

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

Covered Bridge Country Store,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0267055

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 Covered Bridge Country Store (hereinafter “Covered Bridge Country 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 Covered Bridge Country 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 22, 2023, the Retailer Operations Division informed the Appellant that Covered Bridge Country 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 23, 2023 and a copy of the charge letter was delivered by UPS to a residential address provided by the Appellant on June 2, 2023.

The record reflects that by telephone conversation with Retailer Operations Division staff on June 5, 2023, the Appellant requested an extension in time for providing a response to the letter of charges. By letter of June 5, 2023, the Retailer Operations Division granted the Appellant's time extension request to June 12, 2023. The Appellant subsequently requested two additional 10-day extensions on June 13, 2023 and June 23, 2023 which were granted by the Retailer Operations Division. In the Retailer Operations Division's letter to the Appellant granting the time extension requests, the Appellant was informed that the time to request a civil money penalty in lieu of permanent disqualification and to provide the documentation to support such a request could not be extended.

In responses to the Retailer Operations Division of May 31, 2023, June 1, 2023, June 5, 2023, June 13, 2023, June 20, 2023, June 22, 2023, June 23, 2023, June 29, 2023, June 30, 2023, and July 7, 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 responses and the evidence in the case, the Retailer Operations Division issued a determination letter dated October 3, 2023, informing the Appellant that Covered Bridge Country 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 an email correspondence of October 6, 2023, the Appellant, through counsel, appealed the Retailer Operations Division's decision and requested an administrative review of this determination. FNS granted the Appellant's request for administrative review by letter dated October 10, 2023. By letter of October 12, 2023, the Appellant was provided with the name of the Administrative Review Officer assigned to the case as well as a due date of November 2, 2023 to provide any additional information or arguments in support of the request for administrative review. In an email correspondence of November 2, 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 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 August 2022 through January 2023. 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.
- FNS cannot determine that trafficking has occurred based solely upon the ALERT system.
- FNS does not understand the unique characteristics of the store, its location, its customers, and business practices.
- The Appellant has many unique aspects that make it different from a typical convenience store.
- The Appellant has a large inventory of chips, meat jerky, snack foods, candy, donuts, cookies, cereal, oatmeal, flour, syrup, canned vegetables and soups, noodle dinners, sugar, condiments, oatmeal, pasta, jams and jellies, peanut butter, rice, canned meats, a full selection of breads, etc.
- The Appellant is located in a very remote area, in a valley between two mountain ranges, making it difficult for customers to travel to the closest city to shop.
- Most area residents are SNAP recipients. The Appellant knows most of its customers by name.
- There are no neighboring competing grocery stores. The closest grocery store is five miles to the north. The closest store stopped keeping a lot of inventory about a year ago and the items in stock are priced so high they have lost many of their customers.
- The Appellant is the community's only resource for food and the store strives to keep what customers want in stock. The Appellant is a hub of activity as it is the only place to get gas and food.
- The school bus picks up and drops off school children in the Appellant's parking lot.
- There is a large homeless camp just walking distance from the store.
- A large portion of the store's customers do not have transportation to drive over the mountain to get their food.
- The store visit report includes some errors. The store has a lottery machine, stock room, storage freezer, and a bottle return room.
- The store has many refrigeration units which house milk, packaged deli meats, eggs, sandwiches, bacon, ham, burritos, etc.
- The Appellant also has a variety of frozen dinners, frozen vegetables, and ice cream. The Appellant has a specialty freezer that stocks just ice cream sandwiches and novelty ice cream.

