

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

Zacatecas Meat Market,

Appellant,

v.

**Office of Retailer Operations and
Compliance,**

Respondent.

Case Number: C0229981

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 Office of Retailer Operations and Compliance to impose a permanent disqualification against Zacatecas Meat Market (hereinafter Appellant) from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether the Office of Retailer Operations and Compliance 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.

AUTHORITY

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

CASE CHRONOLOGY

By letter dated July 1, 2020, the Office of Retailer Operations and Compliance charged Appellant with trafficking based on a series of irregular SNAP transaction patterns that occurred in October 2019 through March 2020. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also noted that the

Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within ten days of receipt under the conditions specified in 7 CFR § 278.6(i). Appellant responded to the charges in a letter dated July 7, 2020, that admitted to offering credit, but did not request a CMP or provide any documentation in support of a CMP. Upon receipt of Appellant's response admitting to offering credit, evidence of credit accounts was requested by FNS letter dated July 28, 2020, that was received by Appellant on July 31, 2020. Appellant, failed to respond to this request. The Office of Retailer Operations and Compliance notified Appellant by letter dated September 8, 2020, that the firm was permanently disqualified from participation as a SNAP retailer in SNAP in accordance with 7 CFR § 278.6(c) and 278.6(e)(1) for trafficking violations. This letter also stated that Appellant was not eligible for the CMP because insufficient evidence was submitted to demonstrate that it had established and implemented an effective compliance policy and program to prevent SNAP violations.

By letter postmarked September 22, 2020, Appellant appealed the Office of Retailer Operations and Compliance's assessment and requested administrative review. The appeal was granted. No subsequent correspondence was received.

STANDARD OF REVIEW

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

CONTROLLING LAW

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

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

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

7 CFR §278.6(i) states: “FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking . . . if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program.”

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

SUMMARY OF THE CHARGES

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that the questionable transactions were the result of trafficking. The charges on review were based on an analysis of SNAP EBT transaction data during the six month period of October 2019 through March 2020. This involved four patterns of EBT transaction characteristics indicative of trafficking:

1. There were an unusual number of transactions ending in a same cents value.
2. Multiple transactions were made from individual benefit accounts in unusually short timeframes.
3. The majority or all of individual recipient benefits were exhausted in unusually short periods of time.
4. Excessively large purchase transactions were made from recipient accounts.

APPELLANT’S CONTENTIONS

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

- The owner denies trafficking and states that the transactions were the result of his ignorance in extending credit to customers. The firm serves an underprivileged community and it is customary to extend credit for eligible food items to returning customers. The customers make exact payment for the credit when they receive their SNAP benefits;
- The rounded transactions are simply payment for the credit given that is rounded off to the nearest whole number. At no time did the owner believe that credit was a violation of SNAP and it certainly was not trafficking;

- After careful review of the automatically generated data evidence, the USDA erred to the owner's detriment as 75 of the transactions listed in the charge letter supposedly occurred after the firm's hours of operation; and,
- Please give an opportunity and dismiss this as an error and allow the firm's business status to be unchanged. If a judicial review is arranged, customers who were allotted credit for eligible food items can appear at the hearing to state that such statement is true and correct. Commencing a civil action is in further detriment to the owner since it would require legal fees.

Appellant submitted 12 annotated pages from the charge letter with the after hours transactions marked in support of these contentions.

ANALYSIS AND FINDINGS

Stores caught in trafficking violations consistently display particular, characteristic transaction patterns including those cited in the charge letter. Nevertheless, transactions having such characteristics are sometimes valid and sufficient evidence that support that they were the result of legitimate purchases of eligible food items is provided. This is why opportunities are afforded to charged retailers to explain the questionable transactions cited and to provide evidence that they are legitimate. Without supporting evidence and rationale, assertions that the firm has not violated program rules do not constitute valid grounds for overturning the determination.

