

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

**Corner Grocery,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0210181**

**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 Corner Grocery (hereinafter “Corner Grocery” or “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 Corner Grocery.

**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 July 3, 2018, the Retailer Operations Division informed the Appellant that Corner Grocery 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." The letter also noted 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). Per UPS confirmation of delivery, the charge letter was delivered to the Appellant at the store address of record on July 5, 2018.

The record indicates that in a letter dated July 10, 2018, the Appellant's counsel requested information and documents from FNS with regard to the agency's case against Corner Grocery pursuant to the Freedom of Information Act (FOIA). In a letter dated July 30, 2018, FNS provided the Appellant's counsel with a response to the initial FOIA request. The Appellant's counsel appealed the FOIA request in a letter of October 25, 2018. In a letter dated December 9, 2020, FNS provided the Appellant's counsel with a response to the FOIA appeal. On December 9, 2020, the Retailer Operations Division sent a 10 day letter to counsel providing the opportunity to respond to the letter of charges. On December 15, 2020, the Appellant's counsel requested and was granted an extension until January 5, 2021 to provide a response to the charge letter.

In responses to the Retailer Operations Division of July 9, 2018, July 10, 2018, December 15, 2020, January 5, 2021, and January 7, 2021, the Appellant, through counsel, denied the trafficking allegations and provided various explanations and evidences for the questionable SNAP transactions that were outlined in the charge letter.

After considering the Appellant's replies and the evidence in the case, the Retailer Operations Division issued a determination letter dated January 20, 2021, informing the Appellant that Corner Grocery 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 February 1, 2021, the Appellant, through counsel, 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 February 10, 2021. In an email correspondence of March 3, 2021, the Appellant, through counsel, submitted additional information and evidences in support of the request for administrative review.

## **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 February 2018 through May 2018. This involved the following SNAP transactions patterns which are indicative of trafficking:

- There were multiple transactions made from individual benefit accounts within a set time period; 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 Appellant vehemently denies that trafficking took place.
- The Appellant occupies 1,200 of square feet and sells a variety and quantity of staple food items to the surrounding community such as fruits, vegetables, bread, butter, milk, cheese, bacon, beef, chicken, lunch meat, eggs, pasta, canned meats, chips, cookies, muffins, cakes, ice cream and additional items. Inventory is replenished on a rolling basis depending upon demand. Inventory during the beginning of the month is typically superior to inventory at the end of the month. The on-site store visit by FNS found that the Appellant was sufficiently provisioned in all four staple food categories to satisfy the purchase amounts listed in the charge letter.

- A significant portion of the Appellant's clients are EBT participants from the surrounding residential neighborhoods and the vast majority of the store's offerings are qualified items under the SNAP regulations. The Appellant serves the surrounding community which in pertinent part suffers from poverty at a high rate (49.8%) with many low income families. According to USDA's Profile of Households for the 5<sup>th</sup> Congressional District of Georgia, where Corner Grocery is located, 15% of the households receive SNAP benefits. The vast majority of local stores are small convenience, with a substantial portion of the population getting at least a portion of their groceries from stores just like the Appellant. In fact, the Appellant is within walking distance from multiple schools and parks. The firm also sits on a main transportation route which draws, house or place a significant number of SNAP participants. A material portion of these participants visit the store which results in more transactions and higher gross EBT revenue. The store is located in an area where there are not immediate competitors around it as the closest supermarket is located 2.56 miles away. This means less competition and higher dollar volume.
- The 11 customer affidavits from the store's SNAP customers note that they spend **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** during a single trip, exhausting between 40% to 80% of their SNAP benefits at the store, and the majority attest to frequenting the store multiple times in a single day.
- According to the Case Analysis Document, the store's average transaction amounts and purchase transaction counts have been close to those for the County averages. It would appear that the dollar volume, purchase transaction count and average transaction amounts are all roughly in line with what USDA sees from other stores in the area. The only difference that appears to exist is the average transaction amount, which is a result of the store's inventory.
- The store visit review noted four of the store's most expensive staple food items but failed to cite some of the other expensive foods stocked at the Appellant to include broccoli at \$5.99, carrots at \$5.99, lettuce at \$5.99, bacon at \$5.99, beef/steak at \$7.99, chicken at \$7.99, ham/pork at \$7.99, turkey at \$5.99, Enfamil infant formula at \$17.99, imported rice at \$6.99, case of Red Bull at \$42.99, and a case of Powerade at \$6.99.
- The Appellant also runs specials including, but not limited to: Cases of water at \$9.99; cases of soda at \$6.99; family size bags of chips at \$6.99; frozen sandwiches at \$4.99 - \$5.99; frozen meats at \$1.99 - \$15.99; gallon of milk at \$6.99; block of cheese at \$5.99; buy 1 gallon of milk and receive 1 loaf of bread for free; buy a family size bag of chips and get 1 can of soda for free; 2 cans of small energy drink at \$4.99; 2 cans of medium energy drink at \$5.99; cases of energy drinks at \$10.99 - \$30.99; and family size cereal boxes at \$6.99.
- During the review period, there was another EBT authorized store within a mile that was under contract for sale. The store stopped carrying adequate inventory as a result, which increased sales at the Appellant store. The closing store also had a bad reputation for bad service and inventory. The Appellant worked hard to bring the customer service and inventory to a higher standard and as a result, local customers began shopping more at the Appellant firm and the store's revenue grew.
- With regard to the transactions documented in Attachment 1, all of these transactions are the result of the store's business practices, co-shopping, and/or the habits of the SNAP clientele. In Georgia, participant benefits are issued on the 5th through the 23rd day of

