

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

**Eddies Meat Market,**

**Appellant,**

**v.**

**Case Number: C0199933**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

The U.S. Department of Agriculture, Food and Nutrition Service (FNS), finds that there is sufficient evidence to support the decision by the Retailer Operations Division to impose a permanent disqualification against Eddies Meat Market (hereinafter Appellant) from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.6(a), (c) and (e)(1)(i), when it imposed a permanent disqualification against Appellant on June 28, 2017.

**AUTHORITY**

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

**CASE CHRONOLOGY**

In a letter dated May 24, 2017, 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 November 2016 through April 2017. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also noted that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within ten days of receipt under the conditions specified in 7 CFR § 278.6(i).

Appellant responded in a letter dated June 2, 2017, requesting a trafficking and a hardship CMP; however, the response contained no documentation to be considered in support of a CMP. Appellant requested a two week extension of time to respond to the specific charges in a request dated June 4, 2017. This request was approved by FNS letter dated June 5, 2017, authorizing an extension until June 19, 2017, to respond. Appellant responded to the charges in a letter dated June 19, 2017, and subsequently provided information related to inventory mark-up percentages in an email dated June 26, 2017. The Retailer Operations Division notified Appellant in a letter dated June 28, 2017, that the firm was permanently disqualified from participation as an authorized retailer in SNAP in accordance with Section 278.6(c) and 278.6(e)(1) for trafficking violations. This determination letter also stated that Appellant's eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations was considered. However, the letter stated “. . . you are not eligible for the CMP because you failed to submit sufficient evidence to demonstrate that your firm had established and implemented an effective compliance policy and program to prevent violations of the Supplemental Nutrition Assistance Program.”

By letter dated June 30, 2017, Appellant appealed the Retailer Operations Division's assessment and requested an administrative review of this action. Counsel also requested to see all actual evidence used in the decision to permanently disqualify the Appellant business. The appeal was granted and it was suggested that counsel submit a Freedom of Information Act (FOIA) for the requested information. On August 9, 2017, Appellant, via email, submitted a FOIA request. The Agency responded to this request by correspondence dated August 22, 2017, that was received by counsel on August 23, 2017. Subsequent correspondence dated July 24, 2017, and August 23, 2017, was received from Appellant. The August 23, 2017, correspondence advised that counsel would be appealing the FOIA response as the 21 pages containing the pertinent information had been heavily redacted. Counsel further requested that the redacted information be excluded from the administrative review process. Counsel was advised by this Review Officer via email on August 24, 2017, that the administrative review cannot be delayed during the FOIA appeal process and that there is no provision in applicable regulations for the administrative review to exclude materials redacted from the FOIA response.

## **STANDARD OF REVIEW**

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means Appellant has the burden of providing relevant evidence that a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than untrue.

### **CONTROLLING LAW**

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

7 U. S. Code § 2021(a)(2) states, “Regulations promulgated under this chapter shall provide criteria for the finding of a violation of, the suspension or disqualification of and the assessment of a civil penalty against a retail food store or wholesale food concern on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, or evidence obtained through a transaction report under an electronic benefit transfer system.”

In addition, 7 CFR § 278.6(a) states, in part, “FNS may disqualify any authorized retail food store . . . if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an *electronic benefit transfer system* . . . .” (Emphasis added.)

7 CFR § 278.6(e)(1)(i) reads, in part, “FNS shall . . . [d]isqualify a firm permanently if . . . personnel of the firm have trafficked as defined in § 271.2.” Trafficking is defined, in part, in 7 CFR § 271.2, as, “The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits . . . for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone . . . .” Trafficking is further defined, in 7 CFR § 271.2, to include “(5) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.”

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)(ii) states, inter alia: “Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence . . . that establishes the firm’s eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in §278.6(i). This information and evidence shall be submitted within 10 days, as specified in §278.6(b)(1).” Part 278.6(b)(2)(ii) further states that if a firm fails to request 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 Part 278.6(b)(1), the firm shall not be eligible for such a penalty.

### **SUMMARY OF THE CHARGES**

The charges on review were based on an analysis of SNAP EBT transaction data during the six month period of November 2016 through April 2017. This involved four patterns of EBT transaction characteristics indicative of trafficking:

1. There were an unusual number of transactions ending in a same cents value.
2. Multiple purchase transactions were made too rapidly to be credible.
3. Multiple transactions were made from individual benefit accounts in unusually short time frames.
4. Excessively large purchase transactions were made from recipient accounts.

### **APPELLANT’S CONTENTIONS**

In the responses to the letter of charges, in the request for administrative review, and in the subsequent correspondence, Appellant has stated as its position in the matter the following:

- This is a family business that has been primarily operated by the owner and his father for approximately seven years and is approximately 3,200 square feet and very full of groceries, meat, and dairy items. The store sells large quantities of meat with people coming from around the bi-state area to purchase meat. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The store is the only grocery store in Washington Park, Illinois that accepts SNAP benefits. The area population is largely minorities and low income. Many people do not have transportation and walk to the store;
- Neither the store nor the owner have ever engaged in the sale or trafficking of SNAP benefits. The store has never been accused of violating, let alone found to have violated, any state or federal laws relating to its participation in any government programs. The store has a fully-functioning kitchen where employees can prepare food items purchased by customers and a large meat market selling hundreds of thousands of dollars in fresh meat packages every year. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This is good for the people of Washington Park, the majority of whom are on public

assistance, including SNAP. The store is doing exactly what USDA wants it to do – providing a wide variety of healthy grocery, meat, fish, dairy, and vegetable choices, but has been tagged as an outlier by the USDA’s computer algorithm. The essential characteristic of trafficking is a lack of supporting inventory since a retailer does not need inventory to sell when trafficking. Therefore the typical retailer cannot justify its SNAP volume with inventory purchases. This store can prove almost two million in inventory purchases. Not every store with large sales is trafficking, sometimes they are just doing the right thing and doing it well which is what this store does;