In the absence of 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 evidence trafficking as the most likely explanation. Each Attachment furnished with the charge letter represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at the Appellant firm during the review period. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

Store Background and FNS Store Visit

FNS authorized the firm on May 14, 1997, and most recently reauthorized the firm on July 16, 2015. FNS records show that the firm and its owner received warning letters for exchanging ineligible nonfood items for SNAP benefits during undercover investigations in 2004 and again in 2010. The record indicates that in reaching a disqualification determination, the Office of Retailer Operations and Compliance considered information obtained during a March 14, 2020, store visit conducted by an FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information was then used to ascertain if there were justifiable explanations for the firm's suspicious SNAP transactions. The store visit documented the following store size, description, and characteristics:

- The firm was a small grocery store offering a minimal quantity and variety of staple foods and carrying no other unique items or offering any distinctive services.

- The store stocked traditional American brands as well as a Hispanic foods. There were no other ethnic or specialty food items.
- The store visit report and photos showed no shopping carts and only two small handheld baskets for customer use thus severely limiting the amounts of food that could be moved to the checkout.
- No food packages, bundles, case sales, bulk items, or other sales were evident that would explain the unusual transactions and no SNAP eligible cased items were available for purchase.
- The store visit report specifically noted that the firm was not a specialty store and that there were no meat packages, fish specials, or fruit and vegetable boxes for sale.
- The checkout area consisted of a night security window set into a plastic security wall with an opening that was approximately 1.0 feet wide and 1.0 feet deep with no exterior counter or shelving leaving a very limited area for customers to place their purchases. The extremely small checkout area would make it problematic to process large orders. The checkout area had one cash register, one POS terminal, and no optical scanner as confirmed by the store owner.
- There was a commercial kitchen/food preparation area with a posted menu listing the available hot/cold foods. Store staple food stock (deli meats, deli cheeses, fresh vegetables, etc.) was being used in the preparation of the hot/cold prepared foods.
- The firm had a minimal stock of staple foods that also included single serving and pre-packaged items with a significant portion of inventory in soda, candy, snacks, other drinks, and many ineligible items.
- The firm had a moderate selection of fresh unprocessed meat, a very limited selection of fresh unprocessed seafood, no frozen unprocessed meat or seafood, a limited quantity and variety of processed meats and seafood (canned meat, poultry, and fish; hot dogs, a very limited stock of deli meats, and several sausages), no jerky, no bacon, no frozen entrees, no frozen dinners, five cartons of eggs, a moderate stock of fresh fruits and vegetables, no frozen fruit and vegetables, no dried fruit, dried beans, no packaged nuts, 100 percent fruit and vegetable juices, a limited stock of canned and packaged soups, a limited quantity and variety of canned and packaged staple food items, a very limited stock of deli cheese, packaged cheese, one cream cheese, no large yogurt, no single serving yogurt, no single serving yogurt drinks, no margarine, two packages of butter, sour cream, fresh milk, single serving containers of fresh milk, single serving milk drinks, canned milk, coconut milk, no soy milk, no Lactaid milk, no powdered milk, no half & half, one whipped cream, bread, rolls, tortillas, tostadas, no pitas, no taco shells, corn meal, flour, Maseca flour, sugar, rice, cold cereal, no single serving cold cereal, no hot cereal, many single serving noodle soups, no canned pasta, no single serving pasta, dry pasta, dry noodles, seven pancake mixes, mac&cheese, no single serving size mac&cheese, several baking mixes, no heat & eat foods, cooking oil, coffee, tea, cocoa, no baby foods, no baby cereal, no infant formula, no baby juices, and few expensive staple food items.
- Ineligible items included: tobacco, many hot prepared food items, household products, paper products, pet products, auto products, health and beauty items, school supplies, and charcoal while accessory foods included: candy, condiments, snacks, baked goods, sugar, spices, cooking oil, baking mixes, coffee, tea, cocoa, and un/carbonated drinks.
- Business hours were 7:00 AM-8:00 PM daily per the store owner. The owner also

stated that the firm did not take phone or online grocery orders, did not deliver groceries, and did not round price totals up or down.

