

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

**Lima Mini Mart Inc,**

**Appellant,**

**v.**

**Case Number: C0208310**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

The record supports that Lima Mini Mart Inc. (Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP). It is the decision of the USDA that there is sufficient evidence to support that the permanent disqualification of Appellant from participation as an authorized retail food store in the Program, as imposed by the Retailer Operations Division, (Retailer Operations) was appropriate.

**ISSUE**

The issue accepted for review is whether Retailer Operations took appropriate action, consistent with 7 CFR § 278.6(a), (c) and (e)(1) in its administration of the SNAP, when it assessed a permanent disqualification against Appellant.

**AUTHORITY**

7 U.S.C. § 2023 and the implementing regulations at 7 CFR § 279.1 provide that a food retailer aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 may file a written request for review of the administrative action with the Food and Nutrition Service (FNS).

**CASE CHRONOLOGY**

By Charge letter dated May 29, 2018, Retailer Operations informed the owners that it had compiled evidence that Appellant had violated the SNAP regulations based on electronic benefit transfer (EBT) transactions that established clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for the firm type. The sanction for trafficking is permanent disqualification. The owners responded to the Charge letter June 2, 2018.

Retailer Operations issued a Determination letter dated July 3, 2018. This letter informed Appellant that it was permanently disqualified as a retail food store in accordance with Sections 278.6(c) and 278.6(e)(1) of the regulations. Retailer Operations considered Appellant's eligibility for a civil money penalty (CMP) according to Section 278.6(i) of the regulations, and found it was not eligible because insufficient evidence was submitted timely to demonstrate that the firm had established and implemented an effective SNAP compliance policy and program to prevent violations.

By letter dated July 9, 2018, counsel appealed Retailer Operations' determination and requested administrative review. The appeal was granted by letter dated July 20, 2018. Counsel made a FOIA request by letter dated August 6, 2018. The September 6, 2018, FOIA reply was delivered September 7, 2018. Counsel submitted his brief September 28, 2018. Retailer Operations reviewed the brief and submitted its assessment to this office October 31, 2018.

### **STANDARD OF REVIEW**

In an appeal of an adverse action, the Appellant bears the burden of proving, by a preponderance of the evidence, that the administrative action should be reversed. That means the Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than not true.

### **CONTROLLING LAW AND REGULATIONS**

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Sections 278.6(a) and (e)(1) 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(e)(1) states: "FNS shall disqualify 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 or selling of SNAP benefits for cash or consideration other than eligible food."

7 CFR § 271.2 states: "Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food products prepared for immediate consumption."

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(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).”

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.”

### **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 were based on an analysis of SNAP transaction data during the period of November 2017 through April 2018. The patterns of transaction characteristics indicative of trafficking are:

1. Unusual number of transactions ending in a same cents value.
2. Multiple transactions made from individual benefit accounts within a set time period.
3. Excessively large transactions made from recipient accounts.

### **APPELLANT’S CONTENTIONS**

In reaching a decision, attention has been given to all contentions, including any not referenced.

- We are new business owners. We are attempting to grow our customers through various strategy [sic]. One is discounted goods. Many times we round down the prices of our goods to an even number, thus many transactions will have the same cents value.
- On June 2, 2018, Appellants vehemently denied that trafficking had occurred.
- It is not common for your grocer to ask you why you came back twice in one day, or why you spent so much money at his store instead of someone else’s store. In the common course of business, the retailer would never be privy to that information; accordingly, the retailer’s response is necessarily limited, just as the Department’s assumptions are.
- The Department has no evidence to refute the Appellants’ position regarding the pricing of the individual items in the Store, and as such, this Division should take the Appellants’ representation on pricing as undisputed.
- In support of the substantial inventory and innocence of the transactions conducted at the Store, the Appellants have submitted the Store’s grocery product invoices for the period of November 2017 through April 2018. Additionally submitted is an itemized invoice spreadsheet of said invoices, wherein the Store’s monthly invoices are broken down to show the food inventory stocked at the Store.

