

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

Royal Food Mart #14,

Appellant,

v.

Case Number: C0198967

Retailer Operations Division,

Respondent.

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 Royal Food Mart #14 (hereinafter "Royal Food Mart") 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 Royal Food Mart on May 30, 2017.

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 April 12, 2017, the Retailer Operations Division informed the Appellant that her firm 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 telephone conversations with Retailer Operations Division staff on April 18, 2017 and April 19, 2017, and in a letters received by the Retailer Operations Division on May 1, 2017, the Appellant, through counsel, cited credit extension and bulk purchases of frozen foods by SNAP customers as the explanations for the questionable SNAP transactions that were outlined in the April 12, 2017 Charge Letter.

After considering the Appellant's replies and the evidence in the case, the Retailer Operations Division issued a Determination Letter dated May 30, 2017, informing the Appellant that Royal Food Mart 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 June 8, 2017, the Appellant, through counsel, requested an administrative review of the Retailer Operations Division's decision to permanently disqualify the firm from participation in the SNAP. FNS granted the Appellant's request for administrative review by letter dated June 14, 2017.

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 § 278.2(f) states, inter alia:

SNAP [Food Stamp] benefits shall not be accepted by an authorized retail food store in payment for items sold to a household on credit. A firm that commits such violations shall be disqualified from participation in the SNAP [Food Stamp Program] for a period of one year.

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 November 2016 through February 2017. This involved the following SNAP transactions patterns which are indicative of trafficking:

- There were multiple transactions made from individual benefit accounts in unusually short timeframes; and
- There were excessively large purchase transactions made from recipient accounts.

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 Appellant's replies to the Charge Letter and in the review request postmarked June 8, 2017, the Appellant, through counsel, stated the following summarized contentions, in relevant part:

- The multiple transactions made from individual benefit accounts in unusually short timeframes are the result of Royal Food Mart accepting SNAP benefits as repayments on credit accounts from SNAP customers.
- The excessively large purchase transactions are also the result of: (1) Royal Food Mart accepting SNAP benefits as repayments on credit accounts from SNAP customers; (2) SNAP customers purchasing certain frozen foods in bulk quantities; and (3) Royal Food Mart being located in a rural area and SNAP customers relying upon the store while visiting nearby attractions.

- In order to ensure that SNAP violations do not occur again, the Appellant will implement the following employee training procedures at Royal Food Mart:
 1. Each employee, including management, will review the video(s) presently on YouTube (www.fns.usda.gov/snap/retailers-store-training-information). This will be done outside of the work place and the subject attorney or a representative will be present to insure that all participants understand the video and to answer their questions and if necessary to pursue further answers with FNS or hire outside consultants to insure the rules and regulations of the program are understood and followed;
 2. Each employee, including management, will receive a copy of the SNAP booklet to review and following the review will be subjected to an examination by the subject attorney or representative or outside consultant;
 3. Each employee, including management, will acknowledge in a signed statement, that they have viewed the video, read the manual and acknowledge that it is illegal to accept SNAP benefits as payment for items sold to credit; that it is illegal to accept SNAP benefits for hot food; that it is illegal to accept SNAP benefits for cigarettes, tobacco, alcohol, and non-food items; that it is illegal to accept SNAP benefits in exchange for cash; it is illegal to discriminate against SNAP customers (this list is not meant to be exhaustive and will be subject to further review); and
 4. Store employees and management will review the SNAP regulations, if accepted back into the program, on a quarterly basis and any new employees who will work the registers will undergo the same training program and protocol as proposed above before starting work at Royal Food Mart but no later than 30 days after employment.
- The Appellant is requesting that FNS reconsider its decision to impose a permanent disqualification for Royal Food Mart and in the alternative, impose a one year SNAP disqualification and a fine of \$16,320.00.

In support of the Appellant's contentions, the following documents were submitted to FNS:

- Copies of 28 cash register receipts for specific purchases made at Royal Food Mart in November 2016, December 2016, and January 2017;
- Two flyers advertising several frozen foods available for sale in bulk quantities (one flyer includes prices for each food product);
- Two photos of a small upright freezer with food stock;
- A photo of the intersection of 51 East and 145 North and South;
- Two photos of the outside of Royal Food Mart; and
- Four Receipts from Sysco Atlanta LLC dated January 19, 2017, February 2, 2017, February 23, 2017, and April 20, 2017.

