

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

**Beech Grocery Corp,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0184040**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is sufficient evidence to support a finding that a permanent disqualification from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against Beech Grocery Corp. (Appellant) by the Retailer Operations Division of FNS.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(e)(1)(i) in its administration of the SNAP, when it imposed a permanent disqualification against Beech Grocery Corp. on June 12, 2019.

**AUTHORITY**

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

**CASE CHRONOLOGY**

In a letter dated January 7, 2016, the Retailer Operations Division informed the Appellant that Beech Grocery Corp. was in violation of the terms and conditions of the SNAP regulations, 7 CFR § 270 –282, based on EBT SNAP benefit transactions that "establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm."

In a response to the Retailer Operations Division of January 15, 2016 (received by the Retailer Operations Division on February 8, 2016), the Appellant’s counsel requested information and documents from FNS with regard to the agency’s case against Beech Grocery Corp. pursuant to

the Freedom of Information Act (FOIA). In a letter dated April 1, 2016, FNS provided a response to counsel's FOIA request. The record indicates that in a letter dated May 13, 2016, the Appellant's counsel filed a FOIA appeal with FNS. In a letter dated September 17, 2018, FNS provided a response to counsel's FOIA appeal. The record indicates that in a letter dated April 16, 2019, the Appellant filed a second FOIA appeal with FNS. In a letter dated August 7, 2019 and received by the Appellant on August 9, 2019 (per UPS confirmation), FNS provided a response to the Appellant's FOIA appeal.

After considering the Appellant's replies and the evidence in the case, the Retailer Operations Division issued a Determination Letter dated June 12, 2019, informing the Appellant that Beech Grocery Corp. was being permanently disqualified from participation in the SNAP in accordance with 7 CFR § 278.6(e)(1) for trafficking violations. The letter also stated that the Appellant was not eligible for a trafficking civil money penalty (CMP) as the Appellant did not submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter postmarked June 18, 2019, the Appellant requested an administrative review of the Retailer Operations Division's decision to permanently disqualify the firm from participation in the SNAP. FNS granted the Appellant's request for administrative review by letter dated June 27, 2019. In a letter postmarked July 17, 2019, the Appellant provided additional information to FNS in support of its case.

### **STANDARD OF REVIEW**

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

### **CONTROLLING LAW**

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, amended, 7 U.S.C. § 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 2021, Part 278.6(a) and Part 278.6(e)(1)(i) of the Regulations establish the authority upon which a permanent disqualification may be imposed upon a retail food store or wholesale food concern. There also exist FNS policy memoranda and clarification letters which further explain the conditions necessary in order to permanently disqualify retail stores.

7 U.S.C. § 2021(b)(3)(B) states, inter alia:

... a disqualification under subsection (a) shall be ... permanent upon ... the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards ...

7 CFR § 278.6(a) states, inter alia:

FNS may disqualify any authorized retail food store ... if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system ... [Emphasis added].

7 CFR § 278.6(e)(1)(i) states:

Disqualify a firm permanently if: Personnel of the firm have trafficked as defined in § 271.2.

7 CFR § 271.2 states, inter alia:

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

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

A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification.

7 CFR § 278.6(i) states, inter alia:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking as defined in § 271.2 if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations ...

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

(ii) Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence as specified in § 278.6(i), that establishes the firm's eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in § 278.6(i). This information and evidence shall be submitted within 10 days, as specified in § 278.6(b)(1). [Emphasis added].

(iii) If a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified in § 278.6(b)(1), the firm shall not be eligible for such penalty. [Emphasis added].

## **SUMMARY OF CHARGES**

The Appellant was charged and determined to be trafficking based on an analysis of EBT transaction data from July 2015 through November 2015. This involved the following SNAP transactions patterns which are indicative of trafficking:

- There were an unusual number of transactions ending in a same cents value;
- There were multiple transactions made from individual benefit accounts in unusually short timeframes;
- The majority or all of individual recipient benefits were exhausted in unusually short periods of time; and
- There were excessively large purchase transactions made from recipient accounts.

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that questionable transactions were the result of trafficking.

