

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

**Neil's Food, Inc,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0213022**

**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 Neil's Food, Inc (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 April 30, 2019.

**AUTHORITY**

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

**CASE CHRONOLOGY**

By letter dated December 18, 2018, the Retailer Operations Division charged Appellant with trafficking based on a series of irregular SNAP transaction patterns that occurred in March 2018 through August 2018. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also noted that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within ten days of receipt under the conditions specified in 7 CFR § 278.6(i).

Appellant, through counsel, responded to the charges in a letter dated January 29, 2019, that did not request or provide any documentation in support of a CMP. The Retailer Operations Division notified Appellant by letter dated April 30, 2019, that the firm was permanently disqualified from participation as a SNAP retailer in accordance with 7 CFR § 278.6(c) and 278.6(e)(1) for trafficking violations. This letter also stated that Appellant was not eligible for the CMP because insufficient evidence was submitted to demonstrate that it had established and implemented an effective compliance policy and program to prevent SNAP violations.

By letter dated May 10, 2019, Appellant, through counsel, appealed the Retailer Operations Division's assessment and requested administrative review. The appeal was granted. No subsequent correspondence was received.

### **STANDARD OF REVIEW**

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

### **CONTROLLING LAW**

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

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

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

7 CFR §278.6(i) states: "FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking . . . if the firm timely submits to FNS substantial evidence which

demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program.”

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

### **SUMMARY OF THE CHARGES**

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that the questionable transactions were the result of trafficking. The charges on review were based on an analysis of SNAP EBT transaction data during the six month period of March 2018 through August 2018. This involved two patterns of EBT transaction characteristics indicative of trafficking:

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

### **APPELLANT’S CONTENTIONS**

The following may represent a summary of Appellant’s contentions in this matter; however, in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced herein:

- The firm is approximately 3,300 SF with one cash register and four employees (one cashier, one butcher, one lottery cashier, and one stock boy). It sells meat packages priced at \$35.99, \$47.99, \$59.99, \$119.99, and \$239.99. The most expensive items outside of the meat packages are a 40 pound package of chicken wings priced at \$35.99, a 40 pound pack of drumsticks priced at \$39.33, 10 pounds of bacon priced at \$38.00, and one gallon of jerk seasoning priced at \$35.00;
- The store also has a full line of dry goods so it is not unusual for recipients to purchase significant amounts of groceries. The owner has no control over the number of times recipients can use their cards or whether the card is being used by the recipient as the cards do not have photos. Recipients do not know their balance most of the time so will purchase a cheap item or essentials on the first transaction to check the balance and if there are additional benefits, make a second larger purchase (see lines 1 and 2). In addition, they may make a third purchase if there are still benefits remaining to use the balance. It is also not unusual for recipients to request their purchase be billed in

smaller orders. Additionally, some recipients shop in the morning making a small purchase and will return to make a larger purchase after school with their children so they can help carry items (see lines 35 and 36);

- The determination of a large purchase is unsubstantiated since no definition requires a set amount to be considered excessively large. Transactions at the firm are not believed to be excessive since this is a large store of 3,300 SF that offers meat packages priced at \$35.99-\$239.99. The purchases are also not large according to the Official USDA Food Plans that show average weekly purchases of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) for food for a household of four. The owner has no way of knowing the size of the recipient's household or if the purchase was for a week or a month. The purchase of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) could have been a purchase of Meat Package #5 (99 pounds) priced at \$239.99 along with other groceries. Recipients save money when they buy meat packages and the \$239.99 package is the highest selling one;
- The firm is a pillar in its community with strong ties to its customers who rely on the firm's ability to take SNAP as few other stores in the area accept SNAP and sell meat in bulk. The store is open from 8:00 AM-8:00 PM Monday-Saturday and 8:00 AM-5:00 PM on Sundays. The firm has a large customer base and it is not unusual for customers to make large purchases as evidenced by the enclosed sales tax records and inventory invoices. The firm has been serving the community for 10 years and is conveniently located. It is also a top-rated grocery store based on client reviews describing the store as friendly, clean, and reasonably priced; and,
- Disqualification would be a great disadvantage and a hardship for both local and distant customers as the store provides good prices, quality foods, and has a large inventory. Customers are often students or veterans living in residence behind the store. They find the store convenient as many do not have vehicles. The store is one of the few located within walking distance to nearby schools. Half of the households in this area receive SNAP and live below the poverty level with 78.4 percent being African American. The owner has not violated any SNAP regulations and the USDA letter should be withdrawn and the store allowed to operate without penalty.

