

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

**Boggs Gas II,**

**Appellant,**

**v.**

**Case Number: C0204605**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that a permanent disqualification of Boggs Gas II (hereinafter “Appellant”) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed by the Retailer Operations Division.

**ISSUE**

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

**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.”

**SUMMARY OF CHARGES**

The Appellant was charged with trafficking and subsequently permanently disqualified based on an analysis of EBT transaction data from May 2017 through October 2017. This involved the following transaction patterns which are common trafficking indicators:

- 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.
- Excessively large purchase transactions were made from recipient accounts.

## CASE CHRONOLOGY

The agency's record shows that FNS initially authorized Boggs Gas II for SNAP participation as a convenience store on June 13, 2008. In a letter dated January 23, 2018, the Retailer Operations Division charged the Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred between the months of May 2017 and October 2017. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also stated that the Appellant could request a civil money penalty (CMP) in lieu of permanent disqualification for trafficking, but noted that such a request must be made within 10 days of receipt of the charge letter under the conditions specified in 7 CFR § 278.6(i).

In a letter dated January 30, 2018, the Appellant, through counsel, responded to the charges by claiming that the firm was not engaged in trafficking; rather, the unusual transactions were largely the result of two employees purchasing food items from the store at various times during their shifts and rounding the transaction totals to even-dollar amounts. The Appellant further explained that unbeknownst to the store owner, the employees were also obtaining food items on credit and then paying the store back when their SNAP benefits were replenished. The Appellant stated that it has taken action to prevent further "IOU" transactions by employees: it now requires that EBT cards be swiped instead of being entered manually, and requires that cash register receipts be stapled to the EBT transaction receipt.

As for excessively large transactions, the Appellant claimed that some of these are the result of households making large purchases of soda and snacks for events. Additionally, Michigan has a 10-cent deposit on bottles and cans. As such, it is not unheard of for customers to purchase large amounts of soda and then return the containers for "real dollars" for use in other activities.

In support of its reply, the Appellant submitted copies of four itemized cash register receipts from the review period and a handwritten statement from employee 5 U.S.C. § 552 (b)(6) & (b)(7)(C), who states that because of limited transportation and resources, she obtains groceries on credit from the store each month and then pays the store back when she gets her new benefit allotment.

In response to the Appellant's claim that credit accounts were occurring at the store, the Retailer Operations Division sent the firm a letter dated February 1, 2018. In this letter, the Appellant was asked to provide documentation to support its claim of credit accounts. The letter stated that the documentation must identify specific accounts along with corresponding dates and amounts. It should be noted that the practice of allowing SNAP households to purchase food items on credit is prohibited by regulation. If a firm is found to have committed credit account violations instead of trafficking, the firm would be subject to a one-year disqualification from SNAP in accordance with regulations at 7 CFR § 278.2(f).

In a letter dated February 12, 2018, the Appellant provided additional information related to the firm's credit account activities. It reiterated that firm ownership was unaware that employees were engaged in credit accounts and has now placed safeguards to prevent future violations. The Appellant also provided a small amount of documentation, which it argued demonstrates that

trafficking was not occurring. This documentation included an e-mail from the store owner to the firm's attorney indicating that the owner had not been aware of the credit accounts. The e-mail also stated that the owner asked the employees if they ever got cash in exchange for SNAP and both employees denied doing so. The Appellant also submitted five hand-written pages of an apparent credit ledger, showing what was purchased by 5 U.S.C. § 552 (b)(6) & (b)(7)(C), the amounts, and the dates of the transactions.

After reviewing the Appellant's responses and further considering the evidence in the case, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated May 7, 2018. This letter informed the Appellant that it would be permanently disqualified from SNAP upon receipt of the letter in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The letter also stated that the Retailer Operations Division considered the Appellant's eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations, but determined that a CMP was not appropriate in this case 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.

In a letter postmarked May 18, 2018, the Appellant, through counsel, appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted. It should be noted that on June 11, 2018, the Appellant submitted an additional letter of explanation along with copies of EBT and cash register receipts from outside the review period. These receipts, dated January 30, 2018, and May 2, 2018, show that since the implementation of corrective measures, the firm has continued to properly reconcile SNAP transactions.

