

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

**Prescott Express Market,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0245388**

**FINAL AGENCY DECISION**

The U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS) finds there is sufficient evidence to support the determination by the Retailer Operations Division to impose a permanent disqualification of Prescott Express Market (“Appellant”) from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, when it imposed a permanent disqualification against Prescott Express Market.

**AUTHORITY**

7 U.S.C. § 2023 and 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**

Prescott Express Market was initially authorized to participate in SNAP on December 14, 2010. In a letter dated May 5, 2021, the Retailer Operations Division charged Appellant with trafficking, as defined in § 271.2 of SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred between the months of December 2020 and March 2021 and information obtained during a visit to the store by an FNS contractor on March 6, 2021. The attachments enclosed with the charge letter specified the questionable and unusual SNAP transactions indicative of trafficking that were conducted at Appellant’s firm during the review period. The letter noted that the penalty for trafficking is permanent disqualification, as provided by 7 CFR § 278.6(e)(1). It informed Appellant of the right to respond to the charges within 10

days of receipt to explain the irregular SNAP transaction patterns and provided that Appellant may request a civil money penalty (CMP) in lieu of permanent disqualification for trafficking within 10 days of receipt of the charge letter, under the conditions specified in 7 CFR § 278.6(i).

After requesting and being granted an extension of time to reply, Appellant responded to the trafficking charges, through counsel, on May 8, 2021, May 17, 2021, and June 21, 2021. Through its responses, Appellant made a timely request for a CMP, providing an affidavit and photographs in support of its request. Appellant also claimed to be unaware of and uninvolved in any improper EBT charges or trafficking using EBT benefits and claimed not to have benefitted from any such activities. Appellant also submitted over 700 pages of inventory purchase invoices to support the legitimacy of its transactions.

After considering Appellant's reply and further evaluating the evidence, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated November 19, 2021. This letter informed Appellant that the firm 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 Appellant was not eligible for a trafficking CMP in accordance with § 278.6(i) because Appellant failed to submit sufficient evidence to demonstrate the firm had established and implemented an effective compliance policy and program to prevent SNAP violations.

In a letter dated November 23, 2021, Appellant, through counsel, appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted. In supplemental correspondence emailed on December 15, 2021, Appellant, through counsel, submitted additional information in support of the request for administrative review.

## **STANDARD OF REVIEW**

In an appeal of an adverse action, the appellant bears the burden of proving, by a preponderance of the evidence, that the administrative action should be reversed. This means the appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

## **CONTROLLING LAW**

The controlling 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, in part:

[A] disqualification under subsection (a) shall be...permanent upon...the first occasion or any subsequent occasion of a disqualification based on the purchase of [SNAP benefits] or trafficking in [SNAP benefits] 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 § 271.2 states, in part:

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....

Trafficking means:

The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone....

7 CFR § 278.2(a) states, in part:

[SNAP benefits] may be accepted by an authorized retail food store only from eligible households...only in exchange for eligible food. [SNAP benefits] may not be accepted in exchange for cash...[and] may not be accepted in payment of interest on loans or for any other nonfood use.

7 CFR § 278.6(a) states, in part:

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....** Disqualification shall be for a period of 6 months to 5 years for the firm's first sanction; for [a] period of 12 months to 10 years for a firm's second sanction; and **disqualification shall be permanent for a disqualification based on paragraph (e) (1) of this section.** [Emphasis added.]

7 CFR § 278.6(b)(2)(ii) states, in part:

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(e)(1)(i) states, in part:**

[FNS] shall...disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.

**7 CFR § 278.6(i) states, in part:**

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 § 284.1 Pandemic Electronic Benefits Transfer (P-EBT) states in part:**

(a) Overview. Section 1101 of the Families First Coronavirus Response Act (FFCRA; Pub. L. 116-127), as amended, authorized supplemental allotments to certain households. These benefits shall be referred to as Pandemic Electronic Benefits Transfer (P-EBT) benefits .... This section establishes the retailer integrity regulations for P-EBT for retailers in any State as defined in Section 3(r) of the Food and Nutrition Act.