Appellant submitted photos showing the signage for the meat packages, EBT POS receipts, the Official USDA Food Plan, sales tax reports, invoices for inventory purchases, internet reviews, photos of store stock, an area map, census data, cash register receipts, preprinted customer statements, and the USDA Profile of SNAP Households for Illinois Congressional District 7 in support of these contentions.

## **ANALYSIS AND FINDINGS**

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

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

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

FNS initially authorized the firm on April 26, 2002. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a September 22, 2018, store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information was then used to ascertain if there were justifiable explanations for the firm's suspicious SNAP transactions. The store visit documented the following store size, description, and characteristics:

- The firm was a good sized store offering a moderate quantity and variety of staple foods and carrying no other unique items or offering any distinctive services. The store stocked traditional American brands and there were no ethnic or specialty food items.
- The store visit report and photos showed six small shopping carts and 23 small hand baskets for customer use.
- No case sales, bulk items, or other sales were evident that would explain the unusual transactions and no cased items were available for purchase except for bottled water and 12 packs of Ramen noodle soups.
- The store visit report specifically noted that the firm was not a specialty store and that there were meat packages for sale, but no fish specials or fruit and vegetable boxes for sale. Five meat packages priced at \$35.99, \$47.99, \$59.99, \$119.99, and \$239.99 were available. The stock of fresh and frozen meats was limited making it questionable as to how many meat packages could be sold with the existing stock.
- There was only one checkout area that was approximately 4.0 feet wide and 2.0 feet deep leaving a limited area for customers to place their purchases. The small checkout area would make it problematic to process large orders. The checkout area had one cash register, a POS terminal, and no optical scanner as confirmed by the store manager.
- The firm had a moderate stock of staple foods that also included many single serving and pre-packaged items with a significant portion of inventory in soda, candy, snacks, other drinks, and Ramen noodle soups as well as many ineligible items.
- The firm had a limited quantity and variety of fresh and frozen unprocessed meat or seafood, a limited quantity and variety of processed meats (canned meat, poultry, fish; hot dogs; sausages; bacon; deli meats; and packaged lunch meat), a very limited selection of frozen entrees, no frozen dinners, many cartons of eggs, a very limited selection of fresh fruit and vegetables, no frozen fruits, a very limited selection of frozen vegetables, no packaged nuts, a limited stock of single serving nuts, a minimal selection of canned soups, a moderate quantity and variety of canned and packaged staple food items, a limited quantity and variety of deli cheese, a limited selection of packaged cheese, no yogurt, no single serving yogurt, four packages of butter,

margarine, seven containers of sour cream, canned milk, fresh milk, no coconut milk, no soy milk, no Lactaid milk, no powdered milk, no single serving milk drinks, no cream cheese, bread, rolls, tortillas, no pitas, no tostadas, corn meal, flour, sugar, rice, dried beans, no other dried fruit or vegetables, cold cereal, no single serving cold cereal, hot cereal, many single serving Ramen noodle soups, canned pasta, dry pasta, dry noodles, pancake mixes, baking mixes, several frozen or refrigerated foods (pizza, burgers, sandwiches, Lunchables, French fries, waffles, etc.), no mac&cheese, no single serving size mac&cheese, cooking oil, coffee, tea, no cocoa, no baby foods/cereals, six containers of infant formula, no soy infant formula, and few expensive staple food items outside of the meat packages and meats.

