

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

**Richland Convenience Store,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0249855**

**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 Richland Convenience Store (hereinafter “Richland Convenience Store” 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 Richland Convenience Store.

**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 May 16, 2022, the Retailer Operations Division informed the Appellant that Richland Convenience Store 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 May 17, 2022.

The record reflects that the Appellant did not provide the Retailer Operations Division with a response to the letter of charges within the 10 day required timeframe.

After considering the evidence in the case, the Retailer Operations Division issued a determination letter dated June 10, 2022, informing the Appellant that Richland Convenience Store 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 June 22, 2022, 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 July 15, 2022. In an email correspondence of August 4, 2022, the Appellant, through counsel, submitted additional information in support of the request for administrative review.

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

- There were multiple transactions made from one or more SNAP households within a short timeframe;
- 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 administrative review request and in subsequent correspondence, the Appellant, through counsel, stated the following summarized contentions, in relevant part:

- The SNAP transactions documented in Attachment 1 are the result of SNAP customers making regular grocery purchases for themselves and/or their families.
- Also, SNAP customers will make a purchase to check the balance on their SNAP cards and then make an additional purchase once they know the card balance.
- These transactions are also the result of family members co-shopping.
- Some customers do not have transportation to go to other stores.
- Some customers use two different SNAP cards for their purchases.
- During COVID, some customers only shopped once per month.
- The SNAP transactions documented in Attachment 2 are the result of the same customer making two or more purchases on the same day or on two different days.
- Also, family members share their cards and make separate purchases at different times.
- During COVID, some customers only shopped once per month and made large purchases.
- Customers also made purchases with the P-EBT cards provided to their children.
- The SNAP transactions documented in Attachment 3 are the result of customers making large purchases because of COVID.
- Customers also made purchases with the P-EBT cards provided to their children.
- The Appellant is the only SNAP authorized retailer within 10 miles.

- A SNAP disqualification would impose a financial hardship on the Appellant.
- The Appellant requests consideration for the imposition of a trafficking civil money penalty in lieu of a SNAP disqualification.

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

- July 15, 2022 Acknowledgement Letter;
- Listing of transactions 1 through 143 of the charge letter with explanations for these transactions noted; and
- Copies of two P-EBT cards.

## **ANALYSIS AND FINDINGS**

### **SNAP Authorization**

During the review period of April 2021 through September 2021, Richland Convenience Store was classified as a convenience store. When the Appellant was authorized by FNS for participation in the SNAP on April 25, 2014, 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. 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 1,600 square feet in size with approximately 50 square feet of storage area outside of public view which stocked predominantly drinks;
- Did not have storage coolers/freezers;
- No shopping carts and two 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;
- Had an optical scanner;
- Did not have a special pricing structure, such as prices ending in \$.xx9 or \$.x.00;
- Did not round transactions up or down at the checkout counter;
- 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;
- Telephone and on-line orders were not taken;
- Delivery was not offered;
- The six most expensive (costing \$5.00 and above) SNAP-eligible food items in stock were Coombs Family Farms maple syrup at \$10.99 per 12 ounces; Bowl & Basket rice at \$9.99 per 5 pounds (2 units in stock); Starbucks coffee at \$9.99 per 12 K cups; Pomerian classic olive oil at \$9.99 per 69 ounces; All sodas at \$7.99 per 12-12 ounce cans; and Jack Links jerky at \$7.99 per 3.25 ounces;
- No fresh or frozen meats, poultry, or seafood;
- Frozen food stock consisted of ice cream and ice only;
- Did not have a kitchen; The only hot food sold was coffee;
- Did not have a deli or prepared food section and deli meats and cheeses by the pound were not sold;
- Meat items included units of canned fish, canned/potted meat, meat jerky, eggs, packaged lunch meat, hot dogs, and bacon;
- Dairy included milk (dairy, almond, and coconut varieties), butter, margarine, sour cream, yogurt, and cheese;
- Fresh produce stock consisted of a few (each) lemons, limes, and bananas;
- Other staple foods available for purchase included such items as juice, loaf bread, pasta, rice, flour, baking mix, cereal, buns/rolls, corn meal, tortillas, English muffins, and canned goods;
- Much of the remaining food stock consisted of accessory foods such as candy, carbonated and non-carbonated drinks, condiments, sugar, snack foods, and cakes/pastries; and
- Ineligible nonfood items included health and beauty aids, paper products, household cleaning supplies, tobacco products, household items, lottery tickets, automotive supplies, pet supplies, sunglasses, and greeting cards.

