

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

**Family Market La Familia Market,**

**Appellant,**

**v.**

**Office of Retailer Operations and  
Compliance,**

**Respondent.**

**Case Number: C0220711**

**FINAL AGENCY DECISION**

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) finds that there is sufficient evidence to support the determination by the Office of Retailer Operations and Compliance (“ROC”) to assess a civil money penalty against Family Market La Familia Market (“Appellant”) in the amount of \$59,000 in lieu of a permanent disqualification from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

**ISSUE**

The purpose of this review is to determine whether the ROC took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.6(a), (c) and (e)(1)(i), when it assessed a civil money penalty against Appellant in the amount of \$59,000 in lieu of a permanent disqualification on November 23, 2021.

**AUTHORITY**

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

**CASE CHRONOLOGY**

In a letter dated September 19, 2021, the ROC charged Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations. This charge was based on a series of SNAP transaction patterns that “establish clear and repetitive patterns of unusual, irregular, and inexplicable activity for your type of firm.” This letter of charges states: “As provided by Section 278.6(e)(1) of the SNAP regulations, the sanction for trafficking is permanent disqualification.” The letter

also states that “. . . under certain conditions, FNS may impose a civil money penalty (CMP) . . . in lieu of a permanent disqualification of a firm for trafficking.”

Appellant replied to the ROC’s charges in writing. The record reflects that the ROC received and considered the information provided prior to making a determination. The ROC determined that Appellant’s contentions did not outweigh the evidence that the store was trafficking. Based on the preponderance of evidence, the ROC concluded that trafficking is the most probable explanation for the questionable transactions listed in the charge letter attachments.

The ROC issued a determination letter dated November 23, 2021. This letter informed Appellant that it was permanently disqualified from participation as an authorized retailer in SNAP in accordance with Section 278.6 (c) and 278.6(e)(1) for trafficking violations. The letter also states the ROC considered Appellant’s eligibility for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP regulations. The ROC determined that Appellant was eligible for a civil money penalty in the amount of \$59,000 in lieu of a permanent disqualification.

On December 3, 2021, Appellant appealed the ROC’s determination and requested an administrative review of this action. The appeal was granted.

### 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 § 278.6(a) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern in the event that personnel of the firm engaged in trafficking of SNAP benefits.

7 CFR § 278.6(a) states, in part:

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

7 CFR § 278.6(a) states, in part:

Any firm considered for disqualification ... under paragraph (a) of this section... shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of noncompliance before FNS makes a final administrative determination. The FNS regional office shall send the firm a letter of charges before making such determination. The letter shall specify the violations or actions which FNS believes constitute a basis for disqualification . . . . The letter shall inform the firm that it may respond either orally or in writing to the charges contained in the letter within 10 days of receiving the letter . . . .

7 CFR § 278.6(c) reads, in part:

The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination. In the case of a firm subject to permanent disqualification under paragraph (e)(1) of this section, the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS, regardless of whether a request for review is filed in accordance with part 279 of this chapter.

7 CFR § 278.6(e)(1)(i) reads, in part:

FNS shall . . . . [d]isqualify a firm permanently if . . . personnel of the firm have trafficked as defined in § 271.2.

Trafficking is defined in 7 CFR § 271.2, in part, as:

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 . . . .”

Also at 7 CFR § 271.2, eligible food is defined as:

Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption . . . .

7 CFR § 278.6(b)(2)(ii) states, in part:

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).

7 CFR § 278.6(b)(2)(iii) states:

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 a penalty.

### **SUMMARY OF CHARGES**

The charges under review were based on an analysis of SNAP Electronic Benefit Transfer (EBT) transaction data during the period from March 2019 through August 2019. This analysis identified the following patterns of SNAP transaction activity that indicate trafficking:

- An inordinate number of transactions ending in same-cents values;
- Consecutive transactions made too rapidly to be credible;
- Multiple transactions made from the same accounts in unusually short time frames;
- A large number of manual (key-entered) transactions; and,
- Unusually large transactions.

