

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

**Central View Market,**

**Appellant,**

**v.**

**Case Number: C0194721**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

It is the decision of the USDA that there is sufficient evidence to support that the permanent disqualification of Central View Market 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 the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278 in its administration of the SNAP, when it imposed a permanent disqualification against Central View Market.

**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 November 23, 2016, 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 during the months of April 2016 through September 2016. The letter noted that the penalty

for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter stated the Appellant had the right to respond to the charges within 10 days of receipt to provide explanations for the irregular SNAP transaction patterns. The letter also stated that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt under the conditions specified in 7 CFR § 278.6(i).

The Appellant replied to the charges in a document dated December 5, 2016 which was received on December 9, 2016. The Appellant stated that the store was in a rural area and it had customers who bought some food items in bulk. The Appellant admitted that some transactions were repayments on credit accounts in violation of SNAP regulations. These violations were allegedly due to the poor training of a new employee while the owner was absent due to surgery. The Appellant did not request a trafficking CMP under 7 CFR § 278.6(i) within ten (10) days of receiving the charge letter.

After considering the evidence in the case, the Retailer Operations Division issued a determination letter dated April 26, 2017. The determination letter informed the Appellant it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The determination 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. The Retailer Operations Division determined that the Appellant was not eligible for a trafficking CMP 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 violations of the SNAP.

In a letter dated May 8, 2017, the Appellant, through counsel, requested an administrative review of the Retailer Operation Division's determination. The request for administrative review was granted.

On June 8, 2017, the Appellant, through counsel, submitted a Freedom of Information Act (FOIA) request to FNS. As a result of the FOIA request, the administrative review was held in abeyance pending the agency's official FOIA response which was delivered to Appellant's counsel on July 13, 2017. The Appellant was then provided additional time to provide its contentions, evidence and any new information in support of the administrative review.

## **STANDARD OF REVIEW**

In appeals of adverse actions, an appellant bears the burden of proving by a preponderance of the evidence, that the administrative action should be reversed. That means an appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, might 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 covered in the Food & 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, *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(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, *inter alia*:

***Trafficking*** means the buying or selling of ... [SNAP] benefits for cash or consideration other than eligible food ....

7 CFR § 271.2 states, *inter alia*:

*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(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(i) states, *inter alia*:

*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) 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 a penalty.* [Emphasis added.]

## SUMMARY OF CHARGES

The Appellant was charged and determined to be trafficking based on an analysis of electronic benefit transfer (EBT) transaction data from April 2016 through September 2016. This involved the following transaction patterns which are trafficking indicators:

- Multiple transactions were made from individual household benefit accounts within unusually short timeframes.
- Excessively large purchase transactions were made from recipient accounts.

**Charge Letter Attachment 1:** Multiple transactions were made from individual benefit accounts in unusually short time frames. This attachment lists 22 sets of 50 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). T5 U.S.C. § 552 (b)(6) & (b)(7)(C). Violating stores often conduct multiple transactions from the same household account to avoid the detection of single high dollar transactions that cannot be supported by the retailer's food inventory and infrastructure.

**Charge Letter Attachment 2:** Excessively large purchase transactions were made from recipient accounts. This attachment lists 168 SNAP transactions

5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The substantial number of high dollar purchases atypical of a SNAP authorized convenience store calls into question the legitimacy of these transactions.

### APPELLANT'S CONTENTIONS

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

- The agency's ALERT system is over utilized by the USDA. The ALERT system fails to account for special business practices, differences in demographics, foodstuff and geographic areas.
- The transaction patterns cited in the charge letter are due to the store's sale of staple food in bulk.
  - The store stocks a wide variety of products including food staples, convenience foods and items sold in bulk such as hamburgers, steaks, and take-and-bake pizzas. Pictures submitted by the Appellant show these items and additional food products in the store freezer. Central View Market has a selection of frozen meats that are competitive with supermarkets and superstores. The store visit contractor failed to take photographs of the back storage area containing frozen meats and other products.
  - Pictures submitted by the Appellant also show posted signs listing these bulk food items for sale. The store visit contractor failed to capture photographs of these signs.
  - 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The purchase likely included 16 flat iron steaks, two packages of hamburgers, one package of biscuits, 20 pounds of ground beef, three bags of French fries and 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of other food products carried by the store.
  - Signed statements from seven (7) of the store's SNAP customers provide evidence that the store sells items in bulk.
- The transactions cited in the charge letter are due to the normal shopping patterns of the store's customers.
  - The transactions in Charge Letter Attachment 1 are likely due to co-shopping by multiple household members.
  - None of the transactions in Charge Letter Attachment 1 are physically impossible. In the absence of a car, it is common to see larger shopping trips broken down into smaller trips separated by a period of time.
  - The "fast in time" transactions are due to "the nuanced habits of twelve [sic] SNAP households, many of whom likely do not have regular or predictable access to transportation, or whose routines and daily lives bring them by the store often enough to stop in."
  - Signed statements from seven (7) of the store's SNAP customers provide evidence that these customers make repeat

transactions within a few days.

