

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

**Junior Liquor Market,**

**Appellant,**

**v.**

**Case Number: C0212888**

**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 determination by the Retailer Operations Division to impose a permanent disqualification against Junior Liquor 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 November 14, 2018.

**AUTHORITY**

According to 7 U.S.C. § 2023 and the 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**

By letter dated October 16, 2018, the Retailer Operations Division charged Appellant with trafficking based on a series of irregular SNAP transaction patterns that occurred in March through August 2018. 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, through counsel, responded to the charges in a letter dated October 25, 2018, which did request and provide documentation in support of a CMP. The Retailer Operations Division notified Appellant by letter dated November 14, 2018, that the firm was permanently disqualified from participation as a SNAP retailer in accordance with 7 CFR § 278.6(c) and 278.6(e)(1) for trafficking violations. This letter also stated that Appellant was not eligible for the CMP because insufficient evidence was submitted to demonstrate that it had established and implemented an effective compliance policy and program to prevent SNAP violations.

By letter dated November 21, 2018, Appellant, through counsel, appealed the Retailer Operations Division's assessment and requested administrative review. The appeal was granted. No subsequent correspondence was received.

### **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 SNAP benefits.

7 CFR § 278.6(a) states: "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."

7 CFR § 278.6(e)(1)(i) states: "FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2." Trafficking is defined in part as, "The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits for cash or consideration other than eligible food". Trafficking includes "Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food".

7 CFR §278.6(i) states: "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: “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 a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the specified 10 days, 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 March through August 2018. This involved two patterns of EBT transaction characteristics indicative of trafficking:

1. Multiple transactions were made from individual benefit accounts in unusually short time frames.
2. Excessively large purchase transactions were made from recipient accounts.

### **APPELLANT’S CONTENTIONS**

The following 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:

- The firm is a 3,000 SF convenience and liquor store that has been under the same ownership for more than 17 years. The firm offers a wide variety of grocery and snack foods and has large walk-in refrigerator and freezer sections with milk, juices, dairy, eggs, cheese, ice cream, frozen foods, and various other cold items. As a long-term SNAP retailer, the firm caters to SNAP customers by offering cereals; breads; pasta; canned fruits, vegetables, and meats; baking items; nut butters and fruit spreads; dried legumes; rice; pre-packaged foods; and fresh produce as well as candy, nuts, chips, snacks, beer, wine, liquor, small-sized beverages, cleaning and laundry products, and general household items. The firm stocks a large amount of inventory because it is located very near a residential area and has a regular customer base;
- The 43 transactions in Attachment 1 are made by six households who are regular customers and thus more likely to make frequent purchases. The length of time between transactions is significant as the closer in time the transactions are, the more indicative they are of trafficking. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The transactions occurring

within a very short time can be explained by customers forgetting an item or deciding to purchase an additional items within a short time. This pattern is common amongst customers that live near the firm and those without access to a vehicle and must carry their purchases are even more likely to shop frequently. The 43 transactions by these households total approximately seven to 11 transactions per month, except for July with no transactions, showing consistency amongst shoppers. The seven to 11 monthly transactions is small in comparison to the numbers of monthly transactions at the firm;

- Since the firm sells a wide variety of products ranging from inexpensive snacks to large grocery items 5 U.S.C. § 552 (b)(6) & (b)(7)(C), customers make larger transactions in the beginning of the month when they receive their new SNAP benefits. That 41 of the 75 transactions listed in Attachment 2 were made in the first 10 days of the month supports this. 5 U.S.C. § 552 (b)(6) & (b)(7)(C);
- Neither Attachment contained transactions for July 2018 calling into question the accuracy and validity of the method FNS has for gathering transaction data. The fact that no transactions appear for July is questionable; and,
- The firm is mainly operated by the owners themselves and they have trained all employees, including new hires. The owners deny having engaged in, consented to, benefitted from, or condoned any conduct constituting trafficking. The firm has only had two employees since 2009 with one employed 2009-2013 and the other 2011-present. All training is documented and new employees must sign a statement acknowledging their initial training, receipt of the firm's SNAP policies, and a copy of the SNAP Retailers Handbook. Although the firm did not traffick, the owners would like to be considered for a CMP in lieu of permanent disqualification. Please also consider the fact that the firm has operated for over 17 years in a law-abiding manner.