ANALYSIS AND FINDINGS

Store Characteristics

FNS authorized Royal Food Mart as a convenience store on August 31, 2015. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a March 24, 2017 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:

- Royal Food Mart is a free-standing store that is approximately 2,700 square feet in size and it does not have a storage area outside of the public view;
- The store is located in a rural area of Royston, Georgia;
- There were no shopping carts or hand-held baskets available for customer use;
- Royal Food Mart has one cash register and one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;
- There was no conveyor belt for the speedy processing of transactions;
- At the time of the store visit, Royal Food Mart did not meet the requirements for participation in the SNAP under Criterion A as the store stocked only ice cream and milk in the Dairy staple food category and only canned/potted meat and meat jerky in the Meats, Poultry, Fish staple food category;
- Many of the canned foods stocked at Royal Food Mart were dusty and dirty indicating that they are not sold on a regular or consistent basis;
- Some of the food items stocked at Royal Food Mart had elapsed expiration dates;
- Royal Food Mart was poorly stocked with food items and it offered customers a minimal variety and amount of eligible staple foods for sale;
- The majority of the store's food inventory appears to be snack foods and beverages;
- There were no meat/seafood specials or bundles that might sell for high prices;
- The three most expensive food items stocked at Royal Food Mart were coffee at \$7.99 each; meat jerky at \$6.99 each; and ice cream at \$6.29 each;
- It does not appear from the store visit observations that Royal Food Mart extends credit to store customers;
- There were no signs posted in the store nor were there any flyers advertising the availability of bulk foods offered at a discounted rate to include specials on frozen food items;
- Royal Food Mart has a kitchen/food preparation area in which store employees prepare hot and cold prepared, ready-to-eat foods that are intended for immediate consumption and require no additional preparation. There is a menu board posted in the store advertising these foods which include: Hot Wings, chicken wings, chicken strips, chicken livers, barbecue sandwiches, butterfly shrimp, corn dogs, eggrolls, pizza sticks, onion rings, french fries; pizza (available in a few varieties), and desserts (apple pie, cheesecake, strawberry cream cheese pie, and fruit bowl);

- There were no tables with chairs located inside of the store for use by customers in eating the available hot and cold prepared, ready-to-eat foods that are intended for immediate consumption and require no additional preparation;
- Royal Food Mart does not have a deli cooler/area and it does not sell deli meats and cheeses by the pound;
- The checkout counter has a limited space and it is cluttered with miscellaneous items. As such, it does not provide a space for the large amounts of individual food items necessary to make up many of the large transactions cited in the Charge Letter Attachments;
- Royal Food Mart did not stock any fresh or frozen meats, poultry, or seafood items;
- Meat items available for sale included canned/potted meat and meat jerky;
- Royal Food Mart did not stock any fresh or frozen fruits or vegetables;
- The store stocked a small variety and amount of canned fruits and canned vegetables;
- The only frozen food item stocked at Royal Food Mart is ice cream;
- Other staple foods available for purchase included such items as milk, canned and dry soups, 100% juice, pasta, cereal, loaf bread, cakes/pastries, snack foods, etc.;
- Much of the remaining food stock consisted of accessory foods such as candy, carbonated and non-carbonated drinks, sugar, coffee, seasonings, etc.; and
- Royal Food Mart stocked a large supply of ineligible nonfood items such as tobacco products, alcoholic beverages, gasoline, over-the-counter medications, hats, paper products, household cleaning supplies, lottery tickets, knives, health and beauty items, office/school supplies, ice chests, household items, automotive supplies, movie DVDs, charcoal and lighter fluid, laundry detergent, propane tanks, etc.

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 multiple transactions made from individual benefit accounts in unusually short timeframes and the excessively large purchase transactions are the result of Royal Food Mart accepting SNAP benefits as repayments on credit accounts from SNAP customers. 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 provided the Retailer Operations Division with copies of 28 cash register receipts for specific purchases made by five different SNAP customers at Royal Food Mart in November 2016, December 2016, and January 2017. The Appellant contends that the store utilized register receipts to keep track of SNAP customers who were extended credit by Royal Food Mart. The Appellant contends, however, that she was unable to provide the Retailer Operations Division with every register receipt to substantiate that credit was extended as the store's record keeping process involved saving the duplicate receipts and clearing them out when payment was made by SNAP customers. The register receipts that were provided to FNS are representative samples of the credit records kept by Royal Food Mart during the review period.

