

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

**1st Ave Mini Mart,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0218183**

**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 Retailer Operations Division to impose a permanent disqualification against 1st Ave Mini Mart (hereinafter 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 of the Code of Federal Regulations (CFR) § 278.6(a), (c) and (e)(1)(i), when it imposed a permanent disqualification against Appellant on July 11, 2019.

**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 June 25, 2019, the Retailer Operations Division charged Appellant with trafficking based on a series of irregular SNAP transaction patterns that occurred in November 2018 through April 2019. 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 responded to the charges in a letter dated June 27, 2019, that admitted to the firm offering credit. Upon receipt of this response admitting to offering credit, the Retailer

Operations Division requested evidence of credit accounts by letter dated June 27, 2019, that was received by Appellant on June 28, 2019. Appellant responded in a letter dated June 30, 2019, which included evidence in support of credit accounts. The Retailer Operations Division notified Appellant by letter dated July 11, 2019, 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 dated July 17, 2019, Appellant appealed the Retailer Operations Division'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 six month period of November 2018 through April 2019. This involved three patterns of EBT transaction characteristics indicative of trafficking:

1. There were an unusual number of transactions ending in a same cents value.
2. Multiple transactions were made from individual benefit accounts in unusually short time frames.
3. 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 firm is in a low property area, serves a very large and undeveloped community, and was one of the first black-owned businesses in the city. The reasons for the transactions are because the owner allowed credit because some of the people in the community depend on him to help them out throughout the month as they do not have enough food to last until the next SNAP benefit date. This is a very poor community and the owner could not refuse to help them. The households pay him back when they receive their SNAP. Some multiple transactions may occur because the owner allows customers to pay some of their credit before shopping and the rest after. The owner will stop allowing credit because he doesn’t want to lose SNAP;
- The owner does not keep records once the credit is paid, but does have the last month’s credits written down and has attached the balances that have not been cleared yet; and,
- The store has been in business for 30 years and the owner made a promise when he took over to continue helping people in the community. There are elderly on a fixed income, single mothers, and families with barely enough food to last until the next allotment. Some customers do not have transportation to other stores so they shop here. The firm provides the food (sandwich meat, bread, etc.) for them to make it through. The customers will be hurt if SNAP is stopped and the firm will have to close.

Appellant submitted 12 credit log pages and a petition asking that SNAP be kept in the community 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 initially authorized the firm on May 3, 2017. The record indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a May 19, 2019, store visit conducted by a 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 crowded store offering an extremely limited quantity and variety of staple foods and carrying no other unique items or offering any distinctive services.
- The store stocked traditional American brands and no ethnic or specialty food items.
- The store visit report showed no shopping carts or handheld 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 cased items were available for purchase except for many cases of beer, water, and 12 packs of soda.
- The store visit report specifically noted that the firm was not a specialty store and that there were no meat packages, fish specials, or fruit and vegetable boxes for sale.
- The checkout area consisted of an opening in a plastic security wall that was approximately 1.0 feet wide and 1.0 feet deep leaving a very limited area for customers to place their purchases. 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 cashier.