Appellant submitted SNAP training documents and photos of store inventory in support of these contentions.

## **ANALYSIS AND FINDINGS**

Government analyses of stores caught in trafficking violations during on-site investigations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include, in part, those cited in the letter of charges. Nevertheless, transactions having such characteristics are sometimes valid and sufficient evidence that support that they were the result of legitimate purchases of eligible food items is provided. This is why opportunities are afforded to charged retailers to explain the questionable transactions cited and to provide evidence that they are legitimate.

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 Appellant's 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

FNS initially authorized the firm on December 13, 2007, and most recently reauthorized the firm on December 9, 2013. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a July 1, 2018, 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 firm's suspicious SNAP transactions. The store visit documented the following store size, description, and characteristics:

- The firm was a good sized liquor store offering an extremely limited quantity and variety of staple foods and carrying no unique items or offering any distinctive services.
- The store stocked traditional American brands.
- The store visit report and photos showed no shopping carts and only two small hand baskets for customer use thus severely limiting the amounts of food that could be moved to the checkout. The two hand baskets had a jerky display on top of them and bottled drinks in front of them indicating they are seldom, if ever, used.
- No food packages, bundles, case sales, bulk items, or other sales were evident that would explain the unusual transactions and no cased eligible items were available for purchase.
- The store visit report specifically noted that the firm was not a specialty store and that there were no meat bundles or fruit and vegetable boxes for sale.
- There was a single checkout area on top of a glass display case that had a limited area approximately 2.5 feet wide by 2.0 feet deep for customers to place their purchases. There were many displays on both sides further limiting the available space for purchases. The small checkout area would make it problematic to process large orders. The checkout area had one cash register, one specialty cash register for lottery sales, a POS terminal, and no optical scanner as confirmed by the store owner.
- The firm had an extremely limited stock of staple foods that also included many single serving and pre-packaged items with a significant portion of inventory in soda, candy, snacks, and other drinks as well as many ineligible items.
- The firm had no fresh unprocessed meat or seafood, no frozen unprocessed meat or seafood, an extremely limited quantity and variety of processed meats (canned meat, poultry, fish; two packages of turkey bacon, and jerky), no deli meats, no packaged lunch meats, no sausages, no hot dogs, no frozen entrees, no frozen dinners, no frozen single serving sandwiches or burritos, two cartons of eggs both expired several days earlier, no fresh fruit or vegetables except for several limes, no frozen fruits or vegetables, a very limited selection of dried fruit and vegetables, several packages of dried beans and dried lentils, a moderate selection of nuts and packaged single serving nuts, a very limited selection of canned soups, a very limited quantity and variety of canned and packaged staple food items, no deli cheese, several packages of string cheese that had expired two months earlier, no yogurt, no butter, no margarine, two canned milk, fresh milk, single serving milk drinks, two bread, four rolls, no pitas, several packages of tortillas, no tostadas, no corn meal, flour, sugar, only three small bags of rice, no hot cereals, cold cereal, single serving Ramen noodle soups, canned pasta, dry pasta, no dry noodles, no pancake mixes, only three baking mixes, only three boxes of mac&cheese, cooking oil,

coffee, only two small boxes of tea, no cocoa, no baby foods, no infant formula, and very few expensive staple food items.

- Ineligible items included: tobacco, tobacco accessories, water pipes, alcohol, lottery, household and paper products, auto products, health and beauty items, hats, phone accessories, and DVD's while accessory foods included: candy, spices, condiments, snacks, baked goods, cooking oil, sugar, single serving ice cream, coffee, two small boxes of tea, three baking mixes, and un/carbonated drinks.
- Signage was in English and there were no SNAP posters (anti-fraud, eligible items, reporting trafficking, etc.) visible in the store.
- The firm's hours of operation were open 7 AM-10 PM Sunday-Thursday and 8 AM-11 PM Friday-Saturday per the store owner. The owner also stated that the firm did not take phone or online grocery orders, did not deliver groceries, and did not round transaction totals up or down.
- Most food items were priced and comments on the store visit report, completed in with the store owner, specifically stated that most food prices end in .x9 cents. A price ending in .x9 cents is the most common pricing structure for stores of this type.
- The store visit report listed the four most expensive food items costing more than \$5.00 for sale in the store as being a 37.2 ounce container of coffee priced at \$9.99, a one gallon jug of milk priced at \$5.99, a 2.5 ounce package of beef jerky priced at \$5.99, and an 8 ounce package of cashews priced at \$5.99. The firm had less than 10 stocking units of milk and coffee in stock. This listing was provided by the owner during the store visit.
- The firm was a not a WIC vendor.
- The store visit report and photos showed many marginally stocked shelves with product fronted to give the appearance of greater quantities. The firm also had dust on canned and packaged foods as well as expired eggs and cheese indicating a slow turnover of stock.
- The firm was deficient in the dairy staple foods category with milk being the only variety with three or more stocking units.