## **APPELLANT'S CONTENTIONS**

The following represents a brief summary of the Appellant's contentions in this matter. Please be assured, however, that in reaching a decision, full attention and consideration was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

In the replies to the Charge Letter, in the administrative review request, and in subsequent correspondence to FNS, the Appellant, through counsel, stated the following summarized contentions, in relevant part:

- The questionable SNAP transactions outlined in the Charge Letter are the result of Beech Grocery Corp. accepting SNAP benefits as repayment on credit accounts from SNAP customers upon receipt of their monthly EBT benefit allotments. This is the reason why some transactions are higher on certain days of the month. The Appellant does not want to turn any customers away that are hungry.
- Many of the Appellant's customers purchase different grocery products more than three or four times a day due to the fact that the store is the only deli within a considerable distance that accepts EBT. This is especially common within the hours beginning and ending the day. Many households are not always able to go to the supermarket any time they need food products and supermarkets are not open late causing customers to go to delis and spend large amounts. Supermarket pricing is also considerably higher than the Appellant firm allowing clients with limited SNAP funds to buy more compared to the supermarket. The Appellant offers a large variety of nutrition products. It is impossible for the Appellant to finalize a sale without SNAP customers entering their PIN manually. The Appellant has never received a limit on how many times a customer can come and purchase necessary food products.
- The Appellant agrees to fully comply with USDA to demonstrate that all SNAP regulations have been followed by employees. The SNAP regulations have been the

Appellant's guide to processing SNAP transactions since the store was initially authorized. The Appellant understands that participation as a retailer in the SNAP is a privilege and that no business or customer should violate the SNAP regulations. The store owners have taken all necessary actions to remedy the current situation at hand and to ensure that the SNAP rules are followed. The owners have made a personal commitment, along with employees, to study and follow the SNAP regulations. The Appellant has hired new staff that have been trained on the SNAP rules and to not commit SNAP violations.

- The Appellant is located on the same block of the New York City Section 8 and a permanent SNAP disqualification will impose a hardship on the people living in these locations due to the fact that the Appellant firm opens early, closes late, and there are not many other delis within walking distance that accept SNAP benefits. For special needs clients, it is also dangerous and difficult to walk far from their apartments. The supermarkets are far away and close early.
- In the June 16, 2019 request for administrative review, the Appellant submitted a FOIA request for all USDA records for the store's EBT license. The Appellant still has not received the complete requested package to detail and defend all allegations brought forward by USDA. The Appellant finds it odd that its EBT license has been suspended with the FOIA being requested. From its understanding of the USDA regulations, once a FOIA is requested, no actions can be taken until the Appellant receives the documentation.
- The Appellant requests that a civil money penalty be imposed in lieu of a permanent SNAP disqualification and requests an opportunity to complete any and all requirements to continue to participate in the SNAP.

In support of these contentions, the Appellant submitted the following documents for review:

- Signed affidavits of two store employees, dated June 16, 2019, attesting that SNAP training was received;
- Sample cash register receipts (29 total) of EBT transactions dated May 2019 and June 2019; and
- FOIA appeal dated June 16, 2019.

## **ANALYSIS AND FINDINGS**

### **Store Characteristics**

FNS authorized Beech Grocery Corp. as a small grocery store on February 18, 2010. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during an August 6, 2015 store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information obtained from the store visit was also used to ascertain if there were justifiable explanations for the firm's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Approximately 800 square feet in size with no additional storage outside of public view;

- No shopping carts or hand-held baskets available for customer use;
- One cash register and one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;
- One checkout counter area with limited check-out counter space;
- No optical scanners;
- No signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, and grocery package deals;
- No meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices;
- No evidence of a wholesale business such as posted prices or separate entrances for wholesale customers;
- No fresh or frozen meats, poultry, or seafood;
- Had a deli counter and prepared, made-to-order cold and hot deli sandwiches were sold;
- Had a kitchen and hot foods were sold;
- Meat items included units of canned/potted meat, eggs, canned fish, bacon, hot dogs, and lunch meat;
- Dairy included milk, margarine, yogurt, and cheese;
- A limited variety and amount of fresh produce stock;
- Other staple foods available for purchase included such items as juice, pasta, rice, cereal, baking mix, flour, buns/rolls, loaf bread, corn meal, and canned goods;
- Much of the remaining food stock consisted of accessory foods such as candy, carbonated and non-carbonated drinks, vegetable oil, coffee, sugar, and condiments; and
- Ineligible nonfood items included tobacco products, health and beauty aids, paper products, household cleaning supplies, alcohol, over-the-counter medications, and household items.