- The store has coolers that stock soft drinks, beer, and energy drinks.
- The Appellant purchases many items in town that are too expensive to get from a wholesaler.
- The Appellant has a dry erase board behind the counter that takes orders/requests from customers.
- The Appellant has had only one employee since 2012 and he and the store owner work at the store. In early December 2022, the employee had COVID resulting in serious health issues. The store owner then worked at the store from early December 2022 to mid-February 2023, when the employee was able to return to work. This resulted in sales dropping dramatically in December 2022 and January 2023. Customers decided not to come into the store when the store owner was working as they would have to wait in line for long periods as the store owner likes to talk to customers.
- The Appellant is not very current with technology like most every other store. The Appellant still uses a calculator to tally up sales and it does not have a scanner and bar code system that records what each purchase is.
- Transactions 21 (\$100.00) and 22 (24.06) are the result of a mother coming into the store with her home-schooled children who she was teaching math and shopping skills to and instructed her child to get what was on the list but not to go over the purchase amount of \$100.00. However, the child was over budget by \$24.06 so the mother insisted that the EBT card be charged \$24.06 for the remaining items.
- The Appellant has gone through a few EBT machines in the last year because of problems processing cards.
- Transactions 34 (\$99.95) and 35 (\$99.95) are the result of the store's EBT POS device not working properly. An error code was received each time the Appellant tried to ring-up these purchases. The till was over \$140.00 that day. The SNAP recipient's card should be refunded \$99.95 for the second transaction.
- Transactions 116 (\$37.15), 117(\$37.15), and 118 (\$37.15) occurred on the day prior to the Appellant stopping its use of the existing EBT POS device and waiting for a new one. The store's till was over at the end of that day. The SNAP recipient's card should be refunded for the second and third transactions.
- Transactions 131 (\$20.96) and 132 (\$20.96) are also the result of the store's EBT POS device not working properly.
- Transactions 167 through 174 are the result of a customer having a Halloween party and purchasing a lot of candy. A couple of weeks prior to these transactions, the customer requested that the store stock extra candy for the party.
- The Appellant cannot tell customers how to use their SNAP benefits.
- The Appellant has very little counter space for large purchases. When someone is on a shopping spree and fills up the main counter, the store bags up and totals what has been brought to the counter thus far and sets the receipt aside as the customer continues to shop.
- The Appellant does not have shopping carts or hand-held baskets so when someone is buying a lot they fill up the counter and keep shopping.
- The Appellant also separates transactions upon customer request.
- Some customers make a purchase to find their EBT card balance and decide to make another purchase based on the card balance found on their EBT receipt.
- Some customers come into the store in the morning as well as when they are picking up their children from the school bus.
- Some customers hang around the store for most of the day because they live across the street in a homeless camp.
- Some customers shop with family members or share their SNAP cards with family members or friends.

- Tourism in the area also has an effect on these transactions. The Appellant owns the 5 U.S.C. § 552 (b)(6) & (b)(7)(C) Center; however, the Center has been closed during COVID.
- The transactions in Attachment 2 are explained on the submitted EBT register receipts with corresponding calculator receipts. While the Appellant cannot be sure if the items hand-written on the calculator receipts were actually purchased, the firm knows that the store sells the items for the hand-written listed amounts.
- The Appellant is well stocked by the third of each month but by the end of the month the inventory is depleted. Lacking storage, store employees make multiple trips to buy food stock.
- In August through October 2022, the area had rampant wildfires causing many evacuations. People stayed indoors as much as possible because of the smoke. This resulted in a sharp increase in SNAP sales in large amounts at one time because people were stocking up to avoid leaving their homes. The Appellant had a difficult time keeping store shelves stocked during this time period.
- The extra SNAP benefits recipients received as a result of P-EBT seemed to create a less than thrifty attitude in people. They cared less about budgeting their food benefits as they had more benefits to spend. This behavior continued even after household allotments returned to pre-pandemic amounts.
- It is easy to spend more than \$40.00 at a time in the subject store.
- The submitted inventory purchase invoices substantiate the firm's inventory and demonstrate that there was adequate eligible food items to account for the transactions during the review period.
- The Appellant also submits daily reports which the store records the purchases of inventory from vendors and what is purchased for the store as well as the daily sales information.
- The submitted spreadsheet outlines purchases and sales. SNAP-eligible inventory purchases and other inventory purchases (i.e., cigarettes, beer, paper products, etc.) are separated.
- Also submitted for review are EBT register receipts for the transactions noted in the charge letter along with corresponding calculator receipts.
- The Appellant has not been cited for prior SNAP violations.
- The Appellant has made corrective actions after receiving the charge letter.
- A SNAP disqualification would impose a financial hardship on the Appellant.
- Per the submitted petitions signed by store customers, a SNAP disqualification would impose a hardship on area participating SNAP households.

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

- Customer affidavits (21 total);
- Food stock photos (13 pages);
- Signed Power of Attorney;
- EBT register receipts with corresponding calculator receipts which include a hand-written list of foods that might have been sold;
- Inventory purchase invoices/receipts;
- Weekly delivery schedule of some of the Appellant's regular vendors;
- Spreadsheet showing total sales for each month and breakdown of sales;
- Daily Report Details for specific dates during the six month review period;
- Google maps of area surrounding Appellant; and
- Petition signed by numerous customers attesting to hardship if the Appellant is disqualified from the SNAP.