- 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 individually priced and comments on the FNS store visit report, completed in conjunction with the store owner, specifically stated that most food prices end in .x9 cents. A price ending in .x9 cents is a common pricing structure for stores of this type.
- The FNS store visit report listed the four most expensive food items costing more than \$5.00 for sale in the store as being: four 7.0 ounce jars of Taster's Choice coffee priced at \$10.99, four 17.0 ounce packages of Green Mole priced at \$7.99, four jars of Knorr Chicken Flavor Bouillon priced at \$7.99, and more than 10 packages of Beef Flap meat priced at \$7.99 per pound. This listing of the most expensive items was provided by the store owner during the store visit.
- The firm was not a WIC vendor.

Unusual numbers of transactions ending in a same cents value

This Attachment lists 197 transactions ending in the same cents value of .00. Transaction amounts **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** include an unusually high number of transactions for the exact same amount **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** to cite a few of the higher dollar transactions that are not supported by store inventory or pricing. When such repetitive patterns are unsupported by special pricing structures, they are a strong indicator of trafficking in SNAP benefits. It is noted that the same household was responsible for all six transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** which represents the entire monthly SNAP allotment for this household. It is unusual that a household would spend its entire allotment in a single transaction at a minimally stocked small grocery store leaving no funds for additional food purchases until the next month's allotment is posted. The FNS store visit photos revealed no signs posted to indicate special food packages, bundles, case sales, or other sales that would explain the unusual number of transactions ending in these same cents values and no bulk items were available for purchase. The high percentage of same cents transactions combined with the large number of same cents high dollar transactions is irregular and suspicious for this type store.

Appellant contends the rounded transactions are simply payment for the credit given that is rounded off to the nearest whole number. However, Appellant failed to provide any evidence in response to the July 28, 2020, request by FNS for documentation that would support its claim of having offered credit to SNAP recipients. Additionally, the FNS store visit report, completed in conjunction with the store owner on March 14, 2020, clearly states that the firm's pricing structure has most food items ending in a price of .x9 cents and that the firm does not round transaction totals up or down to a whole dollar amount thereby refuting Appellant's claim of rounding transaction totals. This report also lists the firm's four most expensive food items with three priced at \$7.99 and one at \$10.99 thus confirming the lack of expensive eligible food items and the firm's pricing structure since all four items conform to the .x9 cents pricing structure. The purchase of multiple items with prices ending in .x9 cents would not result in a transaction total ending in a same cents value of .00 cents as multiples of .x9 (e.g. .09, .18, .27, etc.) seldom

have a value ending in .00 cents making it statistically impossible that this many store transactions would end in .00 cents with legitimate food purchases. The purchase of a single item with a price ending in .x9 cents would also make it impossible for any transaction totals to end in .00 cents. The issue of credit is addressed more fully later in this decision.

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

Multiple transactions in unusually short time frames

This Attachment documents 47 individual transactions in 21 sets of two or more transactions conducted by 15 different households in a short period of time.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). There were 29 individual transactions (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) ending in the same amount of .00 cents which is an unusually large number accounting for more than 61.0 percent of the individual transactions in this Attachment and which is not supported by the firm's pricing structure and inventory.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). The dollar amounts of subsequent transactions in each set are substantial and nearly equal or exceed the dollar amount of the initial transaction in 12 of the 21 sets. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). One set comprised of four transactions and three sets of three transactions while the remaining 17 sets are comprised of two individual transactions. Fifteen of the 47 individual transactions occurred after the firm's reported business hours of being open from 7:00 AM to 8:00 PM daily. It is an indication of potential trafficking when there are transactions occurring outside of the store's reported business hours. It is not a usual shopping pattern to see so many purchases, in a short period of time, by the same recipients as documented in this Attachment. Multiple transactions conducted by the same household within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by store inventory and structure. These sets of transactions appear to be in amounts which are indicative of trafficking.

Appellant offered no documentation or explanation to support the legitimacy of the listed transactions in this Attachment.

