

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

Schoolcraft - Wyoming Petro Inc.,

Appellant,

v.

Case Number: C0213337

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is sufficient 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 Schoolcraft - Wyoming Petro Inc. (Appellant) by the Retailer Operations Division of FNS.

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 Schoolcraft - Wyoming Petro Inc. on February 26, 2019.

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 January 29, 2019, the Retailer Operations Division informed the Appellant that Schoolcraft - Wyoming Petro Inc. 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."

In a response to the Retailer Operations Division of February 26, 2019, the Appellant, through counsel, replied to the charges therein denying the trafficking allegations and providing various explanations for the questionable SNAP transactions outlined in the January 29, 2019 Charge Letter.

After considering the Appellant's reply and the evidence in the case, the Retailer Operations Division issued a Determination Letter dated February 26, 2019, informing the Appellant that Schoolcraft - Wyoming Petro Inc. was being permanently disqualified from participation in the SNAP in accordance with 7 CFR § 278.6(e)(1) for trafficking violations.

In a letter postmarked March 5, 2019, 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 March 14, 2019.

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 April 2018 through September 2018. This involved the following SNAP transactions patterns which are indicative of trafficking:

- There were an unusual number of transactions ending in a same cents value;
- There were multiple transactions made from individual benefit accounts within a set period of time; and
- There were excessively large purchase transactions 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 reply to the Charge Letter, in the administrative review request, and in subsequent correspondence to FNS, the Appellant, through counsel, stated the following summarized contentions, in relevant part:

- The Appellant denies that it has engaged in SNAP trafficking.
- The Appellant has been authorized to participate in the SNAP since about 1998 and has never been cited for violating the SNAP rules. The Appellant's long track record of compliance with the SNAP rules should be given due consideration.
- Upon receiving the Charge Letter, the owner traced the dated/timed transactions in question to the responsible employee. The employee was immediately confronted about the issue and his employment was immediately terminated.
- With regard to the SNAP transactions included in Charge Letter Attachment 1, during the review period, there were an estimated 10,086 EBT transactions conducted. The Appellant conducted 95 so-called irregular transactions over a span of five months. The 95 transactions cited in this Attachment represent 0.9% of the transactions for the review period and total less 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The store sells many items that end in \$x.00 including baby food, coffee, candies, chips, noodles, wafers, and sandwiches. Therefore, an assumption that transactions that end in \$x.00 is simply unwarranted. These transactions are legitimate purchases of food items.
- Regarding the SNAP transactions included in Charge Letter Attachment 2, more than one transaction from the same household in one day is not indicative of trafficking. There were 46 flagged transactions. This represents 0.45% of all transactions conducted during the review period. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). That certain households would, on rare occasions, make multiple EBT purchases on the same day at the subject store is not unusual when considering the demographics of the area where the Appellant is located. Every household in the area is in deep poverty. There are no supermarkets anywhere to be found. Many of the residents do the majority of their grocery at the subject store. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- Regarding the SNAP transactions included in Charge Letter Attachment 3, there were 205 these transactions cited, representing less than 2% of the transactions during the

review period. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These transaction amounts are not unusual, given the items sold at the Appellant store and the prices of these items. For example, infant formula sells for \$9.00, \$13.00, or \$20.00 depending on the size. With just two large infant formula containers, these transactions are satisfied. Coffee sells for \$10.00 and \$20.00, the purchase of which could easily satisfy most of the transactions. The store sells sandwiches for \$3.00 and \$4.00 each, Red Bull for \$2.49 to \$4.99, honey for \$3.99 to \$6.49, canned chicken for \$3.99 to \$4.99, cereal for \$4.99 to \$6.99, and bacon for \$5.99. There are literally dozens of items that could quickly reach the total found in this Attachment. The Appellant's transaction data makes clear that the store has more SNAP transactions and more sales than would be expected at a gas station. The Appellant sells SNAP eligible food items almost exclusively. If sales of ineligible items occurred, it was due to employee error and not indicative of trafficking.