### **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.

### **Multiple Transactions from One or More Households (Charge Letter Attachment 1)**

There are 72 SNAP transactions (36 transaction sets) totaling \$4,301.26 that meet the parameters of this scan. Each transaction set was completed from 13 seconds to 2 minutes 18 seconds. These types of rapid transactions at a firm with only one register, one EBT POS device, and limited counter space are indicative of trafficking in EBT benefits.

The Appellant contends that these SNAP transactions are the result of SNAP customers making regular grocery purchases for themselves and/or their families.

It is reasonable to expect the subsequent purchase to be for a nominal amount because it is quite rare to find very expensive items positioned at the checkout area, especially in smaller stores like the Appellant. However, in the majority of the Exhibits, the subsequent transaction was for amounts that exceed any nominal, afterthought purchase. 5 U.S.C. § 552 (b)(7)(E). Additionally, while it is possible that customers shop together, it is improbable that they would use just one card if they were both SNAP recipients. If forgotten items are not added into the total, it is implausible that they would merely swipe the EBT card a second time to include those items without totaling them, which would take more than a few seconds to complete the entire transaction. 5 U.S.C. § 552 (b)(7)(E). These transactions cannot be explained by customers visiting the store multiple times a day for a number of reasons, as the same household would have completed both transactions in each set. Additionally, no evidence was advanced to support the Appellant’s contention that some customers use two different SNAP cards for their purchases.

Moreover, it may be possible to conduct rapid transactions for SNAP recipients who may have one or two small inexpensive items; however, given that there were no promotional, special, bulk or package deals offered or advertised, it is unlikely that the transaction in this Attachment are legitimate SNAP transactions. The firm’s checkout counter area offered minimal surface space on which to place items for large purchases and it did not offer equipment required for rapid processing of large amounts of eligible food items. It also precluded the processing of more than one customer at a time, as there is only one register and one EBT POS device.

**5 U.S.C. § 552 (b)(7)(E).**

The Appellant contends that SNAP customers will make a purchase to check the balance on their SNAP cards and then make an additional purchase once they know the card balance. However, the EBT point-of-sale (POS) device is programmed to permit immediate inquiries without having to first process a purchase. There is also a toll-free 800 telephone number that can be called to find out account balances, if needed. As such, the Appellant's contentions are unsubstantiated.

As to whether or not co-shopping and/or customers choosing to shop once per month due to COVID actually affected the Appellant firm during the review period, 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 some customers do not have transportation to go to other stores. However, the record indicates that SNAP customers who shopped at Richland Convenience Store 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.

While such transactions may well be done in succession, performing these processes on large transactions generally are not done rapidly. The amount of time required is, largely, proportional to the dollar amount of the transaction; typically, the larger the dollar amount transacted the longer the time period between transactions. The Appellant firm processed orders considerable faster than supermarkets typically process them, yet the firm has only one small checkout counter, one cash register and one EBT POS device, and none of the logistical tools such as conveyor belts, rotating bagging platforms or order separators that are routinely used in rapid throughput operations. As the Appellant has offered no rational explanation or supporting documentation for why such patterns might exist, it is reasonable to conclude that the SNAP transactions included in this charge letter Attachment are the result of trafficking.