SNAP households have no limits on the number of times they may use their benefits or the dollar amount of eligible food they may purchase. The SNAP transactions at the Appellant firm 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 the firm's stock and facilities and are thus indicative of trafficking. These transaction sets do not contain the characteristics associated with a household purchasing a forgotten item right after checking-out, of household members/friends shopping together and making separate purchases, of households making a separate purchase to check their balance followed by another transaction, or a household making a payment on a credit account followed by a separate transaction for food purchases as all, but

three of the 21 transaction sets 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The transaction sets also do not contain the characteristics of a household returning later in the day to purchase a forgotten item or two as all of the sets have subsequent transactions in amounts 5 U.S.C. § 552 (b)(6) & (b)(7)(C), far more than the cost of a forgotten item or two. Appellant offers no explanation as to why households would conduct multiple sizeable transactions at a store with a minimal stock of staple foods within a short period of time when they are also shopping at the many comparably sized or larger food stores located nearby that includes two super stores, three supermarkets, a large grocery store, three medium grocery stores, and three small grocery stores within 1.01 miles of Appellant's location with many additional super stores and supermarkets located within 2.00 miles. The nearest supermarket is located approximately nine blocks away while the nearest medium grocery store is approximately 10 blocks from Appellant's location. The availability of many larger SNAP stores nearby combined with the firm's minimal staple foodstock makes it unlikely that any household would consider the Appellant firm as their primary source for groceries.

It is certainly not unusual for a small number of SNAP households to conduct multiple transactions in a short period of time. However, it is unusual that subsequent transaction dollar amounts are substantial in these transaction sets and that all of the sets in this Attachment t 5 U.S.C. § 552 (b)(6) & (b)(7)(C) when the comparable average small grocery store SNAP transaction amount in Los Angeles County during the review period was \$12.70. FNS transaction data shows that this same pattern of multiple transactions in unusually short time frames is not evident at other nearby like type grocery stores further supporting that trafficking was occurring at the Appellant firm during the review period.

The Office of Retailer Operations and Compliance's analysis of shopping patterns for Attachment households shows they have ready access to transportation as evidenced by their shopping at a variety of comparably sized or larger food stores located nearby and at a distance from Appellant's location, including super stores and supermarkets. The analysis also shows these households shopped at the Appellant firm and a super store and/or supermarket 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and inexplicably often spent more at the Appellant firm than at the super stores and/or supermarkets. Appellant failed to offer any explanation or rationale as to why households who are regularly shopping and spending large dollar amounts at many larger and better stocked stores would conduct multiple purchases often totaling to comparable or higher dollar amounts at a minimally stocked store. There is no legitimate reason why households would spend so much of their SNAP allotment at the Appellant firm when they clearly had access to and frequently shopped at super stores and supermarkets. Common sense dictates that it is improbable that households would choose to spend large dollar amounts at the Appellant firm if their purchases consisted solely of eligible food items that could be purchased at any of the super stores and/or supermarkets they were already regularly shopping at and therefore the more plausible explanation is that these households were trafficking SNAP benefits at the Appellant firm.

For example, one morning a household shopped at supermarket located 4.04 miles from Appellant's location spending a total 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Later that same day, this household spent 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at the Appellant firm and 5 U.S.C. § 552 (b)(6) & (b)(7)(C) the following day for a total of

5 U.S.C. § 552 (b)(6) & (b)(7)(C). In a span 5 U.S.C. § 552 (b)(6) & (b)(7)(C) this household spent 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at Appellant's minimally stocked firm after having spent 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at a supermarket located more than four miles away. This suspicious pattern of conducting multiple transactions totaling to large dollar amounts at a small grocery store with a minimal stock of staple foods while spending significantly less at much larger stores offering a far better selection of foods at better prices continued throughout the review period.

A second household received its SNAP allotment 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and conducted five transactions (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at the Appellant firm and 5 U.S.C. § 552 (b)(6) & (b)(7)(C) later spent 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at a supermarket located 1.94 miles away. It is noted that based on the SNAP allotment of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) that this is a single person household. It is unusual that a single person household would spend more than 62.0 percent of its monthly SNAP allotment in a series of five transactions at the Appellant firm and then spend the remaining balance in a single transaction at a supermarket located nearly two miles away. This household's suspicious and irregular pattern of conducting multiple transactions totaling to large dollar amounts at a small grocery store with a minimal stock of staple foods while spending significantly less at much larger stores offering a far better selection of foods at better prices continued throughout the review period.