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

This Attachment documents 43 individual transactions in 19 sets of two or more transactions conducted by six different households in a short period of time.

**5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The dollar amounts of subsequent transactions in each set are substantial and nearly equal or exceed the dollar amount of the initial transaction in 15 of the 19 sets. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Five sets are comprised of three individual transactions while the remaining 14 sets are comprised of two individual transactions. 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 within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by store inventory and structure. These sets of transactions appear to be in amounts which are indicative of trafficking.

Appellant contends the 43 transactions in Attachment 1 are made by six households who are regular customers and thus more likely to make frequent purchases. The length of time between transactions is significant as the closer in time transactions are, the more indicative they are of

trafficking. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The transactions occurring within a very short time can be explained by customers forgetting an item or deciding to purchase an additional items within a short time. This pattern is common among customers that live near the firm and those without access to a vehicle that must carry their purchases are even more likely to shop frequently. The 43 transactions by these households total approximately seven to 11 transactions per month, except for July with no transactions, showing consistency amongst shoppers. The seven to 11 monthly transactions is small in comparison to the numbers of monthly transactions at the firm.

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 the store's stock and facilities and are thus indicative of trafficking. These transaction sets do not contain the characteristics associated with a household purchasing a forgotten item right after checking-out or of household members/friends shopping together and making separate purchases as all of the 19 transaction sets 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The transaction sets also do not contain the characteristics of a household returning later in the day or sending their child to purchase a forgotten item or two as all of the sets have subsequent transactions in amounts 5 U.S.C. § 552 (b)(6) & (b)(7)(C) with 18 of the 19 sets having subsequent transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C), far more than the cost of a forgotten item or two.

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 subsequent transaction dollar amounts are substantial in these transaction sets and that all of the sets in this Attachment 5 U.S.C. § 552 (b)(6) & (b)(7)(C) when the comparable average convenience store SNAP transaction amount in San Diego County during the review period was \$6.91. These multiple transactions indicate that the amounts were contrived in an attempt to avoid suspiciously high transactions that would be indicative of trafficking by breaking them into multiple, smaller amounts. FNS transaction data shows that this same pattern of multiple transactions in unusually short time frames is not evident at other nearby like type grocery stores further supporting that trafficking was occurring at the Appellant firm during the period under review.

The Retailer Operation Division's analysis of shopping patterns for households listed in this Attachment shows they have ready access to transportation as evidenced by their shopping at a variety of larger food stores located nearby and at a distance from Appellant's location, including a variety of super stores and supermarkets. Appellant's contentions fail to offer any explanation or rationale as to why households who are shopping and spending large dollar amounts at many larger and better stocked stores would conduct multiple purchases totaling to high dollar values at a very minimally stocked store. Common sense dictates that it is improbable that households would choose to spend large dollar amounts at the Appellant firm if their purchases consisted solely of eligible food items that could be purchased at any of the super stores and/or supermarkets they were already regularly shopping at and therefore more likely than not that these households were trafficking SNAP benefits at the Appellant firm.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is unlikely and suspicious that a one- person household with little or no access to cooking or storage facilities would be conducting multiple high dollar transactions at a very minimally stocked convenience store.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Additionally, a review of this household's transaction history shows it only shopped at other SNAP retailers located more than 10 miles away from Appellant's location indicating that this household most likely lives and regularly shops more than 10 miles away from the Appellant firm. It is unbelievable that a household regularly shopping at super stores and supermarkets more than 10 miles away would travel more than 20 miles round trip to shop at a very minimally stocked convenience store if the purchases were for SNAP eligible foods.