- USDA monitors every SNAP EBT transaction in a national database. FNS uses a computerized fraud detection tool called ALERT to identify statistically unusual EBT transaction patterns that may indicate SNAP violations. Statistical anomalies that may be identified by ALERT reports include high frequencies of sale totals in whole dollar and half dollar amounts. While FNS may rely on inconsistent data to consider their decision, this data alone is not enough to conclude trafficking. Reliance upon such data to charge an entity with trafficking is an outright injustice. Where courts have decided in the government's favor, the EBT transaction data of the disqualified store was found to be abnormal as compared to the transaction activity of like retailers, or other compelling circumstances were found, or both. Among other evidence, EBT debits exceeded the store's gross sales on several occasions; EBT data was compared to similarly-situated stores in the locale; repetitive pattern of unreasonable and inexplicable SNAP activity was compared to other similar authorized grocery stores; SNAP redemptions for four months were compared to the store's total projected annual food sales; and disqualified store offered no evidence to explain the volume, frequency or size of the transactions identified by the government. The Appellant cited case laws in support thereof.
- A permanent SNAP disqualification will impose a hardship on area SNAP customers as they depend upon the Appellant store. SNAP customers shop at the Appellant in ways that perhaps people would not think to shop at a gas station.
- A permanent SNAP disqualification will impose a financial hardship on the Appellant as SNAP sales are an important part of the business.
- The Appellant requests that FNS reverse its decision to permanently disqualify it from participation in the SNAP.
- Upon being hired at the subject firm, all employees are trained on the EBT machine and learn SNAP protocols. Employees are retrained and learn the SNAP rules under the supervision of the owner. All employees receive a copy of the SNAP training manual, watch the EBT training video in the owner's presence, and must sign and date a document that states that they received verbal training and are away of any and all consequences related to fraudulent activity (termination of employment and possible prosecution).

In support of the Appellant's contentions, the following documents were submitted to FNS:

- List of grocery items and retail prices;
- Employee list;

- 2016 demographic information for individual income and area grocery stores;
- Monthly EBT transaction data for 2018;
- Signed employee statements of SNAP training; and
- 2016 1099-K for the Appellant.

ANALYSIS AND FINDINGS

Store Characteristics

FNS authorized Schoolcraft - Wyoming Petro Inc. as a convenience store on November 16, 2006. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a March 15, 2018 store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information obtained from the store visit was also used to ascertain if there were justifiable explanations for the firm's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Approximately 1,200 square feet in size with no additional food storage outside of public view;
- No shopping carts or hand-held baskets available for customer use;
- One cash register and one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions. A second cash register is used for lottery sales only;
- Limited check-out counter space and it is surrounded by a Plexiglas barrier/turn style;
- No optical scanners;
- No signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, and grocery package deals;
- Telephone, online or other types of orders were not taken and delivery was not offered;
- No meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices;
- No evidence of a wholesale business such as posted prices or separate entrances for wholesale customers;
- The store visit report indicates that the firm does not have a special pricing structure, such as prices ending in \$x.x9, \$.x50, and/or \$x.00;
- Transaction totals are not rounded up or down at the checkout counter;
- Only three expensive (costing \$5.00 and above) food items in stock which were Folgers coffee at \$11.79 per 48 ounces; Maxwell House coffee at \$8.99 per 26.8 ounces; and cereal at \$5.99 per 19 ounces;
- No fresh or frozen meats, poultry, or seafood in stock;
- Deli meats and cheeses were not sold by the pound;
- Hot foods were not sold;
- Meat items included units of canned fish, packaged lunch meat, canned/potted meat, and meat jerky;
- Dairy included milk, yogurt, sour cream, margarine, and cheese;
- No fresh produce;

- Other staple foods available for purchase include such items as juice, loaf bread, cereal, pasta, rice, flour, corn meal, and pre-made deli sandwiches;
- Much of the remaining food stock consists of accessory foods such as carbonated and non-carbonated drinks, candy, sugar, spices, and condiments; and
- Ineligible nonfood items included gasoline, lottery tickets, tobacco, health and beauty items, paper products, and household cleaning supplies.

The available inventory of SNAP eligible food at the time of the store visit showed food stock that would be typical of a convenience store/bakery specialty store, where households normally purchase a limited number of items. There was little indication that SNAP households would be inclined to regularly visit the store to purchase large quantities of groceries. Given the available inventory and the store's characteristics, this review could find no reason why the Appellant firm's SNAP redemption patterns differed so significantly from those of similar sized competitors.

Charge Letter Attachments

On review, the investigative materials provided by the Retailer Operations Division, including computer printouts of transaction data available from Federal records, store visit observations, information regarding area competitor firms, and household shopping patterns, were analyzed.

