

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

Ingram Citgo,

Appellant,

v.

**Office of Retailer Operations and
Compliance,**

Respondent.

Case Number: C0246407

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 (“ROC”) to impose a permanent disqualification from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) against Ingram Citgo (“Appellant”).

ISSUE

The purpose of this review is to determine whether the ROC took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.6(a), (c) and (e)(1)(i), when it imposed a Permanent Disqualification against Appellant on January 3, 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 September 17, 2021, the ROC charged Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations. This charge was based on a series of SNAP transaction patterns that “establish clear and repetitive patterns of unusual, irregular, and inexplicable activity for your type of firm.” This letter of charges states: “As provided by Section 278.6(e)(1) of the SNAP regulations, the sanction for trafficking is permanent disqualification.” The letter also states that “. . . under certain conditions, FNS may impose a civil money penalty (CMP) . . . in lieu of a permanent disqualification of a firm for trafficking.”

Appellant replied to the ROC's charges in writing. The record reflects that the ROC received and considered the information provided prior to making a determination. The ROC determined that Appellant's contentions did not outweigh the evidence that the store was trafficking. Based on the preponderance of evidence, the ROC concluded that trafficking is the most probable explanation for the questionable transactions listed in the charge letter attachments.

The ROC issued a determination letter dated January 3, 2022. This letter informed Appellant that it was permanently disqualified from participation as an authorized retailer in SNAP in accordance with Section 278.6 (c) and 278.6(e)(1) for trafficking violations. The letter also states the ROC considered Appellant's eligibility for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP regulations. The ROC determined that Appellant was not eligible for the CMP because Appellant had not submitted sufficient evidence to demonstrate that it had established and implemented an effective compliance policy and program to prevent SNAP violations.

On January 7, 2022, Appellant appealed the ROC's determination 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. § 2021), and implemented through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern in the event that personnel of the firm engaged in trafficking of SNAP benefits.

7 CFR § 278.6(a) states, in part:

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(a) states, in part:

Any firm considered for disqualification ... under paragraph (a) of this section... shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of noncompliance before FNS makes a final administrative determination. The FNS regional office shall send the firm a letter of charges before making such determination. The letter shall specify the violations or actions which FNS believes constitute a basis for disqualification The letter shall inform the firm that it may respond either orally or in writing to the charges contained in the letter within 10 days of receiving the letter . . .

7 CFR § 278.6(c) reads, in part:

The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination. In the case of a firm subject to permanent disqualification under paragraph (e)(1) of this section, the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS, regardless of whether a request for review is filed in accordance with part 279 of this chapter.

7 CFR § 278.6(e)(1)(i) reads, in part:

FNS shall [d]isqualify a firm permanently if . . . personnel of the firm have trafficked as defined in § 271.2.

Trafficking is defined in 7 CFR § 271.2, in part, as:

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”

Also at 7 CFR § 271.2, eligible food is defined as:

Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption . . .

7 CFR § 278.6(b)(2)(ii) states, in part:

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 ... 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).

7 CFR § 278.6(b)(2)(iii) states:

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 a penalty.

SUMMARY OF CHARGES

The charges under review were based on an analysis of SNAP Electronic Benefit Transfer (EBT) transaction data during the period from February 2021 through July 2021. This analysis identified the following patterns of SNAP transaction activity that indicate trafficking:

- Multiple transactions made from the same accounts in unusually short time frames; and,
- Unusually large transactions.

The attachments enclosed with the charge letter specify the questionable and unusual SNAP transactions indicative of trafficking which were conducted at Appellant during the review period.

