

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

Luis & Leonidas Grocery & Deli Corp,

Appellant,

v.

Case Number: C0191308

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 the Luis & Leonidas Grocery & Deli Corp (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 September 21, 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 August 5, 2016, 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 January 2016 through June 2016. 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 16, 2016, and submitted via fax on August 18, 2016. This response requested a CMP be imposed in lieu of a permanent disqualification and included documentation of SNAP training sessions. Appellant's response also admitted to the business offering credit accounts. The Retailer Operations Division, by letter dated August 30, 2016, requested evidence of the existence of credit accounts at the business. Appellant responded to their request by a letter dated October 13, 2016, and submitted via fax on October 14, 2016, that included documentation of credit accounts. The Retailer Operations Division notified Appellant in a letter dated September 21, 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 September 26, 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 § 278.2(f) states, inter alia: “Coupons [SNAP benefits] shall not be accepted by an authorized retail food store in payment for items sold to a household on credit.”

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 January 2016 through June 2016. This involved five patterns of EBT transaction characteristics indicative of trafficking:

1. There were an unusual number of transactions ending in a same cents value.
2. Multiple purchase transactions were made too rapidly to be credible.

3. Multiple transactions were made from individual benefit accounts in unusually short time frames.
4. The majority or all of individual recipient benefits were exhausted in unusually short periods of time.
5. Excessively large purchase transactions were made from recipient accounts.

APPELLANT'S CONTENTIONS

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

- There are many products sold by the whole dollar amount such as two liter soda at two for \$5.00 or \$2.50 per bottle, plantains at two for \$1.00, and orange juice and drinks at \$1.00 and \$4.50 in addition to snacks from .75 cents to \$2.00. Cold cuts are usually requested by the whole dollar amount and sandwiches range from \$3.00-\$6.00. A purchase of several different cold cuts or sandwiches could easily add up. The store has many items that cost .75 cents, two for \$5.00, three at \$1.00, two for \$1.25 so that purchases can easily add up. Many sandwiches sell for \$3.00 and \$4.50-\$6.00 so the purchase of any two or three sandwiches and a two liter soda or two or three \$1.00 sodas make-up the majority of these purchases. The business also will round-off the amounts to make it an even number when asked for discounts by many customers in order to keep them satisfied;
- The rapid transactions are because the store is very well stocked and when they are very busy they will be attending to one EBT client with the EBT terminal while another employee is adding-up the purchase of another customer with a calculator so that once the terminal is available they can process the client's purchase. In this manner, they process as many separate customers as quickly as possible. In fact, this is something that is done on a daily basis being the store can be very busy during specific times of the day or month;
- The multiple transactions are because many families share their SNAP benefits with other family members. For example, one member may receive their benefits on the first of the month while another receives their benefits on the eleventh. A customer will make their personal purchase and then charge the items for the other family member separately in order to obtain a separate invoice. The other family member will then reciprocate when they receive their benefits. The pictures show the store is very well stocked so when the store is busy, the employees add up the purchases with a calculator before they are processed through the EBT terminal so that transactions do not take a lot of time to be processed. In addition, there are customers that receive in store credit that they repay when they receive their monthly benefits. This is a select group of customers that depend on the business to help provide them with food for the family once their benefits have been exhausted. Once these customers pay off their credit balance, they will make another purchase for their home at that time and this is another factor in showing multiple transactions;

- Store ownership apologizes for any misinterpretation of the SNAP rules and regulations when credit was given in order to prevent families in the area from experiencing difficulties when they did not have sufficient food to feed their children. The store owner has come to know many of the families shopping at the business and established a very close relationship with them. Because of this relationship, on occasion, a very select few were offered the opportunity to have their basic food needs filled on credit and then repay the business back when they receive their benefits. Many of the large transactions noted in the report are repayments of not one large transaction, but are the accumulation of many smaller transactions added together. Appellant previously sent letters from these customers vouching for the business and confirming that they receive in store credit. The business has always been a law abiding business and the owner always observed the SNAP rules and regulations and under no circumstances would have violated them. It was never the intent to circumvent the rules and regulations, but to help people in need of food for their families;
- The store has an extensive inventory and variety of merchandise available and a customer can easily expend their benefits here. And with food prices being higher than ever, with only just a few items, a customer can easily accrue a significant amount of sales. Because of competitive pricing, large inventory, and having developed an honest presence in the community, many of the area residents have become accustomed to satisfying their household needs at the store and many make large purchases. Within the context of the store operations and the types of customers at the store, the transactions detailed in the report show a level of normalcy. The submitted pictures show that the store offers a large variety of food products and a full range of groceries, deli, and produce that a customer will need to sustain their family. It would be easy for a customer to expend their monthly benefits. The bank statements provided show the business makes deposits on a daily and weekly basis. A major factor in excessively large transactions is that food prices are higher than ever and only a few items are needed to accrue a large bill. Egg and milk prices have gone up exponentially with a gallon of milk at \$4.50 and eggs at \$2.99. The store sells Boars Head cold cuts and they are priced at \$6.39-\$7.99 per pound and a 20 pound bag of rice is \$8.99 just to name a few. As seen by the invoices provided, the business makes extensive daily and weekly purchases to maintain its foothold in the neighborhood. In addition, most of the large transactions listed on the report correspond to the repayment of the in store credit accounts. These are the accumulation of several smaller transactions given throughout the month that they repay when they receive their monthly benefits. When they repay the store, they will make their monthly purchases with many of them spending their benefits as soon as they are received. Enclosed are several letters from customers, including their bills detailing the purchases of food bought, confirming the credit given to them, and requesting that the EBT terminal not be removed. Appellant enclosed copies of the credit documents sent previously as there is no new information to provide since credit that was once available has been discontinued;
- The store offers an extensive variety of food products, a full range of groceries, deli, and produce that a customer needs to sustain their family. In addition to sandwiches, fruit salads, and smoothies, it would be easy for a customer to expend their monthly benefits at the store. As explained above, most of the large transactions are due to the in store credit offered to some customers and correspond to the repayment of these credit transactions