The Retailer Operations Division reviewed the information/documentation and properly determined that the documents were insufficient to support the Appellant's credit extension contention for the following reasons:

- The Appellant provided no documentation to indicate that Royal Food Mart had actual credit account documentation other than her statement of such.
- There is no verification that the purchases listed on the register receipts were made by SNAP customers other than the Appellant's hand-written account numbers written on top of the receipts.
- A few of the individual food items listed on the cash register receipts are specifically identified; however, the majority of the food items listed on the cash register receipts depict the individual food items purchased on credit in a generic term only--"grocery".
- None of the food items that were specifically identified on the cash register receipts (such as beef brisket, cheese sticks, hot wings, potato wedges, etc.) were available for sale to store customers in a non-cooked form. In addition, there were no signs or flyers posted inside or outside of the store advertising the availability of these food items in bulk quantities.
- No documentation was provided to validate whether the alleged credit was paid off by cash, check, credit card or SNAP benefits.
- No documentation was provided that indicates when the food items were purchased on credit and when the credit was paid off. The dates listed on the register receipts with regard to credit accounts pay-off were hand-written on the top by the Appellant.

- The Appellant only provided information for nine (9) of the SNAP transactions that were listed in the Charge Letter. The Charge Letter had a total of 98 suspect SNAP transactions. As such, over 90% of the suspect transactions listed in the Charge Letter were not accounted for in the information provided by the Appellant.
- None of the purchases indicated on the register receipts are found in Attachment 1 of the Charge letter; therefore, no documentation was provided that explains the “multiple purchase transactions made by individual household accounts in short timeframes”.
- The cash register receipts do not provide any identifying information for the SNAP customers who were extended credit or how the credit accounts were identified when a SNAP customer came back to Royal Food Mart to pay off his/her credit account. The only SNAP customer information provided on the register receipts was a hand-written account number written on top by the Appellant. It is unlikely that Royal Food Mart would be able to keep track of the credit extended to each customer without additional identifying information such as a customer name, nickname, or telephone number.
- The card numbers that were hand-written by the Appellant on top of the register receipts match the account numbers listed in the Charge Letter. However, these account numbers are not the actual account number listed on the customers’ actual SNAP benefit cards. This is an indication that the Appellant has no actual information about the SNAP households in question and most likely matched the cash register receipts to the questionable SNAP transactions listed in the Charge Letter.
- Nine sets of receipts were provided to FNS by the Appellant. However, the dollar amounts listed in the Charge Letter and the sum of the actual purchases do not match some of the transaction sets. As such, some of the register receipts provided to FNS had incorrect calculations strongly suggesting that the receipts were simply paired together by the Appellant for the purposes of trying to explain the questionable SNAP transactions that occurred at Royal Food Mart during the review period.

Additional inaccuracies were identified by the Retailer Operations Division with regard to the information/documentation that the Appellant provided in support of her contention of credit extension. A summary of these inaccuracies are listed below, by SNAP card number.

5 U.S.C. § 552 (b)(6) & (b)(7)(C): The Appellant provided two exhibits for this card number (Exhibits 1 and 2). There is no verification that the purchases listed on the register receipts were made by this SNAP customer other than the Appellant’s hand-written account number that was written on top of the receipts.

Exhibit 1- 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is unlikely that a SNAP household would come to Royal Food Mart and pay off their credit account only three days after completing a large dollar transaction at the subject firm. Also, all of the items listed as purchased on each of the cash register receipts are identified as “grocery”. As such, there is no way to validate that these items were eligible food items. In addition, the register receipts indicate that tax was charged to the SNAP recipient. Per the SNAP regulations, tax is not allowed to be charged when a customer purchases eligible food items with his/her SNAP benefits. As such, the reliability of these register receipts is highly questionable.

Exhibit 2- 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is also important to note that the majority of the items listed as purchased on each of the cash register receipts are identified as “grocery”. As such, there is no way to validate that these items were eligible food items. In addition, the register receipts indicate that tax was charged to the SNAP recipient. Per the SNAP regulations, tax is not allowed to be charged when a customer purchases eligible food items with his/her SNAP benefits. As such, the reliability of these register receipts is highly questionable.

5 U.S.C. § 552 (b)(6) & (b)(7)(C): The Appellant provided two exhibits for this card number (Exhibits 3 and 4). There is no verification that the purchases listed on the register receipts were made by this SNAP customer other than the Appellant’s hand-written account number that was written on top of the receipts.