- Multiple purchases **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** after receiving SNAP benefits is not unusual.
- The transactions at issue consisted of innocent transactions, easily explained by either the business practice of the Store, the participant forgetting an item in his/her prior transaction; co-shopping; and/or the participant making a purchase, returning home, and then returning to the Store to make a second purchase.
- The transactions included in Attachment 3 are not trafficking. They are supported by the substantial inventory of the Store and are reasonably explained by the Store's business practices (including taking large customer orders and delivering them) and/or co-shopping.
- It is entirely unclear which stores, if any, were used as proper comparison stores. Thus, with nothing set forth by the Department to the contrary, the only reasonable conclusion is that the Store's transactions were in line with the transactions at the comparison stores. FNS has no meaningful comparison store, and thus has no context.
- As for ALERT's data, the system's conclusions are directly rebutted by the Store's inventory invoices and photographs, the SNAP Customer Affidavits, and the report produced by the Department's Inspector during the April 20, 2018 on-site store inspection. If the Store were trafficking, then said documents would be "inconsistent." In this instance, there is no inconsistency, the transactions are clearly supported by the Store's inventory and photographs.

## ANALYSIS AND FINDINGS

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

**Attachment 1:** Listed are 204 transactions ending in 00 cent values. The record shows that transactions ending in 00 values made up 61% of the transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** conducted at Appellant during the review months. When there are a disproportionate number of transactions that end in same cents values it appears that these transaction amounts are contrived. In the absence of compelling evidence to the contrary, these transactions are indicative of trafficking.

### Contentions:

- The store opened in 2017, and in an effort to grow business/customer base it offers substantial discount prices and pricing bundles (i.e. 2 bags of chips for \$1.00).
- Many times, the discounts offered are rounded down to an even number, such as .00.
- The inspector failed to cite some of the more expensive items on the list of expensive food items. Items missed include: rice \$24.99 (markup 67%); shrimp \$20.00; yeast \$14.50; chicken wings \$12.00 (markup 41%); goat \$9.00; soda \$6.00; ice cream \$6.00 (50% markup); water \$5.99; and hot dogs \$4.99 (122% markup).

- The inventory notes show the store to be sufficiently stocked/provisioned to satisfy the purchase amounts listed in the Charge letter.
- The inspector noted only two shopping baskets when there are at a minimum five and erroneously noted there was only one cart when there are three shopping carts.
- One of the prejudicial notations by the inspector was the statement that the store does not have an unusual price structure such as ending most product prices with 00 cents. This is blatantly untrue and contradicted by the photos taken. In almost all the photos the observer is able to see small neon colored signs that evidence most product prices end in 00 cents and pricing bundles i.e. 2 bags of chips for \$1.00.

The onsite store visit report dated April 20, 2018, was completed in conjunction with the store president who signed the consent form. The report confirms that prices were not rounded up or down at checkout. According to the store visit report, the four most expensive food items ended in 99 cent values 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The 2018 inventory report does not list shrimp, wings, goat, or hot dogs as being present in the meat, poultry, or fish staple food category. The president presumably would have called attention to these items if they were in stock. By counsel's own admission, the store's inventory becomes depleted quickly. Thus, it is likely that some or all of the items cited by counsel were not in inventory during the store visit and therefore not listed.

As to the number of baskets and carts at Appellant, the FOIA provided two store visit reports with photos, the initial visit was in 2017, followed by the 2018 visit. The 2018 visit in the record includes 41 photos. Photo 30 shows two handheld baskets with branding for 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The same one shopping cart branded for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is seen in photos 7, 9 and 22. The 2017 onsite visit included 38 photos. Photo 20 shows three 5 U.S.C. § 552 (b)(6) & (b)(7)(C) baskets, and photo 30 shows one cart that appears to be the same one cart seen in the 2018 photos. It cannot be presumed that Appellant had a minimum of five baskets or two carts. It is as likely that one basket photographed in 2017 was no longer at Appellant by 2018. Appellant did not provide evidence that the owners purchased the claimed number of carts and baskets for the business. No photos of said number of carts and baskets were provided.