(b) Definitions. For this section:

(1) Trafficking means the activities described in the definition of trafficking at § 271.2 of this chapter when such activities involve P-EBT benefits.

(2) Firm's practice means the activities described in the definition of firm's practice at § 271.2 of this chapter when such activities involve P-EBT benefits.

(3) Involving P-EBT benefits or involve P-EBT benefits means activities involving PEBT benefits as well as supplemental nutrition assistance program (SNAP) benefits, or only P-EBT benefits.

(c) Participation of retail food stores and wholesale food concerns, and redemption of PEBT benefits. Requirements and restrictions on the participation of retail food stores and wholesale food concerns and the redemption of coupons described at §§ 278.2, 278.3 and 278.4 of this chapter, including the acceptance of coupons for eligible food at authorized firms, also apply to activities involving P-EBT benefits ....

(e) Penalties. For firms that commit certain violations described at §§ 278.6 and 278.2 of this chapter where such violations involve P-EBT benefits, FNS shall take the corresponding action prescribed at § 278.6 or § 278.2 for that violation. For the purposes of assigning a period of disqualification, a warning letter shall not be considered to be a sanction. Specifically, FNS shall:

(1) Disqualify a firm permanently, as described at § 278.6(e)(1)(i) of this chapter, for trafficking, as defined at § 284.1(b)(1) of this chapter, or impose a civil money penalty in lieu of permanent disqualification, as described at § 278.6(i) of this chapter, where such compliance policy and program is designed to prevent violations of regulations of this section ....

(6) Disqualify the firm for 1 year for credit account violations as described at §§ 278.6(e)(4)(ii) and 278.2(f) of this chapter, where such violations involve P-EBT benefits.... 5

(11) Impose a civil money penalty in lieu of permanent disqualification for trafficking as described at § 278.6(j) of this chapter in an amount calculated using the described formula at § 278.6(j), which shall also include the relevant amount of P-EBT redemptions when calculating the average monthly benefit redemptions....

(g) Administrative and Judicial review. Firms aggrieved by administrative action under paragraphs (d), (e), and (f) of this section may request administrative review of the administrative action with FNS in accordance with part 279, subpart A, of this chapter. Firms aggrieved by the determination of such an administrative review may seek judicial review of the determination under 5 U.S.C. 702 through 706.

## **SUMMARY OF CHARGES**

FNS charged Prescott Express Market with trafficking based on an analysis of FNS records, which included observed store characteristics, recorded food stock, and store pricing gathered during a store visit, as well as Electronic Benefit Transfer (EBT) transaction data for December

2020 through March 2021. The attachments enclosed with the charge letter reflected the following transaction patterns, which commonly indicate trafficking:

- **Charge Letter Attachment 1:** Multiple transactions were made from the accounts of individual SNAP households within a set time period.
- **Charge Letter Attachment 2:** EBT transactions that are large based on the observed store characteristics and recorded food stock.

### **APPELLANT'S CONTENTIONS**

Appellant's contentions regarding this matter are summarized as follows:

- The determination letter ignored and did not respond to any of the arguments and facts presented in the firm's response to the charge letter. An administrative process that simply rubber-stamps a charge letter's assertions both inherently violates due process and fails to comply with FNS's own regulations. In particular, the determination ignored the effect of FNS's approval of EBT purchase of Hunt Brother Pizza, combined with the effect of issuing pandemic benefits that have skewed the normal triggers for purchase analysis.
- Prescott market carried its burden to demonstrate, by a preponderance of the evidence, its entitlement to a CMP in lieu of permanent disqualification through its detailed response and affidavits. The determination was a summary and conclusory rejection of the Appellant's factual presentation, and therefore it was arbitrary and capricious.
- Prescott Express Market has denied that any of the ALERT-identified transactions even occurred. In particular, Prescott Express Market has denied that any such transactions that did occur constituted trafficking.
- The transaction reports do not create a preponderance of the evidence that cash has actually been exchanged for SNAP benefits. They are not supported by sworn statements by an investigator and no receipts were attached to the transaction report.
- Appellant has produced extensive records, with specific receipts showing that the store sells a high volume of pizza and wings, which sales easily account for both high volume transactions and rapid purchases.
- The due process offered under SNAP regulations falls short of due process protections. The determination violates FNS's own standards for finding a retailer guilty of trafficking based on the ALERT system, rendering the entire process and the initial determination arbitrary and capricious.
- The evidence submitted in various previous responses and in administrative review establishes, by a preponderance of the evidence, that Appellant is entitled to a reversal of the initial determination.
- Appellant requests remand of the case to the program specialist for actual consideration of the evidence rather than a conclusory determination that ignores the retailer's evidence and arguments and reinstatement during the period of remand.
- Prior to the charge letter, store policy permitted EBT families to checkout simultaneously on both registers and use the EBT card first at one and then the other. Large families like to split up and then checkout simultaneously to avoid waiting.

