

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

**Conoco Food Mart,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0248250**

**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 Conoco Food Mart (hereinafter “Conoco Food Mart” or “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 Conoco Food Mart.

**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 October 5, 2021, the Retailer Operations Division informed the Appellant that Conoco Food Mart 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.” The letter also noted that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt under the conditions specified in 7 CFR § 278.6(i). Per UPS confirmation of delivery, the charge letter was delivered to the Appellant at the store address of record on October 7, 2021.

In responses to the Retailer Operations Division of October 8, 2021 and October 12, 2021, the Appellant replied to the letter of charges. The record reflects that the Retailer Operations Division received and considered the information provided prior to making a determination.

After considering the Appellant's responses and the evidence in the case, the Retailer Operations Division issued a determination letter dated November 17, 2021, informing the Appellant that Conoco Food Mart was being permanently disqualified from participation in the SNAP in accordance with 7 CFR § 278.6(e)(1) for trafficking violations. The letter also stated that the Appellant was not eligible for a trafficking civil money penalty (CMP) in accordance with 7 CFR § 278.6(i) as the Appellant did not submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter postmarked November 23, 2021, the Appellant 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 December 7, 2021.

### **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 February 2021 through July 2021. This involved the following SNAP transactions patterns which are indicative of trafficking:

- There were multiple transactions made from the accounts of individual SNAP households within a set time period; and
- There were EBT transactions conducted that are large based on the observed store characteristics and recorded food stock.

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 replies to the charge letter and in the administrative review request, the Appellant stated the following summarized contentions, in relevant part:

- The Appellant denies the trafficking allegations.
- The Appellant is located in a densely populated, generally low-income area.
- Directly behind the store is the largest low-income housing project in Huntsville called Butler Terrace. It boasts 252 single family apartments. Less than half of a mile away is another low-income housing option called Johnson Towers which has 120 units.
- Across the street from the Appellant is another neighborhood with many single-family homes and a few duplexes. The median cost of a home in Huntsville is \$204,109.00. Many of these houses are valued at a fraction of that. This is evidence that the Appellant is servicing a majority of lower income customer base who receive assistance benefits such as SNAP and who use these benefits daily.
- Often, these customers purchase something for breakfast, lunch and/or dinner if they cannot go to a grocery store.
- The nearest Walmart is nearly two miles away. There are two other grocery stores that are closer, Publix and Whole Foods, but both are more than a mile from the Appellant.
- The reviewer may have missed the Appellant's deli during the store visit. The Appellant allows EBT customers to purchase cold foods from the deli and then the store will cook and prepare the foods onsite. Foods such as hamburgers, fries, chicken wings and tenders are available to buy and the vast majority of the store's EBT sales are done this way. This causes repeat business by customers. This is the reason for the larger transactions. For example, a family of six may come in and get a meal.
- The Appellant also has had people come in and purchase multiple of the same items such as 25 cheeseburgers and fries, when they are having a family get together.
- Most of the larger transactions take place in the afternoon and evenings when people tend to eat larger meals for lunch and dinner.
- Also, P-EBT increased the Appellant's sales. People had more benefits and spent more as a result. This increased the number of times a family could eat convenience foods purchased from the deli instead of staple foods which are more often purchased from grocery stores.
- The Appellant restocks its shelves multiple times daily. When the reviewer came for the store visit, the stock was low because the store had a busy morning. The Appellant strives to provide its best service and a variety of foods.
- The Appellant welcomes another store visit at any time for USDA to reconsider the current assessment.
- A SNAP disqualification would impose a hardship on area SNAP customers.

In support of these contentions, the Appellant submitted the following information for review:

- Charge letter dated October 5, 2021;
- Determination letter dated November 17, 2021;
- A web-based map (Bing Maps) of the store's location (one page);
- A snapshot (found on Zillow) of the store's location and the values of the surrounding homes (one page); and

- The Appellant’s deli menu including both hot and cold prepared foods (one page).