- Ineligible items included: lottery, tobacco, tobacco accessories, household products, paper products, auto products, pet products, health and beauty items, ATM, newspapers, incense, hats, and clothing while accessory foods included: spices, condiments, cooking oil, sugar, snacks, baked goods, ice cream, single serving ice cream, baking mixes, coffee, tea, and un/carbonated drinks.
- The firm's hours of operation were open 8:00 AM-7:30 PM Monday-Saturday and 8:00 AM-4:30 PM Sunday per the store manager. The manager also stated that the firm did not take phone or online grocery orders, did not deliver groceries, did not round price totals up/down, and had a pricing structure with most product prices ending in .x9 cents.
- Signage was primarily in English and there were no SNAP posters (anti-fraud, eligible items, reporting trafficking, etc.) visible in the store.
- Most food items were priced and comments on the FNS store visit report, completed in conjunction with the manager, specifically stated that most food prices end in .x9 cents. A price ending in .x9 cents is the most common pricing structure for stores of this type.
- The FNS store visit report listed the four most expensive food items costing more than \$5.00 for sale in the store, excluding meat packages, as being: a one gallon container of jerk seasoning priced at \$35.00, a two liter bottle of olive oil priced at \$19.99, five boxes of cold cereal priced at \$15.99, and a 31 ounce container of coffee priced at \$13.99. It was noted that there was only one olive oil and four coffees in stock. This listing of the most expensive items was provided by the store manager during the store visit.
- While the firm did stock an extremely limited selection of infant formula, most SNAP households with infants or small children are WIC participants and therefore would be purchasing these products at a WIC vendor using WIC vouchers, not SNAP EBT at the Appellant firm.
- The store visit report photos showed several empty or minimally stocked shelves and the quantity and variety of the store's staple food inventory was comparable to that seen during the previous FNS store visit on June 27, 2017, except that there was a greater selection of fresh produce during the 2017 visit.

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

This Attachment documents 109 individual transactions in 49 sets of two or more transactions conducted by 34 different households in a short period of time.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). The dollar amounts of subsequent transactions in each set are substantial and nearly equal or exceed the dollar amount of the initial transaction in 25 of the 49 sets. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). One set is comprised of five individual transactions, one set of four, and six sets of three while the remaining 41 sets are comprised of two transactions. It is not a usual shopping pattern to see so many purchases, in a short period of time, by the same recipients as documented in this Attachment. Multiple transactions conducted by the same household within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by store inventory and structure. These sets of transactions appear to be in amounts which are indicative of trafficking.

The Appellant firm processed transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C), markedly faster than supermarkets typically process purchases, yet the Appellant firm does not have an optical scanner or any of the logistical tools such as conveyor belts, rotating bagging platforms, or order separators that are routinely used in rapid throughput operations. It is 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 the facilities at the firm. 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.

Appellant contends the owner has no control over the number of times recipients can use their cards or whether the card is being used by the recipient as the cards do not have photos. It is also not unusual for recipients to request their purchase be billed in smaller orders. Additionally, some recipients shop in the morning making a small purchase and will return to make a larger purchase after school with their children so they can help carry items (see lines 35 and 36). The store does have a full line of dry goods as well as fresh meat and produce so it is not unusual for recipients to purchase significant amounts of groceries. Recipients do not know their balance most of the time so they will purchase a cheap item or only essentials on their first transaction to check the balance and if there are additional benefits, make a second larger purchase (see lines 1 and 2). In addition, they may make a third purchase if there are still benefits remaining to use the balance.

