

**U.S. Department of Agriculture  
Food and Nutrition Service  
Administrative Review  
Alexandria, VA 22302**

**New Friendly Mini-mart,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0200500**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is sufficient evidence to support a finding that a **Permanent Disqualification** from participation as an authorized retailer in the Supplemental Nutrition Assistance Program<sup>1</sup> was properly imposed against New Friendly Mini-mart (hereinafter “New Friendly Mini-mart” and/or “Appellant”) and its owner of record, by the Retailer Operations Division of the FNS.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(e)(1) in its administration of the Supplemental Nutrition Assistance Program (SNAP) when it imposed a Permanent Disqualification against New Friendly Mini-mart in a letter dated July 17, 2017.

**AUTHORITY**

7 U.S.C. 2023 and its implementing regulations at 7 CFR § 279.1 provide that “[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.

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<sup>1</sup> Section 4001(b) of the Food, Conservation, and Energy Act of 2008 (P.L. 110-234; 122 Stat. 1092) amended the Food and Nutrition Act of 2008 by striking “food stamp program” and inserting “supplemental nutrition assistance program” effective October 1, 2008

## **CASE CHRONOLOGY**

In a letter dated June 27, 2017, the Retailer Operations Division informed Appellant that it was in violation of the terms and conditions of the SNAP regulations, 7 CFR §§ 270-282, based on Electronic Benefit Transaction (EBT) SNAP benefit transactions considered to “establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm.”

The Retailer Operations Division record indicates Appellant provided a written response to the letter of charges, through counsel. Following documented review of the written response Retailer Operations Division advised Appellant of a final determination of permanent disqualification from participation in the SNAP in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1) for trafficking violations, in a letter dated July 17, 2017, documented to have been delivered to Appellant on July 18, 2017.

The determination letter also stated that the Retailer Operations Division considered Appellant’s eligibility for a trafficking civil money penalty (CMP) according to the terms of Section § 278.6(i) of the SNAP regulations. The Retailer Operations Division determined that the Appellant was not eligible for the trafficking CMP because the Appellant did not submit any evidence to demonstrate the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter dated July 24, 2017, received in the offices of the Administrative Review Branch on July 27, 2017, Appellant, through its owner of record<sup>2</sup> submitted an appeal of the Retailer Operations Division’s assessment, requesting an administrative review of the action. The appeal was granted.

## **STANDARD OF REVIEW**

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

## **CONTROLLING LAW AND REGULATIONS**

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (the “Act”)<sup>3</sup>, 7 U.S.C. § 2021 and promulgated through regulation under Title 7 of the

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<sup>2</sup> Appellant has affirmed in telephonic discussions that there is no attorney representation on appeal.

<sup>3</sup> Effective October 1, 2008, the Food Stamp Act of 1977 was superseded by the Food and Nutrition Act of 2008, as amended through P.L. 110-246.

Code of Federal Regulations (CFR),<sup>4</sup> part 278. In particular CFR § 278.6(a) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern.

7 U.S.C. § 2021(b)(3)(B) states, *inter alia*:

*... a disqualification under subsection (a) shall be ... permanent upon...the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards...*

7 CFR § 278.6(e)(1)(i) states, *inter alia*:

*“FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in §271.2.”*

7 CFR § 271.2 states, *inter alia*:

*“ **Trafficking** means 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:...”*

7 CFR § 271.2 states, *inter alia*:

*“Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption.”*

7 CFR § 278.6(a) states, *inter alia*:

*“FNS may disqualify any authorized retail food store ... if the firm fails to comply with the Food & 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(c) states, *inter alia*:

*“Review of evidence. The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination...”*

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<sup>4</sup> Title 7 of the Code of Federal Regulations may be accessed in its entirety via the Internet at [https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title07/7tab\\_02.tpl](https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title07/7tab_02.tpl)

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).**”* [Emphasis added]

7 CFR § 278.6(i), states, *inter alia*:

*“FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking as defined in §271.2 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.”* [Emphasis added]

### SUMMARY OF THE CHARGES

The Retailer Operations Division materials and the charge letter dated June 27, 2017, reveal that charges were based on an analysis of EBT SNAP benefit transaction data during the four (4) month period of February 2017 through May 2017 and involved four (4) patterns of EBT transaction characteristics indicative of trafficking as follow:

- Attachment #1 lists an unusual number of SNAP EBT transactions ending in a same cents value.
- Attachment #2 lists multiple SNAP EBT transactions made from individual benefit accounts in unusually short timeframes.
- Attachment #3 lists instances where the majority or all of the individual recipient benefits were exhausted in unusually short periods of time.
- Attachment #4 lists excessively large purchase transactions made from the accounts of SNAP recipients.

