was in error; or,
- Directing that the action under review be reversed.

Imposition of Fine by FNS

Possible determinations for the imposition of a fine by FNS include:

- Sustaining the action under review;
- Specifying a reduced amount based on a finding that the fine amount initially asserted was in error; or,
- Directing that the action under review be reversed.

Forfeiture of a Collateral Bond/Drawdown of a LOC

Possible determinations for actions involving forfeiture of a collateral bond or drawdown of a letter of credit include:

- Sustaining the action under review;
- Specifying a reduced amount based on a finding that the amount initially forfeited or drawn down was in error; or,
- Directing that the action under review be reversed.

Special Considerations

Change in Ownership - If the ownership of a firm changes while the firm is under administrative review, and if the former owner wishes to continue the review - or does not specifically request to terminate the review - the review officer will pursue the review to conclusion and issue a Final Agency Decision. Any action to close a review as moot, upon request of the former owner, shall be preceded by notification to the previous owner of the right to pursue the review to conclusion - even though the firm was sold - and of the consequence that not pursuing the review to conclusion shall result in the determination of the determining office to be final.

Reinstitution - The regulations do not provide for remanding cases to the determining office. If an appealed action is found to be seriously deficient, the review officer, after consulting with the determining office, may close the case as moot upon receipt of a copy of the

determining office's letter to the firm rescinding its earlier adverse action. In the case of a moot decision, the determining office may then reinstitute adverse administrative action proceedings against the firm, taking care to avoid those objections which had undermined its previous action. Any new adverse action would be subject to administrative review, provided the request for review was made timely. Alternatively, the review officer may render a Final Agency Decision based upon the record as presented.

JUDICIAL REVIEW

Requesting Review

Per 279.7(a), a firm aggrieved by an administrative review decision may, within 30 days of delivery of the Final Agency Decision, file for a judicial review. A complaint against the United States must be filed by the firm in the United States District Court for the district in which the owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If no judicial review is filed, the decision of the Administrative Review Officer shall be final.

Stay of Administrative Action

Administrative actions held in abeyance during the administrative review take effect 30 days after the delivery of the Final Agency Decision and shall remain in force during the judicial review process unless the court grants the firm a stay of the administrative action. This normally entails the firm making a timely stay-of-action application to the court and showing in a hearing that irreparable injury will occur if there is no stay and that the firm is likely to prevail on the merits of the case. Permanent disqualifications are not subject to such stays.

Appeals

Any District Court decision is subject to appeal to a Federal Circuit Court of Appeals and ultimately to the U.S. Supreme Court, by either the Government or the firm.

Any questions regarding this policy should be directed to: RPMDHQ-WEB@fns.usda.gov.

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Supplemental Nutrition Assistance Program