

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

**Amoco Food Store,**

**Appellant,**

**v.**

**Office of Retailer Operations and  
Compliance,**

**Respondent.**

**Case Number: C0251143**

**FINAL AGENCY DECISION**

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), finds that there is sufficient evidence to support the determination by the Office of Retailer Operations and Compliance to deny the application of Amoco Food Store (“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(b)(1), in its administration of the Supplemental Nutrition Assistance Program (SNAP) when it denied the application of Appellant to participate as an authorized SNAP retailer on December 2, 2021.

**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 October 28, 2021, the Office of Retailer Operations and Compliance requested invoices and receipts dated prior to the store visit to establish that Appellant normally carries at least three different types of items in the four staple food categories. Appellant provided additional documents in a subsequent submission to the Office of Retailer Operations and Compliance.

In a letter dated December 2, 2021, the Office of Retailer Operations and Compliance denied the application of Appellant to participate as an authorized retailer in SNAP. This denial action was based on information provided on the firm's retailer application and documents sent by Appellant.

The Office of Retailer Operations and Compliance determined that the firm did not meet eligibility Criterion A or Criterion B under 7 CFR § 278.1(b)(1) of the SNAP regulations. The denial letter stated the Appellant failed to meet the requirements of Criterion A because it did not offer for sale on a continuous basis a variety of foods in the dairy products category and the meats, poultry and fish category. Also, Appellant failed to meet the requirements of Criterion B because staple food sales did not comprise more than 50 percent of its gross retail sales.

As the firm failed to meet either eligibility criterion for approval, Appellant was informed that the firm could not submit a new application to participate in SNAP for a period of six months as provided in § 278.1(k)(2). This determination letter also stated that the Office of Retailer Operations and Compliance considered Appellant's eligibility under the need for access provision at Section 278.1(b)(6) of the SNAP regulations. However, the letter stated Appellant did not qualify for SNAP authorization under this provision.

On December 11, 2021, Appellant appealed the Office of Retailer Operations and Compliance decision and requested an administrative review of this action. The appeal was granted.

### **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(k)(2) establishes the authority upon which the application of any firm to participate in SNAP may be denied if it fails to meet established eligibility requirements.

7 CFR § 278.1(b)(1)(i) relays specific program requirements for retail food store participation, which reads, in part:

An establishment . . . shall . . . effectuate the purposes of the program if it . . . 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 . . . including perishable foods in at

least [two<sup>1</sup>] of the categories (Criterion A); or have more than 50 percent of the total gross retail sales of the establishment . . . in staple foods (Criterion B).

7 CFR § 271.2 defines staple food, in part, as:

Those food items intended for home preparation and consumption in each of the following food categories: meat, poultry, or fish; bread or cereals; vegetables or fruits; and dairy products.

7 CFR § 278.1(b)(1)(ii)(A) of the SNAP regulations as currently implemented define continuous basis as offering for sale no fewer than three different varieties of food items in each of the four staple food categories with a minimum depth of stock of three stocking units for each qualifying staple variety on any given day of operation.

7 CFR § 278.1(b)(1)(ii)(C) of the SNAP regulations define “variety”, in part, as:

Different types of foods within each staple food category. For example: Apples, cabbage, tomatoes, bananas, pumpkins, broccoli, and grapes in the vegetables or fruits category; or cow milk, almond milk, soy yogurt . . . butter, sour cream, and cow milk yogurt in the dairy products category; or rice, bagels, pitas, bread, pasta, oatmeal, and whole wheat flour in the bread or cereals category; or chicken . . . beef, pork, eggs, and tuna in the meat, poultry, or fish category. Variety of foods is not to be interpreted as different brands, nutrient values (e.g., low sodium and lite), flavorings (e.g., vanilla and chocolate), packaging types or styles (e.g., canned and frozen) or package sizes of the same or similar foods. Similar food items such as, but not limited to, tomatoes and tomato juice, different types of rice, whole milk and skim milk, ground beef and beefsteak, or different types of apples (e.g., Empire, Jonagold, and McIntosh), shall count as depth of stock but shall not each be counted as more than one staple food variety for the purpose of determining the number of varieties in any staple food category. Accessory foods shall not be counted as staple foods for purposes of determining eligibility to participate in SNAP as a retail food store.

7 CFR § 278.1(k) reads, in part:

FNS shall deny the application of any firm if it determines that . . . . [t]he firm has failed to meet the eligibility requirements for authorization under Criterion A or Criterion B, as specified in paragraph (b)(1)(i) of this section . . . for a minimum period of six months from the effective date of the denial.

### **APPELLANT’S CONTENTIONS**

Appellant’s responses regarding this matter are essentially as follows:

- Appellant stocks all the items required for SNAP authorization.

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<sup>1</sup> Based on the current implementation of the regulations.

- Failure to authorize Appellant poses a hardship on SNAP participants in the local community.
- Not being a SNAP retailer creates a financial hardship for Appellant.

These explanations may represent only a brief summary of Appellant's contentions. However, in reaching a decision, full consideration has been given to all contentions presented, including any others that have not been specifically listed here.