for food given to the customers. The store allows them to take food throughout the month and repay once they receive their monthly benefits. When they repay the store, they will make their monthly purchases with many of them spending their benefits as soon as they are received. Enclosed are several letters from customers detailing the purchases of foods bought, confirming the credit given to them, and requesting that the EBT terminal not be removed;

- The owner holds quarterly training sessions for all its employees where they review the rules and regulations of the program and discuss scenarios that might occur in reference to the program. Attached is signed documentation given after a training session showing proof that the owner provided corresponding training to the workers regarding the rules and regulations of the SNAP program; and,
- The owner is fully aware of how reliant the firm is on the business done through SNAP and would never jeopardize this for such a minimal profit. The business would not survive SNAP disqualification and may be forced to close. As seen by the bank statements, the business has a large volume of sales and based on the volume of EBT transactions, depends on these EBT redemptions. The income generated by these transactions determines the stability of the store and its continued operations. At this time, the owner would like to request that a CMP be imposed instead of the permanent disqualification.

Appellant submitted copies of invoices and printouts for inventory purchases; banking statements for January 2016-June 2016; seven pages of photographs; documentation of credit accounts; and documentation of SNAP training sessions.

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 June 7, 2010, and the business is classified as a small grocery store. The file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a June 10, 2016, 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 very small grocery store offering a limited quantity and variety of staple foods and carrying no unique items or offering any distinctive services.
- The business stocked a limited quantity and variety of Hispanic foods characteristic for stores in the area as well as many American brand products.
- 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 an opening set inside of a plastic wall containing many displays and was approximately 1.5 feet by 3.0 feet with displays also taking up counter space on both sides as well as a large ice cream freezer directly in front of it that customers must reach over to get to the checkout counter. The narrow size of the checkout counter combined with the ice cream freezer would make it problematic to process large orders.
- The checkout counter had one cash register, no scanner, one point-of-sale (POS) terminal, and no adding machines or calculators as evidenced by the store visit report and photographs.
- 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.
- The store had a large refrigerated deli display case and a kitchen/food prep area containing a cooktop grill, exhaust hood, microwave oven, etc.
- There were no prices posted for the deli meats, deli cheeses, or for the hot/cold, ready-to-eat prepared foods. It also appears that store staple food stock such as deli meats, deli cheeses, vegetables, etc. were being used in the preparation of the hot/cold, ready-to-eat prepared foods.
- The store had a 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 store had no fresh unprocessed meats, a very limited quantity and variety of fresh seafood (packaged Pollock fillets only), no frozen unprocessed meats or seafood, a limited quantity and variety of processed meats and seafood (canned meat/fish/poultry, hot dogs, bacon, and jerky), no packaged lunch meats, no frozen entrees, no frozen dinners, a moderate quantity and variety of fresh fruits and vegetables (bananas, plantains, tomatoes, green peppers, oranges, lettuce (1), lemons, limes, red/yellow onions, yucca (1), & potatoes), no frozen fruits or vegetables, minimal single serving nuts, a limited quantity and variety of canned and packaged staple food items, no tea, and no expensive eligible food items.
- Ineligible items included: tobacco, alcohol, hot ready-to-eat prepared foods, household products, paper products, pet products, health and beauty items, ATM, diapers, newspapers, electronics, electronics accessories, and candles while accessory foods included: candy, spices, condiments, coffee, cocoa, and carbonated/ uncarbonated drinks.
- The store was a WIC vendor. 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.

- Signage in the store was in English and there were no SNAP posters (anti-fraud, eligible items, reporting trafficking, etc.) visible in the store.
- Most food items were priced with all visible staple food prices ending in .x9 cents except for a very limited number of items such as lemons or limes at .50 cents each, a small number of snacks with manufacturer's pricing of .50 cents each, yogurt at \$3.50, and some breads at two for \$5.00. A price ending in .x9 cents is the most common pricing structure for stores of this type.
- Store hours were confirmed by the contracted reviewer with the store owner during the FNS store visit as being open 7:00 AM-12:00 AM daily.