Appellant did have some signage indicating some prices ending in 00 cent values. Other pricing seen ended in x9 cent values and 50 cent end values. Appellant provided no comprehensive pricing information for eligible items during the review months. Given the evidence under review, that the majority of the prices at Appellant ended in 00 cent values is not known.

The date(s) of the photos advanced by the owners is not stated. Clearly the photos were taken after the determination was rendered. Many more signs are seen in the photos advanced for review than were apparent in the April 2018 photos. The store president was on hand during the onsite inventory and had the opportunity to provide input on pricing at that time. The 2018 photos show many orange individual tags on items whereby the prices cannot be discerned. Appellant stocked a host of non-eligible items including: lottery tickets, health and beauty aids, paper goods, cleaning products, housewares, pots and pans, plastic goods, clothing, money transfers, toys and party goods.

No change is provided with SNAP transactions, therefore there is no incentive to price items in a certain way. No itemized cash register tapes were advanced to support the sale of eligible foods at Appellant. According to both store visits, Appellant had an optical scanner which should have facilitated the production of itemized register receipts. Counsel stated that 12 customer affidavits were provided however, none were forwarded by email or by hard copy. The owners have not by a preponderance of evidence demonstrated that this Attachment lists legitimate SNAP transactions for eligible foods.

**Attachment 2:** Listed are 40 transactions in 18 sets of transactions conducted by 11 unique households (HHs). Multiple transactions within a set time period is a method stores use to avoid high dollar transactions, and are indicative of trafficking.

Contentions:

- We are providing substantial discounts and customers are capitalizing on it even after the first transaction, leading to multiple transactions for the same customers/accounts. Many times, they leave and return within hours for further purchase.
- Many of time we take orders and deliver for large quantity of goods such as meat, rice, flour, etc. which end up amounting to a considerable amount. I have enclose some invoices. (Three invoices were submitted.)
- We would never consider taking a chance on an action that would jeopardize our store and family.
- Some customers place orders for large amounts of meat, poultry, and/or fruits, which the store will then order from a local wholesaler and store in the freezer. When the customer arrives to pick up their large food order, it is common that they will shop for other items.
- Appellant will separate all eligible food items from the cart, use a calculator to determine the price then apply a discount (if applicable) and charge all food items (the large order and subsequent food items) as a single non-taxed item.
- The store offers a minimum of five shopping baskets and three shopping carts at all times for their shoppers' convenience, which permits the shoppers to gather a substantial amount of food and transport it from the shelves to the register without logistical difficulty.
- The store alerts customers of re-stocks of specific items; the customer then returns to the store at a later time to purchase the previously depleted food item.
- Submitted are 12 customer affidavits stating that **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, they use between 40 percent to 90 percent of their benefits at the store, and that it is common for all 12 to make frequent purchases from the store within one day of one another.
- Most visits to a store the size of Lima Mini Mart Inc. are made while the customer is on his/her way to work or school (65% of frequent shoppers buy during this time), or while running errands at night (63.3% of the surveyed shoppers shop at this time). Typically, SNAP participants who visit on a daily or weekly basis are significantly more likely to do so in the morning (6 a.m. to 8:59 a.m.), or during the late evening (7 p.m. to 10 pm).
- It is not uncommon for SNAP clientele to make multiple purchases in a short period of time after receiving benefits. Often enough, the participants realizing after they've left the store, that they've forgotten a grocery item or have decided they wanted to purchase items they had originally opted not to purchase.
- In other instances, multiple members of household shop together, and then make purchases separately, using the same account and card in quick succession.

