

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

Guys Deli Grocery,

Appellant,

v.

**Office of Retailer Operations and
Compliance,**

Respondent.

Case Number: C0245587

FINAL AGENCY DECISION

The U.S. Department of Agriculture, Food and Nutrition Service (FNS), finds that there is sufficient evidence to support the determination by the Office of Retailer Operations and Compliance to impose a permanent disqualification against Guys Deli Grocery (hereinafter Appellant) from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether the Office of Retailer Operations and Compliance took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.6(a), (c) and (e)(1)(i), when it imposed a permanent disqualification against Appellant.

AUTHORITY

According to 7 U.S.C. § 2023 and the implementing regulations at 7 CFR § 279.1, “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

By letter dated May 27, 2021, the Office of Retailer Operations and Compliance charged Appellant with trafficking based on a series of irregular SNAP transaction patterns that occurred in December 2020 through March 2021. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also noted that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within ten days of receipt under the conditions specified in 7 CFR § 278.6(i).

Appellant, through counsel, responded to the charges in a letter dated June 10, 2021, and sent via email that did not request or provide any supporting documentation for a CMP. The Office of Retailer Operations and Compliance notified Appellant by letter dated June 17, 2021, that the firm was permanently disqualified from participation as a SNAP retailer in SNAP in accordance with 7 CFR § 278.6(c) and 278.6(e)(1) for trafficking violations. This letter also stated that Appellant was not eligible for the CMP because insufficient evidence was submitted to demonstrate that it had established and implemented an effective compliance policy and program to prevent SNAP violations.

By letter postmarked June 28, 2021, Appellant, through counsel, appealed the Office of Retailer Operations and Compliance's assessment and requested administrative review. The appeal was granted. Subsequent correspondence was received.

STANDARD OF REVIEW

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means Appellant has the burden of providing relevant evidence that a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than untrue.

CONTROLLING LAW

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and implemented through regulation under Title 7 CFR Part 278. In particular, 7 CFR Part 278.6(a) and Part 278.6(e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern in the event that personnel of the firm have engaged in trafficking SNAP benefits.

7 CFR § 278.6(a) states: "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."

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." Trafficking is defined in part as, "The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits for cash or consideration other than eligible food". Trafficking includes "Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food".

7 CFR § 278.6(i) states: "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."

7 CFR §278.6(b)(2)(ii) states: “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).” Part 278.6(b)(2)(ii) further states that if a firm fails to request a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the specified 10 days, the firm shall not be eligible for such a penalty.

SUMMARY OF THE CHARGES

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that the questionable transactions were the result of trafficking. The charges on review were based on an analysis of SNAP EBT transaction data during the four month period of December 2020 through March 2021. This involved two patterns of EBT transaction characteristics indicative of trafficking:

1. Multiple transactions were made from individual benefit accounts in unusually short time frames.
2. Excessively large purchase transactions were made from recipient accounts.

APPELLANT’S CONTENTIONS

The following may represent a summary of Appellant’s contentions in this matter; however, in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced herein:

- The standard of review imposes a nearly impossible burden on the owner by requiring that she prove a negative, which is that trafficking did not take place when it was in fact the USDA that made the initial finding that trafficking had taken place;
- Attachment 1 alleges that multiple withdrawals were made from the accounts of food stamp recipients too rapidly to be credible. It should be noted that the Attachment details 64 sets of transactions over a four month period with 22 sets taking place over more than a 24 hour period, thereby under cutting any claim that the withdrawals were within an unusually short time frame. It must be kept in mind that the owner cannot prevent an individual from using his or her benefits and that SNAP regulations do not prohibit recipients from making multiple withdraws during a single day. There are also times when another family member will be allowed to use the account that results in multiple short term withdrawals. There are also client with life issues and are not as skilled or organized as the average individual. A person will complete a transaction and shortly thereafter engage in another transaction or series of transactions because of their inability to conceptualize in a clear and rational manner. Some individuals purchase just enough items so that they can carry them to their homes. They return to the store within hours to purchase the balance of the goods that they were not able to carry on their first trip. This is not a case where there are superstores and large grocery stores within easy walking distance of the store. Store customers are in no shape to traverse on foot the mile or mile

and a half distance between their residence and the nearest superstore. That means the clients are limited to purchasing a substantial amount of their food needs from the store even if prices are higher and the selection is more limited;

- Attachment 2 alleges that excessively large purchase transactions were made from recipient accounts. There are two responses that can be given to that claim. The first is that the store is a large store that is well stocked with a substantial variety of quality goods that in some cases are relatively expensive. The photos taken at the time of the investigation document the large amount of staples like rice, oil, and meat products that are stocked and sold. These are high priced items. Therefore it is no surprise that some of the transactions that seemed excessively large were in fact ordinary payments for food, vegetables, and other items covered by the SNAP program that the recipient purchased. Also, please see the attached Exhibit B which was prepared by a contractor for the USDA as a result of his visit to the store. It verifies that my client has a store which is extremely well stocked with a variety of dairy products, fruits, vegetables, meats, poultry, fish, breads, and cereals. The average for all of the store's transactions are comparable to the average SNAP transactions for New haven County. Secondly, the most comprehensive government study regarding average EBT purchase amounts documents that approximately sixteen percent of all EBT purchase transactions are in dollar amounts of fifty or more dollars. In the case at hand the percent of EBT purchases that were in excess of fifty dollars at the store amounted to similar percentage when compared to the store's total sales. What that means is that the store is right in line with the number of large purchases that would be predicted by the government's own statistical and empirical research. Additionally, as previously indicated the store's inventory is ample and the staple and non-staple food stock of canned goods, cereal, milk, rice, soft drinks, bread, and snack items justify a substantial portion of the transactions in the Attachment. The third point that the pricing structure in a small grocery store is very different from the pricing in a very large supermarket. The large market counts on volume to make a reasonable return on capital. The small grocery store's business model requires a substantial mark-up on inventory in order to justify the investment in the store. According to a well-respected study, the typical markup for SNAP eligible items in a small store is 65 percent. The owner estimates that the local market in Waterbury supports a similar markup. A markup of that size will result in a series of larger than expected sales. A higher price point necessarily produces seemingly excessively large purchases;
- The relevant federal regulations, 7 CFR §§ 271-282, allow a disqualification where there is a, "...clear and repetitive pattern of unusual, irregular, and inexplicable activity...". It is further undisputed law that an administrative penalty imposed by the USDA FNS must be set aside if it is arbitrary or capricious. Appellant cited court decisions;
- The owner has indicated that she has a close personal relationship with many of her clients. As a result, the customers are willing to frequent her store rather than the few other SNAP authorized stores in the neighborhood. They also overlook the fact that her prices are slightly higher than the prices large supermarkets charge because of that relationship. Finally, many of her customers lack easy access to transportation to the far away supermarkets;
- The USDA failed to look at the entire spectrum of the store's sales. By focusing on 170 sales rather than several thousand sales that took place during the relevant time period,