It is highly unlikely that the Appellant firm stocked any eligible food items that would not be available at the super stores, supermarkets, and the other larger grocery stores the households were regularly shopping at and these stores would also likely have significantly lower food prices yet these households continued to spend large dollar amounts at a small grocery store with a minimal stock of staple foods. Other households analyzed exhibited similar shopping patterns indicative of trafficking. There is no legitimate reason why these households would spend so much of their SNAP allotments at a minimally stocked small grocery store when they clearly had access to and frequently shopped at nearby and distant supermarkets and super stores.

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.

Near Depletions of SNAP Benefit Accounts

This Attachment lists a total of 26 EBT transactions in 23 sets of one or more transactions involving 12 households during which the majority, if not all, of the household's monthly SNAP benefits were depleted in a short period of time. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is also unusual that 20 of the 26 individual transactions in this Attachment end in .00 cents based on the firm's pricing structure. Depleting a household's SNAP allotment in one or a few transactions, or within one day, leaving little or no benefits for the rest of the month, is inconsistent with the

normal shopping behavior of SNAP households.

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

The FNS store visit report shows this is a small grocery store offering a minimal quantity and variety of staple foods as well as a variety of accessory foods and ineligible nonfood items. The report shows that the firm does not carry any unique items or offer any distinctive services that cannot be found at a number of larger grocery stores located nearby and at a distance. The firm is also located in an urban area with scheduled fixed route bus service available nearby that would facilitate shopping at other stores. Additionally, there are two super stores and three supermarkets located within 0.92 miles of Appellant's location. These larger stores would offer a much greater quantity and variety of eligible foods at lower prices than Appellant's minimally stocked small grocery store. The Office of Retailer Operations and Compliance analysis of shopping patterns for households in this Attachment shows that they are regularly shopping at a variety of larger stores located nearby as well as at a distance. Based on these options, it is unlikely that most SNAP households who are shopping at larger stores that would offer a much greater selection of food items at lower prices would choose this firm as a destination for making large household food purchases.

Appellant offered no documentation or explanation to support the legitimacy of the listed transactions in this Attachment.

SNAP households have no limits on the number of times they may use their card or how much eligible food they may purchase. The transactions are questionable because they are inconsistent with normal spending habits attributable to a store with this level and type of eligible food stock, and facilities. Therefore, this atypical behavior is indicative of trafficking.

It should be noted that this Attachment is not targeting excessively large transactions per se. It represents a pattern whereby 12 households within the review months, almost depleted, or did deplete their entire monthly SNAP benefit allotments, in a single or a few transactions, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As previously noted, this is not typical shopping behavior exhibited among SNAP recipients.

High Dollar Value Transactions

This Attachment lists 136 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The substantial number of high dollar transactions is uncharacteristic for a store offering a minimal stock of staple foods and calls into question the legitimacy of these transactions. The transactions are substantially higher than the average SNAP transaction amount of \$12.70 for this store type in Los Angeles County. This is unusual and indicative of trafficking as previously discussed.

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

While households residing in areas with extremely limited grocery store options may conduct high dollar transactions at small grocery stores out of necessity, this is not the case when they have better alternatives. FNS records show there are 12 comparably sized or larger SNAP retailers located within a 1.01 mile radius of the Appellant firm that includes two super stores, three supermarkets, one large grocery store, three medium grocery stores, and three small grocery stores with the nearest supermarket located approximately nine blocks away. There are also additional supermarkets and super stores located further away. These many larger stores would offer greater quantities and varieties of staple food items at lower prices than would be found at a minimally stocked small grocery store.