Exhibit 3- 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The Appellant provided four cash register receipts. However, two of the cash register receipts had the date cut off; therefore, there is no way to validate if these receipts are for the “credit” purchases in question. It is also important to note that the majority of the items listed as purchased on each of the cash register receipts are identified as “grocery”. As such, there is no way to validate that these items were eligible food items. In addition, the register receipts indicate that tax was charged to the SNAP recipient. Per the SNAP regulations, tax is not allowed to be charged when a customer purchases eligible food items with his/her SNAP benefits. As such, the reliability of these register receipts is highly questionable.

Exhibit 4- 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is important to note that the majority of the items listed as purchased on each of the cash register receipts are identified as “grocery”. As such, there is no way to validate that these items were eligible food items. In addition, the register receipts indicate that tax was charged to the SNAP recipient. Per the SNAP regulations, tax is not allowed to be charged when a customer purchases eligible food items with his/her SNAP benefits. As such, the reliability of these register receipts is highly questionable.

5 U.S.C. § 552 (b)(6) & (b)(7)(C): The Appellant provided one exhibit for this card number (Exhibit 5). There is no verification that the purchases listed on the register receipts were made by this SNAP customer other than the Appellant’s hand-written account number that was written on top of the receipts.

Exhibit 5- 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Given that the store visit observations indicate that Royal Food Mart is a poorly stocked convenience store that carries mostly snack foods and beverages and there is no indication that the store offers foods of any kind in bulk, it is highly suspect that these large transactions were legitimate purchases of foods with SNAP benefits or that they were the result of the SNAP customer paying off a credit account. In addition, the register receipts indicate that tax was charged to the SNAP recipient. Per the SNAP regulations, tax is not allowed to be charged when a customer purchases eligible food items with his/her SNAP benefits. As such, the reliability of these register receipts is highly questionable.

5 U.S.C. § 552 (b)(6) & (b)(7)(C): The subject firm provided two exhibits for this card number (Exhibits 6 and 7). There is no verification that the purchases listed on the register receipts were made by this SNAP customer other than the Appellant's hand-written account number that was written on top of the receipts.

Exhibit 6- **5 U.S.C. § 552 (b)(6) & (b)(7)(C).** It is important to note that the majority of the items listed as purchased on each of the cash register receipts are identified as "grocery". As such, there is no way to validate that these items were eligible food items. In addition, the register receipts indicate that tax was charged to the SNAP recipient. Per the SNAP regulations, tax is not allowed to be charged when a customer purchases eligible food items with his/her SNAP benefits. As such, the reliability of these register receipts is highly questionable.

Exhibit 7- **5 U.S.C. § 552 (b)(6) & (b)(7)(C).** It is also important to note that the majority of the items listed as purchased on each of the cash register receipts are identified as "grocery". As such, there is no way to validate that these items were eligible food items. In addition, the register receipts indicate that tax was charged to the SNAP recipient. Per the SNAP regulations, tax is not allowed to be charged when a customer purchases eligible food items with his/her SNAP benefits. As such, the reliability of these register receipts is highly questionable.

5 U.S.C. § 552 (b)(6) & (b)(7)(C): The Appellant provided two exhibits for this card number (Exhibits 8 and 9). There is no verification that the purchases listed on the register receipts were made by this SNAP customer other than the Appellant's hand-written account number that was written on top of the receipts.

Exhibit 8- **5 U.S.C. § 552 (b)(6) & (b)(7)(C).** It is important to note that the majority of the items listed as purchased on each of the cash register receipts are identified as "grocery". As such, there is no way to validate that these items were eligible food items. In addition, the register receipts indicate that tax was charged to the SNAP recipient. Per the SNAP regulations, tax is not allowed to be charged when a customer purchases eligible food items with his/her SNAP benefits. As such, the reliability of these register receipts is highly questionable.

Exhibit 9- **5 U.S.C. § 552 (b)(6) & (b)(7)(C).** It is important to note that the majority of the items listed as purchased on each of the cash register receipts are identified as "grocery". As such, there is no way to validate that these items were eligible food items. In addition, the register receipts indicate that tax was charged to the SNAP recipient. Per the SNAP regulations, tax is not allowed to be charged when a customer purchases eligible food items with his/her SNAP benefits. As such, the reliability of these register receipts is highly questionable.

In conclusion, although Royal Food Mart may have, on a rare occasion, accepted SNAP benefits as repayment on credit accounts, the evidence submitted by the Appellant does not support the contention that the irregular SNAP transactions listed in the Charge Letter are due to repayment on credit accounts. The card numbers that were hand-written by the Appellant on top of the register receipts are not the actual account numbers listed on the customers' actual SNAP benefit cards. It appears that the Appellant has no actual information about the SNAP households in question and most likely attempted to match the cash register receipts to the questionable SNAP transactions listed in the Charge Letter.