Unusual numbers of transactions ending in a same cents value

This attachment lists 1,469 transactions ending in a same cents value

5 U.S.C. § 552 (b)(6) & (b)(7)(C). These 1,469 transactions include 1,067 transactions ending in the same cents value 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 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 that would explain the unusual number of transactions ending in these same cents values and no bulk items were available for purchase. The high percentage of same cent transactions combined with the large number of high dollar transactions is irregular and suspicious for this type store.

Appellant contends that there are many products sold by the whole dollar amount such as two liter soda at two for \$5.00 or \$2.50 per bottle, plantains at two for \$1.00, and orange juice and drinks at \$1.00 and \$4.50 in addition to snacks from .75 cents to \$2.00. Cold cuts are usually requested by the whole dollar amount and sandwiches range from \$3.00-\$6.00. A purchase of several different cold cuts or sandwiches could easily add up. The store has many items that cost .75 cents, two for \$5.00, three at \$1.00, two for \$1.25 so that purchases can easily add up. Many sandwiches sell for \$3.00 and \$4.50-\$6.00 so the purchase of any two or three sandwiches and a two liter soda or two or three \$1.00 sodas make-up the majority of these purchases. The business also will round-off the amounts to make it an even number when asked for discounts by many customers in order to keep them satisfied.

The inventory report and photographs from the June 10, 2016, FNS store visit show the business offered a limited quantity and variety of SNAP eligible food items with the majority of its inventory in snacks, accessory foods and ineligible items. Also, 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. 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 and the many photographs included with the FNS store visit report show that the vast majority of staple food prices ended in .x9 cents. A price ending in .x9 cents is the most common pricing structure for stores of this type. The purchase of several items with prices ending in .x9 cents would most likely not result in a total ending in a same dollar amount 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.

Appellant's contention that recipients ask to round-off their purchase amounts to an even number makes no sense as rounding their transaction totals down would deprive store ownership of needed revenue to stay in operation and would also deprive the owner's family of needed income. It is also unlikely that store clerks would have the authority to choose when to round-off amounts or to charge based on the posted prices. Although store ownership provided no evidence in support of rounding-off totals, a review of the many pages of credit transactions provided by Appellant purportedly listing the items and their prices purchased on credit by a select few customers do not support rounding as none of these transactions by these supposedly favored customers have been rounded-off. Additionally, this alleged practice of rounding totals would be seen as arbitrary to other store customers and would likely lead to more conflicts and more dissatisfied customers, not less.

Appellant's statement that many sandwiches sell for \$3.00 and \$4.50-\$6.00 so the purchase of any two or three sandwiches and a two liter soda or two or three \$1.00 sodas make-up the majority of these purchases also makes no sense and is not supported by the facts. The purchase of three sandwiches at \$6.00 each and two sodas at two for \$5.00

5 U.S.C. § 552 (b)(6) & (b)(7)(C) and would account for only a very small minority of the 1,469 suspicious transactions listed in this Attachment particularly as there are 343 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

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

Rapid Transactions

This Attachment documents 48 sets of back-to-back transactions made in rapid order at the same POS terminal. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Appellant contends that the rapid transactions are because the store is very well stocked and when they are very busy they will be attending to one EBT client with the EBT terminal while another employee is adding-up the purchase of another customer with a calculator so that once the terminal is available they can process the client's purchase. In this manner, they process as many separate customers as quickly as possible. In fact, this is something that is done on a daily basis being the store can be very busy during specific times of the day or month.

Appellant provided no evidence in support of its claim that the rapid transactions are the result of one household having their purchases totaled at the checkout counter while another employee is adding-up the purchase of another customer with a calculator so that once the EBT terminal is available they can process that customer's purchase. An examination of the photographs taken during the FNS store visit on June 10, 2016, do not show a calculator near the checkout counter or anywhere else in the store and the store visit report specifically states that no adding machine or calculator were present. This casts doubt on the validity of Appellant's contention of having a second employee using a calculator on a daily basis to tabulate other customer's orders separately before conducting their actual SNAP transaction. In New York, SNAP benefits are issued over the first nine days of every month and this is the period when the greatest volume of SNAP transactions would occur. Appellant's explanation also fails to explain the 15 rapid consecutive transactions cited in the August 5, 2016, charge letter that occurred after the SNAP benefit issuance period when the store would not be likely to have long lines of customers or multiple employees on duty. Furthermore, a review of the SNAP transaction data at the Appellant business on the dates and times of these 15 SNAP transactions shows that the store was not busy when these transactions occurred and therefore would not have had a need for a second employee to be adding-up purchases with a calculator. A review of some of the other listed transactions in this Attachment that did occur during the SNAP issuance period also show that the store was not busy, again casting doubt on Appellant's claims.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

