

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

**Fauji Grocery,**

**Appellant,**

**v.**

**Case Number: C0199929**

**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 the Fauji Grocery (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 August 16, 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 July 21, 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 to the charges in a letter dated August 1, 2017, but the response neither requested nor contained any evidence to be considered in support of the CMP. The response stated that the owner was out of the country during the review period and therefore unable to manage his business. The Retailer Operations Division notified Appellant in a letter dated August 16, 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 August 20, 2017, Appellant appealed the Retailer Operations Division's assessment and requested an administrative review of this action. The appeal was granted. No subsequent correspondence was received from Appellant.

### **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 issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that the questionable transactions were the result of trafficking. 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 three patterns of EBT transaction characteristics indicative of trafficking:

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

## **APPELLANT’S CONTENTIONS**

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

- The store owner was unaware that trafficking had occurred as he was out of the country during this period and unable to manage his business. He does not agree with the allegations and did his best during his ownership to train and monitor his employees to make sure that all of their actions and decisions strictly coincided with SNAP regulations. During his absence anything that happened was out of his reach to supervise;
- Maybe during this time, mischievous employees had taken advantage of this and misused SNAP benefits, but the owner was not made aware of this and is still not aware of it;
- Since the time of the letter, the employees have been retrained and the owner is checking the SNAP system daily on location;
- There has also been a problem with water leakage in the basement and because of this damage the owner is not able to provide any sales records;
- The business has served the SNAP community for the past 12 years and the owner and his employees use the SNAP facility as a proper channel to provide their customers with USDA approved food products to meet their everyday needs. There are many SNAP beneficiaries around the business that use these services daily to buy groceries for their families;
- The business also creates revenue from SNAP benefits and it would be difficult for the business to survive without it. It would also be a hardship for the people around the business using this convenience. The owner requests to be able to keep serving SNAP beneficiaries as this will be great for the community that he serves and will also keep the business running;
- The owner requests that USDA records be rechecked and verified and, if any mistakes were made, that he be excused because he was not aware of it as he was out of the country; and,
- The owner advises USDA that he has already sold the business.

Appellant submitted no evidence, documentation, or other rationales in support of these contentions.

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 business 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 initially authorized the Appellant business on September 10, 2014, and the business is classified as a convenience store. The file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a May 12, 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 small convenience store offering a very limited quantity and variety of staple foods and carrying no unique items or offering any distinctive services.
- There were no shopping carts or handheld baskets for customer use seen during the visit making it difficult for customers to carry large amounts of food to the checkout.
- The checkout counter was a one foot deep shelf in front of a night window that consisted of a revolving window approximately one foot in diameter. The shelf contained a variety of food displays and the PIN pad leaving approximately a one foot square area for customers to place their purchases. The extremely small size of the checkout area would make it problematic to process large orders.
- The checkout counter had one cash register and one point-of-sale (POS) terminal.
- 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 except for a small number of canned drinks and several six packs of single serving noodle soups.
- The store had a very limited stock of staple foods that consisted of many single serving and pre-packaged items with the majority of inventory in accessory foods (primarily soda, candy, and other drinks), snacks, and ineligible items.
- The business was marginally stocked in the meat/poultry/fish category carrying canned meat/poultry/fish items, packaged lunch meat, hot dogs, two packages of bacon, six dozen eggs, and jerky.
- Dairy items included: single serving milk drinks, butter/margarine, packaged cheese slices, canned milk, single serving ice cream, and several cans of infant formula. The business had no fresh milk for sale.
- There were no fresh or frozen fruit and vegetables. The business stocked a very limited quantity and variety of canned and packaged fruit and vegetables.
- The inventory of staple foods at the time of the visit also included: fruit juices, single serving bagged nuts, sugar, flour, rice, bread/rolls, single serving snacks, single serving baked goods, hot/cold cereals, baby cereal, baby foods, soups, mac&cheese, baking mixes, pancake mixes, canned pasta, single serving canned pasta, dry pasta, and single serving Ramen noodle soups.
- The store had no fresh unprocessed meats or seafood, no frozen unprocessed meats or seafood, a very limited quantity and variety of processed meats and seafood (canned meat/fish/poultry, hot dogs, packaged lunch meat, two packages of bacon, and jerky), no deli meats or deli cheeses, six dozen eggs, no frozen entrees, no frozen dinners, no yogurt, no sour cream, no fresh milk, minimal packaged cheese, minimal butter/margarine, no fresh fruits or vegetables, no frozen fruits or vegetables, minimal single serving nuts, a very limited quantity and variety of canned and packaged staple food

items, no corn meal, no cocoa, a minimal quantity and variety of hot/cold cereals, minimal baby foods, and no expensive eligible food items.

