

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

Del Rey Liquor #2,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0215216

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 Del Rey Liquor #2 (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 Del Rey Liquor #2 on April 19, 2019.

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 February 27, 2019, the Retailer Operations Division informed the Appellant that Del Rey Liquor #2 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."

In responses to the Retailer Operations Division of March 13, 2019 and March 29, 2019, the Appellant cited credit extension to SNAP customers as the explanation for the questionable SNAP transactions that were outlined in the February 27, 2019 Charge Letter.

After considering the Appellant's replies and the evidence in the case, the Retailer Operations Division issued a Determination Letter dated April 19, 2019, informing the Appellant that Del Rey Liquor #2 was being permanently disqualified from participation in the SNAP in accordance with 7 CFR § 278.6(e)(1) for trafficking violations.

In a letter postmarked May 1, 2019, the Appellant requested an administrative review of the Retailer Operations Division's decision to permanently disqualify the firm from participation in the SNAP. FNS granted the Appellant's request for administrative review by letter dated May 8, 2019.

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 August 2018 through December 2018. This involved the following SNAP transactions patterns which are indicative of trafficking:

- There were multiple transactions made from one or more SNAP households within a short timeframe;

- There were multiple transactions made from individual benefit accounts within a set period of time; and
- There were purchase 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 to FNS, the Appellant stated the following summarized contentions, in relevant part:

- The questionable SNAP transactions outlined in the Charge Letter are the result of Del Rey Liquor #2 accepting SNAP benefits as repayment on credit accounts from area SNAP customers upon receipt of their monthly EBT benefit allotments. SNAP customers purchase most of their foods from the subject firm. The customers are given a copy of the receipt so that they can also keep track of what they owe the Appellant and the receipts are given back or destroyed after the customers pay back the credit owed. The credit system is informal. Extending credit to customers is both beneficial to them and the Appellant’s business.
- The Appellant was unaware that extending credit to SNAP customers is a violation of the SNAP rules.
- Regarding the SNAP transactions included in Charge Letter Attachments 1 and 2, customers, including SNAP recipients, are local and generally visit the store several times a day. The majority of the Appellant’s customers are SNAP recipients. SNAP customers pay off the credit owed at the beginning of the month and then purchase additional food supplies to take advantage of the discounts offered by the store. The Appellant’s prices on food items are very competitive and attractive to customers. The Appellant usually offers good deals/special discounts at the beginning of the month to attract more customers and increase sales. The Appellant keeps larger than anticipated food stock at the beginning of the month compared to stores of the same size. The Appellant is ready to restock its food supply at any time and restocks its food stock more quickly than any other comparable sized stores in the area. The Appellant has no control over the frequency of customers’ visits and purchases.
- Regarding the SNAP transactions included in Charge Letter Attachment 3, most of these transactions are not “single” transactions as stated. These transactions are the result of SNAP customers paying off the credit owed at the beginning of the month and then purchasing additional food supplies.
- This is the first time that the Appellant has been cited for SNAP violations.

- A permanent SNAP disqualification is harsh given that the SNAP transactions included in the Charge Letter are the result of credit extension. The Appellant requests that it be given a second chance and for FNS to either reverse the permanent disqualification, issue a warning letter, or impose a shorter period of SNAP disqualification.

ANALYSIS AND FINDINGS

Store Characteristics

FNS authorized Del Rey Liquor #2 as a combination grocery/other store on February 22, 2016. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a February 5, 2019 store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information obtained from the store visit was also used to ascertain if there were justifiable explanations for the firm's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Approximately 608 square feet in size with approximately 120 square feet of additional food storage area outside of public view;
- No shopping carts or hand-held baskets available for customer use;
- One cash register and one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;
- Limited check-out counter space and it is surrounded by a Plexiglas barrier;
- Has 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;
- No indication from the store visit report that the firm has a special pricing structure, such as prices ending in \$x.x9, \$x.50, and/or \$x.00;
- Transactions are not rounded up or down at the checkout counter;
- Telephone and online orders are not taken and delivery is not offered;
- Only three expensive (costing \$5.00 and above) food items in stock which were Nongshim dry soup at \$10.99 per 12 (3.03 ounce bowls); Jack Links jerky at \$6.99 per 3.25 ounces; and Honey Nut Cheerios at \$5.99 per 6 pack (1.8 ounce cups);
- The store did not meet Criterion A requirements for participation in the SNAP as it was deficient in the dairy products staple food category (i.e., the store stocked milk only);
- Frozen foods included single-serve burritos and ice cream;
- There were no fresh or frozen meats, poultry, or seafood;
- Deli meats and cheeses were not sold by the pound;
- Hot foods were not sold;