- The store concentrates on three areas: first it is a grocery store, second a large volume meat market, and third it has a fully-functioning kitchen and deli area to prepare food items for purchase. The kitchen prepares items for consumption at home or outside of the store and is often done while the customer completes their other shopping, which is rung-up in a separate transaction. Prepared items range in price from \$1.99 to \$64.99 and constitute a very large portion of revenue. The store also has large freezers holding frozen foods such as chicken wings, fish, and steaks that customers purchase and request the store prepare for the customer’s later consumption. This is consistent with recent studies showing that most people now prefer to eat in restaurants or purchase prepared foods over cooking at home. Most importantly, the store is famous for its fresh meats selling tens of thousands of dollars of fresh meat each month to customers from around the bi-state area. The store has all the equipment needed to cut, slice, and grind meats. Many customers purchase large meat packages that range from \$49.99 to \$299.99. Every single questioned transaction is entirely legal, legitimate, and in full compliance with SNAP regulations as verified under oath by the owner. What might appear as questionable transactions for a small store or different retail setting are perfectly appropriate in this case;
- Washington Park is a small city outside of East St. Louis with a population of 4,040 and a per capita income well below the rest of the state at \$10,019. Nearly 42 percent live below the poverty level. This store has been serving the neighborhood for nearly seven years and is a full-scale grocery store, not a convenience store, with a complete array of groceries, dairy, frozen foods, fresh produce, meat, and deli as evidenced by photographs;
- Because the store has been a stable member of the community for seven years and the owner has a close relationship with many of his customers, they know the store offers quality products at a fair price and so return again and again to make purchases as evidenced by letters of support and community awards;
- The store sells significant quantities of meat, including dozens of meat packages, at lower, bulk prices such as the All Beef Bundle for \$159.99, the Lunch and Dinner Package for \$119.99, the Family Plan for \$259.99, and the Freezer Buster for \$299.99. Customers are also able to create their own “packages” for purchase. Meat constitutes a high percentage of overall sales. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This would constitute

- approximately 50 percent of monthly sales;
- The menu also reflects the wide variety of other products offered. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The store also has a fully-functioning kitchen where employees can prepare food and meat items purchased by customers. This is often done while the customer completes their other shopping, which is rung-up in a separate transaction;
- The excessively large transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) all fall within the USDA guidelines for the monthly food costs (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) for a family of four. All, but five are below the monthly average for a family of two (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) and nearly half are below the monthly average for a single person (5 U.S.C. § 552 (b)(6) & (b)(7)(C)). Transactions that fall below the USDA averages should not be considered excessive. Add these to the fact that the store sells large quantities of meat, packaged in a way that can be used by the customer for weeks or months, and the large transactions do not seem unusual at all;
- The store sells meat in larger than typical sizes and quantities with meat sales making- up a large percentage of overall sales. SNAP regulations do not require or restrict the purchase of certain items or restrict the quantities purchased. The quantities of meat purchases are confirmed by the invoices provided and demonstrate that during the time in question the store purchased 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in meat and poultry products from its vendors with this same meat retailing for almost 5 U.S.C. § 552 (b)(6) & (b)(7)(C) due to a 50 percent mark-up for meat/poultry items. Other grocery items have a 35 percent mark-up;
- The close in time transactions are explained by the availability of large meat packages that are pre-packaged and rung-up as a single transaction. This can be done very quickly even if the customer has a few separate items along with the meat purchase. This is exactly the pattern of the paired transactions in Attachment 1 – a large transaction paired with a small transaction. These are typically meat orders followed by or preceded by, a small purchase which is entirely possible, reasonable, and proper. Moreover, the store has two registers to allow quicker checkouts;
- Appellant is not clear how the multiple transactions demonstrate trafficking. If a beneficiary were trafficking, wouldn't they do it in a single transaction, rather than in multiple transactions? There are abundant legitimate reasons for these transactions:
  - customers pair a meat package with additional grocery items which are rung separately;
  - Customers purchase a food item for preparation (transaction #1) and have it prepared while they complete their shopping (transaction #2;
  - Customers are unsure what their total will be and after they have determined what their SNAP balance is after transaction #1, they pick-up an additional item or two or three for transaction #2;

- Customers remember something after checking-out or purchase something before shopping;
- Customers request their orders be rung-up separately;
- Customers in a small neighborhood make multiple visits;

A sampling of the transactions from Attachment 3 show any one of the above explanations can be applied to these transactions. Transactions 1185 and 1186 were rung-up at two separate registers signifying the customer likely asked that they be rung- up separately. Similarly, 1189-1190 and 1199-1200 include what appear to be two meat package purchases (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) which the customer likely requested to be rung-up separately. Transaction 1187\*-1188 and 1191-1192 each contain an item that is likely a pre-packaged meat or bulk food purchase (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) coupled with other grocery items (5 U.S.C. § 552 (b)(6) & (b)(7)(C)). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). So a customer might pay for food that is to be prepared and then shop for additional items or vice versa and pay separately. For example, this is the reasonable explanation for transactions 1242-1243, 1244-1245, 1246-1247, 1248-1249, 1252-1253, 1254-1255, 1256-1257, and 1260-1261, among many others. A large majority (65 percent) of the paired transactions have a gap of time 5 U.S.C. § 552 (b)(6) & (b)(7)(C) since customers visit neighborhood stores on multiple occasions in a given day.

Sometimes they forget something and go back later or the mother sends a child back to make additional purchases. Or sometimes customers simply choose to purchase different items at different times of the day. When you are using the market as your kitchen, multiple trips are not unusual. Some beneficiaries may trade and/or sell the items they purchase for cash or other consideration and at other times a beneficiary may allow someone else to utilize their card for cash or other consideration. If a customer chooses to allow a friend or family member to use their card, there is no way for the store to discover the activity as shown in different newscasts titled “Craig’s List Turning Food Stamps into Cash”. This is an issue between SNAP and the beneficiary;

- The same cents transactions are explained by the store’s prices. The charge letter identifies 215 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) over a period of six months for a store that sold more 5 U.S.C. § 552 (b)(6) & (b)(7)(C) merchandise to SNAP beneficiaries in tens of thousands of transactions. This is not an unusual amount when all the larger, bulk, and packaged items 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This explains why 200 transactions involving larger, bulk, and packaged items 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Exhibit E explains many of these transactions and there are also daily and weekly specials with prices ending in .99 cents and custom packages also priced in .99 cents. The 159 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) can be explained as two items each priced at .99 cents. For example, two Budget BBQ Bundles (each 5 U.S.C. § 552 (b)(6) & (b)(7)(C)) 5 U.S.C. § 552 (b)(6) & (b)(7)(C) as

evidenced Attachment 1 transactions 49-53. Transactions 20-26 (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) are the price for Meat Package #1 (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) and Meat Package #2 (5 U.S.C. § 552 (b)(6) & (b)(7)(C)). Transactions 156-159 could be a catfish fillet order (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) with a Mixed Family Size Fish Order (5 U.S.C. § 552 (b)(6) & (b)(7)(C)). In fact, every items in Attachment 1 can be obtained by pairing two menu items (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) and certainly do not lead to the conclusion of trafficking;