- In other circumstances, the participants will go on a spending spree wherein they make purchase after purchase without leaving the store, or by returning after a brief absence, thereby reducing their benefits in short order.
- The store stocks the majority of SNAP households' preferred needs (sweetened beverages, frozen prepared foods and prepared desserts).
- Compared to the other stores in the surrounding area, the Store's prices are not more expensive.
- The Store's SNAP clientele, will engage in one transaction, leave the Store, and then return to the Store, usually within a few hours of when they first left, upon being notified via telephone by Store personnel that the grocery item they were looking for had been delivered to the Store.

The record shows that within one mile of Appellant there are more than 100 authorized retailers of varying store types including: 34 other convenience stores, 55 small groceries, four medium groceries, three large groceries, four supermarkets, and three super stores. The data shows that 45% of the HHs flagged on this Attachment transacted benefits at a super store, supermarket, or large grocery on the same day they transacted benefits at Appellant. Thus, recipients had access to, and did use benefits at other retail food stores. The record also contains analysis of some recipient shopping histories that are unusual.

Counsel did not provide attestations from recipients as noted in his contentions. If these were relevant to this case, they were not emailed or provided by hard copy. As such, there is no recipient evidence to support their claimed shopping behaviors at this store. The times noted between the transactions listed on this Attachment are not indicative of purchases without leaving the store. No analysis of Appellant's transactions was provided to support the claims cited by counsel as extracted from the 2016 study conducted by the *Convenience Store News*. It is noted that this study refers to "core" customers and describes these. The article does not specifically address SNAP customers. The report states that the most popular reason for the convenience stores core customer base is for the sale of gasoline and "immediately consumable food and beverages, such as snacks, fountain drinks and prepared food." The report continues that core shoppers are more likely to cite the purchase of lottery tickets, newspapers and magazines, and cigarettes; none of which, are eligible for purchase with SNAP benefits.

As to the contentions regarding the logistics of the store, the claimed number of baskets and carts is not corroborated by supporting evidence. The evidence from the 2018 store visit shows that Appellant had one cart and two baskets, each branded for other stores. The photos show the check-out area is bounded by a plastic window enclosure with a small ledge, and the opening at the window is fronted by a reach-in freezer chest. This physical setup would likely make processing large numbers of items awkward and more time consuming. The June 2, 2018, reply by the owners was offered to clarify the three Attachments. The owners never denied trafficking or used the word trafficking in their response.

While the owners contended so, no sworn statement was advanced that the owners bought large quantities of goods for individuals upon request or delivered items to customers. No signage is visible from the photos that the store promotes customized food orders or delivers goods. Further, evidence of large orders being placed by customers such as: cash register receipts,

copies of phone orders, phone records of calls to/from SNAP customers, delivery receipts, or customer affidavits were not advanced to support that the transactions cited were legitimate purchases of eligible food items. 5 U.S.C. § 552 (b)(7)(E).

No itemized cash register tapes, bank records, or tax submissions were provided to support that trafficking was not occurring at Appellant. As such, the owners have not by a preponderance of the evidence demonstrated that these transactions are the result of the exchange of benefits for SNAP eligible foods rather than trafficking.

**Attachment 3:** Listed are 184 transactions for amounts that exceed the average transaction amount for the same store type in the same state by three times or more.

5 U.S.C. § 552 (b)(7)(E). Appellant also had more flags on this Attachment at 184 as compared to 21 and 18 at the two nearby convenience stores. This is unusual.

Contentions:

- The Store's substantial inventory is supported by the vendor invoices submitted.
- The ALERT system is not always accurate, as the numbers fail to account for special business practices, differences in demographics and foodstuffs, and geographic areas.
- The Store clearly had more than enough inventory for the amount of transactions conducted with SNAP benefits during the review period.
- The Appellants were unable to locate a significant number of invoices for the review period, specifically for the month of February 2018. The Appellants' purchase many of the Store's products from local vendors and many of their invoices/receipts are informal, illegible, and/or do not contain descriptions, such as the name of the vendor and the specific products purchased.
- The documentary evidence submitted clearly supports a finding that the Store had more than enough inventory to support the SNAP transactions conducted during the months of the Review Period. More specifically, when considering the Store's estimated average markup percentage and estimated 20% for cash/credit purchases, the Store had a substantial amount worth of inventory each month - clearly more than a sufficient amount of inventory for the Store's amount of SNAP redemptions for the respective months.
- After accounting for the SNAP redemptions for the respective months, the Store had approximately an additional 5 U.S.C. § 552 (b)(6) & (b)(7)(C) worth of inventory in December 2017 and had approximately an additional 5 U.S.C. § 552 (b)(6) & (b)(7)(C) worth of inventory in January 2018. Thus, the Store logically had more than enough inventory to account for the SNAP transactions conducted during the review period, and, as such, it is clear that the Store more likely than not conducted innocent transactions rather than trafficking SNAP benefits.
- There are only 12 transactions out of the 184 transactions set forth 5 U.S.C. § 552 (b)(6) & (b)(7)(C) plus. These transactions are conducted by the same three households, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) (responsible for eight of the transactions), 5 U.S.C. § 552 (b)(6) & (b)(7)(C) (responsible for one of the transactions), and 5 U.S.C. § 552 (b)(6) & (b)(7)(C) (responsible for three of the transactions). Unfortunately, as the Department has redacted all of the identifying information for the SNAP participants set forth in Attachments to the Charging Letter.



- With the exception of four out of the 12 transactions, all of these occurred between the 1st through the 10th days of their respective months, which is, consistent with the shopping habits of the SNAP participants.
- A reasonable and plausible explanation for these higher transactions is that these three households likely have a larger amount of SNAP residents residing therein, thus requiring a larger quantity of produce each month than those households with less participants.

Counsel submitted 92 invoices for the review period of November 2017 through April 2018 from, but not limited to: Ray’s Snacks Inc., Giant, Wholesale Dairy Company, Jetro Cash and Carry, Metro Beverage, ALDI, Save-A-Lot, and Best Food Supermarket. Invoices not considered by Retailer Operations were:

- 1 from Ray’s Snacks Inc. LIMA0014: date is illegible (handwritten)
- 2 from Jetro Cash and Carry LIMA0045-46 and LIMA0051 (same as LIMA0039): (1) had no date, (2) was a duplicate from December 2017
- 1 from B and B Sales, Inc. LIMA0022: no date
- 1 from Delphia Distribution Inc. LIMA0023-27: outside of the review period
- 3 from unknown vendors: LIMA0074, LIMA0075 (receipt on left), LIMA0092
- The unconsidered invoices total about 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in vendor purchases. The majority of invoices/receipts were for snacks, juice, soda, water, inexpensive staples, produce, processed meat, and frozen goods.
- The invoices from Best Food Supermarket, which total 5 U.S.C. § 552 (b)(6) & (b)(7)(C), were rejected for alleged purchases of goat meat, beef, chicken, frozen beef patties, eggs, rice, flour, etc.

Retailer Operations determined that the invoices from 5 U.S.C. § 552 (b)(6) & (b)(7)(C) located at 5 U.S.C. § 552 (b)(6) & (b)(7)(C), Philadelphia, PA had inconsistencies that argue against their validity. The telephone number listed on the invoices is disconnected/out of service. Retailer Operations conducted an internet search that gave a telephone number that is different from the one listed on the submitted invoices. The store front seen on the internet photo lists the number as 5 U.S.C. § 552 (b)(6) & (b)(7)(C); the vendor invoices lists the store’s number as 5 U.S.C. § 552 (b)(6) & (b)(7)(C). FNS application records list the store’s phone number as 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This is irregular.

Retailer Operations made repeated attempts to contact the vendor via all the telephone numbers listed.