There is no legitimate reason why these households would spend so much of their SNAP allotments at a very minimally stocked convenience store when they clearly had access to and frequently shopped at supermarkets and super stores located nearby and at a distance. The more plausible explanation is that both households were trafficking at the firm. Other households analyzed exhibited similar shopping patterns indicative of trafficking.

There may be legitimate reasons why a SNAP household 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 dividing a large dollar value transaction into a series of smaller dollar value 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 73 individual EBT transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The substantial number of high dollar transactions is uncharacteristic for a grocery store offering a very limited stock of staple foods and calls into question the legitimacy of these transactions. The transactions are also substantially higher than the average SNAP transaction amount of \$6.91 for this store type in San Diego County. This is unusual and indicative of trafficking.

This Attachment also contains several transactions occurring as late as 11:19 PM, 11:59 PM, and 12:29 AM 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The firm's reported business hours have the firm closing at 10:00 PM during weekdays and at 11:00 PM on Friday and Saturday. Large dollar transactions occurring well outside of store business hours are indicative of trafficking.

The evidence under review shows that SNAP households shopping at the Appellant firm are also shopping at many full-line supermarkets and super stores, located nearby as well as at a distance from Appellant's location that offer a greater quantity and variety of SNAP eligible foods items for better prices than customers can find at the Appellant firm. The high dollar value transactions remain questionable when considering the proximity of these other stores that would be better shopping options for consumers. Based on their 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 firm, where the eligible food stock is limited, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of their purchases at larger food stores.

While households residing in areas with extremely limited grocery store options may conduct high dollar transactions at convenience stores out of necessity, this is not the case when they have better alternatives. FNS records show there are 11 comparably sized or larger SNAP retailers located within a one mile radius of the Appellant firm that includes a supermarket and a super store. There are also seven super stores, five supermarkets, and a medium grocery store located 1.05-1.99 miles away. The closest super store is located approximately three blocks from Appellant's location. These stores would offer greater quantities and varieties of staple food items at lower prices than would be found at a very minimally stocked convenience store offering no fresh or frozen unprocessed meats or seafood and almost no fresh or frozen produce.

The difference in the average SNAP transaction amount and the total SNAP transaction count for San Diego County convenience stores during the review months and at the Appellant firm is significant. 5 U.S.C. § 552 (b)(7)(E). Based on this data, the Appellant firm averaged two SNAP transactions per day for the six month review period. The very low number of SNAP transactions combined with the unusually high average SNAP transaction dollar amount and the firm's extremely poor stock of staple food items suggests the firm is trafficking SNAP benefits. A comparison of Appellant's SNAP redemptions to that of nearby like type stores having redemptions for the review period shows that none exhibit the same suspicious transaction patterns listed in the charge letter 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 further indication that the transactions in both Attachments do not represent legitimate food purchases. The Retailer Operations Division considered all of these to be indicators of unusual and suspicious activity.

The firm also had irregular SNAP transaction data compared to like type stores in San Diego County. A comparison of Appellant's redemption data to County convenience stores using ten dollar increments shows that Appellant's transaction count and dollar volume are significantly less than the average of like type stores in the lowest ranges (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) where typically the majority of convenience store transactions occur, but then significantly exceed the average in the remaining ranges 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at which point transactions stop. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These large dollar transactions are considered to be irregular and suspicious based on the firm's food inventory. The Retailer Operations Division determined there was no credible reason for the firm to have transactions at these dollar levels given the extremely limited stock of staple foods and the lack of any specialty, bulk, or ethnic foods that might sell for large dollar amounts and also considered this to be a strong indication of trafficking. None of Appellant's contentions explain these unusual and suspicious differences.