- Appellant states that the original response contained an error in the sales numbers for Eddie's Meat Market and forwards the corrected numbers. The 2015 tax returns included sales numbers for both the Washington Park and the Collinsville locations. Both stores have separate SNAP authorizations, but share the same sales tax numbers and file federal taxes under the same corporate federal tax identification number. The sales for the Collinsville location (5 U.S.C. § 552 (b)(6) & (b)(7)(C));
- The store and owner have demonstrated beyond any reasonable doubt that there has been no misconduct in violation of SNAP regulations; however, Appellant requests a CMP in the event that USDA determines a trafficking violation occurred;
- The owner and his father operate the two registers and take their obligations under SNAP very seriously and have made every effort to ensure compliance with SNAP regulations. They have maintained a strict policy and training focused on meeting SNAP regulations. Both deny that the store has ever trafficked. At the time of the incidents, Appellant had established and implemented an effective compliance policy and program to prevent SNAP violations;
- Criterion 1: A policy reflecting a commitment to ensure compliance with SNAP regulations was in effect at the time of the incidents. The owner and his father are the only two who operate the cash registers and have read the materials provided by USDA and watched the compliance video. Each is clear on what can and cannot be purchased using SNAP and, most importantly, they each know and accept the serious consequences of exchanging cash for SNAP benefits. The store is their livelihood and they do not intend to lose it by not following the regulations;
- Criterion 2: The owner and his father were trained from the first day the store began to accept SNAP thus meeting this criterion;
- Criterion 3: The owner and his father follow the training materials provided by USDA with training including the materials found on the SNAP website. The training is ongoing, using the written and web-based USDA training materials thereby meeting this requirement;
- Criterion 4: Firm ownership was not aware of, did not approve, did not benefit from, or was not in any way involved in this conduct or approval of trafficking violations, or it is only the first occasion in which a member of firm management was aware of, approved, benefitted from, or was involved in the conduct of any trafficking violations by the firm;



- The owner and his father were not aware of, did not participate in, did not approve of, and did not benefit from the alleged incidents. No trafficking has occurred at the store; and,
- In addition, the store qualifies for a CMP because a disqualification would cause undue hardship to SNAP households as there is no other authorized retail store selling as large a variety of staple food items at comparable prices. This is the only grocery store in Washington Park and there are no chain grocery stores, Walmart's, or Sam's in the area. Many of the customers do not have transportation and must walk to the store. The closest alternative store is more than a one mile walk round trip that is too far for many SNAP residents to walk. The store is a full-service grocery store with shelves of milk, bread, and cereal that carries fruit and vegetables, has frozen foods, and a tremendous meat department. It is clearly selling a substantial variety of staple food items. There are still gas stations and liquor stores, but no real groceries in a location close to home.

Appellant submitted a statement signed by the owner attesting to the truth of the statements contained in the response; 36 undated photographs of store layout, inventory, and menu items; 2014/2015 tax returns; two undated photographs of the prepared food item menu boards; a Fox News article on Americans spending more money on dining-out than on groceries; a one page listing of 15 meat packages (Exhibit E); two undated statements from concerned citizens; photographs of a 2012 Community Service Award plaque and a 2013 Continuous Support plaque; 364 pages of copied invoices; the USDA Food Plan Costs from the Center for Nutrition Policy and Promotion; three undated photographs of recent bulk meat purchases (Exhibit I); and two maps of the area. The preceding may represent a summary of Appellant's contentions in this matter, however, in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

## **ANALYSIS AND FINDINGS**

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

### **Store Background and FNS Store Visit**

The FNS authorized the Appellant business on January 28, 2010, and the business is classified as a medium grocery store. The file indicates that in reaching a disqualification determination, Retailer Operations Division considered information obtained during a February 25, 2017, store visit conducted by a FNS contractor to

observe the nature and scope of the firm's operation, stock, and facilities. This information was then used to ascertain if there were justifiable explanations for the EBT transactions at Appellant's store that formed patterns indicative of trafficking. The store review summary documented the following store size, description, and characteristics:

- The business was a reasonably sized medium grocery store offering a moderate quantity and variety of staple foods and carrying no unique items or offering any distinctive services that would not be found at most well-stocked food stores.
- Exterior signage identified the business as "Eddie's Supermarket".
- There were four shopping carts and 13 handheld baskets for customer use seen during the store visit.
- The checkout counter was approximately four feet by two feet and set in between two plastic walls with displays on both sides thereby limiting available counter space. Additionally, there were ice cream chest freezers directly in front of the check-out area that customers must reach over in order to place their purchases on the counter.
- The checkout counter had two cash registers each with their own POS terminal and no scanner. The small size of the checkout area combined with the shared counter space and freezers would make it problematic to process large orders.
- No food packages, bundles, case sales, bulk products, or other sales were evident that would explain the unusual transactions and no SNAP eligible cased items were available for sale.
- There was no exterior or interior signage advertising the availability of meat packages.
- There was a large, complete commercial kitchen and deli offering a wide variety of hot prepared, ready-to-eat foods.
- Two large menu signs advertised hot chicken, shrimp, and fish dinners; hot sandwiches; fish & chicken dinners; combo platters; gyros; fried catfish; and hot side orders to list a few.
- The store had a butcher shop equipped with cutting and grinding equipment.
- The store had a moderate stock of staple foods that included a good selection of fresh and frozen meats, poultry, seafood; a limited quantity and variety of fresh and frozen fruits and vegetables; many frozen convenience foods; deli meats and cheeses; and a moderate selection of canned and packaged items with a sizeable portion of store inventory in single serving items, snacks, accessory foods, and ineligible items.
- The most expensive items were fresh meats priced up to \$6.99/pound for T-Bone steaks.
- The business also offered baby foods, cereals, and infant formula; however, most SNAP households with infants or small children are WIC participants and therefore would be purchasing infant formula using WIC vouchers, not SNAP EBT, since the store was a WIC vendor.