The attachments enclosed with the charge letter specify the questionable and unusual SNAP transactions indicative of trafficking which were conducted at Appellant during the review period.

### **APPELLANT'S CONTENTIONS**

Appellant's responses regarding this matter are essentially as follows:

- The charge letter did not identify which section of 7 CFR § 271.2 Appellant violated.
- The ALERT system is biased. Once charged, the likelihood that a store will be permanently disqualified is extremely high. FNS's actions have discriminatory impacts on SNAP retailers owned by immigrants and minorities.
- The permanent disqualification of Appellant is arbitrary and capricious.
- FNS did not interview SNAP participants.
- FNS's failure to provide the unredacted administrative record violates due process.
- Appellant is approximately 2,200 square feet.
- Appellant sells expensive items including a beef meat package for \$179.99, a beef/poultry meat package for \$83.88, a box of Manteca (lard) for \$75.
- Appellant sells a wide array of staple food items.
- There are only nine other SNAP-authorized retailers located within a mile of Appellant, and four located within .25 miles. None sold as high a volume of eligible food items as Appellant.
- Appellant's sales exceeded \$1.45 million during the review period.
- The transaction sets in Attachment 1 are because Appellant rounds down large transactions.

- The back-to-back transactions are infrequent and were processed on both of the stores two registers. The CAD incorrectly noted that Appellant had one register.
- The transactions in Attachment 3 were often hours or days apart.
- Manual transactions were infrequent.
- Back-to-back transactions were based on arbitrary thresholds.
- The SNAP Retailer Training Guide does not suggest that SNAP retailers obtain a POS system that provides itemized receipts.
- There is no direct evidence of trafficking.
- For large transactions when the store was not busy, Appellant separated the items, totaled each half of the items on different registers, and had the SNAP participant purchase each half separately.
- Appellant has no control over how a SNAP participant uses their benefits.
- Only a small percentage of the transactions included in the charge letter were over \$300.
- The charge letter does not define terms such as “unusually large” or “short time frames.”
- Appellant denies the allegations.
- Placing the burden of proof on Appellant to rebut the determination violates the Food and Nutrition Act of 2008 and the U.S. Constitution.
- Basing a violation on an analysis of SNAP transactions violates the U.S. Constitution.
- Some SNAP participants without transportation made numerous trips to the store because they could not carry all their groceries in one trip.
- Many transactions occurred early in the month.

In support of its contentions, Appellant provided the following documentation:

- A declaration signed by an owner;
- An illegible map from the SNAP Retailer Locator;
- 22 pages of tax documents; and,
- Four pages of back-to-back transactions from another case.

These explanations may represent only a brief summary of Appellant’s contentions. However, in reaching a decision, full consideration has been given to all contentions presented, including any others that have not been specifically listed here.

## **ANALYSIS AND FINDINGS**

Appellant contends that FNS’s actions have discriminatory impacts on SNAP retailers owned by immigrants and minorities. An unsubstantiated argument such as this does not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

Appellant contends the charge letter did not identify which section of 7 CFR § 271.2 Appellant violated. The charge letter clearly states that the firm is being charged with trafficking as defined in 7 CFR § 271.2.

Appellant denies the allegation and contends that placing the burden of proof on Appellant to rebut the determination violates the Food and Nutrition Act of 2008. Nothing in the Food and

Nutrition Act of 2008 prohibits—once the Office of Retailer Operations and Compliance establishes trafficking occurred—Appellant from bearing the burden of providing relevant evidence during an administrative review to support a conclusion, considering the record as a whole, that it did not engage in trafficking. If this is not demonstrated, the case will be sustained. Without supporting evidence and rationale, assertions that the firm has not violated program rules do not constitute valid grounds for overturning the determination.

