

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

**Raymond 809 Meat Market Corp,**

**Appellant,**

**v.**

**Case Number: C0200785**

**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 Raymond 809 Meat Market 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 25, 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 7, 2017, 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 December 2016 through May 2017. 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 received on August 22, 2017, that included an affidavit signed by the store owner dated August 16, 2017. The response did not request or provide evidence in support of a trafficking CMP in lieu of a permanent disqualification. The Retailer Operations Division notified Appellant in a letter dated September 25, 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 October 3, 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 §278.6(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 December 2016 through May 2017. 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**

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

- The charge letter is insufficient to establish trafficking as defined at 271.2 of the SNAP law. The investigation consisted entirely of a computer-based summarization of select SNAP transactions over a six month period. It did not entail any visit to the business by any investigator nor any inquiry or review of any of the alleged transactions;
- The Appellant business is not a typical deli-grocery store; it is a specialized store offering meat and produce in oversize quantities and also such items as infant formula in bulk. Many customers are inclined to group their purchases and make large purchases on a single day rather than a series of small purchases on multiple days;
- The 30 violating sets of multiple transactions are not rapid-fire transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The multiple sets were not frequent as 30 sets works out to approximately one every five days or one a week. The cited transactions are not large with an aggregate value of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and the majority of transactions were for amounts 5 U.S.C. § 552 (b)(6) & (b)(7)(C) The Department has also offered no reason or basis for finding that the cited transaction pattern is improper;
- The Department appears to identify any transaction 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The clear majority of transactions are for amounts 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and the regulations impose no limit on the size of transactions and the owner does not have the authority to regulate the spending habits of account holders. As noted, the business sells meat, produce, and infant formula in oversize quantities. By the nature of the business, many customers are inclined to group their purchases and make large purchases on a single day rather than a series of small purchases on multiple days. Given the prices of these items, these dollar amounts are not indicative of, and certainly do not prove, any improper use or trafficking of SNAP benefits. The owner does not ask and cannot know what account holders plan to do with the food purchased and believes they are buying food for their personal consumption and that of their families. If some recipients give or trade the food away, that is without the knowledge of the seller and cannot be deemed the fault of the seller;
- The owner states he is aware of SNAP regulations regarding the use and acceptance of SNAP benefits and that it complies with such rules and he instructs and orders his employees to do the same. He believes that all of the cited transactions were fully valid and in accordance with the rules;
- At best, the data might serve as a basis for conducting an investigation, but the raw numbers absent an investigation of the business or the benefit holders cannot in and of itself determine the outcome and vitiate the need for an investigation. The principle of due process requires that a business faced with a penalty that encompasses exclusion from a government program in which it has been participating at least be accorded a hearing prior to any termination. Accordingly, it is requested that the charges be dismissed or the matter be set down for a hearing; and,
- Appellant offers sworn affidavits from 14 SNAP recipients averring that they did, in fact, make the transactions flagged as being improper and requests that at the very least the permanent disqualification be reduced to a disqualification for a defined time period as any SNAP processing errors or infractions the owner may have committed did not involve the exchange of SNAP benefits for cash and do not rise to the level of trafficking.

Appellant submitted an affidavit signed by the store owner dated August 16, 2017, citing the same contentions previously made and signed affidavits from 14 customers in support of these

contentions.

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 August 11, 2015, and the business is classified as a convenience store. The file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a June 17, 2017, 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 store with narrow aisles offering a moderate quantity and variety of staple foods and carrying no unique items or offering any distinctive services.
- The business stocked typical mainstream American brand products as well as Hispanic foods, such as Goya brand, that are typical for the area.
- 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 area was an opening approximately four feet by one foot set into a plastic display wall. There were displays and a PIN pad on the counter and a large ice cream freezer directly in front of the checkout area that customers must reach over in order to place their purchases onto the checkout counter. The small size of the checkout area would make it problematic to process large orders.
- The checkout counter had one cash register, one POS terminal, and no scanner as evidenced by the store visit report and photographs.
- No food packages, bundles, case sales, or other sales were evident that would explain the unusual transactions and no SNAP eligible cased items were available for sale; however, the business did offer 20 and 50 pound bags of rice.
- The store visit report specifically notes that the business is not a meat specialty store and that there are no meat bundles or fruit and vegetable boxes.