- Ineligible items included: alcohol, tobacco, lottery, hot ready-to-eat foods, smoking accessories, ATM, sunglasses, HH/paper products, HBI, hats, shoes, jewelry, diapers, bill pay/money gram services, cell phones, and phone accessories while accessory foods included: un/carbonated drinks, candy, spices, condiments, tea, coffee, prepared salads, and cold ready-to-eat sandwiches.
- Signage was in English.
- Most food items were priced with all visible prices ending in .x9 cents except for individual apples and oranges priced at two for one dollar and potatoes at \$1.00 each. A price ending in .x9 cents is the most common pricing structure for grocery stores.
- The store was a WIC vendor.
- Store hours were open 24/7 daily as confirmed by the store manager during the store visit.
- The FNS store visit report and photographs show some empty or marginally stocked shelves and racks.
- The quantity and variety of the store's staple food inventory was comparable to that seen during the July 11, 2015, FNS store visit.

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

This attachment lists 374 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These 374 transactions include 215 transactions ending in the same cents value 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Transaction amounts include 154 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These include an unusually high number of transactions for the exact same dollar amount 5 U.S.C. § 552 (b)(6) & (b)(7)(C) that are not supported by store inventory or pricing. When such repetitive patterns are unsupported by special pricing structures they are a strong indicator of trafficking in SNAP benefits. The FNS store report and photographs revealed no signs posted to indicate special food packages, bundles, case sales, or other sales that would explain the unusual number of transactions ending in these same cents values and no bulk items were available for purchase. The high percentage of same cent transactions combined with the large number of high dollar transactions is irregular and suspicious for this type store.

Appellant contends the same cents transactions are explained by the store's prices. The charge letter identifies 215 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in merchandise to SNAP beneficiaries in tens of thousands of transactions. This is not an unusual amount when all the larger, bulk, and packaged items 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This explains why 200 transactions involving larger, bulk, and packaged items 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Exhibit E explains many of these transactions and there are also daily and weekly specials with prices ending in .99 cents and custom packages also priced in .99 cents. The

159 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) can be explained as two items each priced at .99 cents. For example, two Budget BBQ Bundles (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) 5 U.S.C. § 552 (b)(6) & (b)(7)(C) as evidenced Attachment 1 transactions 49-53. Transactions 20-26 5 U.S.C. § 552 (b)(6) & (b)(7)(C) are the price for Meat Package #1 (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) and Meat Package #2 (5 U.S.C. § 552 (b)(6) & (b)(7)(C)). Transactions 156-159 could be a catfish fillet order (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) with a Mixed Family Size Fish Order (5 U.S.C. § 552 (b)(6) & (b)(7)(C)). In fact, every item in Attachment 1 can be obtained by pairing two menu items 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and certainly do not lead to the conclusion of trafficking.

The inventory report and photographs from the February 25, 2017, FNS store visit showed no interior or exterior signage advertising meat packages or custom meat packages, no bulk items for sale, no evidence of any daily or weekly specials at all let alone 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and the store offered no expensive items other than fresh meats with T-Bone steaks being the most expensive at \$6.99 per pound. While the store did sell infant formula, it would likely be purchased using WIC vouchers as previously explained and the other expensive items such as alcohol, tobacco, and hot foods are not eligible for purchase using SNAP benefits. While Appellant did provide a copy of a single page of paper listing 15 meat packages, it is questionable that many customers would be purchasing these packages in the quantities claimed by Appellant since there is no signage advertising them and a review of the store's Facebook.com page and other on-line sources found no mention of meat packages. The prices for the 15 meat packages are: \$49.99, \$69.99, \$69.99, \$79.99, \$109.99, \$109.99, \$119.99, \$149.99, \$159.99, \$159.99, \$159.99, \$209.99, \$259.99, and \$299.99. It would be expected that SNAP recipients who receive very limited benefits that have to be stretched to make it through the month would purchase lower priced packages if they were to purchase any packages at all, but this is not shown by the transaction data. Additionally, a review of the meat package prices provided by Appellant does not appear to explain all of the transactions in this Attachment:

- Although there are two packages priced 5 U.S.C. § 552 (b)(6) & (b)(7)(C), there were only 10 transactions for this amount.
- There are two packages priced 5 U.S.C. § 552 (b)(6) & (b)(7)(C), but only three transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- There are no transactions for the packages priced 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- There are four packages priced 5 U.S.C. § 552 (b)(6) & (b)(7)(C), but only three transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- There is only one transaction 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

5 U.S.C. § 552 (b)(6) & (b)(7)(C). The catfish and fish orders used in Appellant's example are only available as hot, ready-to-eat foods that come with side orders of French Fries as evidenced by the two menu boards in both the FNS store visit and Appellant's photographs.

Most food items at the Appellant business were priced with the majority of visible prices ending in .x9 cents which is the most common pricing structure for grocery stores. While there apples and oranges were priced at two for \$1.00 and potatoes at \$1.00 each, the limited quantities of these items would not account for the high dollar value transactions listed in this Attachment. No food packages, bulk products, bundles, case sales, or other sales of eligible items were evident during the store visit that would explain these unusual same cents transactions. The purchase of several items with prices ending in .x9 cents would most likely not result in a total ending in a same dollar amount of .98 or .99 cents as multiples of nine (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) 5 U.S.C. § 552 (b)(6) & (b)(7)(C). When there are a disproportional amount of transactions ending in a same cent value, it appears that these transaction amounts are contrived and therefore, in the absence of any compelling rationale to the contrary, are indicative of trafficking. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

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

## **Rapid Transactions**

This Attachment documents 405 sets of back-to-back transactions made in rapid order at the same POS terminal. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The same household conducted both transactions in seven of the 405 sets.

Appellant contends that the multiple transactions made too rapidly to be credible are explained by the availability of large meat packages that are pre-packaged and rung-up as a single transaction. This can be done very quickly even if the customer has a few separate items along with the meat purchase. This is exactly the pattern of the paired transactions in Attachment 1 – a large transaction paired with a small transaction. These are typically meat orders followed by or preceded by, a small purchase which is entirely possible, reasonable, and proper. Moreover, the store has two registers to allow quicker checkouts.

Although the business has two cash registers each with its own POS terminal, this Attachment only lists those sets conducted at the same cash register. A review of the 405 sets shows that only 62 sets were conducted at the second register indicating that the Appellant business uses a single cash register for more than 80 percent of its transactions. Appellant's reference to these transactions being the same pattern as in Attachment 1 (which I believe should be Attachment 3-multiple transactions by the same household) and consist of a large transaction preceded or followed by a small transaction does not apply since 398 of the 405 sets in this Attachment were conducted by different households. Applying this reference to the seven transaction sets conducted by the same household also makes no sense since there is no reason why the cashier would not include the meat package(s), if any, and all other purchases in a single transaction.