- Prior to March 2021, the store retained sales records including paper receipts for all transactions. However, during April 2021, the on-site manager cleaned the store and discarded all the previously saved paper sales receipts.
- The store sells Hunt Brothers Pizza. Customers may buy a frozen pizza with EBT benefits and the store is permitted to cook pizza for free once the purchase is complete. The pizza is specifically designed and manufactured for in-store post-purchase cooking. The store also sells their wings. The on-site inspector did not mention pizza sales in his report. These sales account for EBT sales in amounts above thirty-four dollars.
- The Hunt Brothers pizza program is designed to promote the customer completing a pizza purchase, then waiting in the store for the pizza to be cooked. It can hardly be surprising that customers then continue to shop and make additional purchases with their SNAP benefits.
- In the receipts provided, during a three-week period, Appellant had eight same day repeat customers and seven two day repeat customers. These repetitions occurred despite the owner's prohibiting dual register EBT swipes.
- The managers and owner have been diligent in enforcing program rules to prevent abuse and trafficking.
- Younger EBT customers take advantage of the special student pandemic EBT card to engage in what can only be described as "binge" spending.
- The store site sits on the edge of a depressed economic area including two large apartment complexes. These customers frequent our stores and buy pizzas.
- While Appellant has not kept a formal log of every single SNAP training session, the store is a small convenience/grocery store, not a large business. Even without a specific training log, the evidence submitted qualifies as substantial. Training information is provided through ongoing verbal instruction and constant reinforcement of the rules through FNS approved posters at the register.
- The store owner was not aware of, had not approved, had not benefitted from, and was not involved in conducting or approving trafficking violations. If they occurred, they would be the first such violations in the store.
- The store has established and implemented an effective compliance policy and program to prevent program violations. This policy and training program were in place at the store when the alleged violations occurred and has been continuously in operation prior to the alleged violations.
- The firm maintains a strict zero-tolerance policy for any SNAP violation and employees are informed that such violations may result in immediate termination.
- The store has implemented its policy and program by adopting use of FNS's own publications, posters, and training guides. Employees who work the register must read and understand the Training Guide for Retailers. Employees are also trained twice monthly by direct communication.
- During the 15 years the store has been in operation, there have been no charges or warnings of SNAP violations.

In support of these contentions, the Appellant submitted the following:

- Inventory purchase invoices for Hunt Brothers Pizza and other vendors for November 2020 through June 2021.

- Spreadsheets showing pizza and wing sales for November 2020 through June 2021 and anticipated future sales.
- EBT sales receipts together with cash register sales receipts for the period May 22, 2021, through June 16, 2021, and a spreadsheet summarizing the information to show repeat purchases by households.
- Cash register batch and history reports for August, September, October, and November 2021.
- EBT sales receipts together with cash register sales receipts for the period August 20, 2021, through November 13, 2021, and an Excel workbook summarizing this sales data.
- Affidavits in support of a Civil Money Penalty signed by the owner, the store manager, a store clerk.
- Eight photographs dated August 5, 2021, which show SNAP posters in the cash register area and copies of The Training Guide for Retailers.

The preceding represents a brief summary of Appellant's contentions. However, in reaching a decision, full consideration has been given to all contentions presented, including any that have not been specifically listed here.

