

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

Raqqa Mart,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0245274

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 Raqqa Mart (hereinafter “Raqqa 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 Raqqa 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 September 1, 2021, the Retailer Operations Division informed the Appellant that Raqqa 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 September 2, 2021.

The record indicates that via telephone conversation with Retailer Operations Division staff on September 7, 2021, the Appellant requested an extension in time for providing a response to the letter of charges. By letter of September 7, 2021, the Retailer Operations Division granted the Appellant's time extension request to October 4, 2021. The Appellant was informed in that letter that the time to request a civil money penalty in lieu of permanent disqualification and to provide documentation to support such a request could not be extended per SNAP regulations.

In responses to the Retailer Operations Division of September 3, 2021, September 7, 2021, September 8, 2021, September 9, 2021, September 13, 2021, September 14, 2021, and September 16, 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 March 31, 2022, informing the Appellant that Raqqa 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 April 3, 2022, the Appellant requested an administrative review of the Retailer Operations Division's determination. FNS granted the Appellant's request for administrative review by letter dated April 14, 2022. The acknowledgement letter stated that the Appellant was welcome to submit additional information or evidence to support the request via email or mail but this information must be emailed or postmarked by May 5, 2022 in order for it to be considered in the administrative review. In an email correspondence of April 14, 2022, the Appellant's counsel sent a letter to the Administrative Review Officer noting that he was representing the Appellant in this matter and that he would provide additional information in support of the request for administrative review by the May 5, 2022 deadline. Via email of May 6, 2022, counsel requested a time extension to May 23, 2022 for providing additional information in support of the request for administrative review. The Administrative Review Officer granted counsel's time extension request and counsel was informed that all information must be submitted by close of business May 23, 2022 in order for it to be considered in the administrative review. Counsel submitted additional information via email on May 24, 2022. As of June 14, 2022, FNS had not received the hard copy information sent via USPS which was noted in counsel's May 24, 2022 email. The information submitted from counsel via email on May 24, 2022 was given consideration in this case.

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 covered in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021, and promulgated 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. 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 December 2020 through February 2021. This involved the following SNAP transactions patterns which are indicative of trafficking:

- There were multiple transactions made from the accounts of individual 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, in the administrative review request, and in subsequent correspondence, the Appellant, through counsel, stated the following summarized contentions, in relevant part:

- The Appellant denies the trafficking allegations.
- The Appellant has been an authorized SNAP retailer since 2013 and has not been cited for prior SNAP violations.
- SNAP sales are the heart of the store's business.
- The Appellant is not just a convenience store, it is a small grocery store. Customers love the hospitality at the Appellant. It is for many the only grocery store available to residents. It sells dairy, meats, produce, bakery items, canned foods, fresh foods, frozen foods and all other selections of beverages and snack items. It is not a chips and soda convenience market.
- The Appellant sells tubs of ground beef, produce (green peppers, tomatoes, lettuce, onions, potatoes, oranges, bananas, and apples), Krispy Crunchy chicken breadding (5 pounds), cases of water and soda, a lot of ice, slushies, and fountain sodas.