### **Constitutionality**

Appellant contends that placing the burden of proof on Appellant to rebut the determination and basing a violation on an analysis of SNAP transactions violates the United States Constitution. In reference to these contentions, no findings or conclusions are rendered. The administrative review process does not include an assessment of the constitutionality of the laws, regulations and policies under which the agency imposed adverse actions, but rather whether the agency actions undertaken were proper pursuant to those laws, regulations and policies and sustainable by a preponderance of evidence. As such, this office does not have the authority to assess whether the United States Congress, in its enactment of legislation, has conformed to Constitutional mandates.

### **Store Characteristics**

In reaching a disqualification determination, the ROC considered information obtained during a June 29, 2019 store visit conducted by a USDA contractor to observe Appellant's operation, stock, and facilities. This store visit information was used to ascertain if there were justifiable explanations for the firm's irregular SNAP transaction patterns. The store visit report documented the following store size, description, and characteristics:

- Store size is approximately 1,982 square feet with no area of food storage outside of public view<sup>1</sup>;
- Only one cash register and one electronic SNAP terminal device;
- No shopping carts and six hand baskets;
- No scanners or conveyor belts;
- No evidence of a wholesale business such as posted prices or separate entrances for wholesale customers; and,
- No meat or seafood specials or bundles.

In addition, the store's checkout counter space area was small allowing little surface area to place large purchases and making it impractical to process more than one customer at a time. Appellant contends the store has two registers. Appellant did not provide any evidence in support of this contention. Store visit documentation supports the store contained one register.

Appellant is correct that it sells a wide array of staple food items which is typical of a medium grocery store. There was no indication that SNAP households were inclined to visit the store

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<sup>1</sup> Appellant states the store is 2,200 square feet with 1,000 square feet of storage which may be correct.

regularly to purchase very large quantities of grocery items. There was no hint that the firm sold items in bulk. Given the available inventory, there was no sign that Appellant would be likely to have SNAP redemption patterns that differed significantly from those of similarly-sized competitors.

### **Same-Cents Transactions**

An interesting characteristic of questionable transactions is that many of them end in a same-cents value. Sets of repeating digits are highly unorthodox and do not regularly occur in legitimate transactions; such transaction structuring is a common hallmark of trafficking activity. In the absence of any compelling rationale to the contrary, these patterns strongly indicate that the firm is trafficking in SNAP benefits.

Attachment 1 to the charge letter documents transactions ending in same-cents values. A review of the store visit record indicates that the store did not promote any specials that could explain the pattern of large numbers of transactions ending in these values. This attachment includes 63 same-cents transactions totaling \$10,974.

There were a total of 242 SNAP transactions that met the parameters of this attachment. Of these transactions, a total of 121 (26%) ended in “00” cents. In other words, more than one out of every four of these transactions was an even-dollar transaction.

A number of households whose transactions were cited in other attachments to the charge letter also consistently made transactions that ended in same-cents values. Transactions appearing in more than one attachment to the charge letter are more suspicious as they display multiple patterns common to trafficking transactions.

It is Appellant's contention that the inordinate number of transactions ending in same-cents values are due to the normal practice of the firm to round down large transactions to even dollar amounts. The assertion that the firm rounds off transaction amounts is not supported by the evidence. Even if Appellant regularly rounded off large transactions, this would not explain the high frequency of large transactions that did not end in even dollar amounts.

Patterns of transactions ending in same-cents amounts indicate that SNAP transaction amounts are contrived. Random data, which legitimate transaction activity approximates, is extremely difficult to produce intentionally; it is very difficult to avoid repetitive patterns when attempting to create the appearance of normal, near-random transactions. That various customers each repeatedly had totals with identical cents values during the review period strains the credibility of Appellant's declaration that this activity reflected the acceptance of SNAP benefits in exchange for eligible food items. As Appellant has offered no rational explanation for why such patterns might exist, it is reasonable to conclude that these same-cents transactions are the result of trafficking.

## **Rapid Transactions**

Attachment 2 to the charge letter documents back-to-back transactions made in rapid order at the same terminal. There are 52 sets of transactions totaling \$5,597.82 included in this document.