Repeat Transactions by the Same Household

Charge Letter Attachment 1 lists 8 transaction sets (18 total transactions)

5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is not credible that the subject store would have so many suspicious SNAP transactions greatly exceeding the average SNAP transaction for convenience stores in Franklin County during the review period. Violating stores often conduct multiple transactions from the same household account to avoid detection of single high dollar transactions that cannot be supported by the firm's food inventory and infrastructure.

The Appellant contends that the multiple transactions made from individual benefit accounts in unusually short timeframes are the result of Royal Food Mart accepting SNAP benefits as repayments on credit accounts from SNAP customers. With regard to the Appellant's claim that these questionable SNAP transactions are due to SNAP benefits being accepted as repayment on credit accounts, as noted above, the information/documentation provided by the Appellant is not sufficient to support that these transactions were due to repayments of credit accounts. None of the transactions listed in Attachment 1 are covered by the cash register receipts provided by the Appellant. As such, the Appellant's claim that credit extension was the explanation for these questionable SNAP transactions is unsubstantiated.

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 the Charge Letter are questionable because they display characteristic 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. Royal Food Mart is not set up to provide for all of one's food needs with no fresh or frozen meats, poultry, or seafood, no frozen fruits or vegetables, no fresh produce items, and it lacks an abundant depth and breadth of staple foods. The store visit observations indicate that Royal Food Mart does not meet the requirements for participation in the SNAP under Criterion A as the store stocked only ice cream and milk in the Dairy staple food category and only canned/potted meat and meat jerky in the Meats, Poultry, Fish staple food category. The store visit observations also indicate that there is no evidence of a price advantage or custom or special services rendered at the subject store.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). In addition, Royal Food Mart does not carry any high priced food items so the majority of 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 Royal Food Mart 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 Royal Food Mart, where the eligible food stock is very 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 eight SNAP authorized retailers located within four miles of Royal Food Mart that can meet the nutritional needs of SNAP customers. These authorized stores include a supermarket and a super store. In addition, there are a total of 33 SNAP authorized stores located within ten miles of the subject store which SNAP customers utilize for their staple food needs. As mentioned above, SNAP customers who shopped at Royal Food Mart during the four month 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 Royal Food Mart's abnormally high SNAP transaction amounts conducted within a short timeframe of each other.

The Appellant did not provide any compelling justification as to why SNAP households are conducting multiple transactions at Royal Food Mart or evidence that all of the irregular transactions cited in the Charge Letter were for eligible food items only. Based on the analysis above, and in the absence of any other reasonable explanation, the irregular transaction patterns are more likely than not to be a result of trafficking in SNAP benefits.

Large Transactions

Attachment 2 of the Charge Letter cites 95 EBT transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. As noted previously, there is no indication from the store visit report that the store would be likely to have SNAP redemption patterns significantly different from similar-sized competitors offering similar food items.

The Appellant contends that excessively large purchase transactions are also the result of: (1) Royal Food Mart accepting SNAP benefits as repayments on credit accounts from SNAP customers; (2) SNAP customers purchasing certain frozen foods in bulk quantities; and (3) Royal Food Mart being located in a rural area and SNAP customers relying upon the store while visiting nearby attractions. With regard to the Appellant's claim that these questionable SNAP transactions are due to SNAP benefits being accepted as repayment on credit accounts, as noted above, the information/documentation provided by the Appellant is not sufficient to support that these transactions were due to repayments of credit accounts.

The Appellant contends that these questionable SNAP transactions are also the result of SNAP customers purchasing certain frozen foods in bulk quantities. However, the Appellant's contention is unsubstantiated. In support of this contention, the Appellant provided FNS with two flyers which advertise several frozen foods available for sale in bulk quantities. One of the flyers included the prices of each food product which were between \$13.99 and \$89.99. A sample of the large ticket food items identified in the flyers include: Cheese sticks (2 lbs.)--\$20.98; jalapeno poppers (2 lbs.)--\$29.99; seasoned potato wedges (5 lbs.)--\$29.99; Austin® beef brisket (10 lbs.)--\$89.99, and frozen cheesecake--\$29.99. While some of the food items listed on the flyers are noted on some of the cash register receipts that were provided by the Appellant, the Reviewer noted that none of these food items were in stock at the time of the store visit. The store visit observations also indicate that there were no signs or flyers located inside or

outside of Royal Food Mart which advertised the availability of any food items in bulk quantities, including the foods listed on the submitted flyers. The store manager was specifically asked by the Reviewer during the store visit to provide a list of the top three most expensive food items (with prices) stocked at Royal Food Mart. The store manager stated that the most expensive food item stocked at the store is coffee priced at \$7.99 each. The manager did not indicate that the store stocked any high priced foods that were available in bulk quantities. The Reviewer also noted that he/she did not see any storage areas/freezers out of the public view that might stock bulk quantities of foods and the Reviewer confirmed this fact with the store manager. At the time of the store visit, the only frozen food item stocked at Royal Food Mart was ice cream.