5 U.S.C. § 552 (b)(6) & (b)(7)(C). SNAP benefit transactions involving legitimate food purchases require many steps: 1) the customer waiting for the previous customer to pick-up their purchases and leave the checkout area; 2) the customer making multiple trips bringing items to the checkout counter for large purchases since the business has no shopping carts or hand baskets; 3) the cashier separating eligible from ineligible items; 4) the cashier handling individual items to determine the price, which in this case involved manual keying of amounts since there is no scanner; 5) the cashier weighing individual items if sold by weight; 6) the cashier entering prices into a register or adding machine, once for eligible foods and once for ineligible items, which is typical for larger purchases; 7) the cashier handling manufacturers cents-off coupons, if applicable; 8) the cashier bagging the items for carry-out; 9) the cashier informing the customer of the totals (one for eligible foods and one for non-eligible items, if applicable, which for large purchases includes most transactions); 10) the cashier pressing the "SNAP transaction key" on the POS device/card reader; 11) the customer swiping their EBT card; 12) the customer entering their required PIN; 13) the cashier entry of the purchase amount; 14) the cashier confirming the customer has a sufficient benefit balance; 15) the transaction being processed by the system and receiving approval; 16) the cashier printing the EBT and cash register receipts; 17) the cashier accepting an alternate form of payment for nonfoods and possibly handling cash change; and 18) the customer removing products from the checkout area so the next customer in line can begin the next transaction. All or most of these steps are inherent in most legitimate large SNAP purchases. One can readily surmise that while such transactions may be completed in succession, performing these processes on large transactions is not done rapidly. The amount of time required is generally proportional to the dollar amount of the transaction; typically, the larger the dollar amount transacted the longer the time period between transactions. The extremely limited counter space as well as manually key-entering multi-digit EBT card numbers adds additional time to transactions.

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

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

Multiple transactions in unusually short time frames

This Attachment documents 295 individual transactions in 122 sets of two or more transactions conducted by 70 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 88 of the 122 sets. **5 U.S.C. § 552 (b)(6) & (b)(7)(C).** Four transaction sets are comprised of five individual transactions, nine sets are comprised of four individual transactions, 21 sets are comprised of three individual transactions, and the remaining 88 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 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 contends the multiple transactions are because many families share their SNAP benefits with other family members. For example, one member may receive their benefits on the first of the month while another receives their benefits on the eleventh. A customer will make their personal purchase and then charge the items for the other family member separately in order to obtain a separate invoice. The other family member will then reciprocate when they receive their benefits. The pictures show the store is very well stocked so when the store is busy, the employees add up the purchases with a calculator before they are processed through the EBT terminal so that transactions do not take a lot of time to be processed. In addition, there are customers that receive in store credit that they repay when they receive their monthly benefits. This is a select group of customers that depend on the business to help provide them with food for the family once their benefits have been exhausted. Once these customers pay off their credit balance, they will make another purchase for their home at that time and this is another factor in showing multiple transactions.

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 small grocery store's stock and facilities and are thus indicative of trafficking. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 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 88 of the 122 sets. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This quantity of same cents transactions exceeds the probability of occurring with legitimate food purchases and indicates that these amounts were contrived by store employees trying to avoid suspiciously high transactions that would be indicative of trafficking by breaking them into multiple, smaller amounts.

Appellant's claims regarding the use of a calculator to total purchases has already been discussed previously in this decision and refuted. Additionally, an analysis of the shopping patterns for 21 of the 70 households listed in this Attachment shows that all, but two of these households have ready access to transportation as evidenced by their shopping at a variety of other larger food stores located nearby and at a considerable distance from Appellant's location. This analysis further shows that 13 of the 21 households reviewed conducted 14 or fewer transactions at the Appellant business during the six month period under review with five of these households conducting only three, four, or five transactions indicating through extrapolation that more than 61 percent of the households in this Attachment are not regularly shopping at the Appellant business and would therefore not be likely to use store credit. It is also unlikely that store ownership would extend credit to customers who do not regularly shop at the business.

FNS records further show there is a super store, a supermarket, one large grocery store, and eight medium grocery stores located within one mile of Appellant's location that would offer greater quantities and varieties of food items at lower prices than would be found at a minimally stocked small grocery store. The supermarket is located within 400 yards of Appellant's location so there would be no transportation difficulties and the Appellant business is also located within two blocks of fixed route bus service on Park Avenue, Lake Avenue, and on Ridge Avenue east of Dunn Park that would facilitate shopping at other stores. Given the proximity of these larger stores, there is no reason for the attraction to the Appellant business and the volume of violative transactions, especially the large dollar transactions. Appellant has failed to provide any viable explanations for the irregular shopping patterns exhibited by the households in this Attachment as contentions of credit have been unsubstantiated. Also, no explanation or rationale has been offered by Appellant as to why households that are regularly shopping at larger stores offering a greater variety and quantity of SNAP eligible food stock at lower prices and who apparently have no transportation limitations would be conducting multiple, high dollar value transactions at a small grocery store that offers a minimal selection of staple food items and has no shopping carts that would be needed for the large transactions in this Attachment. Common sense dictates that it is improbable that SNAP households, with limited cash resources, would choose to shop at the Appellant business when their SNAP eligible food needs could be met at any of the larger stores they are already regularly shopping at and therefore it is more likely than not that these households were trafficking SNAP benefits at the Appellant business.