These transactions were conducted with implausible speed. Frequent and large transactions conducted quickly to purchase eligible foods at Appellant are highly unlikely given Appellant's low-dollar inventory and limited counter space. The firm does not maintain the logistical wherewithal required to rapidly process these transactions. The steps required to process a legitimate SNAP purchase include the following:

- 1) Waiting for the customer to load the items onto the counter space near the cash register. (Due to the large dollar amounts of the transactions and considering how many low-priced items it would take to reach the amounts listed in this attachment, it is unclear how customers, without the use of shopping carts or baskets, were able transport their items to the register and then out the door to waiting transportation);
- 2) Separating eligible items from ineligible items;
- 3) Manually entering the cost of each item;
- 4) If applicable, weighing any individual items sold by weight, such as fresh meat or fruits and vegetables;
- 5) Inputting manufacturers cents-off coupons, if applicable;
- 6) Bagging the items for carry out;
- 7) Handing the customer bagged items to make room for more food items on the counter;
- 8) Informing the customer of the totals (one for eligible foods and one for non-eligible items, if applicable);
- 9) Pressing the "SNAP transaction key" on the point-of-sale device;
- 10) Swiping the card;
- 11) Entering of the required PIN by the customer;
- 12) Entering the purchase amount by the cashier;
- 13) Confirming that the customer has a sufficient benefit balance;
- 14) Processing and approval of the transaction by the system;
- 15) Printing out cash register and EBT receipts;
- 16) Accepting an alternate form of payment for nonfood items and possibly handling cash and change; and,
- 17) Removing products from the checkout area so the next customer in line can begin another transaction.

While such transactions may well be conducted in succession, performing these actions on large transactions cannot be done rapidly. The amount of time required is generally proportional to the dollar amount of the transaction; typically, the larger the dollar amount transacted the longer the time period between transactions. Limited counter space and a lack of shopping carts and baskets add additional time to transactions. Appellant processed very large orders considerably faster than supermarkets typically process them, yet it has only one small checkout counter, no optical scanner, and none of the logistical tools (such as conveyor belts, rotating bagging platforms or order separators) routinely used in rapid throughput operations.



As described above, the rapid processing of large transactions of eligible food items at Appellant is improbable. Yet, the questionable transaction data cited in Attachment 2 reveals consecutive transactions involving large-dollar amounts occurring within a span of only a few minutes. It is highly unlikely that the rapid, multiple, large transactions described above involve solely the sale of eligible foods.

### **Repeat Transactions by the Same Household**

Attachment 3 to the charge letter documents the same household conducting back-to-back transactions in unusually short time frames. Appellant argues “short time frames” is not defined, that the thresholds used to identify back-to-back transactions are arbitrary, and only a small percentage of the transactions included in the charge letter occurred in back-to-back transactions of less than an hour. Violating stores may conduct multiple transactions from the same household account within a 48-hour period to avoid the detection of single, high-dollar trafficking transactions. There are 102 repeat transactions totaling \$11,143.71 included in this document.

Appellant contends some SNAP participants without transportation made numerous trips to the store because they could not carry all their groceries in one trip. The record reflects that customers conducting rapid, repetitive, and large transactions at Appellant frequently spent SNAP benefits at better-stocked and more competitively-priced grocery stores, sometimes on or about the same day they shopped at Appellant.

Appellant also contends there are only nine other SNAP-authorized retailers located within a mile of Appellant, and four located within .25 miles. Appellant insists none sold as high a volume of eligible food items as Appellant. The Case Analysis Document identifies five stores located within .25 miles of Appellant and 18 stores located within one mile. Included in this number are larger stores with more reasonable prices, including a large grocery store located .01 miles from Appellant. There is no basis for unusually high customer attraction to Appellant, there being no great price advantage, profusion of ethnic goods, or special or custom services rendered. Oddly, some SNAP households spent considerably less at the larger stores than at Appellant.