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 medium grocery store's stock and facilities and are thus indicative of trafficking. These transaction sets do not contain the characteristics associated with a household purchasing a forgotten item right after checking-out, of household members/friends shopping together and making separate purchases, of households requesting their purchase be billed in smaller orders, or of recipients checking their balance by purchasing a cheap item or only essentials on the first transaction as 38 of the 49 sets 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Appellant's explanations that recipients were asking that their purchase be billed in smaller orders and that recipients were checking their balance are both without merit as these explanations do not fit the facts in the vast majority of the transaction sets.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). It should also be noted that SNAP regulations require EBT card holders to be able to check their account balance using a retailer's POS terminals without making any purchases or standing in a checkout line, and they can call a toll-free number for that information as well. Regulations also require that EBT card holders receive a POS terminal receipt showing the dollar amount of remaining benefits so, contrary to Appellant's contention, it would be unusual for this many households to not know their SNAP balance. The transaction sets also do not contain the characteristics of a household returning later in the day or sending their child to purchase a forgotten item or two as all of the sets have subsequent transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) with 18 of the 49 sets having subsequent transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C), far more than the cost of a forgotten item or two.

It is certainly not unusual for a small number of SNAP households to conduct multiple transactions in a short period of time. However, it is unusual that subsequent transaction dollar amounts are substantial in these transaction sets and that all of the sets in this Attachment 5 U.S.C. § 552 (b)(6) & (b)(7)(C) when the comparable average medium grocery store SNAP transaction amount in Cook County during the review period was \$16.88. These multiple transactions indicate the amounts were contrived in an attempt to avoid suspiciously high dollar transactions that would be indicative of trafficking by breaking them into multiple, smaller amounts. FNS transaction data shows that this same pattern of multiple transactions in unusually short time frames is not evident at other nearby like type grocery stores further supporting that trafficking was occurring at the Appellant firm during the period under review.

Although the firm offers a moderate stock of staple foods, it is unlikely that any SNAP household would use the firm as their primary grocery store based on the large number of super stores and supermarkets in the area. This was confirmed by the Retailer Operation Division's analysis of the shopping patterns for households listed in this Attachment. Their analysis shows these households have ready access to transportation as evidenced by their shopping at a variety of larger food stores located nearby and at a distance from Appellant's location, including a variety of super stores and supermarkets. For example, a household shopped at a supermarket located 2.31 miles from the Appellant 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This household conducted a small, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), transaction at the same supermarket later that same day and again the next day. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). A review of the household's shopping pattern shows it shopped at a total of 23 other stores during the review period and that 21 of these 23 stores were located more than one mile away from Appellant's location with most stores in the 2.24-3.16 mile range indicating that this household likely does not reside near the Appellant firm, yet travelled miles out of its way to shop there. A different household shopped at a super store located 1.32 miles from Appellant's location 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C) later this household spent 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at a supermarket located 0.58 miles away that specializes in fresh meat and fresh/frozen produce and 5 U.S.C. § 552 (b)(6) & (b)(7)(C) later spent 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at a supermarket located 6.69 miles from Appellant's location. A review of the household's shopping pattern shows it shopped at a total of 24 other stores during the review period and that 22 of these 24 stores were located more than 1.22 miles away from Appellant's location with most stores located up to 6.2 miles away indicating that this



household also likely does not reside near the Appellant firm, yet travelled miles out of its way to shop there. This unusual behavior is suspicious and indicative of trafficking.

Other households in this Attachment had similar shopping patterns which brings-up the question of why would households who are regularly shopping at larger and better stocked stores, both nearby and at a distance, elect to conduct multiple purchases at a moderately stocked medium grocery store that carries no unique foods or offers any special services. Appellant's contentions fail to offer any explanation or rationale for these unusual and suspicious shopping patterns. Common sense dictates that it is improbable that households with limited cash resources would choose to travel these distances if their purchases consisted solely of eligible food items that could be purchased at any of the super stores or supermarkets they were regularly shopping at and therefore more likely than not that these households were trafficking SNAP benefits at the Appellant firm and the multiple transactions were attempts by to obscure trafficking by dividing a large dollar value transaction into a series of smaller dollar value transactions. This is a method used by stores to avoid high dollar transactions that cannot be supported.