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

This charge letter Attachment documents 32 sets of transactions (71 total transactions) that total \$5,750.02 in SNAP benefits to meet the parameters of this scan. These transactions were conducted by 13 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 these transactions are the result the same customer making two or more purchases on the same day or on two different days. Also, family members share their



cards and make separate purchases at different times. During COVID, some customers only shopped once per month and made large purchases.

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, little fresh produce stock, no fresh or frozen meats, poultry, or seafood, and no frozen food stock other than ice cream and ice.

**5 U.S.C. § 552 (b)(7)(E).**

The report and photographs from the store visit of August 20, 2021 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, the store visit report, which was completed in collaboration with and signed by the store owner, and store visit photos indicate that there was a small checkout area, one cash register and one EBT POS device for ringing up food purchases, no shopping carts and only two shopping baskets available to customers for transporting large quantities of food within the store, and no conveyor belts to expedite high dollar or rapid consecutive purchases. 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, or a profusion of specialty or ethnic goods which would entice SNAP customers to utilize the subject store over other area authorized retail stores.

As to whether or not co-shopping, sharing of SNAP cards, or purchases with P-EBT benefits during COVID actually affected the Appellant firm during the review period, 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 record indicates that SNAP customers who shopped at Richland Convenience Store 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 3)**

This charge letter Attachment documents 182 SNAP transactions, as large as \$499.99, that total \$14,253.83. These transactions were conducted by 24 different households. 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 these transactions are the result of customers making large purchases because of COVID. Customers also made purchases with the P-EBT cards provided to their children.

A review of the store visit report, which was completed in collaboration with and signed by the store owner, as well as the stock photos indicate that Richland Convenience Store is a convenience store of approximately 1,600 square feet in size with approximately 50 square feet of storage outside of public view which stocked predominantly drinks. The firm had no storage coolers or freezers. The stock of SNAP-eligible foods is moderate with no fresh or frozen meats, poultry, or seafood, little fresh produce stock, no frozen food stock other than ice cream and ice, and lacks an abundant depth and breadth of staple foods.

In addition, 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, or a profusion of specialty or ethnic goods which would entice SNAP customers to utilize the subject store over other area authorized retail 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 there were only a few expensive eligible foods in stock which would account for these large amounts. In addition, there was a limited checkout counter space, one cash register, one EBT POS device and no conveyor belts to expedite high dollar or rapid consecutive purchases. In addition, there were no shopping carts and only two shopping baskets in which to transport the large number of items required to make up these large transaction amounts. Without a sufficient number of these, it is unlikely that such large dollar value transactions could be for actual food purchases and more likely they are trafficking.

The Appellant's contentions with regard to these transactions being the result of customers making purchasing with P-EBT cards provided to their children was previously addressed in Attachment 2. 5 U.S.C. § 552 (b)(7)(E).

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. 5 U.S.C. § 552 (b)(7)(E).

The Appellant contends that it is the only SNAP authorized retailer within 10 miles. 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 a total of 10 SNAP authorized retailers located within a 3.0 mile radius of Richland Convenience Store, including 1 super store, 2 small grocery stores, 1 combination grocery/other store, and 6 other convenience stores, that could meet the nutritional needs of SNAP customers. There were a total of 86 SNAP authorized retailers located within a 4.0 mile radius of Richland Convenience Store, including 5 super stores, 2 supermarkets, 3 large grocery stores, 10 medium grocery stores, 15 small grocery stores, 9 combination grocery/other stores, and 42 other convenience 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.

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 limited checkout 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 at other area stores, 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.

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.

### **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.

### **CIVIL MONEY PENALTY**

In the May 16, 2022 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 June 22, 2022 request for administrative review, (i.e., after the required 10 days of receipt of the May 16, 2022 charge letter), the Appellant, through counsel, requested consideration for a trafficking civil money penalty in lieu of a permanent SNAP disqualification.

However, the record supports that the Appellant did not submit a timely request and supporting substantial evidence, as required by the regulations, to meet the criteria for a trafficking CMP in lieu of permanent disqualification. 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 Richland Convenience Store 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

September 2, 2022