The following examples from the ROC’s Case Analysis Document show households shopped at better stocked firms on or about the same day as conducting large transactions at Appellant:

#### **SNAP Household #1**

One day, this SNAP household made three transactions at Appellant over 22 minute period for \$137.25, \$43.69, and 10.49 followed by a transaction at a superstore later that day for \$134.65. Another day, this household made a transaction at Appellant for \$100.15 followed by a transaction at a supermarket for \$288.23. The next morning, this household returned to Appellant and made another transaction for \$100.25.

## **SNAP Household #2**

One day, this SNAP household made a transaction at Appellant for \$320 followed by a transaction at a superstore five and a half hours later for \$16.98. Another day, this household made a transaction at Appellant for \$266.08 followed by a transaction at a superstore three hours later for \$15.66.

While there are legitimate reasons why a SNAP recipient might return to a medium grocery store in a short period of time, the examples in Attachment 3 indicate a series of purchases that total to large amounts. SNAP benefits are intended to supplement the food budget for households whose net income is near or below the Federal Poverty Level. It is difficult to believe customers who must rely on SNAP benefits to make ends meet prefer to pay higher prices and spend considerable amounts of their benefits at a medium grocery store. Spending sizable portions of one's SNAP benefit allotment in a medium grocery store - when there are larger stores at which one also shops that carry more variety of foods at a lower cost - is unreasonable customer behavior. Moreover, households listed in this attachment conducted this strange shopping pattern of making substantial purchases at Appellant multiple times during the review period. Given the common practice of violating retailers breaking up large, suspicious transactions into multiple, smaller transactions to avoid detection, a firm's explanation and evidence for why these transactions are occurring in a 48-hour period in a medium grocery store should be both rational and compelling. Appellant's explanation is neither.

### **SNAP Benefit Depletions**

Appellant contends many transactions cited in the charge letter occurred early in the month. A government report on SNAP shopping patterns<sup>2</sup> indicates that after the first day of benefit issuance, on average, 80 percent of a household's allotment remains unspent. Even after seven days, 40 percent of benefits still remain unspent. It typically takes 14 days to deplete 80 percent of one's benefits, and 21 days to deplete 90 percent. This report also revealed that households most often redeemed their benefits at supermarkets and supercenters, with only four percent of all households never shopping in a supermarket.

### **Manual Transactions**

Attachment 4 to the charge letter documents 16 EBT manual (key-entered) transactions made at Appellant. There is insufficient evidence to support that the manual transactions in this case constitute a pattern of trafficking.

### **Large Transactions**

Appellant contends only a small percentage of the transactions included in the charge letter were over \$300. People generally do not spend extremely large sums at medium grocery stores. It is

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<sup>2</sup>U.S. Department of Agriculture, Food and Nutrition Service, Office of Research and Analysis, *Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program*, by Laura Castner and Juliette Henke. Project officer: Anita Singh, Alexandria, VA: February 2011.

rare for a medium grocery store such as Appellant's to have purchases like those included in Attachment 5 to the charge letter. Appellant contends the charge letter does not define "unusually large" however this attachment cites 242 EBT transactions during the six-month period of investigation of \$100.00 or more totaling \$44,728.73. Of these transactions, 85 totaled \$200 or more, 30 totaled \$300 or more and 7 totaled \$400 or more.

Additionally, many of the charge letter transactions arrive at, or cluster around, certain dollar amounts in \$5 increments (e.g. \$150, \$200, \$300). Households typically shop to obtain a certain mix of food items, irrespective of the total cost (other than to remain within allotment balances), and do not strive to achieve a particular total. The purchase amount of eligible food items typically approximates a random total. In contrast, firms facilitating trafficking tend to concentrate transactions at particular dollar amounts. In the absence of any compelling rationale to the contrary, the pattern of clustering transactions around certain dollar levels is implausible and indicative of transaction structuring and SNAP-benefit trafficking.