APPELLANT'S CONTENTIONS

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

- The store is 3,000 square feet and sells a variety and quantity of staple food items.
- Appellant has not had any previous issues with SNAP compliance.
- FNS should consider 7 CFR § 278.6(d) before issuing a determination.
- Appellant is located in an area with many SNAP participants.
- Appellant's inventory is superior to that of nearby stores.
- Most households redeem nearly all their benefits within the first two weeks of the month.
- Large transactions are because SNAP participants are buying meats, sweetened beverages, vegetables, frozen prepared foods, prepared desserts, dairy products, breads, and other items sold by Appellant.
- SNAP participants are more likely to shop at convenience stores and convenience stores, and customers of these stores are among the most loyal customers.
- Convenience stores and similar stores had a 3% increase in customers over 2015.
- Deprivation of FOIA is a violation of the regulations.
- Appellant carries more expensive items than were listed in the store visit report including chicken which is fried upon customer request, hot wings for \$39.99, fish for \$29.99, and cases of drinks.
- The ALERT system has not been independently proven accurate in finding fraud. Data analysis is prone to error without accurate context. The analyst overly relied on the results of the ALERT system when issuing a charge of trafficking because of confirmation bias. The analyst made incorrect assumptions about customer shopping patterns and circumstances and failed to take into account local differences.
- USDA bears the burden of proof in administrative review, not Appellant.

- Appellant quoted studies that stated that superstores and supercenters accounted for 90% of redemptions, but in eight neighborhoods, convenience stores accounted for 46% of SNAP redemptions.
- Households with particular demographic information are more likely to be disqualified which shows a bias towards smaller grocers.
- Because of the pandemic, shoppers are 5% less likely to shop at supermarkets and have increased grocery expenditures by 17%.
- USDA does not know the correlation coefficient between ALERT scans and trafficking. Appellant has calculated this based on results of undercover investigations and determined that it was a positive correlation, but the relationship between the values is weak.
- Appellant denies the allegations.
- Recent administrative review cases discuss the precedent that should be considered in this case: *Howard's Quik Mart vs. Retailer Operations Division* and *Gloesis Group vs. Retailer Operations Division*. Appellant also included an excerpt from *Cardenes Market vs. Retailer Operations and Compliance* and stated this is standard form language in Administrative Review determinations to overturn disqualifications issued by ROC.
- Multiple transactions occurring over the span of hours are not inherently suspicious according to *Onukwugha v. U.S.*
- Past Administrative Review Branch decisions have identified a number of certain explanations which adequately explain the presence of unusual transactions patterns in the charge letter.
- If allegations were raised in cases that were reversed, Appellant can conclude those were the reasons accepted by USDA for the reversal, even though USDA did not cite those reasons for the reversal.
- Back-to-back transaction are because the store is located near a large African American community.
- The store has two cash registers.
- Appellant conducts telephone orders.
- Back-to-back transactions are because households participate in co-shopping where different household members split benefits evenly or proportionately and separately shop at Appellant during a short period of time.
- SNAP participants shop at Appellant because it is more convenient and smaller.
- SNAP participants make purchases for friends.
- There are no logistic barriers to the transactions included in the charge letter.
- There are 11 stores located within a mile of Appellant. The nearest is .34 miles away. The closest supermarket is over two miles away.
- SNAP customers shop at Appellant because they lack consistent transportation.
- SNAP customers make back-to-back purchases at Appellant because they are unemployed and bored.
- Other stores are located closer together creating more competition and less SNAP activity.
- Back-to-back purchases are because participants are making purchases, returning home, and then returning to the store to make a second purchase.
- Appellant's transactions are not large.

- Larger purchases may be because the SNAP households are larger.
- Appellant requests a CMP.

In support of its contentions, Appellant provided the following documentation:

- Approximately 425 pages of documents containing invoices and receipts;
- Approximately seven customer affidavits;
- Approximately 24 documents containing pictures;
- Approximately 12 pages of tax documents;
- Approximately 59 pages of bank documents;
- A 109-page report entitled *Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program in Fiscal Year 2017* by Insight Policy Research;
- An ALERT Correlation Coefficient Calculation;
- An 11-page article entitled *What does SNAP benefit usage tell us about food access in low-income neighborhoods?;*
- A six-page article entitled *Shopping pattern and food purchase differences among Supplemental Nutrition Assistance Program (SNAP) households and Non-supplemental Nutrition Assistance Program households in the United States;*
- A one-page profile of SNAP households in Appellant's congressional district and another profile from a congressional district in California;
- A 38-page FMI report entitled *U.S. Grocery Shopping Trends, 2016;*
- Four pages of an April 2016 article in *Convenience Store News;* and,
- A 49-page USDA report dated November 2016 entitled *Foods Typically Purchased by Supplemental Nutrition Assistance (SNAP) Households.*

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

Regarding Appellant's denial of violations, this review examines the relevant information regarding the determination. Appellant asserts USDA bears the burden of proof in administrative review, not Appellant. Appellant is incorrect. Once the ROC establishes trafficking occurred, Appellant bears the burden of providing relevant evidence to support a conclusion, considering the record as a whole, that it did not engage in trafficking. If this is not demonstrated, the case will be sustained. Without supporting evidence and rationale, assertions that the firm has not violated program rules do not constitute valid grounds for overturning the determination.