## **ANALYSIS AND FINDINGS**

This review examines the relevant information regarding the Retailer Operations Division's trafficking determination. The record must contain evidence sufficient to raise a presumption that trafficking occurred. In a trafficking determination, this evidence includes SNAP transaction data, considered together with other available information, such as store visit observations, the location and characteristics of competitor firms, and household shopping patterns. Once the presumption is established, Appellant bears the burden of providing relevant evidence to support a conclusion, considering the record as a whole that it did not engage in trafficking. If Appellant fails to show this, the case will be sustained.

Retailers are provided opportunities to submit evidence accompanied by explanations of the legitimacy of questionable transactions, both to the Retailer Operations Division and here on administrative review. Without supporting evidence and rationale, assertions that the firm has not violated program rules do not constitute valid grounds for overturning the determination.

Based on the evidence in this case, the SNAP transactions listed in the May 5, 2021, charge letter were indicative of trafficking. Appellant has not provided reasonable explanations supported by sufficient credible and convincing evidence to demonstrate that these transactions were more likely due to reasons other than trafficking. Accordingly, the permanent disqualification is sustained. The Retailer Operations Division's decision not to impose a trafficking CMP is also sustained as Appellant failed to submit evidence of an effective compliance policy and program to prevent SNAP violations in place at the time of the violations. Discussed below are elements of the Retailer Operations Division's record, Appellant's contentions, and the findings of this review.



## **Store Visit Report**

In reaching a disqualification determination, the Retailer Operations Division considered information obtained from a store visit conducted by an FNS contractor on March 6, 2021, 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:

- The firm is a convenience store, approximately 1,152 square feet in size. The store has about 128 square feet of storage outside of public view that contained non-food items and the store has storage coolers or freezers that contained staple foods and ingredients for prepared foods. Store personnel confirmed that no food was stored offsite.
- The store had no shopping carts or shopping baskets.
- The store had two cash registers.
- The store did not use optical scanners to process transactions.
- The store's staple food stock met SNAP program eligibility requirements; the food selection was typical of a convenience store. The store did not sell specialty items such as bundles of meat or seafood or large boxes of fruit and vegetables.
- The store had a kitchen or food preparation area and sold hot food. The store also sold Hunt Brothers frozen pizza and wings. The store sold frozen pizza for SNAP benefits and then charged \$1.00 to cook it upon request.
- The store had a deli or prepared food section and sold a limited selection of deli meats and cheeses.
- The firm did not have a special pricing structure, except that most prices appear to end in 9, such as \$0.99, \$1.99, etc.
- Store personnel confirmed that the store does not round prices up or down at checkout.
- The store did not take online orders or offer delivery but did take telephone orders.
- The most expensive SNAP eligible food items for sale at the store included a 14-inch frozen pizza for \$10.99; a 24-pack of Faygo drink for \$8.99; a 35-pack of soda for \$17.99; a gallon of milk for \$5.49; a 40-pack of Niagara water for \$7.99; and deli turkey sold by the pound for \$7.99.

The SNAP eligible food stocked by the store was generally of a low dollar value consisting mainly of inexpensive canned and packaged goods, snack foods, single-serving food items and accessory food items. Given the available inventory, there was very little sign that the firm would likely have SNAP redemption patterns that differed significantly from those of similarly sized competitors, especially competitors that sell similar or identical food items.

## **SNAP Transaction Analysis**

While SNAP households have no limit on the number of times they may use their SNAP card or how much eligible food they may purchase in SNAP transactions, government analyses have found that stores likely trafficking SNAP benefits have particular transaction patterns or characteristics that are inconsistent with the transaction patterns and characteristics of similarly

situated stores. The Charge Letter Attachments specify the unusual transactions and transaction patterns found at Appellant's store, which are considered together with other available information, such as store visit observations, the location and characteristics of competitor firms, and household shopping patterns, to determine if the anomalies can be explained based on circumstances specific to the store.