the USDA gets a warped view of the store's sales. Once a review of the entire universe of sales is undertaken it will become clear that the average transaction in the store is in line with the average purchase amount for New Haven County grocery stores; and,

- The owner urges the USDA to undertake a detailed examination of the transactions in question and compare it with similar sized businesses. It is her belief that the empirical data that would result of the analysis would reveal an absence of evidence in support of the disqualification; and,
- In conclusion, based on the factual patter elucidated above it is legally impossible for the USDA to conclude that the firm engaged in trafficking. Neither the owner nor any employees engaged in behaviors or actions that would have resulted in a violation of the SNAP regulations as set out in the charge letter. CFR Section 278.6 (a). The owner has engaged in appropriate transactions in accordance with the relevant SNAP rules and regulations. It is counsel's position that a factual predicate for a finding of trafficking does not exist and a permanent disqualification is both unwarranted and in violation of the regulations and case law. A careful review of the evidence and rationale provided by the owner, and in previous contacts with the USDA, demonstrates by a preponderance of the evidence that the disqualification should be reversed. The allegedly unusual, irregular and inexplicable activity is in fact regular, usual and has been appropriately explained.

Appellant submitted two typed, signed, and dated customer statements; the staple food inventory page from the FNS store visit; and the owner's 2020 Federal Tax Return Schedule C in support of these contentions.

ANALYSIS AND FINDINGS

Stores caught in trafficking violations consistently display particular, characteristic transaction patterns including those cited in the charge letter. Nevertheless, transactions having such characteristics are sometimes valid and sufficient evidence that support that they were the result of legitimate purchases of eligible food items is provided. This is why opportunities are afforded to charged retailers to explain the questionable transactions cited and to provide evidence that they are legitimate. Without supporting evidence and rationale, assertions that the firm has not violated program rules do not constitute valid grounds for overturning the determination.

In the absence of evidence for the legitimacy of such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the unusual, irregular, and inexplicable transactions and patterns evidence trafficking as the most likely explanation. Each Attachment furnished with the charge letter represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at the Appellant firm during the review period. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

Store Background and FNS Store Visit

FNS authorized the firm on July 22, 2020, and the firm was classified as a convenience store during the review period. The record also indicates that in reaching a disqualification determination, the Office of Retailer Operations and Compliance considered information

obtained during a March 11, 2021, store visit conducted by an FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information was then used to ascertain if there were justifiable explanations for the firm's suspicious SNAP transactions. The store visit documented the following store size, description, and characteristics:

- The firm was a small convenience store with only 750 SF of sales floor space offering a limited quantity and variety of staple foods and carrying no unique items or offering any distinctive services. The store stocked the traditional American brands and Goya products typically found in like type stores.
- The store visit report and photos showed no shopping carts or hand baskets for customer use thus severely limiting the amounts of food that could be moved to the checkout.
- No food packages, bundles, case sales, bulk items, or other sales were evident that would explain the unusual transactions and no SNAP eligible cased items were available for purchase.
- The store visit report specifically noted that the firm was not a specialty store and that there were no meat bundles, seafood specials, or fruit/vegetable boxes for sale.
- The checkout area was an opening set into a clear plastic storage wall and was approximately 4.0 feet wide and 1.0 feet deep with food displays on one side leaving a very limited area for customers to place their purchases. The checkout area was located above a chest freezer containing ice cream that would make it more difficult to pass items to the clerk. The very small checkout area would make it problematic to process large orders. The checkout area had one cash register, a POS terminal, and no optical scanner as confirmed by the store owner.
- The firm had a limited stock of relatively inexpensive staple foods that also included single serving and pre-packaged items with a significant portion of inventory in soda, candy, snacks, other drinks, and ineligible items.
- The firm had a large deli counter with a very limited selection of deli meats and deli cheeses and a kitchen/food prep area containing a commercial slicer, commercial scale, microwave oven, deep fat fryer, commercial exhaust hood, stainless steel steam table, small heated display case, stainless steel prep tables, hot dog roller oven, upright reach-in cooler, etc. Signage advertised a variety of hot/cold prepared sandwiches, and combos. The store visit report noted that the store owner stated that store food stock was used in the preparation of the hot and cold prepared foods.
- The firm had no fresh or frozen unprocessed meat, no fresh or frozen unprocessed seafood except for several frozen packages of Pollock and shrimp, a limited quantity and variety of processed meats and seafood (very few deli meats; canned meat, poultry, and fish; hot dogs; bacon; sausages; salami; packaged dried seafood; and jerky), no packaged lunch meats, no brown and serve sausages, a very limited quantity and variety of frozen entrees, no frozen dinners, eggs, a moderate selection of fresh fruit and vegetables some of which was reported by the owner as being used in the preparation of hot/cold foods, no frozen fruit, a very limited selection of frozen vegetables, dried beans and raisins, no other dried fruit or vegetables, packaged nuts, 100 percent fruit juices, 100 percent vegetable juices, a limited stock of canned soups, a limited quantity and variety of canned and packaged staple food items, packaged cheese, few deli cheeses, cream cheese, no large yogurt, no several single serving yogurt, no single serving yogurt drinks, margarine, no butter, no sour cream, fresh milk, single serving containers of fresh milk, single

