

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

**Asian American Market,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0196968**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture, Food and Nutrition Service (FNS) that the permanent disqualification from the Supplemental Nutrition Assistance Program (SNAP) imposed upon Asian American Market (hereinafter “Appellant”) by the Retailer Operations Division, Investigations and Analysis Branch, hereinafter “ROD Office” is hereby sustained.

**ISSUE**

The issue accepted for review is whether the ROD Office took appropriate action, consistent with 7 U.S.C. § 2021, 7 CFR § 278.6(a) and 7 CFR § 278.6 (e)(1) and (i) in its administration of the SNAP when it imposed a permanent disqualification upon Appellant.

**AUTHORITY**

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

**CASE CHRONOLOGY**

In a letter dated March 15, 2017, the Retailer Operations Division charged the Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred during the months of June through November 2016. The letter noted that the sanction 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 10 days of receipt under the conditions specified in 7 CFR §278.6(i). The record reflects that Appellant did not reply to the Charge Letter. By a letter dated April 3, 2017, Appellant was informed that it was permanently disqualified from participation as a retail store in the SNAP and was ordered upon receipt of the letter to cease accepting SNAP benefits; consequently, Appellant ceased to accept said benefits. On April 13, 2017, Appellant requested an administrative review of the SNAP Office's decision; the request was granted. It is noted that the request contained a substantial amount of information not previously provided to the ROD Office; accordingly the ROD Office was provided the opportunity to review the material to determine if it would alter their initial determination. The ROD Office has reviewed the information and determined that it does not alter their initial determination.

### STANDARD OF REVIEW

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

### CONTROLLING LAW

The controlling statute in this matter is contained in the Food & Nutrition Act of 2008, as amended, at 7 U.S.C. § 2021 and in Part 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 2021, Part 278.6(a) and Part 278.6 (e)(1)(i) of the Regulations establish the authority upon which a permanent disqualification may be imposed upon a retail food store or wholesale food concern.

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

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

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

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

7 CFR § 278.6(e)(1)(i) states:

Disqualify a firm permanently if: Personnel of the firm have trafficked as defined in §271.2

7 CFR § 271.2 states, *inter alia*:

*Trafficking* means the buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers, (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.

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

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

7 CFR §278.6(i) states, *inter alia*:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking as defined in § 271.2 if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations...

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

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 THE CHARGES

- A series of 34 sets of SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) were conducted too rapidly to be credible (Attachment 1).
- A series of multiple SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) were debited from individual benefit accounts in unusually short time frames (Attachment 2).
- In a series of SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) the majority or all of individual recipient benefits were exhausted in unusually short periods of time (Attachment 3).
- An excessive number of manual key-entered transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) were debited at your location; these transactions significantly exceeded the normal practice for stores in your state (Attachment 4).
- A series of 410 excessively large SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C)

were debited from recipient accounts (Attachment 3).

### **APPELLANT'S CONTENTIONS**

In Appellant's written request for review dated April 13, 2017, and in subsequent correspondence, it was argued that:

1. Appellant firm serves a Myanmar, Asian and Burmese population. Appellant lists various ethnic packaged goods, but the store visit contractor had little grasp of the nature of the food inventory.
2. Appellant states that the nearest store is 15 miles away and does not carry comparable items.
3. Appellant notes that its customers can't shop at other stores in the area due to language barriers.
4. Appellant notes that Burmese people consume less dairy and more seafood.
5. Appellant notes that its customers conform to traditional transaction patterns of other SNAP participants, such as depleting nearly all SNAP benefits in the first two weeks following issuance.
6. The firm is a medium-sized grocery store and is treated as a primary grocery store. Appellant provides copies of product purchase receipts/invoices in support thereof. SNAP sales greatly outweigh non-SNAP sales.
7. Appellant states that more than half of the store's retail space is dedicated to frozen fish, meats, pork, rice and groceries.
8. The markup on food varies by type and origin and averages from 25% to 50% over purchased value. Appellant provides price lists of several of the products sold at the firm.
9. Appellant provided 10 customer affidavits attesting to items purchased and amounts. Appellant asserts that the agency writes off affidavits without good reason. The failure of affiants' transactions to appear in the Charge Letter does not serve to discredit the affidavits. The affidavits provide a fair cross section of the SNAP participants that would have first-hand knowledge of large transactions conducted at the store, which are common.
10. Charge Letters should be sent in different languages, as the Owner of the Appellant firm does not read English. Appellant did not reply to the Charge Letter for that reason.
11. Appellant requests the administrative review branch to seek legal advice from the General Counsel's Office, as the determinations made during the review are inherently legal decisions. The practice of consulting the General Counsel's Office should be instituted to avoid unnecessary judicial appeals and to assist with the legal decisions made in these decisions.
12. Appellant presents arguments stating that the ALERT system is over-utilized and has other detrimental qualities and cites case law in noting that the ALERT system should not be relied upon too deeply. The charges are based on the errant belief that the ALERT system identifies trafficking, but the system can identify suspicious behavior at most. The basis for this system is unknown. FNS cannot state that the Charge Letter transactions are not possible and does not have information beyond a transaction log that is reliant upon context. Where is the "context" that shows the firm did not traffic.

“Context” in this case is reliant upon meaningful comparison stores, which the ROD Office does not have. The ALERT data is directly rebutted by the receipts and transaction details provided in Appellant’s Brief. It is more likely that the system mis-identified legitimate transactions because the firm’s qualification as a medium grocery store is not in line with the store’s operations and might only reflect the square footage of the store. Appellant contends the firm operates as a supermarket or large grocery store. Invoices, inventory amounts, product lists and photos of the store support the position that these transactions were legitimate.

13. There are no meaningful stores in the area to which Appellant firm may be compared.
14. Regarding Attachments 1 and 2, all but 13 of 118 transactions in these attachments were conducted during the first days of the month and well within the 1<sup>st</sup> week of the participants’ receipt of SNAP benefits. Because Appellant supplies a large portion of customers’ needs, the store is one of the first shopping trips made.
15. Appellant argues that co-shopping explains Attachment 2. Transactions don’t imply that large amounts of food were purchased at one time. The store would calculate purchase sizes for large transactions based upon what the customer identifies; then the transaction will be run after the participant has identified his or her items.
16. Appellant argues that small purchases prior to large ones are balance speculation.
17. Regarding Attachment 3, Appellant cannot control how quickly customers deplete balances nor turn customers away on that basis. Appellant referenced the affidavits noted above in support of this contention.
18. Appellant argues that it shouldn’t have to provide invoices/receipts as the agency doesn’t require retailers to maintain them.
19. Regarding Attachment 4 transactions, it appears the card reader is faulty and that some of the SNAP benefit cards are also faulty. Appellant contends that four cards were not working properly.
20. Excessively large transactions: 10 affidavits show that even the largest transactions are legitimate. Appellant cites the invoices/product purchase receipts provided in support of the above. Appellant notes that rice costs \$19.99 and that the store offers other expensive items. There are a number of combinations of goods customers could purchase to arrive at large totals, which the store can show sufficient inventory to support. According to the Department’s own numbers, an average family would be expected to spend more than the majority of the transactions listed in Attachment 5.

## **ANALYSIS AND FINDINGS**

At the outset it should be noted that the ROD Office ordered a contracted store visit to the Appellant firm as part of its investigation into Appellant’s questionable transaction activity; the visit was conducted on January 9, 2017, as a result of which documentation was obtained including photographs of the interior and exterior of the store, a store layout diagram and a store inventory survey. This documentation reflected the following:

- No optical scanners used.
- No shopping carts.
- One cash register.