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 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.

Near Depletions of SNAP Benefit Accounts

This Attachment lists a total of 71 EBT transactions in 30 sets of one or more transactions involving 23 households during which the majority, if not all, of the household's monthly SNAP benefits were depleted in a short period of time. There is one set comprised of five transactions, four sets comprised of four transactions, eight sets comprised of three transactions, nine sets comprised of two transactions, and eight sets comprised of one transaction.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Depleting a household's entire SNAP allotment in one or a few transactions, or within one day, leaving little or no benefits for the rest of the month, is inconsistent with the normal shopping behavior of SNAP benefit households.

SNAP benefits are intended to supplement the food budget for recipient households whose net income is at or below the Federal Poverty Level. A government report on SNAP shopping patterns¹ indicates that after the first day of benefit issuance, on average, 79.1 percent of a household's allotment remains unspent. Even after seven days, 42 percent of benefits still remain unspent. It typically takes two weeks to deplete 78.1 percent of one's benefits. This report further revealed that households most often redeemed their benefits at supermarkets and super stores with only four percent of households never shopping in a supermarket. Participating households typically made several (just over nine on average) relatively small purchases (**5 U.S.C. § 552 (b)(6) & (b)(7)(C)**) with SNAP benefits each month. Making single or multiple transactions of large dollar amounts or cumulatively large dollar amounts, and/or depleting substantial amounts of one's allotment in a period of hours, leaving a marginal amount or no benefits for the rest of the month, is inconsistent with typical shopping behavior of SNAP benefit households. Rather, transactions over a short period of time of large value, or large cumulative value, in which SNAP benefits are exhausted are an indicator of trafficking.

Appellant contends these transactions are because the store offers an extensive variety of food products, a full range of groceries, deli, and produce that a customer needs to sustain their family. In addition to sandwiches, fruit salads, and smoothies, it would be easy for a customer to expend their monthly benefits at the store. As explained above, most of the large transactions are due to the in store credit offered to some customers and correspond to the repayment of these credit transactions for food given to the customers. The store allows them to take food throughout the month and repay once they receive their monthly benefits. When they repay the store, they will make their monthly purchases with many of them spending their benefits as soon

¹ "Benefit Redemptions in the Supplemental Nutrition Assistance Program", report prepared by Mathematica Policy Research for the Food and Nutrition Service, February 2011.

as they are received. Enclosed are several letters from customers detailing the purchases of foods bought, confirming the credit given to them, and requesting that the EBT terminal not be removed.

The FNS store visit shows this is a very small store offering a minimal quantity and variety of staple foods items as well as a large variety of the accessory foods and ineligible items typically found in convenience stores or small grocery stores. It is unlikely that most SNAP households would choose this store as a destination for making large household food purchases if they had the ability to shop at larger stores. An analysis of the shopping patterns for the households listed in this Attachment shows that all, but one of these households have ready access to transportation as evidenced by their shopping at a variety of other larger food stores, including many super stores and supermarkets, located nearby and at a considerable distance from Appellant's location. This analysis further shows that 15 of the 23 households conducted 14 or fewer transactions at the Appellant business during the six month period under review with nine of these households conducting seven or fewer transactions indicating that 65.2 percent of the households in this Attachment are not regularly shopping at the Appellant business and would therefore not be likely to use store credit. It is also unlikely that store ownership would extend credit to customers who do not regularly shop at his business therefore Appellant's claim that some of these transaction sets are the result of SNAP recipients making payments on a credit account followed by their regular purchase of groceries is without merit.

Additionally, 14 of the 23 households are conducting all or the majority of their shopping at other SNAP retailers located more than 0.58 miles from Appellant's location indicating that these households likely reside at a distance from the Appellant business and would be traveling out of their way to shop there. Two of these households only shopped at stores located more than 1.06 and 1.6 miles away, respectively. Appellant offered no explanation as to why households residing at a distance would use their limited cash resources to travel away from their normal shopping areas to shop at Appellant's minimally stocked small grocery store.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). It seems unlikely that multiple single person households with very limited food dollars would be purchasing large quantities of eligible food products that would exhaust the majority or all of their monthly SNAP benefits at a store where they seldom shop. The multiple transactions combined with the high number of households comprised of one individual make it unlikely that the transactions listed in this Attachment are for eligible food items.

Appellant has failed to provide any explanations for the irregular shopping patterns exhibited by the households listed in this Attachment, the majority of whom are not regular customers of the Appellant business, or why these households would deplete or exhaust their SNAP benefits in a single day with some conducting up to five multiple consecutive transactions to do so. While SNAP households do tend to make larger purchases in the days immediately following receipt of their monthly allotment, the behavior by households in this Attachment is contrary to the documented shopping patterns of SNAP households, as previously discussed, who typically make just over nine transactions each month consisting of relatively small dollar amounts. Also, no explanation or rationale has been offered by Appellant as to why households that are regularly shopping at larger stores offering a greater variety and quantity of SNAP eligible food stock at lower prices and who apparently have no transportation limitations would be conducting high

dollar value transactions at a small grocery store that offers a limited selection of staple food items and has no shopping carts that would be needed for the large transactions in this Attachment. Based on this discussion, trafficking is the only feasible explanation for these irregular shopping patterns.