- The store had a moderate stock of staple foods that also included many single serving and pre-packaged items with a large portion of inventory in accessory foods (primarily soda, candy, and other drinks), snacks, and ineligible items.
- The store had a small refrigerated deli display case with two small heated display cases on top of it and a very small kitchen area behind it containing a heated sandwich press, prep area, commercial slicer, commercial scale, etc. A large menu board advertised a variety of hot/cold sandwiches.
- The store had no fresh unprocessed meats, a very limited selection of fresh unprocessed seafood (Pollock/Cod fillets), no frozen unprocessed meats or seafood, a very limited quantity and variety of processed meats and seafood (canned meat/fish/poultry, three deli meats, jerky, salami), no packaged lunch meats, no bacon, no hot dogs, no frozen entrees, no frozen dinners, a moderate quantity and variety of fresh fruit and vegetables (bananas, plantains, potatoes, yucca, limes, fruit cups, tomatoes, oranges, three lettuce), no frozen fruits or vegetables, a limited quantity and variety of single serving nuts, minimal quantities and varieties of soups, a moderate quantity and variety of canned and packaged staple food items, no Masa flour, no corn meal, no eggs, no sour cream, no infant formula, and a very limited number of expensive eligible food items.
- Ineligible items included: alcohol, hot prepared foods, household products, paper products, pet products, automotive products, health and beauty items, ATM, diapers, clothing, umbrellas, phones/phone cards, and newspapers while accessory foods included: candy, spices, condiments, coffee, tea, cocoa, and carbonated/uncarbonated drinks.
- Signage was in English as well as Spanish 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 priced differently such as Hero rolls at 60 cents or two for \$1.00, limes at three for \$1.00, and fresh fish fillets at two for \$5.00. Comments on the FNS store visit report by the contract reviewer specifically stated that most of the food prices ended 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 items **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** for sale in the store as being a 50 pound bag of rice priced at \$24.99, a 20 pound bag of rice priced at \$9.99, a one gallon container of Mazola cooking oil priced at \$11.99, and deli turkey meat priced at \$6.99 per pound. The listing of the most expensive items was provided by store employees during the store visit.
- The store was not a WIC vendor. While the business did stock a limited quantity and variety of baby foods and baby cereals, most SNAP households with infants or small children are WIC participants and therefore would be purchasing these products using WIC vouchers at WIC vendors, not SNAP EBT.
- The store visit inventory form, completed in conjunction with store employees, specifically noted that no infant formula was in stock.
- The business's hours of operation were 7:00 AM-11:00 PM Monday-Friday, 7:00 AM-12:00 AM Saturday, and 7:00 AM-10:00 PM Sunday as confirmed by the store manager during the store visit.
- The quantity and variety of the store's staple food inventory was less than that seen during the previous FNS store visit on August 4, 2015. Specifically, the store had

significantly greater quantities and varieties of deli meats, deli cheeses, and fresh fruits and vegetables in 2015.

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

This Attachment documents 68 individual transactions in 30 sets of two or more transactions conducted by 21 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 15 of the 30 sets. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). One transaction set is comprised of four individual transactions, six sets are comprised of three individual transactions, and the remaining 23 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. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These sets of transactions appear to be in amounts which are indicative of trafficking.

Appellant offers no actual explanation(s) for these unusual sets of transactions instead merely contending that the 30 violating sets of multiple transactions are not rapid-fire transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). T5 U.S.C. § 552 (b)(6) & (b)(7)(C). The Department has also offered no reason or basis for finding that the cited transaction pattern is improper.

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 convenience 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. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These multiple transactions indicate that the 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. In a separate contention, Appellant states that many customers are inclined to group their purchases and make large purchases on a single day rather than a series of small purchases on multiple days thereby confirming that these sets are unusual. FNS transaction data shows that this same pattern of multiple transactions in unusually short time frames was not evident at other nearby like type convenience stores further supporting that trafficking was occurring at the Appellant business during the period under review.