These transactions significantly exceed the county's average SNAP transaction, which was \$15.84 for this type of store during the six months of the review period. The Case Analysis Document shows the average transaction at Appellant during the same period totaled \$23.41. Appellant's average transaction is significantly higher than the county's average transaction. As previously stated, Appellant has a limited food stock typical of a medium grocery store and does not have any features that would induce people to spend substantially more than the typical medium grocery store purchase amount.

Additionally, the Case Analysis Document contains a comparison of Appellant's redemption activity during the analysis period to a SNAP-authorized medium grocery store located nearby that carries Latinx specialty foods. Appellant's SNAP redemptions during the analysis period were 2.8 times that of the nearby comparable firm.

Based on the store layout, infrastructure, and available inventory, it is not credible that the Appellant would so frequently conduct large transactions closely resembling those typically found at a supermarket or superstore. It is not plausible that the firm's customers would regularly carry very large amounts of merchandise around the store without the benefit of shopping carts or shopping baskets, especially since larger, better-stocked stores are readily available and in the vicinity of the Appellant firm. Appellant is not set up to process high-dollar transactions, as indicated by its lack of equipment to facilitate large transactions and limited counter space. There are no legitimate bases for SNAP customers' unusual attraction to the firm such as a superior selection of staple foods, price advantages, package specials, bulk or promotional items, an extensive variety of otherwise unavailable ethnic food items, or special services rendered. Appellant failed to provide convincing evidence to establish the legitimacy of these excessively large transactions, such as itemized cash register receipts. Based on all of these factors discussed in this section, the large volume of transactions for high-dollar amounts is unlikely to indicate a pattern of legitimate food purchases.

### **No Control Over Benefit Use**

Appellant is correct that it has no control over how and when SNAP customers spend their benefits. SNAP households have no limits on the number of times they may use their SNAP cards or how much eligible food they may purchase. The SNAP transactions of Appellant are questionable not because they exceed any limits for use. Rather, they display characteristics not typically found at convenience stores and are indicative of trafficking.

### **Expensive Offerings**

Appellant asserts it sells expensive items which explain the large purchases. The evidence does not support this contention.

Appellant states it sells boxes of meat, lard, and cases of drinks. During the June 29, 2019 store visit, none of these items listed by Appellant with prices over \$21.99 were on display as being available for bulk sale. In addition, there were no posted prices for these items. The store clerk identified the four most expensive items at Appellant, which were then recorded and photographed by the store reviewer. None of these items Appellant now alleges it sells were identified by the store clerk. The store review report also documented that the firm did not have meat or seafood specials or bundles. Appellant did not provide any receipts or invoices in support of its contentions.

While there may have been occasions when Appellant sold expensive items, based on evidence from the store visit, and lack of corroborating receipts or invoices, it is more likely true than not true that the sale of expensive items does not explain the large SNAP transactions that occurred at Appellant. Trafficking is a more likely explanation for the unusual and irregular pattern of high-dollar transactions.

### **Appellant's Responsibilities**

Appellant does not have receipts and insists that SNAP Retailer Training Guide does not suggest that SNAP retailers obtain a POS system that provides itemized receipts. While the SNAP Retailer Training Guide does not endorse particular POS systems, as Appellant notes, the document recommends retaining "all register receipts for at least one year for program eligibility and integrity purposes."

### **Infant Formula**

Appellant contends that high transaction amounts are due in part to selling expensive infant formula. It would be unusual for a SNAP household to purchase baby formula with SNAP benefits, as households who participate in SNAP are eligible to participate in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). WIC has a more lenient income threshold for participation - and a higher participation rate of eligible participants - than SNAP. WIC provides participants with vouchers for baby formula as well as other staple items, such as orange juice and cereal. WIC participants would likely purchase all their infant formula, as well as other expensive staple goods, with their WIC benefits.