The available inventory of SNAP eligible food at the time of the store visit showed food stock that would be typical of a small grocery store, where households normally purchase a limited number of items. 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. There was little indication that SNAP households would be inclined to regularly visit the store to purchase large quantities of groceries. Given the available inventory and the store's characteristics, this review could find no reason why the Appellant firm's SNAP redemption patterns differed so significantly from those of similar sized competitors.

### **Charge Letter Attachments**

On review, the investigative materials provided by the Retailer Operations Division, including computer printouts of transaction data available from Federal records, store visit observations, information regarding area competitor firms, and household shopping patterns, were analyzed.

Government analyses of stores caught in trafficking violations during on-site investigations have found that transactions involving trafficking consistently display particular characteristics or

patterns. These patterns include, in part, those cited in the letter of charges. 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.

The Retailer Operations Division presented a case that the Appellant trafficked SNAP benefits. Each Attachment furnished with the letter of charges represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at the Appellant store during the review period. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

### **Credit Transactions**

The Appellant contends that the questionable SNAP transactions outlined in the Charge Letter are the result of Beech Grocery Corp. accepting SNAP benefits as repayment on credit accounts from SNAP customers upon receipt of their monthly EBT benefit allotments. This is the reason why some transactions are higher on certain days of the month. The Appellant does not want to turn any customers away that are hungry.

When a retailer claims it maintains credit accounts to explain irregular SNAP transactions and data patterns, FNS requires a level of detail regarding the legitimacy of the claim. This is because retailers have often made false admissions of credit in an attempt to obtain a lesser penalty after committing more egregious violations such as trafficking. Credit transactions must be accounted for with substantive evidence such as the dates credit was extended, to whom, for what amount, and for what items.

The Appellant did not provide any evidence or documentation in support of its contention of credit extension to SNAP households. FNS reviewed the information provided from the Appellant and properly determined that the information was insufficient to support the Appellant's credit extension contention for the following reasons:

**5 U.S.C. § 552 (b)(7)(E).**

In conclusion, although Beech Grocery Corp. may have, on a rare occasion, accepted SNAP benefits as repayment on credit accounts, the evidence submitted by the Appellant does not support its contention that the irregular SNAP transactions listed in the Charge Letter are due to repayment on credit accounts.

### **Same Cents Transactions (Charge Letter Attachment 1)**

This Charge Letter Attachment documents transactions ending in same cents values. A review of the store visit record indicates that the store did not promote any specials that could explain the pattern of large numbers of transactions ending in these values.

**5 U.S.C. § 552 (b)(6) & (b)(7)(C).**

Beech Grocery Corp. conducted 4,835 SNAP transactions during the review period. There were a total of 2,177 SNAP transactions that met the parameters of this Scan. Of these, a total of 955 transactions, or 45.11%, ended in \$x.00 and 461 transactions, or 21.28%, ended in \$x.50.

A number of households whose transactions were cited in other Attachments to the Charge Letter also consistently made transactions that ended in same cents values. Transactions appearing in more than one Attachment to the Charge Letter are more suspicious as they display multiple patterns common to trafficking transactions.

With regard to the Appellant's credit extension contention, as noted previously, the information provided by the Appellant is not sufficient to support that these questionable SNAP transactions are due to repayment of credit accounts by SNAP customers.

The SNAP regulations do not prohibit SNAP transactions that end in a same cents number value. However, an interesting characteristic of questionable transactions is that many of them end in a same cents value. Sets of repeating digits are highly unorthodox and do not regularly occur in legitimate transactions; such transaction structuring is a common hallmark of trafficking activity. In the absence of any compelling rationale to the contrary, these patterns strongly indicate that the firm is trafficking in SNAP benefits.