Appellant contends the high dollar transactions are because the firm is a 3,000 SF convenience and liquor store that has been under the same ownership for more than 17 years. The firm offers a wide variety of grocery and snack foods and has large walk-in refrigerator and freezer sections with milk, juices, dairy, eggs, cheese, ice cream, frozen foods, and various other cold items. As a long-term SNAP retailer, the firm caters to SNAP customers by offering cereals; breads; pasta;

canned fruits, vegetables, and meats; baking items; nut butters and fruit spreads; dried legumes; rice; pre-packaged foods; and fresh produce as well as candy, nuts, chips, snacks, beer, wine, liquor, small-sized beverages, cleaning and laundry products, and general household items. The firm stocks a large amount of inventory because it is located very near a residential area and has a regular customer base. Since the firm sells a wide variety of products ranging from inexpensive snacks to large grocery items 5 U.S.C. § 552 (b)(6) & (b)(7)(C), customers make larger transactions in the beginning of the month when they receive their new SNAP benefits. That 41 of the 75 transactions listed in Attachment 2 were made in the first 10 days of the month supports this. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Appellant submitted photos of store inventory in support of these contentions.

Regarding Appellant's contentions, information obtained during the FNS store visit on July 1, 2018, shows that the Appellant firm offers an extremely limited quantity and variety of SNAP eligible staple food items, many accessory foods, and many ineligible items. Much of the inventory for sale consists of inexpensive snacks, candy, condiments, drinks, and single serving foods as well as many ineligible items. The fact that tobacco, tobacco accessories, water pipes, alcohol, lottery, household and paper products, auto products, health and beauty items, hats, phone accessories, and DVD's are not eligible for purchase with SNAP benefits also provides no justification for the high transaction amounts.

The FNS store visit report includes an inventory of staple food items and many photos which refute Appellant's claim of the firm offering a wide variety of foods. On the day of the visit, the Appellant firm had no fresh or frozen unprocessed meats or seafood; two cartons of eggs, both expired; only packaged single serving string cheese, also expired; no frozen foods; and no fresh produce except for several limes at the checkout that were more likely to complement purchases of alcohol. The store visit report, completed in collaboration with the store owner, shows no staple food items costing more than \$5.99 with the most expensive food item being coffee, an accessory food, priced at \$9.99. The vast majority of the firm's sales space and all of its storage areas contain various alcoholic beverages. Outside of two small ice cream chest freezers with single serving ice cream, the firm has no other freezers and no other frozen foods. In addition to the expired foods, the firm had dust on canned and packaged foods indicating a slow turnover of stock. The firm was also deficient in the dairy staple foods category with milk being the only variety with three or more stocking units thus providing further evidence of extremely limited stock. Additionally, as previously discussed, there is a better stocked supermarket and super store located just minutes away.

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 store stock. A shopping pattern analysis by the Retailer Operations Division shows that households in this Attachment are regularly shopping at much larger stores, and conducting high dollar transactions, yet are conducting comparable or higher dollar transactions at the Appellant firm. It makes 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 firm since its cost of goods is higher than that of larger stores such as supermarkets or super stores.

Higher food prices make it even more unlikely that SNAP recipients, with very limited food benefits, would want to spend a considerable part of their benefits in a store that does not address all of their food 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 also offer store brand products at lower prices, weekly specials, and have shopping carts and checkouts with built-in scanners and conveyor belts to facilitate processing purchases quickly. 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 months. The firm has a small checkout area and no shopping carts thereby making it difficult to facilitate the great quantities of eligible food items required to make up these large dollar transactions. Therefore, it is improbable that the food items purchased in these high dollar amounts could be carried to the register without the use of carts and more likely that the amounts were contrived.

The submitted photos show a greater quantity and variety of both staple and accessory foods as well as pricing signage than was present in the FNS store visit photos making it more likely than not that the photos were staged after the fact in an attempt to falsely support Appellant's contention that the firm has a substantial food inventory. The store visit report also shows that the store owner confirmed there were no staple food items costing more than \$5.99 available for purchase at the time of the store visit. These facts support that Appellant's photos were staged in an effort to avoid the permanent disqualification and therefore are of no evidentiary value.

It is further noted that SNAP redemptions at the Appellant firm fluctuated unusually following the store visit on July 1, 2018. The average SNAP transaction dollar amount decreased from 11.95 percent from June to July 2018 while the volume of SNAP redemptions decreased 11.94 percent during the same period. A pronounced fluctuation in SNAP redemptions following the store visit is a clear indication of trafficking since, if trafficking were not occurring, there would be no abnormal fluctuations in redemptions.

