

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

**Swift Mart Llc #1,**

**Appellant,**

**v.**

**Case Number: C0197624**

**Retailer Operations Division,**

**Respondent.**

**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 (SNAP) was properly imposed against Swift Mart Llc #1 (hereinafter "Swift Mart") by the Retailer Operations Division of FNS.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(e)(1)(i), in its administration of the SNAP when it imposed a Permanent Disqualification against Swift Mart on March 28, 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.

**CASE CHRONOLOGY**

In a letter dated February 21, 2017, the Retailer Operations Division informed the Appellants that their firm was in violation of the terms and conditions of the SNAP regulations, 7 CFR § 270 – 282, based on EBT SNAP benefit transactions that "establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm."

In telephone conversations with Retailer Operations Division staff on March 3, 2017 and March 10, 2017 and in letters dated February 24, 2017, February 28, 2017, March 10, 2017, and March 15, 2017, the Appellants, through counsel, denied the trafficking allegations and provided various explanations for the questionable SNAP transactions that were outlined in the February 21, 2017 Charge Letter.

After considering the Appellants' replies and the evidence in the case, the Retailer Operations Division issued a Determination Letter dated March 28, 2017, informing the Appellants that Swift Mart was being permanently disqualified from participation in the SNAP in accordance with 7 CFR § 278.6(e)(1) for trafficking violations.

In a letter postmarked March 30, 2017, the Appellants, through counsel, requested an administrative review of the Retailer Operations Division's decision to permanently disqualify the firm from participation in the SNAP. FNS granted the Appellants' request for administrative review by letter dated April 5, 2017.

### **STANDARD OF REVIEW**

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

### **CONTROLLING LAW**

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, amended, 7 U.S.C. § 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 2021, Part 278.6(a) and Part 278.6(e)(1)(i) of the Regulations establish the authority upon which a permanent disqualification may be imposed upon a retail food store or wholesale food concern. There also exist FNS policy memoranda and clarification letters which further explain the conditions necessary in order to permanently disqualify retail stores.

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(a) states, inter alia:

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) states:

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 issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone...

7 CFR § 278.6(f)(1) states, inter alia:

A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification.

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 ...

7 CFR § 278.6(b)(2) states, inter alia:

(ii) 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 as specified in § 278.6(i), 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].

(iii) 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 § 278.6(b)(1), the firm shall not be eligible for such penalty. [Emphasis added].

## **SUMMARY OF CHARGES**

The Appellants were charged and determined to be trafficking based on an analysis of EBT transaction data from August 2016 through January 2017. This involved the following SNAP transactions patterns which are indicative of trafficking:

- There were multiple transactions made from individual benefit accounts in unusually short timeframes; and
- There were excessively large purchase transactions made from recipient accounts.

## **APPELLANTS' CONTENTIONS**

The following represents a brief summary of the Appellants' contentions in this matter. Please be assured, however, that in reaching a decision, full attention and consideration was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

In the Appellants' replies to the Charge Letter, in the review request postmarked March 30, 2017, and in a subsequent correspondence dated May 1, 2017, the Appellants, through counsel, stated the following summarized contentions, in relevant part:

- The Appellants deny that trafficking of SNAP benefits took place at Swift Mart;
- FNS based its charges on an analysis of electronic records which revealed "clear and repetitive patterns of unusual, irregular, and inexplicable activities for this type of firm". As such, FNS reached its conclusion that trafficking had occurred at Swift Mart because the Agency had not conducted an investigation or visited the firm and, therefore, it is not in a position to fully appreciate the type of firm that the Appellants have and its customers;
- The multiple purchase transactions made from individual household accounts in unusually short timeframes are the result of: (1) Swift Mart providing groceries and other items to a very poor neighborhood consisting of many SNAP recipients who live in housing projects/apartments. Swift Mart is much more than a convenience store—it acts as a grocery store for SNAP recipients; (2) The nearest retail store that sells similar foods as Swift Mart being located over a half mile away; (3) Different family members utilizing the same EBT card to make different food purchases throughout the day; and (4) SNAP customers not having transportation available to them to reach other SNAP authorized stores;
- The excessively large purchase transactions are the result of: (1) Swift Mart selling frozen meats to SNAP customers in bulk. For example, a case of hot dogs costs \$38.00 and a case of hamburgers costs \$29.79. Also, SNAP customers place special orders for bulk food purchases at Swift Mart which the Appellants fill the next time they go to Sam's Club or Aldi's; and (2) Hurricane Matthew causing a flash flood in early October 2016 resulting in the issuance of disaster SNAP benefits to area residents. This resulted in higher SNAP purchases at Swift Mart; and

- Per the petitions signed by numerous customers and hand-written letters from two SNAP customers of Swift Mart, a permanent SNAP disqualification will impose a hardship on many SNAP customers as they do not have transportation available to them and will have to travel farther to obtain their groceries at other authorized SNAP stores.