**Charge Letter Attachment 1: Multiple transactions were made from the accounts of individual SNAP households within a set time period.** This attachment lists 19 sets of transactions (44 transactions in all) totaling \$2,162.43 in SNAP benefits, and averaging \$49.15 per transaction, or \$113.81 per set of transactions. Violating stores often conduct multiple transactions from the same household account in short time periods to avoid the detection of single high-dollar transactions that cannot be supported by the retailer's inventory, store type, or structure.

Appellant, through counsel, explains that these repeat transactions occurred because people purchase pizza with SNAP benefits and then continue to shop and make additional SNAP purchases while the pizza is being cooked. Appellant also said that large families will use two different registers to avoid waiting and will use the EBT card first at one and then the other.

Regarding Appellant's contentions, 43 of the 44 transactions in Charge Letter Attachment 1 took place on the same terminal. Therefore, Appellant's explanation that large families split transactions between terminals does not appear to be a valid reason for the repetitive charges. Likewise, all but one set of transactions in Charge Letter Attachment 1 took place in time periods ranging from 1 hour and 19 minutes to 26 hours and 52 minutes. It is unlikely that customers waited in the store for an hour and 19 minutes, or more, for pizza to cook. The one set of transactions that took place in a shorter period of time took only 1 minute and 44 seconds. The first transaction was for \$24.88, while the second, on the same terminal, was for \$66.33. This transaction set does not appear to include legitimate transactions. Given that the store sold mostly low-priced items, it would likely take longer than 1 minute and 44 seconds for a customer to gather enough items to reach such a large total and complete the purchase of these multiple items.

While regulations and statute do not govern or mandate how or when a SNAP household should spend its benefit allotment, the repetitive nature of the transactions identified in Charge Letter Attachment 1 is significantly different from other nearby competitor firms during the review period, indicating they are likely due to trafficking. The only evidence Appellant has offered is EBT sales receipts, together with cash register sales receipts for May 22, 2021, through June 16, 2021, and a spreadsheet summarizing this information to show repeat purchases by households. However, this information has little probative value as it is dated outside of the review period and therefore cannot explain the irregular transactions that took place during the review period. Also, this evidence is dated soon after the May 5, 2021, charge letter that made Appellant aware of the charges against the store. Once Appellant was aware of the charges against the store, it would be easy to manufacture receipts showing shopping patterns that fit Appellant's narrative explanations.

Although it is not uncommon for customers to have multiple transactions in a day or two, it is uncommon that, at a convenience store, such multiple transactions total large dollar amounts.

The SNAP transactions noted in the charge letter are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of Appellant's stock and facilities and are therefore indicative of trafficking. The photographs from the store visit offer no explanation as to why SNAP customers would routinely shop at Appellant multiple times during a short period to purchase such a large volume of items, there being no great variety of products, price advantage, profusion of large packages, or significant bulk items for sale. Appellant's contentions, likewise, have not offered sufficient evidence to show that the transactions listed in Charge Letter Attachment 1 were legitimate purchases.

**Charge Letter Attachment 2: Excessively large purchase transactions were made from recipient accounts.** This attachment lists 235 large purchase SNAP transactions totaling \$12,201.15 for an average transaction amount of \$51.92. As a point of reference, during the review period, the average purchase amount for transactions in the State of Tennessee was \$8.66. In Shelby County, the average was \$8.57. Appellant's large transactions are not consistent with other convenience stores in the same State or county.

Given that the Appellant firm does sell a variety of eligible foods, including pizzas, it is probable that there would be an occasional purchase where the transaction amount is high, perhaps exceeding \$40.00 or even \$50.00. 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 shopping baskets. The substantial number of high-dollar purchases in a four-month period calls into question the legitimacy of these transactions.

Appellant contends that the transactions on Charge Letter Attachment 2 are due to the sale of Hunt Brothers pizzas and submitted inventory purchase invoices for November 2020 through June 2021, spreadsheets showing pizza and wing sales for November 2020 through June 2021 and anticipated future sales, cash register batch and history reports for August through November 2021, and sales receipts together with summary spreadsheets for dates from May 2021 through November 2021.