It should be noted that this Attachment is not targeting excessively large transactions per se. It represents a pattern whereby 23 households within the review months, almost depleted, or did deplete their entire monthly SNAP benefit allotments, in a single or a few transactions, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As previously noted, this is not typical shopping behavior exhibited among SNAP recipients.

High Dollar Value Transactions

This Attachment lists 847 individual EBT transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The substantial number of high dollar transactions is atypical for a minimally stocked small grocery 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 \$12.68 for this store type in Westchester County. The 847 excessively large SNAP EBT transactions at Appellant's business for the review months represents more than 57 percent of all SNAP redemptions at Appellant's business during the period under review. This is unusual and indicative of trafficking.

The record shows that within a one mile radius of Appellant's store there are 57 SNAP authorized retailers including: one super store, one supermarket, eight medium grocery stores, 23 small grocery stores, one farmers market, one seafood specialty store, five combination grocery stores, and 17 convenience stores. There are six stores that include a supermarket store and five small grocery stores located within 0.25 miles or less than 440 yards of Appellant's location. 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 shows that the difference in the average SNAP transaction dollar amount, the total SNAP transaction dollar volume, and the SNAP transaction count for Westchester County small grocery stores during the review months and at the Appellant business is significant.

5 U.S.C. § 552 (b)(7)(E) The unusually high number of SNAP transactions is an indication that the business may be dividing larger transactions into multiple smaller transactions in an effort to circumvent detection as previously discussed. A comparison of Appellant's SNAP redemptions to that of nearby small grocery 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.

This store also had irregular SNAP transaction data as compared to like type small grocery stores in Westchester County. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These unusual spikes in both transaction numbers and dollar volume do not appear in the transaction count and dollar volume averages for other Westchester County small grocery stores. These high dollar transactions are considered to be irregular and suspicious based on the Appellant store's food inventory. The Retailer Operations Division determined there was no credible reason for the Appellant business to have transactions at those high dollar levels given the limited stock of staple foods and the lack of any specialty, bulk, or ethnic foods that might sell for large dollar amounts and therefore also considered this to be a strong indication of trafficking. None of Appellant's contentions explain these unusual and suspicious differences.

Appellant contends the large transactions are because the store has an extensive inventory and variety of merchandise available and a customer can easily expend their benefits here. And with food prices being higher than ever, with only just a few items, a customer can easily accrue a significant amount of sales. Because of competitive pricing, large inventory, and having developed an honest presence in the community, many of the area residents have become accustomed to satisfying their household needs at the store and many make large purchases. Within the context of the store operations and the types of customers at the store, the transactions detailed in the report show a level of normalcy. The submitted pictures show that the store offers a large variety of food products and a full range of groceries, deli, and produce that a customer will need to sustain their family. It would be easy for a customer to expend their monthly benefits. The bank statements provided show the business makes deposits on a daily and weekly basis. A major factor in excessively large transactions is that food prices are higher than ever and only a few items are needed to accrue a large bill. Egg and milk prices have gone up exponentially with a gallon of milk at \$4.50 and eggs at \$2.99. The store sells Boars Head cold cuts and they are priced at \$6.39-\$7.99 per pound and a 20 pound bag of rice is \$8.99 just to name a few. As seen by the invoices provided, the business makes extensive daily and weekly purchases to maintain its foothold in the neighborhood. In addition, most of the large transactions listed on the report correspond to the repayment of the in store credit accounts. These are the accumulation of several smaller transactions given throughout the month that they repay when they receive their monthly benefits. When they repay the store, they will make their monthly purchases with many of them spending their benefits as soon as they are received.

Enclosed are several letters from customers, including their bills detailing the purchases of food bought, confirming the credit given to them, and requesting that the EBT terminal not be removed.

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 June 10, 2016, shows that the Appellant business offers a limited quantity and variety of SNAP eligible staple food items, many accessory foods, and many ineligible items. Since the Appellant business carries no fresh unprocessed meats, a very limited quantity and variety of fresh seafood (packaged Pollock fillets only), no frozen unprocessed meats or seafood, a limited quantity and variety of processed meats and seafood (canned meat/fish/poultry, deli meats, hot dogs, bacon, and jerky), no packaged lunch meats, no frozen entrees, no frozen dinners, a moderate quantity and variety of fresh fruits and vegetables (bananas, plantains, tomatoes, green peppers, oranges, lettuce (1), lemons, limes, red/yellow onions, yucca (1), and potatoes), no frozen fruits or vegetables, minimal single serving nuts, a limited quantity and variety of canned and packaged staple food items, no tea, and offers little or no expensive eligible food items, these patterns are deemed to be suspicious. The fact that: tobacco, alcohol, hot ready-to-eat prepared foods, household products, paper products, pet products, health and beauty items, ATM, diapers, newspapers, electronics, electronics accessories, and candles are not eligible for purchase with SNAP benefits also provides no justification for the high transaction amounts. 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 small grocery 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. 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. Additionally, Appellant furnished no itemized cash register and EBT receipts for the period under review to document the legitimacy of these excessively large transactions.