An analysis of the shopping patterns for the 21 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 located nearby and at a distance from Appellant's location with 20 households shopping at a large number of super stores, supermarkets, and medium grocery stores many of which specialize in fresh meats and poultry. Six of the 21 households also shopped at meat specialty stores. This analysis further shows that seven of the 21 households conducted 17 or fewer transactions at the Appellant business during the six month period under review with two households conducting six or fewer transactions

5 U.S.C. § 552 (b)(6) & (b)(7)(C) in this Attachment are not regularly shopping at the Appellant business and would therefore not be likely to conduct multiple transactions totaling to large dollar amounts in short periods of time.

FNS records show there are four super stores, four supermarkets, six large grocery stores, 11 medium grocery stores, and three meat specialty stores located within 0.5 miles of Appellant's location that offer greater quantities and varieties of staple food items at lower prices than would be found at a moderately stocked convenience store that offers no fresh meats and has limited fresh fruits and vegetables. Specifically, there is a super store located 105 feet from the Appellant business that offers a full line of groceries as well as fresh meats, poultry, and seafood. There is also a medium grocery store located 210 feet away that specializes in fresh meats, poultry, and fish with an in-house butcher shop in addition to offering bulk sizes of rice and cooking oil and a full selection of other grocery items. There is fixed route bus service on East 176th Street and on the Grand Concourse located one block away with a NYC Metro Station also one block away on the Grand Concourse 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 plausible explanations for the irregular shopping patterns exhibited by the households in this Attachment. Also, no explanation or rationale has been offered by Appellant as to why households that are regularly shopping at much larger stores offering a greater quantity and variety 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 convenience store that offers a moderate 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 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 372 individual EBT transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The substantial number of high dollar transactions is atypical for a moderately stocked convenience 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 \$9.16 for this store type in Bronx County. The 372 excessively large



SNAP EBT transactions at Appellant's business for the review months  
5 U.S.C. § 552 (b)(6) & (b)(7)(C). This is unusual and indicative of trafficking.

The record shows that within a 0.5 mile radius of Appellant's store there are 153 SNAP authorized retailers including: four super stores, four supermarkets, six large grocery stores, 11 medium grocery stores, 54 small grocery stores, three meat specialty stores, two seafood specialty stores, three bakeries, one buying club, one farmers market, six fruit and vegetable specialty stores, 13 combination grocery stores, and 45 convenience stores. The evidence under review shows that SNAP households shopping at the Appellant business are also shopping at other nearby stores, as well as 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 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 Bronx County convenience stores during the review months and at the Appellant business is significant.

5 U.S.C. § 552 (b)(7)(E). A comparison of Appellant's SNAP redemptions to that of nearby convenience 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 convenience stores in Bronx County. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This unusual spike in both transaction numbers and dollar volume do not appear in the transaction count and dollar volume averages for other Bronx County convenience 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 moderate 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 Appellant business is not a typical deli-grocery store; it is a specialized store offering meat and produce in oversize quantities and also such items as infant formula in bulk. Many customers are inclined to group their purchases and make large purchases on a single day rather than a series of small purchases on multiple days.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). As noted, the business sells meat, produce, and infant formula in oversize quantities. By the nature of the business, many customers are inclined to group their purchases and make large purchases on a single day rather than a series of small purchases on multiple days. Given the prices of these items, these dollar amounts are not indicative of, and certainly do not prove, any improper use or trafficking of SNAP benefits. The owner does not ask and cannot know what account holders plan to do with the food purchased and believes they are buying food for their personal consumption and that of their families. If some recipients give or trade the food away, that is without the knowledge of the seller and cannot be deemed the fault of the seller.

