

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

**Texaco Food Mart,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0263559**

**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 Texaco Food Mart (hereinafter “Texaco 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 Texaco 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 January 31, 2023, the Retailer Operations Division informed the Appellant that Texaco 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 February 1, 2023.

In a response to the Retailer Operations Division of February 8, 2023, the Appellant, through counsel, 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 response and the evidence in the case, the Retailer Operations Division issued a determination letter dated February 13, 2023, informing the Appellant that Texaco 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 an email correspondence of February 16, 2023, 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 February 21, 2023. In an email correspondence of March 14, 2023, 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 July 2022 through December 2022. 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 reply 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 store owner categorically denies any knowledge in regard to any actions that were made by any employees in contravention with the policies set forth by the Appellant.
- This is the first time that the Appellant has been cited for SNAP violations.
- The Appellant has taken reasonable steps to ensure that all employees are trained and informed about the SNAP rules.
- Upon internal investigations, the Appellant believes that an employee committed the violations noted in the charge letter. Per the submitted employee statement, the employee accepts responsibility for the violations and affirms that ownership was not aware of the actions that she took independently.
- The employee had been collaborating with two individuals (mother and daughter) who were SNAP recipients to perpetuate these violations.
- The employee was hired in September 2021 and was properly trained on the SNAP rules per the submitted acknowledgement of training.
- Considering the submitted evidence of existence of an effective training program and compliance protocol at the Appellant, evidence that employees have been trained prior to the date of the charge letter violations, and the fact that ownership of the Appellant was not aware of, did not approve, did not benefit from, and was not otherwise involved in the trafficking violations, the Appellant requests that no fines or penalties be assessed against the Appellant.
- Should FNS believe that any fines or penalties be assessed, the Appellant requests that any fines or penalties be subject to reduction due to compliance of Texaco Food Mart with the criteria for reduction of the civil money penalties per Section 268.6(i).
- The Appellant has met the minimum standards of eligibility for the imposition of a civil money penalty in lieu of a permanent SNAP disqualification by fulfilling each of the four criteria as specified in 7 CFR § 278.6(i).
- With regard to Criterion 1, submitted are photos of a warning sign posted for all employees to be forewarned of their obligation to comply with the SNAP rules. Employees have access to the *SNAP Training Guide for Retailers* which is readily available next to the POS system for reference. An acknowledgement of training is completed by each employee after they complete the training and the manual is readily available at the counter in the event employees have questions or issues.
- With regard to Criterion 2, the Appellant has a zero-tolerance policy towards any illegal actions. The subject employee completed the training provided by the Appellant and in spite of this, unilaterally sought to benefit from this scheme. The employee was terminated.
- With regard to Criterion 3, the Appellant has taken steps to ensure that all employees are trained and informed about the SNAP rules. Every employee is required to complete the SNAP training when hired prior to being allowed to operate the POS system without supervision. This includes watching the videos and reviewing the materials available on the SNAP website at <https://www.fns.usda.gov/snap/retailer/training>. After completion of their training, each employee is required to execute an acknowledgement that evidences that they have completed the training and understand their obligations related to the acceptance of SNAP benefits in the

course of their employment. The subject employee was terminated as a result of her independent and unauthorized actions to circumvent the SNAP rules for her own personal benefit.

- With regard to Criterion 4, there was no knowledge or financial benefit to the firm ownership as noted in the store owner's sworn statement. This is the sole and only alleged violation in any business in which the Appellant has worked or owned.

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

- Affidavit of store owner;
- SNAP Employee Training Acknowledgement Forms for four employees (dated September 18, 2021, July 7, 2022, July 8, 2022, January 26, 2023, and February 2, 2023);
- Statement of employee attesting to exchanging SNAP benefits for cash without the knowledge of ownership or management;
- Photo of Don't Do It! poster on door of store;
- Photo of the *SNAP Training Guide for Retailers* located near the cash register; and
- Screen shot of video camera overseeing the cashier/cash register.

## **ANALYSIS AND FINDINGS**

### **SNAP Authorization**

During the review period of July 2022 through December 2022, Texaco Food Mart was classified as a convenience store. When the Appellant was authorized by FNS for participation in the SNAP on October 15, 2021, 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 a December 20, 2022 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, drinks, 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 2,460 square feet in size with approximately 200 square feet of storage area outside of public view;
- Had walk-in storage coolers which stocked predominantly drinks and alcohol and storage coolers in the kitchen for use in storing foods for use in the preparation of hot and/or cold prepared foods;

- Had storage freezers which were used for storing foods for use in the preparation of hot and/or cold prepared foods;
- No shopping carts and no hand-held baskets available for customer use;
- One small checkout counter area with limited check-out counter space;
- Two cash registers and two EBT point-of-sale (POS) devices for use in ringing-up SNAP transactions;
- Had optical scanners;
- Did not have a special pricing structure, such as prices ending in \$.x9 or \$.00;
- Did not round transactions up or down at the checkout counter;
- 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 to customers;
- Did not stock a profusion of specialty or ethnic food items;
- The six most expensive (costing \$5.00 and above) SNAP-eligible food items in stock were Pure Life water at \$9.99 per 40 pack (1 unit in stock); Jack Links jerky at \$9.29 per 3.25 ounces; Aquafina at \$8.99 per 24-pack (7 units in stock); Ben and Jerry's ice cream at \$7.69 per 1 pint; Coke at \$6.99 per 12-pack; and Dasani at \$6.99 per 24-pack (9 units in stock);
- No fresh or frozen meats, poultry, or seafood;
- Frozen food stock consisted of ice cream only;
- Had a kitchen and hot foods were sold;
- Did not have a deli or prepared food section and deli meats and cheeses were not sold by the pound;
- Meat items included units of canned fish, canned/potted meat, and meat jerky;
- At the time of the store visit, the firm did not meet the requirements for participation in the SNAP under Criterion A as it was deficient in dairy products stocking milk and cheese only;
- Fresh produce stock consisted of a few bananas;
- Other staple foods available for purchase included such items as juice, pasta/ramen, cereal, flour, oats-other, nuts, and canned goods;
- Much of the remaining food stock consisted of accessory foods such as candy, carbonated and non-carbonated drinks, snack foods, condiments, and cakes/pastries; and
- Ineligible nonfood items included health and beauty aids, paper products, household cleaning supplies, automotive supplies, alcohol, gasoline, lottery tickets, tobacco products, clothing, gift items/souvenirs/party goods, and household items.