- The transaction patterns are explainable by the context of a remote rural store that sells a variety of food products.
  - The store is a medium sized grocery store and is treated by its customers as a primary grocer as there is no other store within 8.6 miles or as much as 11.2 miles away by the fastest route. This means that Central View Market is “the only store readily available to the local SNAP community.”
  - Rural shopping tendencies results in customers making frequent and large purchases within a week of receiving their benefits. The large purchases are for major items while supplemental trips are for side items.
  - There are no reliable comparison stores within a reasonable distance of Central View Market. Due to the distance to other stores, most of the households will have to pass Central View Market.
  - FNS incorrectly presumes that the local SNAP households have ready access to a supermarket or superstore.
- Central View Market has a sufficient inventory of food to justify the transactions cited in the charge letter. The store’s SNAP food sales are in line with the amount of business handled by the store.
- The Appellant admits that a single clerk did accept SNAP benefits as repayments on credit accounts in 2016; however, no records remain of these credit transactions. It is possible that many of the transactions cited in the charge letter are repayments on credit accounts.

The preceding may represent only a brief summary of the Appellant’s contentions presented in this matter. Please be assured, however, in reaching a decision, full attention was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

## **ANALYSIS AND FINDINGS**

### **Authorization History**

The Food & Nutrition Service (FNS) authorized Central View Market for the SNAP on April 1, 2003. During the review period, FNS classified Central View Market as a convenience store.

### **Store Visit Report**

The case record documents that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during an October 21, 2016 store visit conducted by an FNS contractor to observe the nature and scope of the firm's operation, stock and facilities. This information was then used to ascertain if there were justifiable explanations for the store's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Central View Market is approximately 2,200 square feet in size and operates out of a freestanding building in a rural area.
- The store had approximately two (2) shopping baskets with handles and approximately three (3) shopping carts for customer use.
- There was one (1) cash register and one (1) point-of-sale device.
- The store had an optical scanner at checkout but no conveyor belts.
- The store visit report recorded that there was no food stored out of public view in a storage area.
- There were no large bulk foods displayed or advertised for sale at the time of the store visit. There were no international or specialty foods that might sell for a high price. There were no fresh meat/seafood bundles or fresh fruit/vegetable boxes for sale.
- The checkout area consisted of a small counter top with a cash register and space was limited for stacking purchase items.
- There were empty and sparsely stocked shelves in the store.

The inventory of SNAP eligible food items at the time of the store visit was typical of a limited to moderately stocked convenience store. 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.

Accessory food items included, but were not limited to: coffee, tea, carbonated and non- carbonated drinks, condiments, and spices. The stocked ineligible items included tobacco products, lottery tickets, gasoline, health and beauty products, automotive supplies, paper goods, cleaning supplies and general houseware.

A significant proportion of the store's business appeared to be in SNAP ineligible hot and cold prepared food not intended for home preparation and consumption. There was a large kitchen and dining area with tables for the sale and onsite consumption of hot and prepared ready to eat food items. A menu board advertised various dinner plates (ribeye, hamburger steak, pork chops, chicken strips, and catfish) and appetizers. The menu also included hamburgers, cheeseburgers, hot and cold sandwiches, onion rings, salads, fried and baked chicken among other prepared food items. The kitchen area had visible stacks of plates, saucers and utensils for consuming food onsite as well as stacks of Styrofoam containers for take-out.

Given the available inventory as noted above, there is no indication from the store visit report that the store would be likely to have SNAP redemption patterns significantly different from similar-sized competitors.