serving milk drinks, canned milk, coconut milk, no soy milk, no Lactaid milk, three almond milk, no powdered milk, no half & half, bread, French bread, no rolls, tortillas, tostadas, no taco shells, no pitas, corn meal, no AP flour, Maseca flour, no corn flour, sugar, rice (up to 10# bags), rice flour, cold cereal, single serving cold cereal, hot cereal, single serving noodle soup, canned pasta, no single serving pasta, dry pasta, dry noodles, pancake mixes, mac&cheese, single serving size mac&cheese, baking mixes, frozen heat & eat foods (chicken sandwiches, BBQ sandwiches, pot pies, Hot Pockets, etc.), no cold ready-to-eat sandwiches, cooking oil, coffee, tea, no cocoa, jars of baby food, infant formula, baby cereal, and very few expensive staple food items.

- The firm's hours of operation were open 8:00 AM-12:00 AM daily, as confirmed by the store owner.
- Signage was in English and there were no SNAP posters (anti-fraud, eligible items, reporting trafficking, etc.) visible in the store. There was a large sign near the checkout area stating that no credit would be offered.
- Most food items were individually priced and comments on the FNS store visit report, completed in conjunction with the store owner, specifically stated that most food prices end in .x9 cents. A price ending in .x9 cents is a common pricing structure for stores of this type. The FNS store visit report listed the five most expensive food items costing more than \$5.00 for sale in the store as being: two pound containers of shrimp (more than 10 in stock) priced at \$17.99, one gallon containers of Goya corn oil (seven in stock) priced at \$14.99, 10 pound bags of Goya rice (five in stock) priced at \$14.99, one pound packages of Pollock (more than 10 in stock) priced at \$6.19, and 26 ounce containers of Chock Full O'Nuts coffee (two in stock) priced at \$5.99. This listing of the most expensive items was provided by the store owner during the store visit.
- The firm was not a WIC vendor. While the firm did stock a limited selection of infant formula and baby food, most SNAP households with infants or small children are WIC participants and therefore would be purchasing these products at a WIC vendor using WIC vouchers, not SNAP EBT at the Appellant firm.

Multiple transactions in unusually short time frames

This Attachment documents 163 individual transactions in 64 sets of two or more transactions conducted by 43 different households in a short period of time. Individual transaction amounts range from \$20.49 to \$232.78 with 92 transactions for \$50.00 or more and 20 transactions exceeding \$100.00. There are transaction set totals as high as \$478.24, \$432.14, \$376.27, \$324.64, \$266.99, \$248.53, \$239.82, \$235.20, \$233.80, \$212.16, \$210.38, \$209.75, \$208.52, \$202.73, \$200.50, \$197.89, \$196.87, \$194.69, \$190.01, \$188.90, \$180.25, \$174.72, \$170.91, \$169.56, \$161.09, \$157.27, \$155.87, \$154.79, \$153.61, \$153.60, \$142.94, \$142.53, \$141.90, \$141.69, \$140.43, \$137.88, \$137.34, \$132.93, \$124.83, \$119.44, \$115.96, \$113.98, \$113.94, \$113.30, \$113.03, \$112.70, \$110.46, \$104.72, \$102.09, and \$100.09 to list the higher dollar value set totals. The dollar amounts of subsequent transactions in each set are substantial and nearly equal or exceed the dollar amount of the initial transaction in 48 of the 64 sets. The span of time for transaction sets ranges from 58 seconds to more than 46 hours with 31 of the 64 sets occurring over consecutive days. Three sets are comprised of five individual transactions, six of four transactions, and 14 of three transactions while the remaining 41 sets are comprised of two transactions. It is not a usual shopping pattern to see so many purchases, in a short period of

time, by the same recipients as documented in this Attachment. Multiple transactions conducted by the same household within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by store inventory and structure. These sets of transactions appear to be in amounts which are indicative of trafficking.

It is also noted that several transactions occurred after the store's reported business hours. It is an indication of potential trafficking when there are transactions occurring outside of a store's reported business hours.

Contrary to Appellant's claim that the transactions in this Attachment were "made from the accounts of food stamp recipients too rapidly to be credible", an examination of the May 27, 2021, USDA charge letter shows that these transactions were described as being, "multiple transactions were made from the accounts of individual households within a set time period". Accordingly, Appellant's contentions relating to rapid transactions are dismissed as not being relevant to the matter under review.

Appellant also mistakenly contends that "by focusing on 170 sales rather than several thousand sales that took place during the relevant time period, the USDA gets a warped view of the store's sales. Once a review of the entire universe of sales is undertaken it will become clear that the average transaction in the store is in line with the average purchase amount for New Haven County grocery stores". USDA records show that the average SNAP transaction dollar amount at the Appellant firm during the review period was \$14.95 while the average for New Haven County convenience stores was \$10.09 clearly showing that Appellant's transactions were 48.1 percent larger.

Appellant states that it must be kept in mind that the owner cannot prevent an individual from using their benefits and that SNAP regulations do not prohibit recipients from making multiple withdrawals during a single day. There are times when another family member will be allowed to use the account that results in multiple short term withdrawals and there are also clients with life issues who are not as skilled or organized as normal people. A person will complete a transaction and shortly thereafter engage in another transaction or series of transactions. Yet other individuals will make multiple purchases since they are limited by what they can carry to their homes. This is not a case where there are super stores and large grocery stores within walking distance of the store. That means the store's clients are limited to purchasing a substantial amount of their food needs from the store even if prices are higher and the selection is more limited. Because of the age of the store's POS system, the owner is unable to provide paired receipts for the households noted on the Attachment. However, the owner avers that the particular items were in fact purchased by that particular person each and every time the client visited the store and that the purchases that took place were for eligible food items.