### **STANDARD OF REVIEW**

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

### **CONTROLLING LAW AND REGULATIONS**

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

7 U.S.C. § 2021(b)(3)(B) states, in part:

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

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

7 CFR § 278.6(e)(1)(i) states:

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

7 CFR § 271.2 states, in part:

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

7 CFR § 271.2 states, in part:

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

7 CFR § 278.6(b)(1) states, in part:

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

7 CFR § 278.6(c) states, in part:

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

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

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

7 CFR § 278.6(b)(2)(iii) states:

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

7 CFR § 278.6(i) states, in part:

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

### APPELLANT'S CONTENTIONS

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

- The Appellant owner runs a small, two-aisle gas station and relies on his employees a great deal when he is in the back of the store or is not present. So to discover that his employees were charging items on credit and then paying the store back when their SNAP benefits came in was surprising.
- When the Appellant discovered this activity, it did not attempt to hide it; instead it put into place a provision that all SNAP transactions, by anyone, must have the cash register receipt stapled to the EBT receipt. These are then reviewed each day by the store owner.
- One employee, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), who was engaged in this activity, had her employment terminated on March 1, 2018.
- To ensure that proper processing of SNAP transactions is occurring, all current employees were required to take online training classes. This was combined with the corrective provision mentioned earlier, where all EBT and cash register receipts must be stapled together. Since these actions were taken, all SNAP transactions have been processed correctly.
- The online training mentioned above included watching the training video provided by FNS and reviewing the information in the SNAP Training Guide for Retailers.
- To further enforce training and internal cross-check, the Appellant owner met with each employee and had them sign a copy of a document identifying qualified vs. unqualified purchases. This demonstrates that violations will not be tolerated. It also afforded employees an opportunity to ask questions about SNAP processes.
- The Appellant owner then went through the store's inventory to identify what items are or are not eligible for purchase with SNAP benefits.
- Appellant asks that FNS find that the firm has taken all steps possible to address how to properly implement and maintain compliance with SNAP.

In support of its contentions, the Appellant submitted copies of its previous correspondence with the Retailer Operations Division and copies of EBT and cash register receipts from outside the review period. These receipts (six receipts dated January 30, 2018, and nine from May 2, 2018)

were submitted to show that since the implementation of the corrective measures mentioned above, the firm has continued to properly reconcile SNAP transactions.

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

## **ANALYSIS AND FINDINGS**

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

### **Contractor Store Visit**

The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered not only the Appellant firm's EBT transactions, but also information obtained from a November 20, 2017, store visit which was conducted by an FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This store visit information was used to ascertain if there were justifiable explanations for the firm's irregular SNAP transaction patterns. The store visit report and photographs documented the following store size, description, and characteristics:

- Boggs Gas II is a small convenience store/gas station operating in the city of Ypsilanti, Washtenaw County, Michigan.
- At the time of the contractor's visit, the firm had no shopping carts or shopping baskets, which is not unusual for stores of this size. Customers shopping in such stores generally purchase only as much food as they can carry in their arms.
- The store visit photographs show one cash register for food purchases and agency records reflect the use of one EBT point-of-sale device (records indicate that the firm replaced its point-of-sale device in June 2017).
- It appears that the firm uses optical scanners to process transactions.
- The store's staple food stock is marginal in each of the four staple food categories. The food selection is largely snack foods and drinks. The store does not appear to sell specialty items such as bundles of meat or seafood or large boxes of fruit and vegetables.
- SNAP-eligible, non-staple accessory food items available at the store include carbonated and uncarbonated drinks, snacks, candy, and condiments. The store also sells ineligible, nonfood items, including tobacco products, lottery tickets, and miscellaneous household merchandise.
- The checkout area consists of a small counter space where items can be placed for purchase. To reach the counter, a customer must reach across a slide-top floor freezer. The constricted checkout area is not suitable for conducting large or rapid transactions as there is very little space on the counter to place more than a few items at a time and little room for customers to maneuver with large amounts of groceries.