- The firm had an extremely limited stock of staple foods that also included many single serving and pre-packaged items with a significant portion of inventory in soda, candy, snacks, and other drinks as well as many ineligible items.
- There was a microwave oven for use in heating frozen single serving sandwiches.
- The firm had no fresh or frozen unprocessed meat or seafood, a very limited quantity and variety of processed meat and seafood (canned meat, poultry, and fish; six hot dogs, many 5.0 ounce packages of lunch meat, and jerky), no deli meat, no bacon, no sausage, no frozen entrees except for two small packages of frozen processed wings, no frozen dinners, two eggs, no fresh or frozen fruit or vegetables except for two onions, no dried fruit or vegetables except for dried beans, single serving packaged nuts, 100 percent fruit and vegetable juices, a limited stock of canned soups, a very minimal quantity and variety of canned and packaged staple food items, no deli cheese, no packaged cheese, no large yogurt, no single serving yogurt, no single serving yogurt drinks, limited quantities and varieties of butter/margarine with margarine being sold by the stick, no sour cream, fresh milk, no single serving fresh milk, no single serving milk drinks, four canned milk, no coconut milk, no soy milk, no Lactaid milk, no powdered milk, no cream cheese, several bread, no rolls, no tortillas, no pitas, no tostadas, two corn meal, six small flour, sugar, 10 small rice, no cold cereal, no single serving cold cereal, several cereal bars, seven hot cereal, many single serving noodle soups, no canned pasta, several single serving pasta, no dry pasta, dry noodles, no pancake mix, mac&cheese, no single serving mac&cheese, single serving heat&eat sandwiches, no frozen burritos, no Hot Pockets, cooking oil, no coffee, no tea, no cocoa, no baby foods, no baby cereals, no infant formula, no baby juices, and few if any expensive staple food items.
- Ineligible items included: tobacco, tobacco accessories, alcohol, household products, paper products, pet products, auto products, health and beauty items, ATM, charcoal, lighter fluid, jewelry, sunglasses, and two video gaming machines while accessory foods included: candy, condiments, snacks, baked goods, sugar, single serving ice cream, spices, cooking oil, five small baking mixes, and un/carbonated drinks.
- The firm's hours of operation were open 24/7 per the store cashier who also stated the firm did not take phone or online grocery orders, did not deliver groceries, and did not round price totals up/down.
- Signage was in English and there were no SNAP posters (anti-fraud, eligible items, reporting trafficking, etc.) visible in the store. There was a small sign posted at the checkout saying No Credit.
- Most food items were priced and comments on the FNS store visit report, completed in conjunction with the cashier, specifically stated that most food prices end in .x9 cents. A price ending in .x9 cents is the most common pricing structure for stores of this type.
- The store visit report listed the most expensive food items costing more than \$5.00 for sale in the store as being a 10 ounce box of TGI Friday Wings priced at \$5.99. Normally the four most expensive items are listed, but in this case there was only one item priced for \$5.00 or higher. It was noted that there were only two boxes in stock. This listing of the most expensive items was provided by the store cashier during the store visit.
- The firm was not a WIC vendor.
- The quantity and variety of the store's staple food inventory was less than that seen during the previous FNS store visit on April 21, 2017.

## **Unusual numbers of transactions ending in a same cents value**

This attachment lists 99 transactions ending in a same cents value of 0.50 cents.

**5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. When such repetitive patterns are unsupported by special pricing structures they are a strong indicator of trafficking in SNAP benefits. The FNS store report and photos revealed no signs posted to indicate special food packages, bundles, case sales, or other sales that would explain the unusual number of transactions ending in these same cents values and no bulk items were available for purchase. The high percentage of same cent transactions combined with the large number of high dollar transactions is irregular and suspicious for this type store.

Appellant provided no documentation or explanation to support the legitimacy of the listed transactions in this Attachment.

The FNS store visit form includes many questions that are answered in conjunction with the store employee authorizing the store visit which in this case was the cashier. The cashier responded to a question concerning the firm's pricing plan stating that the firm had food items with prices ending in .x9 cents. This fact was confirmed by the many photos taken during the visit that only showed food items with prices ending in .x9 cents. The purchase of several items with prices ending in .x9 cents like those evident during the visit would most likely not result in a total ending in a same dollar amount of .50 cents as multiples of nine seldom have a value ending in this amount making it statistically impossible that this many store transactions would end in .50 cents. When there are a disproportional amount of transactions ending in a same cent value, it appears that these transaction amounts are contrived and therefore, in the absence of any compelling rationale to the contrary, are indicative of trafficking.