SNAP households have no limit on the number of times they may use their benefits or the dollar value of eligible food they may purchase. The SNAP transactions listed in this Attachment are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of a convenience store's stock and facilities and are thus indicative of trafficking. These transaction sets do not contain the characteristics associated with a household purchasing a forgotten item right after checking-out,

of household members/friends shopping together and making separate purchases using the same EBT card, of a household dividing its purchases because it is carrying them home, or of customers with “life issues” completing a transaction and then shortly thereafter engaging in another transaction or series of transactions as 59 of the 64 transaction sets occur more than 66 minutes apart with 31 sets occurring over consecutive days. The transaction sets also do not contain the characteristics of a household returning later in the day to purchase a forgotten item or two as all of the sets have subsequent transactions in amounts equaling or exceeding \$20.49 with 56 of the 64 sets having subsequent transactions of \$35.00 to \$199.36, far more than the cost of a forgotten item or two. Appellant offers no explanation as to why households would conduct up to five sizeable transactions at a minimally stocked convenience store within a short period of time when there are many larger retail food stores where these households are regularly shopping. Contrary to Appellant’s claim of there being no comparable or larger stores within 1.0-1.5 miles of the Appellant firm, a review of USDA records shows there are actually 35 comparably sized or larger authorized retail food stores within a 1.0 mile radius that includes two supermarkets, three medium grocery stores, seven small grocery stores, and 23 convenience stores with the nearest medium grocery store and nearest supermarket being 3.5 and 4.0 short blocks, respectively, from Appellant’s location. These larger stores would offer a much greater quantity and variety of foods at lower prices than the Appellant firm and their proximity would make it unlikely that any SNAP recipient would consider the Appellant firm to be their primary source for groceries. This is supported by the analysis of the shopping patterns for households listed in the charge letter conducted by the Office of Retailer Operations and Compliance staff that showed all of these households were shopping at a variety of super stores and supermarkets on a regular basis.

It is certainly not unusual for a small number of SNAP households to conduct multiple transactions in a short period of time. However, it is unusual that subsequent transaction dollar amounts are substantial in these transaction sets and that all of the sets in this Attachment total \$76.84 or more when the comparable average convenience store SNAP transaction amount in New Haven County during the review period was \$10.09. These multiple transactions indicate that the amounts were contrived in an attempt to avoid suspiciously high transactions that would be indicative of trafficking by breaking them into multiple, smaller amounts. FNS transaction data shows that this same pattern of multiple transactions in unusually short time frames is not evident at other nearby comparable grocery stores further supporting that trafficking was occurring at the Appellant firm during the period under review.

The Office of Retailer Operations and Compliance’s analysis of shopping patterns for households listed in this Attachment shows they have ready access to transportation as evidenced by their shopping at a variety of larger food stores located nearby and at a distance from Appellant’s location, including a variety of super stores and supermarkets. Appellant’s contentions fail to offer any explanation or rationale as to why households who are shopping and spending large dollar amounts at many larger and better stocked stores would conduct multiple purchases totaling to high dollar values at a much smaller and minimally stocked convenience store. Common sense dictates that it is improbable that households would choose to spend large dollar amounts at the Appellant firm if their purchases consisted solely of eligible food items that could be purchased at any of the super stores and/or supermarkets they were already regularly

shopping at and therefore more likely than not that these households were trafficking SNAP benefits at the Appellant firm.

For example:

A household received its monthly SNAP allotment and spent \$232.78 at the Appellant firm in a manually keyed transaction. The next day this same household spent \$4.18 at a supermarket located 0.42 miles from Appellant's location and \$2.99 at a large grocery store located 1.91 miles away in swiped transactions. The following day this household returned to the Appellant firm and spent \$199.36 in a manually keyed transaction. Two days later the household conducted two manually keyed transactions (\$60.97 and \$41.98) at the Appellant firm totaling \$102.95 in the span of only 50 seconds. In summary, this household spent \$535.09 in four transactions at the Appellant firm while spending \$7.17 in transactions at a supermarket and large grocery store. It is inexplicable, based on the Appellant firm's limited stock of staple foods, that any SNAP household would spend \$535.09 in allegedly legitimate purchases of eligible food items at the Appellant firm when it was shopping at far better stocked super stores in the middle of these transactions. This unusual and erratic shopping pattern is indicative of trafficking. This household and others reviewed displayed similar shopping patterns during the review period indicating that this was a regular occurrence.

It is also noted that this household's reported address of record was located 1.3 miles from the Appellant firm meaning that this household was traveling more than two miles round trip away from its regular shopping area past larger and comparably sized grocery stores in order to shop and spend extremely large dollar amounts at a minimally stocked convenience store that stocked no unique items. It is also unusual and suspicious that all four of the previously cited transactions at the Appellant firm were manually keyed while the transactions at the other stores were swiped. Manually keyed transactions are those in which the magnetic strip on the household's EBT card is not being read by the store's POS device when the card is swiped and the clerk must manually enter the lengthy EBT card number. When the strip on an EBT card fails, it can no longer be swiped and replacement cards contain different identification numbers. It is an indication of trafficking when the same card is used for both manual and swipe transactions. In cases of trafficking, the manual transactions occur when a household gives a retail store its EBT card number as well as the PIN so that store employees can manually enter the card number and then enter the PIN without needing to have the actual EBT card. A review of the Appellant firm showed swiped transactions both before and after these transactions indicating that there was not a problem with the firm's POS terminal. This household and others reviewed displayed similar suspicious patterns of both swiped and manually keyed transactions at the Appellant firm indicating that this was a regular occurrence that was indicative of trafficking.

