

**U.S. Department of Agriculture  
Food and Nutrition Service  
Administrative Review Branch  
Alexandria, VA 22302**

Crestline Mart,	)	
	)	
Appellant,	)	
	)	
v.	)	Case Number: C0188088
	)	
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 that a permanent disqualification of Crestline Mart from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed by the Retailer Operations Division.

**ISSUE**

The issue accepted for review is whether or not the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278 in its administration of SNAP, when it imposed a permanent disqualification against Crestline Mart.

**AUTHORITY**

7 U.S.C. § 2023 and its implementing regulations at 7 CFR § 279.1 provide that “[A] food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 . . . may file a written request for review of the administrative action with FNS.”

**CASE CHRONOLOGY**

The agency’s record shows that Crestline Mart submitted an application for SNAP participation on November 2, 2011. Crestline Mart was then authorized as a convenience store effective December 14, 2011. The firm completed a routine reauthorization on January 23, 2014.

In a letter dated March 24, 2016, the Retailer Operations Division charged the Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred between the months of September 2015 and February

2016. The irregular redemption activity included multiple purchase transactions that were made too rapidly to be credible; multiple transactions that were made from individual SNAP accounts in unusually short timeframes; the majority or all of an individual SNAP recipient's benefits that were exhausted in unusually short periods of time; and excessively large purchases that were made from SNAP recipient accounts. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also stated that the Appellant could request a civil money penalty (CMP) in lieu of permanent disqualification for trafficking, but noted that such a request must be made within 10 days of receipt of the charge letter under the conditions specified in 7 CFR § 278.6(i).

In multiple e-mails between April 8 and April 26, 2016, the Appellant, through its accountant, submitted to the Retailer Operations Division a significant amount of documentation in an effort to demonstrate that the firm was not engaged in trafficking, but rather had been allowing SNAP customers to set up credit accounts. In other words, the Appellant permitted customers to obtain merchandise without paying, but with the intention of paying the amount they owed when their SNAP benefits were loaded onto their EBT cards the following month.

Documentation provided by the Appellant included 28 PDF e-mail attachments, which included nine inventory purchase receipts from [7 USC 2018 (b)(6)&(b)(7)(c)]; two receipts from [7 USC 2018 (b)(6)&(b)(7)(c)]; one receipt from [7 USC 2018 (b)(6)&(b)(7)(c)]; two receipts from [7 USC 2018 (b)(6)&(b)(7)(c)]; and 25 receipts from [7 USC 2018 (b)(6)&(b)(7)(c)]. The Appellant also submitted 54 cash register receipts, all from March 2016, all of which included a handwritten customer name on the top of the receipt.

Also provided were eight pages of what appear to be credit ledgers from prior to the review period. These documents do not include any evidence showing that the credit accounts were paid off. Only two of the eight pages were dated, both of which were from December 2012.

The Appellant also submitted an Excel spreadsheet listing 48 names (mostly first and last names) with the last four digits of an EBT card number beside each name. The Appellant also provided 15 photographs of the store layout, freezers, and boxes of food. One photo was of a list of 13 names and eight phone numbers, although there was no explanation as to precisely what this meant. It is assumed that these are SNAP customers with credit accounts.

In response to the Appellant's claim that credit accounts were permitted at the store, the Retailer Operations Division sent the firm a letter dated April 28, 2015, informing the Appellant that the acceptance of SNAP benefits as payment for items sold to a household on credit is a violation of SNAP regulations at 7 CFR § 278.6(f). The Retailer Operations Division further requested that the Appellant provide documentation to support its claim of credit activities. The letter stated that the documentation must identify "specific accounts along with corresponding dates and amounts."

[It should be noted here that if it is determined that a firm has engaged in credit account violations instead of trafficking, then such firms are subject to a one-year disqualification penalty in accordance with 7 CFR § 278.2(f).]