While some transactions in this Attachment may have been for legitimate staple food purchases, particularly those in the lower dollar amounts, there is insufficient evidence that these repeating same cent transactions are legitimate. When many transactions end in a same cents amount, it appears that these transaction amounts are contrived and therefore, in the absence of compelling evidence to the contrary, are suggestive of trafficking. As such, the transactions in this Attachment have not been adequately documented as legitimate and therefore do not constitute valid grounds for dismissal of the current charges of violations or for mitigating their impact.

## **Multiple transactions in unusually short time frames**

This Attachment documents 24 individual transactions in 11 sets of two or more transactions conducted by eight different households in a short period of time.

**5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The dollar amounts of subsequent transactions in each set are substantial and nearly equal or exceed the dollar amount of the initial transaction in nine of the 11 sets. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. There are two transaction sets and one pair of transactions in a set containing three individual transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** which is an unusually short amount of time given the many steps required to complete a SNAP transaction combined with the firm's very small checkout area, the lack of high priced eligible food items, the lack of a scanner, and the lack of any shopping carts or hand baskets with which to transport a large number of inexpensive items to the checkout counter. Two sets are comprised

of three individual transactions while the remaining nine sets are comprised of two individual 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.

Appellant contends that some multiple transactions may occur because the owner allows customers to pay some of their credit before shopping and the rest afterwards.

SNAP households have no limits on the number of times they may use their SNAP benefits or the dollar amount of eligible food they may purchase. The SNAP transactions at the Appellant firm are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of the firm'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, or of a household making a payment on a credit account followed by another transaction for food items being purchased as all but two of the transaction sets in this Attachment **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. It would make no sense for a customer to travel to the firm to make a payment on their credit account and then make a second trip hours later to purchase needed food. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Appellant also offers no explanation as to why households would conduct up to three sizeable transactions at a very poorly stocked store within a short period of time when they are also shopping at the many comparably sized or larger retail food stores located nearby that includes a super store located 0.64 miles away with an additional supermarket, large grocery store, and a small grocery store 1.13-1.73 miles away. The availability of other larger SNAP retail stores nearby combined with the firm's very limited stock of staple foods make it unlikely that any SNAP household would consider the Appellant firm as their primary source for groceries.

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 **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** when the comparable average convenience store SNAP transaction amount in Dallas County during the review period was \$7.16. 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 like type grocery stores further supporting that trafficking was occurring at the Appellant firm during the period under review.

The Retailer Operation Division'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 comparably sized or larger food stores located nearby and at a distance from Appellant's location, including super stores and supermarkets. Their analysis also shows these households shopped at the Appellant firm and at a super store and/or supermarket **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** and inexplicably spent more at Appellant's store than they did

at the super stores and supermarkets. Appellant failed to offer any explanation or rationale as to why households who are regularly shopping and spending large dollar amounts at many larger and better stocked stores would conduct multiple purchases often totaling to comparable or higher dollar amounts at a very poorly stocked store. There is no legitimate reason why households would spend so much of their SNAP allotment at the Appellant firm when they clearly had access to and frequently shopped at super stores and supermarkets. 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 supermarkets they were already regularly shopping at and therefore the more plausible explanation is that they were trafficking SNAP benefits at the Appellant firm.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). There is no legitimate reason why these two households and other households that exhibited similar shopping patterns indicative of trafficking, but are not included in this decision for the purpose of brevity, would spend so much of their SNAP allotment at an extremely poorly stocked convenience store when they clearly had access to and frequently shopped at super stores and supermarkets located nearby and at a distance. The more plausible explanation is that these households were trafficking at the firm.

There may be legitimate 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 158 individual EBT transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The substantial number of high dollar transactions is uncharacteristic for a store offering an extremely limited stock of staple foods and calls into question the legitimacy of these transactions. The transactions are substantially higher than the average SNAP transaction amount of \$7.16 for this store type in Dallas County. There are also an unusually high number of transactions for the exact same dollar amount with most ending in .50 cents 5 U.S.C. § 552 (b)(6) & (b)(7)(C), to cite the largest transactions that are not supported by store inventory or by the firm's pricing structure of most items having prices ending in .x9 cents as evidenced during the FNS store visit. This is unusual and indicative of trafficking as previously discussed.