Government analyses of stores caught in trafficking violations during on-site investigations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include, in part, those cited in the letter of charges. Based on this empirical data, and in the absence of any reasonable explanations for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the most likely explanation for "unusual, irregular, and inexplicable" transactions and patterns cited in the letter of charges is trafficking. Transactions having such characteristics sometimes do have valid explanations that support that they were the result of legitimate purchases of eligible food items. This is why opportunities are afforded to charged retailers to explain the questionable transactions cited. In this case, the Retailer Operations Division determined that the Appellant's contentions did not outweigh the evidence. 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. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

Same Cents Transactions (Charge Letter Attachment 1)

This Charge Letter Attachment documents transactions ending in same cents values. A review of the store visit record indicates that the store did not promote any specials that could explain the pattern of large numbers of transactions ending in these values. This Attachment includes 95 transactions (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) ending in \$.00
5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Schoolcraft - Wyoming Petro Inc. conducted 10,635 SNAP transactions during the review period. There were a total of 1,535 SNAP transactions that met the parameters of this Scan. Of

the total SNAP transactions conducted during the review period, a total of 95, or 6.19%, ended in “00” cents.

A number of households whose transactions were cited in other Attachments to the Charge Letter also consistently made transactions that ended in same cents values. Transactions appearing in more than one Attachment to the Charge Letter are more suspicious as they display multiple patterns common to trafficking transactions.

With regard to the transactions included in Attachment 1, the Appellant contends that during the review period, there were an estimated 10,086 EBT transactions conducted. The Appellant conducted 95 so-called irregular transactions over a span of five months. The 95 transactions cited in this Attachment represent 0.9% of the transactions for the review period and total less 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The store sells many items that end in \$x.00 including baby food, coffee, candies, chips, noodles, wafers, and sandwiches. Therefore, an assumption that transactions that end in \$x.00 is simply unwarranted. These transactions are legitimate purchases of food items.

The SNAP regulations do not prohibit SNAP transactions that end in a same cents number value. However, an interesting characteristic of questionable transactions is that many of them end in a same cents value. Sets of repeating digits are highly unorthodox and do not regularly occur in legitimate transactions; such transaction structuring is a common hallmark of trafficking activity. In the absence of any compelling rationale to the contrary, these patterns strongly indicate that the firm is trafficking in SNAP benefits.

Attachment 1 to the Charge Letter documents transactions ending in a same cents value. In support of its contentions that the store sells many items that end in \$x.00, the Appellant provided FNS with a list of grocery items and retail prices. However, the majority of the food items included on the list end in price variations of \$x.x9. The two most expensive food items included on the list were infant formula which cost \$9.00, \$13.00, and \$20.00 and coffee at \$10.00 and \$20.00. However, the store visit record indicates that the Appellant stocked no infant formula and the firm’s coffee prices were \$11.79 and \$8.99. The store visit record also indicates that the Appellant did not promote any specials nor did it have a special pricing structure, such as prices ending in \$x.x9, \$x.50, or \$x.00, that could explain the pattern of large numbers of transactions ending in these values. In addition, the store visit record indicates that transaction totals are not rounded up or down at the checkout counter. This Attachment includes 95 same cents transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Patterns of transactions ending in same cents amounts indicate that SNAP transaction amounts are contrived. Random data, which legitimate transaction activity approximates, is extremely difficult to produce intentionally; it is very difficult to avoid repetitive patterns when attempting to create the appearance of normal, near-random transactions. That various customers each repeatedly had totals with identical cents values during the review period strains the credibility of the Appellant’s declaration that this activity reflected the acceptance of SNAP benefits in exchange for eligible food items. As the Appellant has offered no rational explanation or supporting documentation for why such patterns might exist, it is reasonable to conclude that these same cents transactions are the result of trafficking.

Repeat Transactions by the Same Household (Charge Letter Attachment 2)

This Charge Letter Attachment documents 18 sets of transactions (46 total transactions) **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in SNAP benefits to meet the parameters of this scan. Multiple transactions conducted by the same household account within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by a retailer's inventory and structure.

Although it is not uncommon for customers to have more than one transaction per day, it is not common that such multiple transactions are for large dollar amounts. The SNAP transactions noted in the Charge Letter are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of the Appellant's stock and facilities and are therefore indicative of trafficking. The photographs from the store visit offer no explanation as to why SNAP customers would routinely shop at Schoolcraft - Wyoming Petro Inc. multiple times during a short period or purchase such a large volume of items, there being no great variety of products, price advantage, profusion of large packages, or significant bulk items or food cases for sale. The second, third, and fourth transactions in each set are too large to consist of forgotten items.