## **ALERT System**

The Appellant makes multiple contentions regarding the limitations of the agency's ALERT system and states it is relied upon too heavily by the agency. With regard to these contentions, it should be noted that the ALERT system is a computerized fraud detection tool to identify SNAP transactions that form patterns having characteristics indicative of trafficking. However, this tool does not by itself determine or conclude that trafficking has occurred. The Retailer Operations Division must still conduct an extensive analysis of the transaction data and patterns, often with other factors such as, in this case, observations from store visits, an analysis of customer shopping behavior, local conditions, and a comparison of stores in the area, and render a determination whether the questionable transactions were, more likely than not, the result of trafficking. Lastly, the Appellant is always given a chance to explain the specific transaction patterns before the determination letter is issued and during the administrative review. A review of the case file documents that the Retailer Operations Division appropriately considered those additional factors referenced by the Appellant including business practices, demographics, foodstuff and geographic location before issuing its determination letter. The Retailer Operations Division also reviewed the new information supplied by the Appellant and concluded that the evidence was sufficient to stand by its earlier permanent disqualification decision.

The legality of this methodology is supported by 7 CFR §278.6(a) which 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.]

The Appellant further cites some case law which it claims supports its position on the ALERT system. Although the Appellant may disagree, considerations of legal precedent through case law, or the lack thereof in relation to the present case, is beyond the scope of this review. Instead this administrative review is limited to whether the Retailer Operations Division appropriately followed the Food and Nutrition Act of 2008, as amended, and the regulations promulgated under the Act, and whether the action taken is sustainable by a preponderance of the evidence. Therefore, any application of a supposed judicial precedent would best be addressed in a judicial review in a court of law. Accordingly, no further findings or conclusions are rendered in this regard.



## **Bulk Items**

The Appellant states that Central View Market stocks a wide variety of products including food staples, convenience foods and items sold in bulk such as hamburgers, steaks, and take-and-bake pizzas. Central View Market claims that its selection of frozen meats are competitive with supermarkets and superstores. The Appellant submitted pictures of frozen meats and other items in the store freezer located in the back of the store and stated that the store visit contractor erroneously failed to inspect this area.

Regarding this contention, store visit contractors do not normally review areas outside of the normal view of customers which include backroom storage areas due to security and safety concerns. Instead, the store visit contractor will ask store personnel if there is such a storage area containing food. If told yes or no during the interview, the store visit contractor will make that notation on the store visit form as well as any other information provided by store personnel. The Retailer Operations Division does not contest the Appellant's assertion that it has a backroom storage freezer that contained food items at the time of the store visit. However, based on the layout of the store and other factors, it is likely that no mention was made of the frozen food in the backroom by store personnel as the store was using this for its kitchen preparation of SNAP ineligible hot food not intended for home preparation and consumption.

As noted earlier, a significant proportion of the store's business appears to be in SNAP ineligible hot and cold prepared food not intended for home preparation and consumption. The store visit pictures show a large kitchen and dining area with tables for the sale and onsite consumption of hot and prepared ready to eat food items. A large menu board advertised various dinner plates (ribeye, hamburger steak, pork chops, chicken strips, and catfish) hot and cold sandwiches, onion rings, salads, and fried and baked chicken among other prepared food items. The kitchen area had visible stacks of plates, saucers and utensils for consuming food onsite as well as stacks of Styrofoam containers for take-out. These conditions and the location of the kitchen adjacent to the backroom storage area in an area not accessible to store customers indicate that the frozen meats and other foods in the backroom freezers were, and are, intended for the store's restaurant business. In addition, the Retailer Operations Division contacted Central View Market's primary meat supplier and determined that this supplier sells food primarily for kitchen and restaurant preparation. The items sold by this supplier are generally not sold to retail grocery stores and as a result are not packaged or pre-labeled for retail sales.

The Appellant submitted pictures of posted paper signs purporting to list bulk food items for sale. The Appellant states that the store visit contractor erroneously failed to capture photographs of these posted paper signs; however,

the absence of these photographs is more likely due to the fact they were not there at time of the store visit. The Appellant provided a picture of a single paper sign in pristine condition advertising bulk sale items (mostly frozen steaks, beef and hamburgers) taped on the outer glass of a standup freezer containing Cool Whip, bags of French fries, packages of six corn dogs, frozen pizza, and next to a freezer with ice cream. The store visit contractor took a picture of the same freezer with the door open to better capture the items inside. The Appellant claims that the store visit contractor failed to take a picture of the sign, but the more likely explanation is that the sign did not exist at the time of the store visit.