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

### **High Dollar Value Transactions**

This Attachment lists 277 individual EBT transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** that are not supported by store inventory or pricing. The substantial number of high dollar transactions is uncharacteristic for a grocery store offering a moderate stock of staple foods and calls into question the legitimacy of these transactions. The transactions are also substantially higher than the average SNAP transaction amount **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** for this store type in Cook County. This is unusual and indicative of trafficking.

The evidence under review shows that SNAP households shopping at the Appellant firm are also shopping at many full-line supermarkets and super stores, located nearby as well as at a distance from Appellant's location, that offer a greater quantity and variety of SNAP eligible foods items for better prices than customers can find at the Appellant firm. These high dollar transactions remain questionable when considering the proximity of other stores that would be better shopping options for consumers. Based on their shopping patterns, transportation does not appear to be an issue for these households. Yet, these recipients continue to shop and spend suspicious high dollar amounts at the Appellant firm, where the eligible food stock is limited, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** of their purchases at larger food stores. For example, 86 of the 115 households in this Attachment shopped at a supermarket or superstore **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** of their purchases listed in this Attachment.

FNS records show there are eight comparably sized or larger SNAP retailers located within a 1.04 mile radius of the Appellant firm that includes two super stores, three supermarkets, and three medium grocery stores. The closest supermarket is located less than two blocks away while the next closest supermarket (specializing in fresh meats and produce) and the closest medium grocery store are both located approximately 10 blocks away. There are an additional five super stores and four supermarkets located within two miles. All of the larger stores would offer greater quantities and varieties of staple foods at lower prices than would be found at a moderately stocked medium grocery store offering a limited quantity of fresh and frozen unprocessed meat or seafood and a very limited selection of fresh fruit and vegetables.

The difference in the average SNAP transaction amount, the total SNAP transaction dollar volume, and the total SNAP transaction count for Cook County medium grocery stores during the review months and at the Appellant firm is significant. Appellant's SNAP transaction dollar amount is 26.9 percent smaller than that of Cook County medium grocery stores while its total SNAP transaction count is 81.67 percent larger than the County average and its average SNAP transaction dollar volume is 32.81 percent larger. The very high number of SNAP transactions and dollar volume combined with the low average SNAP transaction dollar amount is an indication the firm 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 like type stores with redemptions for the review period shows that none exhibit the same suspicious transaction patterns listed in the charge letter for the Appellant firm even though all are located in proximity to Appellant's location and would therefore be expected to share the same SNAP customer base and shopping patterns. This is further indication that the transactions in this Attachment do not represent legitimate food purchases. The Retailer Operations Division considered all of these to be indicators of unusual and suspicious activity.

The firm also had irregular SNAP transaction data compared to like type Cook County stores. A comparison of Appellant's redemption data to Cook County medium grocery stores using ten dollar increments shows that Appellant's transaction count and dollar volume is comparable or greater than the average of like type stores in all ranges 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This transaction pattern and the unusual spikes in both transaction numbers and dollar volume do not appear in the transaction patterns or in the transaction count and dollar volume averages for other like type stores. These large dollar transactions are considered to be irregular and suspicious based on the firm's food inventory. The Retailer Operations Division determined there was no credible reason for the firm to have transactions at these dollar levels given the minimal stock of staple foods and the lack of any specialty, bulk, or ethnic foods that might sell for large dollar amounts and also considered this to be a strong indication of trafficking. None of Appellant's contentions explain these unusual and suspicious differences.

Appellant contends that the determination of a large purchase is unsubstantiated since no USDA definition requires a set amount to be considered excessively large. Transactions at the firm are not believed to be excessive since this is a large store of 3,300 SF that offers meat packages priced at \$35.99-\$239.99. The purchases are also not large according to the Official USDA Food Plans that show average weekly purchases 5 U.S.C. § 552 (b)(6) & (b)(7)(C) for food for a household of four. The owner has no way of knowing the size of the recipient's household or if