The store visit observations also indicated that Royal Food Mart advertises the availability for purchase various hot and cold prepared, ready-to-eat foods that are intended for immediate consumption and require no additional preparation. Per photo #1 below taken during the store visit, a menu board is posted in Royal Food Mart which advertises these ready-to-eat food items which are not allowed to be purchased with SNAP benefits as stipulated in the SNAP regulations. All of the ineligible food items listed on the menu board are also listed on the bulk frozen food flyers that were provided by the Appellant. As was previously indicated, these food items were not noted during the March 24, 2017 visit of Royal Food Mart.



Photo #1: Menu Board Posted in Royal Food Mart during FNS store visit.

In addition to the two flyers, the Appellant provided FNS with two photos which show a small upright freezer (and its food stock) located in Royal Food Mart. The Appellant contends that the bulk frozen food items advertised in the flyers are stocked in the upright freezer. The photos taken by the Reviewer during the store visit of Royal Food Mart also show a small upright freezer located in the kitchen. It appears to be the same type of freezer depicted in the two photos provided by the Appellant. However, the store manager stated during the store visit interview that Royal Food Mart does not have a storage area/freezer outside of the public view. Instead, the foods that were stocked in the upright freezer appear to be used in the preparation of various hot and cold prepared, ready-to-eat foods. The Appellant's photos show that several of the boxed foods that were stored in the freezer were open suggesting that these items are not for sale to customers and are pulled out by store employees and used as needed to prepare a hot food

purchase. In addition, one of the Appellant's photos shows that there are plastic tubs located on the freezer's top shelf which are not labeled for individual sale also suggesting that these items are not for sale to customers and are pulled out by store employees and used as needed to prepare a hot food purchase. As is indicated below in photo #2 provided by the Appellant, the upright freezer has a sign in the upper left corner which states "open bags are in door" strongly suggesting that these foods are used in the preparation of hot foods and not for individual sale to customers.



Photo #2: Appellant's photo of upright store freezer showing "open bags are in door" sign.

In support of the contention that the excessively large purchase transactions are the result of SNAP customers purchasing certain frozen foods in bulk quantities the Appellant also provided FNS with four vendor invoices from Sysco Atlanta LLC. These invoices are dated January 19, 2017, February 2, 2017, February 23, 2017, and April 20, 2017. The April 20, 2017 invoice is not dated during the four month review period and is, therefore, not germane to this case. The majority of the purchased [frozen] foods listed on the submitted invoices include: chicken tenders, chicken wings, jalapeno poppers, egg rolls, onion rings, pork barbecue, potato wedges, corn dogs, and pizza. All of these foods are included on Royal Food Mart's hot food menu board. Based on the above discussion, it is most likely that these food items were purchased as part of the hot food menu and were not to be sold [unprepared] to customers. It is also important to note that the total food amount depicted on the three review period invoices is

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Therefore, they do not substantiate 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP transactions that were redeemed by Royal Food Mart during the four month review period.

The Appellant contends that the excessively large purchase transactions are the result of Royal Food Mart being located in a rural area and SNAP customers relying upon the store while visiting nearby attractions. The two attractions mentioned by the Appellant are Victoria Bryant State Park and the Ty Cobb museum. It is acknowledged that Royal Food Mart is located in a rural area of Royston, Georgia. However, records indicate that there are several other authorized SNAP stores clustered around the Ty Cobb museum that are actually located closer to the museum than the subject store.

In an effort to analyze the Appellant's contention, FNS compared the SNAP transactions conducted at two other area convenience stores during the review period to the SNAP transactions that were conducted at Royal Food Mart during the same time period. These other convenience stores are located on the same highway as the subject store which means they are also located in a rural area. FNS' analysis indicates that Royal Food Mart had a consistently higher average transaction dollar amount in comparison to the two area convenience stores. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Therefore, if there was an influx in business (i.e., SNAP transactions) at Royal Food Mart during the review period due to the identified local attractions, one would expect to see a similar increase in business at the two area convenience stores as well. As such, the Appellant's contention is unsubstantiated.