- Meat items included units of canned/potted meat, canned fish, canned shellfish, eggs, and meat jerky;
- Dairy included milk;
- Fresh produce included a few lemons and limes;
- Other staple foods available for purchase include such items as juice, pasta, rice, cereal, flour, baking mix, and canned goods;
- Much of the remaining food stock consists of accessory foods such as candy, carbonated and non-carbonated drinks, sugar, vegetable oil, and condiments; and
- Ineligible nonfood items included health and beauty items, paper products, household cleaning supplies, lottery tickets, and tobacco products.

The available inventory of SNAP eligible food at the time of the store visit showed food stock that would be typical of a combination grocery/other store, where households normally purchase a limited number of items. There was little indication that SNAP households would be inclined to regularly visit the store to purchase large quantities of groceries. Given the available inventory and the store's characteristics, this review could find no reason why the Appellant firm's SNAP redemption patterns differed so significantly from those of similar sized competitors.

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.

Credit Transactions

The Appellant contends that the questionable SNAP transactions outlined in the Charge Letter are the result of Del Rey Liquor #2 accepting SNAP benefits as repayment on credit accounts from area SNAP customers upon receipt of their monthly EBT benefit allotments. SNAP customers purchase most of their foods from the subject firm. The customers are given a copy of

the receipt so that they can also keep track of what they owe the Appellant and the receipts are given back or destroyed after the customers pay back the credit owed. The credit system is informal. Extending credit to customers is both beneficial to them and the Appellant's business.

When a retailer claims it maintains credit accounts to explain irregular SNAP transactions and data patterns, FNS requires a level of detail regarding the legitimacy of the claim. This is because retailers have often made false admissions of credit in an attempt to obtain a lesser penalty after committing more egregious violations such as trafficking. Credit transactions must be accounted for with substantive evidence such as the dates credit was extended, to whom, for what amount, and for what items.

The Appellant did not provide any evidence or documentation in support of its contention of credit extension to SNAP households. FNS reviewed the information provided from the Appellant and properly determined that the information was insufficient to support the Appellant's credit extension contention for the following reasons:

5 U.S.C. § 552 (b)(7)(E).

Regarding the Appellant's contention that it was unaware that extending credit to SNAP customers is a violation of the SNAP rules, the Appellant, upon being authorized by FNS to participate in the SNAP on February 22, 2016, received the same Authorization Kit that is sent to all retail food stores when they are newly authorized in the SNAP, including various information booklets, signs and posters indicating the Do's and Don'ts, rules of the SNAP available in several different languages, a copy of the SNAP regulations and a training video. Moreover, periodic newsletters have been sent to all retail food stores participating in the SNAP with a reminder in almost every newsletter sent that accepting nutrition assistance program benefits for payment on credit accounts is a violation. In accordance with 7 CFR § 278.2(f) . . . SNAP benefits "may not be accepted by an authorized retail food store in payment for any eligible food sold to a household on credit". As such, the Appellant's contention is unfounded.

In conclusion, although Del Rey Liquor #2 may have, on a rare occasion, accepted SNAP benefits as repayment on credit accounts, the evidence submitted by the Appellant does not support its contention that the irregular SNAP transactions listed in the Charge Letter are due to repayment on credit accounts.

Rapid Transactions -- One or More Households (Charge Letter Attachment 1)

There are 17 transaction sets (34 total SNAP transactions) **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** that met the parameters of this Charge Letter Attachment. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These types of rapid transactions at a firm with only one register and limited counter space are indicative of trafficking in EBT benefits. The Retailer Operations Division considered this to be a strong indicator because the second purchase of items would have to be transported to the counter area without shopping carts or hand-held baskets available for customer use. When considering the time required to process a legitimate purchase and the numerous steps involved, to include the cashier's handling of individual items to determine the price which can involve manual keying of amounts, bagging the items for carry out, and processing the transaction, these

multiple purchase transactions appear to have been made too rapidly to be credible and are indicative of trafficking. The Appellant has one cash register and one POS device in which to process SNAP transactions.