Appellant argues households with particular demographic information are more likely to be disqualified which shows a bias towards smaller grocers. There is no relationship between individuals disqualified from the SNAP program, which is conducted by state agencies, and the disqualification of SNAP retailers, which is conducted by USDA.

Administrative Reviews Independent of FOIA Process

Appellant alleges not holding determinations in abeyance while FOIA responses are pending violates 7 CFR §278.6(b)(1) according to *Triple E Express vs. ROD*, Case No. C0191279 because Appellant is not given a full opportunity to respond. Effective October 26, 2020, the changes to 7 CFR §278.6 and 7 CFR §279.4 went into effect. These changes prohibit holding determinations and administrative reviews in abeyance while FOIA responses are pending. The finding in *Triple E Express* is based on outdated regulations.

Prior Administrative Reviews

Appellant contends that the determinations should be reversed based on Final Agency Decisions in other cases. Appellant asserts that if allegations were raised in cases that were reversed, Appellant can conclude those allegations were the reasons accepted by USDA for the reversal, even though USDA did not cite those reasons for the reversal. Appellant asserts that an excerpt from *Cardenes Market vs. Retailer Operations and Compliance* is standard language in Final Agency Decision reversals.

Prior administrative review decisions are based on the specific circumstances of each case as documented by materials provided by the Appellant and the Office of Retailer Operations and Compliance. Administrative review decisions do not establish policy or supersede federal law, regulations or policy guidance. The determination in this case conforms to SNAP regulations and is consistent with sanctions imposed upon other retailers that have committed similar violations. The language excerpted from *Cardenes Market* is not found in other Final Agency Decisions. Appellant implies its list of “acceptable explanations” were discussed in Final Agency Decisions that reversed prior EBT determinations. In fact, these are simply arguments made by Appellant’s attorney in those cases. Appellant undermines its credibility in the present case by its apparent willingness to manufacture precedent in previous administrative review decisions.

Store Characteristics

In reaching a disqualification determination, the ROC considered information obtained during a May 10, 2021 store visit conducted by a USDA contractor to observe Appellant’s operation, stock, and facilities. This store visit information was used to ascertain if there were justifiable explanations for the firm’s irregular SNAP transaction patterns. The store visit report documented the following store size, description, and characteristics:

- Store size is approximately 1,600 square feet with 200 square feet of food storage outside of public view;¹
- Available inventory of SNAP-eligible food items showed stock composed predominantly of inexpensive items, which is typical of a convenience store;
- Two cash registers and one electronic SNAP terminal device;
- No shopping carts or hand baskets;

¹ Appellant contends the store is 3,000 square feet.

- No scanners or conveyor belts;
- No evidence of a wholesale business such as posted prices or separate entrances for wholesale customers; and,
- No meat or seafood specials or bundles.

In addition, the store's checkout counter space area was cluttered and small allowing very little surface area to place large purchases and making it impractical to process more than one customer at a time.

Appellant contends it sells a variety and quantity of staple food items, and its inventory is superior to that of nearby stores. Appellant stock was typical of a convenience store. There was no indication that SNAP households were inclined to visit the store regularly to purchase large quantities of grocery items. The available food was primarily of a low-dollar value and there was no hint that the firm sold items in bulk. Given the available inventory, there was no sign that Appellant would be likely to have SNAP redemption patterns that differed significantly from those of similarly-sized competitors.

Repeat Transactions by the Same Household

Attachment 1 to the charge letter documents the same household conducting back-to-back transactions in unusually short time frames. Violating stores may conduct multiple transactions from the same household account within a 48-hour period to avoid the detection of single, high-dollar trafficking transactions. There are 175 repeat transactions totaling \$8,080.33 included in this document.