### APPELLANT’S CONTENTIONS

In the letter dated July 24, 2017, submitted under the signature of Appellant’s owner, it is asserted that SNAP benefits have not been accepted for cash, nor has Appellant violated SNAP rules in any way, at any time. Appellant indicates that the only failing has been to maintain adequate records and requests participation from FNS in the establishment of an improved record keeping system.

Additionally a copy of the July 3, 2017 response to the letter of charges from counsel is provided for consideration. That letter provides:

- 37 cash register receipts representing 60 of the transactions identified as suspicious in the letter of charges indicating the materials serve to represent legitimate SNAP food purchases.
- Indication that the volume of SNAP redemptions has increased at Appellant over the recent past because a nearby food store closed on or about February 1, 2017.
- Noting that Appellant should have done a better job of maintaining records indicating that Appellant's owner, and his family, are recent immigrants with very little command of the English language or understanding of the things required to effectively operate Appellant.

The wife of Appellant contacted the Administrative Review Officer on August 22, 2017 requesting information on how to prove that Appellant has not been "tricking". She spoke in broken English and asked her 14 year old son to help interpret although she did not allow him to relate her information in most instances. Essentially she indicated that: infant formula is sold in bulk; Appellant has gained lots of new customers; some family member share SNAP cards; and, Appellant was only WIC certified for a short period of time in 2016. The family was advised to provide as much information as available to refute the suspicion of the charge letter transactions.

In a letter received on August 30, 2017 Appellant, through Appellant owner's wife, provided a letter indicating that more cash register receipts had been found in her basement, providing 167 cash register receipts which were forwarded to Retailer Operations for consideration. The letter recounts an explanation for repeated transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) stating that a customer made weekly SNAP purchases for cases of 24 energy monster drinks individually priced at \$2.50. A phone number was provided for verification with the customer. Appellant indicates that the inclusion of the newly provided cash register receipts brings the match with the charge letter attachments to 98 percent. Appellant again asserts that no cheating has taken place and asks for a second chance.

The preceding represents only a brief 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**

On review, the investigative materials provided by the Retailer Operations Division, including computer printouts of transaction data available from Federal records, store visit observations, information regarding area competitor firms, and household shopping patterns, were analyzed.

With regards to Appellant's contentions in explanation of questionable transactions, the issue in review is whether there is sufficient evidence, through a preponderance of that evidence, that it is more likely true than not true that the questionable transactions were the result of trafficking.

### **Appellant Operations:**

The record reveals that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a store visit conducted by FNS contracted personnel on April 17, 2017. The April 17, 2017 visit was authorized by a self-identified “owner” and resulted in materials reflecting observations made during the store visit which describe the nature and scope of Appellant’s operation, as well as the stock and facilities.

Appellant is reported to be open seven (7) days per week from 9AM until 10PM Sunday through Thursday; and from 9AM until 11PM on Friday and Saturday. Appellant is shown to be operating out of a commercial space of approximately 1400 square feet as declared by ownership. The building is shown in the store visit photographs to include the first floor space of a residential building in a block of row houses. No out of public view storage declared or identified in the store visit materials, however the store visit photographs include a photo of a utility room/closet area that includes stacks of various drinks.

The store visit materials describe New Friendly Mini-mart as a small grocery store; operating with one (1) cash register that is not equipped with scanning technology; and, one (1) point-of-sale (POS) terminal. The checkout operation is seen in the certified store visit photographs to have limited access due to the placement of product displays on the checkout counter leaving what the Retailer Operations Division estimates as a 10”X 10” clear area for the placement of products presented for purchase. Telephone orders are identified as accepted.

The store visit materials document that there are seven (7) hand-held shopping baskets and no shopping carts available to support the delivery of purchases to the counter/checkout area for the completion of merchandise price totaling and payment. There is no identifiable area for staging and packaging items presented for purchase.

**Certified photographs from the April 17, 2017 contracted store visit are presented below:**



Photo #37 – Storefront





**Photo #42 – Checkout Area**



**Photo #17 – General Layout Overview**

The inventory at the time of the April 17, 2017 store visit includes varieties in each of the four (4) staple food groups as follows:

- Six (6) varieties of dairy products with between six (6) and 20 units of butter/margarine; two (2) units of sour cream/yogurts; and more than 20 units each of cheese, ice cream, milk, and infant formula.
- Seventeen (17) varieties of fruits and vegetables with more than 20 units of 100 percent fruit juices (mostly single serve identified). The remaining varieties of products include canned and pre-packaged and range in quantities of two (2) each fresh apples; two (2) cans of pears; between six (6) and 20 cans of berries and canned vegetables; a limited supply of fresh greens (i.e. lettuce held in cooler from which made-to-order sandwiches are made); fresh/frozen/canned tomato products in quantities of more than 20.
- Nine (9) varieties of breads and cereals were identified with more than 20 units in each variety.
- Ten (10) varieties of meat/poultry/fish staple foods with five (5) of those varieties identified as fresh/frozen. Three (3) of the varieties (pork/chicken/eggs) each showed



quantities of between six (6) and 20 and there were more than 20 units of beef, deli meats, canned meat, canned fish, infant meats, and meat jerky.