As discussed in the previous section, the plausibility of there being meat packages for sale at the Appellant business in the quantities alleged by Appellant is questionable as the business has no signage advertising meat packages and there is no evidence of pre-packaged large meat packages in any of the FNS store visit photographs. Even if meat packages are being sold, the fact that the transactions in this Attachment **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** of the previous transaction is unbelievable based on the number of steps required to complete legitimate transactions listed below.

SNAP benefit transactions involving legitimate food purchases require many steps: 1) unloading items from a shopping cart or hand basket and placing them in the check-out area, 2) the cashier separating eligible from ineligible items, 3) the cashier handling individual items to determine the price, which in this case involved manual keying of amounts since there is no scanner, 4) weighing individual items if sold by weight, 5) entering prices into a register or adding machine, once for eligible foods and once for ineligible items, which is typical for larger purchases, 6) handling manufacturers cents-off coupons, if applicable, 7) bagging the items for carry-out, 8) informing the customer of the totals (one for eligible foods and one for non-eligible items, if applicable, which for large purchases includes most transactions), 9) pressing the "SNAP transaction key" on the POS device/card reader, 10) swiping the EBT card, 11) the customer entry of the required PIN, 12) the cashier entry of the purchase amount, 13) the cashier confirming the customer has a sufficient benefit balance, 14) the transaction being processed by the system and receiving approval, 15) the cashier printing the EBT and cash register receipts, 16) the cashier accepting an alternate form of payment for nonfoods and possibly handling cash change, and 17) the customer removing products from the checkout area so the next customer in line can begin the next transaction. All or most of these steps are inherent in most legitimate large SNAP purchases. One can readily surmise that while such transactions may be completed in succession, performing these processes on large transactions is not done rapidly. The amount of time required is generally proportional to the dollar amount of the transaction; typically, the larger the dollar amount transacted the longer the time period

between transactions. Limited counter space as well as manually key-entering multi-digit EBT card numbers adds additional time to transactions.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is therefore improbable that large dollar value transactions for the purchase of legitimate food items which would consist of a substantial number of lower priced items based on Appellant's stock could be processed in the times listed in this Attachment given that the Appellant business has limited checkout counter space and no scanner. The large transaction dollar amounts and the short interval between transactions in this Attachment demonstrate the improbability of these being legitimate eligible food purchases and suggest trafficking as the most likely explanation.

Based on this discussion, as well as the stock and facilities present at the Appellant business, it is unbelievable that these large dollar value transaction sets could occur in the short periods of time listed if they involved legitimate eligible food purchases. It is therefore more likely that the transactions listed in this Attachment are attributable to trafficking.

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

This Attachment documents 437 individual transactions in 205 sets of two or more transactions conducted by 163 different households in a short period of time.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is not a usual shopping pattern to see so many purchases, in a short period of time, by the same recipients as documented in this Attachment. Multiple transactions conducted by the same household 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. These sets of transactions appear to be in amounts which are indicative of trafficking.

In response to this Attachment, Appellant states it is not clear how the multiple transactions demonstrate trafficking. If a beneficiary were trafficking, wouldn't they do it in a single transaction, rather than in multiple transactions? There are abundant legitimate reasons for these transactions:

- Customers pair a meat package with additional grocery items which are rung separately.
- Customers purchase a food item for preparation (transaction #1) and have it prepared while they complete their shopping (transaction #2).
- Customers are unsure what their total will be and after they have determined what their SNAP balance is after transaction #1, they pick-up an additional item or two or three for transaction #2.
- Customers remember something after checking-out or purchase something before shopping.
- Customers request their orders be rung-up separately.
- Customers in a small neighborhood make multiple visits.



A sampling of the transactions from Attachment 3 show any one of the above explanations can be applied to these transactions. Transactions 1185 and 1186 were rung-up at two separate registers signifying the customer likely asked that they be rung-up separately. Similarly, 1189- 1190 and 1199-1200 include what appear to be two meat package purchases (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) which the customer likely requested to be rung-up separately. Transaction 1187-1188 and 1191-1192 each contain an item that is likely a pre-packaged meat or bulk food purchase (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) coupled with other grocery items (5 U.S.C. § 552 (b)(6) & (b)(7)(C)). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). So a customer might pay for food that is to be prepared and then shop for additional items or vice versa and pay separately. For example, this is the reasonable explanation for transactions 1242-1243, 1244-1245, 1246-1247, 1248-1249, 1252-1253, 1254-1255, 1256-1257, and 1260-1261, among many others. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Or sometimes customers simply choose to purchase different items at different times of the day. When you are using the market as your kitchen, multiple trips are not unusual. Some beneficiaries may trade and/or sell the items they purchase for cash or other consideration and at other times a beneficiary may allow someone else to utilize their card for cash or other consideration. If a customer chooses to allow a friend or family member to use their card, there is no way for the store to discover the activity as shown in different newscasts titled “Craig’s List Turning Food Stamps into Cash”. This is an issue between SNAP and the beneficiary.

It must be noted that SNAP households have no limits on the number of times they may use their SNAP cards or how much eligible food they may purchase. Although it is not uncommon for customers to have more than one transaction per day, the SNAP transactions listed in this Attachment are questionable and therefore suspicious because they are large transactions totaling to very large dollar amounts being conducted by a specific household in a short period of time at a medium grocery store and display characteristics of use inconsistent with the nature and extent of the store’s stock and facilities. The household transactions in this Attachment do not contain the characteristics associated with a household purchasing a forgotten item right after checking-out or different family members shopping together and making separate purchases since well over half of the transaction sets 5 U.S.C. § 552 (b)(6) & (b)(7)(C) Appellant also provided no explanation as to why a household would allegedly purchase a meat package and grocery items during the same shopping trip, but would want the meat package rung-up in a separate transaction. 5 U.S.C. § 552 (b)(7)(E). For example, recipients may shop and later return to the store to pick-up a forgotten item. 5 U.S.C. § 552 (b)(7)(E). For the reasons discussed in the previous section, it is unlikely these large dollar value transaction sets could occur in the short periods of time listed if they involved legitimate eligible food purchases. Based on these discussions, it is more likely that these large dollar value transaction amounts were contrived by store employees trying to avoid suspiciously high transactions that would be indicative of trafficking.