In response to this letter, the Appellant, through its accountant, sent the Retailer Operations Division 18 sheets of credit account ledgers listing 243 separate credit accounts. In most

instances one copied sheet equaled two pages of the credit account ledger, which appears to be a journal-type book with blank, lined pages. The ledgers list first names and a running total of the amount owned. It appears that when the amount was paid off, the final amount was circled and marked “paid.” Occasionally there would be an entry showing a reduction in the amount owed, like this example for a customer named 7 USC 2018 (b)(6)&(b)(7)(c):

215.69  
296.55  
303.26  
329.89  
-163.89  
166.00  
-57.98  
108.02 paid

In this example, the credit account started with an amount of \$17.64 and was added upon with several more credit transactions until it reached \$215.69, which is where this example begins. Then a credit purchase for \$80.86 was made, making the new credit total \$296.55, and so forth. Then, a payment for \$163.89 was made, making the new debt total \$166.00. Another payment, this time for \$57.98 was then made, followed by a final payment for \$108.02. The final amount was circled and marked as paid. There were no dates listed on the credit ledgers, only first names and lists of transactions.

Many of the credit payoff amounts in the ledgers correspond with amounts listed in the charge letter attachments. In the example cited above, the \$163.89 transaction is found in Attachment 4, but neither the \$57.98 nor the \$108.02 amounts are listed on any of the charge letter attachments. So either these payments were made sometime outside of the review period or else they were paid using a method other than SNAP benefits. It is also possible that the actual payoff amount included other items purchased at the time of the payoff, and so the total amount paid does not match the amount on the ledger.

The credit accounts on the ledger range from one credit transaction followed at some point by a payoff, to many transactions (as many as 30 or more, totaling several hundred dollars) before a payment takes place.

After considering the Appellant’s replies and reviewing the documentation in the case, the Retailer Operations Division determined that neither the Appellant’s explanations nor its documentation was sufficient to justify the unusual transaction patterns listed in the charge letter attachments. As a result, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated May 17, 2016. This determination letter informed the Appellant that it would be permanently disqualified from SNAP upon receipt of the letter in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The letter also stated that the Retailer Operations Division considered the Appellant’s eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations, but that a CMP was not appropriate in this case because the Appellant did not submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations.

In a letter postmarked May 28, 2016, the Appellant, through its accountant, appealed the Retailer Operations Division's determination and requested an administrative review. The appeal was granted.

### STANDARD OF REVIEW

In an appeal of adverse action, such as disqualification from SNAP participation, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means an 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 law in this matter is found in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern.

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(c) states, *inter alia*:

*The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination. In the case of a firm subject to permanent disqualification under paragraph (e)(1) of this section, the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS, regardless of whether a request for review is filed in accordance with part 279 of this chapter.*

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, [or] evidence obtained through a transaction report under an electronic benefit transfer system....** [Emphasis added.]*

7 CFR § 278.6(e)(1)(i) states:

*FNS shall 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 § 271.2 states, *inter alia*:

*Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption...*

7 CFR § 278.6(b)(1) states, *inter alia*:

*Any firm considered for disqualification ... under paragraph (a) of this section... shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of noncompliance before FNS makes a final administrative determination. The FNS regional office shall send the firm a letter of charges before making such determination. The letter shall specify the violations or actions which FNS believes constitute a basis for disqualification.... The letter shall inform the firm that it may respond either orally or in writing to the charges contained in the letter within 10 days of receiving the letter...*

7 CFR § 278.6(b)(2)(ii) states, *inter alia*:

*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 ... 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).*

7 CFR § 278.6(b)(2)(iii) states:

*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 a penalty.*

7 CFR § 278.6(i) states, *inter alia*:

*FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking ... 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 of the Program... In determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of permanent disqualification for trafficking, the firm shall, at a minimum, establish by substantial evidence its fulfillment of each of the following criteria:*

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

*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 the violations cited in the charge letter sent to the firm; and*

*Criterion 3. The firm had developed and instituted an effective personnel training program as specified in § 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...*

### **SUMMARY OF CHARGES**

The Appellant was charged with trafficking and subsequently permanently disqualified based on an analysis of EBT transaction data from September 2015 through February 2016. This involved the following transaction patterns which are common trafficking indicators:

- There were multiple purchase transactions made too rapidly to be credible
- There were multiple transactions made from individual household benefit accounts within unusually short timeframes
- The majority or all of individual recipient benefits were exhausted in unusually short periods of time
- Excessively large purchase transactions were made from recipient accounts.