In support of the Appellants' contentions, the following documents were submitted to FNS:

- A list of 11 vendors and their delivery schedules to Swift Mart;
- 17 Color photos of some of Swift Mart's food stock at the time that the Appellants responded to the Charge Letter allegations;
- Hand-written statements from 16 SNAP customers attesting that they purchase staple foods at Swift Mart, that a permanent SNAP disqualification will impose a hardship on them, and that they spend substantial amounts of their SNAP benefits at the subject store;
- Hand-written letters from two additional SNAP customers attesting that they shop at Swift Mart and that a permanent SNAP disqualification will impose hardship on their families;
- 2 Color photos showing the water level in Swift Mart as the result of flash floods that were incurred because of Hurricane Matthew;
- Several reports, letters, and photos regarding the effects of Hurricane Matthew on the surrounding area and the resulting business and vehicle losses of the Appellants;
- A letter from both Appellants explaining the procedures for large purchases by patrons of Swift Mart; and
- A letter from an employee of Swift Mart explaining how and why patrons of Swift Mart purchase large amounts of food.

## **ANALYSIS AND FINDINGS**

### **Store Characteristics**

FNS authorized Swift Mart as a convenience store on August 8, 2012. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a December 11, 2016 store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information obtained from the store visit was also used to ascertain if there were justifiable explanations for the firm's irregular SNAP transactions. The FNS contractor interviewed the store owner, Hani Nahhas, during the store visit and the store owner signed the store visit consent form. The store visit report and photographs documented the following store size, description, and characteristics:

- Swift Mart is approximately 1,140 square feet in size and it does not have a storage area outside of the public view;
- Swift Mart is located in an urban, residential area of Kinston, North Carolina;
- Swift Mart is a WIC Program vendor; however, FNS received a notification from the North Carolina WIC State Agency that the subject store received an official Warning

Letter in 2014 and in 2016 for overcharging WIC recipients. As such, the WIC Program Vendor Agreement was terminated by the North Carolina WIC State Agency in 2016. At the time of FNS' store visit, the only infant foods stocked at Swift Mart were infant fruits and vegetables and two units of infant cereal;

- There were no shopping carts or hand-held baskets available for customer use;
- Swift Mart has one cash register, one checkout counter, and only one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;
- As is illustrated in Photo #1 below, the checkout counter has limited space as it is obstructed by an ice cream freezer and it is cluttered with miscellaneous items. As such, the checkout counter does not provide adequate space for the large amounts of individual food items necessary to make up many of the large transactions cited in the Charge Letter Attachments;
- The store does not have any optical scanners or conveyor belts for the speedy processing of transactions;
- Swift Mart has a food stock that is typical of convenience stores and it offers customers a minimal variety and amount of eligible staple foods for sale;
- There were no meat/seafood specials or bundles that might sell for high prices;
- As is indicated in Photo #2 below, the most expensive staple foods stocked at Swift Mart appear to be a minimal quantity of each: Frozen beef steaks, frozen whole chickens and cut-up chickens, and frozen pork ribs and pork chops;
- It does not appear from the store visit observations that Swift Mart extends credit to customers;
- No signs were posted in the store nor were there any flyers advertising the availability of bulk foods offered at a discounted rate to include food combination deals;
- Swift Mart has a small kitchen and food preparation area with cooking equipment. A menu board was posted in the store which advertised the availability of hot and cold prepared, ready-to-eat foods that are intended for immediate consumption and require no additional preparation such as fried chicken, fried chicken meals, popcorn chicken, breaded fried jalapeno poppers, cheese sticks, french fries, fried seafood, fried seafood meals, fried shrimp, fried shrimp meals, fried cod fillets, fried cod fillet meals, hot dogs, etc. However, as is indicated in Photo #3 below, at the time of the store visit, the contracted Reviewer noted that the store had a non-working deli area and there was signage posted in Swift Mart stating that the kitchen was closed;
- Swift Mart did not sell deli meats and cheeses by the pound;
- There were no fresh meats, poultry, or fish items;
- Other meat items available for sale included a minimal quantity of packaged lunch meat, a minimum quantity of pork sausage, a minimum quantity of bacon, canned/potted meat, canned fish, eggs, and meat jerky;
- Swift Mart stocked a limited amount and variety of dairy items to include packaged cheese, ice cream, canned milk (one unit in stock at the time of the store visit), and margarine (one unit in stock at the time of the store visit);
- Additional frozen foods stocked at Swift Mart included single-serving packages of each: Burritos, pizza, hamburgers, cheeseburgers, Hot Pockets®, and pot pies;
- The only fresh produce items stocked at Swift Mart were potatoes and onions in small quantities;