ANALYSIS AND FINDINGS

SNAP Authorization

During the review period of August 2022 through January 2023, Covered Bridge Country Store was classified as a convenience store. When the Appellant was authorized by FNS for participation in the SNAP on November 13, 1996 and in subsequent reauthorization applications, the owner signed a SNAP application for the store and acknowledged she 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 February 1, 2023 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 2,000 square feet in size with no additional storage area outside of public view;
- No storage coolers or freezers;
- No shopping carts and no hand-held baskets available for customer use;
- One small checkout counter area with limited check-out counter space;
- One cash register and one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;
- Did not have optical scanners;
- 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 and on-line orders were not taken and delivery was not offered;
- Did not stock a profusion of specialty or ethnic food items;
- Firm was not a WIC Program vendor and did stock infant formula and foods
- The six most expensive (i.e., costing \$5.00 and above) SNAP-eligible food items in stock were Jack Links jerky at \$18.99 per 10 ounces (4 units in stock); Tillamook jerky at \$9.99 per 2.5 ounces (8 units in stock); Digiorno pizza at \$9.49 per 29 ounces; McDutch apple pie at \$8.99 per 38 ounces (4 units in stock); Hungry Man salisbury steak at \$6.99 per 16 ounces (4 units in stock); and Mega Bowl at \$5.99 per 14 ounces (2 units in stock);

- No fresh or frozen meats, poultry, or seafood;
- Had a limited variety and amount of frozen food stock to include such items as potatoes, meals, pizza, bowls, Cool Whip, pot pies, vegetables, pies, and cakes;
- Did not have a kitchen and hot foods were not 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/potted meat, sausage, eggs, hot dogs, meat jerky, packaged lunch meat, and canned fish;
- Dairy products included cheese, milk, butter, and sour cream;
- Had a minimal variety and amount of fresh produce stock to include a few (each) apples, oranges, and bananas;
- Other staple foods available for purchase included such items as juice, pasta/ramen, rice, cold cereal, flour, loaf bread, baking mix, oatmeal, buns/rolls, tortillas, corn meal, and canned goods;
- Much of the remaining food stock consisted of accessory foods such as candy, carbonated and non-carbonated drinks, condiments, cakes/pastries, sugar, vegetable oil, spices/seasonings, and snack foods; and
- Ineligible nonfood items included health and beauty aids, household cleaning supplies, tobacco products, automotive supplies, lottery tickets, paper products, clothing, household items, alcohol, housewares, and gift items/souvenirs/party goods.

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 71 sets of transactions (177 total transactions) that total \$12,145.73 in SNAP benefits to meet the parameters of this scan. These transactions were conducted by 33 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.

5 U.S.C. § 552 (b)(7)(E).

The Appellant contends that the store cannot tell customers how to use their SNAP benefits. The Appellant separates transactions upon customers request. Some customers come into the store in the morning as well as when they are picking up their children from the school bus.

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, a minimal variety and amount of fresh produce, no fresh or frozen meats, poultry, or seafood, and a limited variety and amount of frozen food stock. The store visit observations indicate that the subject firm is a convenience store 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 5 U.S.C. § 552 (b)(7)(E) to 5 U.S.C. § 552 (b)(7)(E) 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 the store owner, and store visit photos as well as the stock photos provided by the Appellant offer no explanation as to why SNAP customers would routinely shop at Covered Bridge Country Store 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 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. It is important to note that even "well stocked" stores will sometimes engage in trafficking, so the food stock shown in the Appellant's photos provides no definitive explanation for the suspicious transactions and patterns noted in the charge letter. No evidence was submitted substantiating the Appellant's claim that the store has a dry erase board behind the counter for customers to place order requests nor was there any evidence included in the store visit report or photos that the firm takes order requests from customers.

The store visit report and photos and the Appellant's photos of the checkout counter indicate that there was one checkout counter with limited check-out counter space (also confirmed by the Appellant), one cash register and one EBT POS device for use in ringing-up SNAP transactions (also confirmed by the Appellant), and no optical scanners or conveyor belts (also confirmed by the Appellant) to expedite high dollar or rapid consecutive purchases. In addition, there were no shopping carts (also confirmed by the Appellant) in which to transport the large number of items required to make up these large transaction amounts. Without these, it is unlikely that such large dollar value transactions could be for actual food purchases and more likely they are trafficking. The 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 contends that in August through October 2022, the area had rampant wildfires causing many evacuations. People stayed indoors as much as possible because of the smoke. This resulted in a sharp increase in SNAP sales in large amounts at one time because people were stocking up to avoid