Appellant contends that back-to-back purchases are because SNAP customers lack access to transportation, Appellant's inventory is superior to that of nearby stores, and that SNAP participants shop at Appellant because it is more convenient. The record reflects that customers conducting rapid, repetitive, and large transactions at Appellant frequently spent SNAP benefits at better-stocked and more competitively-priced grocery stores, sometimes on or about the same day they shopped at Appellant.

Appellant contends multiple transactions occurring over the span of hours are not inherently suspicious according to *Onukwugha v. U.S.* This case, which supported that the pattern of back-to-back transactions identified by FNS were indicative of trafficking, also stated that transactions "occurring in relatively quick succession" are "extremely suspicious." It notes that this is especially the case when transactions are large and for identical amounts, but also cites as suspicious a variety of examples of back-to-back transactions – similar to those included in the charge letter in this case - that when considered together establish a pattern of trafficking.

Appellant contends there are 11 stores located within a mile of Appellant, with the nearest being .34 miles away. Appellant also contends the closest supermarket is over two miles away. During the review period, there were 8 SNAP-authorized stores located within one mile of Appellant. The closest store was located .54 miles away and a supermarket was located .55 miles away.

Appellant contends that it is located in an area with many SNAP participants. While this may be true, the Case Analysis Document identifies much larger stores with more reasonable prices located within one mile of Appellant. There is no basis for unusually high customer attraction to Appellant, there being no great price advantage, profusion of ethnic goods, or special or custom services rendered. Oddly, some SNAP households spent considerably less at the larger stores than at Appellant.

The following examples from the ROC's Case Analysis Document show households shopped at better stocked firms on or about the same day as conducting large transactions at Appellant:

SNAP Household #1

One day, this household made two transactions at Appellant for \$10.27 and \$96.46 followed by a transaction at a supermarket four hours later for \$28.23. The next day, this household returned to Appellant and made four transactions for \$37.48, \$14.78, \$26.98, and \$2.89. Another day, this household made four transactions at Appellant over a three-hour period for \$13.22, \$110.86, \$43.59, \$17.19 followed by a transaction at a supermarket less than three hours later for \$4.16.

SNAP Household #2

Over a period of eight days, this household made four transactions at supermarkets and superstores for \$15.42, \$35.96, \$152.68, and \$197.10. During this same period, Appellant made 16 transactions at Appellant totaling \$715.27.

Appellant argues households participate in co-shopping where different household members split benefits evenly or proportionately and separately shop at Appellant during a short period of time. That members of a household share the chore of grocery shopping ("co-shopping") means that household members take turns doing the shopping, not that both shoppers shop on or about the same day. This would defeat the purpose of why households typically share the chore of grocery shopping. A household is one that purchases and prepares meals together, so there would be no need to split benefits. Households that purchase and prepare meals separately are considered separate households.

Appellant contends the back-to-back transactions are due to customers sharing benefits with others. Appellant has offered no evidence whatsoever that SNAP households share their cards with other household members, relatives, or friends. Appellant has also not provided any explanation for why, if such behavior was occurring, these purchases would occur at Appellant rather than at nearby, larger stores. It is unlikely that a family relying on SNAP to supplement their nutritional needs would share these benefits with another family that purchases and prepares meals separately. An unsubstantiated argument such as this does not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

Appellant contends rapid transactions are because customers purchase preordered goods by telephone and then make a second purchase. If Appellant is making a purchase at Appellant in addition to items that were preordered, it is unclear why Appellant or a customer would not prefer that both purchases be made at the same time.

Appellant asserts that back-to-back transactions are because the store is located near a large African American community. Appellant does not explain why, if this pattern is the result of community demographics, this pattern occurs at Appellant much more frequently than at other nearby stores.

Appellant contends SNAP customers make back-to-back purchases at Appellant because they are unemployed and bored, or because customers return to the store to make a second purchase after going home. While there are legitimate reasons why a SNAP recipient might return to a convenience store in a short period of time, the examples in Attachment 1 indicate a series of purchases that total to large amounts. SNAP benefits are intended to supplement the food budget for households whose net income is near or below the Federal Poverty Level. It is difficult to believe customers who must rely on SNAP benefits to make ends meet prefer to pay higher prices and spend considerable amounts of their benefits at a convenience store. Spending sizable portions of one's SNAP benefit allotment in a convenience store - when there are larger stores at which one also shops that carry more variety of foods at a lower cost - is unreasonable customer behavior. Moreover, households listed in this attachment conducted this strange shopping pattern of making substantial purchases at Appellant multiple times during the review period. Given the common practice of violating retailers breaking up large, suspicious transactions into multiple, smaller transactions to avoid detection, a firm's explanation and evidence for why these transactions are occurring in a 48-hour period in a convenience store should be both rational and compelling. Appellant's explanation is neither.