- There is no indication from the store visit report that the firm has a special pricing structure, although most items appear to end with a cents-value of 9, such as \$0.99, \$1.79, \$3.99, etc. The report also states that the firm does not round transaction totals up or down at checkout.
- According to the contractor’s report, the most expensive food items available for purchase at Boggs Gas II include a case (36 cans) of soda for \$14.99; an 11.3-ounce can of coffee for \$7.39; a 3.25-ounce package of beef jerky for \$6.99; and a 6-ounce package of pistachios for \$5.49.

The available inventory of SNAP-eligible food at the time of the store visit showed stock that would be typical of a convenience store/gas station, where households normally purchase a limited number of items to complement their overall dietary needs. There was no indication that SNAP households would be inclined to regularly visit Boggs Gas II to purchase large quantities of groceries, especially considering the absence of shopping carts and baskets, the very constricted checkout area, and the availability of much larger grocery stores in the area, including one supermarket and one superstore within a mile and a half radius of the store. Given the available inventory and the store’s characteristics, this review could find no reason why the Appellant firm’s SNAP redemption patterns would differ so significantly from those of nearby, similar-sized competitors.

### **SNAP Transaction Analysis**

**Charge Letter Attachment 1: There were an unusual number of transactions ending in a same cents value.** This attachment lists 77 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E).**

In its reply to the charge letter, the Appellant stated that even-dollar transactions are the result of having a “need a penny/take a penny” jar on the checkout counter. According to the Appellant, SNAP households often take pennies from this jar to round off SNAP purchases. In fact, some of its employees do this as well. The Appellant claims that it was not aware of this practice until it asked its employees about it.

Unfortunately the Appellant’s argument makes no sense. All SNAP transactions are done with the use of an EBT card, so the use of pennies in SNAP purchases is entirely unnecessary and unlikely. Further, this review can think of no discernable advantage or convenience for rounding, as households have no need to memorize their remaining benefit allotment after each purchase. At the bottom of each transaction summary on the EBT receipt is a line showing exactly how much money is left on the card.

Without a reasonable explanation or compelling evidence to demonstrate that the transactions in Attachment 1 were legitimate purchases of eligible food, this review has little option but to conclude that the transactions listed in Attachment 1 were likely due to trafficking violations.

As part of its claim that at least two of its employees had engaged in the practice of credit accounts, the Appellant submitted a supposed credit ledger showing that some transaction totals were rounded down. The topic of credit accounts will be addressed in the next section.

**Charge Letter Attachment 2: Multiple transactions were made from individual benefit accounts in unusually short timeframes.** This attachment lists 13 sets of transactions (58 transactions in all) 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E).

5 U.S.C. § 552 (b)(6) & (b)(7)(C), an extraordinary amount for a small convenience store/gas station like Boggs Gas II, which has no shopping carts or baskets and a very cramped checkout area. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The repetition found in Attachment 2 is extraordinarily unusual and is strongly indicative of trafficking.

In its reply to the charge letter, the Appellant stated the following: “[The employees have] “charged” items, using an IOU, taking them when needed and then paying for them when the benefits were reloaded, and keeping a log of such behind the register. This also means that several transactions in a short time may occur as they pay for items already taken and then shop over the course of their shift...”

In this contention, the Appellant appears to claim that the transactions in Attachment 2 are the result of employees paying off credit balances for items previously received and also doing additional shopping – all during the same shift. This review does not find this contention to be believable in any respect.

One of the firm’s employees, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), is herself a SNAP recipient. 5 U.S.C. § 552 (b)(6) & (b)(7)(C):

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

As shown in the graphic above, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is neither reasonable nor practical for a household owing a credit balance to pay the balance off in 5 U.S.C. § 552 (b)(6) & (b)(7)(C) increments over a period of time. If a household owes 5 U.S.C. § 552 (b)(6) & (b)(7)(C) total, it makes no sense to pay the amount down in five separate transactions over the course of one’s shift at work. A single transaction of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) would resolve the debt in a manner of seconds.