Much of the evidence submitted by Appellant, including sales receipts and accompanying spreadsheets and cash register batch reports, are dated outside the review period and therefore do not explain the questionable transaction patterns in the charge letter attachments. The spreadsheets showing pizza and wing sales for November 2020 through June 2021 are not supported by sales receipts, which Appellant claims to have been destroyed in April 2021, just prior to the May 5, 2021, charge letter. While the inventory purchase receipts are dated within the review period, Appellant reported large markups for items on the receipts, including 50% for most SNAP eligible foods and 100% for the Hunt Brothers pizza invoices. These markups are high on both counts. However, if they were accurate, Appellant would have sufficient inventory to support SNAP redemptions, though this would have to assume little in sales in any other form of tender, such as cash, check, credit card, or debit card. Also, the invoices showed primarily the sale of snacks such as ice cream, chips, and candy, as well as drinks. Inventory purchases of these types of items far exceeded purchases of Hunt Brothers inventory, making it less likely that Hunt Brothers pizzas were a driving force of high SNAP transactions. Regardless, inventory

purchases do not fully explain the irregular SNAP transactions cited in the Charge Letter attachments. Violating stores often conduct largely legitimate transactions while also conducting trafficking transactions with a smaller number of trusted households. Absent sales receipts showing the sale of inventory during the review period, the inventory purchase receipts submitted are insufficient to establish the legitimacy of the irregular transactions.

Again, the store's inventory and characteristics do not support the frequency of large transactions reflected in this Charge Letter Attachment. Additionally, there is nothing notable about the store that would make its redemption patterns differ so significantly from those of similarly-sized competitors offering similar food items.

### **Competitor Stores**

The Retailer Operations Division reviewed the number of SNAP authorized retailers within a one-mile radius of Appellant to determine if households living near Appellant had access to other shopping options during the review period. Mapping showed 12 convenience stores within a one-mile radius, a superstore less than a quarter mile away, and a supermarket less than a mile away. This comparison demonstrates that households shopping at Appellant likely had access to larger stores that may have lower prices and better inventory. With these shopping options, it is unlikely that SNAP recipients would expend their SNAP benefits in large amounts at Appellant's convenience store, and that they would do so recurrently.

### **Comparison with Similarly Situated Convenience Stores**

Given that there were a number of shopping options near Appellant, the Retailer Operations Division selected four convenience stores near Appellant that were SNAP authorized during the review period to compare to Appellant. These stores were on the same side of the river and expressway adjacent to Appellant and were located from 0.37 miles to 0.65 miles from Appellant. Two of the comparison stores sold Hunt Brothers products. Because the stores are close in proximity to Appellant, if the stores are similar in inventory and infrastructure to Appellant, then the sales patterns should be comparable.

The chart below shows just how anomalous Appellant's transaction patterns were when compared to the comparison stores. Appellant's average transaction amount was significantly higher than the comparison stores and the number of transactions that met the criteria of Charge Letter Attachments 1 and 2 were also significantly higher. To note, Store 1 and Store 2 below are the comparison stores that sold Hunt Brothers products.

Store	Average Transaction Amount	Attachment 1 Pattern	Attachment 2 Pattern
Appellant	\$12.59	19	235
Store 1	\$9.66	6	110
Store 2	\$8.19	0	42
Store 3	\$9.37	2	32
Store 4	\$7.38	3	33

The Retailer Operations Division also determined that Appellant conducted far more SNAP transactions in each ten-dollar interval between \$40.00 and \$90.00 than the average convenience store in the State of Tennessee during the review period. For example, the average convenience store in Tennessee conducted less than five transactions in the \$60.00 to \$69.99 dollar range, while Appellant conducted more than 40 transactions in this range. Appellant's contentions and evidence are insufficient to explain why its transactions patterns differ from both other convenience stores in the same state and those nearby with very similar types and quantities of products.

### **Household Analysis**

In addition to determining if households had access to other shopping options, the Retailer Operations Division conducted a household analysis to determine if households shopping at Appellant actually utilized larger stores during the review period. As noted above, larger stores usually have lower prices and better inventory. Households with regular access to these larger stores are less likely to recurrently spend large amounts of SNAP benefits at a convenience store that has less inventory and higher prices.