With regard to the SNAP transactions included in this Attachment, the Appellant contends that customers, including SNAP recipients, are local and generally visit the store several times a day. The majority of the Appellant's customers are SNAP recipients. SNAP customers pay off the credit owed at the beginning of the month and then purchase additional food supplies to take advantage of the discounts offered by the store. The Appellant's prices on food items are very competitive and attractive to customers. The Appellant usually offers good deals/special discounts at the beginning of the month to attract more customers and increase sales. The Appellant keeps larger than anticipated food stock at the beginning of the month compared to stores of the same size. The Appellant is ready to restock its food supply at any time and restocks its food stock more quickly than any other comparable sized stores in the area. The Appellant has no control over the frequency of customers' visits and purchases.

With regard to the Appellant's credit extension contention in support of the transactions in this Attachment, as noted previously, the information provided by the Appellant is not sufficient to support that these questionable SNAP transactions are due to repayment of credit accounts by SNAP customers.

The Appellant contends that its prices on food items are very competitive and attractive to customers and that it usually offers good deals/special discounts at the beginning of the month to attract more customers and increase sales. In addition, the Appellant keeps larger than anticipated food stock at the beginning of the month compared to stores of the same size. However, the Appellant provided no evidence or documentation in support of these contentions. The store visit observations indicate that Del Rey Liquor #2 is not set up to provide for all of one's food needs with no fresh meats, poultry, or seafood, no frozen meats, poultry, or seafood, only two varieties of fresh produce in minimal quantities, and lacks an abundant depth and breadth of staple foods. Also, the store visit observations indicate that there is no evidence of a price advantage or custom or special services rendered at the subject store that are not offered at other authorized SNAP stores in the area.

The store visit report and photos of February 5, 2019 (i.e., conducted at the beginning of the month) indicate that there were no signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, and grocery package deals, no evidence of meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices, and no evidence of a wholesale business such as posted prices or separate entrances for wholesale customers.

It is reasonable to expect the subsequent purchase to be for a nominal amount because it is quite rare to find very expensive items positioned at the checkout area, especially in smaller stores. However, in many of the Exhibits, the subsequent transaction was for amounts that exceed any nominal, afterthought purchase. In some cases, the amounts of subsequent transactions equaled or exceeded the preceding transaction amount. Additionally, while it is possible that customers shop together, it is improbable that they would use just one card if they were both SNAP

recipients. If forgotten items are not added into the total, it is implausible that they would merely swipe the EBT card a second time to include those items without totaling them, which would take more than a few seconds to complete the entire transaction. However, several of the violations listed in this attachment followed a transaction by a different household. Out of 17 total sets of violations, 7 were conducted by a household different from that, which made the first transaction in the set.

Moreover, it may be possible to conduct rapid transactions for SNAP recipients who may have one or two small inexpensive items however, given that there were no promotional, special, bulk or package deals offered or advertised, it is unlikely that the Attachment 1 transactions are legitimate SNAP transactions. The firm's checkout counter area offered minimal surface space on which to place items for large purchases and it did not offer equipment required for rapid processing of large amounts of eligible food items. It also precluded the processing of more than one customer at a time, as there is only one register and one POS device. **5 U.S.C. § 552 (b)(7)(E).**

While such transactions may well be done in succession, performing these processes on large transactions generally are not done rapidly. The amount of time required is, largely, proportional to the dollar amount of the transaction; typically, the larger the dollar amount transacted the longer the time period between transactions. The Appellant firm processed orders considerable faster than supermarkets typically process them, yet the firm has only one small checkout counter and none of the logistical tools such as conveyor belts, rotating bagging platforms or order separators that are routinely used in rapid throughput operations.

Based on the analysis above and in the absence of any compelling evidence to the contrary, the irregular and unusual transaction pattern cited in the Charge Letter is unlikely and a strong indicator of trafficking in SNAP benefits.

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

This Charge Letter Attachment documents 17 sets of transactions (40 total transactions) **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in SNAP benefits to meet the parameters of this scan. 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.

Although it is not uncommon for customers to have more than one transaction per day, 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. The photographs from the store visit offer no explanation as to why SNAP customers would routinely shop at Del Rey Liquor #2 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 second and third transactions in each set are too large to consist of forgotten items.

With regard to the SNAP transactions included in this Attachment, the Appellant contends that customers, including SNAP recipients, are local and generally visit the store several times a day. The majority of the Appellant's customers are SNAP recipients. SNAP customers pay off the credit owed at the beginning of the month and then purchase additional food supplies to take advantage of the discounts offered by the store. The Appellant's prices on food items are very competitive and attractive to customers. The Appellant usually offers good deals/special discounts at the beginning of the month to attract more customers and increase sales. The Appellant keeps larger than anticipated food stock at the beginning of the month compared to stores of the same size. The Appellant is ready to restock its food supply at any time and restocks its food stock more quickly than any other comparable sized stores in the area. The Appellant has no control over the frequency of customers' visits and purchases.