each month, based upon a combination of the type of case and the case name. USDA has previously conducted research into the standard practices of participants for food purchases, and purchases made within the first seven days after receiving benefits is not unusual. In fact, on a regular basis, the participants will make significant grocery purchases from the Appellant store 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of receiving the deposit in their accounts. Such patterns are supported by the *Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program Final Report* (2011). Here, almost all of the transactions set forth in Attachment 1 reflect this standard shopping habit and patterns of SNAP participants.

- Co-shopping, which is where both adult members of an average household are about 50 percent responsible for picking up groceries, is on the rise in the United States. This is manifested in the SNAP participants that shop at Appellant in the following ways: (1) different household members will shop separately (using the same account) to pick up different needs and personal needs, on top of the household's list; and (2) different household participants will travel to the store together to make purchases, and then separate their purchases to track what amount each party has used from their benefits account. The first option is statistically preferred by customers.
- As was noted in the 2016 study conducted by the Convenience Store News, small grocery/convenience store customers are among some of the most loyal customers when it comes to their store selection. Some 70.5% of *daily* shoppers state that they shop at the same store every time, as do 62.8% of *weekly* shoppers. Of these regular customers, most daily and weekly customers are between 35 and 44 years of age. Children also regularly effect the store's customer base: 57% of consumers with at least one child under the age of eighteen visit small grocers/convenience stores on a daily basis, while 42.9% of them visit on weekly basis. Consumers without children are notably less likely to make visits to the store.
- Most visits to a store the size of Corner Grocery are made while the customer is on his/her way to work or school (65% of frequent shoppers buy during this time), or while running errands at night (63.3% of the surveyed shoppers shop at this time). Typically, SNAP participants who visit on a daily or weekly basis are significantly more likely to do so in the morning (6 a.m. to 8:59 a.m.), or during the late evening (7 p.m. to 10 p.m.). Also, SNAP participants are more likely to shop regularly at a small grocery/convenience store than non-participants.
- The Appellant is aware that there are a number of SNAP households that come into the store multiple times a day because of convenience often sending their children on separate shopping trips to pick up items from time to time. In some circumstances, one of the SNAP participants had a party at his house and he came in a few times to purchase large bags of ice, cases of Red Bull and soda to provide to guests. After every purchase, the participant would check his remaining balance at the bottom of the receipt and then make additional purchases as the party went on. The Appellant has not right to restrict these purchases.
- The store does not have an optical scanner, but the clerk has the ability to visually identify and enter items into the register. Item prices are usually consistent if not outright uniform, and are frequently memorized by the clerk through repetition over time. Furthermore, the store will tabulate transactions on a rolling basis, meaning that unlike a grocery store when you line up, set all of your items on the counter and then purchase

them, this store permits participants to gather items, bring them to the register, and then return to gather more items. Although the EBT transactions are processed consecutively 5 U.S.C. § 552 (b)(6) & (b)(7)(C), the calculations, bagging and gathering of items can 5 U.S.C. § 552 (b)(6) & (b)(7)(C) if the participant chooses. From a physical transportation angle, the groceries are bagged, and often the customers carry the groceries by hand using their children or friends to carry some items. On occasion, other items like strollers can be used to help transport items out of the store.

- It is important to consider the store's size, inventory and operations. The store's inventory is sufficient to account for the transactions. The store visit observations indicate that the store is sufficiently stocked in all four staple food categories and that its inventory exceeds those around it and has a greater quality and variety than an average convenience store. It is much easier for a customer to get through the spaces of a store like the Appellant than it is for them to go into a supermarket/super store. Accordingly, these customers are more likely to come back for supplemental and quick shopping trips than they otherwise would at an average convenience store with an inferior inventory and a further distance from their homes.
- Transportation inconsistency is another reason for the transactions outlined in this Attachment. Participants do not have their own vehicles so trips to larger stores are dependent upon rides from friends or family. However, a household that cannot depend on those trips is forced to shop nearby. This issue is related to convenience, as it is much easier to carry frozen groceries a few blocks home than it is to walk a mile round trip with the same groceries.
- As stated in the court in *Onukwugha v. U.S.*, "multiple transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C)" are not "inherently suspicious" as it is not uncommon for a customer to make multiple trips to the same store on the same day (finding it unclear as to why FNS found certain close in proximity transactions to be consistent with patterns of trafficking "rather than the innocent explanation of a shopper realizing he forgot something or, for example, one household member wanting to make a small purchase . . . while the other household member stays behind to complete a larger purchase).
- Past Administrative Review Branch decisions have identified a number of certain explanations which adequately explain the presence of Attachment 1 transactions. Examples of acceptable explanations for these purchase transactions include (the Appellant cited numerous administrative review cases and numbers in support thereof): A significant presence of low income SNAP population residing near the retailer; absence of local SNAP retailers to compete with the subject store; significant inventory that encourages multiple shopping trips, like the presence of a deli or meat by the pound; customer loyalty and loyalty programs; lack of transportation for local SNAP households; delivery services; bulk discounts on food purchases, especially expensive items and sodas (like Red Bull); and forgotten Items.
- With regard to the transactions documented in Attachment 2, the Appellant offers its clientele a considerable inventory. As such, these transactions are the result of the store's inventory, co-shopping, and/or are the normal reflections of a SNAP participant's shopping habits.
- Examples of acceptable explanations for excessively large purchase transactions include (the Appellant cited numerous administrative review cases and numbers in support