- Customers know what the store sells and many will ask the chef to get foods located in the back of the store for them to purchase.
- The COVID-19 pandemic has resulted in the charge letter allegations. When you combine the neighborhood store during a pandemic, with the sale of “prepared food items” for persons who were spending far more time than usual at home, with a substantial increase in the amount of available to those persons, it is easy to see how USDA’s algorithm numbers would change. During the review period, USDA increased benefits by 15% as well as increasing the maximum benefit available to all household categories.
- Sales have increased because the Appellant is the only food store in the neighborhood that is SNAP authorized.
- Now that the government has stopped giving away SNAP benefits SNAP sales have gone back to normal.
- The Appellant is the only grocery store in the village of Riverview which has over 4,000 residents.
- Customers walk in and buy their food and pay for it. Then minutes later they come back to the store and purchase groceries, drinks, and many more items.
- The Appellant has tried to avoid conducting two or more transactions for a single customer so it does not have to pay per swipe for the customer. The Appellant did not realize that these types of transactions would be considered suspicious activity by the agency.
- The Appellant has a hot foods menu.
- It sells foods cold or frozen like Krispy Crunchy, bags of chicken (wings, 8 piece mix, and tenders), and take-and-bake Hunt Brothers pizza and cooks them free for customers. The Appellant does not sell hot foods with SNAP benefits. Hot foods can only be purchased with cash or credit cards.
- USDA has confirmed multiple times in testimony under oath that heating or cooking food that is cold when purchased constitutes the legal purchase of an eligible SNAP food item. It is only when the food item is hot at the time of purchase that the food item is not an eligible SNAP food item.
- The Appellant’s customers know that the store will prepare the food if they ask even without a sign.
- The back of the store burned down and that is one of the reasons why there was no “You Buy, We Fry” or “Take-N-Bake” sign in the store.
- The Appellant will make sure that there are signs posted in store that states that these foods must be purchased cold and can then be cooked by the store.
- Unlike large grocery stores, customers will purchase additional foods while they are waiting for their foods to be cooked by the store.
- Having so many transactions back-to-back like this should prove that the Appellant is not doing anything wrong.
- If the Appellant or its employees notice anything suspicious from SNAP recipients they are asked to leave the store.
- The Appellant cannot provide register receipts as the system does not go back to the review period. The Appellant has called to obtain a new register system that would save transactions for 24 months and it is still waiting for a price quote.
- USDA has not presented any survey or study to support its claims that no person would shop at the Appellant and another bigger store in the same day, week, or month. People shop at multiple stores all the time. People with fewer resources also act similarly.
- Other stores do not sell prepared food items so customers are attracted to the Appellant.

- The inspection reports prepared by the investigator for this case are almost always wrong. His propensity for error has been the subject of federal court testimony.
- The dimensions of the market, the amount of available storage, and the highest priced items (this is always incorrect because the investigator testified that USDA has directed him not to include prepared food items prices in the inspection reports) are incorrectly noted on the store visit report.
- When a single prepared food item at the Appellant, such as chicken wings, fish and seafood, chicken tenders, and pizza, can range in price from \$5.99 to \$129.99, the average transaction will obviously exceed the transaction from a chips and soda store.
- Sales for the Appellant in 2020 included: 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- Sales for the Appellant in 2021 included: 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- USDA is welcome to contact all customers who conducted the charge letter SNAP transactions to verify that the activity is for eligible food items.
- The Appellant has an estimated \$250,000.00-\$300,000.00 in inventory of which \$50,000.00-\$75,000.00 is grocery inventory.
- Invoices submitted from Sam's Club (\$4,095.00), Fox Pizza (\$1,263.00), Pepsi (\$3,640.00), Prairie Farms (\$4,006.00), Blue Bunny ice cream (\$1,855.00), Hunt Brothers Pizza (\$4,534.00), Folsom Soda and Juice (\$5,248.00), American Bottling (\$4,318.00), Red Bull (\$5,072.00), Old Vienna (\$4,497.00), Grey Eagle (\$2,721.00), Frito-Lay (\$9,093.00), Coca-Cola (\$4,055.00), Rock Bottom (\$11,684.00), Rest Depot (\$1,503.00), and Little Debbie (\$341.00) total \$67,925.00 in purchased inventory.
- Eligible food purchases from the Appellant's three main vendors are: AMCON--\$6,500.00, Sysco--\$21,064.00, and Performance--\$16,000.00.
- The Appellant's average mark-up is 40%-50%--\$105,000.00 - \$42,000.00 = \$63,000.00. The total inventory purchase as noted in the invoices should be \$63,000.00-\$65,000.00.
- Invoices total \$111,489.00.
- The profit margin for a typical store like the Appellant ranges from 25% on some items all the way up to 200% or more for items such as soda and water. The prepared food items will generally run a profit margin of between 40% and 75%.
- The inventory total from the submitted invoices shows that the firm has enough eligible food stock to cover its SNAP redemptions.
- The Appellant purchases food items from the following vendors but is missing invoices from these vendors: Little Debbie (Vaccaro Distributing)—average purchase of \$250.00-\$350.00 per week; Natalie Cake—average purchase of \$160.00-\$250.00 per week; T M Midwest (King Henry candy bags)—average purchase of \$200.00-\$250.00 per week; Chicago candy (25 cent candy and chips and bags of candy)—average purchase of \$1,000.00-\$1,200.00 every two weeks; Sam's Club—average purchase of \$400.00-\$600.00 per week; UTZ—average purchase of \$400.00-\$500.00 per week; Chicken Skin Chips Co—average purchase of \$20.00-\$250.00 per week; and there are purchases from Coca-Cola, Becker Bris Eggs Inc, Horns Chips, Master Wholesalers, Al Food Supply Inc, Aldi, and Restaurant Depot.
- A SNAP disqualification would impose a financial hardship on the firm and may force it to close.
- A SNAP disqualification would impose a hardship on the many area customers who depend upon the Appellant.
- The only reason for this case is because the algorithm shows the Appellant is an outlier as compared to some hypothetical set of comparative data that USDA refuses to share but asserts everyone should just accept it as gospel.