## **ANALYSIS AND FINDINGS**

### **SNAP Authorization**

During the review period of February 2021 through July 2021, Conoco Food Mart was classified as a convenience store. When the Appellant was authorized by FNS for participation in the SNAP on December 23, 2019, the owner signed a SNAP application for the store and acknowledged he was aware of the SNAP regulations and understood those regulations. That application included a certification and confirmation that the owner would “accept responsibility on behalf of the firm for violations of the SNAP regulations, including those committed by any of the firm’s employees, paid or unpaid, new, full-time or part-time.” The violations listed on this certification include accepting SNAP benefits in exchange for cash, otherwise known as trafficking, and other violations such as accepting SNAP benefits as repayment on credit accounts or in exchange for ineligible items.

### **Store Visit Observations**

The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during an August 20, 2021 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 available inventory of SNAP eligible food at the time of the store visit showed food stock that would be typical of a convenience store, where households normally purchase a limited number of items. The SNAP eligible food stocked by the store was generally of a low dollar value, consisting mainly of inexpensive canned and packaged goods, snack foods, single-serving food items and accessory food items. The store visit report and photographs documented the following store size, description, and characteristics:

- Approximately 3,000 square feet in size with approximately 400 square feet of storage area outside of public view which stocked predominantly drinks;
- Had storage coolers/freezers which stocked foods for hot and/or cold food preparation;
- No shopping carts and no hand-held baskets available for customer use;
- One small checkout counter area with limited check-out counter space;
- One cash register and one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;
- Did not have optical scanners;
- Did not have a special pricing structure, such as prices ending in \$.x9;
- Did not round transactions up or down at the checkout counter;
- Had ATM or money transfer service;
- 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 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;
- No orders (telephone or on-line) were taken;
- Delivery was not offered;
- Had some scantily-filled shelves;
- Had poor lighting;

- Only four expensive (costing \$5.00 and above) SNAP eligible food items in stock which were Purified bottled water at \$7.99 per 45 bottles (7 units in stock); Sodas at \$6.99 per 12 pack; Café Bustelo coffee at \$5.99 per 11 ounces (3 units in stock); and bacon at \$5.99 per 11 ounces (3 units in stock);
- No fresh or frozen meats, poultry, or seafood;
- Frozen food items included ice cream only;
- Had a kitchen and hot and cold prepared foods were sold;
- Did not have a deli area and deli meats and cheeses were not sold by the pound;
- Meat items included units of canned/potted meat, canned fish, hot dogs, packaged lunch meat, bacon, meat jerky, and eggs;
- Dairy included milk, margarine, cheese, and sour cream;
- Fresh produce stock consisted of a few bananas;
- Other staple foods available for purchase included such items as juice, pasta, cereal, flour, loaf bread, corn meal, oats, baking mix, and canned goods;
- Much of the remaining food stock consisted of accessory foods such as candy, carbonated and non-carbonated drinks, condiments, snack foods, cakes/pastries, and sugar; and
- Ineligible nonfood items included health and beauty aids, paper products, household cleaning supplies, alcohol, automotive supplies, gasoline, tobacco products, and pet food.

### **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.

### **Repeat Transactions by the Same Household (Charge Letter Attachment 1)**

This charge letter Attachment documents 23 sets of transactions (52 total transactions) that total \$2,769.52 in SNAP benefits to meet the parameters of this scan. These transactions were conducted by 19 different households. 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.

The Appellant contends that the store is servicing a majority of lower income customer base who receive assistance benefits such as SNAP and who use these benefits daily. Often, these customers purchase something for breakfast, lunch and/or dinner if they cannot go to a grocery store.

Although it is not uncommon for customers to have more than one transaction per day and there are no limits on the number of times EBT cards may be used or the amount of eligible foods that may be purchased, 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.

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 benefit allotment in just one or two days, especially from a convenience store like the Appellant firm that has a moderate food stock, no fresh produce stock other than a few bananas, no fresh meats, poultry, or seafood, no frozen meats, poultry or seafood, and no frozen food stock other than ice cream.