Attachment 1 to the Charge Letter documents transactions ending in a same cents value. The store visit record indicates that the Appellant did not promote any specials nor did it have a special pricing structure, such as prices ending in \$x.50 or \$x.00, that could explain the pattern of large numbers of transactions ending in these values. In addition, the store visit record indicates that transaction totals are not rounded up or down at the checkout counter. This Attachment includes 955 transactions ending in \$x.00 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and 461 transactions ending in \$x.50 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Patterns of transactions ending in same cents amounts indicate that SNAP transaction amounts are contrived. Random data, which legitimate transaction activity approximates, is extremely difficult to produce intentionally; it is very difficult to avoid repetitive patterns when attempting to create the appearance of normal, near-random transactions. That various customers each repeatedly had totals with identical cents values during the review period strains the credibility of the Appellant's declaration that this activity reflected the acceptance of SNAP benefits in exchange for eligible food items. As the Appellant has offered no rational explanation or supporting documentation for why such patterns might exist, it is reasonable to conclude that these same cents transactions are the result of trafficking.

### **Repeat Transactions by the Same Household (Charge Letter Attachment 2)**

This Charge Letter Attachment documents 80 sets of transactions (183 total transactions) 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP benefits to meet the parameters of this scan. These transactions were conducted by 55 different SNAP households. Multiple transactions conducted by the same household account within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by a retailer's inventory and structure.



With regard to the Appellant's credit extension contention in support of the transactions in this Attachment, as noted previously, the information provided by the Appellant is not sufficient to support that these questionable SNAP transactions are due to repayment of credit accounts by SNAP customers.

The Appellant contends that many of the store's customers purchase different grocery products more than three or four times a day due to the fact that the store is the only deli within a considerable distance that accepts EBT. This is especially common within the hours beginning and ending the day. The Appellant offers a large variety of nutrition products. It is impossible for the Appellant to finalize a sale without SNAP customers entering their PIN manually. The Appellant has never received a limit on how many times a customer can come and purchase necessary food products. In support of its contentions, the Appellant submitted sample cash register receipts (29 total) of EBT transactions dated May 2019 and June 2019.

With regard to the Appellant's contentions, although it is not uncommon for customers to have more than one transaction per day and there are no limits on the number of times EBT cards may be used or the amount of eligible foods that may be purchased, it is not common that such multiple transactions are for 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 the Appellant's stock and facilities and are therefore, indicative of trafficking. The report and photographs from the store visit offer no explanation as to why SNAP customers would routinely shop at Beech Grocery Corp. multiple times during a short period or purchase such a large volume of items, there being no great variety of products, price advantage, profusion of large packages, or significant bulk items or food cases for sale. The second, third, and fourth transactions in each set are too large to consist of forgotten items. In addition to the store's limited checkout space which is unsuitable for large transactions, Beech Grocery Corp. has no shopping carts or hand-held baskets available to customers for transporting food within the store.

The Appellant contends that many households are not always able to go to the supermarket any time they need food products and supermarkets are not open late causing customers to go to delis and spend large amounts. Supermarket pricing is also considerably higher than the Appellant firm allowing clients with limited SNAP funds to buy more compared to the supermarket. It is recognized that sometimes a firm may have unusual transaction patterns due to a recipient's lack of access to other SNAP authorized stores. However, there are 71 SNAP authorized retailers, including 25 medium grocery stores, 2 supermarkets, and 3 super stores, located within a 0.5 mile radius of Beech Grocery Corp. that can meet the nutritional needs of SNAP customers. Several of these authorized SNAP stores are larger than Beech Grocery Corp. and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store.

In addition, the record indicates that SNAP customers who shopped at Beech Grocery Corp. during the review period also shopped at other area grocery stores and, therefore, transportation to other stores is not an issue for these customers. Therefore, lack of access to other authorized stores (or the availability of other food stores) does not appear to be an explanation for the

Appellant's abnormally high SNAP transaction amounts conducted within a short timeframe of each other.