- Swift Mart did not stock any frozen fruits or vegetables;
- Other staple foods available for purchase included such items as 100% juice, pasta, rice, flour, loaf bread, a minimal amount and variety of canned fruits and vegetables, cakes/pastries, soups, snack foods, etc.;
- Much of the remaining food stock consisted of accessory foods such as candy and gum, carbonated and non-carbonated drinks, condiments, salt and other spices, coffee, and vegetable oil; and
- Swift Mart stocked a large supply of ineligible nonfood items such as health and beauty aids, tobacco products, paper products, pet food, lottery tickets, alcoholic beverages, charcoal and lighter fluid, infant diapers, jewelry, incense sticks, gaming machines, etc.

**Photo #1: Limited space at checkout counter which is obstructed by an ice cream freezer:**



**Photo #2: Swift Mart stocks a limited amount and variety of frozen meats and poultry food items:**



**Photo #3: At the time of the store visit, Swift Mart had a non-working deli area and there was signage posted indicating that the kitchen was closed:**





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.

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. Based on this empirical data, and in the absence of any reasonable explanations for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the most likely explanation for “unusual, irregular, and inexplicable” transactions and patterns cited in the letter of charges is trafficking. Transactions having such characteristics sometimes do have valid explanations that support that they were the result of legitimate purchases of eligible food items. This is why opportunities are afforded to charged retailers to explain the questionable transactions cited. In this case, the Retailer Operations Division determined that the Appellants’ contentions did not outweigh the evidence. The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that questionable transactions were the result of trafficking. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

### **Denial of Trafficking Allegations**

Regarding the Appellants’ contention that they deny the trafficking allegations, this review encompasses and documents the examination of the primary and relevant information in this case, the purpose of which is, as noted above, to determine whether the Appellants demonstrate by a preponderance of the evidence that the permanent disqualification should be reversed. In this case, therefore, if the Appellants demonstrate by a preponderance of the evidence that



trafficking did not occur in the Appellants' firm, then trafficking will be considered not to have occurred 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.

### **SNAP Disqualification Based on Computer Generated Analysis**

The Appellants contend that FNS based its charges on an analysis of electronic records which revealed "clear and repetitive patterns of unusual, irregular, and inexplicable activities for this type of firm". As such, FNS reached its conclusion that trafficking had occurred at Swift Mart because the Agency had not conducted an investigation or visited the firm and, therefore, it is not in a position to fully appreciate the type of firm that the Appellants have and its customers. Firms are chosen for analytical investigation based upon numerous detailed and rigorous mathematical algorithms. This data presents the Retailer Operations Division with a statistically valid prima facie indication of highly unusual transaction activity; the activity therein identified is not marginally aberrant, but markedly so. Properly analyzed and interpreted, the Retailer Operations Division does not contend that EBT transactions are overtly suspicious when they occur on an occasional or intermittent basis, but when such transactions form repetitive patterns, on a comparative basis, over a period of time that ensures such activity is not simply intermittent, such activity is identified for further analysis.

Once such firms have been identified as potential compliance cases, from approximately 262,462 authorized firms nationwide, the Retailer Operations Division undertakes a detailed examination of the available transaction data and obtains further relevant information regarding the firm's business operations such as the level and condition of staple food stock maintained by the firm, the presence or absence of the firm's logistical retail wherewithal and numerous other factors pertinent to the firm's ability to legitimately process the transaction activity for which the firm has been flagged. Agency policy and procedures direct that only after a careful, comprehensive and complete analysis, from which appropriate conclusions are logically derived, will the firm be issued a Charge Letter. The firm is then given the opportunity to reply to those charges and provide any information it deems appropriate in justifying as legitimate the transaction activity detailed in the Charge Letter. In the present case, these policies and procedures are shown by the record to have been duly performed in all relevant and pertinent detail.

Moreover, 7 CFR § 278.6(a), noted above, established the authority upon which FNS may disqualify any authorized retail food store on the basis of evidence obtained through a transaction report under an electronic benefit transfer system. The Retailer Operations Division's use of transaction data and other reports, in addition to store visit observations and an analysis of household shopping behavior and other relevant data and information, in rendering a finding that trafficking is the most likely explanation of the transaction activity, is as valid a means of establishing evidence as that obtained through an on-site investigation and the eye witnessing of trafficking. Accordingly, the Appellants' contention that the charges are speculative and based solely upon a computer generated analysis is not compelling.

With regard to the Appellants' contention that FNS had not conducted an investigation or visited the firm prior to sending the Charge Letter and, therefore, it is not in a position to fully appreciate the type of firm that the Appellants have and its customers, as was indicated previously, the case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a December 11, 2016 store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information obtained from the store visit was also used to ascertain if there were justifiable explanations for the firm's irregular SNAP transactions. The contracted Reviewer interviewed the store owner/Appellant, Hani Nahhas, during the store visit and the store owner/Appellant signed the store visit consent form. As such, the Appellants were fully aware that FNS had conducted an on-site store visit/investigation of Swift Mart prior to the issuance of the Agency's Charge Letter.