SNAP Benefit Depletions

Appellant is correct that a government report on SNAP shopping patterns² indicates that after the first day of benefit issuance, on average, 80 percent of a household's allotment remains unspent. Even after seven days, 40 percent of benefits still remain unspent. It typically takes 14 days to deplete 80 percent of one's benefits, and 21 days to deplete 90 percent. Appellant implies that as most of the suspicious transactions occurred during this period of time this must reflect legitimate purchases. Yet, this report also revealed that households most often redeemed their benefits at supermarkets and supercenters, with only four percent of all households never shopping in a supermarket. This is contrary to Appellant's conclusion that because the store stocks the majority of a SNAP household's preferred needs, it is reasonable to expect SNAP customers to spend the majority of their benefits at Appellant.

Appellant quoted studies that stated that superstores and supercenters accounted for 90% of redemptions, but in eight neighborhoods, convenience stores accounted for 46% of SNAP redemptions. Appellant was not located in any of the neighborhoods highlighted in these studies nor does its location mirror the characteristics of the neighborhoods included in this study.

²U.S. Department of Agriculture, Food and Nutrition Service, Office of Research and Analysis, *Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program*, by Laura Castner and Juliette Henke. Project officer: Anita Singh, Alexandria, VA: February 2011.

Appellant contends that SNAP participants are more likely to shop at convenience stores and convenience stores than non-SNAP participants, and customers of these stores are among the most loyal customers. The article Appellant provides in support of this statement (“Know your Core, Protect Your Core” from *Convenience store News*) does say that that low income households shop at convenience stores more than other households, but it does not specifically refer to SNAP households. The article states that the main reason (80.1%) these customers are likely to shop at the store is to buy gas. This not a SNAP-eligible purchase. Appellant also states that many of its customers do not own vehicles. While some of the less common reasons for making purchases at a convenience store include making inexpensive purchases (e.g., snacks, beverages, gum), others are for purchases that SNAP benefits cannot be used (e.g., lottery tickets, cigarettes). The information included in this article does not support Appellant’s conclusion regarding SNAP participants’ shopping patterns at convenience stores. Even if Appellant is correct, this article does not support that SNAP participants make large purchases at these smaller stores. If anything, it implies the opposite.

Appellant asserted convenience stores and similar stores had a 3% increase in customers over 2015 (from 5% to 8%). Appellant cited a 2016 *U.S. Grocery Shopper Trends* report which does not reflect the period covered by this investigation. This report also supports that customers are much more likely to shop at supermarkets and superstores.

Appellant cited articles which stated that because of the pandemic shoppers are 5% less likely to shop at supermarkets and have increased grocery expenditures by 17%. Appellant failed to indicate whether the 5% decrease in purchases at supermarkets have resulted in a commensurate increase in purchases at convenience stores. Customers may be purchasing more of their groceries online or at medium grocery stores, for example. Pandemic-related increases in purchases at conveniences stores would not explain the suspicious transactions listed in the charge letter.

It is extremely doubtful that a SNAP household making a legitimate purchase would choose to spend a large portion of its monthly allotment at a convenience store with likely higher prices and substantially less inventory than what would be found at a supermarket or superstore. Although many SNAP households do shop early in the month as opposed to later in the month, most households do not spend all or a majority of their monthly benefits in only a few transactions or a single day. Depleting a large portion of one’s SNAP balance early in the benefit month, leaving little to purchase food for the remainder of the month, is inconsistent with the normal shopping behavior of SNAP households.