The difference in the average SNAP transaction amount, the total SNAP transaction dollar volume, and the total SNAP transaction count for Los Angeles County small grocery stores during the review months and at the Appellant firm is significant. Appellant's average SNAP transaction dollar volume is 93.5 percent larger than that of Los Angeles County small grocery stores while its total SNAP transaction count is 60.96 percent larger and its average SNAP transaction amount is 13.62 percent larger than the County average. A comparison of Appellant's SNAP redemptions to that of nearby like type stores having redemptions for the review period shows that none exhibit the same suspicious transaction patterns listed in the charge letter for the Appellant firm even though all are located in proximity to Appellant's location and would therefore be expected to share the same SNAP customer base and shopping patterns. This is further indication that the transactions in this Attachment and the previous do not represent legitimate food purchases. The Office of Retailer Operations and Compliance considered all of these to be indicators of unusual and suspicious activity.

The firm also had irregular SNAP transaction data compared to like type stores in Los Angeles County. A comparison of Appellant's redemption data to the average for County small grocery

stores using ten dollar increments shows that Appellant's transaction count and dollar volume was significantly higher than that of like type stores in all ranges

5 U.S.C. § 552 (b)(6) & (b)(7)(C) at which point transactions stop. It is unusual that like type Los Angeles County small grocery stores begin averaging less than one transaction in each range 5 U.S.C. § 552 (b)(6) & (b)(7)(C), less than one-half that of the Appellant firm. The Appellant firm also has unusual spikes in the number and dollar volume of transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) over the same period. For example, the Appellant firm has 11 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) compared to an average of 2.11 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) for like type Los Angeles County stores. This transaction pattern and the unusual spikes in both transaction number and dollar volume do not appear in the transaction patterns or in the transaction count and dollar volume averages for other like type stores. These large dollar transactions are considered to be irregular and suspicious based on the firm's food inventory. The Office of Retailer Operations and Compliance determined there was no credible reason for the firm to have transactions at these dollar levels given the minimal stock of staple foods and the lack of any specialty, bulk, or ethnic foods that might sell for large dollar amounts and also considered this to be a strong indication of trafficking. None of Appellant's contentions explain these unusual and suspicious differences.

Appellant again offered no documentation or explanation to support the legitimacy of the listed transactions in this Attachment.

The SNAP transactions noted in this Attachment are not presumed to be trafficking because they exceed a set dollar amount; they are questionable because they are inconsistent for this type of store and store stock. A shopping pattern analysis by the Office of Retailer Operations and Compliance shows that Attachment households are regularly shopping at much larger stores, and conducting high dollar transactions, yet are conducting comparable or higher dollar transactions at the Appellant firm. It makes no sense for a household that regularly shops at larger stores and apparently has no transportation limitations to spend large dollar amounts at the Appellant firm since its cost of goods is higher than that of larger stores such as supermarkets or super stores.

The FNS store visit shows that the firm offers a minimal stock of staple foods that also includes single serving and pre-packaged items with a significant portion of inventory in drinks, candy, and snacks as well as many ineligible items. The fact that tobacco, hot prepared foods, household products, paper products, pet products, auto products, health and beauty items, and charcoal are not eligible for purchase with SNAP benefits also provides no justification for the high transaction amounts.

Higher food prices make it even more unlikely that SNAP recipients, with very limited food benefits, would want to spend a considerable part of their benefits in a store that does not address all of their food needs when they are already shopping at larger, fully-stocked stores that would offer a greater variety of foods at lower prices. Many of these stores also offer store brand products at lower prices, weekly specials, and have shopping carts and checkouts with built-in scanners and conveyor belts to facilitate processing purchases quickly. Additionally, Appellant furnished no itemized cash register and corresponding 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

months. The firm also has a very small checkout area and no shopping carts or handbaskets thereby making it extremely difficult to facilitate the great quantities of eligible food items required to make up these large dollar transactions. The fact that the firm carries a minimal stock of staple food items also makes it improbable that the high dollar transactions in this Attachment were for the purchase of eligible food items and more likely that the amounts were contrived.

It is further noted that SNAP redemptions at the Appellant firm fluctuated unusually following the receipt of the charge letter on July 2, 2020. The volume of SNAP redemptions at the Appellant firm decreased 45.62 percent from June 2020 to July 2020 while the average dollar amount of SNAP transactions decreased 14.41 percent and the number of SNAP transactions decreased 36.49 percent. A pronounced fluctuation in SNAP redemptions following the receipt of the charge letter is a clear indication of trafficking since, if trafficking were not occurring, there would be no abnormal fluctuations in redemption amounts.