## **Evidence of Trafficking**

Appellant argues there is no direct evidence of trafficking and that FNS should have interviewed SNAP participants. Appellant also insists that the ALERT system is biased and that once charged, the likelihood that a store will be permanently disqualified is extremely high. As previously stated, 7 CFR § 278.6(a) states, in part:

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

FNS employs a computerized fraud detection tool to identify EBT transactions that form patterns having characteristics indicative of trafficking. This tool does not determine that trafficking has occurred. The ROC must still analyze the transaction patterns, along with other information such as store visit observations, customer shopping patterns, and comparative data from nearby stores. Only then does the ROC conclude whether questionable transactions were, more likely than not, the result of trafficking. Transactions with these patterns sometimes have valid explanations that support the idea they were the result of legitimate purchases of eligible food items, which is why opportunities are given to charged retailers to explain the questionable transactions cited. In this case, based on the suspicious patterns displayed and the other supporting evidence in the file - and in the absence of any reasonable explanations for such transaction patterns - the preponderance of the evidence supports that the “unusual, irregular, and inexplicable” transactions and patterns cited in the letter of charges are the result of trafficking.

## **No Denial of Due Process**

Appellant contends that it has been denied due process because it did not receive the unredacted administrative record. In this regard, the permanent disqualification of Appellant by the ROC is neither a criminal nor a civil action, but rather an administrative action imposed against the firm as a result of trafficking violations. Appellant requested information through a FOIA request. Appellant has been advised of the appropriate forum to pursue its objections regarding information it requested through FOIA that was protected from disclosure. In addition, Appellant was provided with the charge letter which included the suspicious transactions on which the charge was based as well as the store visit documentation.

## **Summary**

The ROC determined that Appellant likely trafficked in SNAP benefits. The charges of violations were based on the ROC’s assessment that substantial evidence exists that the questionable transactions occurring during the review period displayed patterns inconsistent with legitimate sales of eligible food to SNAP participants. The evidence the ROC considered in support of its determination included:

- The irregular SNAP transaction data of Appellant as compared to similar stores;
- Observations made during an store visit by a USDA contractor, including the inadequacy of the firm's staple food stock to support such large transactions;
- The availability and characteristics of other SNAP-authorized stores located close to Appellant; and,
- Shopping behaviors of Appellant's customers.

The transaction data and overall firm record demonstrate the patterns of unusual, irregular, and inexplicable SNAP activity for this firm is likely the result of trafficking.

Appellant contends the permanent disqualification of Appellant is arbitrary and capricious. Upon review, Appellant failed to prove by a preponderance of the evidence that the administrative action should be reversed. Appellant provided inadequate explanations for the suspicious transactions and insufficient evidence to legitimize its transaction data. It has not convincingly rebutted the ROC's determination that Appellant most likely trafficked in SNAP benefits. The SNAP regulations are specific with regard to the action that must be taken if personnel of the firm have trafficked, which is that FNS must disqualify the firm permanently.

### **CIVIL MONEY PENALTY**

The Office of Retailer Operations and Compliance offered Appellant the opportunity to pay a trafficking civil money penalty in the amount of \$59,000 in lieu of a permanent disqualification.

### **CONCLUSION**

The record has yielded no indication of error in the finding by the Office of Retailer Operations and Compliance that Appellant trafficked in SNAP benefits. A review of the evidence supports that it is more likely true than not true that program violations occurred as charged. Based on the discussion above, the determination by the Office of Retailer Operations and Compliance to the Office of Retailer Operations and Compliance to assess a civil money penalty against Family Market La Familia Market in the amount of \$59,000 in lieu of a permanent disqualification is sustained. In accordance with the Food and Nutrition Act, and the regulations thereunder, this penalty shall become effective thirty (30) days after receipt of this letter. To pay the civil money penalty, Appellant should refer to the information provided in the determination letter.

## **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 Appellant desires a judicial review, 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.

RICH PROULX  
ADMINISTRATIVE REVIEW OFFICER

January 13, 2022