thereof): Sufficient inventory to account for the transactions, as supported by invoices; sales tax documentation to support sales of food items in amounts to satisfy the transactions; large families shopping contemporaneously; presence of high dollar eligible foods in the store's inventory; presence of specialty or imported foods, which are expensive and not generally available elsewhere; miscategorization of the store, leading to inadequate comparisons of transaction sizes; sales of large quantities of soda; absence of local large SNAP retailers; presence of a large local SNAP population; and presence of bulk pricing or a reward system for larger purchases.

- The transaction 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was for a birthday party across the street and included the purchase of two 5 U.S.C. § 552 (b)(6) & (b)(7)(C) cakes, snacks, and everything else that was needed.
- According to USDA's research (*Foods Typically Purchased by SNAP Households*), sweetened beverages and salty snacks are within the top 10 expenditures for SNAP households, as are meats and a number of other items offered by the Appellant. In all, the SNAP household study found that participants spend almost 62% of their monthly benefits on meats, sweetened beverages (sodas and energy drinks, Gatorade and the like), vegetables, frozen prepared foods, prepared desserts, high fat dairy/cheese and breads—in that order. It is therefore reasonable to expect SNAP customers to spend large amounts and/or the majority of their benefits at the Appellant store.
- According to the FMI *U.S. Grocery Shopping Trends* 2016 annual report, limited assortment stores saw an increase of consumers who use them as a primary grocery by 3% over 2015; convenience stores likewise saw an increase of 3% in consumers who used their store as their primary grocer; ethnic food stores saw a rise of 1% in primary grocery usage.
- Aside from the substantial inventory of convenience foods and regular groceries at the store, a reasonable and plausible explanation for these higher transactions is that the households that conducted these transactions have a larger amount of SNAP residents residing therein, thus requiring a larger quantity of grocery products each month than those households with less participants.
- The excel summaries of the grocery inventory purchases for the review period support the store's inventory. These purchases are substantiated by the bank account records also provided to FNS. According to the Case Analysis Document, the Appellant conducted 5 U.S.C. § 552 (b)(6) & (b)(7)(C) worth of SNAP during the review period, meaning the store's inventory was more than adequate to satisfy the logistics consideration. The physical ability to conduct these transactions was aided by households who shopped in groups, brought their own portable carts (to make transportation of the groceries home easier), or who gathered their items in groups and brought them to the counter to be bagged and tabulated while they continued shopping.
- The number of high priced items in the store do not require the store to have a huge amount of counter space to set all of the items. Given that a number of the items are roughly \$5.00 each, twelve of such items would not be difficult to carry and be placed on the given space set out in the photographs from the store visit report. Furthermore, visual identification on the part of the store's clerk is easier than scanning the items as the clerks are aware of the food prices because of experience so they need only to identify the items and enter the price on the register. In addition, the other stores that are nearby do not



have the inventory variety that the Appellant has. Accordingly, the Appellant is going to have larger transactions than the average convenience store.

- The ALERT system cannot identify fraud. It is designed to identify “suspicious behavior” at most, but the basis for the system is unknown. That is not to say that USDA does not have the right to utilize inconsistent redemption data in disqualifying stores, as the statute plainly permits it. However, the statute does not authorize the Department to rely upon a system that inaccurately accounts for what is “consistent” or “inconsistent”. Context is king, and the purpose for developing a reliable data model from which to work. USDA has held that “without relevant evidence from the [retailer], such as inventory records or itemized cash register receipts, it is reasonable for this review” to conclude that trafficking more likely than not occurred at the store. (Emphasis added). See *TG Mini Mart, Inc.*, Pg. 11-12 (stating that the retailer failed to provide evidence, such as cash register receipts, accounting records, or inventory purchase invoices to demonstrate that the transactions were in fact legitimate – and indicating that the presence of these documents would change the outcome of the analysis); See also *Lima Mini Mart Inc.*, Pg. 11 (finding the retailer to have not provided a preponderance of evidence that the transactions were innocent because the retailer did not provide itemized cash register receipts, comprehensive pricing information, SNAP recipient statements, federal business tax returns or state tax filings, nor any business banking statements – again indicating that where such documents were provided, there would be a different outcome). At this point, it is more likely that USDA has misidentified legitimate transactions as a result of an errant assumption about the Store’s inventory and clientele.
- It is likely that the presence of a Confirmation Bias exists, as it does in many cases handled by FNS. The danger of Confirmation Bias is obvious: USDA starts with the theory that trafficking exists because that is allegedly what the ALERT patterns were designed to detect and if the store is flagged often enough, then the automatic hypothesis put forth by USDA that trafficking is occurring.
- Recent administrative review cases discuss the precedent that should be considered in this case: *Howard’s Quik Mart vs. Retailer Operations Division* and *Gloesis Group vs. Retailer Operations Division*.
- As trafficking did not occur, the Appellant requests that the permanent SNAP disqualification be reversed.
- However, in the event that FNS determines that trafficking did occur, the Appellant requests imposition of a civil money penalty pursuant to 7 CFR § 278.6(i) which states that to be considered for a CMP, a retailer must demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations. Here, the effective compliance policy and program at the Appellant is reflected by the firm’s significant compliance history since it became an authorized SNAP retailer.