### **APPELLANT'S CONTENTIONS**

The Appellant, through its accountant, made the following summarized contentions in its request for administrative review, in relevant part:

- In an effort to help the local community, the Appellant offered customers the opportunity to custom-order specific food items that are unavailable locally.
- When the merchandise arrived at the store, the Appellant also allowed the customers to set up credit accounts. The customers would then pay for the merchandise when they received their food benefits on their EBT cards the following month.
- The store is located in an area of town with high percentage of SNAP households.
- In many instances, more than one recipient resides in the same household, and the credit balance would be paid by more than one card holder.
- Appellant owner sincerely felt that he was helping his customers in addition to generating business for himself. He was not aware that credit accounts were not permitted for SNAP recipients.
- No trafficking was occurring. All items paid for were eligible food items. The only violation was allowing credit accounts.

- On the credit ledgers, the credit amount and the new total amount were entered into a journal with the customer's name. Credit account payments were also marked in the journal. The Appellant now realizes that the record keeping was not adequate, but hopes that the ledgers and other information provided prove that only eligible food items were being purchased.
- Each credit ledger page is numbered, and each customer is numbered. Corresponding EBT receipts are also numbered to match up with the customer number. Some EBT receipts show a higher amount than the amount due on the journal page. This is because customers purchased additional items at the same time they were paying on the credit account.
- To support these explanations, the Appellant provided 27 sheets of credit ledgers that had not been previously supplied to the Retailer Operations Division. The ledgers provided to the Administrative Review Officer show 334 separate accounts. The Appellant also provided 124 EBT receipts, which is less than half of the total number of credit accounts listed on the ledgers.
- The Appellant also provided additional inventory invoices to demonstrate that the firm purchases products that may be considered out of the ordinary for a typical convenience store. The customers place an order with the Appellant, which in turn places orders with various vendors. All items were ordered at the request of the customer. Very little merchandise remained in stock once the customers picked up their orders.
- This custom-ordering started with the Appellant helping out just a few families, and it has grown from there. The Appellant considers this business not just a convenience store, but a small business catering to the needs of the community, which the owner is a part of. He does not do this solely for financial gain.
- Many customers do not have vehicles and are on limited incomes.
- Many of the items ordered are not commonly found in area stores, such as those that come from Hawaii and some from Seattle.
- Many items are sold only by the case, such as chicken, turkey, and Asian noodles. Frozen fish is either sold by the pound or by the case. The Appellant provided the following partial price list to show that the prices are reasonable and not intended to gouge the customer.
  - 5 types of tuna \$3.99
  - 5 types of mackerel \$3.99 small; \$5.99 large
  - Kimchi \$3.39
  - Biscuits (variety) \$3.09
  - Breakfast Crackers \$19.99
  - Spec. Candies \$7.99
  - Turkey (case) \$45.99 (sold by case – this is average)
  - Chicken (case) \$59.99 (average)
  - 25 lb. rice \$28.99
  - Spam \$4.99
  - Frozen fish \$4.99-\$5.99
  - Asian noodles \$17.99 (case)
- There was no ill-intent on the part of the Appellant owner. He was not aware (but is now) that credit accounts were not acceptable for SNAP recipients. There has been no misuse of SNAP funds and absolutely no trafficking.

- All of the information provided should indicate that the Appellant's intent was in the best interest of the customers, as well as increasing business.
- The Appellant has provided as much information as it can to prove that the actions were not intentionally illegal and that no malice was intended.
- Appellant understands that the penalty for credit accounts cannot be dismissed, but would like the charge of trafficking to be reconsidered.

In support of its contentions, the Appellant, through its accountant, provided the following additional documentation:

- 113 pages of inventory receipts. Of these, 23 were from the review period of September 2015 to February 2016; several were from March 2016 or earlier in 2015; and quite a few were from 2013, an effort by the Appellant to show that the firm's purchasing habits have not changed.
- 16 pages of credit account documentation from 2013, to show how the credit account record keeping has evolved over the years.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. However, in reaching a decision, full attention was given to all contentions presented, including any not specifically summarized or specifically referenced herein.

## **ANALYSIS AND FINDINGS**

The primary issue for consideration is whether or not the Retailer Operations Division adequately established that the Appellant firm engaged in the violation of trafficking. In other words, did the Retailer Operations Division, through a preponderance of the evidence, establish that it is more likely true than not true that the irregular and questionable transactions cited in the charge letter were the result of trafficking?