The Appellant submitted other pictures showing paper signs affixed to the metal counter that separates the kitchen from the dining area. In the October 2016 store visit photographs, no signs exist; however, the Appellant's photographs, taken after the determination letter, show three taped white paper signs advertising take and bake pizzas, deli meats and cheeses by the pound and deli sandwiches. All of the paper signs in the Appellant's photographs appear to be recently printed as they are in pristine condition without any tears, smudges or stains that would likely appear on a sheet of white paper taped onto the glass door of a freezer or a metal counter for any length of time. In addition, the meats and chesses allegedly for sale in bulk were not openly displayed for customer purchase. A store that sells meat by the pound or in bulk would normally have some of these products in a visible display case where a customer could see what is available for selection.

The store's 2017 reauthorization application also provides further evidence that the store did not sell meats or other products in bulk. The reauthorization application, electronically signed and dated by the owner on April 20, 2017, states that the store only has 10% of its annual gross retail sales in staple foods and that 65% of gross sales are in non-food and hot food items. The reauthorization application states that 25% of its gross retail sales come from "other" food items, known as accessory foods, such as carbonated and non- carbonated drinks, condiments and spices. These percentages, supplied by the store owner, are further evidence that the store's staple food sales are not significant and are not consistent with a store selling expensive bulk food items including frozen meat packages.

Based on the analysis above, it is more likely true than not true that Central View Market does not have the type of bulk sales that would explain the irregular SNAP transaction patterns cited in the charge letter.

### **Multiple Transactions by the Same Household**

SNAP households have no limit on the number of times they may use their SNAP cards or how much eligible food they may purchase. However, 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 a convenience store's stock and facilities and are thus indicative of trafficking. It is also noteworthy that every single transaction in each group of transactions cited in the charge letter greatly exceeds the average for a Tennessee convenience store during the review period.

Violating stores often conduct multiple transactions from the same household account as a method to avoid the detection of single high dollar transactions that cannot be supported by the retailer's food inventory and infrastructure.

**5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. While the Appellant may be correct that transactions at a rural convenience store may be higher than those at convenience stores in more urbanized parts of the state, it is not credible that Central View Market would have suspicious SNAP transactions greatly exceeding the average SNAP transaction of a supermarket or superstore in Tennessee.

The Appellant states that the transactions in Charge Letter Attachment 1 are likely due to co-shopping by multi-person households. The Appellant appears to be referring to a 2017 Food Marketing Institute study of grocery shopping trends in the United States. That survey states that out of all households, 45% are multiple-person households with a primary shopper, 9% are multiple-person households with a secondary shopper, and 22% are multiple-person households with an equal-share shopper. (The remaining 24% are shoppers in single-person households.) It should be noted that the FMI study looked at all households and not just those who are SNAP recipients. However, even if these statistics applied equally to SNAP households, it would not justify the transactions cited in the charge letter.

Even if repeated "co-shopping" trips were made by different household members this does not explain the multiple excessively high transactions conducted in a short period of time as cited in Charge Letter Attachment 1. Even the smallest transactions in Charge Letter Attachment 1 were

**5 U.S.C. § 552 (b)(6) & (b)(7)(C)** higher than the average for a Tennessee convenience store during the review period. Since SNAP households are defined by regulation as households that purchase and prepare food together, there would also be no need for different household members to obtain a separate receipt if shopping together at the same time. The Appellant has offered no evidence such as itemized cash register receipts or other documentation to support its contention that these were legitimate transactions.

The Appellant states that the "fast in time" transactions are due to the "nuanced habits of twelve [sic] SNAP households, many of whom likely do not have regular or predictable access to transportation, or whose routines and daily lives bring them by the store often enough to stop in." The Appellant also states, that in the absence of a car, it is common to see larger shopping trips broken down into smaller trips separated by a period of time. In summary, the Appellant emphatically states that Central View Market "***is the only store readily available to the local SNAP Households.***" Regarding these contentions, the case record

documents that the Retailer Operations Division looked at all 13 households cited in Charge Letter Attachment 1 and found that seven (7) of the 13 households lived outside of Walling in either Crossville, Sparta or Doyle. These households lived closer to SNAP authorized supermarkets and superstores than they did to Central View Market. All of these households had access to and shopped at multiple supermarkets and superstores; therefore, Central View Market was not the “only store readily available” to these households. Of the remaining six (6) households that lived in Walling, Tennessee, four (4) households had access to and shopped at multiple supermarkets and superstores; therefore, Central View Market was not the “only store readily available” to these households. Only two (2) of the 13 households shopped primarily at Central View Market and these are likely the only households limited to Central View Market due to a lack of transportation.