**5 U.S.C. § 552 (b)(7)(E).**

Unfortunately, the Appellant has not provided any evidence to show that the transactions listed in this Attachment were legitimate purchases of eligible foods. The arguments presented by the Appellant hold little weight without some kind of evidence to substantiate its claims.

### **Majority or All SNAP Benefits Exhausted (Charge Letter Attachment 3)**

Charge Letter Attachment 3 documents 6 suspicious transaction sets (18 total transactions) **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These transactions were conducted by six different SNAP households. Depleting the household's entire allotment in one or a few transactions, or within one or two days, leaving little or no benefits for the rest of the month is inconsistent with the normal shopping behaviors of SNAP benefit households. Therefore, transactions in which SNAP benefits are exhausted in unusually short periods of time are indicative of trafficking.

With regard to the Appellant's credit extension contention in support of the transactions in this Attachment, as noted previously, the information provided by the Appellant is not sufficient to support that these questionable SNAP transactions are due to repayment of credit accounts by SNAP customers.

The Appellant contends that many of the store's customers purchase different grocery products more than three or four times a day due to the fact that the store is the only deli within a considerable distance that accepts EBT. This is especially common within the hours beginning and ending the day. Many households are not always able to go to the supermarket any time they need food products and supermarkets are not open late causing customers to go to delis and spend large amounts. Supermarket pricing is also considerably higher than the Appellant firm allowing clients with limited SNAP funds to buy more compared to the supermarket. The Appellant offers a large variety of nutrition products. It is impossible for the Appellant to finalize a sale without SNAP customers entering their PIN manually. The Appellant has never received a limit on how many times a customer can come and purchase necessary food products.

With regard to the Appellant's contentions, a review of the store visit report and photos indicates that Beech Grocery Corp. offers a moderate amount and variety of staple food items and that it does not offer any specialty or ethnic food items that are not available at other area authorized retail food stores. There were no signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, and grocery package deals, no evidence of meat/seafood specials or bundles/plans or fruit/vegetable boxes that might sell for high prices, and no evidence of a wholesale business such as posted prices or separate entrances for wholesale customers.

As mentioned previously, there are 71 SNAP authorized retailers, including 25 medium grocery stores, 2 supermarkets, and 3 super stores, located within a 0.5 mile radius of Beech Grocery Corp. that can meet the nutritional needs of SNAP customers. Several of these authorized SNAP

stores are larger than Beech Grocery Corp. and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store. Also, as noted previously, SNAP customers who shopped at Beech Grocery Corp. during the review period also shopped at other area grocery stores and, therefore, transportation to other stores is not an issue for these customers. Therefore, lack of access to other authorized stores does not appear to be an explanation for Beech Grocery Corp.'s abnormally high SNAP transaction amounts conducted within a short timeframe of each other.

A government report on SNAP household patterns indicates that after the first day of benefit issuance, on average 80 percent of a household's allotment remains unspent. After seven days, 40 percent of benefits remain unspent. Typically two weeks elapse prior to the average household's depletion of 80 percent of its SNAP benefits while three weeks elapse prior to depleting 90 percent. Although many households do shop early in the month as opposed to later in the month, most households do not spend all or a majority of their monthly benefit allotment in only a few transactions or in a single day. Depleting one's entire allotment in one or two days or in a single day, especially in a moderately stocked small grocery store, leaving no benefits for the remainder of the month, is inconsistent with the normal shopping behavior of SNAP households. Rather, large single transactions, or multiple and high cumulative transactions which diminish balances over a short period of time soon after benefit issuance, are indicative of SNAP benefit trafficking and attempts to diminish attention to signs of the same.

The Appellant did not provide any compelling justification or evidence as to why SNAP households are spending the majority or all of their SNAP benefits in short periods of time at Beech Grocery Corp. or evidence that all of the irregular transactions cited in this Charge Letter Attachment were for eligible food items only. Based on the analysis above and in the absence of any other reasonable explanation, the irregular transaction patterns are more likely than not to be a result of trafficking in SNAP benefits.