Signage in front of Appellant as seen in photograph #37 above advertises “Subs” at \$3.99 and the store visit materials indicate that there is a small deli prep area with a meat slicer and meats advertised as sold by weight. Although made-to-order sandwiches are advertised no menu posting was identified. (Photos included below)



**Photo #10 – Deli Prep Foods with customer foods co-mingled**



**Photo #43 – Deli Prep Area & Meat Slicer**



**Snip from Photo #29  
advertising deli meat prices**

General disorganization of merchandise, aisles cluttered with boxes of inventory, and empty coolers are noted in the store visit materials.

The store visit materials indicate that the most expensive SNAP eligible items sold @ Appellant include 10 pound bags of Carolina Rice priced @ \$15.99; Similac Soy Infant Formula priced @ \$17.99; powdered Infant Formula Similac priced @ \$17.69; Goya Vegetable Oil in 96 ounce container shown with two (2) prices \$8.49 and \$8.99; and banquet frozen chicken tenders @ \$5.99 for 24 oz.

Non-SNAP products and services offered at Appellant include tobacco products, lottery tickets, mobile phones/phone cards; automotive products; health and beauty aids; paper goods; cleaning products; housewares; gift items; party goods; souvenirs; caps/hats; a few clothing items; and, an ATM or money transfer service.

### Charge Letter Attachment Analysis:

The data reflected in the letter of charges dated June 27, 2017 is the result of information gained primarily from the Anti-Fraud Locator using Electronic Benefits Transfer (EBT) Retailer Transactions (ALERT) system which is a fraud detection, decision support system designed to monitor and track electronically conducted retail transactions completed by SNAP recipients in authorized meal program and food retailer locations.

The ALERT System facilitates management of the program by providing transaction-level information to Federal personnel charged with the responsibility of SNAP retailer management and compliance. The system uses pre-defined criteria or patterns for potential fraud detection. Pre-formatted reports provide information on those stores and transactions meeting the criteria. ALERT supports both online analysis and online queries and reports for use by FNS. The system does not make the final determination instead it is used by Retailer Operations Division to develop information and evidence for consideration in support of their development of an ultimate decision.

**Attachment #1:** Represents **an unusual number of SNAP EBT transactions ending in a same cents value**. The materials list a total of 102 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The Retailer Operations Division documents that there are several items visible in the store visit photographs priced at even numbers or numbers that would total to even numbers; 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The Retailer Operations Division noted that there were even number transactions only in the months of February, March and May with an absence of same cents transactions in April. Retailer Operations Division determined that the disproportionate number of transaction that end in the same cent value of .00 appear to be contrived and in the absence of any compelling rationale to the contrary are indicative of trafficking.

Appellant did not provide any explanations relative to the repetitive 5 U.S.C. § 552 (b)(6) & (b)(7)(C) SNAP transaction amount identified in the Attachment #1 materials.

On review it is noted that the Attachment #1 materials includes 65 transactions in amounts 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Given the information as presented it is determined that the transactions identified in Attachment #1 of the letter of charges do not represent unreasonable transactions in enough volume or value to imply the transactions were more likely than not the result of SNAP trafficking. Therefore, the Attachment #1 materials are being disregarded from consideration in the instant case.

**Attachment #2:** Represents **multiple SNAP EBT transactions made from individual benefit accounts in unusually short timeframes** and includes 47 transactions, grouped in 20 sets, where 15 households redeemed SNAP benefits in sets of two (2) to four (4) transactions per set, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The Retailer Operations Division documents that completing multiple transactions spaced over short period of times, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), is a method used to avoid single high dollar transaction that are individually suspicious.

Appellant did not provide any direct explanations relative to the repetitive transactions in unusually short time periods as identified in the Attachment #2 materials.

On review it is noted that there were four (4) of the 15 households that had multiple transactions in more than one (1) month of the four (4) month focus period.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Given Appellant's operational information it is not reasonable that households could bring to the counter quantities of SNAP eligible foods, in the amounts identified in the Attachment #2 materials, from the inventory identified at the store visit. Although Appellant indicates that selling infant formula in bulk, or selling cases of drinks priced individually @ \$2.50 account for some of the identified transactions there was no evidence provided supporting the contentions.