### **Multiple Transactions in Unusually Short Timeframes (Charge Letter Attachment 1)**

Violating stores often conduct multiple transactions from the same household account as a method to avoid detection of single high dollar transactions that cannot be supported by the retailer's food inventory and infrastructure. Charge Letter Attachment 1 lists 22 transaction sets (52 total transactions) 5 U.S.C. § 552 (b)(6) & (b)(7)(C). T5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is not credible that the subject store would have so many suspicious SNAP transactions greatly exceeding the average SNAP transaction for convenience stores in North Carolina during the review period. Violating stores often conduct multiple transactions from the same household account to avoid detection of single high dollar transactions that cannot be supported by the firm's food inventory and infrastructure.

The Appellants contend that the multiple purchase transactions made from individual household accounts in unusually short timeframes are the result of: (1) Swift Mart providing groceries and other items to a very poor neighborhood consisting of many SNAP recipients who live in housing projects/apartments. Swift Mart is much more than a convenience store—it acts as a grocery store for SNAP recipients; (2) The nearest retail store that sells similar foods as Swift Mart being located over a half mile away; (3) Different family members utilizing the same EBT card to make different food purchases throughout the day; and (4) SNAP customers not having transportation available to them to reach other SNAP authorized stores.

With regard to the Appellants' contentions, while the SNAP regulations and guidelines do not institute limits on the number of times EBT cards may be used or the amount of eligible foods that may be purchased, the SNAP transactions noted in the Charge Letter are questionable because they display characteristic of use inconsistent with the nature and extent of the store's stock and facilities and are indicative of trafficking. Although it is not uncommon for customers to conduct more than one transaction per day, it is not common that such multiple transactions are for large dollar amounts. Swift Mart is not set up to provide for all of one's food needs with no fresh meats, poultry, or seafood items, a minimum amount and variety of frozen meats and poultry items, only two varieties of fresh produce in limited quantities, no frozen fruits or vegetables, and it lacks an abundant depth and breadth of staple foods. Also, the store visit observations indicate that there is no evidence of a price advantage or custom or special services

rendered at the subject store. It is irregular for convenience stores to have purchases such as those cited, especially when the smallest individual transaction noted in Attachment 1 is more than three times greater than the average transaction amount for convenience stores in North Carolina during the six month review period. In addition, Swift Mart stocks only a few high priced food items in minimal quantities (i.e., frozen meats and frozen poultry items) so the majority of food items stocked at the store are low priced items.

The Appellants provided FNS with 17 color photos of some of the foods that they claim are stocked at Swift Mart on a regular basis. The Appellants' photos indicate that Swift Mart stocks a large supply of frozen beef steaks, whole frozen chickens, frozen pork ribs, etc. in addition to a large supply of packaged food items such as White Castle® cheeseburgers, frozen meals, frozen mini corn dogs, whole (large) frozen pizzas, frozen whole dessert pies, numerous packages of burritos, cases of ramen noodles, etc. However, as is indicated in Photo #4 below, at the time of FNS' store visit, the only frozen meats and poultry items that were in stock included a few packages of each: Beef steaks, whole chickens and cut-up chicken, pork ribs (there was only one package of this food item in stock), and pork chops (there were only two packages of this food item in stock). In addition, as is indicated in Photos #5 and #6 below, Swift Mart had only a few packages of packaged frozen food items in stock to include single-serving packages of each: Burritos, pizza, hamburgers, cheeseburgers, Hot Pockets®, and pot pies. Contrary to the photos provided by the Appellants, Swift Mart did not stock any packages of White Castle® cheeseburgers, frozen mini corn dogs, whole (large) frozen pizzas, whole frozen dessert pies, numerous packages of burritos, or cases of ramen noodles at the time of the store visit.

**Photo #4: Swift Mart stocks a limited amount and variety of frozen meats and poultry food items:**



**Photo #5: Swift Mart had a minimal amount and variety of frozen packaged foods in stock:**





**Photo #6: Swift Mart had a minimal amount and variety of frozen packaged foods in stock:**



The photos provided by the Appellants appear to indicate that they restocked a number of food items after they received the Charge Letter from FNS. As such, it is likely that the Appellants' photos were contrived as an attempt to justify the suspicious transaction patterns outlined in the Charge Letter, calling into question the integrity of this data. The Appellants did not provide FNS with any evidence or documentation, such as vendor invoices for foods purchased for Swift Mart during the review period, to validate their contention that Swift Mart stocks a large

variety and amount of frozen meats and poultry items as well as packaged food items such as frozen whole (large) pizzas, whole frozen dessert pies, cases of ramen noodles, etc. No reasonable evidence was provided as to why or how SNAP customers are making large rapid transactions as outlined in Charge Letter Attachment 1.