### **Contractor Store Visit**

The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered its analysis of the firm's EBT transactions as well as information obtained from a February 6, 2016 store visit which was conducted by an FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This store visit information was used to ascertain if there were justifiable explanations for the firm's irregular SNAP transaction patterns. The store visit report and photographs documented the following store size, description, and characteristics:

- Crestline Mart is a small convenience store operating in a suburban commercial area of Spokane, Washington. The contractor estimated that the store is roughly 900 square feet in size.
- At the time of the visit, the firm appeared to have no shopping carts or shopping baskets for customer use.
- The store visit photographs show one cash register and one EBT point-of-sale device.
- The store appears to use optical scanners to process transactions.
- The store's staple food stock is moderate in each of the four staple food categories.
- In addition to the staple food inventory, the store also sells SNAP-eligible, non-staple accessory food items, such as carbonated and uncarbonated drinks, condiments,

snacks and candy. Additionally, the store sells ineligible nonfood items, such as alcohol, tobacco, lottery tickets, and other miscellaneous household merchandise.

- The checkout area consists of a very small countertop (approximately 18 inches by 18 inches) where items can be placed to be rung up. The cramped checkout area is not suitable for conducting large or rapid transactions and there is no conveyor belt to expedite the purchase.
- There is no indication that the firm has a special pricing structure, although judging by the store visit photos, the vast majority of prices appear to end in 9, such as \$0.99, \$1.19, \$1.89, \$2.99, etc.

The available inventory of SNAP-eligible food items at the time of the visit showed stock that would be typical of a convenience store. A large sign on one wall states, “Welcome to **7** **USC 2018 (b)(6)&(b)(7)(c)** for all your snack and beverage needs.” There was no indication that SNAP households would be inclined to regularly visit the store to purchase large quantities of grocery items. The available food was primarily of a low dollar value and there was very little indication that the firm sold any high-priced meat or seafood bundles or other bulk items. At the time of the store visit, there was, in the middle of the floor, a pallet of boxed goods, primarily canned meat and fish. However, the boxes were not marked with a price and it was not indicated one way or another whether the canned goods were sold by the box or whether the boxes were opened and the cans placed on the shelves to be sold individually. There was no signage indicating that custom ordering was available or that frozen foods were sold by the pound. There was also no scale for the weighing of meat or fish. Given the available inventory, there was no sign that the firm would be likely to have SNAP redemption patterns that differed significantly from those of similar-sized competitors.

### SNAP Transaction Analysis

#### **7 USC 2018 (b)(7)(e)**

A number of these repetitive transactions were conducted with implausible rapidity. Frequent and large transactions conducted quickly at the Appellant’s store are highly unlikely given the Appellant’s low-dollar inventory and very limited counter space. The firm does not maintain the logistical wherewithal required to rapidly process these transactions. The amount of time required to process a transaction is generally proportional to the dollar amount of the transaction and the number of items purchased; typically, the larger the dollar amount transacted the longer the time period between transactions. A lack of shopping carts or baskets and limited counter space adds additional time to the transactions. In this instance, the Appellant processed orders considerably faster than supermarkets typically process them, yet it 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 operations.

As described above, the speedy processing of large transactions of eligible food items at the Appellant firm is improbable. Yet, the questionable data cited in Attachment 1 reveals a significant number of consecutive transactions in which a very large transaction (often \$200.00 or more) occurred within a span of only a few seconds after the preceding transaction. It is highly unlikely that the rapid, multiple, large transactions described above involve solely the sale of eligible foods.

Based on this evidence, it is reasonable to conclude that the transactions cited in Attachment 1 were the result of trafficking.

The Appellant has contended that the firm's practice of extending credit to SNAP customers is the reason for these unusual transactions. The topic of credit accounts will be discussed in a separate section, below.

**7 USC 2018 (b)(7)(e)**

The transactions cited in Attachment 2 are noteworthy because they are irregular and stand out significantly from normal shopping patterns at convenience stores such as Crestline Mart. As noted earlier, the store visit photographs show a small store with a limited amount of staple food inventory, most of which is low-priced or single-serving items. The photos offer very little explanation for why SNAP customers would routinely shop at the store multiple times and spend large dollar amounts – as much as \$530.32 – during a single 24-hour period. The store offers no great variety of products, price advantage, profusion of large packages, or significant bulk items for sale.