An analysis of the shopping patterns for the 14 households conducting the transactions referenced by Appellant shows that these households all have ready access to transportation as evidenced by all of them shopping at a variety of other larger food stores, including many super stores and supermarkets, located nearby and at a considerable distance from Appellant's location. This is contrary to Appellant's claim that many people do not have transportation and walk to the store. This analysis further shows that all 14 households conducted 16 or fewer transactions at the Appellant business during the six month period under review with seven of the households conducting four or fewer transactions indicating that 50 percent of the households in this sample do not regularly shop at the Appellant business and would therefore be unlikely to exhibit these unusual patterns at a store they seldom shopped at or had not shopped at previously. This analysis showed that six of the 14 households shopped exclusively at other stores located at a considerable distance from the Appellant business and five additional households shopped almost exclusively at other stores located at a considerable distance from the Appellant business. The closest other store for two of these households was located 7.86 miles away meaning that these households likely resided at a great distance from Appellant's location and travelled more than 15 miles round-trip, past numerous larger grocery stores and specialty stores where they regularly shopped at to shop at the Appellant business. No explanation or rationale has been offered by Appellant as to why households that are regularly shopping at much larger stores located closer to their residences that offer a greater variety and quantity of SNAP eligible food stock at lower prices and who apparently have no transportation limitations would be conducting multiple, high dollar value transactions at a moderately stocked medium grocery store. Common sense dictates that it is improbable that SNAP households, with limited cash resources, would choose to travel large distances to shop at the Appellant business when their SNAP eligible food needs could be met at any of the larger grocery or specialty stores they are already regularly shopping at and therefore it is more likely than not that these households were trafficking SNAP benefits at the Appellant business and that the multiple transactions were attempts by store employees to obscure trafficking by dividing a large dollar value transaction into a series of smaller dollar value transactions. This is a method used by stores to avoid high dollar transactions that cannot be supported.

There may be legitimate reasons why a SNAP recipient might return to a store during a short period of time, but the examples in this Attachment indicate a series of SNAP purchases that total to large dollar amounts. Multiple transactions over a short period of time, especially those of high dollar values, are indicative of attempts by store employees to obscure trafficking by fabricating transactions and are a method which stores use to avoid high dollar transactions that cannot be supported.

### **High Dollar Value Transactions**

This Attachment lists 385 individual EBT transactions

5 U.S.C. § 552 (b)(6) & (b)(7)(C). The substantial number of high dollar transactions is atypical for a medium grocery store and calls into question the legitimacy of these transactions. The SNAP transactions listed in this Attachment are all significantly higher than the average SNAP transaction amount 5 U.S.C. § 552 (b)(6) & (b)(7)(C) for this store type in St. Clare County. The 385 excessively large SNAP EBT transactions at Appellant's business for the review months represents more than 15 percent of all SNAP redemptions at Appellant's business during the period under review. This is unusual and indicative of trafficking.

The evidence under review shows that SNAP households shopping at the Appellant business are also shopping at other nearby stores such as the supermarket, super store, and medium grocery store located within a two mile radius of the Appellant business as well as at other full-line supermarkets and super stores located at a further distance from Appellant's location that offer a greater variety and quantity of SNAP eligible foods items for better or comparable prices than the customers can find at the Appellant business. The large dollar transactions remain questionable when considering the proximity of these other SNAP authorized stores that would be better shopping options for consumers. Based on these shopping patterns, transportation does not appear to be an issue for these households. Yet, these recipients continue to shop and spend suspicious high dollar amounts at the Appellant business, where the eligible food stock is limited, 5 U.S.C. § 552 (b)(7)(E).

Evidence also shows that the difference in the total SNAP transaction dollar volume and the SNAP transaction count for St. Clare County medium grocery stores during the review months and at the Appellant business is significant.

5 U.S.C. § 552 (b)(7)(E). A comparison of Appellant's SNAP redemptions to that of other medium and large grocery stores located nearby with redemptions for the review period shows similar differences with the average SNAP dollar volume, transaction count, and transaction amount at the Appellant business being significantly larger than the average amount at these nearby stores. Additionally, none of these nearby stores exhibit the same suspicious transaction patterns listed in the charge letter for the Appellant business even though all are located in proximity to Appellant's location and would therefore be expected to share the same SNAP customer base and shopping patterns. This is a further indication that the SNAP transactions in this Attachment and the others do not represent legitimate food purchases. The Retailer Operations Division considered all of these to be indicators of unusual and suspicious activity.

This store also had irregular data as compared to like type medium grocery stores. A comparison of Appellant's SNAP redemption data with that of St. Clare County medium grocery stores using ten dollar increments shows that Appellant's transaction count and dollar volume ranges are significantly higher than the

average of like type stores in all ranges 5 U.S.C. § 552 (b)(6) & (b)(7)(C).  
5 U.S.C. § 552 (b)(6) & (b)(7)(C).

These high dollar transactions are considered to be irregular and suspicious based on the Appellant store's food inventory. The Retailer Operations Division determined there was no credible reason for the Appellant business to have transactions at those high dollar levels given the moderate stock of staple foods and the lack of specialty, bulk, or ethnic foods that might sell for large dollar amounts and therefore considered this to be a strong indication of trafficking. None of Appellant's contentions explain these unusual and suspicious differences.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Transactions that fall below the USDA averages should not be considered excessive. Add these to the fact that the store sells large quantities of meat, packaged in a way that can be used by the customer for weeks or months, and the large transactions do not seem unusual at all. The store sells meat in larger than typical sizes and quantities with meat sales making-up a large percentage of overall sales. SNAP regulations do not require or restrict the purchase of certain items or restrict the quantities purchased. The quantities of meat purchases are confirmed by the invoices provided and demonstrate that during the time in question the store purchased 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in meat and poultry products from its vendors with this same meat retailing for almost 5 U.S.C. § 552 (b)(6) & (b)(7)(C) due to a 50 percent mark-up for meat/poultry items. Other grocery items have a 35 percent mark-up.

The SNAP transactions noted in this Attachment are not presumed to be trafficking because they exceed a set dollar amount; they are questionable because they are inconsistent for this type of store and the store's stock. An analysis of shopping patterns by the Retailer Operations Division shows that households in this Attachment are regularly shopping at much larger stores, and conducting transactions of large dollar amounts, yet are conducting comparable or higher dollar value transactions at the Appellant business. It would make no sense for a household that regularly shops at larger stores and apparently has no transportation limitations to spend large dollar amounts at the Appellant business since its cost of goods would be higher than that of larger stores such as supermarkets or super stores. This is further evidenced by an analysis of the shopping patterns for the households listed in this Attachment that shows 81 percent of these households made what would appear to be normal food purchases of significant dollar amounts at super stores, supermarkets, or large grocery stores within three days of shopping at the Appellant business indicating that these households do not consider the Appellant business to be their primary or exclusive grocery store.