Therefore, on review it is determined that the transactions as identified in Attachment #2 of the June 27, 2017, remain suspicious, and based on a preponderance of the evidence are found more likely than not to represent trafficking transactions.

**Attachment #3:** Represents transactions where the **majority or all** of the **individual recipient benefits** were **exhausted in unusually short periods of time** listing 27 individual transactions in 15 sets, where 12 households, conducted between two (2) and four (4) transactions significantly reducing or exhausting their available SNAP benefits

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Retailer Operations Division indicates that the practice of significantly reducing or eliminating a SNAP balance is inconsistent with normal shopping behavior; and, that the food product inventory was not deemed representative of a wide enough variety to support the transactions.

Appellant did not provide any specific or general explanation for the transactions identified as suspicious in the Attachment #3 materials.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Therefore, the Attachment #3 materials are being found to be suspicious, and in absence of reasonable evidence supported explanation, found more likely than not to represent SNAP trafficking.

**Attachment #4:** Represents **excessively large purchase transactions made from the accounts of SNAP recipients** with 144 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) conducted by 60 households at New Friendly Mini-mart in the focus period. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The Retailer Operations Division indicates that the average small grocery store transaction in the State of Pennsylvania during the focus period 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Retailer Operations Division documents that the transactions are suspicious in consideration of the operation and facilities of Appellant.

The excessively large transactions as individually identified for Appellant in the June 27, 2017 letter of charges, cumulatively represent unreasonable SNAP transaction activity that cannot be reasonably supported with the stock and facilities as identified at Appellant in the April 17, 2017 store visit. The transactions identified are therefore found, more likely than not, to represent SNAP trafficking transactions.

### **Receipts:**

Both in response from counsel provided to the Retailer Operations Division and in subsequent materials provided in administrative review Appellant's ownership provided cash register receipts which were explained to represent legitimate SNAP purchases. The documents were reconciled by Appellant with the charge letter attachment materials.

The Retailer Operations Division documented review of the materials and noted that the materials did not provide evidence of legitimate SNAP transactions because:

- The receipts are not itemized. As can be seen in the receipt below the items purchases are all defined as "Dept 01". There is no indication that Dept 01 represents only SNAP eligible items. 5 U.S.C. § 552 (b)(7)(E).
- Ten (10) receipts for eight (8) households show purchases 5 U.S.C. § 552 (b)(6) & (b)(7)(C) which is the price shown for Similac. Retailer Operations Division indicates that infant formula is typically purchased with WIC and therefore did not consider those receipts acceptable.
- One (1) household is noted to have purchased 7 items 5 U.S.C. § 552 (b)(6) & (b)(7)(C) (infant formula meets identified for that price) completing a second transaction 5 U.S.C. § 552 (b)(6) & (b)(7)(C) after the first for four (4) more items 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Eleven (11) containers of infant formula is noted by the Retailer Operations Division to be highly unusual.
- Ten (10) receipts showed items priced 5 U.S.C. § 552 (b)(6) & (b)(7)(C) however on the store visit review materials there were no items found to be priced 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- The receipt numbering sequence is found not to be consecutive despite the identification of only one (1) cash register and one (1) POS device.
- Three (3) of the receipts did not include the store name info as seen in the receipt above.

On review it is determined that because the receipts are not itemized to show the purchase of SNAP eligible items only they do not necessarily evidence purely SNAP eligible transactions.

### **Denial of Charges:**

Although Appellant vehemently denies ever violating SNAP rules unsupported declarations of innocence, absent supportive evidence, cannot be accepted as a valid basis for mitigating or reversing the current charges as detailed in the June 27, 2017 letter of charges.

### **SNAP Revenue Increase based on Closure of Nearby Competitor:**

Appellant has explained that an increase in SNAP revenue has occurred at Appellant due to the recent closing of a nearby competitor. However, the Retailer Operations Division has documented that the referenced nearby competitor has not redeemed SNAP benefits since 2015. Further, no increased SNAP revenue from February 2017 is noted on review of SNAP redemption records. Therefore, this contention cannot be accepted as a basis for mitigating or reversing the current charges on review.

### **WIC Redemptions:**

Appellant explains that sales of infant formula, priced at \$17.69 and \$17.99, explain many of the transactions identified as suspicious in the charge letter attachments.

The Retailer Operations Division indicates that infant formula is typically purchased by SNAP eligible participants with WIC benefits which are specifically prescribed by WIC.