A review of client shopping data for the review period shows that clients shopping at Swift Mart are also shopping at other area grocery stores, as well as full-line supermarkets and super stores that most likely offer customers a much larger quantity and variety of eligible food items for better prices. Based on these shopping patterns, transportation to other stores is not an issue for these SNAP customers. Yet, these customers continue to shop and spend suspicious high dollar amounts in short timeframes at Swift Mart, where the eligible food stock is limited, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of their purchases at better stocked stores. This is a strong indicator of trafficking.

Sometimes a firm may have unusual transaction patterns due to a recipient's lack of access to other SNAP authorized stores. However, there are 19 SNAP authorized retailers located within a 1.0 mile radius of Swift Mart that can meet the nutritional needs of SNAP customers. These authorized SNAP stores include 13 convenience stores, 4 combination grocery stores, 1 medium grocery store, and 1 super store. Therefore, lack of access to other authorized stores does not appear to be an explanation for Swift Mart's abnormally high SNAP transaction amounts conducted within a short timeframe of each other.

The Appellants did not provide any compelling justifications as to why SNAP households are conducting multiple transactions at Swift Mart or evidence that all of the irregular transactions cited in Charge Letter Attachment 1 were for eligible food items only. Based on the analysis above, and in the absence of any other reasonable explanation, the irregular transaction patterns are more likely than not to be a result of trafficking in SNAP benefits.

### **Excessively Large Purchase Transactions (Charge Letter Attachment 2)**

Attachment 2 of the Charge Letter cites 213 EBT transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This average transaction is more than seven times larger than the average transaction made at convenience stores in North Carolina during the review period.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As noted previously, there is no indication from the store visit report that Swift Mart would be likely to have SNAP redemption patterns significantly different from similar-sized competitors offering similar food items.

The Appellants contend that the excessively large purchase transactions are the result of: (1) Swift Mart selling frozen meats to SNAP customers in bulk. For example, a case of hot dogs costs \$38.00 and a case of hamburgers costs \$29.79. Also, SNAP customers place special orders for bulk food purchases at Swift Mart which the Appellants fill the next time they go to Sam's Club or Aldi's; and (2) Hurricane Matthew causing a flash flood in early October 2016 resulting in the issuance of disaster SNAP benefits to area residents. This resulted in higher SNAP purchases at Swift Mart.

The Appellants contend that the excessively large purchase transactions are the result of Swift Mart selling frozen meats to SNAP customers in bulk. For example, a case of hot dogs costs \$38.00 and a case of hamburgers costs \$29.79. Also, SNAP customers place special orders for bulk food purchases at Swift Mart which the Appellants fill the next time they go to Sam's Club or Aldi's. However, at the time of the store visit, there were no hot dogs, hamburgers or other foods in stock that were available by the case or in bulk. In addition, there were no signs or flyers posted in Swift Mart advertising that the store takes food orders from customers and then goes to Sam's Club or Aldi's to purchase the foods listed on the customer's food orders or to purchase foods in bulk nor were there any signs or flyers posted indicating that Swift Mart sells foods in bulk. The photos provided by the Appellants do not indicate that there were any food orders "pinned above the cash register" (which the Appellants had indicated in their March 10, 2017 response to FNS is where these food orders are kept) nor did the Appellants' photos indicate that there were any signs or flyers posted in Swift Mart advertising the availability of food items in bulk. The Appellants did not provide FNS with copies of past food orders from SNAP customers or any other evidence that could validate these contentions. In addition, Hani Nahhas, store owner, did not indicate during the store visit that Swift Mart sells foods in bulk or that they accept food orders from customers which they fill by purchasing the listed food items or foods in bulk from another store. As such, the Appellants' contentions are unfounded.

The Appellants also contend that the excessively large purchase transactions are the result of Hurricane Matthew causing a flash flood in early October 2016 resulting in the issuance of disaster SNAP benefits to area residents. This resulted in higher SNAP purchases at Swift Mart. In support of their contention, the Appellants provided FNS with several reports, letters, and photos regarding the effects of Hurricane Matthew on the surrounding area and the resulting business and vehicle loss of the Appellants. With regard to the Appellants' contention, FNS acknowledges that severe flooding was caused by Hurricane Matthew in October 2016 which allowed for disaster SNAP benefits (D-SNAP) to be issued in the State of North Carolina. Another aspect of the D-SNAP was the automatic, mass replacement of SNAP benefits to households in select counties which included Lenoir County, where the subject firm is located. According to FNS' records, non-SNAP households in Lenoir County were eligible to apply for D-SNAP from October 22, 2016 through October 26, 2016.