#### **Excessively Large Purchase Transactions (Charge Letter Attachment 4)**

This Charge Letter Attachment lists 544 SNAP transactions, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These large transaction amounts are not consistent with the store's observed characteristics and food inventory. The frequency of high dollar purchases in the review period calls into question the legitimacy of these transactions.

With regard to the Appellant's credit extension contention in support of the transactions in this Attachment, as noted previously, the information provided by the Appellant is not sufficient to support that these questionable SNAP transactions are due to repayment of credit accounts by SNAP customers.

The Appellant contends that many of the store's customers purchase different grocery products more than three or four times a day due to the fact that the store is the only deli within a considerable distance that accepts EBT. This is especially common within the hours beginning and ending the day. The Appellant offers a large variety of nutrition products. It is impossible for the Appellant to finalize a sale without SNAP customers entering their PIN manually. The Appellant has never received a limit on how many times a customer can come and purchase

necessary food products. In support of its contentions, the Appellant submitted sample cash register receipts (29 total) of EBT transactions dated May 2019 and June 2019.

With regard to the Appellant's contentions, the food stock and facilities of the Appellant as reported in the store visit documentation do not appear sufficient to provide for all of one's food needs. People generally do not spend large sums at such stores. They usually stop at small grocery stores to pick up a few staple food items, such as bread, milk, or a can or two of food that they may consider are not worth a trip to the supermarket to purchase. The Appellant contends that some of the large transactions are not the result of trafficking of SNAP benefits. However, it is rare for a small grocery store such as Beech Grocery Corp. to have purchases like those included in this Attachment to the Charge Letter. This Attachment cites 544 EBT transactions during the five month period of investigation **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

The FNS store visit report and photos of August 6, 2015 show that Beech Grocery Corp. offers a moderate stock of SNAP eligible foods with no fresh meats, poultry, or seafood, no frozen meats, poultry, or seafood, a minimal variety and amount of fresh produce, and lacks an abundant depth and breadth of staple foods. The store visit inventory report and photos also show only a few expensive eligible foods in stock that would account for these large amounts as well as showing the store has limited checkout counter space and no shopping carts or hand-held baskets in which to transport the large number of items required to make up these large transaction amounts. Without these, it is unlikely that such large dollar value transactions could be for actual food purchases and more likely they are trafficking.

The store visit report and photos also indicate that there were no signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, and grocery package deals, no evidence of meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices, and no evidence of a wholesale business such as posted prices or separate entrances for wholesale customers. There is no evidence of a price advantage or custom or special services rendered at the subject store that are not offered at other authorized SNAP stores in the area. There is no evidence that the firm would be likely to have SNAP redemption patterns that differ considerably from similar sized competitors. These large transaction amounts are also not consistent with the Appellant store's inventory. Most of the food products in Beech Grocery Corp. consisted of accessory food items such as snack foods, candy, and drinks and inexpensive staple foods such as canned and packaged goods.

While the Appellant firm may be located in a neighborhood with households that qualify for SNAP benefits, these factors are not an indication that questionable transactions would be occurring at any given store. The subject store shows unusual transaction patterns that are not displayed in other similarly stocked stores. If specific household needs are causing these questionable transactions at the subject store, it would be expected that similar patterns would also present themselves at nearby firms as well. But this is simply not the case.

The Appellant contends that many households are not always able to go to the supermarket any time they need food products and supermarkets are not open late causing customers to go to delis and spend large amounts. Supermarket pricing is also considerably higher than the Appellant

firm allowing clients with limited SNAP funds to buy more compared to the supermarket. However, as noted previously, there are 71 SNAP authorized retailers, including 25 medium grocery stores, 2 supermarkets, and 3 super stores, located within a 0.5 mile radius of Beech Grocery Corp. that can meet the nutritional needs of SNAP customers. Several of these authorized SNAP stores are larger than Beech Grocery Corp. and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store.