The store visit report and photos show that Royal Food Mart was stocked with a very limited quantity and variety of staple foods as it stocked no fresh or frozen meats, poultry, or seafood, no frozen fruits or vegetables, no fresh produce items, and a minimal quantity and variety of processed meats. In fact, at the time of the store visit Royal Food Mart did not meet the requirements for participation in the SNAP under Criterion A as it stocked milk and ice cream only from the Dairy and canned/potted meat and meat jerky only from the Meats, Poultry, Fish staple food categories. The inventory report and photos also show that the subject store stocked no expensive staple foods indicating that there are no 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 8 SNAP authorized retailers located within four miles of Royal Food Mart and a total of 33 SNAP authorized stores located within 10 miles of the subject store. Several of these stores are larger than Royal Food Mart and 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 all of the households shopping at Royal Food Mart have access to transportation and that all are regularly shopping at a variety of larger stores, including super stores and supermarkets, located a few miles distance from the Appellant's location. While Royal Food Mart does offer some staple food items, SNAP recipients are already shopping at other larger SNAP retailers located within a few miles of 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.

The Appellant did not submit any additional vendor invoices to FNS which depict foods that were purchased for Royal Food Mart during the four month review period in order to substantiate that the store had purchased enough staple food items to cover/explain the SNAP transactions that occurred at the subject firm. The only vendor invoices provided to FNS for the review period were the three Sysco Atlanta LLC invoices discussed above. As was indicated previously, the total food purchase amount depicted on the three review period invoices was 5 U.S.C. § 552 (b)(6) & (b)(7)(C); therefore, that they do not substantiate the 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP transactions that were redeemed by Royal Food Mart during the review. It is important to note that even if the Appellant had provided all of the vendor invoices to FNS for foods purchased during the review period and the invoices indicated 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 consecutive transactions by individuals during the same store visit or in a single day. 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 frozen meats/seafood and no fresh meats/seafood, no fresh produce, and no frozen fruits or vegetables, a greater variety of foods at comparable or lower prices at other stores, no shopping carts or hand-held baskets available for customer use, and little counter space to place food for purchase at the checkout counter. Even if there were sufficient food stock at Royal Food Mart to mathematically support high dollar transactions, there does not appear to be anything that would reasonably attract SNAP households to shop there, a poorly stocked convenience store, in some cases traveling a few miles to do so, and spend substantial amounts of their SNAP benefits.

Lastly, the case record documents that the Retailer Operations Division conducted a detailed analysis of eight SNAP households identified in the Charge Letter to analyze their shopping patterns at Royal Food Mart compared to their shopping patterns at other SNAP authorized stores. Each of these households had access to, and shopped at larger stores including super stores and/or supermarkets. It is obvious that these SNAP households had transportation available to them to reach these other authorized stores. However, despite this access to better stocked stores, these sampled households conducted excessively large transactions at Royal Food Mart often 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of shopping at the larger stores where they conducted much smaller SNAP purchases. It is highly unlikely that a convenience store with minimal staple foods would have legitimate SNAP transactions greater than these larger and better stocked stores.

In summary, the store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding the average transaction amount 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 offering of no shopping carts or 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 and/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 2 are more likely than not the result of trafficking in SNAP benefits.

Training Programs Implemented

The Appellant contends that in order to ensure that SNAP violations do not occur again, she will implement the following employee training procedures at Royal Food Mart:

1. Each employee, including management, will review the video(s) presently on YouTube (www.fns.usda.gov/snap/retailers-store-training-information). This will be done outside of the work place and the subject attorney or a representative will be present to insure that all participants understand the video and to answer their questions and if necessary to pursue further answers with FNS or hire outside consultants to insure the rules and regulations of the program are understood and followed;
2. Each employee, including management, will receive a copy of the SNAP booklet to review and following the review will be subjected to an examination by the subject attorney or representative or outside consultant;
3. Each employee, including management, will acknowledge in a signed statement, that they have viewed the video, read the manual and acknowledge that it is illegal to accept SNAP benefits as payment for items sold to credit; that it is illegal to accept SNAP benefits for hot food; that it is illegal to accept SNAP benefits for cigarettes, tobacco, alcohol, and non-food items; that it is illegal to accept SNAP benefits in exchange for cash; it is illegal to discriminate against SNAP customers (this list is not meant to be exhaustive and will be subject to further review); and
4. Store employees and management will review the SNAP regulations, if accepted back into the program, on a quarterly basis and any new employees who will work the registers will undergo the same training program and protocol as proposed above before starting work at Royal Food Mart but no later than 30 days after employment.