The evidence under review shows that SNAP households shopping at the Appellant firm are also shopping at many full-line super stores, and supermarkets located nearby as well as at a distance from Appellant's location, that offer a greater quantity and variety of SNAP eligible foods items for better prices than customers can find at the Appellant firm. These high dollar value transactions remain questionable when considering the proximity of the 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 limited, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of their purchases at larger food stores.



While households residing in areas with extremely limited grocery store options may conduct high dollar transactions at convenience stores out of necessity, this is not the case when they have better alternatives. FNS records show there are seven comparably sized or larger SNAP retailers located within a 1.0 mile radius of the Appellant firm that includes one super store and six convenience stores as well as a supermarket, large grocery store, and a small grocery store located 1.13-1.73 miles away. These many larger stores would offer greater quantities and varieties of staple food items at lower prices than would be found at a very poorly stocked convenience store offering no fresh or frozen unprocessed meats or seafood and virtually no fresh or frozen fruit and vegetables.

The difference in the average SNAP transaction amount, the total SNAP transaction dollar volume, and the total SNAP transaction count for Dallas County convenience stores during the review months and at the Appellant firm is significant. Appellant's average SNAP transaction dollar amount is 4.19 percent less than that of Dallas County convenience stores while its average SNAP transaction dollar volume is 5 U.S.C. § 552 (b)(7)(E) larger and its total SNAP transaction count is 5 U.S.C. § 552 (b)(7)(E) larger than the County average. The extremely high number of SNAP transactions and the large dollar volume combined with the lower average SNAP transaction dollar amount is an indication 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 Retailer Operations Division 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 Dallas 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 is significantly higher than that of like type stores in all ranges 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This transaction pattern and the unusual spikes in both transaction numbers and dollar volume do 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 Retailer Operations Division determined there was no credible reason for the firm to have transactions at these dollar levels given the very 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.

Appellant again offered no documentation or explanation to support the legitimacy of the listed transactions in this Attachment.

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 Retailer Operations Division shows that households in this Attachment 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 Appellant firm since its cost of goods is higher than that of larger stores such as super stores or supermarkets.

Information obtained during the October 29, 2018, FNS store visit shows that the Appellant firm offers an extremely limited stock of staple foods that also includes many single serving and pre-packaged items with a significant portion of inventory in drinks, candy, and snacks as well as many ineligible items. The fact that tobacco, tobacco accessories, alcohol, household products, paper products, pet products, auto products, health and beauty items, ATM, charcoal, lighter fluid, and jewelry, sunglasses, and two video gaming machines are not eligible for purchase with SNAP benefits also provides no justification for the high transaction amounts.

Higher food prices make it even more unlikely that SNAP recipients, with very limited food benefits, 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 handbaskets 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 an extremely 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.

It is further noted that SNAP redemptions at the Appellant firm fluctuated unusually following the FNS store visit on May 19, 2019. The volume of SNAP redemptions at the Appellant firm decreased 36.44 percent from April 2019 to June 2019 while the number of SNAP transactions decreased 14.91 percent and the average transaction amount decreased 25.3 percent during the same period of time. 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 this discussion, Appellant did not provide adequate evidence to support the legitimacy of the excessively large transactions in this Attachment.