1. Invoice phone # 5 U.S.C. § 552 (b)(6) & (b)(7)(C) – apparently disconnected, a repeated message that “all circuits are busy” was given
2. SNAP Application phone # 5 U.S.C. § 552 (b)(6) & (b)(7)(C) – no response, a voice mail box with no store information
3. Store Front phone # 5 U.S.C. § 552 (b)(6) & (b)(7)(C) – same as #2

The record shows that according to Google maps, this vendor is located 0.06 miles from Appellant. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) applied for SNAP authorization 1/18/2018. The application states the store was open for business 11/10/17. This is three days prior to the vendor invoice dated 11/13/17 for meat and poultry supposedly acquired by Appellant at this store. The corporate officer listed on the application has the same last name as one of the owners of

Appellant. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is listed as the corporation name. The application shows that 84% of estimated sales were in tobacco, alcohol, non-foods, and accessory foods. Staple foods were 15.5% of estimated total retail sales. Question number 17 of the application asks: “Do you sell products wholesale to other businesses?” and the “No” box was filled in by the applicant. FNS withdrew the application on March 1, 2018 for non-response to information requested. The record also points out a series of other inconsistencies in these invoices such that the credulity of the invoices from this vendor is undermined.

According to the vendor invoices from 5 U.S.C. § 552 (b)(6) & (b)(7)(C), Appellant allegedly purchased a total of 798 pounds of goat, chicken, beef, and turkey breast from the said vendor during the review period. Nevertheless, there are no photos of such meat being in the store. The one photo of a freezer chest provided by counsel, in the stock room, shows a closed unit so no content of possible meat/poultry/fish products or any eligible items are seen. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Counsel’s brief estimates 20% of sales at Appellant for cash or credit. Based on all of the invoices/receipts that Retailer Operations considered to be credible, even with a 70% markup, Appellant did not present sufficient evidence that it acquired enough eligible food stock to cover the SNAP redemptions for review period. Given the high percentages of invoices of alleged purchases from a dubious vendor, the vendor documentation is not convincing by a preponderance of the evidence that trafficking did not occur as charged.

#### 5 U.S.C. § 552 (b)(7)(E)

The agency has a responsibility to recipients’ privacy, and properly redacted the HH numbers in the Attachments provided to the owners. As to the three HH numbers cited by counsel as plausibly having a “larger amount of SNAP residents residing therein”, only one HH appears to have a SNAP benefit balance that might indicate it is a larger HH size.

While some households may have conducted legitimate SNAP transactions at Appellant, insufficient credible evidence was presented by the owners to support this argument. The owners provided no itemized cash register tapes to support legitimate sales for the review months. No comprehensive pricing information was advanced. No SNAP recipient statements were provided to support that the transactions listed were for eligible foods. No federal business tax returns or state tax filings were advanced, and no business banking statements were provided. Thus, the owners have not provided a preponderance of evidence that the transactions on the Attachments are for eligible foods rather than the result of trafficking.

### **CIVIL MONEY PENALTY**

The regulations at 7 CFR Section 278.6(i) specify the criteria for a firm’s eligibility for a CMP in lieu of permanent disqualification for trafficking. The owners failed to submit any documentation to show that they met the four criteria in order to qualify for a CMP. Accordingly, Retailer Operations determined that Appellant was not eligible for a trafficking civil money penalty.

## **CONCLUSION**

Retailer Operations' analysis of Appellant's SNAP 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. Based on empirical data and in the absence of a preponderance of evidence of the legitimacy of the transactions presented by Appellant, it is more likely true than not true that violations did occur as charged by Retailer Operations. Retailer Operations denial of a trafficking CMP was also proper per the applicable regulations. Therefore, the decision to impose a permanent disqualification against Appellant is sustained.

## **RIGHTS AND REMEDIES**

Attention is called to Section 14 of the Food and Nutrition Act of 2008 and to 7 CFR § 279.7 of the regulations with respect to applicable rights to judicial review of this decision. If judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which Appellant's owners reside or are engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

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

M. Viens  
Administrative Review Officer

December 6, 2018