A second household received its monthly SNAP allotment and conducted two transactions (\$40.62 and \$47.98) totaling \$88.60 at the Appellant firm. Later that afternoon this household returned to the Appellant firm spending \$25.09 and later in the day traveled 1.89 miles to a members only super store where it spent \$182.29. The next

day this household spent \$42.18 at the Appellant firm and later that same day spent \$159.60 at a nearby supermarket. The following day the household again returned to the Appellant firm sending \$43.29. In summary, this household spent \$199.16 in five transactions at the Appellant firm while spending \$341.89 in transactions at a super store and a supermarket. Again, it makes no sense for a household with limited financial resources to spend \$199.16 in allegedly legitimate purchases at the Appellant firm when it was shopping at stores with a far larger quantity and variety of staple foods at lower prices in the midst of the transactions at the Appellant firm. This unusual and erratic shopping pattern is indicative of trafficking.

There is no legitimate reason why this household and others with similar patterns would spend so much of their SNAP allotment at a minimally stocked convenience store when they clearly had access to and frequently shopped at supermarkets and super stores located nearby and at a distance. The more plausible explanation is that these households were trafficking at the firm.

There may be valid reasons why a SNAP household might return to a store during a short period of time, but the examples in this Attachment indicate a series of SNAP purchases that total to large dollar amounts. Multiple transactions over a short period of time, especially those of high dollar values, are indicative of attempts to obscure trafficking by dividing a large dollar value transaction into a series of smaller dollar value transactions and are a method which violating stores use to avoid high dollar transactions that cannot be supported.

High Dollar Value Transactions

This Attachment lists 170 individual EBT transactions ranging from \$60.34 to \$232.78 with 56 transactions for \$100.00 or more and three transactions for more than \$200.00. The substantial number of high dollar transactions is uncharacteristic for a convenience store offering a limited stock of staple foods and calls into question the legitimacy of these transactions. These transactions are also substantially higher than the average SNAP transaction amount of \$10.09 for this store type in New Haven County during the review period. This is unusual and indicative of trafficking.

It is also noted that eight transactions occurred after the store's reported business hours. It is an indication of potential trafficking when there are transactions occurring outside of a store's reported business hours.

The evidence under review shows that SNAP households shopping at the Appellant firm are also shopping at many full-line supermarkets and super stores that offer a greater quantity and variety of SNAP eligible foods items for better prices than customers can find at the firm. These high dollar value transactions remain questionable when considering the proximity of other stores that would be better shopping options for consumers. Based on their shopping patterns, transportation does not appear to be an issue for these households. Yet, they continue to shop and spend suspicious high dollar amounts at the Appellant firm, where the eligible food stock is extremely limited, often on the same day, or within 24-72 hours of purchases at larger stores.

For example:

A household shopped at a supermarket located 1.91 miles from Appellant's location spending \$44.16 and less than three hours later spent \$143.28 at the Appellant firm. On another day this household spent \$66.49 at a large grocery store located 1.91 miles away and two hours later spent \$98.67 at the Appellant firm. It is also noted that this household's reported address of record was located 4.3 miles from the Appellant firm meaning that this household was traveling more than eight miles round trip away from its regular shopping area past larger and comparably sized grocery stores in order to shop and spend extremely large dollar amounts at a minimally stocked convenience store that stocked no unique items.

A different household spent \$173.67 at a supermarket located 0.32 miles away and 18 minutes later spent \$186.17 at the Appellant firm. On a different date it spent \$110.00 at the same supermarket and the next day spending \$69.29 at the Appellant firm.

No explanation or rationale has been offered by Appellant as to why households that are regularly shopping at larger stores offering a greater variety and quantity of SNAP eligible foods at lower prices and who apparently have no transportation limitations would be conducting high dollar transactions at a minimally stocked convenience store. It is highly unlikely that the Appellant firm stocked any eligible food items that would not be available at the super stores, supermarkets, and other larger grocery stores the above households were regularly shopping at and these stores would also likely have significantly lower food prices, yet these households continued to spend large dollar amounts at a convenience store with a limited stock of staple foods and no shopping carts that would be needed for the large transactions in this Attachment. There is no legitimate reason why these households would spend so much of their SNAP allotments at a minimally stocked convenience store when they clearly had access to and frequently shopped at supermarkets and super stores located nearby and at a distance. The more plausible explanation is that these households were trafficking SNAP benefits at the firm. Other households exhibited similar shopping patterns indicative of trafficking. Based on this discussion, trafficking is the most viable explanation for these irregular shopping patterns.

While households residing in areas with extremely limited grocery store options may conduct high dollar transactions at convenience or small grocery stores out of necessity, this is not the case when they have better alternatives. FNS records show there were 35 comparably sized or larger authorized retail food stores within a 1.0 mile radius that included two supermarkets, three medium grocery stores, seven small grocery stores, and 23 convenience stores where households listed in the Attachments were regularly shopping as well as additional larger stores further away. These larger stores would offer greater quantities and varieties of staple food items at lower prices than would be found at Appellant's minimally stocked convenience store.

The difference in the SNAP transaction dollar volume, the SNAP transaction count, and the average SNAP transaction amount for New Haven County convenience stores during the review months and at the Appellant firm is significant. Appellant's average SNAP dollar volume is 254.64 percent larger than like type County stores while its total SNAP transaction count is 139.35 percent larger and its average SNAP transaction amount is 48.17 percent larger than the

County average. A comparison of the firm's total SNAP transaction dollar volume, the total SNAP transaction count, and the average SNAP transaction amount to New Haven County small grocery stores yielded similar results. The very high transaction dollar volume is abnormal based on the firm's limited stock of staple foods and very few expensive food items. The extremely high number of SNAP transactions and the extremely high dollar volume, more than three times larger than that of County convenience stores, combined with the relatively low average transaction amount is a strong indication that the firm may be dividing larger transactions into multiple smaller transactions in an effort to circumvent detection as previously discussed. A comparison of Appellant's SNAP redemptions to that of nearby like type stores having redemptions for the review period shows that none exhibit the same suspicious transaction patterns listed in the charge letter for the Appellant firm even though all are located in proximity to Appellant's location and would therefore be expected to share the same SNAP customer base and shopping patterns. This is further indication that the transactions in this Attachment and the previous do not represent legitimate food purchases. The Office of Retailer Operations and Compliance considered all of these to be indicators of unusual and suspicious activity.