FNS concedes that the aftermath of Hurricane Matthew could have affected SNAP households and could explain the increase in dollar volume and total purchase transaction count at Swift Mart for October 2016 and even into November of 2016. In fact, the effects of Hurricane Matthew could have had an impact on SNAP sales for other retail stores located in Lenoir County and the area surrounding Swift Mart. However, according to FNS' records, Swift Mart's total dollar volume exceeded that of other convenience stores in Lenoir County during the review period with the exception of November 2016. In addition, while the total dollar volume of other convenience stores in Lenoir County began to decrease after November 2016 indicating a return to normality after Hurricane Mathew, Swift Mart's total dollar volume slightly decreased from November to December 2016 and then increased in January 2017. Also, while the number of "excessively large purchase transactions" spiked at Swift Mart in October 2016 (most likely resulting from the issuance of the D-SNAP benefits), there was still a large number of "excessively large purchase transactions" that occurred at Swift Mart throughout the remaining months of the review period. It is also important to note that while the number of "excessively

large purchase transactions” increased at Swift Mart in October 2016, the average dollar amount for these questionable transactions each month of the review period remained consistent. In fact, the number of “excessively large purchase transactions” that occurred at Swift Mart in September 2016 (the month leading up to the flooding) was more than the number of these questionable transactions that occurred in October 2016---the month that the D-SNAP benefits were issued. As such, the Appellants’ contention that Hurricane Matthew and the issuance of disaster SNAP benefits to area residents explains the excessively large purchase transactions that occurred at Swift Mart during the review period is unsubstantiated.

The store visit report and photos show that Swift Mart was stocked with a limited quantity and variety of staple foods as it stocked a minimal amount and variety of frozen meats and poultry items, no fresh meats, poultry, or seafood items, no frozen fruits or vegetables, a minimal amount and variety of fresh produce items, and a minimal quantity and variety of processed meats. The inventory report and photos also show that the subject store stocked only a few expensive staple foods in minimal quantities indicating that the majority of the eligible food items stocked at Swift Mart are low priced and would not account for these large amounts. In addition, the store has limited checkout counter space, no optical scanner, and no shopping carts or hand-held baskets in which to transport the large number of items required to make up these large transaction amounts. Without these, it is unlikely that such large dollar value transactions could be for actual food purchases and more likely they are trafficking.

The record shows that there are 19 SNAP authorized retailers located within a 1.0 mile radius of Swift Mart. Several of these stores are larger than Swift Mart and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store. An analysis of the shopping patterns for all of the SNAP households listed in this Attachment shows that all of the households shopping at Swift Mart have access to transportation and that all are regularly shopping at a variety of larger stores, including super stores and/or supermarkets, located a few miles distance from the Appellants’ location. While Swift Mart does offer some staple food items, SNAP recipients are already shopping at other larger SNAP retailers located within a few miles of the Appellants’ business offering a greater quantity and variety of products, including fresh meats/seafood and produce, at lower prices. Therefore, the store has nothing to attract SNAP customers as there are no special or custom services offered.

The Appellants provided FNS with 16 handwritten letters/statements from SNAP customers attesting that they purchase staple foods at Swift Mart, that a permanent SNAP disqualification will impose a hardship on them, and that they spend substantial amounts of their SNAP benefits at the subject store. The Appellants contend that these customer statements substantiate the questionable SNAP transactions that were conducted at Swift Mart during the review period. The Retailer Operations Division compared the names on each of the customer statements to North Carolina’s SNAP recipient records. It is important to note that one of the customer statements that was provided to FNS contained only a first name and, therefore, information for this SNAP recipient could not be found. In addition, out of the 15 remaining customer statements, two SNAP recipient names could not be located in the State’s records thereby leaving information for 13 different SNAP recipients that could be reviewed. The Retailer Operations Division reviewed the State’s records for the 13 SNAP recipients as well as their



SNAP transaction activity within a 10 mile radius of Swift Mart for the six month review period. Below is a summary of that review:

- SNAP customer #1: This SNAP customer stated that he shops at Swift Mart for foods utilizing his SNAP benefits. The customer also indicated that he does not have a car. However, during the review period, this SNAP customer shopped at Swift Mart only twice and spent a combined 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP benefits while spending the rest of his SNAP benefits at other area retail stores;
- SNAP customer #2: This SNAP customer stated that she sometimes spends 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at Swift Mart during a single visit. A review of the State's records indicates that there are two persons listed with the recipient name provided. However, the EBT card number provided by this SNAP recipient does not correspond to either of the customer names listed in the State's records;
- SNAP customer #3: This SNAP customer stated that she lives across the street from Swift Mart and gives her EBT card to her daughter to purchase food items for school. However, out of the 16 SNAP transactions conducted by this SNAP recipient at Swift Mart during the review period, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This is a good indication that even though Swift Mart is located in close proximity to this SNAP recipient's home, she does not use Swift Mart as a primary destination to obtain her nutritional needs;
- SNAP customer #4: This SNAP customer stated that she uses her SNAP card at Swift Mart to obtain food items. However, of the 93 SNAP transactions conducted by this SNAP recipient at Swift Mart during the review period, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C);
- SNAP customer #5: This SNAP customer stated that she buys frozen foods from Swift Mart with her SNAP benefits in the amount of 5 U.S.C. § 552 (b)(6) & (b)(7)(C). However, State records indicate that this SNAP customer did not conduct any SNAP transactions at Swift Mart during the six month review period;
- SNAP customer #6: This SNAP customer stated that she purchases foods all the time at Swift Mart utilizing her SNAP benefits. However, out of the 27 total SNAP transactions conducted by this SNAP customer at Swift Mart during the review period, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C);
- SNAP customer #7: This SNAP customer stated that he shops at Swift Mart each month and conducts SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). However, State records indicate that this SNAP customer did not conduct any SNAP transactions at Swift Mart during the six month review period;
- SNAP customer #8: This SNAP customer stated that either he or his girlfriend shops at Swift Mart 5 U.S.C. § 552 (b)(6) & (b)(7)(C). However, during the review period this SNAP recipient made nine SNAP transactions at Swift Mart (one in November 2016 and 8 in January 2017) 5 U.S.C. § 552 (b)(6) & (b)(7)(C);
- SNAP customer #9: This SNAP customer stated that she shops at Swift Mart for food items utilizing her SNAP benefits. However, State records indicate that this SNAP customer did not conduct any SNAP transactions at Swift Mart during the six month review period;
- SNAP customer #10: This SNAP customer stated that she often shops at a local supermarket when she has a ride; however, she sometimes purchases White Castle®

hamburgers and pizza from Swift Mart. A review of this recipient's SNAP transactions during the review period indicates that she shopped at 23 different SNAP authorized retailers during the review period including 3 supermarkets and 5 super stores. This recipient conducted several questionable SNAP transactions at Swift Mart that were listed in Attachments 1 and 2 of the Charge Letter in conjunction with SNAP transactions that were made at a super store on the same day;

- SNAP customer #11: This SNAP customer stated that he shops at Swift Mart for food items utilizing his SNAP benefits. According to State records, this SNAP recipient conducted 16 different SNAP transactions at Swift Mart during the review period compared to 23 SNAP transactions which he conducted at a SNAP authorized super store located less than one mile from the subject store. 5 U.S.C. § 552 (b)(6) & (b)(7)(C);
- SNAP customer #12: This SNAP customer stated that she shops at Swift Mart for food items utilizing her SNAP benefits. A review of the State's records indicates that there are two persons listed with the recipient name provided. However, neither of these SNAP customers conducted any SNAP transactions at Swift Mart during the six month review period; and
- SNAP customer #13: This SNAP customer stated that he sometimes shops at Swift Mart for food items utilizing his SNAP benefits 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The SNAP recipient also stated that Swift Mart gives him good deals on chicken, pork chops, snacks, and other products. However, a review of this recipient's SNAP transactions during the review period indicates that he conducted several questionable SNAP transactions at Swift Mart that were listed in Attachments 1 and 2 of the Charge Letter in conjunction with SNAP transactions that were made at a supermarket and a super store on the same day. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

It is evident from the above analysis and review that the SNAP recipients who provided statements are not dependent upon Swift Mart for their staple food needs nor do they, on a regular basis, spend substantial amounts of their SNAP benefits at the store. Therefore, the SNAP recipient statements provided to FNS do not substantiate the questionable SNAP transactions that were listed in the Charge Letter Attachments.

The Appellants also provided FNS with affidavits/statements from two additional SNAP customers and an employee of Swift Mart indicating that SNAP customers depend upon Swift Mart for their staple food needs and that they sometimes make large purchases with SNAP benefits at the subject store. With regard to the SNAP customer/store employee affidavits provided by the Appellants which purport to establish that the questionable SNAP transactions were legitimate and that no trafficking occurred, the truth of such declarations can neither be confirmed nor denied. Although such affidavits may be sworn to and notarized, that does not mean that they are necessarily truthful. One would not expect SNAP customers/store employees to admit that questionable transactions were not legitimate, were it really so. On the contrary, one would expect that any SNAP customer/store employee affidavit provided would attest to questionable transactions being legitimate.