the purchase was for a week or a month. The purchase 5 U.S.C. § 552 (b)(6) & (b)(7)(C) could have been a purchase of Meat Package #5 (99 pounds) priced at \$239.99 along with other groceries. Recipients save money when they buy meat packages and the \$239.99 package is the highest selling one. The firm is one of the few retailers in the area that offers SNAP and sells meat in bulk. The firm has a large customer base and it is not unusual for customers to make large purchases as evidenced by the enclosed sales tax records and inventory invoices. The firm has been serving the community for 10 years and is conveniently located. It is also a top-rated grocery store based on client reviews describing the store as friendly, clean, and reasonably priced. The firm is approximately 3,300 SF with one cash register and four employees (one cashier, one butcher, one lottery cashier, and one stock boy). It sells meat packages priced from \$35.99-\$239.99. The most expensive items outside of the meat packages are a 40 pound package of chicken wings priced at \$35.99, a 40 pound pack of drumsticks priced at \$39.33, 10 pounds of bacon priced at \$38.00, and one gallon of jerk seasoning priced at \$35.00. Disqualification would also be a great disadvantage and a hardship for both local and distant customers as it provides good prices, quality foods, and has a large inventory. Customers are often students or veterans living in residence behind the store. They find the store convenient as many do not have vehicles. The store is one of the few located within walking distance to nearby schools. Half of the households in this area receive SNAP and live below the poverty level with 78.4 percent being African American. Appellant submitted photos showing the signage for the meat packages, EBT POS receipts, the Official USDA Food Plan, sales tax reports, internet reviews, photos of store stock, invoices for inventory purchases, an area map, cash register receipts, census data, and the USDA Profile of SNAP Households- Illinois Congressional District 7 in support of these contentions.

Regarding Appellant's contentions, the USDA Food Plan, the internet reviews, and the sales tax reports provide no explanation for the unusual and suspicious transaction patterns exhibited by the households in either Attachment. While POS terminal receipts were submitted, no corresponding itemized cash register receipts were offered to account for the large dollar transactions in this Attachment. The POS receipts by themselves only show that a transaction was made, but provide no evidence as to what was purchased and whether or not the purchase only involved eligible food items. They provide no evidence to substantiate the legitimacy of these transactions. The square footage of the store is not in dispute. Contrary to Appellant's claim that the firm is one of the few retailers in the area that offers SNAP and sells meat in bulk, there are actually two super stores, three supermarkets, and three medium grocery stores located near the Appellant firm offering fresh produce and meat. Additionally, the supermarket located approximately 10 blocks away specializes in fresh meats and fresh/frozen produce. It has a greater quantity and variety of staple foods than the Appellant firm and also offers a variety of meat packages.

The SNAP transactions noted in this Attachment are not presumed to be trafficking because they exceed a set dollar amount; they are questionable because they are inconsistent for this type of store and store stock. A shopping pattern analysis by the Retailer Operations Division shows that households in this Attachment are regularly shopping at much larger stores, and conducting high dollar value transactions, yet are conducting comparable or higher dollar value transactions at the Appellant firm. It makes no sense for a household that regularly shops at larger stores and

apparently has no transportation limitations to spend large dollar amounts at the Appellant firm since its cost of goods is higher than that of larger stores such as supermarkets or super stores.

Information obtained during the September 22, 2018, store visit on shows that the firm offers a moderate quantity and variety of SNAP eligible staple food items, many accessory foods, and many ineligible items. Much of the inventory for sale consists of inexpensive snacks, candy, condiments, and drinks as well as many ineligible items. The fact that SNAP benefits cannot be used for lottery, tobacco, tobacco accessories, household products, paper products, auto products, pet products, health and beauty items, ATM, newspapers, incense, hats, and clothing also provides no justification for the high transaction amounts.