Many of the individual transactions in this Attachment do, in fact, fall within the USDA guidelines for the monthly food costs and could explain some of the transactions if it were not for the fact that many of these households are not just making a single large dollar value purchase, but are making multiple large dollar value purchases throughout the month that would greatly exceed the USDA

guidelines for monthly food purchases. Additionally, Appellant contends that the sale of meat packages and/or prepared food items, the vast majority of which are meats, account for the large dollar value transactions at the Appellant business. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) Accordingly, routine expenditures by multiple households on meat items in the extremely high dollar values cited in this Attachment are improbable.

Increasing food prices make it even more unlikely that SNAP recipients, with limited food benefits, would want to spend a considerable part of their benefits in a medium grocery store when they are already shopping at larger, fully-stocked stores that would offer a greater variety of foods at lower prices. Many of these stores would also offer store brand products at lower prices, offer weekly specials, and have plenty of shopping carts and multiple checkouts with scanners and conveyor belts to facilitate processing purchases quickly. The Appellant business has a small checkout area shared by both cash registers and no scanners, conveyor belts, or a separate bagging area thereby making it difficult to facilitate the great quantities of eligible food items required to make up these large dollar transactions.

Appellant furnished no itemized cash register and EBT receipts for the period under review to document the legitimacy of these excessively large transactions, but did submit invoices for all meat purchases and all inventory invoices for the months of November 2016 and March 2017. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

5 U.S.C. § 552 (b)(6) & (b)(7)(C). In summary, the invoices provided by Appellant to substantiate inventory purchases and thereby explain the large transactions in this Attachment were found to be insufficient to support the level of SNAP redemptions and thereby satisfactorily explain the transactions in this Attachment leaving trafficking as the most likely explanation. The tax returns provided by Appellant have no bearing on this as Appellant states the invoices provided reflect inventory purchases for the business location under review and not the owner's second location.

An analysis of SNAP transactions for households listed identified seven households that conducted both swiped and/or manually keyed transactions at the Appellant business during the review period, but had only swiped transactions at other SNAP retailers despite using the same EBT card. Manually keyed transactions are those in which the magnetic strip on the back of the EBT card is not being read by the store's POS device and the clerk must manually key enter the lengthy EBT card number. When the magnetic strip on an EBT card fails, it can no longer be swiped and replacement EBT cards contain different identification numbers. On-site investigations into trafficking at retailers have found it is not uncommon for retailers to have a SNAP recipient's PIN and EBT card number in order to facilitate trafficking SNAP benefits in exchange for cash without the need for the recipient to be physically present. The retailer enters the EBT card number manually as the recipient has the actual EBT card and then enters the PIN.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). This household conducted 109 SNAP transactions at 22 different SNAP retailers during the period under review that included 16 transactions at the Appellant business of which only one was manually keyed. All, but one of the other SNAP retailers patronized by this household are located more than 1.8 miles away with the majority of stores located more than three miles away indicating this household likely does not live near the Appellant business. A review of EBT transactions at the Appellant business on the date of this household's only manually keyed transaction shows that Appellant's POS device was functioning properly as there were swipe transactions before and after the manual transaction. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Allowing time for this household to transport its purchases from the supermarket checkout to its vehicle, load the vehicle, and then drive to Appellant's location leaves little or no time to shop and select 5 U.S.C. § 552 (b)(6) & (b)(7)(C) worth of groceries, wait for the customers ahead of it at Appellant's checkout, and then complete the steps previously listed to for SNAP transactions thereby making it more likely than not that this transaction represented trafficking rather than a legitimate purchase of eligible foods. It is an indication of trafficking when the same EBT card is used for both manual and swipe transactions.

It was also noted that SNAP redemptions at the Appellant business dropped significantly following receipt of the charge letter on May 25, 2017.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). A pronounced decrease in SNAP transactions immediately following receipt of the charge letter is a clear indication of trafficking since, if trafficking were not occurring, there would be no abnormal fluctuations in redemption amounts.

## **Other Contentions**

This review encompasses and documents the examination of the primary and relevant information in this case, the purpose of which, as noted above, is to determine whether Appellant demonstrates, by a preponderance of the evidence, that the disqualification should be reversed. In this case, therefore, if Appellant demonstrates by a preponderance of the evidence that it did not engage in trafficking with SNAP benefits, then such transactions will be considered legitimate and the disqualification reversed. If this is not demonstrated, the case is to be sustained. Assertions that the firm has not violated program rules, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations or for mitigating their impact. Regardless of whom the ownership of a store may utilize to handle store business or their degree of involvement in store operations, ownership is accountable for the proper training of staff and the monitoring and handling of SNAP benefit transactions. The ownership remains liable for all violative transactions handled by store personnel, whether paid or unpaid, new, full-time or part-time. Additionally, a record of participation in 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 FNS store visit report and photographs do confirm that the business has a fully-functioning kitchen where employees can prepare food items for purchase by customers. The store visit photographs and those provided by Appellant document an extensive menu of hot prepared entrees and sides. While these photographs also show a good selection of fresh and frozen meats, poultry, and seafood, they show a limited quantity and variety of fresh and frozen fruits and vegetables and an overall moderate selection of staple foods. As previously stated, the FNS store visit photographs show no signage advertising meat packages or custom packages. Appellant states this is because the state Department of Agriculture made him remove his signage; however, a review of a meat specialty store located near the Appellant business shows many large signs on the walls advertising a variety of meat packages. Additionally, a review of the Appellant business's facebook.com page shows that the business presents itself to the public as primarily a hot foods restaurant with comments that include: "shout-out to the trucker's magazine for making us one of the best places for truckers to stop and get a great meal" and "thanks for making us one of the most popular places to eat in the metro east/St. Louis city area". The info block describes the business as having "the best soul food on either side of the Mississippi" and lists bill pay services, cell phones for sale, beauty supplies, grocery, liquor, and tobacco for sale, but makes no mention of meat packages. Furthermore, the customers that the owner has a close relationship with, and who allegedly return again and again to make purchases, are actually shopping at larger stores with many conducting the majority of their shopping at super stores and supermarkets thereby showing that the Appellant business is not their grocery of choice. It is also not disputed that a large number of Americans prefer to eat at restaurants or purchase prepared foods over cooking at home.