- Ineligible items included: tobacco, lottery, household products, paper products, health and beauty items, money transfer services, diapers, electronics, and electronics accessories while accessory foods included: candy, spices, condiments, coffee, tea, and carbonated/uncarbonated drinks.
- The store was not a WIC vendor.
- Signage in the store was in English.
- Most food items were priced with all visible prices ending in .x9 cents except for some snack items and jerky priced at .75 cents, two for \$1.00, and \$1.00. Comments on the FNS store visit report by the contract reviewer specifically stated that most of the food prices ended in .x9 cents. A price ending in .x9 cents is the most common pricing structure for stores of this type.
- The store owner reported that transaction totals are never rounded up or down.
- The FNS store visit report listed the four most expensive items for sale in the store as being a 12.4 ounce container of Similac infant formula priced at \$14.75, a 13.0 ounce container of Similac infant formula priced at \$5.25, and two types of boxed cold cereal (24 and 21.4 ounces) priced at \$5.59 each. This listing of the most expensive items was provided by the store owner during the store visit.
- While the business did stock baby foods and infant formula, most SNAP households with infants or small children are WIC participants and therefore would be purchasing these products using WIC vouchers, not SNAP EBT.
- Store hours were confirmed by the contracted reviewer with the store owner during the FNS store visit as being open 6:00 AM-12:00 AM daily.
- The FNS store visit report and photographs showed empty or marginally stocked shelves and racks as well as dust on the canned goods indicative of a slow turnover of stock.
- The quantity and variety of the store's staple food inventory was significantly less than that seen during the previous FNS store visit conducted on September 6, 2014.

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

This attachment lists 136 transactions ending in a same cents value

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Transaction amounts include 10 transactions for amounts equaling or exceeding 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and three transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) or more. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 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/promotions 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 provided no documentation or explanation to support the legitimacy of the listed transactions in this Attachment.

The inventory report and photographs from the May 12, 2017, FNS store visit show the business offered a very limited quantity and variety of SNAP eligible food items with the majority of its inventory in snacks, accessory foods and ineligible items. Additionally, the business carried no expensive eligible food items making it questionable that such a large number of high dollar value SNAP transactions could be for legitimate food purchases. 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 stores of this type. While there were a small number of snack items and jerky priced at .75 cents, two for \$1.00, and \$1.00, 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/promotions of eligible items were evident during the store visit that would explain these unusual same cents transactions.

**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. Also, the three page store visit questionnaire completed by the contract reviewer includes a section where the four most expensive items available for sale at the store based on information provided by the store's owner are listed; the most expensive food items were cold breakfast cereals priced at \$5.59 and containers of Similac infant formula. As previously mentioned, while the business did stock baby foods and infant formula, most SNAP households with infants or small children are WIC participants and therefore would be purchasing these products using WIC vouchers, not SNAP EBT.

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.

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

This Attachment documents 159 individual transactions in 46 sets of two or more transactions conducted by 27 different households in a short period of time.

**5 U.S.C. § 552 (b)(6) & (b)(7)(C).** The dollar amounts of the subsequent transactions in each set are all substantial and they nearly equal or exceed the dollar amount of the initial transaction in all of the 46 sets. Two transaction sets are comprised of eight individual transactions, one set is comprised of seven individual transactions, four sets are comprised of five individual transactions, nine sets are comprised of four individual transactions, 20 sets are comprised of three individual transactions, and the remaining 10 sets are comprised of two individual transactions. **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.

Appellant again provided no documentation or explanation to support the legitimacy of the listed transactions in this Attachment.