- One card reader.
- No hot food sold.
- No dining area.
- No deli section.
- No meat/seafood bundles/specials or fruit/vegetable boxes.
- Approximately 900 square feet of store space.
- The firm also sold health and beauty products, paper goods, cleaning products, housewares (bedding, rugs, kitchen small appliances and utensils, tubs, brooms, shovels and woven baskets), clothing and other non-food items.
- Faded/missing labels on food products noted.
- Comments: “A lot of the food was store in unlabeled ziplock bags in the freezer and on shelves. Owner signed consent.”
- The firm sold bags of rice, which appeared to consist of 10 each of 20-pound bags, nine medium bags and five or six small bags of rice. Photo: 1, 10 and 28.
- The firm was a typical, though unusually small, combination grocery/other store selling a large variety of non-food items. Photos: 1, 2, 8, 10, 21 and 28.
- Upright freezer held various frozen vegetables and fruit. Photos: 12 and 15.
- Most of the food inventory consisted of what appeared to be inexpensive small packaged and canned food items and small packages of frozen food. Storage area appeared to contain additional inventory of such products. Photos: 6, 7, 11, 13, 14, 19, 21, 22, 24, 25, 26, 27 and 30.
- No fresh meat or produce. No back stock of frozen products.
- No special or bulk food packages offered/advertised.
- Small amount of cases of water soda and other drinks. Photos: 1 and 28.
- Approximately 2 X 2 feet of check-out counter space over a case containing health/beauty products. A case containing what appeared to be clothing or blankets was behind the register. Photos: 3 and 8.
- Chest freezer with frozen fish and other meat. Photos: 9 and 33.

The documentation presents no indication of advertised specials, promotions or bulk or expensive foods, other than large bags of rice and a few other items. The checkout area was set up in convenience store fashion, utilizing a small check-out area (approximately 2 by 2 feet of useable space) placed over display case containing health/beauty products. A case containing what appeared to be clothing or blankets was behind the register. There were no shopping carts with which customers could transport large orders to the small check-out area or to waiting transportation. This documentation reflects that the firm was a typically-stocked combination grocery/other store in all relevant respects, that it also carried a large proportion of non-food inventory. The record reflects, moreover, that the ROD Office duly considered that the firm carried ethnic food items.

In regard to contention 1 above, the store visit reviewer took adequate and appropriate photographs, diagramed the firm’s layout with what appears to be quite reasonable accuracy and was clearly able to assign food categories to virtually all foods in the store; such is shown by the record to have been completed in all relevant and pertinent detail. Store visit reviewers often visit many stores and types of stores, often several per day and dozens over the course of a single

week, and gain considerable experience in recognizing food types (breads and cereals, meat/poultry/fish, fruits/vegetables and dairy foods, each from the other) that many others might not have the opportunity to gain. Likewise, ROD Offices are quite often highly experienced in recognizing food category types and varieties. Additionally, in depth familiarity with a particular food item is not typically required in order to discern what food category the item belongs to. For example, noodles of various kinds with various labels in different languages typically will belong in the bread and cereals category and will not easily be mistaken for food items in any of the other categories. Even unlabeled fruits, vegetables, meats, fish, flour, grains, rice, etc., are not often overly difficult to correctly place into the agency's four general categories.

The ROD Office notes that Appellant's photographs show many of the same food items as seen during the agency's store visit, though the inventory is better organized and better-stocked in Appellant's photos. The ROD Office points out that Appellant's photos tended to be close-up while generally the store visit included wider-angle photos. The vast majority of items were inexpensive, canned/bottles/small packaged goods such as pastes, noodles, cookies, cakes and other snacks and drinks. The firm stocked a small amount of frozen meat/fish items which were likewise primarily inexpensive (highest per price list was frozen Rohu at \$12.00). It should be again noted that the firm sold no fresh meat/poultry/fish or fresh fruit/vegetables.

Regarding contention 2 above, the contention is found to be counter to the record; the ROD Office notes that, at the time of the sanction decision, there were two comparable firms within a three-mile radius, one of which was located within walking distance. The ROD Office verified that the nearer firm, categorized as a medium grocery store, had a substantial inventory of fresh produce, flours and seeds, frozen and dried fish and other meats in a much larger selection, both small and large bags of various kinds of rice, canned and small packaged goods, frozen vegetables, bread, spices and many other ethnic items. Documentation likewise reflects a superior variety and depth of stock than offered by Appellant. The other comparable firm also stocked a substantial inventory of canned and small packaged goods, dried fish, bread, beans, peas, flours, rice, frozen fish, and other meat, fresh produce, frozen produce, spices, oils and other ethnic items. Documentation likewise reflects a comparable and arguably superior variety and depth of staple food stock.