The report and photographs from the store visit offer no explanation as to why SNAP customers would routinely shop at the Appellant 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 majority of the Appellant's food stock consists of packaged food items, canned items, accessory food items, snacks, and beverages. The second, third, and fourth transactions in each set are too large to consist of forgotten items.

In addition, there was a small checkout area with one cash register and one EBT POS device to ring-up food purchases. There were no shopping carts or hand-held baskets available to customers for transporting food within the store. The store visit observations also indicate that the firm offered no special or custom services to customers, such as on-line or telephone orders and/or delivery services, which would entice SNAP customers to utilize the subject store over other area authorized retail stores.

The following are examples of questionable Attachment 1 transactions where seven different households transacted between \$91.07 and \$223.56 in elapsed times of 34 seconds to 22 hours 9 minutes and 7 seconds:

**5 U.S.C. § 552 (b)(7)(E).**

While the Appellant may be located in a neighborhood with households that qualify for SNAP benefits, these factors are not an indication that questionable transactions would be occurring at any given store. The subject store shows unusual transaction patterns that are not displayed in other similarly stocked stores. If specific household needs are causing these questionable transactions at the subject store, it would be expected that similar patterns would also present themselves at nearby firms as well. But this is simply not the case.

The Appellant contends that customers often purchase something for breakfast, lunch and/or dinner if they cannot go to a grocery store. The nearest Walmart is nearly two miles away. There are two other grocery stores that are closer, Publix and Whole Foods, but both are more than a mile from the Appellant.

It is recognized that sometimes a firm may have unusual transaction patterns due to a recipient's lack of access to other SNAP authorized stores. However, during the review period there were 14 SNAP authorized retailers located within a 1.0 mile radius of Conoco Food Mart, including 2 small grocery stores, 2 medium grocery stores, and 1 super store, that could meet the nutritional needs of SNAP customers. There were a total of 36 authorized SNAP stores located within a 2.0 mile radius, including 4 small grocery stores, 4 medium grocery stores, 4 supermarkets, and 4 super stores. Some of these area authorized stores offer a comparable or greater quantity and variety of food products at comparable or better prices as compared to the subject store.

In addition, the record indicates that SNAP customers who shopped at Conoco Food Mart 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 or the availability of other food 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.

**5 U.S.C. § 552 (b)(7)(E).**

Unfortunately, the Appellant has not provided any evidence to show that the transactions listed in Attachment 1 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 2)**

This charge letter Attachment documents 1,392 SNAP transactions, as large as \$180.00 that total \$66,195.93. These large transaction amounts are not consistent with the store's observed characteristics and food inventory. The frequency of high dollar purchases in the review period calls into question the legitimacy of these transactions.

The Appellant contends that the reviewer may have missed the Appellant's deli during the store visit. The Appellant allows EBT customers to purchase cold foods from the deli and then the store cooks and prepares the foods onsite. Foods such as hamburgers, fries, chicken wings and tenders are available to buy and the vast majority of the store's EBT sales are done this way. Most of the larger transactions take place in the afternoon and evenings when people tend to eat larger meals for lunch and dinner.

However, 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 Conoco Food Mart to have purchases like those included in this Attachment to the charge letter.

The store visit report and photos indicate that the firm had a kitchen and that hot and cold prepared foods were sold at the Appellant. The deli menu provided by the Appellant advertises the availability of both hot (sub sandwiches, chicken wings, chicken tenders, chicken nuggets, shrimp, cheeseburgers, pizza, etc.) and cold prepared foods (salads, wraps, club sandwiches, etc.). However, the majority of the advertised foods were hot foods. The SNAP regulations state that hot foods cannot be purchased with SNAP benefits. The Appellant also provided no evidence, such as itemized EBT receipts, which would support its claim that the store allows EBT customers to purchase cold foods from the deli which are cooked and prepared on site. In addition, the store visit observations indicate that there were no signs posted in the store advertising the availability of this service to customers.