An analysis of the shopping patterns for all of the SNAP households listed in this Attachment shows that the majority of the households shopping at Beech Grocery Corp. have access to transportation and that all are regularly shopping at a variety of larger stores, including super stores and/or supermarkets, located nearby and at several miles distance from the Appellant's location. While Beech Grocery Corp. does offer some staple food items, SNAP recipients are already shopping at other larger SNAP retailers located in proximity to the Appellant's business offering a greater quantity and variety of products, including fresh meats/seafood and produce, at lower prices.

**5 U.S.C. § 552 (b)(7)(E).**

Government analyses of stores caught in trafficking violations during on-site investigations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include, in part, those cited in the Charge letter. Therefore, based on this empirical data, and in the absence of credible evidence for 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 letter of charges evidence trafficking as the most likely explanation. Nevertheless, transactions having such characteristics do sometimes have valid explanations that support that they were the result of legitimate purchases of eligible food items, and this is why opportunities are afforded to charged retailers to explain the questionable transactions cited. In this case, however, the Retailer Operations determined that the Appellant's contentions did not outweigh the evidence. Assertions that the firm has not violated program regulations, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations.

In summary, the store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding those of similar type stores. In addition to the statistical irregularity of such high dollar transactions, the limited availability of counter space for checking out and the lack of shopping carts and hand-held baskets support the Retailer Operations Division's determination. It is not plausible that the store's customers are carrying large amounts of food around the store without the benefit of shopping carts and/or hand-held baskets. Customers purchasing such large quantities of food items would have to hold them in their arms, or enlist the help of others while shopping. Based on the preponderance of the evidence, the irregular transaction patterns cited in this Charge Letter Attachment are more likely than not the result of trafficking in SNAP benefits.

## **Corrective Action**

The Appellant contends that it agrees to fully comply with USDA to demonstrate that all SNAP regulations have been followed by employees. The SNAP regulations have been the Appellant's guide to processing SNAP transactions since the store was initially authorized. The Appellant understands that participation as a retailer in the SNAP is a privilege and that no business or customer should violate the SNAP regulations. The store owners have taken all necessary actions to remedy the current situation at hand and to ensure that the SNAP rules are followed. The owners have made a personal commitment, along with employees, to study and follow the SNAP regulations. The Appellant has hired new staff that have been trained on the SNAP rules and to not commit SNAP violations. In support of its contentions, the Appellant submitted signed affidavits of two store employees, dated June 16, 2019, attesting that SNAP training was received.

It is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division. This review is limited to what circumstances were at the basis of the Retailer Operations Division action at the time such action was made. It is not the authority of this review to consider what subsequent remedial actions may have been taken so that the store may begin to comply with program requirements. There is no provision in the SNAP regulations or internal agency policy directives for waiver or reduction of an administrative penalty assessment on the basis of after-the-fact corrective action implemented subsequent to investigative findings of program violations. Therefore, the Appellant's contention that it has taken or will take corrective actions, though they would have been valuable towards preventing future program violations, does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

## **Customer Hardship**

The Appellant contends that the store is located on the same block of the New York City Section 8 and a permanent SNAP disqualification will impose a hardship on the people living in these locations due to the fact that the Appellant firm opens early, closes late, and there are not many other delis within walking distance that accept SNAP benefits. For special needs clients, it is also dangerous and difficult to walk far from their apartments. The supermarkets are far away and close early.

7 CFR § 278.6(f) of the SNAP regulations provides for civil money penalty assessments in cases where disqualification would cause "hardship" to SNAP households because of the unavailability of a comparable participating food store in the area to meet their needs. However, this regulation also sets forth the following specific exception to such assessments there under: "A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification". Therefore, since this case involves a permanent disqualification action, the civil money penalty provision is not applicable to the present case.

## **FOIA Appeal**

The Appellant contends that in the June 16, 2019 request for administrative review, the Appellant submitted a FOIA request for all USDA records for the store's EBT license. The Appellant still has not received the complete requested package to detail and defend all allegations brought forward by USDA. The Appellant finds it odd that its EBT license has been suspended with the FOIA being requested. From its understanding of the USDA regulations, once a FOIA is requested, no actions can be taken until the Appellant receives the documentation. In support of its contentions, the Appellant submitted a FOIA appeal dated June 16, 2019.