## **ANALYSIS AND FINDINGS**

Appellant contends that the business stocks all the items required for SNAP authorization. Appellant was provided with an opportunity to provide receipts and invoices to demonstrate that it normally carried a sufficient variety of staple food items. The Office of Retailer Operations and Compliance requested receipts dated within four weeks prior to Appellant's application (9/28/2021 – 10/27/2021). Appellant provided 15 pages of invoices in response to the Office of Retailer Operations and Compliance and contends that the invoices it provided demonstrate that it does offer a sufficient variety of foods in the dairy products category and the meats, poultry, or fish category. Upon review, Appellant submitted 11 additional pages of invoices. For purpose of this review, it is assumed that these invoices were provided to the Office of Retailer Operations and Compliance in a timely manner. Some of the invoices provided were dated outside the four week period identified by the Office of Retailer Operations and Compliance or included dates that were not legible.

None of the additional receipts included staple food items from the lacking staple food categories beyond those present at the time of the store visit (milk, beef, chicken, one stocking unit of eggs, two stocking units of yogurt, one stocking unit of cheese). This evidence does not support that Appellant normally carried a sufficient variety of staple food items.

A review of the store visit documentation illustrates that on the day of the visit the store was deficient in the dairy products category and the meat, poultry, or fish category. Therefore, the Office of Retailer Operations and Compliance correctly concluded Appellant did not meet Criterion A because the store did not offer "qualifying staple foods on a continuous basis."

An evaluation of the percentages of staple food sales reported on Appellant's retailer application, as well as the photographs and store inventory provided from the store visit, indicate that Appellant did not receive more than 50 percent of its projected annual sales from the sale of staple foods. Accordingly, the Office of Retailer Operations and Compliance correctly determined Appellant was not eligible for authorization under Criterion B.

### **No Need for Access**

Appellant has requested another chance because the store is located in an area where many people use SNAP. SNAP regulation 7 CFR § 278.6(f)(1) provides for civil money penalties in lieu of disqualification in cases where disqualification would cause hardship to SNAP households because of the unavailability of a comparable participating retail food store in the

area to meet their needs. However, 7 CFR § 278.6(f)(1) only applies to firms that are “selling a substantial variety of staple food items.”

As Appellant failed to meet Criterion A and B, the Office of Retailer Operations and Compliance did consider whether Appellant is located in an area with significantly limited access to food as required under SNAP regulation 7 CFR § 278.1(b)(6). In determining whether Appellant is located in such an area, the Office of Retailer Operations and Compliance considered factors such as the distance from Applicant to the nearest currently SNAP-authorized firm and the extent of Appellant’s stocking deficiencies in meeting Criterion A and Criterion B. The Office of Retailer Operations and Compliance determined Appellant did not qualify for SNAP authorization under 7 CFR § 278.1(b)(6).

Some degree of inconvenience to SNAP benefit users is inherent in the failure to authorize a retailer, since the distance to the nearest SNAP-authorized firm may be longer for some SNAP benefit holders. A review of the factors and evidence considered by the Office of Retailer Operations and Compliance under 7 CFR § 278.1(b)(6) supported that authorization of Appellant was not necessary for access.

Therefore, the earlier determination that authorization of Appellant was not required to ensure access to food for SNAP participants, as differentiated from potential inconvenience, is sustained.

### **Hardship to Appellant**

Appellant asserts that denial of authorization would put the business in financial jeopardy. Economic hardship is a likely consequence whenever a store is denied from participation in SNAP. However, there is no provision in the SNAP regulations for reducing an administrative penalty on the basis of possible economic hardship to the firm resulting from such a penalty. To excuse Appellant from an assessed administrative penalty based on purported economic hardship to the firm would render the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA virtually meaningless.

Moreover, giving special consideration to economic hardship of the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with program regulations, but also to those retailers who have been denied from the program in the past for similar deficiencies. Therefore, Appellant’s contention that it will incur economic hardship based on deficiencies in meeting the eligibility requirements does not provide any valid basis for dismissing the denial of Appellant’s application.

The regulations at 7 CFR § 278.1(k) state, in part, “FNS shall deny the application of any firm if it determines that . . . the firm has failed to meet the eligibility requirements for authorization under Criterion A or Criterion B, as specified in paragraph (b)(1)(i) of this section . . . for a minimum period of six months from the effective date of the denial.” There is no agency discretion to impose a sanction of less than six months when a firm does not meet the eligibility requirements for authorization.

## **CONCLUSION**

Based on the discussion above, the determination by the Office of Retailer Operations and Compliance to deny the application of Amoco Food Store to participate as an authorized SNAP retailer is sustained. Appellant is ineligible to submit a new application for SNAP authorization for a period of six months from the date of the denial letter, December 2, 2021.

## **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this decision are set forth in 7 U.S.C. § 2023 and 7 CFR § 279.7. If Appellant desires a judicial review, the complaint must be filed in the U.S. District Court for the district in which Appellant's owner resides, is engaged in business, or in any court of record of the State having competent jurisdiction. This complaint, naming the United States as the defendant, must be filed within thirty (30) days of receipt of this decision.

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

March 14, 2022