A review of the store visit report, which was completed in collaboration with and signed by the store owner, as well as the photos indicates that Conoco Food Mart is a convenience store which is approximately 3,000 square feet in size with approximately 400 square feet of storage area outside of public view which stocked predominantly drinks. The store's storage coolers/freezers stock foods for hot and/or cold food preparation. The stock of SNAP eligible foods is moderate with no fresh meats, poultry, or seafood, no frozen meats, poultry, or seafood, no fresh produce other than a few bananas, no frozen food stock other than ice cream, and lacks an abundant depth and breadth of staple foods.



In addition, the firm offered no special or custom services to customers, such as on-line or telephone orders and/or delivery services, which would entice SNAP customers to utilize the subject store over other area authorized retail stores. The Appellant does not offer any specialty or ethnic food items that are not available at other area authorized retail food stores. 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 observations also indicate that the store had some scantily-filled shelves, poor lighting, and that there were only a few expensive eligible foods in stock, some of which were in limited quantities, which would account for these large amounts. In addition, there was a limited checkout counter space, one cash register, and one EBT POS device and no optical scanners or conveyor belts to expedite high dollar or rapid consecutive purchases. In addition, there were 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 Appellant contends that store shelves are restocked multiple times daily. When the reviewer came for the store visit, the stock was low because the store had a busy morning. However, while there is no definition in the SNAP regulations for an excessively large purchase or transaction, FNS makes its determination based on the store type, characteristics and stocked inventory. The burden is on the Appellant to prove transactions FNS identified as large for the store type (in this case, a convenience store) are for legitimate purchases. According to the store visit, the subject store did not have inventory to support the numerous large transactions. The Appellant did not provide any evidence of continuously purchasing inventory throughout the review period to satisfy the large transactions, such as inventory invoices.

#### 5 U.S.C. § 552 (b)(7)(E).

The Appellant contends that P-EBT increased the Appellant's sales. People had more benefits and spent more as a result. However, these same pandemic conditions would affect all stores and are not an indication that questionable transactions would be occurring at any given store. The subject store shows unusual transaction patterns that are not displayed in other similarly stocked stores. If specific pandemic needs are causing these questionable transactions at the subject store, it would be expected that similar patterns would also present themselves at nearby firms as well. But this is simply not the case.

#### 5 U.S.C. § 552 (b)(7)(E).

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 super store. It is not plausible that the firm's customers would regularly carry very large amounts of merchandise around the store without the benefit of shopping carts, especially since larger, better-stocked stores are readily available and in the vicinity of the Appellant firm. The 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. The 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.

USDA employs a computerized fraud detection tool to identify EBT transactions that form patterns that have characteristics indicative of trafficking. However, this tool does not, by itself, determine or conclude that trafficking has occurred. The Retailer Operations Division analyzes the transaction data and patterns along with other documentation such as, information from the onsite store visit report including photographs of stock and the store layout, an analysis of recipient shopping behavior, and comparisons with similar store types in local area, to render a determination as to whether or not the questionable transaction patterns were, more likely than not, the result of trafficking. The regulations at 7 CFR § 278.6(a) state that FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, and that such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through, inconsistent redemption data, and evidence obtained through a transaction report under an electronic benefit transfer system.

### **Customer Hardship**

With regard to the Appellant's contention that a SNAP disqualification would impose hardship on area SNAP customers, 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.

### **CIVIL MONEY PENALTY**

As previously indicated, the November 17, 2021 determination letter advised the Appellant of the ineligibility for consideration for a trafficking civil money penalty according to the terms of Section 278.6(i) of the SNAP regulations. The letter of charges dated October 5, 2021 advised the Appellant that documentation of eligibility for that alternative sanction was to be provided within 10 days. The regulations specify that such documentation must, in part, establish that there was an effective compliance policy and training program and that both were in effect and implemented prior to the occurrence of violations. The letter indicates that no information was provided by the Appellant for consideration; therefore, on review the Retailer Operations Division's determination that the Appellant firm is ineligible for the imposition of civil money penalties in lieu of disqualification is affirmed.

### **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 Conoco Food Mart 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

February 4, 2022