Large Transactions

Appellant contends its large transactions are not large. Appellant also contends its large transactions are because SNAP participants are buying meats, sweetened beverages, vegetables, frozen prepared foods, prepared desserts, dairy products, breads. Appellant does not carry all of these items. The food stock and facilities of Appellant as reported in the store visit documentation do not appear sufficient to provide for all of one’s food needs. People generally do not spend large sums at such stores. They usually stop at convenience stores to pick up a few staple food items, such as bread, milk, or a can or two of food that they may consider are not

worth a trip to the supermarket to purchase. It is rare for a convenience store such as Appellant's to have purchases like those included in Attachment 2 to the charge letter. This attachment cites 234 EBT transactions during the six-month period of investigation of \$50.00 or more totaling \$14,986.73. Of these transactions, 10 totaled \$100 or more.

Appellant stated that larger purchases may be because the SNAP households are larger. While this may be true, this does not explain why larger SNAP households are more likely to shop at Appellant rather than other similarly-sized stores.

These transactions significantly exceed the county's average SNAP transaction, which was \$10.05 for this type of store during the six months of the review period. The Case Analysis Document shows the average transaction at Appellant during the same period totaled \$13.03. Appellant's average transaction is significantly higher than the county's average transaction. As previously stated, Appellant has a limited food stock typical of a convenience store and does not have any features that would induce people to spend substantially more than the typical convenience store purchase amount.

Its large transactions during the review period were also much more frequent than those of similar stores in the state. For example, convenience stores had an average of 11.4 transactions between \$50 and \$59.99, 5.7 transactions between \$60 and \$69.99, 2.6 transactions between \$70 and \$79.99, and 1.3 transactions between \$80 and \$89.99. Appellant had 124, 57, 21, and 13 such transactions, respectively.

Additionally, the Case Analysis Document contains a comparison of Appellant's redemption activity during the analysis period to the three SNAP-authorized convenience stores located closest to Appellant. Appellant's SNAP redemptions during the analysis period ranged from over three to eight times that of the nearby comparable firms.

Based on the store layout, infrastructure, and available inventory, it is not credible that the Appellant would so frequently conduct large transactions closely resembling those typically found at a supermarket or superstore. It is not plausible that the firm's customers would regularly carry very large amounts of merchandise around the store without the benefit of handbaskets and shopping carts, especially since larger, better-stocked stores are readily available and in the vicinity of the Appellant firm. Appellant is not set up to process high-dollar transactions, as indicated by its lack of equipment to facilitate large transactions and limited counter space. There are no legitimate bases for SNAP customers' unusual attraction to the firm such as a superior selection of staple foods, price advantages, package specials, bulk or promotional items, an extensive variety of otherwise unavailable ethnic food items, or special services rendered. Appellant failed to provide convincing evidence to establish the legitimacy of these excessively large transactions, such as itemized cash register receipts. Based on all of these factors discussed in this section, the large volume of transactions for high-dollar amounts is unlikely to indicate a pattern of legitimate food purchases.

Expensive Offerings

Appellant asserts it sells expensive items which explain the large purchases. The evidence does not support this contention. Appellant stated it carries more expensive items than were listed in the store visit report including chicken which is fried upon customer request, hot wings for \$39.99, fish for \$29.99, and cases of drinks. Appellant does sell a variety of hot foods including fried chicken, however hot foods are not available for purchase with SNAP benefits. Fried chicken was kept in a warm display case; there were no signs indicating that raw chicken was available for purchase.

Regarding the other items Appellant mentioned, during the May 10, 2021 store visit, none of these items were on display as being available for bulk sale. In addition, there were no posted prices for these items. The store clerk identified the six most expensive items at Appellant, which were then recorded and photographed by the store reviewer. None of these other items Appellant now alleges it sells were identified by the store clerk.

While there may have been occasions when Appellant sold expensive items, based on the evidence from the store visit it is more likely true than not true that the sale of expensive items does not explain the large SNAP transactions that occurred at Appellant. Trafficking is a more likely explanation for the unusual and irregular pattern of high-dollar transactions.

No Applicable Mitigating Factors

Appellant asserts that this is the first time there has been an issue related to SNAP. A record of program participation with no documented previous violations, however, does not constitute valid grounds for mitigating the impact of the present serious determination of trafficking.