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

- Numerous inventory invoices/receipts for food purchases;
- Deposition of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) dated May 6, 2021 (7 pages);
- Hot/prepared foods menu (2 pages);
- Food stock photos (7 total);
- Photos of food in storage area and cooler (predominantly drinks and alcohol) (4 total); and
- Photos of food in storage freezer as well as the store's kitchen area (3 total).

ANALYSIS AND FINDINGS

SNAP Authorization

FNS authorized Raqqa Mart for participation in the SNAP on April 4, 2013. During the review period of December 2020 through February 2021, Raqqa Mart was classified as a convenience store. 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 April 2, 2021 store visit conducted by a FNS contractor to observe the nature and scope of the firm’s operation, stock, and facilities. 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. 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 1,900 square feet in size with approximately 150 square feet of storage area outside of public view which stocked predominantly drinks and alcohol;
- Had storage coolers/freezers in which foods for hot or cold food prep were stored;
- No shopping carts and 10 hand-held baskets available for customer use;
- One small checkout counter area with limited check-out counter space;
- Three cash registers and two EBT point-of-sale (POS) devices for use in ringing-up SNAP transactions;
- Had optical scanners;
- Had empty shelves;
- Had poor lighting;

- Had an 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;
- Did not utilize an unusual pricing structure, such as prices ending in \$x.x9 or \$x.00;
- Transaction totals were not rounded up or down at the checkout counter;
- Telephone orders were taken;
- Delivery was not offered;
- The six most expensive (i.e., costing \$5.00 and above) SNAP-eligible food items in stock were Folgers coffee at \$9.99 per 30.5 ounces (3 units in stock); Dog Town pizza at \$8.99 per 16 ounces; Ice Mountain water at \$8.99 per 40-pack (.5 liters) (2 units in stock); Folgers coffee at \$7.99 per 11.3 ounces (1 unit in stock); Kirkwood chicken patties at \$5.99 per 23.8 ounces (1 unit in stock); and Maxwell House coffee at \$5.99 per 11.5 ounces (8 units in stock). Note: 7 units of infant formula were noted in the store visit report and in the store visit photos but were not listed in the store visit report as one of the most expensive SNAP-eligible foods. Infant formula usually costs more than \$5.00 and, therefore, should have been listed in the store visit report as one of the store's most expensive SNAP-eligible foods;
- No fresh or frozen unprocessed meats, poultry, or seafood;
- Frozen food stock included such items as ice cream, pizza rolls, Hot Pockets, pizza, appetizers, waffles, Texas Toast, French fries, sausage, and sandwiches;
- Had a kitchen and hot foods were sold; Hot foods menu was posted in store;
- Had a deli/prepared food section; Store stock was being used in deli/prepared food section;
- Deli meats and cheeses were not sold by the pound;
- Meat items included units of canned/potted meat, hot dogs, meat jerky, packaged lunch meat, eggs, bacon, and canned fish;
- Dairy included milk, margarine, butter, sour cream, and cheese;
- Had a minimal variety and amount of fresh produce stock;
- Other staple foods available for purchase included such items as juice, pasta, cereal, oats, baking mix, loaf bread, corn meal, flour, rice, tortillas, and canned goods;
- Much of the remaining food stock consisted of accessory foods such as candy, carbonated and non-carbonated drinks, condiments, cakes/pastries, snack foods, sugar, and vegetable oil; and
- Ineligible nonfood items included health and beauty aids, paper products, household cleaning supplies, tobacco products, lottery tickets, automotive supplies, clothing, hookah pipes, gift items/party goods/souvenirs, cell phones and accessories, and alcohol.