Higher food prices make it even more unlikely that SNAP recipients, with very limited food benefits, would want to spend a considerable part of their benefits in a store that does not address all of their food needs when they are already shopping at larger, fully-stocked stores that would offer a greater variety of foods at lower prices. Many of these stores also offer store brand products at lower prices, weekly specials, and have shopping carts and checkouts with built-in scanners and conveyor belts to facilitate processing purchases quickly. Additionally, Appellant furnished no corresponding itemized cash register and EBT receipts for the period under review to document the legitimacy of these excessively large transactions. The cash register receipts provided are not itemized as they code all items as “1 LINK”. It is also noted that the times on the cash register receipts and the corresponding EBT POS receipts are different. While it is not unusual for there to be a difference between these times, it is unusual and suspicious that the difference is not consistent and varies even in transactions occurring on the same day. For example, three transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. This inconsistency in times is suggestive of the cash register receipts having been fabricated.

A detailed analysis of invoices and receipts submitted for inventory purchases was conducted by the Retailer Operations Division and the dollar amount of eligible food purchases plus markup compared to the firm’s SNAP redemptions for the review period. The information provided shows that the firm primarily offers a wide variety of accessory foods with 55 percent of invoice purchases being for soda, snacks, candy, juice, and ice cream while only 13.6 percent were for meat. The Retailer Operations Division analyzed the information provided and applied a standard 40 percent markup. Their analysis determined that the firm had insufficient stock by **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** to support SNAP redemptions and non-SNAP sales during the months under review. That the firm averaged **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** per month in meat purchases makes it questionable that these could explain the many high dollar or multiple transactions cited in the charge letter. While there is a large apartment building located by the Appellant firm that is dedicated to veterans, it is unlikely that many, if any, of the large transactions in this Attachment could be attributed to legitimate purchases of eligible food items by the veterans occupying these very small one-person studio apartments with small kitchens that could not accommodate large quantities of meat. It is also questionable that many of the low income SNAP recipients, many of whom would be expected to live in subsidized housing, would have sufficient freezer space to accommodate the large purchases of meat that Appellant has alleged accounts for the high dollar value transactions in this Attachment.

The photos of store stock submitted by Appellant are comparable to those taken during the FNS store visit and do not provide any justification for the unusual and suspicious shopping pattern listed in the charge letter. Appellant's explanation that the firm is located in an area with a high percentage of SNAP recipients and households living under the poverty level provides no basis for the legitimacy of these transactions as the majority of SNAP retail stores are located in areas with large numbers of low income recipients, yet these stores do not exhibit the same unusual patterns as the Appellant firm. As previously stated, it makes no sense for a household that regularly shops at larger stores and apparently has no transportation limitations to spend large dollar amounts at the Appellant firm since its cost of goods is higher than that of larger stores, such as supermarkets or super stores. It is noted that the FNS Profile for Illinois Congressional District 7 was provided, but according to the Find Your Representative function on the US House of Representative's web site, the firm is actually located in Congressional District 1.

SNAP redemptions at the Appellant firm fluctuated unusually following receipt of the charge letter on December 19, 2018. The average SNAP transaction dollar amount decreased 38.26 percent from November 2018 to February 2019. The volume of SNAP redemptions at the Appellant firm increased 28.25 percent from November 2018 to January 2019 and then plummeted -72.5 percent in February 2019. The number of SNAP transactions increased 47.64 percent from November 2018 to January 2019 and then plummeted -61.34 percent in February 2019. A pronounced fluctuation in SNAP redemptions following receipt of the charge letter is a clear indication of trafficking since, if trafficking were not occurring, there would be no abnormal fluctuations in redemption amounts. The Retailer Operations Division also noted a significant decrease of 80 percent in the number of high dollar transactions following receipt of the charge letter as well as a marked change in the shopping patterns of those households analyzed as part of the trafficking investigation.

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

### **Other Contentions**

Regarding Appellant's denial of violations of SNAP rules and regulations, the purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division and is limited to what circumstances were at the basis of the action at the time such action was made. In an appeal of an adverse action, the Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means the Appellant has the burden of providing relevant evidence that a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than untrue. Assertions that the firm has not violated program rules, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations or for mitigating their impact. When the store owner signed the certification page of the SNAP retailer authorization application to become a SNAP retailer, he confirmed he understood and agreed to abide by program rules and regulatory provisions. He also agreed to accept responsibility on behalf of the firm for violations of the SNAP including those committed by any of the firm's employees, paid or unpaid, new, full-time

or part-time. The certification is clear that store ownership understood by signing the document that violations of program rules can result in administrative actions such as fines, sanctions, withdrawal, or disqualification from the SNAP. Additionally, a record of participation in SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges.