With regard to the transactions included in Attachment 2, the Appellant contends that more than one transaction from the same household in one day is not indicative of trafficking. There were 46 flagged transactions. This represents 0.45% of all transactions conducted during the review period. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. That certain households would, on rare occasions, make multiple EBT purchases on the same day at the subject store is not unusual when considering the demographics of the area where the Appellant is located. Every household in the area is in deep poverty. There are no supermarkets anywhere to be found. Many of the residents do the majority of their grocery at the subject store. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. In support of these contentions, the Appellant provided FNS with 2016 demographic information for individual income and area grocery stores and monthly EBT transaction data for 2018.

With regard to these contentions, while there are no limits on the number of times EBT cards may be used or the amount of eligible foods that may be purchased, the SNAP transactions noted in this Charge Letter Attachment are questionable because they display characteristics of use inconsistent with the nature and extent of the store's stock and facilities and are indicative of trafficking. Although it is not uncommon for customers to conduct more than one transaction per day, it is not common that such multiple transactions are for large dollar amounts. Schoolcraft - Wyoming Petro Inc. is not set up to provide for all of one's food needs with no fresh or frozen meats, poultry, or seafood, no frozen fruits or vegetables, no fresh produce, and lacks an abundant depth and breadth of staple foods. Also, the store visit observations indicate that there is no evidence of a price advantage or custom or special services rendered at the subject store that are not offered at other authorized SNAP stores in the area.

The store visit report and photos of March 15, 2018 indicate that there were no signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include

meats in bulk, foods sold by the case, and grocery package deals, no evidence of meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices, and no evidence of a wholesale business such as posted prices or separate entrances for wholesale customers. The store visit report and photos indicate that Schoolcraft - Wyoming Petro Inc. is approximately 1,200 square feet in size with no additional storage area outside of public view. It is irregular for convenience stores to have purchases such as those cited, especially when the Appellant stocks only a few high priced food items so the majority of the food items stocked at the store are low priced items.

Sometimes a firm may have unusual transaction patterns due to a recipient's lack of access to other SNAP authorized stores. The Appellant contends that there are no supermarkets anywhere to be found and provided demographic information for area grocery stores. However, agency mapping systems indicate that there are 16 SNAP authorized retailers (including a super store) located within a 1.0 mile radius of Schoolcraft - Wyoming Petro Inc. that can meet the nutritional needs of SNAP customers. Some of these authorized SNAP stores are larger than Schoolcraft - Wyoming Petro Inc. and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store. As mentioned previously, SNAP customers who shopped at Schoolcraft - Wyoming Petro Inc. during the review period also shopped at other area grocery stores and, therefore, transportation to other stores is not an issue for these customers. Therefore, lack of access to other authorized stores does not appear to be an explanation for the Appellant's abnormally high SNAP transaction amounts conducted within a short timeframe of each other.

No banking records or state sales tax forms were advanced to support that the Appellant was not trafficking. The owner provided no recipient affidavits to attest to shopping behaviors of flagged households at the Appellant. No vendor invoices of eligible foods were provided to support the Appellant's SNAP redemption volume. No itemized cash register tapes were advanced for review. While the Appellant provided FNS with a copy of its Federal business tax records for 2016, the records do not substantiate that the flagged transactions were the result of legitimate purchases of eligible food items and not the result of trafficking.

Unfortunately, the Appellant has not provided any evidence to show that the transactions listed in Attachment 2 were legitimate purchases of eligible foods. The arguments presented by the Appellant hold little weight without some kind of evidence to substantiate its claims.

Excessively Large Purchase Transactions (Charge Letter Attachment 3)

This Charge Letter Attachment documents 205 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These large transactions are not consistent with a convenience store in Wayne County, Michigan. During the review period, the average transaction amount for a convenience store in Wayne County, Michigan was \$5.44. The average transaction in Attachment 3 is seven times larger than the average purchase amount for this store type. There is no evidence that the firm would be likely to have SNAP redemption patterns that differ considerably from similar sized competitors. These large transaction amounts are also not consistent with the store's inventory. There were no fresh or frozen meats, poultry, or seafood and no fresh produce in stock. Most of the food products in Schoolcraft - Wyoming Petro Inc. consisted of accessory food items such as snack foods, candy, and drinks and inexpensive staple foods such as canned and packaged

goods. The frequency of high dollar purchases in the review period calls into question the legitimacy of these transactions.