Neither the Food and Nutrition Act of 2008, as amended, nor the accompanying regulations cite any minimum dollar amount of cash or SNAP benefits, or number of occurrences, for such exchanges to be defined as trafficking. Nor do they cite any degrees of seriousness pertaining to trafficking of SNAP benefits. Trafficking is always considered to be extremely serious, even when the exchange of SNAP benefits for cash is dollar-for-dollar or is conducted by a non-managerial store clerk. This is reflected in the Food and Nutrition Act, which reads, in part, that disqualification "shall be permanent upon . . . the first occasion of a disqualification based on . . . trafficking . . . by a retail food store." In keeping with this legislative mandate, § 278.6(e)(1)(i) of the SNAP regulations states that FNS must disqualify a firm permanently if personnel of the firm have trafficked. There is no agency discretion in the matter of what sanction is to be imposed when trafficking is involved.

Consideration of Factors for a Sanction

Appellant stated that FNS should consider the factors listed in 7 CFR § 278.6(d) before imposing a sanction. Appellant lists these factors: the nature and scope of the violations; whether the firm was warned violations were occurring; and, any evidence of intent to violate the regulations. This argument is based on an incorrect understanding of the regulations. The severity of the penalties, set forth in the subsequent paragraph 7 CFR § 278.6(e), are based on the factors listed in 7 CFR

§ 278.6(d). For example, permitting the sale of cigarettes with SNAP benefits results in a three-year disqualification, but this becomes five years if the firm had been previously warned. Other sanctions consider intent, such as whether false information on an application was “knowingly submitted” or whether the sale of nonfood items were “the firm’s practice” (which carries a three-year disqualification) rather than “due to carelessness or poor supervision” (which results in a six-month disqualification). In permanently disqualifying Appellant for trafficking the Office of Retailer Operations and Compliance did consider the factors listed in 7 CFR § 278.6(d).

Invoices

Appellant submitted approximately 425 pages of invoices to establish that the store purchased enough inventory to support the total of its SNAP sales. The invoices are sufficient to demonstrate that Appellant purchased enough inventory to support the amounts of its SNAP transactions. However, based on the sales data provided on Appellant’s tax documents the invoices are insufficient to account for the sum of Appellant’s SNAP and non-SNAP transaction activity. In sum, the invoices do not explain the questionable transactions at Appellant.

Customer Statements

With regard to customer statements provided by Appellant that purport to establish that questionable transactions were legitimate and no trafficking occurred, the truth of such statements cannot be verified. Customers engaging in trafficking transactions would be unlikely to admit to this behavior. On the contrary, customer statements would be expected to attest to the legitimacy of questionable transactions regardless of whether they were, in fact, legitimate. The ROC analyzed the shopping patterned of the households who submitted statements and found only one whose transactions were included in the attachments to the charge letter.

Evidence of Trafficking

Appellant argues the ALERT system has not been independently proven accurate in finding fraud, and the analyst overly relied on the results of the ALERT system when issuing a charge of trafficking because of confirmation bias. Appellant also contends that the analyst made incorrect assumptions about customer shopping patterns and circumstances and failed to take into account local differences. Appellant also stated there was an unsuccessful undercover investigation at Appellant. As previously stated, 7 CFR § 278.6(a) states, in part:

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.)

USDA employs a computerized fraud detection tool to identify EBT transactions that form patterns having characteristics indicative of trafficking. Appellant stated that past reversals in

administrative review prove that ALERT scans on their own are insufficient to support trafficking. This tool does not determine that trafficking has occurred. The ROC must still analyze the transaction patterns, along with other information such as store visit observations, customer shopping patterns, and comparative data from nearby stores. Only then does the ROC conclude whether questionable transactions were, more likely than not, the result of trafficking. Transactions with these patterns sometimes have valid explanations that support the idea they were the result of legitimate purchases of eligible food items, which is why opportunities are given to charged retailers to explain the questionable transactions cited. In this case, based on the suspicious patterns displayed and the other supporting evidence in the file - and in the absence of any reasonable explanations for such transaction patterns - the preponderance of the evidence supports that the “unusual, irregular, and inexplicable” transactions and patterns cited in the letter of charges are the result of trafficking.

Appellant argues that USDA does not know the correlation coefficient between ALERT scans and trafficking. Appellant asserts that it has calculated this based on results of undercover investigations and determined that it was a positive correlation, but the relationship between the values is weak. These contentions are pure conjecture on the part of Appellant. Appellant does not have the necessary data to perform a reliable correlation analysis.