Further, the handwritten credit ledger documentation provided by the Appellant has a strong appearance of being fabricated. In a typical ledger, the documentation shows the date the food items were obtained, what exactly was purchased, and some indication that the balance was paid off at a later time. In this instance, the credit log appears to show the dates and amounts of the EBT transactions *before* a listing of what was actually purchased. The documentation suggests that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) looked at the October 13 transactions in Attachment 2 and then manufactured a list of merchandise to roughly match the transaction totals.

It is also very curious that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) would repeatedly make purchases that totaled just over 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and then round down to 5 U.S.C. § 552



(b)(6) & (b)(7)(C) when conducting the SNAP transaction. Similar transactions occurred on 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

The likelihood that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) consistently, repeatedly, and legitimately purchased food items totaling 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is extremely remote.

It is the finding of this review that the Appellant's credit account explanation and handwritten evidence lacks credibility. Without compelling evidence to show that the transactions listed in Attachment 2 were legitimate purchases of eligible food or that they were legitimately credit account payoffs, it is reasonable for this review to conclude that that they were likely the result of trafficking violations.

**Charge Letter Attachment 3: Excessively large purchase transactions were made from recipient accounts.** This attachment lists 101 SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These large transactions are not consistent with a convenience store in the state of Michigan. The Retailer Operations Division has determined that during the review period, the average SNAP transaction amount for a convenience store in Michigan was \$5.99. In Washtenaw County, the average was slightly higher, at \$6.06 per transaction. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Given that the Appellant firm does have a moderate inventory of staple foods and other SNAP-eligible foods, it is possible that there would be an occasional purchase where the transaction amount is high, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As such, there may well be some legitimate SNAP transactions sprinkled among the transactions listed in Attachment 3. However, as noted earlier, there is no evidence that the firm would be likely to have SNAP redemption patterns that differ significantly from nearby, similar-sized competitors, especially considering the absence of shopping carts and baskets and the very constricted checkout area. The substantial number of high-dollar transactions in a six-month period calls into question the legitimacy of these transactions.

Attachment 2 lists eight transactions for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) or more during the review period, including a high of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), which is an extraordinary amount for a gas station selling primarily snack foods. Another 18 transactions were between 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is notable that many of the transactions in Attachment 3, including the nine largest transactions, were from households other than 5 U.S.C. § 552 (b)(6) & (b)(7)(C), suggesting that non-employee customers were engaged in trafficking at the firm as well as employees.

Considering how many food items it would typically take to add up to 5 U.S.C. § 552 (b)(6) & (b)(7)(C) or more, and considering that the store does not have any shopping carts or baskets, and given the fact that there are much larger grocery stores in the area with substantially greater inventory and variety, this review finds it very unlikely that SNAP households would legitimately choose to spend large portions of their benefit allotments at a small gas station such as Boggs Gas II.

The Appellant has argued that some of the large transactions are the result of households making large purchases of soda and snacks. It claims that because of Michigan's 10-cent deposit on bottles and cans, it is not unheard of for customers to purchase large quantities of soda and then return the containers for "real dollars" for use in other activities.

To support this contention, the Appellant submitted four itemized cash register receipts – three of which correspond to transactions listed in Attachment 3. One of the receipts is dated 5 U.S.C. § 552 (b)(6) & (b)(7)(C), for 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Along with a bag of Lays chips, two bags of ice, and unknown candy for \$1.75, the customer in this transaction apparently purchased four cases of Mountain Dew soda – a total of 144 cans. Another receipt – 5 U.S.C. § 552 (b)(6) & (b)(7)(C) – shows the purchase of 16 king size candy bars and 13 packages of gum.

Despite what is listed on these two cash register receipts, it is the conclusion of this review that the transactions are likely not legitimate and were very possibly fabricated, particularly since both purchases were made by employee 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It may be true that customers will occasionally purchase large quantities of a specific food item, even employees who are SNAP recipients, but the transactions in Attachment 3 are so out of the ordinary – especially in comparison with nearby comparison stores – that trafficking seems highly likely. At the very least, the transactions are not representative of normal shopping behavior of SNAP households at convenience stores. If SNAP customers in the Ypsilanti area were known to visit convenience stores with the purpose of purchasing large quantities of soda in exchange for cash deposits, then such activity would almost certainly manifest itself in the form of excessively large transactions at other nearby convenience stores. But this is not the case. Unfortunately for the Appellant, the submission of three questionable receipts out of 101 transactions in Attachment 3 does not persuade this review to conclude that trafficking was not occurring.