Regarding the SNAP transactions included in Charge Letter Attachment 3, the Appellant contends that there were 205 these transactions cited, representing less than 2% of the transactions during the review period. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These transaction amounts are not unusual, given the items sold at the Appellant store and the prices of these items. For example, infant formula sells for \$9.00, \$13.00, or \$20.00 depending on the size. With just two large infant formula containers, these transactions are satisfied. Coffee sells for \$10.00 and \$20.00, the purchase of which could easily satisfy most of the transactions. The store sells sandwiches for \$3.00 and \$4.00 each, Red Bull for \$2.49 to \$4.99, honey for \$3.99 to \$6.49, canned chicken for \$3.99 to \$4.99, cereal for \$4.99 to \$6.99, and bacon for \$5.99. There are literally dozens of items that could quickly reach the total found in this Attachment. The Appellant's transaction data makes clear that the store has more SNAP transactions and more sales than would be expected at a gas station. The Appellant sells SNAP eligible food items almost exclusively. If sales of ineligible items occurred, it was due to employee error and not indicative of trafficking. In support of these contentions, the Appellant provided FNS with a list of grocery items and retail price, demographic 2016 demographic information for individual income and area grocery stores, monthly EBT transaction data for 2018, and 2016 1099-K.

With regard to these contentions, the food stock and facilities of the 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. The Appellant contends that the large transactions are not the result of trafficking of SNAP benefits. However, it is rare for a convenience store such as Schoolcraft - Wyoming Petro Inc. to have purchases like those included in Attachment 3 to the Charge Letter. This Attachment cites 205 EBT transactions during the six month period of investigation 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The Appellant argues that these transaction amounts are not unusual, given the items sold at the Appellant store and the prices of these items. For example, infant formula sells for \$9.00, \$13.00, or \$20.00 depending on the size. With just two large infant formula containers, these transactions are satisfied. Coffee sells for \$10.00 and \$20.00, the purchase of which could easily satisfy most of the transactions. The store sells sandwiches for \$3.00 and \$4.00 each, Red Bull for \$2.49 to \$4.99, honey for \$3.99 to \$6.49, canned chicken for \$3.99 to \$4.99, cereals for \$4.99 to \$6.99, and bacon for \$5.99. However, the store visit report and photos indicate that the Appellant stocked only three expensive (costing \$5.00 and above) food items which included Folgers coffee at \$11.79 per 48 ounces; Maxwell House coffee at \$8.99 per 26.8 ounces; and cereal at \$5.99 per 19 ounces. There was no infant formula, cereals costing more than \$5.00, or bacon in stock. While the store visit report and photos indicate that the store stocked pre-made deli sandwiches, Red Bull, and canned chicken, most of the food products in Schoolcraft - Wyoming Petro Inc. consisted of accessory food items such as snack foods, candy, and drinks and inexpensive staple foods such as canned and packaged goods. The food stock variety and amount was limited.

When one considers that SNAP benefit allotments are calculated to provide households with a bare minimum of food security, it is unreasonable to believe that households would spend a

large portion of their SNAP benefit allotments at a minimally stocked convenience store like Schoolcraft - Wyoming Petro Inc. The Appellant contends that the store sells SNAP eligible food items almost exclusively. However, the store visit findings indicate that the firm also sells a large number of ineligible nonfood items including gasoline, lottery tickets, tobacco, health and beauty items, paper products, and household cleaning supplies.

The FNS store visit report and photos of March 15, 2018 show that the Appellant offers a minimal stock of SNAP eligible foods with no fresh or frozen meats, poultry, or seafood, no fresh produce, and lacks an abundant depth and breadth of staple foods. The store visit inventory report and photos also show only a few expensive eligible foods in stock that would account for these large amounts as well as showing the store has limited checkout counter space and no shopping carts or hand-held baskets in which to transport the large number of items required to make up these large transaction amounts. Without these, it is unlikely that such large dollar value transactions could be for actual food purchases and more likely they are trafficking.