The Appellant submitted seven (7) signed “affidavits” from the store’s SNAP customers. These generally stated that each customer shopped in bulk at Central View Market and often made repeat transactions within a few days. Utilizing the names and addresses provided on these statements, the Retailer Operations Division searched the Tennessee SNAP redemption system to identify the households and review their certification and redemption history. Five (5) of these seven (7) households made irregular transactions cited in Charge Letter Attachment 1; of these, three (3) lived in Walling, one (1) in Sparta and one (1) in Crossville. The household in Crossville would have to drive over 40 miles to reach Central View Market bypassing several SNAP authorized supermarkets and superstores on the way. The household in Sparta would have to drive from 5.4 miles to 6.9 (depending on the route taken) to reach Central View Market even though this household is closer to SNAP authorized supermarkets and superstores in Sparta. Of the three (3) households in Walling all shopped at a number of superstores and supermarkets; only one (1) shopped (almost) exclusively at Central View Market without ever shopping at a supermarket or superstore.

The Appellant claims that the statements of SNAP recipients Williams and Collins are prototypical of the households who shop at Central View Market. However, the Retailer Operations Division determined that these two customers had access to, and shopped at supermarkets and superstores during the review period. Williams’ household shopped at eight (8) different superstores/supermarkets during the review period. Collins’ household shopped at four (4) different superstores/supermarkets during the review period. However, despite this access to better stocked stores, both households conducted excessively large transactions at Central View Market on the same day or within a day of shopping at these supermarkets and superstores. It is highly unlikely that a convenience store would have legitimate SNAP transactions larger or equivalent to those at supermarkets and superstores especially as the frozen meat carried by Central View Market was likely used exclusively for its restaurant operations.

The Appellant identifies several transactions and offers speculation about what “could” have been bought to reach these dollar amounts which are excessive and atypical for a Tennessee convenience store during the review period. However, the Appellant offers no evidence such as itemized cash register receipts or other documents that could explain these series of excessively large transactions.

The Appellant also states that one or more households were likely making a purchase to check their card balance and then would make a second purchase if they had enough remaining in their account. The Appellant disregards the fact that a SNAP household can run a balance inquiry at the store without making a purchase. It is also unlikely that a customer would select a large amount of food, transport it to the restricted counter space, determine the balance and then, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), conduct a second excessively large transaction exceeding the average for a Tennessee supermarket or superstore. This contention is simply not credible.

In summary, the store visit pictures show that is unlikely that SNAP customers would want to shop at this store multiple times during a short time frame, 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 for sale. In addition to the store’s limited counter space which is unsuitable for large transactions, Central View Market has only a limited number of handheld shopping baskets and shopping carts for transporting food within the store. 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 Transactions**

SNAP households have no limit on the amount of eligible food they may purchase (subject to the remaining balance on the card). However, 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 a convenience store’s stock and facilities and are thus indicative of trafficking.

Charge Letter Attachment 2 cites 168 SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E). It is possible that Central View Market might have slightly higher SNAP transactions than the average for other SNAP authorized Tennessee convenience stores. However, it is not likely that Central View Market would have transactions which greatly exceeded the average transactions for a SNAP authorized supermarket or superstore in Tennessee during the review period.

The store visit pictures show that the store layout is not conducive to these excessively large transactions. Central View Market only has a few shopping carts and handheld shopping baskets for transporting food around the store and the checkout counter space is limited. In addition, the store's stock is mainly inexpensive snack foods, canned/package foods and accessory food items. As noted above, Central View Market does not have any fresh meat or seafood, food for sale in bulk, international items, or any other food items that would justify high dollar transactions atypical of a convenience store. The frozen meats and other products stored in the backroom freezer appear to be exclusively used for the store's restaurant operations.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). According to the Appellant, this purchase likely included 16 flat iron steaks, two packages of hamburgers, one package of biscuits, 20 pounds of ground beef, three bags of French fries and 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of other food products carried by the store. This is mere speculation on the part of the Appellant as it provided no evidence to support this contention. The Appellant also states this could have been a credit transaction, but has no evidence to support this contention either.

Sometimes a store may have higher than normal SNAP transactions due to the lack of other SNAP authorized stores in the area and Central View Market is located in a rural area.