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

- *Know Your Core, Protect Your Core*, Convenience Store News for the Single Store Owner, April 2016;
- *U.S. Grocery Shopping Trends*, FMI, 2016;
- *Foods Typically Purchased by SNAP Households*, FNS, November 2016;

- *Profile of SNAP Households in 2018*, Georgia Congressional District 5, FNS;
- *Benefit Redemption Patterns in the SNAP Final Report*, FNS, February 2011;
- *Benefit Redemption Patterns in the SNAP Final Report*, FNS, September 2020;
- Customer affidavits (11 total) attesting to purchasing habits at Appellant firm;
- Excel summaries of grocery store purchases for the review period; and
- Monthly bank statements for review period.

## **ANALYSIS AND FINDINGS**

### **SNAP Authorization**

FNS authorized Corner Grocery for participation in the SNAP on January 8, 2018. During the review period of February 2018 through May 2018, Corner Grocery was classified as a convenience store. The owner signed a SNAP application for the store and acknowledged he was aware of the SNAP regulations and understood those regulations. That application included a certification and confirmation that the owner would “accept responsibility on behalf of the firm for violations of the SNAP regulations, including those committed by any of the firm’s employees, paid or unpaid, new, full-time or part-time.” The violations listed on this certification include accepting SNAP benefits in exchange for cash, otherwise known as trafficking, and other violations such as accepting SNAP benefits as repayment on credit accounts or in exchange for ineligible items.

### **Store Visit Observations**

The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a June 15, 2018 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 1,200 square feet in size with approximately 25 square feet of additional storage area outside of public view which stocked predominantly drinks;
- Had a storage cooler which stocked alcohol only;
- Had a chest freezer that stocked ice cream only;
- No shopping carts and no hand-held baskets available for customer use;
- One specialty cash register for lottery sales only;
- One cash register and one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;
- One small checkout counter area with limited check-out counter space which was surrounded by a Plexiglas barrier;
- No optical scanners;
- Had ATM or money transfer service;

- 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;
- Utilized an unusual pricing structure, such as Little Debbie pastries for \$0.50 or \$1.00; and small bags of snack chips at two for \$1.00;
- Transaction totals were not rounded up or down at the checkout counter;
- Telephone and on-line orders were not taken and delivery was not offered;
- The four most expensive SNAP-eligible food items in stock were yellow rice at \$8.99 per 3.5 pounds; Dasani water at \$6.99 per 32 pack (.5 liter); Folgers coffee at \$6.49 per 11.5 ounces; and Maxwell House coffee at \$6.49 per 11.5 ounces;
- No fresh or frozen meats, poultry, or seafood;
- Frozen food items included ice cream only;
- Firm had a kitchen, offered hot food, and food for on-site consumption. The only hot food present at the time of the store visit was nachos. However, there was signage for other hot foods to include such items as burgers, quesadillas, chicken wings, French fries, shrimp, chicken nuggets, and sides;
- Deli meats and cheeses were not sold by the pound;
- Prepared, made-to-order sandwiches were sold;
- Meat items included units of canned/potted meat, canned fish, eggs, hot dogs, packaged lunch meat, and meat jerky;
- Dairy included milk, margarine, sour cream, and cheese;
- No fresh produce stock;
- Other staple foods available for purchase included such items as juice, pasta, rice, cereal, baking mix, buns/rolls, corn meal, flour, oats, and canned goods;
- Much of the remaining food stock consisted of accessory foods such as candy, carbonated and non-carbonated drinks, condiments, snack foods, and spices; and
- Ineligible nonfood items included tobacco products, lottery tickets, health and beauty aids, paper products, household cleaning supplies, alcohol, housewares, pet food, and toys.