The firm also had irregular SNAP transaction data compared to like type stores in the County. A comparison of Appellant's redemption data to the average for County convenience stores using ten dollar increments shows that Appellant's transaction count and dollar volume was significantly higher than like type stores in all ranges up to the \$230.00-\$239.99 range at which point transactions stopped. New Haven County stores dropped below one transaction per range after the \$70-\$79.99 range, less than one-third that of the Appellant firm. For example, the Appellant firm had 18 transactions in the \$100.00-\$109.99 range totaling more than \$2,399.00 while the county average was 0.38 transactions totaling less than \$39.00. It is very unusual that Appellant's minimally stocked convenience store would have more than 47 times the dollar volume and more than 61 times the total transactions than the average of New Haven County like type stores in this range. This transaction pattern does not appear in the transaction patterns or in the transaction count and dollar volume averages for other like type stores. These large dollar transactions are considered to be irregular and suspicious based on the firm's food inventory. The Office of Retailer Operations and Compliance determined there was no credible reason for the firm to have transactions at these dollar levels given the limited stock of staple foods and the lack of any specialty, bulk, or ethnic foods that might sell for large dollar amounts and also considered this to be a strong indication of trafficking. None of Appellant's contentions explain these unusual and suspicious differences.

The SNAP transactions noted in this Attachment are not presumed to be trafficking because they exceed a set dollar amount; they are questionable because they are inconsistent for this type of store and store stock. A shopping pattern analysis by the Office of Retailer Operations and Compliance shows that Attachment households are regularly shopping at much larger stores, and conducting high dollar transactions, yet are conducting comparable or higher dollar transactions at the Appellant firm. It makes no sense for a household that regularly shops at larger stores and apparently has no transportation limitations to spend large dollar amounts at the firm since its cost of goods would be higher than that of larger stores such as supermarkets or super stores.

Appellant contends that the transactions in this Attachment are explained by the firm being a large and extremely well-stocked store with a substantial variety of quality goods that in some cases are relatively expensive. The photos taken at the time of the investigation document the large amount of staples like rice, oil, and meat products that are stocked and sold. These are high priced items. Therefore it is no surprise that some of the transactions that seemed excessively large were in fact ordinary payments for food, vegetables and other items covered by the SNAP program that the recipient purchased. Also, the staple food inventory sheet which was prepared by a contractor for the USDA as a result of his visit to the store verifies that the store is extremely well stocked with a variety of dairy products, fruits, vegetables, meats, poultry, fish, breads, and cereals. The average for all of the store's transactions are comparable to the average SNAP transactions for New Haven County. Secondly, the most comprehensive government study regarding average EBT purchase amounts documents that approximately sixteen percent of all EBT purchase transactions are in dollar amounts of fifty or more dollars. In the case at hand the percent of EBT purchases that were in excess of fifty dollars at the store amounted to similar percentage when compared to the store's total sales. What that means is that the store is right in line with the number of large purchases that would be predicted by the government's own statistical and empirical research. Additionally, as previously indicated the store's inventory is ample and the staple and non-staple food stock of canned goods, cereal, milk, rice, soft drinks, bread, and snack items justify a substantial portion of the transactions in the Attachment. The third point that the pricing structure in a small grocery store is very different from the pricing in a very large supermarket. The large market counts on volume to make a reasonable return on capital. The small grocery store's business model requires a substantial mark-up on inventory in order to justify the investment in the store. According to a well-respected study, the typical markup for SNAP eligible items in a small store is 65 percent. The owner estimates that the local market in Waterbury supports a similar markup. A markup of that size will result in a series of larger than expected sales. A higher price point necessarily produces seemingly excessively large purchases.

Information obtained during the March 11, 2021, USDA store visit on shows that the Appellant firm offered a limited stock of relatively inexpensive staple foods that also included single serving and pre-packaged items with a significant portion of inventory in soda, candy, snacks, other drinks, and ineligible items. As previously discussed, and as clearly evidenced by the FNS store visit report, staple food inventory listing, and numerous photos of stock, the Appellant firm is a small sized (750 SF) and minimally stocked convenience store, not a large and well-stocked small grocery store as claimed by the Appellant. The staple food inventory sheet does show that the firm met the minimum stocking requirements in the four staple food categories required for licensing as a SNAP retail food store. While the firm did stock a limited selection of infant formula and baby food, most SNAP households with infants or small children are WIC participants and therefore would be purchasing these products at a WIC vendor using WIC vouchers, not SNAP EBT at the Appellant firm. The store visit report notes and the photos records that the only expensive items selling for more than \$10.00, per the owner, were two pound bags of frozen shrimp, one gallon containers of corn oil, and 10 pound bags of rice. These are not the type of items that are purchased multiple times in a short period of time and therefore would not account for the unusually large transactions in this Attachment. Other Waterbury convenience stores and even small grocery stores have the same or similar markups that would result in similar prices. Yet, as previously discussed, a comparison of Appellant's SNAP

redemptions to that of nearby like type stores shows that none exhibit the same suspicious transaction patterns listed in the charge letter for the Appellant firm even though all are located in proximity to Appellant's location and would therefore be expected to share the same SNAP customer base and shopping patterns. The evidence, as discussed, shows that the firm's average transaction dollar amount is the result of dividing larger transactions into a series of smaller ones in an attempt to avoid detection and therefore cannot be meaningfully compared to that of other SNAP retail stores.