However, other SNAP authorized stores are available to the local SNAP community. The Retailer Operations Division determined that within a ten-mile radius of Central View Market there are 22 SNAP authorized stores including a superstore under seven (7) miles away and two (2) supermarkets both approximately 7.5 miles away. The Appellant also overstates the transportation issues for the local community as the Retailer Operations Division documented that 11 of the 13 households identified in both Charge Letter Attachment 1 and 2 shopped at supermarkets and superstores during the review period. The data on these households demonstrate that they were not solely reliant on Central View Market for their nutritional needs. These 11 SNAP households shopped at 20 different SNAP authorized supermarkets/superstores in White County and adjacent counties.

Thus, these 11 households had access to a greater depth, quality and variety of staple food products at these supermarkets/superstores which would not require them to make purchases atypical of a convenience store at Central View Market.

The Appellant claims that the statements of SNAP recipients Herron, Miller and Seals support its contentions that the excessively large purchases at the store are in fact legitimate. However, the Retailer Operations Division determined that two (2) of these three (3) households shopped at supermarkets and superstores often on the same day or within a day of conducting excessively large transactions at Central View Market. Access to these larger stores was clearly not an issue as one

household shopped at seven (7) different superstores/supermarkets during the review period and another shopped at four (4) different superstores/supermarkets during the review period. Only one (1) household shopped exclusively at Central View Market. It is unlikely that a household with access to several supermarkets and superstores would conduct excessively large transactions at Central View Market 5 U.S.C. § 552 (b)(6) & (b)(7)(C), of shopping at a supermarket or superstore.

In summary, the store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding the average SNAP transaction amount 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 limited supply of shopping carts support the Retailer Operations Division determination. Based on a preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 2 are more likely than not the result of trafficking in SNAP benefits.

## **Purchase Invoices**

The Appellant states that the store's food inventory supports the size of the purchases being made and states that the store's average monthly food sales are approximately 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Using the invoices provided by the Appellant, the Retailer Operations Division determined that Central View Market purchased 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in food during the review period.

However, an interview with Central View Market's primary meat supplier indicated that these purchases included the purchase of at least 5 U.S.C. § 552 (b)(6) & (b)(7)(C) (adjusted in the Appellant's favor) in food intended for hot food preparation/restaurant sales. With the subtraction of food purchases intended for the restaurant, and including a 40% retail markup, Central View Market likely had retail sales of staple and accessory foods approximating 5 U.S.C. § 552 (b)(6) & (b)(7)(C) during the review period. This projected retail sales amount would include cash, credit and SNAP purchases. If cash and credit card sales were 20% of this amount, then Central View Market would have estimated SNAP sales of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) during the review period as compared to the actual SNAP redemption of 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This represents a slight shortfall of food inventory to SNAP redemptions of approximately 5 U.S.C. § 552 (b)(6) & (b)(7)(C) during the review period. If cash and credit card sales were higher than 20%, then the shortfall would be much greater. The Appellant states that that Central View Market's SNAP business is about a quarter of the store's eligible food sales. Therefore, the store's SNAP redemptions are too high based on the invoice documentation provided by the Appellant; in short, not enough food was purchased to support SNAP eligible sales.

## **Credit Transactions**

The Appellant states that the many of the transactions cited in the charge letter may be repayments on credit accounts. Central View Market alleges that a store employee was doing this for a period of time in 2016 unbeknownst to the owner and management. 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 submitted no evidence beyond mere speculation to support its claim that some of the transaction patterns cited in the charge letter were due to repayments of credit accounts with SNAP benefits.

## **CIVIL MONEY PENALTY**

The Appellant did not timely request consideration for a trafficking CMP in lieu of a permanent disqualification under 7 CFR 278.6(i) even though it was informed of the right to do so in the charge letter. Therefore, under the regulations at 7 CFR § 278.6(b)(2) the Appellant is not eligible for a trafficking CMP. Even if a timely request had been submitted, the Appellant would likely not have been eligible for a trafficking CMP because there is insufficient evidence to demonstrate that the firm had established and implemented an effective SNAP compliance policy and program prior to the violations. Therefore, the Retailer Operations Division's decision not to impose a trafficking CMP 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 was the primary basis for its determination to permanently disqualify the retailer. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. 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.

In the absence of any reasonable explanations 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. 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 determined by the Retailer Operations Division. Based on the discussion above, the decision to impose a permanent disqualification against Central View Market, Appellant, is sustained.

### **RIGHTS AND REMEDIES**

Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) addresses 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, 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.

RONALD C. GWINN  
Administrative Review Officer

November 2, 2017