It is the finding of this review that the attachments furnished with the charge letter adequately identify the irregular patterns of SNAP transactions which indicate that trafficking was likely taking place. The transactions listed in the charge letter are highly unusual and substantially different from comparable stores in the area. Based on these and other factors, such as the store's physical characteristics and inventory, the case of trafficking is convincing.

In an appeal of adverse action, the onus is on the Appellant to prove, by a preponderance of the evidence, that the administrative action should be reversed. This means submitting sufficient and compelling evidence that would lead a reviewer to conclude that trafficking did not occur. Unfortunately, the Appellant's contentions are largely anecdotal and are not supported by sufficient or compelling evidence. Without reasonable evidence from the Appellant, it is the conclusion of this review that the transactions listed in the charge letter were, more likely than not, the result of trafficking violations committed by the firm.

### **Remedial Actions Taken**

After receiving the charge letter the Appellant owner instituted a number of measures to ensure that SNAP violations will not occur in the future. This includes a provision that all SNAP transactions must now have the cash register receipt stapled to the EBT receipt. According to the

Appellant, this will prevent any future credit or “IOU” transactions. Additionally, one employee, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), was terminated and the remaining employees underwent additional training. The Appellant contends that since these corrective actions have been implemented, the firm has processed all of its SNAP transactions correctly. The Appellant submitted a small number of itemized cash register receipts and EBT receipts from January 2018 and May 2018 as evidence of its ongoing compliance with SNAP rules. The Appellant then asked this review to find that the firm has taken all steps possible to address how to properly implement and maintain compliance with SNAP.

With regard to these contentions as well as the remedial actions that appear to have been taken by the Appellant after receiving the charge letter, it must be reiterated that the purpose of this review is to either validate or invalidate the earlier determination of the Retailer Operations Division. This review is limited to the circumstances that existed at the time the violations were committed. It is not the authority of this review to consider any subsequent remedial actions that may have been taken or that will take place so that a store may enhance or begin to comply with program requirements. In addition, there are no provisions in the SNAP regulations for a waiver or reduction of an administrative penalty on the basis of alleged or planned corrective actions implemented subsequent to findings of program violations.

Therefore, the Appellant’s contention that corrective action has taken place or that further remedial actions are planned does not provide a valid basis for dismissing or reducing the trafficking charges.

### **Civil Money Penalty**

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

In accordance with regulations at 7 CFR § 278.6(b)(2), in order for a civil money penalty to be considered, a firm must not only notify FNS that it desires the agency to consider a trafficking CMP in lieu of permanent disqualification, but it must also submit appropriate documentation within designated timeframes. The case record shows that the Appellant did not request a civil money penalty when it replied to the charge letter and there is no evidence that the Appellant submitted any documentation that would indicate that the firm had a compliance policy or training program of any kind.

Therefore, in accordance with 7 CFR § 278.6(b)(2)(iii) and § 278.6(i), a civil money penalty in lieu of permanent disqualification for trafficking is not an option in this case.

### **CONCLUSION**

An analysis of the Appellant’s EBT transaction record was the primary basis for the decision by the Retailer Operations Division to permanently disqualify Boggs Gas II from SNAP participation. This data provided sufficient evidence for this review to conclude that the

questionable transactions and patterns listed in the charge letter were more likely than not the result of trafficking violations committed by the Appellant. Likewise, the Appellant has not proven, by a preponderance of the evidence, that the administrative action should be reversed.

Based on a review of all available information and evidence in this case, the decision to impose a permanent disqualification against the Appellant, Boggs Gas II, under the ownership of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), is sustained.

### **RIGHTS AND REMEDIES**

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

Under the Freedom of Information Act, 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.

JON YORGASON  
Administrative Review Officer

October 25, 2018