In support of their contentions, the Appellants provided FNS with a list of 11 food vendors and their delivery schedules to Swift Mart. However, the vendor list and delivery schedules do not substantiate or explain the questionable SNAP transactions that occurred at Swift Mart during

the review period. The Appellants did not provide FNS with vendor invoices/receipts for the foods that were purchased for Swift Mart during the six month review period in order to help substantiate that they had purchased enough staple food items to cover/explain the SNAP transactions that occurred at the store during that timeframe. Therefore, a vendor invoice analysis could not be conducted by FNS. It is important to note that even if the Appellants had provided vendor invoices to FNS that were during the review period and the invoices indicated that Swift Mart had purchased sufficient food inventory to account for the firm's SNAP redemption volume, sufficient inventory alone does not explain the suspicious patterns of SNAP transactions such as consecutive transactions by individuals during the same store visit or in a single day. Even the large dollar transactions would remain questionable if there were sufficient food inventory to support such transactions when consideration is made of there being only a limited variety of stock in the store, a minimal amount and variety of frozen meats/poultry and no fresh meats, poultry, or seafood, very limited amount and variety of fresh produce, and no frozen fruits or vegetables, a greater variety of foods at comparable or lower prices at other stores, no shopping carts or hand-held baskets available for customer use, and very little counter space to place food for purchase at the checkout counter. Even if there were sufficient food stock at Swift Mart to mathematically support high dollar transactions, there does not appear to be anything that would reasonably attract SNAP households to shop there, a convenience store, in some cases traveling a few miles to do so, and spend substantial amounts of their SNAP benefits.

Lastly, the case record documents that the Retailer Operations Division conducted a detailed analysis of four SNAP households identified in the Charge Letter to analyze their shopping patterns at Swift Mart compared to their shopping patterns at other SNAP authorized stores. Each of these households had access to, and shopped at larger stores including super stores and/or supermarkets. It is obvious that these SNAP households had transportation available to them to reach these other authorized stores. However, despite this access to better stocked stores, these sampled households conducted excessively large transactions at Swift Mart often 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of shopping at the larger stores where they conducted much smaller SNAP purchases. It is highly unlikely that a convenience store with minimal staple foods would have legitimate SNAP transactions greater than these larger and better stocked stores.

In summary, the store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding the average transaction amount of similar type stores. In addition to the statistical irregularity of such high dollar transactions, the limited availability of counter space for checking out and the lack of shopping carts and hand-held baskets support the Retailer Operations Division's determination. It is not plausible that the store's customers are carrying large amounts of food around the store without the benefit of shopping carts and/or hand-held baskets. Customers purchasing such large quantities of food items would have to hold them in their arms, or enlist the help of others while shopping. Based on the preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 2 are more likely than not the result of trafficking in SNAP benefits.

## **SNAP Disqualification Imposes a Hardship on SNAP Customers**

The Appellants contend that per the petitions signed by numerous customers and hand-written letters from two SNAP customers of Swift Mart, a permanent SNAP disqualification will impose a hardship on many SNAP customers as they do not have transportation available to them and will have to travel farther to obtain their groceries at other authorized SNAP stores. 7 CFR § 278.6(f) 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 such assessments there under: “A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification”. Therefore, since this case involves a permanent disqualification action, the civil money penalty provision is not applicable to the present case.

### **CIVIL MONEY PENALTY**

As previously indicated, the March 28, 2017 Determination Letter advised the Appellants 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 February 21, 2017 advised the Appellants that documentation of eligibility for that alternative sanction was to be provided within 10 days. The regulations specify that such documentation must, in part, establish that there was an effective compliance policy and training program and that both were in effect and implemented prior to the occurrence of violations. The letter indicates that no information was provided by the Appellants for consideration; therefore, on review the Retailer Operations Division’s determination that the Appellant firm is ineligible for the imposition of civil money penalties in lieu of disqualification is affirmed.

### **CONCLUSION**

The Retailer Operations Division’s analysis of the Appellants’ EBT transaction record, upon which charges of violations are based, together with observations made during the store visit and an analysis of customer shopping behaviors, provide substantial evidence that questionable transactions during the focus period have characteristics and display patterns that are not consistent with legitimate sales of eligible food to SNAP benefit customers at a store of this type, size and makeup. Rather, the characteristics are indicative of illegal trafficking in program benefits. The Appellants’ contentions do not outweigh this evidence.

The record has yielded no indication of error or discrepancy in the reported findings by the Retailer Operations Division that program benefits were accepted in exchange for cash or consideration other than eligible food. 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. Therefore, the decision to impose a permanent disqualification from participation in the SNAP against Swift Mart Llc #1 is sustained.

## **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. 2023) and to Section 279.7 of the Regulations (7 CFR § 279.7) with respect to your right to a judicial review of this determination. Please note that if a judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which you reside or are engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

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

LORIE L. CONNEEN  
Administrative Review Officer

January 29, 2018