SNAP households have no limit on the number of times they may use their benefits or the dollar value of eligible food they may purchase. The SNAP transactions listed in this Attachment are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of a convenience store's stock and facilities and are thus indicative of trafficking. It is certainly not unusual for a small number of SNAP households to conduct multiple transactions in a short period of time. However, it is unusual that the subsequent transaction dollar amount is for a substantial amount in all of these transaction sets and that they nearly equal or exceed the dollar amount of the first transaction in every one of the 46 sets. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This is further supported by the unusual occurrence of balance inquiries at the Appellant business for households conducting multiple transactions at the Appellant business. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

5 U.S.C. § 552 (b)(6) & (b)(7)(C). There were no fresh or frozen meats or seafood, no fresh or frozen fruits or vegetables, no frozen dinners or entrees, and a very limited quantity and variety of canned and packaged staple food items making the Appellant business unlikely to be the grocery store of choice for SNAP recipients especially when there are many larger stores nearby. The business also offers no great variety of products, price advantage, profusion of large packages, or significant bulk items for sale leaving no explanation for the large dollar transactions amounts. The store visit inventory report and photographs show no expensive eligible foods in stock that would account for these large amounts as well as showing the store has extremely limited checkout counter space and no shopping carts or hand baskets in which to transport the large number of low priced items required to make-up these large transaction amounts. Without these, it is unlikely such large dollar value transactions could be for actual food purchases and more likely they involve trafficking. Furthermore, SNAP benefit transactions at the Appellant business entail recipients hand-carrying food items to the small checkout counter a little at a time because there are no shopping carts or hand baskets with which to transport the large number of individual food items needed for these large dollar value transactions, waiting for the previous customer to vacate the checkout area, putting their purchases on the counter, the clerk handling individual items to enter their price, bagging the items, handing the recipient bagged items to make room for more food items the recipient is bringing to the checkout, informing the recipient of the total, pressing the "SNAP transaction key" on the SNAP terminal device, swiping the SNAP card or manually entering the card number, having the recipient enter the PIN, and waiting for the transaction to be processed by the system. A separate transaction would then have to occur to pay for any non-food items, such as personal hygiene or cleaning supplies, which the household may also be purchasing. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The large transaction dollar amounts and the short interval between transactions in the examples cited above demonstrate this improbability and suggest trafficking as the most likely explanation.



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 to obscure trafficking by fabricating transactions and are a method which violating stores use to avoid high dollar transactions that cannot be supported.

### **High Dollar Value Transactions**

This Attachment lists 492 individual EBT transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). There also are an unusually high number of transactions ending in .8x cents in the highest dollar value transactions. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Based on the inventory and pricing structure at the Appellant business, it seems implausible that there would be such an improbably large number of high dollar value transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) with legitimate food purchases and suggests that these amounts may have been contrived in an effort to obscure trafficking. The substantial number of high dollar transactions is atypical for a minimally stocked convenience store of this size and calls into question the legitimacy of these transactions. The SNAP transactions listed in this Attachment are all substantially higher than the average SNAP transaction amount of \$7.36 for this store type in Baltimore City County. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This is unusual and indicative of trafficking.

The record shows that within a one mile radius of Appellant's store there are 120 SNAP authorized retailers including: three supermarkets, seven medium grocery stores, 35 small grocery stores, three meat specialty stores, four seafood specialty stores, one produce specialty store, one bakery, seven combination grocery stores, and 59 convenience stores. The evidence under review shows that SNAP households shopping at the Appellant business are also shopping at other nearby stores, as well as at full-line supermarkets and super stores, located nearby as well as at a distance from Appellant's location that offer a greater variety and quantity of SNAP eligible foods items for better prices than 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)(6) & (b)(7)(C) of their purchases at larger food stores.

Evidence also shows that the difference in the average SNAP transaction dollar amount, the total SNAP transaction dollar volume, and the SNAP transaction count for Baltimore City County convenience 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 nearby convenience stores that had redemptions for the review period shows similar differences. 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.

Appellant again provided no documentation or explanation to support the legitimacy of the listed transactions in this Attachment.

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.

Information obtained during the FNS store visit on May 12, 2017, shows that the Appellant business offers a very limited quantity and variety of SNAP eligible staple food items, many accessory foods, and many ineligible items. There is no apparent legitimate reason for the high transaction amounts at Appellant's store given the minimal stock of staple foods and the fact that: tobacco, lottery, household products, paper products, health and beauty items, money transfer services, diapers, electronics, and electronics accessories are not eligible for purchase with SNAP benefits. The business carries no special foods or offers any unique services that are not also available at other nearby grocery stores making it unlikely that SNAP recipients with available transportation would make this business their grocery store of choice.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

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 convenience store that does not address all of their food shopping needs 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 shopping carts and checkouts with scanners and conveyor belts to facilitate processing purchases quickly. The Appellant business has an extremely small checkout area, no shopping carts, and no handbaskets thereby making it difficult to facilitate the great quantities of eligible food items required to make up these large dollar transactions. Additionally, Appellant furnished no itemized cash register and EBT receipts for the period under review to document the legitimacy of these excessively large transactions and no evidence was provided of SNAP eligible store stock via receipts of products taken into inventory for the relevant review months. Accordingly, it is improbable that the food items purchased in these high dollar amounts could be carried to the register without the use of many carts and thus more likely the amounts were contrived.