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

The issue under review involves a charge of trafficking SNAP benefits based on EBT transaction data. EBT transaction data is covered in SNAP regulations at 7 CFR § 278.6(a) and is addressed below. Trafficking is always considered to be the most serious violation even if it is a first offense therefore a temporary suspension or lesser penalty would not be applicable. SNAP regulations at 278.6(e)(1) clearly state that, "FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2." SNAP regulations at 7 CFR § 271.2, define trafficking as, "The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits for cash or consideration other than eligible food". SNAP regulations at 7 CFR § 278.6(a) clearly state that "FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system". In the present case, the data presented in the Attachments is solely based on the SNAP EBT transactions conducted at the Appellant firm during the review period. This firm was selected as a result of a series of complex algorithms that make numerous data comparisons with other like type firms during the review period. All of the transactions were then reviewed and analyzed by the Retailer Operations Division staff before the decision was made to issue a charge letter. This investigative process included a detailed examination of information obtained from various sources, including, but not limited to the inventory report and photos from the FNS store visit, a transaction comparison and analysis of like type and larger stores, and analysis of shopping patterns for recipient households conducting transactions at the Appellant firm during the review period. This analysis also included a review of the firm to ensure its store classification was correct and the data comparisons with like type firms valid. Additionally, there are nearby like type stores whose transaction data does not form these suspicious patterns and are therefore not at risk of disqualification for trafficking. There is also no regulatory requirement that trafficking disqualifications be based solely on on-site undercover operations.

Based on this empirical data, and in the absence of sufficient evidence for the legitimacy of such transaction patterns, a conclusion can be drawn, through a preponderance of evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the charge letter evidence

trafficking as the most likely explanation for the questionable transactions listed. It is herein determined that Appellant did not provide a preponderance of evidence demonstrating that the transactions contained in the charge letter were more likely due to eligible food sales than not. Under review, the evidence more substantially supports a conclusion that the transaction activity in the charge letter Attachments is due primarily to trafficking in SNAP benefits.

The Food and Nutrition Act of 2008, as amended, and the regulations issued pursuant thereto do not cite any minimum dollar amount of cash or SNAP benefits, or number of occurrences, for such exchanges to be defined as trafficking. Nor do they cite any degrees of seriousness pertaining to trafficking of SNAP benefits. Trafficking is always considered to be the most serious violation, even when the exchange of SNAP benefits for cash is dollar-for-dollar or is conducted by a non-managerial store clerk. This is reflected in the Food and Nutrition Act, which reads, in part, that disqualification "shall be permanent upon the first occasion of a disqualification based on trafficking by a retail food store." In keeping with this legislative mandate, Section 278.6(e)(1)(i) of the SNAP regulations states that FNS shall disqualify a firm permanently if personnel of the firm have trafficked. There is no agency discretion in the matter of what sanction is to be imposed when trafficking is involved and second chances are not an authorized option under existing regulations.

### **CIVIL MONEY PENALTY**

Although Appellant claimed a hardship to SNAP recipients and provided numerous preprinted customer statements claiming a hardship, 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 ineligible 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 or to submit any 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.

Based on the above discussion and the evidence under review, Appellant failed to meet the regulatory standard for a trafficking CMP as it did not request or provide substantial evidence that it met all four criteria required by 7 CFR §278.6(i). Based on the above, the Retailer Operations Division's decision not to impose a CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR §278.6(i).

### **CONCLUSION**

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

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

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

### **RIGHTS AND REMEDIES**

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

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

ROBERT T. DEEGAN  
ADMINISTRATIVE REVIEW OFFICER

August 28, 2019