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 17, 2017, shows that the Appellant business offers a moderate quantity and variety of SNAP eligible staple food items, many accessory foods, and many ineligible items. Additionally, the store visit report specifically notes that the business is not a meat specialty store and that there are no meat bundles or fruit and vegetable boxes while the store visit inventory form, completed in conjunction with store employees, specifically notes that no infant formula was in stock on the day of the visit. The store manager made it a point to inform the FNS contract reviewer that eggs were on order, but made no mention of infant formula being on order. Since the Appellant business offers no fresh unprocessed meats, a very limited selection of fresh unprocessed seafood (Pollock/Cod fillets), no frozen unprocessed meats or seafood, a very limited quantity and variety of processed meats and seafood (canned meat/fish/poultry, three deli meats, jerky, salami), no packaged lunch meats, no bacon, no hot dogs, no frozen entrees, no frozen dinners, a moderate quantity and variety of fresh fruit and vegetables (bananas, plantains, potatoes, yucca, limes, fruit cups, tomatoes, oranges, three lettuce), no frozen fruits or vegetables, a limited quantity and variety of single serving nuts, minimal quantities and varieties of soups, a moderate quantity and variety of canned and packaged staple food items, no Masa flour, no corn meal, no eggs, no sour cream, no infant formula, and has a very limited number of expensive eligible food items, these patterns are deemed to be suspicious. The fact that: alcohol, hot prepared foods, household products, paper products, pet products, automotive products, health and beauty items, ATM, diapers, clothing, umbrellas, phones/phone cards, and newspapers 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)(7)(E).

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 convenience 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 a very 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 and no evidence was provided of SNAP eligible store stock via receipts of products taken into inventory for the relevant review months. 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.

It was further noted that SNAP redemptions at the Appellant business fluctuated significantly following the FNS store visit on June 17, 2017. 5 U.S.C. § 552 (b)(7)(E). A pronounced fluctuation in SNAP transactions immediately following the store visit 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.

### **Other Contentions**

Appellant contends that the charge letter is insufficient to establish trafficking as defined at 271.2 of the SNAP law. The investigation consisted entirely of a computer-based summarization of select SNAP transactions over a six month period. It did not entail any visit to the business by any investigator nor any inquiry or review of any of the alleged transactions. At best, the data might serve as a basis for conducting an investigation, but the raw numbers absent an investigation of the business or the benefit holders cannot in and of itself determine the outcome and vitiate the need for an investigation. The principle of due process requires that a business faced with a penalty that encompasses exclusion from a government program in which it has been participating at least be accorded a hearing prior to any termination. Accordingly, it is requested that the charges be dismissed or the matter be set down for a hearing. Appellant offers sworn affidavits from 14 SNAP recipients averring that they did, in fact, make the transactions flagged as being improper and requests that at the very least the permanent disqualification be reduced to a disqualification for a defined time period as any SNAP processing errors or infractions the owner may have committed did not involve the exchange of SNAP benefits for cash and do not rise to the level of trafficking. Lastly, the owner states he is aware of SNAP regulations regarding the use and acceptance of SNAP benefits and that it complies with such rules and he instructs and orders his employees to do the same. He believes that all of the cited

transactions were fully valid and in accordance with the rules.

It is important to state that this review encompasses and documents the examination of the primary and relevant information in this case, the purpose of which is to determine whether Appellant demonstrates, by a preponderance of the evidence, that the disqualification should be reversed. In this case, therefore, if Appellant demonstrates by a preponderance of the evidence that it did not engage in trafficking with SNAP benefits, then such transactions will be considered legitimate and the disqualification reversed. If this is not demonstrated, the case is to be sustained. 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. Regardless of whom the ownership of a store may utilize to handle store business or their degree of involvement in store operations, ownership is accountable for the proper training of staff and the monitoring and handling of SNAP benefit transactions. The ownership remains liable for all violative transactions handled by store personnel, whether paid or unpaid, new, full-time or part-time. 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.