The available inventory of SNAP eligible food at the time of the store visit showed food stock that would be typical of a convenience 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. Based on this empirical data, and in the absence of any reasonable explanations for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the most likely explanation for “unusual, irregular, and inexplicable” transactions and patterns cited in the letter of charges is trafficking. Transactions having such characteristics sometimes do have valid explanations that support that they were the result of legitimate purchases of eligible food items. This is why opportunities are afforded to charged retailers to explain the questionable transactions cited. In this case, the Retailer Operations Division determined that the Appellant’s contentions did not outweigh the evidence. 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. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

### Repeat Transactions by the Same Household (Charge Letter Attachment 1)

This charge letter Attachment documents 23 sets of transactions (56 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 16 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.

The Appellant contends that these transactions are the result of the store’s business practices, co-shopping, and/or the habits of the SNAP clientele. In addition, USDA has previously conducted research into the standard practices of participants for food purchases, and purchases within the first seven (7) days after receiving benefits is not unusual. In fact, on a regular basis, the participants will make significant grocery purchases from the Appellant **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** of receiving the deposit into their accounts. Such patterns are supported by the *Benefit Redemption Patterns in the SNAP Final Report* (2011).

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.

Although many SNAP 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 just one or two days, especially from a convenience store like the Appellant firm that has a minimal food stock, no fresh produce, no frozen food stock other than ice cream, and carries no fresh or frozen meats, poultry, or seafood. The February 2011 government report cited by the Appellant revealed that households most often redeemed their benefits at supermarkets and super stores with only 4% of all households never shopping in a supermarket or super store. The September 2020 *Benefit Redemption Patterns in the SNAP Final Report* provided by the Appellant also noted that SNAP participants most often redeem their benefits at supermarkets and super stores and averaged the largest purchases at these stores. Transactions at supermarkets/super stores accounted for 82.1% of all benefit dollars redeemed. Thus, when a supermarket or super store is available, it is highly unlikely that a SNAP recipient would conduct multiple transactions within a limited period of time or excessively large SNAP transactions at a convenience store like Corner Grocery with a minimal selection of staple foods.

The Appellant contends that as was noted in the 2016 study conducted by the Convenience Store News, small grocery/convenience store customers are among some of the most loyal customers when it comes to their store selection. Most visits to a store the size of Corner Grocery are made while the customer is on his/her way to work or school, or while running errands at night. Typically, SNAP participants who visit on a daily or weekly basis are significantly more likely to do so in the morning (6 a.m. to 8:59 a.m.), or during the late evening (7 p.m. to 10 p.m.). Also, SNAP participants are more likely to shop regularly at a small grocery/convenience store than non-participants.

FNS acknowledges the statement regarding small grocery/convenience store shoppers being some of the most loyal, based on the supplied 2016 study and that customers often pick-up needed items on their way to or from work or school. However, no evidence was submitted by the Appellant to support the statement that SNAP customers are more likely to shop regularly at a small grocery or convenience store than non-participants. The Appellant's claim that SNAP customers are more likely to shop regularly at a small grocery or convenience store than non-participants is located nowhere in the supplied study. This study appears to refer to all types of customers. The consumer research on convenience store core shoppers cited in the 2016 study did not address SNAP redemptions or SNAP customers.

As to whether or not co-shopping actually affected the Appellant firm during the review period, this argument is little more than conjecture. The Appellant has provided no evidence to show that co-shopping is particularly common among SNAP recipients in Atlanta, Georgia. If co-shopping truly impacted Corner Grocery as the Appellant suggests, it would stand to reason that co-shopping would affect other nearby firms as well. This would manifest itself in comparable firms having similar transaction patterns – multiple transactions from the same household in a short period of time. But this is simply not the case.

The Appellant contends that some households that come into the store multiple times per day do so because of convenience—often sending their children on separate shopping trips to pick up items from time to time. However, these transaction sets do not contain the characteristics associated with a household purchasing a forgotten item right after checking-out or of a

household making a separate purchase to check their balance followed by another transaction as 18 of the 23 transaction sets 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The transaction sets also do not contain the characteristics of a household returning later in the day to purchase a forgotten item or two as all of the sets have subsequent transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C), far more than the cost of a forgotten item or two.

The Appellant contends that in some circumstances, one of the SNAP participants had a party at his house and came to the store to purchase a few times to purchase large bags of ice, cases of Red bull and soda to provide to his guests. After every purchase, the participant would check his remaining balance at the bottom of the receipt and then make additional purchases as the party went on. However, the EBT point-of-sale (POS) device is programmed to permit immediate inquiries without having to first process a purchase. There is also a toll-free 800 telephone number that can be called to find out account balances, if needed. As such, the Appellant's contention is unsubstantiated.

The Appellant contends that it is important to consider the store's size, inventory and operations. The store's inventory is sufficient to account for the transactions. The store visit observations indicate that the store is sufficiently stocked in all four staple food categories. Customers are more likely to come back for supplemental and quick shopping trips at the Appellant than they otherwise would at an average convenience store with an inferior inventory and a further distance from their homes.

However, the report and photographs from the store visit offer no explanation as to why SNAP customers would routinely shop at Corner Grocery 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 store visit photos indicate that there were no signs posted advertising the availability of specials or bulk packages. While research reports acknowledge the rapid spending habits of SNAP participants as normal practices, it is expected SNAP benefits are expended in establishments with adequate inventory to support purchases. Such inventory was not confirmed in the subject store.