With regard to the Appellant's credit extension contention in support of the transactions in this Attachment, as noted previously, the information provided by the Appellant is not sufficient to support that these questionable SNAP transactions are due to repayment of credit accounts by SNAP customers.

The Appellant contends that its SNAP customers are local and generally visit the store several times a day. While there are no limits on the number of times EBT cards may be used or the amount of eligible foods that may be purchased, the SNAP transactions noted in this Charge Letter Attachment are questionable because they display characteristics of use inconsistent with the nature and extent of the store's stock and facilities and are indicative of trafficking. Although it is not uncommon for customers to conduct more than one transaction per day, it is not common that such multiple transactions are for large dollar amounts.

The Appellant contends that its prices on food items are very competitive and attractive to customers and that it usually offers good deals/special discounts at the beginning of the month to attract more customers and increase sales. In addition, the Appellant keeps larger than anticipated food stock at the beginning of the month compared to stores of the same size. However, the Appellant provided no evidence or documentation in support of these contentions. The store visit observations indicate that Del Rey Liquor #2 is not set up to provide for all of one's food needs with no fresh meats, poultry, or seafood, no frozen meats, poultry, or seafood, only two varieties of fresh produce in minimal quantities, and lacks an abundant depth and breadth of staple foods. Also, the store visit observations indicate that there is no evidence of a price advantage or custom or special services rendered at the subject store that are not offered at other authorized SNAP stores in the area.

The store visit report and photos of February 5, 2019 (i.e., conducted at the beginning of the month) indicate that there were no signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, and grocery package deals, no evidence of meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices, and no evidence of a wholesale business such as posted prices or separate entrances for wholesale customers. The store visit report and photos indicate that Del Rey Liquor #2 is approximately 608 square feet in size with approximately 120 square feet of additional storage area outside of public view. It is irregular for combination grocery/other

stores to have purchases such as those cited, especially when Del Rey Liquor #2 stocks only a few high priced food items so the majority of the food items stocked at the store are low priced items.

A review of client shopping data for the review period shows that clients shopping at Del Rey Liquor #2 are also shopping at other area grocery stores, as well as full-line supermarkets and super stores that most likely offer customers a much larger quantity and variety of eligible food items for better prices. Based on these shopping patterns, transportation to other stores is not an issue for these SNAP customers. Yet, these customers continue to shop and spend suspicious high dollar amounts in short timeframes at Del Rey Liquor #2, where the eligible food stock is limited, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of their purchases at better stocked stores. This is a strong indicator of trafficking.

Sometimes a firm may have unusual transaction patterns due to a recipient's lack of access to other SNAP authorized stores. However, there are 45 SNAP authorized retailers (including two supermarkets and two super stores) located within a 1.0 mile radius of Del Rey Liquor #2 that can meet the nutritional needs of SNAP customers. Several of these area authorized SNAP stores offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store. As mentioned previously, SNAP customers who shopped at Del Rey Liquor #2 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 does not appear to be an explanation for the Appellant's abnormally high SNAP transaction amounts conducted within a short timeframe of each other.

5 U.S.C. § 552 (b)(7)(E).

Unfortunately, the Appellant has not provided any evidence to show that the transactions listed in this Charge Letter Attachment were legitimate purchases of eligible foods. The arguments presented by the Appellant hold little weight without some kind of evidence to substantiate its claims.

Excessively Large Purchase Transactions (Charge Letter Attachment 3)

This Charge Letter Attachment lists 68 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These large transactions are not consistent with a combination grocery/other store in Los Angeles County, California. During the review period, the average transaction amount for a combination grocery/other store in Los Angeles County, California was \$17.45. The average transaction in Attachment 3 is more than seven (7) times larger than the average purchase amount for this store type. There is no evidence that the firm would be likely to have SNAP redemption patterns that differ considerably from similar sized competitors. These large transaction amounts are also not consistent with the store's inventory. There were no fresh or frozen meats, poultry, or seafood and very little fresh produce. Many of the food products in Del Rey Liquor #2 consisted of accessory food items such as snack foods and drinks and inexpensive staple foods such as canned and packaged goods. The frequency of high dollar purchases in the review period calls into question the legitimacy of these transactions.