It is important to note that according to FNS records there are at least 19 SNAP authorized stores located within one mile of Crestline Mart, including one superstore, two supermarkets, one large grocery store, one medium grocery store, one small grocery store, and 13 convenience stores. It is not reasonable, therefore, that so many SNAP households, many of which are doing all they can to stretch their SNAP benefit dollars, would prefer to shop at a convenience store like Crestline Mart multiple times a day, often spending more than \$300.00 within a 24-hour period, rather than shopping at a nearby grocery store or supermarket where prices are likely lower – perhaps much lower – and where shopping carts and shopping baskets would help facilitate the purchase of large numbers of food items.

The Appellant has argued that credit accounts explain the unusual transactions found in the charge letter. As noted earlier, this contention will be addressed in detail below. But while a credit account argument could feasibly be a legitimate explanation for the transactions found in Attachments 1, 3, and 4, such an argument makes little sense when considering the unusual transactions found in Attachment 2.

The Appellant has stated that some of the amounts on the EBT receipts are different than the amounts listed on the credit ledger. According to the Appellant, the reason for this difference is that the household will not only make a payment toward the credit account, but will also purchase additional food items. All items would then be rung up together in a single total. This explanation makes sense. But that is not what appears to be happening in Attachment 2. Instead, the record suggests that a household would either make rapid, consecutive transactions from the same EBT card, or leave the store and return later for another large purchase.

**7 USC 2018 (b)(7)(e)**

The transactions listed on lines 129-130 are also unusual. In this circumstance, the same EBT card made both payments, just 2 minutes, 10 seconds apart. EBT receipts provided by the Appellant confirm that this is true. However, according to the credit ledger record, the \$314.77 payment was attributed to someone named [7 USC 2018 (b)(6)&(b)(7)(c)], but the \$150.00 payment was attributed to an individual named [7 USC 2018 (b)(6)&(b)(7)(c)]. Does this mean that [7 USC 2018 (b)(6)&(b)(7)(c)] paid for [7 USC 2018 (b)(6)&(b)(7)(c)] credit account? While this is possible, it seems unlikely unless [7 USC 2018 (b)(6)&(b)(7)(c)] was either reimbursing [7 USC 2018 (b)(6)&(b)(7)(c)] at a later date or was compensating [7 USC 2018 (b)(6)&(b)(7)(c)] in some other manner.

Unfortunately, the Appellant's explanation of credit accounts does not fully explain these complicated and unusual transactions in Attachment 2. The credit ledgers alone do not give sufficient information for one to come to a rational conclusion, especially a conclusion that the Retailer Operation's Division's decision should be reversed.

Given the common practice of violating retailers breaking up large, suspicious transactions into multiple, smaller transactions to avoid detection, a firm's explanation and evidence for why these multiple SNAP transactions from individual accounts are occurring in a 24-hour period in a small convenience store should be both rational and compelling. The Appellant's contentions in this regard are neither.

**7 USC 2018 (b)(7)(e)**

The samples above are common examples of transactions that are indicative of trafficking. It is not unusual for violating retailers to conduct trafficking transactions in which a household spends the vast majority of its allotment in a very short period of time. The conclusion that trafficking has occurred is further solidified when these balance-depleting purchases occur in small stores such as Crestline Mart, where there is limited staple food inventory and a lack of shopping carts or baskets to help facilitate large purchases. As discussed previously, the food available in the Appellant store is primarily of a low-dollar value. Therefore, it makes little sense that households would regularly spend almost the entirety of their SNAP allotment in a single transaction or in a series of transactions in a short period of time in a convenience store like Crestline Mart.

The Appellant has contended that the firm's practice of extending credit to SNAP customers is the reason for these unusual transactions. The topic of credit accounts will be discussed in a separate section, below.

**7 USC 2018 (b)(7)(e)**

Given that the Appellant firm does sell a small variety of staple foods as well as some eligible accessory items, such as candy and drinks, it is possible that there would be an occasional purchase where the transaction amount is high, perhaps exceeding \$30.00 or even \$40.00. However, as noted earlier, there is no evidence that the firm would be likely to have SNAP redemption patterns that differ considerably from similar-sized competitors, especially considering the absence of shopping carts and baskets and the store's severely constricted

checkout area. The substantial number of high-dollar purchases in a six-month period calls into question the legitimacy of these transactions.