leaving their homes. The Appellant had a difficult time keeping store shelves stocked during this time period. However, FNS asserts that it is not logical to assume that extreme external factors such as COVID and wildfires would both cause people to stay home AND make them visit the Appellant many times in one day. It is much more likely that due to these external factors customers would make some small number of reluctant trips to a store, buy what they need, and then stay home as much as possible. If we consider that a reasonable supposition, then these external factors would not explain the Attachment 1 or Attachment 2 transactions and the idea that a household would make one trip out for essential items to a convenience store such as the subject store, when FNS's household analysis shows that households that conduct transactions at the Appellant also travel as far as 15 miles to transact benefits at super stores and supermarkets, does not seem likely.

As to the claim that tourism to the area near the 5 U.S.C. § 552 (b)(6) & (b)(7)(C) could explain some of the unusual transactions cited in the charge letter, there is no evidence to support this statement. In addition, there is no way to determine what percentage of the people who shop at the subject store are tourists, or what percentage of tourists are SNAP recipients. Further, it is more likely that tourists would stay in hotels in places like 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and just make a day trip to the 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These tourists may or may not purchase some impulse items at the subject store, but it seems unlikely that they would stock up on groceries at a rural convenience store while site seeing. It also seems more likely that that tourists would want to purchase ineligible nonfood items such as the books and t-shirts available in the subject store or perhaps even gasoline but again, there is no way of knowing these details. Further, the Appellant claims that the store owner owns the 5 U.S.C. § 552 (b)(6) & (b)(7)(C) Center and that the Center has been closed during COVID. This statement suggests that tourism and therefore, sales would be significantly lower during a time when COVID and wildfires are occurring.

The Appellant contends that some customers make a purchase to find out their EBT card balance and decide to make another purchase based on the card balance found on the EBT receipt. However, the EBT point-of-sale machine is programmed to permit immediate inquiries without having to first process a purchase. There is also a toll-free 800 telephone number than can be called to find out account balances. Therefore, it is not necessary for customers to make a purchase just to find out what they have on balance on their SNAP benefits accounts. In addition, only 19 of the 71 (or just 26%) transaction sets in Attachment 1 have an elapsed transaction time of less than 1 hour. If households were commonly conducting a second transaction after realizing/seeing their card balance on their first purchase receipt, it would be logical to assume that the elapsed transaction times of Attachment 1 sets would be under 1 hour, as the store is not overly large, and the household would have more than likely just purchased their most needed items in the first transaction. Instead, most of the Attachment 1 transaction sets have transaction times with hours between them which does not fit the model that the Appellant has presented. Additionally, there are many Attachment 1 sets where the time between the transactions is so short that it is suspicious that the number of items purchased could even be gathered up and a transaction completed so quickly, even considering the Appellant's overall response that due to the limited counter space that the store rings-up half of the items, bags them, sets them off to the side, and then rings up the other half of the items.

The Appellant submitted for review EBT register receipts with corresponding calculator receipts which include handwritten notes from the retailer which include a list of items that the customers **might have purchased**. However, the EBT register receipts are not itemized and do not list which, if any, items were actually sold. They only show the following information: date; time; amount; and last four numbers of the EBT card used. The EBT register receipts only confirm that the transactions took place, which FNS and ALERT data confirm occurred. However, they do not confirm that the transactions were for legitimate purchases of eligible SNAP foods. In addition, the calculator receipts include a list of items that the Appellant noted **might have been purchased** by customers. They are not conclusive evidence of

the actual items purchased. As such, both the EBT register and calculator receipts are not sufficient evidence to support that the transactions are the result of purchases of eligible staple foods and not the result of trafficking.

In addition, a FNS review of the EBT receipts and corresponding calculator receipts provided in support of Attachment 1 transactions indicates that 17 of the 177 transactions could be supported by the statements made by the Appellant such as children shopping for \$100.00 maximum for a school project, dial up error duplicate charges to customer, and back-to-back Halloween candy purchases. However, this represents only 10% of the transactions in Attachment 1 and notably these explanations are not supported by any other evidence than the Appellant's assertion, and the calculator receipts (which, as noted previously, have been deemed as unacceptable evidence that trafficking did not occur). The Appellant also provided receipts for the remaining 160 transactions, but these calculator receipts show, at best, the date and total (example labeled #43 below) and often just a list of prices with no date, no name, and a hand-written explanation of what the items *might be*. FNS has no way to determine if the items purchased were SNAP-eligible, other than the assertion made by the Appellant. In addition, the Appellant admitted that the firm has no way of knowing the exact items purchased. Therefore, while the Appellant has made great efforts to provide EBT receipts with corresponding calculator receipts, they are not sufficient evidence to explain the charges in this case.