A review of the 14 sworn affidavits shows they are identical in format and content. An analysis of the affidavits shows that three of the SNAP identification numbers provided are not listed in the FNS transaction database and are likely invalid. Three other SNAP identification numbers show that the households only shopped at other SNAP retailers located at a significant distance from the Appellant business with two of the households only shopping at retailers located in Washington Heights making it improbable that any of the three reside near the Appellant business and suggesting that the information provided on the affidavit may have been fabricated as Appellant has provided no explanation as to why households would travel away from their regular shopping areas to shop at Appellant's unremarkable convenience store. Additionally, one of the two households that only shopped at stores located in Washington Heights conducted a total of 50 SNAP transactions during the review period using the same EBT card. This household conducted 14 manually keyed transactions at the Appellant business and 36 swiped transactions at 19 other stores in Washington Heights; the household had no swiped transactions at the Appellant business. Manual transactions are those in which the magnetic strip is not being read by the store's POS device and the clerk must manually key enter the EBT card number. A review of other EBT transactions on the dates of the manual transactions show that Appellant's POS device was functioning properly as there were swipe transactions before and after the manual transactions. When the magnetic strip on an EBT card fails, it can no longer be swiped and replacement EBT cards contain different identification numbers. On-site investigations into trafficking at retailers have found it is not uncommon for retailers to have a SNAP recipient's PIN and EBT card number in order to facilitate trafficking SNAP benefits in exchange for cash without the need for the recipient to be physically present. The retailer enters the EBT card number manually as the recipient has the actual EBT card and then enters the PIN. An analysis of the transaction data in this Attachment identified transactions by at least two other households which fit this pattern and are suggestive of trafficking. That one of these households was conducting swiped transactions at retailers in Florida using the EBT card 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of manually keyed transactions being conducted at the

Appellant business provides evidence that trafficking was occurring. A review of the remaining statements shows many of these households shopping at the previously mentioned super store and/or medium grocery store, both of which are located just steps away from Appellant's location and offer large quantities and varieties of fresh meats and poultry, often immediately before or after large transactions at the Appellant business. These households also shopped at other larger stores specializing in meat and poultry sales. As previously stated, FNS records show that the Appellant business sells no fresh meats or bulk items other than 20 and 50 pound bags of rice so it would make no sense for households to transact large dollar amounts or conduct multiple transactions totaling to large dollar amounts at the Appellant business before or after shopping at these larger stores that would be better values unless the households were not making purchases of eligible foods. Based on this discussion, the affidavits submitted by the Appellant do not provide any credible explanation for the suspicious transactions in either Attachment and upon closer examination actually provide further evidence of trafficking at the Appellant business.

With regards to Appellant's contention that its rights to due process were violated, section 278.6(b)(1) of the SNAP regulations provides that upon charging a firm with SNAP violations, the letter informing the firm of the charges "shall inform the firm that it may respond either orally or in writing to the charges contained in the letter within 10 days of receiving the letter." This section further states that, "Any firm considered for disqualification, shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of noncompliance before FNS makes a final administrative determination." A review of the Retailer Operations Division's administrative actions regarding this matter indicates full compliance with all applicable SNAP regulations, policies, and procedures. This disqualification is an administrative action and SNAP regulations do not provide for a hearing, but rather for an administrative review of the action. The Act, as amended, and regulations provide that any firm aggrieved by an administrative review determination may seek judicial review of the determination in Federal court or a State court of record having competent jurisdiction. In such event, trial de novo proceedings ensure the firm of a full evidentiary hearing on the agency action at issue.

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 17, 2017, 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. This analysis also included a review of the business 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 letter of charges evidence trafficking as the most likely explanation for the questionable transactions listed in the charge letter Attachments. It is herein determined that Appellant has not provided 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 was due primarily to trafficking in SNAP benefits.

The evidence under review shows SNAP activity indicative of trafficking. 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**

A CMP for hardship to SNAP households may not be imposed in lieu of a permanent disqualification as specified in SNAP regulations at 7 CFR § 278.6(f). Trafficking is a permanent disqualification so Appellant is not eligible for a hardship CMP.

The Retailer Operations Division determined that the Appellant was not eligible for a trafficking

CMP in lieu of a disqualification under 7 CFR 278.6(i) because Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations within the specified timeframe. As such, the Retailer Operations Division determined that Appellant was not eligible for a trafficking CMP in lieu of permanent disqualification.

Appellant made no mention of how the business met any of the four criteria in either its response to the charge letter or in the request for administrative review and no documentation or other evidence of any kind, including written statements, was subsequently received from Appellant in support of a trafficking CMP. 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).

## **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 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 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 26, 2018