Based on this discussion, Appellant did not provide adequate evidence to support the legitimacy of the excessively large transactions in this Attachment.

## Other Contentions

The store owner states that he was out of the country during the period under review and therefore anything that happened was out of his reach to supervise. Furthermore, he also did his best to train and monitor his employees to make sure that all of their actions and decisions strictly coincided with SNAP regulations and he has since retrained the employees and is checking the SNAP system daily on location. Lastly, the store owner reported that he has now sold the business. No evidence was submitted in support of these contentions.

It is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division. This review is limited to what circumstances were at the basis of the Retailer Operations Division action at the time such action was made. It is not within the authority of this review to consider what subsequent remedial actions may have been taken or will be taken in the future so that a store may begin to comply with program requirements. There is no provision in the SNAP regulations for waiver or reduction of an administrative penalty assessment on the basis of corrective actions implemented subsequent to investigative findings of program violations. Therefore, while the owner has retrained his employees and is now checking the SNAP system daily are both positive steps, they do not provide any valid basis for dismissing the charges, or for mitigating the penalty imposed. While store ownership may not have personally conducted the violative transactions, SNAP rules and regulations state that regardless of whom the ownership of a store may utilize to handle store business or their degree of involvement in store operations, the ownership is accountable for the proper training of staff and the monitoring and handling of all 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. Ownership is also responsible for all SNAP transactions at the firm regardless of the amount of time the owner is present at the subject firm.

The FNS retailer application contains a certification page whereby applicants must confirm their understanding of and agreement with SNAP retailer requirements in order to complete the application or reauthorization process. Store ownership did certify its understanding and agreement to abide by program rules and regulatory provisions when it initially applied for authorization as a SNAP retailer through the FNS retailer web site in 2014. The owner agreed to accept responsibility on behalf of the firm for violations of the SNAP including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time. The "SNAP Training Guide for Retailers" is provided to all retail store owners upon their authorization and also clearly states that store owners or operators are legally responsible for their own actions as well as the actions of everyone working in their store whether paid or unpaid, new, full-time or part-time and that violations may include being disqualified from SNAP. Regardless of whom the ownership of a store may utilize to handle store business or their degree of involvement in store operations, the ownership is liable for all violative transactions handled by store personnel and is accountable for the proper training of staff and the monitoring and handling of SNAP benefit transactions. The store owner's physical location at the time the violations occurred is not relevant as he affirmed and agreed to adhere to all of the SNAP rules and regulations, and to accept responsibility for any violations at the store regardless of who committed the violations. Regardless of whether or not he was aware of the violations, he is still held responsible for the

operations at his store, including those related to the SNAP program. Accordingly, the store owner cannot avoid responsibility for the violative SNAP transactions by claiming to have been out of the country.

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 May 12, 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 also 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 letter of charges evidence trafficking as the most likely explanation for the questionable transactions listed in the charge letter Attachments. It is herein determined that Appellant has not provided 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 was due primarily to trafficking in SNAP benefits.

The evidence under review shows SNAP activity indicative of trafficking. 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.

It is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in SNAP. However, there is no provision in the SNAP regulations for waiver or reduction of an administrative penalty assessment on the basis of possible economic hardship to the firm or to ownership resulting from imposition of such penalty. To allow store ownership to be excused from an assessed administrative penalty based on purported economic hardship to the firm would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008, as amended, and the enforcement efforts of the USDA. Furthermore, giving special consideration to economic hardship to the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with program regulations, but also to those retailers who have been disqualified from the program in the past for similar violations. Therefore, Appellant’s contention that the firm may incur economic hardship based on the assessment of an administrative penalty does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

### **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 Appellant failed to request a trafficking CMP or to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations within the specified timeframe. As such, the Retailer Operations Division determined that Appellant was not eligible for a trafficking CMP in lieu of permanent disqualification.

Appellant made no mention of how the business met any of the four criteria in either its response to the charge letter or in the request for administrative review and no documentation or other evidence of any kind, including written statements, was subsequently received from Appellant in support of a trafficking CMP. 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).

## **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 three 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

November 16, 2017