### **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 55 sets of transactions (158 total transactions) that total \$11,513.94 in SNAP benefits to meet the parameters of this scan. These transactions were conducted by 21 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.

#### **5 U.S.C. § 552 (b)(7)(E).**

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 limited food stock, no fresh produce stock other than a few bananas, no fresh or frozen meats, poultry, or seafood, and no frozen food stock other than ice cream. The store visit observations indicate that the subject firm is a convenience store and gas station without unique food stock, floor plan, or other characteristics. The Appellant's transaction activity is unusual as every transaction in each set of transactions range from \$20.99 to \$227.87 and the average convenience store transaction in 5 U.S.C. § 552 (b)(6) & (b)(7)(C) during the review period was 5 U.S.C. § 552 (b)(7)(E) and 5 U.S.C. § 552 (b)(7)(E) for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) County. The second, third, and subsequent transactions in each set are too large to consist of forgotten items.

The store visit report, which was completed in collaboration with and signed by a store employee, 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 SNAP-eligible food stocked by the store was generally of a low dollar value, consisting mainly of inexpensive canned and packaged goods, drinks, snack foods, single-serving food items and accessory food items.

In addition, the store visit report and photos indicate that there was only one checkout counter with limited check-out counter space, no shopping carts or hand-held baskets available to customers for transporting 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.

The Appellant is located in a rural area. 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 three (3) SNAP authorized retailers located within a 1.0 mile radius of Texaco Food Mart, including 1 supermarket, 1 combination grocery/other store, and 1 other convenience store, that could meet the nutritional needs of SNAP customers. 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 Texaco 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.

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 321 SNAP transactions, as large as \$328.98, that total \$22,638.11. These transactions were conducted by 88 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 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. It is rare for a convenience store such as Texaco Food Mart to have purchases like those included in this Attachment to the charge letter.

The store visit observations indicate that that the Appellant is a convenience store and gas station which measures approximately 2,460 square feet in size with approximately 200 square feet of storage area outside of public view, has walk-in storage coolers which stock predominantly drinks and alcohol, has storage coolers located in the kitchen which are used to stock foods for use in the preparation of hot and/or cold prepared foods, and has storage freezers which are used to store foods for use in the preparation of hot and/or cold prepared foods. The stock of SNAP-eligible foods is limited with no fresh or frozen meats, poultry, or seafood, no fresh produce stock other than a few bananas, no frozen food stock other than ice cream, and lacks an abundant depth and breadth of staple foods. In fact, the firm did not meet the requirements for participation in the SNAP under Criterion A as it was deficient in dairy products stocking milk and cheese only. The store's meat stock was also limited consisting of meat jerky, canned/potted meat, and canned fish only.



The store visit inventory report and photos also show only a few expensive eligible foods in stock, some 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.

In addition, as noted previously, the firm had only one checkout counter with limited check-out counter space and no conveyor belts to expedite high dollar or rapid consecutive purchases. The customers would have no place to put large purchases. In addition, there were no shopping carts and no 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.

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).

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.

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.

### **No Owner Involvement and No Prior Violations**

The Appellant contends that upon internal investigations, the firm believes that an employee committed the violations noted in the charge letter. Per the submitted employee statement, the employee accepts responsibility for the violations and affirms that ownership was not aware of the actions that she took independently. The store owner categorically denies any knowledge in regard to any actions that were made by any employees in contravention with the policies set forth by the Appellant.

However, when store ownership signed the certification page of the SNAP retailer authorization application to become a SNAP retailer, it confirmed it understood and agreed to abide by program rules and regulatory provisions. It also agreed to accept responsibility on behalf of the firm for SNAP violations including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time. The certification is clear that store ownership understood by signing the document that violations of program rules can result in administrative actions such as fines, sanctions, withdrawal, or disqualification from the SNAP.

Regardless of who the store owner utilizes to handle store business, ownership is accountable for the proper handling of SNAP benefit transactions. The regulations establish that an authorized food store may be disqualified from participating in the program when the store fails to comply with the Act or regulations because of the wrongful conduct of an owner, manager, or someone acting on their behalf.

The Appellant is correct that the firm has not been cited for prior 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.

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

### **Corrective Action**

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

## **CIVIL MONEY PENALTY**

In the January 31, 2023 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.

The Appellant contends that the firm has taken reasonable steps to ensure that all employees are trained and informed about the SNAP rules. The Appellant has met the minimum standards of eligibility for the imposition of a civil money penalty in lieu of a permanent SNAP disqualification by fulfilling each of the four criteria as specified in 7 CFR § 278.6(i). In support thereof, the Appellant submitted the six Attachments previously noted in the Final Agency Decision.

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

The standards of eligibility for a trafficking CMP are high. They require substantial proof that a compliance policy and program was established and implemented prior to the occurrence of violations. These standards exist to thwart attempts to falsely present compliance policies and programs that were not actually implemented prior to violations. As the Appellant did not provide the required supporting documentation, 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 Texaco 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

April 25, 2023