The Appellant contends that cashiers know the price of goods by memory, which makes the checkout process easier. Furthermore, the store will tabulate transactions on a rolling basis, meaning that unlike a grocery store when you line up, set all of your items on the counter and then purchase them, this store permits participants to gather items, bring them to the register, and then return to gather more items.

The store visit observations indicate that the firm had a small checkout area with limited check-out counter space which was surrounded by a Plexiglas barrier. In addition, the firm had only one cash register and one EBT POS device for ringing-up SNAP purchases. There were no shopping carts or hand-held baskets available to customers for transporting food within the store and no conveyor belts to expedite high dollar or rapid consecutive purchases. The customers have no place to put multiple purchases or carry the items while shopping. As a customer this would be inconvenient at best and it would make it hard for the cashiers to keep a running total of items purchased as the Appellant suggests. As such, even if cashiers do know

the price of goods by memory, these factors call into question that this is a reasonable explanation for the transactions.

The Appellant contends that the store is located in an area where there are not immediate competitors around it as the closest supermarket is located 2.56 miles away. This means less competition and higher dollar volume. There was another EBT authorized store within a mile that was under contract for sale. The store stopped carrying adequate inventory as a result, which drop up sale at the Appellant store. The closing store also had a bad reputation for bad service and inventory. The Appellant worked hard to bring the customer service and inventory to a higher standard and as a result, local customers began shopping more at the Appellant firm and the store's revenue grew.

With regard to these contentions, 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, during the review period there were 16 SNAP authorized retailers located within a 1.0 mile radius of Corner Grocery, including 1 supermarket and 1 medium grocery store, that could meet the nutritional needs of SNAP customers. Some of these authorized SNAP stores are larger than Corner Grocery and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store.

The Appellant contends that participants do not have their own vehicles so trips to larger stores are dependent upon rides from friends or family. A household that cannot depend on those trips is forced to shop nearby. However, the Retailer Operation Division's analysis of shopping patterns for households listed in the charge letter Attachments shows they have ready access to transportation as evidenced by their shopping at a variety of larger food stores located nearby and at a distance from the Appellant's location, including a variety of super stores and supermarkets. It is improbable that households would choose to spend large dollar amounts at the Appellant firm if their purchases consisted solely of eligible food items that could be purchased at any of the super stores and/or supermarkets they were already regularly shopping at.

No documentation was offered to support the owner's contention that trafficking was not occurring at the Appellant. The Appellant has the burden to provide relevant evidence to rebut the trafficking charges. 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.

### **Excessively Large Purchase Transactions (Charge Letter Attachment 2)**

This charge letter Attachment documents 118 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.

The Appellant has provided several contentions with regard to the transactions in Attachment 2, including a claim that the store sells a variety and quantity of staple food items to the

surrounding community such as fruits, vegetables, bread, butter, milk, cheese, bacon, beef, chicken, lunch meat, eggs, pasta, canned meats, chips, cookies, muffins, cakes, ice cream and additional items. The Appellant has a substantial inventory of convenience foods and regular groceries.

However, 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 convenience 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 the large transactions are not the result of trafficking of SNAP benefits. However, it is rare for a convenience store such as Corner Grocery to have purchases like those included in this Attachment to the charge letter.

The Appellant contends that the store visit review noted four of the store's most expensive staple food items but failed to cite some of the other expensive foods stocked at the Appellant to include broccoli at \$5.99, carrots at \$5.99, lettuce at \$5.99, bacon at \$5.99, beef/steak at \$7.99, chicken at \$7.99, ham/pork at \$7.99, turkey at \$5.99, Enfamil infant formula at \$17.99, imported rice at \$6.99, case of Red Bull at \$42.99, and a case of Powerade at \$6.99. The Appellant also runs specials including, but not limited to: Cases of water at \$9.99; cases of soda at \$6.99; family size bags of chips at \$6.99; frozen sandwiches at \$4.99 - \$5.99; frozen meats at \$1.99 - \$15.99; gallon of milk at \$6.99; block of cheese at \$5.99; buy 1 gallon of milk and receive 1 loaf of bread for free; buy a family size bag of chips and get 1 can of soda for free; 2 cans of small energy drink at \$4.99; 2 cans of medium energy drink at \$5.99; cases of energy drinks at \$10.99 - \$30.99; and family size cereal boxes at \$6.99. The transaction 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was for a birthday party across the street and included the purchase of two 5 U.S.C. § 552 (b)(6) & (b)(7)(C) cakes, snacks, and everything else that was needed.

However, the FNS store visit report and photos show that Corner Grocery offers a minimal stock of SNAP eligible foods with no fresh meats, poultry, or seafood, no frozen meats, poultry, or seafood, no frozen foods other than ice cream, no fresh produce, and a lack of an abundant depth and breadth of staple foods. Many of the foods noted by the Appellant such as broccoli, carrots, lettuce, bacon, frozen sandwiches, frozen meats, and infant formula, were not stocked by the firm. The store visit inventory report, which was signed by the store owner, and photos also show only a few expensive eligible foods in stock (each of which had less than 10 units in stock) that would account for these large amounts, 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, specials such as buy one food item and get one for free, 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.