Higher food prices make it even more unlikely that SNAP recipients, with very limited food dollars, would want to spend a considerable part of their benefits in a store that does not address all of their food needs when they are already shopping at larger, fully stocked stores that would offer a greater variety of foods at lower prices. Many of these stores also offer store brand products at lower prices, weekly specials, and have shopping carts and checkouts with built-in scanners and conveyor belts to facilitate processing purchases quickly. Additionally, Appellant furnished no itemized cash register and EBT receipts for the period under review to document the legitimacy of these excessively large transactions and no evidence was provided of SNAP eligible store stock via receipts of products taken into inventory for the relevant months. The firm also has a very small checkout area and no shopping carts or hand baskets thereby making it extremely difficult to facilitate the great quantities of eligible food items required to make up these large dollar transactions. The fact that the firm carries a limited stock of staple food items also makes it improbable that the high dollar transactions in this Attachment were for the purchase of eligible food items and more likely that the amounts were contrived.

SNAP redemptions at the Appellant firm fluctuated unusually following the store visit on March 11, 2021. Following the store visit, the volume of SNAP redemptions at the Appellant firm had a marked increase of 44.33 percent from March 2021 to May 2021 while the number of SNAP transactions increased 43.06 percent and the average dollar amount of SNAP transactions increased 0.86 percent during the same period. This substantial increase appears to indicate that store ownership was likely aware the firm would be disqualified from SNAP and was attempting to generate as much trafficking income as possible before the store was disqualified. A pronounced fluctuation in SNAP redemptions following the store visit is a clear indication of trafficking since, if trafficking were not occurring, there would be no abnormal fluctuations in redemption amounts.

Based on these discussions, Appellant did not provide adequate evidence to support the legitimacy of the excessively large transactions in this Attachment.

Other Contentions

Regarding Appellant's denial of trafficking, the purpose of this review is to either validate or to invalidate the earlier decision of the Office of Retailer Operations and Compliance and is limited to what circumstances were at the basis of the action at the time such action was made. In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means the Appellant has the burden of providing relevant evidence that a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be

true than untrue. Assertions that the firm has not violated program rules, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations or for mitigating their impact. When store ownership signed the certification page of the SNAP retailer authorization application to become a SNAP retailer, it confirmed it understood and agreed to abide by program rules and regulatory provisions. It also agreed to accept responsibility on behalf of the firm for SNAP violations including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time. The certification is clear that store ownership understood by signing the document that violations of program rules can result in administrative actions such as fines, sanctions, withdrawal, or disqualification from the SNAP. Additionally, a record of participation in SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges. This is particularly true for a store that had only been licensed as a SNAP retail food store for eleven months at the time the charge letter was issued.

The two customer statements submitted by Appellant each account for one set of transactions in the first Attachment. A review of the shopping patterns for these households shows that they shopped at a variety of other stores, located both nearby and at a distance (up to 17 and 18 miles away), in addition to the Appellant firm during the review period, but did not exhibit the same number of suspicious transactions at the other stores as at the Appellant firm. The first statement does not support the customer's claim of doing the "vast majority" of his shopping at the Appellant firm since records show that he conducted 27 transactions at nine other stores that included a super store and a supermarket while only shopping 10 times at the Appellant firm. The fact that five of these nine other stores were located 1.61-18.3 miles away also contradicts the customer's claim of lacking transportation. The second statement also claims a lack of transportation, yet the customer was able to shop 12 times throughout the review period at a convenience store located 17.99 miles away. In conclusion, the two statements do not explain the charge letter transactions.

In regard to case law cited by Appellant, considerations of relevant legal precedent through case law, or the lack thereof in relation to the present case, are beyond the scope of this review. This review relies upon the statute and regulations governing the SNAP and evaluates whether the decision to impose a disqualification upon the Appellant was in accordance with same and sustainable by a preponderance of the evidence. Appellant's case law references are acknowledged in this context only.

With regards to Appellant's contention that its rights to due process were violated, section 278.6(b)(1) of the SNAP regulations provides that upon charging a firm with SNAP violations, the letter informing the firm of the charges "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." This section further states that, "Any firm considered for disqualification, shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of noncompliance before FNS makes a final administrative determination." A review of the Office of Retailer Operations and Compliance's administrative actions regarding this matter indicates full compliance with all applicable SNAP regulations, policies, and procedures therefore no due process violations occurred. This disqualification is an administrative action and SNAP

regulations provide for an administrative review of the action. The Act, as amended, and regulations provide that any firm aggrieved by an administrative review determination may seek judicial review of the determination in Federal court or a State court of record having competent jurisdiction. In such event, trial de novo proceedings ensure the firm of a full evidentiary hearing on the agency action at issue. Discovery and evidentiary hearings are not elements of the administrative review, but are part of judicial review of the final agency decision if such review is sought.

“A sanction is not arbitrary and capricious if the agency properly adheres to its own regulations and guidelines in imposing a sanction.” *Castillo v. United States*, 989 F. Supp. 413, 417 (D. Conn. 1997). “Whether the imposition of a penalty by the FNS was arbitrary or capricious is a matter of law appropriately determined on a motion for summary judgment. *Yafaie v. United States*, 1995 WL 422169, at *1 (S.D.N.Y. July 18, 1995); see also *Lugo v. United States*, 2009 WL 928136, at *3 (S.D.N.Y. Mar. 30, 2009). The FNS followed its own regulations in determining that the Appellant firm was engaging in trafficking. Furthermore, as provided by 7 U.S.C. § 2021(b)(3)(B) and 7 CFR § 278(e)(1)(i), the FNS must permanently disqualify a store upon the “first occasion” of trafficking. Only if a store qualifies for a CMP may the FNS consider an alternate penalty. Here, however, the Appellant did not provide the FNS with any evidence of a compliance program as set forth in 7 CFR § 278.6(i) within the specified timeframe. Therefore, the decision to disqualify the Appellant firm permanently from SNAP and deny a CMP was not arbitrary and capricious.