5 U.S.C. § 552 (b)(7)(E).

Regarding the specific customer behavior of dropping off and picking up children at the bus stop in the subject store parking lot as an explanation for Attachment 1 transactions, the Appellant did not provide any evidence that there is a bus stop in the parking lot, and from the photos submitted by the Appellant, no bus stop is evident. In addition, FNS has no way of knowing what hours drop off/pickup would occur as it is not known what school the children are attending and how long the commute would be. However, in consideration of this point, FNS reviewed the elapsed times of the Attachment 1 flagged transactions. There are 77 sets of Attachment 1 transactions in the charge letter, yet only 10 of those sets have an elapsed time greater than 5 hours and less than 8 hours which means that only 13% of the Attachment 1 sets could be explained by a household conducting a transaction at the morning drop off time and then another transaction being conducted between 5 and 8 hours later. (FNS posits that a school day would be at least hours long but would not be more than 8 hours). And still further, of those 10 sets, *none* of them have a morning time earlier than 9:00 am, which FNS posits most schools would already be in session. Therefore, FNS has determined that a school drop off and pick up schedule is not a valid explanation for the Attachment 1 transactions in this case.

As to whether or not co-shopping and/or sharing of EBT cards actually affected the Appellant firm during the review period, this argument is little more than conjecture. The Appellant has provided no evidence to show that co-shopping and/or sharing of EBT cards is particularly common among SNAP recipients in 5 U.S.C. § 552 (b)(6) & (b)(7)(C). If co-shopping and/or sharing of EBT cards truly impacted Covered Bridge Country Store as the Appellant suggests, it would stand to reason that co-shopping and/or sharing of EBT cards would affect other nearby firms as well. This would manifest itself in comparable firms having similar transaction patterns – multiple transactions from the same household in a short period of time. But this is simply not the case.

It is also important to note that it is unlikely that a family relying on SNAP benefits to supplement their nutritional needs would share their benefits with another family or friends who purchase and prepare meals separately. An unsubstantiated argument such as this does not provide a valid basis for dismissing the charges or mitigating the penalty imposed. Additionally, anecdotal arguments offer little insight into the transactions in question and do not verify what took place between the customers and the store clerks at the point of sale.

It should be further noted that the transactions identified in the charge letter are not marginally abnormal, but decidedly so, especially in comparison with other nearby SNAP authorized stores with similar characteristics. This review does not contend that the EBT transactions detailed in the charge letter are overtly suspicious when they occur on an occasional or intermittent basis. But when such transactions form repetitive and questionable patterns on a consistent basis over a substantial period of time, such activity is considered highly irregular, and a firm's intent to comply with program regulations is called into question.

The Appellant contends that the store is located in a very remote area, in a valley between two mountain ranges, making it difficult for customers to travel to the closest city to shop. There are no neighboring competing grocery stores. The closest grocery store is five miles to the north. The closest store stopped keeping a lot of inventory about a year ago and the items in stock are priced so high they have lost many of their customers. A large portion of the store's customers do not have transportation to drive over the mountain to get their food.

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 53 SNAP authorized retailers of comparable or larger size located within a 15.0 mile radius of Covered Bridge Country Store, including 3 super stores, 6 supermarkets, 1 large grocery store, 2 medium grocery stores, 2 small grocery stores, and 39 other convenience stores, that could meet the nutritional needs of SNAP customers. Some of these authorized SNAP stores are larger than Covered Bridge Country Store and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store.

The record also indicates that SNAP customers who shopped at Covered Bridge Country 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. In addition, the Household Distance Analysis report in ALERT also revealed that at least 61 of the households cited in the charge letter spent at least 60% of their SNAP benefits outside a 2.0 mile radius of the subject store. 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.

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 370 SNAP transactions, as large as \$234.69, that total \$27,225.17. These transactions were conducted by 81 different SNAP 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 FNS does not understand the unique characteristics of the store, its location, its customers, and business practices. The Appellant is the community's only resource for food and the store strives to keep what customers want in stock. The Appellant is a hub of activity as it is the only

place to get gas and food. The Appellant has many unique aspects that make it different from a typical convenience store. The Appellant has a large inventory of food items. The store has many refrigeration units which house milk, packaged deli meats, eggs, sandwiches, bacon, ham, burritos, etc. The Appellant also has a variety of frozen dinners, frozen vegetables, and ice cream. The store has coolers that stock soft drinks, beer, and energy drinks. It is easy to spend more than \$40.00 at a time in the subject store.