Appellant submitted a total of 82 pages of invoices that included 46 pages of invoices dated outside of the period under review that were not included in the Retailer Operations Division analysis. The invoice analysis of the remaining 36 pages 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in eligible food purchases. A 40 percent markup on the wholesale purchases was applied resulting in potential eligible food sales 5 U.S.C. § 552 (b)(6) & (b)(7)(C). SNAP redemptions during the period under review 5 U.S.C. § 552 (b)(6) & (b)(7)(C) thereby showing that the Appellant business had insufficient food inventory to support the level of SNAP redemptions made during the period under review. In summary, the invoices provided by Appellant to substantiate inventory purchases and thereby explain the large transactions in this Attachment and provide evidence in support of Appellant's contentions in the other Attachments were found to be insufficient leaving trafficking as the most likely explanation. The banking statements provided do show large deposits, but contain no information relevant to the matter under review. The photographs provided also provide no relevant information.

It was further noted that SNAP redemptions at the Appellant business dropped significantly following the contracted store visit on June 10, 2016, and dropped even further following receipt of the charge letter on August 8, 2016. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). A pronounced decrease in SNAP transactions immediately following the store visit and receipt of the charge letter is a clear indication of trafficking since, if trafficking were not occurring, there would be no abnormal fluctuations in redemption amounts.

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

Credit Contentions

Appellant contends the business allows credit accounts, a violation of SNAP regulations at Section 278.2(f), and submitted documentation in support of this claim. Store ownership apologizes for any misinterpretation of the SNAP rules and regulations when credit was given in order to prevent families in the area from experiencing difficulties when they did not have sufficient food to feed their children. The store owner has come to know many of the families shopping at the business and established a very close relationship with them. Because of this relationship, on occasion, a very select few were offered the opportunity to have their basic food needs filled on credit and then repay the business back when they receive their benefits. Many of the large transactions noted in the report are repayments of not one large transaction, but are the accumulation of many smaller transactions added together. Appellant previously sent letters from these customers vouching for the business and confirming that they receive in store credit. The business has always been a law abiding business and the owner always observed the SNAP rules and regulations and under no circumstances would have violated them. It was never the intent to circumvent the rules and regulations, but to help people in need of food for their families.

Regarding the above contentions, when the store owner signed the certification page of the SNAP retailer application to begin operating as a SNAP retailer, she confirmed she understood

and agreed to abide by program rules and regulatory provisions. She 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. *This certification page specifically includes violations such as accepting SNAP benefits as payment on credit accounts or loans* (Emphasis added.) The certification is clear that 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. Despite agreeing to abide by SNAP rules and regulations, ownership now admits that the business allowed credit accounts, a clear violation of SNAP regulations and rules. Additionally, the SNAP Retailer Training Guide and the SNAP retailer training video, provided to all retailers upon initial authorization and upon reauthorization, both cite credit accounts as violating SNAP regulations.

Ownership's admission that the business extended credit is documented in the case file under review and is not contested. Accepting SNAP benefits for payment on credit is a violation of Section 278.2(f) and warrants a one year disqualification period as specified by Section 278.6(e)(4); this Section includes a like disqualification period for the sale of ineligible items by management personnel. It is the agency's position that credit violations constitute owner or management involvement and that a one year disqualification is the base sanction. To refute charges of trafficking, the retailer must provide adequate proof that credit accounts existed at the time the suspicious transactions occurred so that a comparison can be made with transactions outlined in the letter of charges. A level of detail regarding the legitimacy of credit accounts is necessary since retailers have long admitted to credit in an attempt to garner a lesser penalty after committing more egregious violative acts. Credit transactions must be accounted for with substantive evidence such as the dates credit was extended, to whom, for what amount, and for what items. If such exculpatory evidence is not advanced, the appropriate penalty is permanent disqualification.

In regards to Appellant's admission to accepting SNAP benefits for payment on credit accounts, a program violation, Appellant submitted documentation consisting of eight handwritten statements from SNAP recipients admitting to having received store credit, a copy of each recipient's New York EBT card, and what appears to be handwritten credit ledger pages for each recipient. The ledger pages list the recipient's name, items purchased, item prices, the purchase amount, a total general amount at the bottom of each page, and a single date at the top of each page even though multiple purchases are listed.