The record shows that there are 16 SNAP authorized retailers (including a super store) located within a 1.0 mile radius of the Appellant that can meet the nutritional needs of SNAP customers. Some of these area authorized SNAP stores are larger than Schoolcraft - Wyoming Petro Inc. and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store. An analysis of the shopping patterns for all of the SNAP households listed in this Attachment shows that the majority of the households shopping at Schoolcraft - Wyoming Petro Inc. have access to transportation and that all are regularly shopping at a variety of larger stores, including super stores and/or supermarkets, located nearby and at several miles distance from the Appellant's location. While Schoolcraft - Wyoming Petro Inc. does offer some staple food items, SNAP recipients are already shopping at other larger SNAP retailers located in proximity to the Appellant's business offering a greater quantity and variety of products, including fresh meats/seafood and produce, at lower prices. Therefore, the store has nothing to attract SNAP customers as there are no special or custom services offered.

5 U.S.C. § 552 (b)(7)(E).

Lastly, the case record documents that the Retailer Operations Division conducted a detailed analysis of three SNAP households identified in the Charge Letter to analyze their shopping patterns at Schoolcraft - Wyoming Petro Inc. compared to their shopping patterns at other SNAP authorized stores. Each of these households had access to, and shopped at larger stores including super stores and/or supermarkets. It is obvious that these SNAP households had transportation available to them to reach these other authorized stores. However, despite this access to better stocked stores, these sampled households conducted excessively large transactions at Schoolcraft - Wyoming Petro Inc. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** of shopping at the larger stores where they conducted much smaller SNAP purchases. It is highly unlikely that a convenience store with minimal staple foods would have legitimate SNAP transactions greater than these larger and better stocked stores.

The burden to disprove trafficking rests with the Appellant. In this matter, insufficient evidence was advanced to support the contention. No itemized cash register receipts were provided. No vendor invoices to document eligible items sufficient to cover the Appellant's SNAP

redemptions were provided. No customer statements were provided to explain the shopping behaviors of flagged households at the Appellant. No business banking records were provided. While the Appellant provided FNS with a copy of its Federal business tax records for 2016, the records do not substantiate that the flagged transactions were the result of legitimate purchases of eligible food items and not the result of trafficking.

Government analyses of stores caught in trafficking violations during on-site investigations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include, in part, those cited in the Charge letter. Therefore, based on this empirical data, and in the absence of credible evidence for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the “unusual, irregular, and inexplicable” transactions and patterns cited in the letter of charges evidence trafficking as the most likely explanation. Nevertheless, transactions having such characteristics do sometimes have valid explanations that support that they were the result of legitimate purchases of eligible food items, and this is why opportunities are afforded to charged retailers to explain the questionable transactions cited. In this case, however, the Retailer Operations determined that the Appellant’s contentions did not outweigh the evidence. Assertions that the firm has not violated program regulations, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations.

In summary, the store’s layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding those of similar type stores. In addition to the statistical irregularity of such high dollar transactions, the limited availability of counter space for checking out and the lack of shopping carts and hand-held baskets support the Retailer Operations Division’s determination. It is not plausible that the store’s customers are carrying large amounts of food around the store without the benefit of shopping carts and/or hand-held baskets. Customers purchasing such large quantities of food items would have to hold them in their arms, or enlist the help of others while shopping. Based on the preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 3 are more likely than not the result of trafficking in SNAP benefits.

Denial of Charges

Regarding the Appellant’s argument that it denies the trafficking allegations, this review encompasses and documents the examination of the primary and relevant information in this case, the purpose of which is, as noted above, to determine whether the Appellant demonstrates by a preponderance of the evidence that the permanent disqualification should be reversed. In this case, therefore, if the Appellant demonstrates by a preponderance of the evidence that trafficking did not occur in the Appellant’s firm, then trafficking will be considered not to have occurred and the disqualification reversed. If this is not demonstrated the case is to be sustained. Assertions that the firm has not violated program rules, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations or for mitigating their impact.

No Prior Violations

The Appellant contends that it has been authorized to participate in the SNAP since about 1998 and has never been cited for violating the SNAP rules. The Appellant's long track record of compliance with the SNAP rules should be given due consideration. However, a record of participation in the SNAP with no documented previously violations does not constitute valid grounds for mitigating the impact of the present serious determination of trafficking.

Corrective Action

The Appellant contends that upon receiving the Charge Letter, the owner traced the dated/timed transactions in question to the responsible employee. The employee was immediately confronted about the issue and his employment was immediately terminated.