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

### **Other Contentions**

Regarding Appellant's denial of trafficking, the purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division and is limited to what circumstances were at the basis of the action at the time such action was made. In an appeal of an adverse action, the Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means the 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. 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. When the store owners signed the certification page of the SNAP retailer authorization application to become a SNAP retailer and

again when they applied for reauthorization as a SNAP retailer, they confirmed they understood and agreed to abide by program rules and regulatory provisions. They also 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 certification is clear that store ownership understood by signing the document that violations of program rules can result in administrative actions such as fines, sanctions, withdrawal, or disqualification from the SNAP. 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.

There were no transactions included in the two Attachments for the month of July 2018 due to the firm's SNAP redemptions being unusually low for that month. As previously discussed, this significant decrease is attributed to the receipt of the FNS charge letter on July 1, 2018, and is another indication of trafficking.

The owners and the firm were charged with trafficking based on a computer analysis of the store's transactions for the review period. The charges do not derive from the use of a confidential informant or independent investigator who visited the store and made illegal purchases to support findings of trafficking, but by a computer program used by SNAP Administrators. While traditional undercover operations are still in use by USDA, for many years federal regulations have also authorized the use of evidence consisting of EBT transaction data in investigations of SNAP retail stores to determine if trafficking is occurring and U.S. District Courts have long upheld the validity of EBT transaction data.

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 disqualify 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". SNAP regulations at 7 CFR § 278.6(a) clearly state that "FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, 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". In the present case, the data presented in the Attachments is solely based on the SNAP EBT transactions conducted at the Appellant firm during the review period. 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 review period. 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 photos from the FNS store visit, a transaction comparison and analysis of like type and larger stores, and analysis of shopping patterns for recipient households conducting transactions at the Appellant firm during the review

period. This analysis also included a review of the firm 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. 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.

The Food and Nutrition Act of 2008, as amended, and the regulations issued pursuant thereto do not 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 and second chances are not an authorized option under existing regulations.

### **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 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.

SNAP regulations are explicit in what constitutes substantial evidence. Specifically, 7 CFR § 278.6(i)(2) states in relevant part, “As specified in Criterion 3 above, in determining whether a firm has established an effective policy to prevent violations, FNS shall consider written and dated statements of firm policy which reflect a commitment to ensure that the firm is operated in

a manner consistent with part 278 of current FNS regulations and current FSP policy on the proper acceptance and handling of food coupons.” This section goes on to state, “As required by Criterion 2, such policy statements shall be considered only if documentation is supplied which establishes that the policy statements were provided to the violating employee(s) prior to the commission of the violation.” This section further states, “A firm which seeks a civil money penalty in lieu of permanent disqualification shall document its training activity by submitting to FNS its dated training curricula and records of dates training sessions were conducted...”

Appellant contends that the firm is mainly operated by the owners themselves and they have trained all employees, including new hires. The owners deny having engaged in, consented to, benefitted from, or condoned any conduct constituting trafficking. The firm has only had two employees since 2009 with one employed 2009-2013 and the other 2011-present. All training is documented and new employees must sign a statement acknowledging their initial training, receipt of the firm’s SNAP policies, and a copy of the SNAP Retailers Handbook. Although the firm did not traffick, the owners would like to be considered for a CMP in lieu of permanent disqualification. The firm has also operated for over 17 years in a law-abiding manner. Appellant submitted SNAP training documents in support of the CMP.

No training documentation of any kind was presented for either owner. Additionally, FNS was unable to verify the authenticity of the training records submitted for the two store employees as no documentation of identity or of employment such as payroll records or other documentation was provided.

Based on the above discussion and the evidence under review, Appellant failed to meet the regulatory standard for a trafficking CMP as it did not provide substantial evidence by the specified deadline 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 presented a case that Appellant has likely trafficked in SNAP benefits. Their 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 consistent with trafficking violations in SNAP benefits. This is evidenced by: the suspicious patterns in two 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. Based on the discussion above, the determination to impose a permanent disqualification against Appellant is sustained. Furthermore, the Retailer Operations Division properly determined that Appellant was not eligible for a trafficking CMP according to 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

May 13, 2019