7 USC 2018 (b)(7)(e).

Based on the store type and structure, it is simply not credible that the Appellant would so frequently conduct transactions that more closely resemble those of a supermarket or superstore. It is not plausible that the firm's customers would carry large amounts of merchandise around the store without the benefit of shopping carts, especially since larger, better stocked stores are readily available and very near to the Appellant firm. As noted earlier, there are 19 SNAP-authorized retail stores within one mile of the Appellant firm, including a superstore and two supermarkets. It is highly doubtful that a SNAP household making legitimate purchases would choose to spend a large portion of its monthly allotment at a small convenience store with less variety of food and undoubtedly higher prices than what would be found at a supermarket or other grocery store.

7 USC 2018 (b)(7)(e)

As noted earlier, the Appellant has contended that credit accounts explain the transactions cited in the charge letter, including the transactions found in Attachment 4. This contention will be addressed in detail below.

Stores caught in trafficking violations, both during on-site investigations and in EBT analysis cases, consistently display particular characteristics or patterns. These patterns often include frequent, large transactions that cannot be supported by the retailer's inventory, store type and structure. It is the conclusion of this review that Crestline Mart, with its limited and primarily low-dollar inventory, lack of shopping carts and baskets, and its constricted checkout area cannot support the large numbers of high-dollar transactions identified in Attachment 4. Therefore, the most logical explanation for such repetitive transactions is trafficking.

-----

Based on the analysis above, it is the determination of this review that the Retailer Operations Division has satisfactorily presented a case that Crestline Mart trafficked in SNAP benefits. The attachments furnished with the charge letter adequately identify the irregular patterns of SNAP transactions which indicate that trafficking was likely taking place at the firm during the review period.

#### **Credit Accounts / Custom Orders**

The Appellant, through its accountant, has provided a number of explanations and pieces of evidence to support the argument that rather than trafficking the firm was engaged in the practice of extending credit to SNAP customers. This claim of credit accounts is the crux of the Appellant's argument. Directly related to the claim of credit accounts is the Appellant's contention that the firm allows customers to place special orders with Crestline Mart. These orders are largely for merchandise not available locally in Spokane, such as various types of mackerel and tuna, kimchi, candies, and Asian noodles. The firm also claims to sell large bags of rice as well as cases of chicken and turkey.

According to the Appellant, orders are placed with various vendors at the request of customers. Once these items are delivered to the store, the customers will pick them up. Very little merchandise remains in stock once the orders are collected. To support this claim, the Appellant submitted 15 photographs showing cases of canned goods and empty coolers and freezers. One freezer did show a supply of frozen fish, what appeared to be mackerel.

As part of these custom orders, the Appellant allowed customers to pick up the merchandise without paying. The customers would obtain the items on credit and pay the firm back once their SNAP benefits were loaded onto their EBT cards in subsequent months. The Appellant claims that this arrangement began with a few families and then grew into a much larger operation. The Appellant owner insists that he was not aware of the prohibition against credit accounts for SNAP customers, and contends that there was never any malice or intent to violate regulations. His only intention was to meet the needs of his customers while increasing his business.

To support these claims, the Appellant, through its accountant, submitted a large amount of evidence to both the Retailer Operations Division and the Administrative Review Officer, which includes the following:

- 152 pages of inventory purchase receipts, which included:
  - 113 pages of receipts from various vendors were from outside of the review period, either prior to September 2015 or after February 2016. A large portion of these were from 2013, an effort by the Appellant to show that the firm’s purchasing habits have not changed over the years.
  - Receipts from the review period:
    - 19 inventory receipts from 7 USC 2018 (b)(6)&(b)(7)(c), totaling \$5,499.05
    - Four receipts from 7 USC 2018 (b)(6)&(b)(7)(c), totaling \$5,184.00
    - Four receipts from 7 USC 2018 (b)(6)&(b)(7)(c), totaling \$17,762.96
    - Four receipts from 7 USC 2018 (b)(6)&(b)(7)(c), totaling \$1,310.25
  - 7 USC 2018 (b)(7)(e).
- 54 itemized cash register receipts – all from March 2016. While the receipts are technically itemized, every item is listed as “grocery,” with no distinction as to what was actually purchased. The receipts also show a larger amount, often \$100.00 or more, also listed as “grocery.” This appears to be the credit amount that was owed

prior to the current transaction. The larger amount is then added to the current purchase to come up a new credit amount owed. On most of the receipts, the purchase is then voided to show that nothing was paid. This is apparently the firm’s way of informing the customer how much they still owe. For example, a receipt from March 27, 2016 lists the following:

Grocery	\$2.16
Grocery	\$2.16
Grocery	\$2.16
Grocery	\$1.09
Grocery	\$3.79
Grocery	\$162.57
VOID	\$173.93