The Appellant contends that the visual identification on the part of the store's clerk is easier than scanning the items as the clerks are aware of the food prices because of experience so they need only to identify the items and enter the price on the register. In addition, the number of high priced items in the store do not require the store to have a huge amount of counter space to set all of the items.

As noted previously, the store visit observations indicate that the firm had a small checkout area with limited check-out counter space which is surrounded by a Plexiglas barrier. In addition, the firm had only one cash register and one EBT POS device for ringing-up SNAP purchases. There were no shopping carts or hand-held baskets available to customers for transporting food within the store and no conveyor belts to expedite high dollar or rapid consecutive purchases. The customers have no place to put multiple purchases or carry the items while shopping. As a customer this would be inconvenient at best and it would make it hard for the cashiers to keep a running total of items purchased as the Appellant suggests. As such, even if cashiers do know the price of goods by memory, these factors call into question that this is a reasonable explanation for the transactions.

The Appellant contends that the 11 SNAP customer statements/affidavits provided note that they spend 5 U.S.C. § 552 (b)(6) & (b)(7)(C) during a single trip, exhausting between 40% to 80% of their SNAP benefits at the store, and the majority attest to frequenting the store multiple times in a single day.

A search of the state administrative terminal data for the names provided in the customer statements indicates that one (1) customer did not conduct any SNAP transactions at the subject firm during the review period; one (1) customer had more than 45 potential name matches but not one of them matched the address listed on the customer statement; one (1) of the statements was illegible and therefore, could not be matched to a specific customer; and two (2) households did not have matches in the administrative terminal.

The remaining six (6) customer affidavits were matched to households in the charge letter. These households completed a total of 163 transactions at the subject firm 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These same six households completed 193 transactions at other authorized firms during the review period 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E).

While FNS acknowledges the statements, affidavits/customer statements provided in cases where violations are suspected are frequently considered unreliable because the persons writing them historically give inaccurate information. These affidavits, even if well-intentioned, are typically not accurate depictions of a household's shopping behavior, as households generally do not retain records of transactions and often do a poor job of recalling actual spending patterns at a particular location. Even if the statements were accepted as evidence of legitimate transactions, these statements could account for just 18 of 141 transactions/transaction sets in the charge letter. These statements are not found to be more persuasive of legitimate SNAP transactions for eligible foods than the evidence supporting trafficking.

The Appellant contends that the Excel summaries of the grocery inventory purchases for the review period support the store's inventory. These purchases are substantiated by the bank account records also provided to FNS. According to the Case Analysis Document, the Appellant conducted 5 U.S.C. § 552 (b)(6) & (b)(7)(C) worth of SNAP during the review period, meaning the store's inventory was more than adequate to satisfy the logistics consideration.

5 U.S.C. § 552 (b)(7)(E).

While FNS acknowledges the Excel summaries provided by the Appellant, these summaries do not indicate what items were purchased. There is no way to determine what items were purchased and whether the items were eligible inventory or other ineligible nonfoods items. It cannot be determined if the purchases actually occurred. In addition, some of the entries have no dates associated with them. Some of the entries, such as the information labeled "checks", do not even note where the purchases occurred, what was purchased or what dates the purchases took place. As such, the Excel summaries provided by the Appellant are insufficient to establish the eligible food inventory at the subject firm during the review period.

The bank records submitted for review do not show/indicate what was purchased and whether the items are eligible SNAP foods or ineligible nonfood items. In many instances the transactions listed on the Excel summaries are not included on the bank records. 5 U.S.C. § 552 (b)(7)(E).

It is possible the entries provided by the subject firm were cash purchases for eligible food inventories. It is possible the firm was only capturing eligible food purchase totals that were part of a larger purchase that is somehow included on the bank statement. However, none of these speculative theories was supported by any evidence provided by the Appellant. Such evidence could have included purchase reports from the vendors, itemized purchase receipts, etc. Without any evidence these allegations and the Excel summaries and bank statements provided are insufficient to support a finding that the firm purchased sufficient inventory during the review period to cover their SNAP redemptions.

The Appellant contends that according to the Case Analysis Document, the store's average transaction amounts and purchase transaction counts have been close to those for the County averages. It would appear that the dollar volume, purchase transaction count and average transaction amounts are all roughly in line with what USDA sees from other stores in the area. The only difference that appears to exist is the average transaction amount, which is a result of the store's inventory.

5 U.S.C. § 552 (b)(7)(E).

As to whether or not co-shopping actually affected the Appellant firm during the review period, this argument is little more than conjecture. The Appellant has provided no evidence to show that co-shopping is particularly common among SNAP recipients in Atlanta, Georgia. If co-shopping truly impacted Corner Grocery as the Appellant suggests, it would stand to reason that co-shopping would affect other nearby firms as well. This would manifest itself in comparable

firms having similar transaction patterns – excessively large purchase transactions made from recipient accounts. But this is simply not the case.