### **Credit Contentions**

Appellant contends the firm allows credit accounts, a violation of SNAP regulations at Section

278.2(f), as evidenced by Appellant's written statements. While ownership may or may not have personally conducted the violative transactions, SNAP rules and regulations state that regardless of whom store ownership may utilize to handle store business or their degree of involvement in store operations, the ownership is accountable for the proper training of staff and the monitoring and handling of all SNAP benefit transactions. When ownership signed the certification page of the SNAP retailer application to begin operating as a SNAP retailer, it confirmed it understood and agreed to abide by program rules and regulatory provisions. It agreed to accept responsibility for SNAP violations including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time. This certification page specifically cites violations such as accepting SNAP benefits as payment on credit accounts or loans. The certification is clear that 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. Despite agreeing to abide by SNAP rules and regulations, ownership now admits that the firm allowed credit accounts, a clear violation of SNAP regulations and rules. Additionally, the SNAP Retailer Training Guide and the training video, provided to all retailers upon initial authorization, cite credit accounts as violating SNAP regulations. Had ownership reviewed the SNAP training materials or trained its employees using them, it is inconceivable that it could not have been aware that credit accounts violate SNAP regulations.

Ownership's admission to extending credit is documented in the case file under review and is not contested. Accepting SNAP benefits for payment on credit is a violation of Section 278.2(f) and warrants a one year disqualification period as specified by Section 278.6(e)(4). It is the agency's position that credit violations constitute owner or management involvement and that a one year disqualification is the base sanction. To refute charges of trafficking, the retailer must provide adequate proof that credit accounts existed at the time the suspicious transactions occurred so that a comparison can be made with transactions outlined in the charge letter. A level of detail regarding the legitimacy of credit accounts is necessary since retailers have long admitted to credit in an attempt to garner a lesser penalty after committing more egregious violative acts. Credit transactions must be accounted for with substantive evidence such as the dates credit was extended, to whom, for what amount, and for what items. If such exculpatory evidence is not advanced, the appropriate penalty is permanent disqualification.

A review of Appellant's credit log pages by the Retailer Operations Division shows that they were for June 2019 which is not part of the review period. While the pages do provide the dates of credit purchases made during the month, they do not include a detailed or itemized breakdown of what items were purchased, their unit cost, or the dates and dollar amounts of credit payments. The 12 households listed are also not sufficient to account for transactions by the more than 50 households listed in the charge letter. It is also noted that the FNS store visit photos show a sign at the checkout area stating that "no credit" is permitted which cast doubt on the legitimacy of Appellant's claim of credit being extended to customers.

Accordingly, the documents offered by Appellant do not provide substantial evidence that the store permitted credit accounts during the review period. Since Appellant was unable to account for any of the charge letter transactions as being due to credit, the original determination made by the Retailer Operations Division was evaluated to determine if trafficking occurred. The transactions showed clear and repetitive patterns of unusual, irregular, and inexplicable SNAP

activity indicative of trafficking as previously discussed.

### **Other Contentions**

The purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division 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, the 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 violations of the SNAP 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.

Appellant's submission of a pre-printed petition asking that SNAP be kept in the community has no bearing on the matter under review.

The ownership 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 Retailer Operations Division 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.

It is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in SNAP. However, there is no provision in the SNAP regulations for waiver or reduction of an administrative penalty assessment on the basis of possible economic hardship to the firm or to ownership resulting from imposition of such penalty. To allow ownership to be excused from an assessed administrative penalty based on purported economic hardship to the firm would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008, as amended, and the enforcement efforts of the USDA. Furthermore, giving special consideration to economic hardship to the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are

complying fully with program regulations, but also to those retailers who have been disqualified from the program in the past for similar violations. Therefore, ownership's contention that the firm may incur economic hardship based on the assessment of an administrative penalty does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

### **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 Retailer Operations Division determined that the Appellant was not eligible for a trafficking CMP in lieu of a disqualification under 7 CFR 278.6(i) because Appellant failed to 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 timeframe. As such, the Retailer Operations Division 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 request or provide substantial evidence that it met all four criteria required by 7 CFR §278.6(i). Based on the above, the Retailer Operations Division's decision not to impose a CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR §278.6(i).

### **CONCLUSION**

The Retailer Operations Division 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 three 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 Retailer Operations Division 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

November 5, 2019