With regard to the Appellant's contention, 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 she 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.

Alternative Penalty Requested

The Appellant is requesting that FNS reconsider its decision to impose a permanent disqualification for Royal Food Mart and in the alternative, impose a one year 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

The Appellant is requesting that FNS consider imposing a fine of \$16,320.00 in lieu of a permanent SNAP disqualification of Royal Food Mart. In the April 12, 2017 Charge Letter the Appellant was informed by the Retailer Operations Division that, under certain conditions, FNS may impose a civil money penalty (CMP) of up to \$59,000 in lieu of permanent disqualification of a firm for trafficking. Per Section 278.6(i) of the SNAP regulations, four criteria must be met in order to be considered for a trafficking civil money penalty. If requesting a trafficking CMP, an Appellant must meet each of the four criteria listed and provide the documentation as specified within ten days of the Appellant's receipt of their Charge Letter. As specified in 7 CFR § 278.6(i), in determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of trafficking, the firm shall, at a minimum, establish by substantial evidence its fulfillment of each of the following four criteria:

Criterion 1. The firm shall have developed an effective compliance policy as specified in 7 CFR § 278.6(i)(1);

Criterion 2. The firm shall establish that both its compliance policy and program were in operation at the location where the violation(s) occurred prior to the occurrence of violations cited in the Charge Letter;

Criterion 3. The firm had developed and instituted an effective personnel training program as specified in 7 CFR § 278.6(i)(2); and

Criterion 4. Firm ownership was not aware of, did not approve, did not benefit from, or was not in any way involved in the conduct or approval of trafficking violations.

If the Appellant's request for a trafficking CMP and the required documentation are not submitted on time, he will lose his right for any further consideration for a trafficking CMP. The SNAP regulations are specific at 7 CFR §278.6(b)(2)(iii) that "if a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and

submit documentation and evidence of its eligibility within the 10 days specified, the firm shall not be eligible for such a penalty”. The regulations do not provide the agency discretion to extend the time within which documentation and evidence in support of a trafficking civil money penalty may be submitted. The Appellant did not request consideration of a CMP in lieu of a permanent SNAP disqualification within the 10 day required timeframe. As such, she is not eligible for such penalty.

In the Appellant’s June 8, 2017 request for administrative review (i.e., after the required 10 day timeframe), she requested that FNS impose a fine of \$16,320.00 in lieu of permanently disqualifying Royal Food Mart from participation in the SNAP. However, the Appellant did not provide any information or documentation to validate that she had developed an effective compliance policy and program as specified in 7 CFR § 278.6(i)(1) and that both were in operation at Royal Food Mart **prior** to the occurrence of the SNAP violations that were cited in the Charge Letter. As such, the Appellant did not address the requirements described herein and did not provide any evidence, in accordance with the criteria detailed in the referenced regulations, that the firm established and implemented an effective policy and program to prevent violations.

Therefore, in the May 30, 2017 Determination Letter, the Appellant was informed by the Retailer Operations Division that consideration was given to the Appellant for a trafficking CMP according to the terms of the SNAP regulations but the Retailer Operations Division determined that the Appellant was not eligible for the trafficking CMP because she failed to submit the request for a CMP within the 10 day required timeframe and she did not provide sufficient evidence to demonstrate that Royal Food Mart had established and implemented an effective compliance policy and program prior to the SNAP violations occurring in order to prevent violations of the SNAP. Therefore, the Retailer Operations Division’s decision not to impose a trafficking CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR § 278.6(i).

CONCLUSION

The Retailer Operations Division’s analysis of the Appellant’s EBT transaction record, upon which charges of violations are based, together with observations made during the store visit and an analysis of customer shopping behaviors, provide substantial evidence that questionable transactions during the focus period have characteristics and display patterns that are not consistent with legitimate sales of eligible food to SNAP benefit customers at a store of this type, size and makeup. Rather, the characteristics are indicative of illegal trafficking in program benefits. The Appellant’s contentions do not outweigh this evidence.

The record has yielded no indication of error or discrepancy in the reported findings by the Retailer Operations Division that program benefits were accepted in exchange for cash or consideration other than eligible food. Therefore, based on a review of the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged. Therefore, the decision to impose a permanent disqualification from participation in the SNAP against Royal Food Mart #14 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, we are 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

March 14, 2018