The analysis included examples of five households with unusual shopping patterns at Appellant that also regularly shopped at larger stores. Each household conducted transactions at larger grocery stores on the same day as when the household shopped at Appellant. These examples included a household that spent \$77.99 at Appellant and less than 15 minutes later spent only \$31.24 at a super store. The household shopped at superstores 15 times during the review period, indicating the household had regular access to larger stores. Another household spent \$52.99 at Appellant and less than 11 minutes later spent only \$20.52 at a superstore. On at least two other occasions, the household conducted multiple transactions at Appellant for large amounts on the same day the household also shopped at a superstore or supermarket. A third household spent \$66.99 at Appellant on the same day it spent \$24.49 at a superstore. This household also regularly shopped at one of the comparison convenience stores that sold Hunt Brothers products, but the household's transactions at the comparison store were for small amounts, while its transactions at Appellant were irregularly large. During the review period, this household shopped at the comparison store 21 times, with only one transaction totaling more than \$10. That transaction was for \$14.23. 16 transactions were for amounts under \$5.00. This household shopped at Appellant 18 times during the review period. Six of the household's transactions at Appellant were for amounts over \$60.00, with the highest transaction totaling \$83.87. An analysis of the households shopping at Appellant supports the conclusion that Appellant's transactions were highly irregular. Appellant has failed to offer any reasonable explanation or sufficient evidence to show that these were legitimate transactions and not trafficking.

### **Evidence of Trafficking**

Regarding Appellant's contentions about the legitimacy of the ALERT system and transaction reports that are not supported by sworn statements by an investigator or sales receipts, the USDA uses the ALERT system to identify transaction patterns indicative of trafficking. However, this tool does not, by itself, determine or conclude that trafficking has occurred. The Retailer

Operations Division analyzes the transaction data and patterns along with other documentation such as information from the onsite store visit report including photographs of stock and the store layout, an analysis of recipient shopping behavior, and comparisons with similar store types in local area, to render a determination as to whether or not the questionable transaction patterns were, more likely than not, the result of trafficking. SNAP regulations, at 7 CFR § 278.6(a), support the use of the ALERT system and state that FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, and that such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through, inconsistent redemption data, and evidence obtained through a transaction report under an electronic benefit transfer system.

### **No Prior Violations**

Appellant contends that the store owner was not aware of, had not approved of, had not benefitted from, and was not involved in conducting or approving trafficking violations and that if they occurred, they would be the first such violations in the store.

Regarding this contention, this review acknowledges that the owner may not have been aware of or may not have intended for the trafficking violations to occur at the store. However, the record shows that the owner signed an application to participate as a retailer in SNAP. By signing the application, the owner agreed to accept responsibility on behalf of the firm for compliance with all statutory and regulatory requirements associated with participation in SNAP. The record clearly establishes that the owner agreed to abide by program rules, including taking responsibility for violations committed by any of the firm's employees, whether paid or unpaid, new, full-time or part-time. An owner or manager is not free of responsibility simply because he or she was not in the vicinity at the time the violations occurred or because he or she was uninvolved in the violations. Regardless of which clerks are operating the cash register at a given time and regardless of whom firm ownership authorizes to handle store business, the ownership of the firm is ultimately responsible for the proper training of staff and the monitoring and handling of SNAP benefit transactions. As such, the owner's alleged lack of knowledge or intent in this matter is not a valid reason to dismiss the charges or modify the penalty in any way.

As to the contention that this is Appellant's first violation, statute at 7 U.S.C. § 2021(b)(3)(B) and SNAP regulations at 7 CFR § 278.6(e) require that when trafficking occurs, permanent disqualification is the necessary penalty, even on the first occasion, regardless of a firm's prior compliance with program rules. This review finds that the sanction imposed by the Retailer Operations Division in this case fully conforms to SNAP regulations and is consistent with sanctions imposed upon other retail stores that have committed similar first-time violations. Further, this review has no authority to reduce a period of disqualification in a case in which trafficking violations were found to have occurred.