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 42 sets of transactions (105 total transactions) that total \$4,957.09 in SNAP benefits to meet the parameters of this scan. These transactions were conducted by 28 different SNAP 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 customers love the hospitality at the store. The Appellant is the only grocery store in the village of Riverview which has over 4,000 residents. Customers walk in and buy their food and pay for it. Then minutes later they come back to the store and purchase groceries, drinks, and many more items. USDA has not presented any survey or study to support its claims that no person would shop at the Appellant and another bigger store in the same day, week, or month. People shop at multiple stores all the time.

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.

5 U.S.C. § 552 (b)(7)(E).

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, a minimal variety and amount of fresh produce stock, no fresh or frozen unprocessed meats, poultry, or seafood, and a moderate variety and amount of frozen food stock.

The store visit report, which was completed in collaboration with and signed by a store employee, as well as the store visit photos and the photos provided by the Appellant offer no explanation as to why SNAP customers would routinely shop at Raqqa Mart multiple times during a short period or purchase such a large volume of items, there being no great variety or advertisements of products, price advantage, profusion of large packages, or significant bulk items or food cases for sale. The store visit observations also indicate that the firm did not offer a profusion of specialty or ethnic goods which would entice SNAP customers to utilize the subject store over other area authorized

retail stores. The store visit observations also indicate that the firm's checkout area was limited in size, there no shopping carts available to customers for transporting large quantities of food within the store, and there were no conveyor belts to expedite high dollar or rapid consecutive purchases. The customers have no place to put multiple purchases or carry the items while shopping.

The available inventory of SNAP-eligible food is 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 second, third, and subsequent transactions in each set are too large to consist of forgotten items. While research reports acknowledge the rapid spending habits of SNAP participants as normal practices, it is expected SNAP benefits are expended in establishments with adequate inventory to support purchases. Such inventory was not confirmed in the subject store.

The Appellant contends that the store sells foods cold or frozen like Krispy Crunchy, bags of chicken (wings, 8 piece mix, and tenders), and take-and-bake Hunt Brothers pizza and cooks them free for customers. The Appellant does not sell hot foods with SNAP benefits. The back of the store burned down and that is one of the reasons why there was no "You Buy, We Fry" or "Take-N-Bake" sign in the store. FNS acknowledges the hot/prepared foods menu provided by the Appellant and that the Appellant offers hot/prepared foods which includes such items as chicken wings, Cajun chicken tenders, family meals, fried chicken, chicken sandwiches, fried shrimp, fried fish, and corn dogs. As noted by the Appellant, the SNAP regulations do not allow hot foods to be purchased with SNAP benefits. The store visit observations indicate that there were no signs posted in the store advertising the availability of foods which could be purchased cold or frozen and cooked for free by the store nor did the Appellant provide any evidence, 5 U.S.C. § 552 (b)(7)(E), indicating that this service was available to customers and that purchases of these items was prevalent during the review period. In addition, the Appellant provided no evidence, such as insurance documents or a police report, documenting that there was a fire at the store. If this is such a popular service and explanation for such purchases at the Appellant, the store would have most likely posted another sign in the store after the supposed fire.

5 U.S.C. § 552 (b)(7)(E). It is not likely that these transactions are the result of a customer making a cold or frozen food purchase, waiting for it to cook, and making additional purchases.

While the Appellant's sales may have increased as the result of the COVID-19 pandemic and increased SNAP benefits to recipients, 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 it is the only food store in the neighborhood that is SNAP authorized. 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 four (4) SNAP authorized retailers located within a 1.0 mile radius of Raqqa Mart, including 1 super store, 2 other convenience stores, and 1 combination grocery store and 22 SNAP authorized retailers located within a 2.0 mile radius of Raqqa Mart, including 2 super stores, 1 supermarket, 1 large grocery store, and 13 other convenience stores, that could meet the nutritional needs of SNAP customers.