Total \$0.00

In the example above, it appears that the household had a credit balance of \$162.57 and then made a “purchase” for an additional \$11.36, making the new credit balance \$173.93. If the credit account was paid off, then it shows a transaction total at the bottom. For example one receipt from March 28, 2016 shows the following:

Grocery	\$4.99
Grocery	\$4.99
Grocery	\$3.99
Grocery	\$9.99
Grocery	\$9.99
Grocery	\$401.38
Total	\$435.33
Cash	\$435.33

7 USC 2018 (b)(7)(e)

- An Excel spreadsheet listing 48 names with the last four digits of EBT card numbers beside each name
- 45 copied sheets of credit account ledgers, listing roughly 575 credit accounts. Generally speaking, each sheet is the equivalent to two journal pages in the Appellant’s credit account book. So the credit ledger documentation totaled between 80-90 pages from the Appellant’s credit book.
- 24 pages of credit account documentation from 2012 and 2013 to show how the credit account record keeping has evolved over the years.
- 124 EBT receipts, most of which correspond to transactions listed on the credit account pages.

After evaluating all of the documentation provided by the Appellant, this review concludes that it is highly likely that the Appellant firm engaged in the prohibited practice of extending credit to SNAP customers. The evidence provided by the Appellant is both plentiful and compelling. However, this review is not convinced that the credit accounts were solely for eligible food. There are a number of reasons for this position.

**First**, as noted earlier, Crestline Mart is not significantly different from other convenience stores. The available inventory of SNAP-eligible food items at the time of the contractor’s store visit gave no indication that SNAP households would be inclined to regularly visit the store to purchase large quantities of grocery items. While it is very likely that the Appellant firm attracted a large clientele due to its willingness to engage in prohibited activities, such as credit accounts, the type and quantity of food items at the store does not justify the very large, frequent transactions that occurred.

7 USC 2018 (b)(7)(e)

**Second**, the inventory purchased by the store is less than its total SNAP redemptions. Between September 2015 and February 2016, Crestline Mart processed \$108,942.05 in SNAP benefits. The inventory records provided by the firm for the same six month period add up to only \$31,869.52, which is less than one-third of SNAP redemptions.

7 USC 2018 (b)(7)(e)

**Third**, while the Appellant has submitted evidence that eligible food was available for purchase, it has provided no evidence of what was actually purchased by SNAP customers. For example, the Appellant provided no cash register receipts from the review period. Itemized cash register receipts can show what items were obtained by a household, including which items were paid for with SNAP and which were paid for with cash or credit cards (such as nonfood items). The only cash register receipts submitted by the Appellant are from March 2016, which is after the review period. Assuming that these receipts are similar to receipts printed during the review period, they offer very little insight into what was purchased. Every item on every March receipt is listed as “grocery,” including the credit account information (see examples below). One could infer from this practice that every item in the store was listed on the cash register receipt as “grocery,” whether eligible for SNAP purchase or not.

7 USC 2018 (b)(7)(e)

Furthermore, it appears that the cash register receipts provided by the Appellant are completely fabricated. None of the amounts listed on the receipts appear anywhere on the agency’s list of actual transactions that occurred at the store on the dates listed on the receipts.

7 USC 2018 (b)(7)(e)

As noted earlier, the cash register receipts are dated outside of the review period, and such evidence is generally disregarded. However, the fact that the March 2016 receipts appear to be manufactured after the Appellant received the charge letter, coupled with the fact that the Appellant did not submit a single cash register receipt from the review period casts doubt onto the legitimacy of the transactions listed in the charge letter and strongly supports the Retailer Operations Division’s position that trafficking was likely occurring at the firm.

**Fourth**, several of the credit accounts were paid using multiple EBT cards. The Appellant has stated that in some instances, more than one SNAP recipient resides in the same household, and that the credit balance would be paid by more than one card holder. This unsubstantiated claim may well be true, but it raises suspicion regarding the transactions. For example, one customer named [7 USC 2018 (b)(6)&(b)(7)(c)] accumulated nearly \$950.00 in credit. When the account was finally paid, records show (comparing the credit ledger with actual EBT transactions) that [7 USC 2018 (b)(6)&(b)(7)(c)] used at least six, perhaps seven different EBT cards to pay the account. It is extremely unlikely that each of these EBT cards were from a separate SNAP household within a single residence. It is much more likely that [7 USC 2018 (b)(6)&(b)(7)(c)] obtained the EBT cards illegally, which calls into question the legitimacy of the transactions that she conducted at Crestline Mart.