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

Credit Contentions

Appellant contends the firm allows credit accounts, a violation of SNAP regulations at Section 278.2(f), as evidenced by Appellant's written statements. While store ownership may or may not have personally conducted the violative transactions, SNAP rules and regulations state that regardless of whom store ownership may utilize to handle store business or their degree of involvement in store operations, the ownership is accountable for the proper training of staff and the monitoring and handling of all SNAP transactions. When store ownership signed the certification page of the SNAP retailer application to begin operating as a SNAP retailer, it confirmed it understood and agreed to abide by program rules and regulatory provisions. It agreed to accept responsibility for SNAP violations including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time. This certification page specifically cites violations such as accepting SNAP benefits as payment on credit accounts or loans. The certification is clear that ownership understood by signing the document that violations of program rules can result in administrative actions such as fines, sanctions, withdrawal, or disqualification from the SNAP. Despite agreeing to abide by SNAP rules and regulations, ownership now admits that the firm allowed credit accounts, a clear violation of SNAP rules and regulations. Additionally, the SNAP Retailer Training Guide and the training video, provided to all retailers upon authorization, cite credit accounts as violating SNAP regulations. Had store ownership reviewed the SNAP training materials or trained its employees using them, it is inconceivable that it would not have been aware that credit accounts violate SNAP regulations.

Ownership's admission to extending credit is documented in the case file under review and is not contested. Accepting SNAP benefits for payment on credit is a violation of Section 278.2(f) and warrants a one year disqualification period as specified by Section 278.6(e)(4). It is the agency's position that credit violations constitute owner or management involvement and that a one year disqualification is the base sanction. To refute charges of trafficking, the retailer must provide

adequate proof that credit accounts existed at the time the suspicious transactions occurred so that a comparison can be made with transactions outlined in the charge letter. A level of detail regarding the legitimacy of credit accounts is necessary since retailers have long admitted to credit in an attempt to garner a lesser penalty after committing more egregious violative acts. Credit transactions must be accounted for with substantive evidence such as the dates credit was extended, to whom, for what amount, and for what items. If such exculpatory evidence is not advanced, the appropriate penalty is permanent disqualification.

Appellant failed to respond to the FNS request to provide evidence in support of the admission to accepting SNAP benefits for payment on credit accounts. Since Appellant was unable to account for any of the charge letter transactions as being due to credit, the original determination made by the Office of Retailer Operations and Compliance was evaluated to determine if trafficking occurred. The transactions showed clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity indicative of trafficking as previously discussed.

Other Contentions

The purpose of this review is to either validate or to invalidate the earlier decision of the Office of Retailer Operations and Compliance and is limited to what circumstances were at the basis of the action at the time such action was made. In an appeal of an adverse action, the Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means the Appellant has the burden of providing relevant evidence that a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than untrue. Assertions that the firm has not violated program rules, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations or for mitigating their impact.

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

Regarding the afterhours transactions, the times listed are when the transactions were submitted for processing by the firm's POS terminal and are accurate times. It is an indication of trafficking when there are numerous transactions occurring outside of a firm's operating hours.

The issue under review involves a charge of trafficking SNAP benefits based on EBT transaction data. EBT transaction data is covered in SNAP regulations at 7 CFR § 278.6(a) and is addressed below. Trafficking is always considered to be the most serious violation even if it is a first offense therefore a temporary suspension or lesser penalty would not be applicable. SNAP

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

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

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

CIVIL MONEY PENALTY

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 Office of Retailer Operations and Compliance determined that the Appellant was not eligible for a trafficking CMP in lieu of a disqualification under 7 CFR 278.6(i) because Appellant failed to request or to submit 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 Office of Retailer Operations and Compliance determined that Appellant was not eligible for a trafficking CMP in lieu of permanent disqualification.

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

CONCLUSION

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

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

RIGHTS AND REMEDIES

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

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

ROBERT T. DEEGAN
ADMINISTRATIVE REVIEW OFFICER

January 7, 2021