It is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division. This review is limited to what circumstances were at the basis of the Retailer Operations Division action at the time such action was made. It is not the authority of this review to consider what subsequent remedial actions may have been taken so that the store may begin to comply with program requirements. There is no provision in the SNAP regulations or internal agency policy directives for waiver or reduction of an administrative penalty assessment on the basis of after-the-fact corrective action implemented subsequent to investigative findings of program violations. Therefore, the Appellant's contention that it has taken corrective actions, though they would have been valuable towards preventing future program violations, does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

ALERT Data

The Appellant contends that USDA monitors every SNAP EBT transaction in a national database. FNS uses a computerized fraud detection tool called ALERT to identify statistically unusual EBT transaction patterns that may indicate SNAP violations. Statistical anomalies that may be identified by ALERT reports include high frequencies of sale totals in whole dollar and half dollar amounts. While FNS may rely on inconsistent data to consider their decision, this data alone is not enough to conclude trafficking. Reliance upon such data to charge an entity with trafficking is an outright injustice. Where courts have decided in the government's favor, the EBT transaction data of the disqualified store was found to be abnormal as compared to the transaction activity of like retailers, or other compelling circumstances were found, or both. Among other evidence, EBT debits exceeded the store's gross sales on several occasions; EBT data was compared to similarly-situated stores in the locale; repetitive pattern of unreasonable and inexplicable SNAP activity was compared to other similar authorized grocery stores; SNAP redemptions for four months were compared to the store's total projected annual food sales; and disqualified store offered no evidence to explain the volume, frequency or size of the transactions identified by the government.

Government analysis of stores caught in trafficking violations during on-site investigations found that transactions involving trafficking consistently display particular characteristic or patterns.

These patterns include those cited in the letter of charges. The Appellant is correct that FNS employs a computerized fraud detection tool called ALERT to identify these patterns; however, the Appellant is incorrect in its contention that the Retailer Operations Division overly relied on the results of the ALERT system when using a charge of trafficking. This tool does not determine that trafficking has occurred. The Retailer Operations Division 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 Retailer Operations Division conclude whether questionable transactions were, more likely than not, the result of trafficking.

Nevertheless, transactions with these patterns sometimes have valid explanations that support the idea that they were the result of legitimate purchases of eligible food items, which is why opportunities are afforded to charged retailers to explain the questionable transactions cited. In this case, based on the empirical data of past trafficking investigations, the number of suspicious patterns displayed, the other evidence in the file, and in the absence of any reasonable explanations for such transaction patterns, the preponderance of evidence supports that the “unusual, irregular, and inexplicable” transactions and patterns cited in the letter of charges are the result of trafficking.

Case Law

The Appellant cited various case laws in support of its contentions that the SNAP transactions included in the Charge Letter were legitimate purchases of eligible food items and not the result of SNAP trafficking. With regard to the case laws cited by the Appellant, it is beyond the scope and authority of this review to determine the applicability of same. This review is limited to consideration of whether or not the Retailer Operations Division duly adhered to the Food and Nutrition Act of 2008, as amended, and the implementing regulations, and whether or not the action taken is sustainable by a preponderance of the evidence. Therefore, the application of any judicial precedent is better addressed via judicial review. Accordingly, no further findings or conclusions are rendered in this regard.

Customer Hardship

The Appellant contends that a permanent SNAP disqualification will impose a hardship on area SNAP customers as they depend upon the Appellant store. SNAP customers shop at the Appellant in ways that perhaps people would not think to shop at a gas station. 7 CFR § 278.6(f) of the SNAP regulations provides for civil money penalty assessments in cases where disqualification would cause “hardship” to SNAP households because of the unavailability of a comparable participating food store in the area to meet their needs. However, this regulation also sets forth the following specific exception to such assessments there under: “A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification”. Therefore, since this case involves a permanent disqualification action, the civil money penalty provision is not applicable to the present case.

Financial Hardship

The Appellant contends that a permanent SNAP disqualification will impose a financial hardship on the Appellant as SNAP sales are an important part of the business. However, there is no provision in the SNAP regulations or internal agency policy directives for waiver or reduction of an administrative penalty assessment on the basis of possible economic hardship to the firm resulting from imposition of such penalty. To allow store ownership from being excused from assessed administrative penalties based on purported economic hardship to the firm would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA.