The Retailer Operations Division's analysis of the credit documentation provided shows that there are only two or three ledger pages for each recipient covering only two or three months during the review period and listing only 20 transaction amounts in total.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). As previously mentioned, none of the very select few recipients who were allowed to use store credit had transaction amounts that were rounded-down despite their favored status. The analysis also found other patterns that contradict Appellant's contentions such as recipients making multiple purchases at the Appellant business

5 U.S.C. § 552 (b)(6) & (b)(7)(C) before making a credit payment, recipients making purchases at the Appellant business days before making a credit payment, recipients making credit payments at the end of the month weeks after having received their monthly allotment, and recipients making purchases on credit even though they still had sufficient SNAP funds

remaining in their EBT accounts and would not have needed to use credit. Additionally, six of the eight recipients shopped regularly and frequently at super stores and/or supermarkets, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) before conducting transactions at the Appellant business thereby contradicting Appellant's contention that recipients could and did expend all of their SNAP benefits at the Appellant business. The Retailer Operations Division found that these discrepancies and contradictions serve to further disprove Appellant's claim to having allowed store credit and suggest that the credit ledger pages provided may have been fabricated after the fact in an attempt to avoid permanent disqualification. Accordingly, the Retailer Operations Division then evaluated the suspicious SNAP transactions listed in the letter of charges to determine if they indicated trafficking.

Even if Appellant's claims of credit were valid, at best they only account for 20 of the hundreds of suspicious transactions contained in the letter of charges. Accordingly, the original determination made by the Retailer Operations Division was evaluated to determine if trafficking occurred. Their determination was that the transactions showed clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity indicative of trafficking as previously discussed.

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 June 10, 2016, 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. Additionally, there are nearby like type stores whose transaction data does not form these suspicious patterns and are therefore not at risk of disqualification for trafficking. There is also no regulatory requirement that trafficking disqualifications be based solely on on-site undercover operations.

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

Neither the Food and Nutrition Act of 2008, as amended, nor the regulations issued pursuant thereto cite any minimum dollar amount of cash or SNAP benefits, or number of occurrences, for such exchanges to be defined as trafficking. Nor do they cite any degrees of seriousness pertaining to trafficking of SNAP benefits. Trafficking is always considered to be the most serious violation, even when the exchange of SNAP benefits for cash is dollar-for-dollar or is conducted by a non-managerial store clerk. This is reflected in the Food and Nutrition Act, which reads, in part, that disqualification “shall be permanent upon . . . the first occasion of a disqualification based on . . . trafficking . . . by a retail food store.” In keeping with this legislative mandate, Section 278.6(e)(1)(i) of the SNAP regulations states that FNS shall disqualify a firm permanently if personnel of the firm have trafficked. There is no agency discretion in the matter of what sanction is to be imposed when trafficking is involved.

CIVIL MONEY PENALTY

Appellant contends that store ownership holds quarterly training sessions for all its employees where they review the rules and regulations of the program and discuss scenarios that might occur in reference to the program. Appellant also submitted signed documentation given after a training session showing proof that the owner provided corresponding training to the workers regarding the rules and regulations of the SNAP program. The owner is also fully aware of how reliant the firm is on the business done through SNAP and would never jeopardize this for such a minimal profit. The business would not survive SNAP disqualification and may be forced to close. As seen by the bank statements, the business has a large volume of sales and based on the volume of EBT transactions, depends on these EBT redemptions. The income generated by these transactions determines the stability of the store and its continued operations. At this time, the owner would like to request that a CMP be imposed instead of the permanent disqualification.

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.

To be considered eligible for a trafficking CMP a firm must establish, by substantial evidence, its fulfillment of each of the following criteria:

- Criterion 1: The firm shall have developed an effective compliance policy as specified in Section 278.6(i)(1).
- Criterion 2: The firm shall establish that both its compliance policy and program were in operation at the location where the violation(s) occurred prior to the occurrence of violations cited in the charge letter sent to the firm.
- Criterion 3: The firm had developed and instituted an effective personnel training program as specified in Section 278.6(i)(2).
- Criterion 4: Firm ownership was not aware of, did not approve, did not benefit from, or was not in any way involved in the conduct or approval of trafficking violations. Or it is the first occasion in which a member of firm management was aware of, approved, benefited from, or was involved in the conduct of any trafficking violations by the firm.

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...*” (Emphasis added).

Appellant submitted 12 pages of documentation consisting of a cover page and two Policy pages signed by the store owner and two employees for training conducted on August 4, 2015; November 5, 2015; February 5, 2016; and May 4, 2016. The five items listed on the Policy pages submitted by Appellant do not constitute an effective compliance policy as they lack substance and detail, nor do they show any indication that the store owner had a compliance program in effect to monitor store transactions for possible violations. Although all four sets of training documents do contain the statement that training is conducted every three months, no record of what areas were covered or what training resources were used during the training sessions was provided by Appellant. There also is no documentation showing the dates of employment for the two employees. Additionally, no mention was made of the training video provided by FNS that is to be included in a SNAP training program. Therefore, Appellant failed to meet the regulatory standard for a trafficking CMP as it did not provide substantial evidence that it met all four criteria required by 7 CFR §278.6(i). Based on the above, the Retailer Operations Division’s decision not to impose a CMP in lieu of disqualification is sustained as

appropriate pursuant to 7 CFR §278.6(i).

It is 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.

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 five 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

January 9, 2018