The Appellant contends that a significant portion of the Appellant’s clients are EBT participants from the surrounding residential neighborhoods and the vast majority of the store’s offerings are qualified items under the SNAP regulations. The Appellant serves the surrounding community which in pertinent part suffers from poverty at a high rate (49.8%) with many low income families. According to USDA’s Profile of Households for the 5<sup>th</sup> Congressional District of Georgia, where Corner Grocery is located, 15% of the households receive SNAP benefits.

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 according to USDA’s research (*Foods Typically Purchased by SNAP Households*), sweetened beverages and salty snacks are within the top 10 expenditures for SNAP households, as are meats and a number of other items offered by the Appellant. It is therefore reasonable to expect SNAP customers to spend large amounts and/or the majority of their benefits at the Appellant store.

It is acknowledged that the subject store does offer items that SNAP households would purchase; however, many of these items are accessory items that a SNAP customer would not purchase all the time. However, the key findings of the noted study indicate that there were no major differences in the expenditure patterns of SNAP and non-SNAP households, no matter how the data was categorized. The study noted that similar to most American households: About 40 cents of every dollar of food expenditures by SNAP households was spent on basic items such as meat, fruits, vegetables, milk, eggs, and bread; another 20 cents out of every dollar was spent on sweetened beverages, desserts, salty snacks, candy and sugar; the remaining 40 cents was spent on a variety of items such as cereal, prepared foods, dairy products, rice, and beans; and the top 10 summary categories and the top 7 commodities by expenditure were the same for SNAP and non-SNAP households, although ranked in slightly different orders.

The Appellant contends that according to the FMI *U.S. Grocery Shopping Trends 2016* annual report, limited assortment stores saw an increase of consumers who use them as a primary grocery by 3% over 2015; convenience stores likewise saw an increase of 3% in consumers who used their store as their primary grocer; ethnic food stores saw a rise of 1% in primary grocery usage. FNS does not question the data in the report and acknowledges that it could be possible that some people shop at the subject store regularly. However, the Appellant is using this average and or overall data to attempt to explain the questionable transactions in the charge letter. This data, however, is not specific to the subject store. This report does not mention the number of SNAP recipients, if any, included in the survey. In addition, the survey participants were located in Seattle, Washington, while the subject firm is located in Atlanta, Georgia. As

such, the referenced report does not substantiate that trafficking did not occur at the Appellant firm.

The Appellant contends that it is common for customers to spend larger amounts at the Appellant as a direct result of the lack of nearby alternative stores that offer sufficient inventory. As noted previously, 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, during the review period there were 16 SNAP authorized retailers located within a 1.0 mile radius of Corner Grocery, including 1 supermarket and 1 medium grocery store, that could meet the nutritional needs of SNAP customers. Some of these authorized SNAP stores are larger than Corner Grocery and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store.

The record also indicates that SNAP customers who shopped at Corner Grocery 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 during the review period.

**5 U.S.C. § 552 (b)(7)(E).**

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 a 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.

Regarding the Appellant's contentions with respect to the reliability of the ALERT system and Confirmation Bias, USDA employs a computerized fraud detection tool to identify EBT transactions that form patterns that have characteristics indicative of trafficking. However, this tool does not, by itself, determine or conclude that trafficking has occurred. The Retailer Operations Division analyzes the transaction data and patterns along with other documentation such as, information from the onsite store visit report including photographs of stock and the store layout, an analysis of recipient shopping behavior, and comparisons with similar store types in local area, to render a determination as to whether or not the questionable transaction patterns were, more likely than not, the result of trafficking. The regulations at 7 CFR § 278.6(a) state that FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, and that such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through, inconsistent redemption data, and evidence obtained through a transaction report under an electronic benefit transfer system.

Based on the discussion above 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. As noted herein, the Appellant has the burden of providing credible, relevant evidence, which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than not true. This burden has not been met.

### **Case Laws/Past Administrative Reviews**

With regard to the case laws and past administrative reviews cited by the Appellant, it is beyond the scope and authority of this review to determine the applicability of same. This review is limited to consideration of whether or not the Retailer Operations Division duly adhered to the Food and Nutrition Act of 2008, as amended, and the implementing regulations, and whether or not the action taken is sustainable by a preponderance of the evidence. Therefore, the application of any judicial precedent is better addressed via judicial review. Accordingly, no further findings or conclusions are rendered in this regard.

It is also important to note that as with all administrative review decisions, this administrative review decision is not precedent setting as the decision is based on the specific circumstances of this case as documented by materials provided by both the Appellant and the Retailer Operations Division. In addition, this administrative review decision, as well as all administrative review decisions, does not establish policy or supersede Federal law, regulations or policy guidance.

### **CIVIL MONEY PENALTY**

In the July 3, 2018 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 its correspondence to FNS, the Appellant, through counsel, requested consideration for a civil money penalty in lieu of permanent disqualification. However, the Appellant provided no supporting documentation in support of its request. The Appellant contends that the firm's effective compliance policy and program is reflected by its significant compliance history since becoming an authorized SNAP retailer. However, a record of participation in the SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges.

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 Corner Grocery 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

April 5, 2021