Moreover, giving special consideration to economic hardship to 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 disqualified from the program in the past for similar violations. Therefore, the Appellant's contention that the firm may incur economic hardship based on the assessment of an administrative penalty does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

Reversal of Imposed Penalty

The Appellant requests that FNS reverse its decision to permanently disqualify it from participation in the SNAP. However, the Food and Nutrition Act of 2008, at § 2021, does not allow for discretion in determining sanctions for trafficking and is specific in its requirement that "... a disqualification . . . 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 ...". In keeping with this legislative mandate, 7 CFR § 278.6(e)(1)(i) of the SNAP regulations states that FNS shall disqualify a firm permanently if personnel of the firm have trafficked.

CIVIL MONEY PENALTY

While the Appellant did not specifically request consideration of a trafficking civil money penalty (CMP) in lieu of a permanent SNAP disqualification, this alternative penalty was given consideration by FNS based on the Appellant's claims of employee training.

In the January 29, 2019 Charge Letter the Appellant was informed by the Retailer Operations Division that, under certain conditions, FNS may impose a civil money penalty (CMP) of up to \$59,000 in lieu of permanent disqualification of a firm for trafficking. Per Section 278.6(i) of the SNAP regulations, four criteria must be met in order to be considered for a trafficking civil money penalty. If requesting a trafficking CMP, an Appellant must meet each of the four criteria listed and provide the documentation as specified within ten days of the Appellant's receipt of their Charge Letter. As specified in 7 CFR § 278.6(i), in determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of trafficking, the firm shall, at a minimum, establish by substantial evidence its fulfillment of each of the following four criteria:

Criterion 1. The firm shall have developed an effective compliance policy as specified in 7 CFR § 278.6(i)(1);

Criterion 2. The firm shall establish that both its compliance policy and program were in operation at the location where the violations(s) occurred prior to the occurrence of violations cited in the Charge Letter;

Criterion 3. The firm had developed and instituted an effective personnel training program as specified in 7 CFR § 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.

If the Appellant's request for a trafficking CMP and the required documentation are not submitted on time, it will lose its right for any further consideration for a trafficking CMP. The SNAP regulations are specific at 7 CFR §278.6(b)(2)(iii) that "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**, the firm shall not be eligible for such a penalty". The regulations do not provide the agency discretion to extend the time within which documentation and evidence in support of a trafficking civil money penalty may be submitted.

In the March 25, 2019 letter in support of its request for administrative review (**i.e., past the 10 day required timeframe for requesting an imposition of a trafficking civil money penalty in lieu of permanent disqualification**), the Appellant stated that it provides training to store employees on the SNAP rules. Specifically, the Appellant contends that upon being hired at the subject firm, all employees are trained on the EBT machine and learn SNAP protocols. Employees are retrained and learn the SNAP rules under the supervision of the owner. All employees receive a copy of the SNAP training manual, watch the EBT training video in the owner's presence, and must sign and date a document that states that they received verbal training and are aware of any and all consequences related to fraudulent activity (termination of employment and possible prosecution). In support of its claims of employee training, the Appellant provided FNS with an employee list and signed employee statements of SNAP training.

The Retailer Operations Division determined that the Appellant was not eligible for a trafficking civil money penalty in lieu of a disqualification under 7 CFR § 278.6(i) because the Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations. **5 U.S.C. § 552 (b)(7)(E).**

Therefore, the Retailer Operations Division's decision not to impose a civil money penalty in lieu of disqualification is sustained as appropriate pursuant to 7 CFR § 278.6(i).

CONCLUSION

The Retailer Operations Division's analysis of the Appellant's EBT transaction record, upon which charges of violations are based, together with observations made during the store visit and

an analysis of customer shopping behaviors, provide substantial evidence that questionable transactions during the focus period have characteristics and display patterns that are not consistent with legitimate sales of eligible food to SNAP benefit customers at a store of this type, size and makeup. Rather, the characteristics are indicative of illegal trafficking in program benefits. The Appellant's contentions do not outweigh this evidence.

The record has yielded no indication of error or discrepancy in the reported findings by the Retailer Operations Division that program benefits were accepted in exchange for cash or consideration other than eligible food. Therefore, based on a review of the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged. Therefore, the decision to impose a permanent disqualification from participation in the SNAP against Schoolcraft - Wyoming Petro Inc. is sustained.

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

May 7, 2019