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 Covered Bridge Country Store to have purchases like those included in this Attachment to the charge letter.

The store visit observations indicate that the Appellant is a convenience store which measures approximately 2,000 square feet in size with no additional storage area outside of public view and has no storage coolers or freezers. The stock of SNAP-eligible foods is limited with no fresh or frozen meats, poultry, or seafood, a limited variety and amount of frozen food stock, a minimal variety and amount of fresh produce stock, and has a lack of an abundant depth and breadth of staple foods. In addition, there were no signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate.

The store visit report indicates that the six most expensive (i.e., costing \$5.00 and above) SNAP-eligible food items in stock were Jack Links jerky at \$18.99 per 10 ounces (4 units in stock); Tillamook jerky at \$9.99 per 2.5 ounces (8 units in stock); Digiorno pizza at \$9.49 per 29 ounces; McDutch apple pie at \$8.99 per 38 ounces (4 units in stock); Hungry Man Salisbury steak at \$6.99 per 16 ounces (4 units in stock); and Mega Bowl at \$5.99 per 14 ounces (2 units in stock). The most expensive items found in the submitted inventory purchase invoices were the same as those listed in the high-priced item list in the store visit report (i.e., meat jerky and frozen pizzas). In addition, the inventory purchase invoices provided for review do not show purchases of any unique items (not available elsewhere) or especially high priced items or bulk items which would go toward explaining the charges in this case.

The Appellant contends that the store visit report includes some errors. The store has a lottery machine, stock room, storage freezer, and a bottle return room. FNS acknowledges that the store visit report does not indicate that there are specialty registers for sales such as lottery sales (Question#10) and that the store does not have any storage areas out of public view (Question#14) or storage coolers/freezers (Question#15). However, the store visit report was completed in collaboration with and signed by the store owner; therefore, any errors that may have occurred on the report were made by the store owner as well as FNS. However, these minor errors do not invalidate the store visit report, as the Appellant seems to be implying. Nor does the fact that the store has storage coolers on site, a small storage room, and a lottery machine alter the facts of the case. These items, though marked incorrectly on the store visit report, are common in nearly all authorized retailers and do not change the overall square footage of the store or FNS's overall assessment of the observed store characteristics and recorded food stock. It is important to note that in the photos submitted by the Appellant, there is a door to the storage room. FNS posits that the store visit reviewer may have overlooked the storage room because it is labeled with an "Exit" sign. FNS finds that neither the errors on the store visit report nor the photos submitted by the Appellant offer a sufficient explanation to the unusual transactions cited in the charge letter.

Regarding the Appellant's statement that inventory is depleted by the end of the month, FNS submits that the Appellant indicated that **5 U.S.C. § 552 (b)(7)(E)** is the biggest vendor the store utilizes and that this vendor provides a large assortment of items for the store. After reviewing the submitted inventory

purchase invoices, it was determined that every month of the review period has at least two invoices from 5 U.S.C. § 552 (b)(7)(E)—one at the top/beginning of the month and another at the bottom/latter part of the month. Further, the Appellant stated that store personnel make trips to stores multiple times per week to keep the store stocked, even going so far as to take requests from customers as advertised on a dry erase board. Therefore, the idea that the store is out of stock by the end of the month is not supported by the evidence. While the Appellant asserts that the firm has multiple storage coolers/freezers and a store room, this evidence suggests that the store would not run out of product at the end of the month. While the Appellant claims that the store has trouble keeping the store stocked due to limited storage and inability to get to town to re-supply, FNS asserts that it is even more unusual that the unusual transaction activity is high enough to have warranted a charge letter. If the Appellant does not have product, then flagged transactions would not be so prevalent. On the other side of the issue, if the store is well stocked and manages to get to town to re-supply twice a week (as the inventory purchase invoices suggest), it is still questionable as to why a household would choose to conduct a transaction at the subject store, when the household analysis in this case shows that SNAP recipients that conduct transactions at the subject store are also conducting transactions at other stores that are up to 15 miles from Covered Bridge Country Store.