The Appellant contends that most of the SNAP transactions included in this Charge Letter Attachment are not “single” transactions as stated and are the result of Del Rey Liquor #2 accepting SNAP benefits as repayment on credit accounts from area SNAP customers upon receipt of their monthly EBT benefit allotments. With regard to the Appellant’s credit extension contention, as noted previously, the information provided by the Appellant is not sufficient to support that these questionable SNAP transactions are due to repayment of credit accounts by SNAP customers.

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 combination grocery/other 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 combination grocery/other store such as Del Rey Liquor #2 to have purchases like those included in Attachment 3 to the Charge Letter. This Attachment cites 68 EBT transactions during the five month period of investigation **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

The FNS store visit report and photos of February 5, 2019 show that Del Rey Liquor #2 offers a minimal stock of SNAP eligible foods with no fresh meats, poultry, or seafood, no frozen meats, poultry, or seafood, and only two varieties of fresh produce in minimal quantities. The inventory report and photos also show only a few expensive eligible foods in stock that would account for these large amounts as well as showing the store has limited checkout counter space and no shopping carts or hand-held baskets in which to transport the large number of items required to make up these large transaction amounts. Without these, it is unlikely that such large dollar value transactions could be for actual food purchases and more likely they are trafficking.

The record shows that there are 45 SNAP authorized retailers (including two supermarkets and two super stores) located within a 1.0 mile radius of Del Rey Liquor #2 that can meet the nutritional needs of SNAP customers. Several of these area authorized SNAP stores offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store. An analysis of the shopping patterns for all of the SNAP households listed in this Attachment shows that the majority of the households shopping at Del Rey Liquor #2 have access to transportation and that all are regularly shopping at a variety of larger stores, including super stores and/or supermarkets, located nearby and at several miles distance from the Appellant’s location. While Del Rey Liquor #2 does offer some staple food items, SNAP recipients are already shopping at other larger SNAP retailers located in proximity to the Appellant’s business offering a greater quantity and variety of products, including fresh meats/seafood and produce, at lower prices. Therefore, the store has nothing to attract SNAP customers as there are no special or custom services offered.

5 U.S.C. § 552 (b)(7)(E).

5 U.S.C. § 552 (b)(7)(E).

The burden to disprove trafficking rests with the Appellant. In this matter, insufficient evidence was advanced to support the contentions. 5 U.S.C. § 552 (b)(7)(E).

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 Charge letter. Therefore, based on this empirical data, and in the absence of credible evidence for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the “unusual, irregular, and inexplicable” transactions and patterns cited in the letter of charges evidence trafficking as the most likely explanation. Nevertheless, transactions having such characteristics do sometimes have valid explanations that support that they were the result of legitimate purchases of eligible food items, and this is why opportunities are afforded to charged retailers to explain the questionable transactions cited. In this case, however, the Retailer Operations determined that the Appellant’s contentions did not outweigh the evidence. Assertions that the firm has not violated program regulations, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations.

In summary, the store’s layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding those of similar type stores. In addition to the statistical irregularity of such high dollar transactions, the limited availability of counter space for checking out and the lack of shopping carts and hand-held baskets support the Retailer Operations Division’s determination. It is not plausible that the store’s customers are carrying large amounts of food around the store without the benefit of shopping carts or hand-held baskets. Customers purchasing such large quantities of food items would have to hold them in their arms, or enlist the help of others while shopping. Based on the preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 3 are more likely than not the result of trafficking in SNAP benefits.

First Time Violator

The Appellant contends that this is the first time that the firm has been cited for SNAP violations. However, a record of participation in the SNAP with no previously documented violations does not constitute valid grounds for mitigating the impact of the present serious determination of trafficking.

Reconsideration of Penalty

The Appellant contends that a permanent SNAP disqualification is harsh given that the SNAP transactions included in the Charge Letter are the result of credit extension. The Appellant requests that it be given a second change and for FNS to either reverse the permanent disqualification, issue a warning letter, or impose a shorter period of SNAP disqualification.

However, the Food and Nutrition Act of 2008, at § 2021, does not allow for discretion in determining sanctions for trafficking and is specific in its requirement that “... a disqualification . . . 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 ...". In keeping with this legislative mandate, 7 CFR § 278.6(e)(1)(i) of the SNAP regulations states that FNS shall disqualify a firm permanently if personnel of the firm have trafficked.

CIVIL MONEY PENALTY

As previously indicated, the April 19, 2019 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 February 27, 2019 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 Del Rey Liquor #2 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

July 1, 2019