This review is largely convinced that many of the excessive and unusual transactions in the charge letter were payoffs of credit accounts. However, as stated in the analysis above, there are significant unanswered questions about what was actually purchased during those

transactions. Based on a lack of inventory in relation to the firm's SNAP redemptions; a lack of shopping carts or baskets to carry large numbers of food items around the store; a lack of credible receipt evidence; and questionable credit payment transactions; this review

finds that it is more likely true than not true that the Appellant firm was engaged in trafficking as charged by the Retailer Operations Division.

### **Appellant Unaware that Credit Accounts were a Violation**

The Appellant, through its accountant, contends that it was not aware that the practice of credit accounts was prohibited and that it did not knowingly break program rules.

With regard to this contention, it is documented that the Appellant signed and submitted a *Supplemental Nutrition Assistance Program Application for Stores* (FNS-252) when it applied for SNAP authorization in 2011. By signing the application, the Appellant owner acknowledged the following (emphasis added):

- I am aware that violations of program rules can result in administrative actions such as fines, sanctions, withdrawal or disqualification from the Supplemental Nutrition Assistance Program; I am aware that violations of the Supplemental Nutrition Assistance Program rules can also result in Federal, State and/or local criminal prosecution and sanctions;
- I accept responsibility on behalf of the firm for violations of the Supplemental Nutrition Assistance Program regulations, including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time. These include violations such as, but not limited to:
  - **Trading cash for Supplemental Nutrition Assistance Program benefits (i.e. trafficking);**
  - Accepting Supplemental Nutrition Assistance Program benefits as payment for ineligible items;
  - **Accepting Supplemental Nutrition Assistance Program benefits as payment on credit accounts or loans;**
  - Knowingly accepting Supplemental Nutrition Assistance Program benefits from people not authorized to use them;

The evidence clearly shows that firm ownership agreed to abide by program rules, including the acknowledgement that both trafficking and permitting credit accounts were program violations. Therefore, the contention that ownership or staff was not aware or was not fully trained on the proper use of SNAP benefits does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

### **CIVIL MONEY PENALTY**

As noted earlier, the Retailer Operations Division determined that the firm was not eligible for a civil money penalty in lieu of permanent disqualification pursuant to 7 CFR § 278.6(i) because it did not submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations.

In accordance with regulation at 7 CFR § 278.6(b)(2), in order for a civil money penalty to be considered, a firm must not only notify FNS that it desires the agency to consider the sanction of a CMP in lieu of permanent disqualification, but the firm must also submit appropriate documentation within designated timeframes as required by the regulation. As best as can be determined, at no time did the Appellant request consideration of a CMP or submit any documentation to support its eligibility of such a sanction. Additionally, the Appellant made no mention of a trafficking CMP in any portion of its request for administrative review. Therefore, in accordance with 7 CFR § 278.6(b)(2)(iii), it is the determination of this review that the Appellant is not eligible for a civil money penalty in lieu of permanent disqualification for trafficking.

### **CONCLUSION**

The Retailer Operations Division's analysis of the Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Crestline Mart from SNAP participation. This data provided sufficient evidence that the questionable transactions during the review period had characteristics that were consistent with trafficking in SNAP benefits. 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.

In the absence of any reasonable or credible explanations for such transaction patterns, a conclusion can be drawn through a preponderance of the evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the charge letter point to trafficking as the most likely explanation. Therefore, based on a review of all of the evidence in this case, it is more likely true than not true that program violations did occur as determined by the Retailer Operations Division. Based on the analysis above, the decision to impose a permanent disqualification against the Appellant, Crestline Mart, is sustained.

### **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in Section 279.7 of the SNAP regulations. 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 the Appellant owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a complaint is filed, it must be filed within 30 days of receipt of this decision.

Under the Freedom of Information Act (FOIA), it may be necessary to release this document and related correspondence and records upon request. If such a request is received, FNS will seek to protect, to the extent provided by law, personal information that if released could constitute an unwarranted invasion of privacy.

/s/

---

JON YORGASON  
ADMINISTRATIVE REVIEW OFFICER

November 8, 2016  
DATE