With regard to the Appellant's contention that the store's proximity to a homeless camp could explain the charges in this case, FNS asserts that people who are experiencing homelessness would likely not have a vehicle or a refrigerator, or generally any kind of storage for such a large amount of food items. Therefore, the idea that purchases made by homeless customers would explain the Attachment 2 transactions is simply not supported by a sufficient amount of evidence. While FNS understands that a person experiencing homelessness might return to the store multiple times in the day for snacks or beverages, it seems unlikely that they would purchase items such as frozen pizzas, frozen meals, packaged deli meats, cheeses, etc. Based upon the submitted EBT register receipts and accompanying calculator receipts with handwritten notes for what products customers might be purchasing, the evidence does not support the idea that people experiencing homelessness could sufficiently explain the Attachment 1 transactions either. It is also important to note that with regard to Attachment 2 transactions, the EBT register receipts and accompanying calculator receipts submitted for review failed to account for even 50% of the 350 transactions in Attachment 2, so even if these receipts were considered valid, they would still not provide a sufficient explanation of the charges in this case.

Regarding the Appellant's contention with respect to the store owner running the store in the months of December 2022 and January 2023 because the one store employee was out with COVID, FNS notes that both the Attachment 1 and Attachment 2 ALERT scan counts dropped precipitously in December 2022 and January 2023 as compared to the other months of the review period. The Appellant asserted that customers would avoid coming into the store because the store owner talks too much and they wanted to get in and out of the store quickly which led to a decline in sales. FNS acknowledges that there was a decline in sales for December 2022 and January 2023 and that the drop in overall flagged transactions coincides with the owner being present, or perhaps more significantly, the employee being absent. Therefore, it is logical to assume that violative behavior occurs when the store owner is not present at the store.

While the Appellant's sales may have increased and SNAP recipients may have received increased benefits as the result of the COVID-19 pandemic, 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 and/or demographic 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.

Regarding the Appellant's contentions regarding customers making purchases when they drop off their children at the bus stop in the morning and when they pick them up later after school, if the Appellant's assertion is true, it would be expected that most of the Attachment 2 flagged activity would occur early in the day and then later in the afternoon. However, a review of a time-of-day report specific to Attachment 2 transactions during the review period shows that these flagged transactions occur all throughout the day, not just early and late hours. Very few Attachment 2 transactions occurred before 9:00 am. More precisely, 55% of the Attachment 2 transactions occurred between 9:00 am and 2:00 pm which FNS posits would be hours that children are in school, not being picked up or dropped off. Therefore, FNS has determined that a school drop off and pick up schedule is not a valid explanation for the Attachment 2 transactions.

5 U.S.C. § 552 (b)(7)(E).

5 U.S.C. § 552 (b)(7)(E).

5 U.S.C. § 552 (b)(7)(E).

It is important to note that if it assumed that there was no violative behavior occurring at the subject store and that the flagged transaction counts that led to the charge letter being issued were all due to just a "unique manner of running a isolated country store in rural Orgeon", it would be expected that the flagged transaction count numbers would remain mostly the same after the charge letter was received in May of 2023. Instead the monthly ALERT activity for June, July, and August of 2023 shows that all of the scan counts have decreased significantly. In addition, a comparison of the months of June, July, and August of 2022 (pre-charge letter) to the same months in 2023 (post-charge letter) indicates that the dollar volume was more than \$3,000.00 higher in each of these months prior to the issuance of the charge letter. Keep in mind that per the Appellant, the store owner was not present at the store from May to November 2022 for a majority of the review period. FNS submits that after receiving the charge letter violative activity was either significantly decreased or stopped altogether thereby lowering the scan counts and total dollar volume of the store.

The Appellant submitted for review 21 customer affidavits/statements that purport to establish that the transactions in the charge letter were legitimate purchases of eligible food and not the result of trafficking. FNS researched the submitted customer affidavits via the 5 U.S.C. § 552 (b)(6) & (b)(7)(C) State Administrative Terminal. It should be noted that the 5 U.S.C. § 552 (b)(6) & (b)(7)(C) State Administrative Terminal does not provide address information so for the few affidavits that contained an address, FNS was unable to use that information to find a match. Of the 21 affidavits submitted, four (4) provided an EBT number. However, none of the EBT card numbers resulted in a match. Therefore, none of the affidavits contained identifying information that could be successfully matched to SNAP recipients. Therefore, the transaction history of these households could not be viewed.