However, the news article referenced by Appellant does not examine the purchasing habits of SNAP households. Unlike other households, SNAP households have extremely limited food benefit dollars that are designed to only supplement a household's food budget and are not sufficient for the purchase of large quantities of hot, prepared foods or for recurring purchases of large quantities of bulk foods.

The issue under review involves a charge of trafficking SNAP benefits based on EBT transaction data. EBT transaction data is covered in SNAP regulations at 7 CFR § 278.6(a) and is addressed below. Trafficking is always considered to be the most serious violation even if it is a first offense therefore a temporary suspension or lesser penalty would not be applicable. SNAP regulations at 278.6(e)(1) clearly state that, "FNS shall . . . [d]isqualify a firm permanently if . . . personnel of the firm have trafficked as defined in § 271.2." SNAP regulations at 7 CFR § 271.2, define trafficking as, "The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits . . . for cash or consideration other than eligible food,

either directly, indirectly, in complicity or collusion with others, or acting alone . . . .” SNAP regulations at 7 CFR § 278.6(a) clearly state, in part, that “FNS may disqualify any authorized retail food store . . . if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an *electronic benefit transfer system* . . . .” (Emphasis added). In the present case, the data presented in the Attachments is solely based on the SNAP electronic benefit transfer transactions conducted at the Appellant business during the period under review. This firm was selected as a result of a series of complex algorithms that make numerous data comparisons with other like type firms during the period under review. All of the transactions were then reviewed and analyzed by the Retailer Operations Division staff before the decision was made to issue a charge letter. This investigative process included a detailed examination of information obtained from various sources, including, but not limited to the inventory report and photographs from the FNS store visit on February 25, 2017, a transaction comparison and analysis of like type and larger stores, and analysis of shopping patterns for recipient households conducting transactions at the Appellant business during the review period. This analysis included a review of the business to ensure its store classification was correct and the data comparisons with like type firms valid. Additionally, there are nearby like type stores whose transaction data does not form these suspicious patterns and are therefore not at risk of disqualification for trafficking. There is also no regulatory requirement that trafficking disqualifications be based solely on on-site undercover operations.

Based on this empirical data, and in the absence of sufficient evidence for the legitimacy of such transaction patterns, a conclusion can be drawn, through a preponderance of evidence that the “unusual, irregular, and inexplicable” transactions and patterns cited in the charge letter evidence trafficking as the most likely explanation for the questionable transactions listed in the charge letter Attachments. It is herein determined that Appellant did not provide a preponderance of evidence demonstrating that the transactions contained in the charge letter were more likely due to eligible food sales than not. Under review, the evidence more substantially supports a conclusion that the transaction activity in the charge letter Attachments is due primarily to trafficking in SNAP benefits.

Neither the Food and Nutrition Act of 2008, as amended, nor the regulations issued pursuant thereto cite any minimum dollar amount of cash or SNAP benefits, or number of occurrences, for such exchanges to be defined as trafficking. Nor do they cite any degrees of seriousness pertaining to trafficking of SNAP benefits. Trafficking is always considered to be the most serious violation, even when the exchange of SNAP benefits for cash is dollar-for-dollar or is conducted by a non-managerial store clerk. This is reflected in the Food and Nutrition Act, which reads, in part, that disqualification “shall be permanent upon . . . the first occasion of a disqualification based on . . . trafficking . . . by a retail

food store." In keeping with this legislative mandate, Section 278.6(e)(1)(i) of the SNAP regulations states that FNS shall disqualify a firm permanently if personnel of the firm have trafficked. There is no agency discretion in the matter of what sanction is to be imposed when trafficking is involved.

### **CIVIL MONEY PENALTY**

A CMP for hardship to SNAP households may not be imposed in lieu of a permanent disqualification as specified in SNAP regulations at 7 CFR § 278.6(f). Trafficking is a permanent disqualification so Appellant is not eligible for a hardship CMP.

The Retailer Operations Division determined that the Appellant was not eligible for a trafficking CMP in lieu of a disqualification under 7 CFR 278.6(i) because although Appellant requested both a trafficking CMP and a hardship CMP within the specified timeframe, it failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations. As such, the Retailer Operations Division determined that Appellant was not eligible for a trafficking CMP in lieu of permanent disqualification.

Appellant states that the owner and his father are the only two individuals who operate the cash registers, the firm had a compliance policy in place prior to the violations, the owner and his father use the USDA web site for ongoing training by reading materials and watching the video; and that the owner was not aware of, did not approve, did not benefit from, or was not in any way involved in this conduct or approval of trafficking violations, or it is only the first occasion in which a member of firm management was aware of, approved, benefitted from, or was involved in the conduct of any trafficking violations by the firm. No documentation of any kind was received from Appellant in support of a trafficking CMP at any point during the charging or administrative review phases. Therefore, Appellant failed to meet the regulatory standard for a trafficking CMP as it did not provide substantial evidence that it met all four criteria required by 7 CFR §278.6(i). Based on the above, the Retailer Operations Division's decision not to impose a CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR §278.6(i). It is also unlikely that in a business that is open 24 hours a day, seven days a week and has two cash registers, that only the owner and the manager ever operate the cash registers.

### **CONCLUSION**

The Retailer Operations Division has presented a case that Appellant has likely trafficked in SNAP benefits. The Retailer Operations Division's analysis of Appellant's EBT transaction record was the primary basis for its determination to



permanently disqualify Appellant. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking violations in SNAP benefits. This is evidenced by: the suspicious patterns in four Attachments of EBT transaction data, the inadequacy of the store's staple food stock as observed during the store visit to support large transactions in short time frames, the lack of adequate evidence for customer spending habits given that there are other SNAP authorized stores located within proximity to Appellant that likely offer a greater selection of eligible food items at competitive prices, and the irregular SNAP transaction data of Appellant as compared to other like type and larger stores in the county and state.

The retailer has not provided sufficient evidence to rebut the case that Appellant most likely trafficked in SNAP benefits. Therefore, based on a review of all of the evidence in this case, it is more likely true than not true that program violations did in fact occur as charged by the Retailer Operations Division. Based on the discussion above, the determination to impose a permanent disqualification against Appellant is sustained. Furthermore, Retailer Operations properly determined that Appellant was not eligible for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations.

### **RIGHTS AND REMEDIES**

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

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

ROBERT T. DEEGAN  
Administrative Review Officer

October 24, 2017