### **Summary**

This review finds that the attachments furnished with the charge letter adequately identify irregular patterns of SNAP transactions, thereby indicating that trafficking was likely taking place. The transactions listed in the charge letter are highly unusual and substantially different

from comparable stores in the area. Based on these and other factors, such as the store's physical characteristics and inventory and household shopping patterns, the case for trafficking is convincing.

On review, the Appellant failed to prove, by a preponderance of the evidence, that the administrative action should be reversed. The Appellant has not offered sufficient and compelling evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the charge letter were not caused by trafficking. Given the totality of the record, this review finds the transactions listed in the charge letter attachments were, more likely than not, the result of trafficking violations committed by the Appellant. Therefore, the Retailer Operations Division's decision to impose a permanent disqualification against Prescott Express Market is sustained.

### **CIVIL MONEY PENALTY (CMP)**

In the charge letter, the Retailer Operations Division informed Appellant of its right to request a trafficking CMP under 7 CFR §278.6(i). Appellant was informed that it would need to provide both the request and supporting evidence within 10 calendar days of receiving the charge letter and that no extension of time could be granted for making the request or for providing the required evidence. The criteria for a trafficking CMP in lieu of disqualification is defined under 7 CFR §278.6(i) which reads, *inter alia*:

In determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of a permanent disqualification for trafficking, the firm shall, at a minimum, establish by **substantial evidence** [emphasis added] 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 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; or it is only the first occasion in which a member of firm management was aware of, approved, benefited from, or was involved in the conduct of any trafficking violations by the firm ....

The Retailer Operations Division found the firm was ineligible for a trafficking CMP in lieu of disqualification under 7 CFR § 278.6(i) because Appellant failed to submit, within the specified

timeframe, evidence of an effective compliance policy and program to prevent SNAP violations. This review agrees.

In support of its eligibility for a trafficking CMP, Appellant claims to have had and implemented an effective compliance policy and program to prevent program violations when the alleged violations occurred. Appellant says the manager and owner have been diligent in enforcing program rules to prevent violations and says that training is provided by ongoing verbal instruction and constant reinforcement of the rules through FNS approved posters at the register. Also, employees who work at the register are required to read and understand the Training Guide for Retailers. As evidence of its compliance policy and program, Appellant submitted affidavits signed by the store owner, store manager, and a store clerk claiming that a compliance policy and program had been continuously in place during the review period, as well as eight photographs showing SNAP posters in the area of the cash register and copies of The Training Guide for Retailers.

However, Appellant did not submit any signed employee agreements or documents signed by employees with the dates of when any training actually occurred. While the affidavits attested to a compliance policy and program being in place when the alleged violations occurred, Appellant submitted no contemporaneous documentation that could verify that training actually occurred prior to the review period or that a compliance policy was in place.

The standards of eligibility for a trafficking CMP are high. They require substantial proof that a compliance policy and program was established and implemented prior to the occurrence of violations. These standards exist to thwart attempts to falsely present compliance policies and programs that were not actually implemented prior to violations. Appellant is ineligible for a trafficking CMP because it failed to meet the standards under 7 CFR § 278.6 (i). Based on the analysis above, the Retailer Operation's Division's decision not to impose a trafficking CMP in lieu of disqualification is sustained.

## **CONCLUSION**

The Retailer Operations Division's analysis of the EBT transaction record for Prescott Express Market was the primary basis for its determination to permanently disqualify the retailer. This review finds this data provides substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. The store visit record and the Retailer Operations Division's supporting analysis further support a trafficking determination. Appellant has not proven, by a preponderance of evidence, that the administrative action should be modified or reversed.

Based on a review of all the information available in this case, the determination by the Retailer Operations Division to impose a permanent disqualification against Prescott Express Market, under the ownership of Mussa Hamoud Saleh Al Shuga, is sustained. Likewise, the Retailer Operations Division's determination that Appellant was ineligible for a trafficking CMP is sustained.



## **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this determination are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in SNAP regulations, at 7 CFR § 279.7. If 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 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, 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.

MICHELLE WATERS  
ADMINISTRATIVE REVIEW OFFICER

May 20, 2022