The owner and the firm were charged with trafficking based on a computer analysis of the store’s transactions for the review period. The charges do not derive from the use of a confidential informant or independent investigator who visited the store and made illegal purchases to support findings of trafficking, but by a computer program used by SNAP Administrators. While traditional undercover operations are still in use by USDA, for many years federal regulations have also authorized the use of evidence consisting of EBT transaction data in investigations of SNAP retail stores to determine if trafficking is occurring and U.S. District Courts have long upheld the validity of EBT transaction data.

The issue under review involves a charge of trafficking SNAP benefits based on EBT transaction data. EBT transaction data is covered in SNAP regulations at 7 CFR § 278.6(a) and is addressed below. Trafficking is always considered to be the most serious violation even if it is a first offense therefore a temporary suspension or lesser penalty would not be applicable. SNAP regulations at 278.6(e)(1) clearly state that, “FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.” SNAP regulations at 7 CFR § 271.2, define trafficking as, “The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits for cash or consideration other than eligible food”. SNAP regulations at 7 CFR § 278.6(a) clearly state that “FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, 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”. In the present case, the data presented in the Attachments is solely based on the SNAP EBT transactions conducted at the Appellant firm during the review period. This firm was selected as a result of a

series of complex algorithms that make numerous data comparisons with other like type firms during the review period. All of the transactions were then reviewed and analyzed by the Office of Retailer Operations and Compliance staff before the decision was made to issue a charge letter. This investigative process included a detailed examination of information obtained from various sources, including, but not limited to the inventory report and photos from the FNS store visit, a transaction comparison and analysis of like type and larger stores, and analysis of shopping patterns for recipient households conducting transactions at the Appellant firm during the review period. This analysis also included a review of the firm to ensure its store classification was correct and the data comparisons with like type firms valid. Additionally, there are nearby like type stores whose transaction data does not form these suspicious patterns and are therefore not at risk of disqualification for trafficking. There is also no regulatory requirement that trafficking disqualifications be based solely on on-site undercover operations.

Based on this empirical data, and in the absence of sufficient evidence for the legitimacy of such transaction patterns, a conclusion can be drawn, through a preponderance of evidence that the “unusual, irregular, and inexplicable” transactions and patterns cited in the charge letter evidence trafficking as the most likely explanation for the questionable transactions listed. It is herein determined that Appellant did not provide a preponderance of evidence demonstrating that the transactions contained in the charge letter were more likely due to eligible food sales than not. Under review, the evidence more substantially supports a conclusion that the transaction activity in the charge letter Attachments is due primarily to trafficking in SNAP benefits.

The Food and Nutrition Act of 2008, as amended, and the regulations issued pursuant thereto do not cite any minimum dollar amount of cash or SNAP benefits, or number of occurrences, for such exchanges to be defined as trafficking. Nor do they cite any degrees of seriousness pertaining to trafficking of SNAP benefits. Trafficking is always considered to be the most serious violation, even when the exchange of SNAP benefits for cash is dollar-for-dollar or is conducted by a non-managerial store clerk. This is reflected in the Food and Nutrition Act, which reads, in part, that disqualification “shall be permanent upon the first occasion of a disqualification based on trafficking by a retail food store.” In keeping with this legislative mandate, Section 278.6(e)(1)(i) of the SNAP regulations states that FNS shall disqualify a firm permanently if personnel of the firm have trafficked. There is no agency discretion in the matter of what sanction is to be imposed when trafficking is involved and second chances are not an authorized option under existing regulations.

CIVIL MONEY PENALTY

A CMP for hardship to SNAP households may not be imposed in lieu of a permanent disqualification as specified in SNAP regulations at 7 CFR § 278.6(f). Trafficking is a permanent disqualification so Appellant is not eligible for a hardship CMP.

The Office of Retailer Operations and Compliance determined that the Appellant was not eligible for a trafficking CMP in lieu of a disqualification under 7 CFR 278.6(i) because the Appellant did not request a trafficking CMP within the specified timeframe or submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations within the specified time. As such, the Office of

Retailer Operations and Compliance determined that Appellant was not eligible for a trafficking CMP in lieu of permanent disqualification.

Based on the above discussion and the evidence under review, Appellant failed to meet the regulatory standard for a trafficking CMP as it did not provide substantial evidence that it met all four criteria required for a trafficking CMP by 7 CFR §278.6(i) within the specified period. Based on the above, the Office of Retailer Operations and Compliance's decision not to impose a CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR §278.6(i).

CONCLUSION

The Office of Retailer Operations and Compliance presented a case that Appellant has likely trafficked in SNAP benefits. Their analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Appellant. This data provided substantial evidence that the questionable transactions during the review period had characteristics consistent with trafficking violations in SNAP benefits. This is evidenced by: the suspicious patterns in two Attachments of EBT transaction data, the inadequacy of the store's staple food stock as observed during the store visit to support large transactions in short time frames, the lack of adequate evidence for customer spending habits given that there are other SNAP authorized stores located within proximity to Appellant that likely offer a greater selection of eligible food items at competitive prices, and the irregular SNAP transaction data of Appellant as compared to other like type and larger stores in the county and state.

The retailer has not provided sufficient evidence to rebut the case that Appellant most likely trafficked in SNAP benefits. 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, in fact, occur as charged. Based on the discussion above, the determination to impose a permanent disqualification against Appellant is sustained. Furthermore, the Office of Retailer Operations and Compliance properly determined that Appellant was not eligible for a trafficking CMP according to Section 278.6(i) of the SNAP regulations.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in 7 U.S.C. § 2023 and 7 CFR § 279.7. If a judicial review is desired, the complaint must be filed in the U.S. District Court for the district in which Appellant's owner resides, is engaged in business, or in any court of record of the State having competent jurisdiction. This complaint, naming the United States as the defendant, 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.

ROBERT T. DEEGAN
ADMINISTRATIVE REVIEW OFFICER

June 27, 2022