Summary

The ROC determined that Appellant likely trafficked in SNAP benefits. The charges of violations were based on the ROC’s assessment that substantial evidence exists that the questionable transactions occurring during the review period displayed patterns inconsistent with legitimate sales of eligible food to SNAP participants. The evidence the ROC considered in support of its determination included:

- The irregular SNAP transaction data of Appellant as compared to similar stores;
- Observations made during an store visit by a USDA contractor, including the inadequacy of the firm’s staple food stock to support such large transactions;
- The availability and characteristics of other SNAP-authorized stores located close to Appellant; and,
- Shopping behaviors of Appellant’s customers.

The transaction data and overall firm record demonstrate the patterns of unusual, irregular, and inexplicable SNAP activity for this firm is likely the result of trafficking.

Upon review, Appellant failed to prove by a preponderance of the evidence that the administrative action should be reversed. Appellant provided inadequate explanations for the suspicious transactions and insufficient evidence to legitimize its transaction data. It has not convincingly rebutted the ROC’s determination that Appellant most likely trafficked in SNAP benefits. The SNAP regulations are specific with regard to the action that must be taken if personnel of the firm have trafficked, which is that FNS must disqualify the firm permanently.

CIVIL MONEY PENALTY

Appellant requested a civil money penalty (CMP) contending that it had established and implemented an effective compliance policy and program to prevent SNAP violations. According to 7 CFR § 278.6(i) of the SNAP regulations, FNS may impose a CMP in lieu of permanent disqualification for trafficking.

For an Appellant's request for a CMP to be considered, the regulations at 7 CFR § 278.6(b)(2) require that Appellant submit supporting documentation within ten days of receipt of the charge letter. Appellant was advised of this provision in the charge letter of September 17, 2021. A review of the administrative record indicates Appellant did not submit documentation to support its eligibility for this alternative sanction by this deadline.

7 CFR § 278.6(i) sets forth the eligibility requirements for a CMP:

The firm shall, at a minimum, establish by substantial evidence its fulfillment of each of the following criteria:

Criterion 1: The firm shall have developed an effective compliance policy as specified in Section 278.6(i)(1); and,

Criterion 2: The firm shall establish that both its compliance policy and program were in operation at the location where the violation(s) occurred prior to the occurrence of violations cited in the charge letter sent to the firm; and,

Criterion 3: The firm had developed and instituted an effective personnel training program as specified in Section 278.6(i)(2); and,

Criterion 4: Firm ownership was not aware of, did not approve, did not benefit from, or was not in any way involved in the conduct or approval of trafficking violations; or it is the first occasion in which a member of firm management was aware of, approved, benefited from, or was involved in the conduct of any trafficking violations by the firm . .

. .

In support of Appellant's contention that it is eligible for a CMP, it described its compliance policy and training program. In this regard, the various statements made by Appellant is not "substantial evidence" that fulfills each of the four criteria of 7 CFR § 278.6(i), demonstrating "that the firm had established and implemented an effective compliance policy and program to prevent violations."

The standards of eligibility for a trafficking CMP are high. They require substantial proof that a compliance policy and program was established and implemented prior to the occurrence of violations. These standards exist to thwart attempts to falsely present compliance policies and programs that were not actually implemented prior to violations. As Appellant did not provide the required supporting documentation, the ROC did not assess a CMP. According to the requirements stated in 7 CFR § 278.6(b)(1), § 278.6(b)(2)(ii and iii), and § 278.6(i), Appellant is not eligible for a CMP in lieu of a permanent disqualification from participation as an authorized retailer in SNAP. The determination by the Office of Retailer Operations and Compliance to deny Appellant a civil money penalty is sustained.

CONCLUSION

The record has yielded no indication of error in the finding by the Office of Retailer Operations and Compliance that Appellant trafficked in SNAP benefits. A review of the evidence supports that it is more likely true than not true that program violations occurred as charged. Based on the discussion above, the determination by the Office of Retailer Operations and Compliance to impose a permanent disqualification against Ingram Citgo from participating as an authorized retailer in SNAP is sustained.

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

February 28, 2022