The record indicates that in the January 15, 2016 response to the letter of charges, the Appellant's counsel requested information and documents from FNS with regard to the agency's case against Beech Grocery Corp. pursuant to the Freedom of Information Act (FOIA). In a letter dated April 1, 2016, FNS provided a response to counsel's FOIA request. The record indicates that in a letter dated May 13, 2016, the Appellant's counsel filed a FOIA appeal with FNS. In a letter dated September 17, 2018, FNS provided a response to counsel's FOIA appeal. The record indicates that in a letter dated April 16, 2019, the Appellant filed a second FOIA appeal with FNS. In a letter dated August 7, 2019 and received by the Appellant on August 9, 2019 (per UPS confirmation), FNS provided a response to the Appellant's FOIA appeal. As FNS has provided the Appellant a response to both the May 13, 2016 and April 16, 2019 FOIA appeals, policy indicates that the Appellant is not entitled to an additional FOIA appeal. As noted in the June 27, 2019 acknowledgement of administrative review, since the adverse action imposed upon the Appellant by the Retailer Operations Division in the June 12, 2019 Determination Letter was a permanent SNAP disqualification, the firm cannot be authorized to accept SNAP benefits during the administrative review process.

## **CIVIL MONEY PENALTY**

The Appellant requests that a civil money penalty be imposed in lieu of a permanent SNAP disqualification and requests an opportunity to complete any and all requirements to continue to participate in the SNAP.

In the January 7, 2016 Charge Letter the Appellant was informed by the Retailer Operations Division that, under certain conditions, FNS may impose a civil money penalty (CMP) of up to \$59,000 in lieu of permanent disqualification of a firm for trafficking. Per Section 278.6(i) of the SNAP regulations, four criteria must be met in order to be considered for a trafficking civil money penalty. If requesting a trafficking CMP, an Appellant must meet each of the four criteria listed and provide the documentation as specified within ten days of the Appellant's receipt of their Charge Letter. As specified in 7 CFR § 278.6(i), in determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of trafficking, the firm shall, at a minimum, establish by substantial evidence its fulfillment of each of the following four criteria:

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

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

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

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

If the Appellant's request for a trafficking CMP and the required documentation are not submitted on time, it will lose its right for any further consideration for a trafficking CMP. The SNAP regulations are specific at 7 CFR §278.6(b)(2)(iii) that "if a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility **within the 10 days specified**, the firm shall not be eligible for such a penalty". The regulations do not provide the agency discretion to **extend the time** within which documentation and evidence in support of a trafficking civil money penalty may be submitted.

In the Appellant's request for administrative review postmarked June 18, 2019 (i.e., dated **after the ten day required timeframe** for requesting consideration of an imposition of a trafficking CMP in lieu of permanent disqualification and providing documentation in support of its request for a CMP), the Appellant requested consideration of a civil money penalty in lieu of permanent disqualification. However, the Appellant provided no supporting documentation in support of its request.

The Retailer Operations Division determined that the Appellant was not eligible for a trafficking civil money penalty in lieu of a disqualification under 7 CFR § 278.6(i) because the 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. **5 U.S.C. § 552 (b)(7)(E).**

Therefore, the Retailer Operations Division's decision not to impose a civil money penalty in lieu of disqualification is sustained as appropriate pursuant to 7 CFR § 278.6(i).

## CONCLUSION

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

The record has yielded no indication of error or discrepancy in the reported findings by the Retailer Operations Division that program benefits were accepted in exchange for cash or consideration other than eligible food. Therefore, based on a review of the evidence in this case,



it is more likely true than not true that program violations did, in fact, occur as charged. Therefore, the decision to impose a permanent disqualification from participation in the SNAP against Beech Grocery Corp. is sustained.

### **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. 2023) and to Section 279.7 of the Regulations (7 CFR § 279.7) with respect to your right to a judicial review of this determination. Please note that if a judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which you reside or are engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

Under the Freedom of Information Act, FNS is releasing this information in a redacted format as appropriate. FNS will protect, to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy.

LORIE L. CONNEEN  
ADMINISTRATIVE REVIEW OFFICER

September 25, 2019