It is important to note that the truth of such statements cannot be verified. Written affidavits or declarations, by themselves and without supporting documentation relative to the specific transactions in question, offer little to no insight into the actions that occurred between the customer and the store clerk at the point of sale. Unsubstantiated statements are insufficient to rebut the trafficking determination. Even if it is assumed that the customer statements provided were 100% accurate and accepted as evidence of legitimate transactions, they could account for just a small percentage of the flagged transactions noted in the charge letter as there were 33 different SNAP households that conducted Scan B2 (Attachment 1) flagged transactions and 81 different SNAP households that conducted Scan F (Attachment 2) flagged transactions listed in the charge letter Attachments. As such, the submitted

customer statements are not found to be more persuasive of legitimate SNAP transactions for eligible foods.

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

5 U.S.C. § 552 (b)(7)(E).

Based on the store layout, infrastructure, and available inventory, it is not credible that the Appellant would so frequently conduct large transactions closely resembling those typically found at a supermarket or super store. It is not plausible that the firm's customers would regularly carry very large amounts of merchandise around the store without the benefit of shopping carts, especially since larger, better-stocked stores are readily available and in the vicinity of the Appellant firm. The Appellant is not set up to process high-dollar transactions, as indicated by its lack of equipment to facilitate large transactions and limited counter space. There are no legitimate bases for SNAP customers' unusual attraction to the firm such as a superior selection of staple foods, price advantages, package specials, bulk or promotional items, an extensive variety of otherwise unavailable ethnic food items, or special services rendered. The Appellant failed to provide convincing evidence to establish the legitimacy of these excessively large transactions, **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.

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 and Other Supporting Documents

The Appellant submitted for review numerous inventory purchase invoices to substantiate the firm's inventory and demonstrate that there was adequate eligible food items to account for the transactions during the review period. The Appellant also provided a weekly delivery schedule of some of the regular vendors and pointed out those vendor which delivered only eligible food items such as **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** and **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

FNS conducted an analysis of the invoices provided for the review period months. Invoices that were duplicates and/or dated outside of the review period were excluded from the analysis, if applicable.

Purchases of ineligible nonfood items were also excluded from the invoice analysis. With a mark-up of 5 U.S.C. § 552 (b)(7)(E), the invoice analysis indicates that the firm purchased sufficient food stock to cover its SNAP redemptions for the review period months. However, the analysis also does not account for any non-SNAP purchases (cash, credit and debit card, etc.) of food items at the Appellant.

It is important to note that even if the results of the invoice analysis appear to indicate that the Appellant had purchased sufficient food inventory to account for the firm's SNAP redemption volume, sufficient inventory alone does not explain the suspicious patterns of SNAP transactions such as repeat transactions by the same household during the same store visit or in a short period of time. Even the large dollar transactions would remain questionable if there were sufficient food inventory to support such transactions when consideration is made of there being only a limited variety of stock in the store, no fresh or frozen meats, poultry, or seafood, a minimal variety and amount of fresh produce stock, a limited variety and amount of frozen food stock, a greater variety of foods at comparable or lower prices at other stores, and little counter space to place food for purchase at the checkout counter. Even if there were sufficient food stock at Covered Bridge Country Store to mathematically support high dollar transactions, there does not appear to be anything that would reasonably attract SNAP households to shop there, a convenience store, in some cases traveling a few miles to do so, and spend substantial amounts of their SNAP benefits.

The submitted spreadsheet showing total sales for each month and breakdown of sales and Daily Report Details for specific dates during the six month review period provide no insight into the specific inventory purchased by the store or the individual SNAP transactions that occurred during the review period. As such, this information does not offer additional insight as to what occurred during the charge letter transactions and do not validate that they were legitimate, bona-fide transactions.

No Prior Violations

The Appellant contends that the firm has not been cited for prior SNAP violations. However, a record of participation in 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 the violations upon which they are based. There is no provision in the Act, regulations, or agency policy that reverses or reduces a sanction based upon a lack of prior violations by a firm and its owners, managers and/or employees.

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.

Financial Hardship

With regard to the Appellant's contention that a SNAP disqualification would impose a financial hardship on the firm, it is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in SNAP. However, there is no provision in the SNAP regulations for waiver or reduction of an administrative penalty assessment on the basis of possible economic hardship to the firm or to ownership resulting from imposition of such penalty. To allow ownership to be excused from an assessed administrative penalty based on purported economic hardship to the firm would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008, as amended, and the enforcement efforts of the USDA.

Furthermore, 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, 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

The Appellant contends that a SNAP disqualification would impose a hardship on area SNAP households and submitted signed customer petitions in support thereof. However, 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 October 3, 2023 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 May 22, 2023 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 Covered Bridge Country 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 delivery 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

November 17, 2023