Some of these authorized SNAP stores are larger than Raqqa Mart and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store.

The record indicates that SNAP customers who shopped at Raqqa 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.

The Appellant has not provided any evidence to show that the transactions listed in this Attachment were legitimate purchases of eligible foods and not the result of trafficking of SNAP benefits. The arguments presented by the Appellant hold little weight without some kind of evidence to substantiate its claims. The Appellant has the burden to provide relevant evidence to rebut the trafficking charges. This burden has not been met.

Excessively Large Purchase Transactions (Charge Letter Attachment 2)

This charge letter Attachment documents 562 SNAP transactions, as large as \$179.98, that total \$29,107.95. 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 it is not just a convenience store, it is a small grocery store. It is for many the only grocery store available to residents. It sells dairy, meats, produce, bakery items, canned foods, fresh foods, frozen foods, cases of water and soda, and all other selections of beverages and snack items. Customers know what the store sells and many will ask the chef to get foods located in the back of the store for them to purchase.

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 Raqqa Mart to have purchases like those included in this Attachment to the charge letter.

The Appellant contends that the inspection report was inaccurate with regard to the dimensions of the store, the amount of available storage, and the highest priced items. The store visit report, which was completed in collaboration with and signed by a store employee, as well as the store visit photos indicate that the Appellant is a convenience store of approximately 1,900 square feet in size with approximately 150 square feet of storage out of public view which stocked predominantly drinks and alcohol. The store also had storage coolers/freezers which stocked food for hot or cold food preparation. The photos provided by the Appellant of store stock and food storage area and cooler/freezer indicate similar findings.

The FNS store visit report and photos as well as the food stock photos provided by the Appellant indicate that Raqqa Mart offers a moderate stock of SNAP-eligible foods with no fresh or frozen unprocessed meats, poultry, or seafood, a minimal variety and amount of fresh produce stock, a moderate variety and amount of frozen food stock, and a lack of an abundant depth and breadth of

staple foods. In addition, the store had empty shelves. The store visit observations also show only a few expensive eligible foods in stock, most of which were in limited quantities, that would account for these large amounts, 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, specials such as buy one food item and get one for free, 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.

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 (See Invoice Analysis section of this Final Agency Decision).

The Appellant contends that purchases of “you buy and we fry” and “take-and-bake” Hunt Brothers pizza drive the average transaction amounts up, resulting in more large dollar transactions. As noted previously, the store visit observations indicate that there were no signs posted in the store advertising the availability of foods which could be purchased cold or frozen and cooked for free by the store nor did the Appellant provide any evidence, 5 U.S.C. § 552 (b)(7)(E), indicating that this service was available to customers and that purchases of these items was prevalent during the review period. In addition, the Appellant would have to have sufficient food stock to account for these transactions. However, as noted previously, an analysis of the purchase invoices provided by the Appellant indicates that the firm did not purchase enough eligible foods to cover the SNAP redemptions conducted at the store for the review months (See Invoice Analysis section of this Final Agency Decision).

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, 5 U.S.C. § 552 (b)(7)(E). 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.

Based on the discussion above 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. As noted herein, the Appellant has the burden of providing credible, relevant evidence, which 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 not true. This burden has not been met.

Evidence of Trafficking

Regarding the Appellant's contentions with respect to the reliability of the ALERT system, 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.

Invoice Analysis

The Appellant submitted numerous inventory purchase invoices/receipts to substantiate the firm's inventory and demonstrate that there was adequate eligible food items to account for the firm's SNAP transactions. 5 U.S.C. § 552 (b)(7)(E), the invoice analysis indicates that the firm lacked sufficient purchased food stock to cover its SNAP redemptions. The analysis also does not account for any non-SNAP purchases (cash, credit and debit card, etc.) of food items at the Appellant. In sum, the invoices are insufficient to explain the questionable transactions at the Appellant.

No Prior Violations

The Appellant is correct in that the firm has no previous history of SNAP violations. However, a record of participation in the SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges.

Financial Hardship

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

Customer Hardship

With regard to the Appellant's contention that a SNAP disqualification would impose a 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 March 31, 2022 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 September 1, 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 Raqqa 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

June 15, 2022