On review the record shows that Appellant is shown to have only redeemed WIC benefits in the amount **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** during two (2) months of calendar year 2016. There is no documentation regarding Appellant's WIC authorization continuing into 2017.

It is unclear whether or not Appellant was WIC authorized in 2017 and could therefore justify some of the larger transactions with sale of that high priced product; neither is it clear that Appellant had enough infant formula inventory to support the SNAP redemptions. Therefore, Appellant's contention cannot be accepted as evidence to refute the suspicious SNAP redemptions as identified in the attachments to the letter of charges.

### **Comparison/Competitor Store Information:**

Retailer Operations Division documents that the subject firm is located within a one-mile radius of 15 alternative SNAP authorized stores; five (5) of them competitor small grocery stores; two (2) medium grocery stores; one (1) large grocery store; and, one (1) supermarket. Additionally

there are six (6) SNAP authorized convenience stores within a one-mile radius identified by the Retailer Operations Division.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

### **Household Analysis:**

Retailer Operations Division documents analysis of the SNAP transactions in the focus period for four (4) randomly selected households. The analysis reveals that each of the households conducted numerous suspicious transactions at Appellant, clearly distinct from the patterns for the same households at alternative shopping venues.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

### **Poor Record Keeping:**

Appellant provides that SNAP regulations have not been violated; indicating in counsel's response to the letter of charges that the recently immigrated family, with little command of the English language and ability to understand how to properly operate Appellant is only guilty of poor record keeping. A request for FNS assistance in establishing effective record keeping processes is made.

Appellant's business acumen, whether impacted by limited language skills or recent immigration status; and, the establishment of appropriate record keeping, are not the responsibility of FNS. Rather it is Appellant ownership who bears sole responsibility to follow SNAP regulations, as agreed upon initial authorization, and to maintain records in support of the effective operation of the SNAP authorized firm.

### **Economic Impact:**

Appellant contends that losing SNAP authorization will be devastating. An economic impact is expected to result from the disqualification, whether permanent or temporary, of any currently authorized SNAP retailer. This impact is likely to be evident to not only Appellant's operation but to that of competitor firms. Notwithstanding the recognized economic impact consideration must be given to the interests of the program and fairness and equity, not only to competing stores but also to those other participating retailers who are complying fully with program regulations. In addition, fairness must be afforded to those other retailers who have been disqualified from the program in the past for similar violations.

Therefore, Appellant's contentions do not provide a basis for mitigating or reversing the current penalty as assessed by the Retailer Operations Division.

### **Civil Money Penalty**



Part 278.6(f)(1) of the SNAP regulations provides for civil money penalty assessments in cases where disqualification would cause “hardship” to SNAP households because of the unavailability of a comparable participating food store in the area to meet their needs. However, this regulation also sets forth the following specific exception to assessments thereunder: “A civil money penalty for hardship to Food Stamp households may not be imposed in lieu of a permanent disqualification.” Therefore, this civil money penalty provision is not applicable in the present case.

As previously indicated the July 17, 2017 determination letter advised Appellant of the ineligibility for consideration for a trafficking civil money penalty (CMP) according to the terms of Section § 278.6(i) of the SNAP regulations. The letter of charges dated June 27, 2017 advised Appellant that documentation of eligibility for that alternative sanction was to be provided within 10 days.

As indicated in the July 17, 2017 determination letter, no information was provided by Appellant for consideration. A review of the administrative record finds no evidence of materials or information timely provided.

Therefore, on review the Retailer Operations Division’s determination that Appellant firm is ineligible for the imposition of civil money penalties in lieu of disqualification is affirmed.

## **CONCLUSION**

The Retailer Operations Division analysis of Appellant’s EBT transaction records, upon which charges of violations are based, together with observations made during the contracted store visit provide substantial evidence that questionable transactions during the focus period have characteristics that are not consistent with legitimate sales of eligible food to SNAP customers at a store of the nature and scope as described in the preceding materials. Rather, the characteristics are indicative of illegal trafficking in program benefits.

Therefore, based on a review of the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged and that the Retailer Operations Division has provided substantial evidence of trafficking violations.

Based on the discussion above, the decision to impose a permanent disqualification from participation in the SNAP against New Friendly Mini-mart is sustained.

However, as indicated previously, given the information as presented it is determined that the transactions identified in Attachment #1 of the letter of charges do not represent unreasonable transactions in enough volume or value to imply the transactions were more likely than not the result of SNAP trafficking. Therefore, the Attachment #1 materials are being disregarded from consideration in the instant case.



## **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.

NANCY BACA-STEPAN  
Administrative Review Officer

November 6, 2017