With regard to contention 3 above, as noted, there were other stores in the area also catering to the ethnicities residing in the area. Additionally, the ROD office undertook an analysis of the shopping habits of a sample of Appellant's customers that conducted implausible transactions found in the Charge Letter; the analysis reflects that these customers clearly had access to and routinely shopped at super stores, supermarkets and grocery stores in the area, some of which sold ethnic items popular with local customers. From the analysis it is clear that these customers were not limited to shopping at the Appellant firm and in fact had numerous SNAP-authorized stores regularly at their disposal.

In regard to contention 4 above, these assertions do not provide a rationale for rapid, repetitive, balance depleting, key-entered or excessively large transactions. That the area the store is located in is low-income and relies heavily on SNAP benefits likewise does not explain the transaction activity.

Regarding contention 5 above, the record reflects that the transaction patterns at issue by and large do not conform to traditional patterns found at other stores in the same geographical area; as noted, the Appellant firm is not the only store in the area selling its particular kinds of ethnic foods. The ROD Office notes that Appellant's numbers of rapid, repetitive, balance-depleting, key-entered and excessively large transactions were multiple times that of the comparable firms noted above.

With regard to contention 6 above, the firm was categorized as a combination grocery/other store, not a medium grocery store. Medium grocery stores must meet Criterion A with regard to staple food variety and meet higher total retail and/or staple food sales percentages and thresholds. The Appellant firm clearly did not qualify as a medium grocery store. It is again noted for the record that the firm did not stock any fresh meat, poultry or fish nor any fresh fruit or vegetables; additionally the firm had an insufficient inventory of staple foods in the dairy category to qualify under Criterion A; this was self-reported by the firm upon application and confirmed during the store visit.

In regard to contention 7 above, there was no pork offered for sale on the day of the store visit. Frozen meat (fish and chicken) was stocked in one standard-sized chest freezer. Rice was stocked in one small area in the store approximately four feet high and four feet wide and was comprised of 10 large bags, nine medium bags and five or six small bags. As noted in the foregoing, the firm's inventory included textiles/clothing, brooms/shovels, housewares, paper products, diapers, cleaning supplies health and beauty products and other non-food items. Food stock was primarily canned, bottled and small packages of an assortment of accessory food items (condiments, drinks, candy, etc.), which are not considered staple foods, as well as staple food items. The photographs and store layout diagram reflect that the firm's staple food items comprised approximately one-half of the firm's retail space; firms typically devote retail space in proportion to sales, which would reflect that the firm's sales of staple foods are approximately one-half of its gross sales, which is more in line with a convenience store than a grocery store.

Regarding contention 8 above, Appellant provided invoices which were tabulated and analyzed by the ROD Office; one invoice could not be used due to the lack of total amounts and the lack of a grand total. Appellant appears to have included the cost of non-food items in its argument that the invoices support the firm's SNAP redemptions; however with non-foods removed, invoices, at either a 25% or a 50% mark-up, are substantially insufficient to justify SNAP sales. Additionally, the ROD Office notes that much of the firm's purchased inventory was comprised of snack and accessory food items. There was minimal seafood purchased compared with Appellant's assertions but which generally supports store visit documentation and photographs; there were seafood-related products such as pastes and snacks but a relatively small amount of seafood meat items such as fish, shrimp, etc. This review affirms the ROD Office's findings, although in the few cases where the review officer found a different invoice amount, the ROD Office had determined in favor of the Appellant (which included allowing a June 2015 invoice). Nonetheless, the invoices clearly do not support the contention that customers regard the store as a medium grocery store or a primary source of groceries.



Regarding price lists provided by Appellant, these were analyzed by the ROD Office and were noted to have been separated into the following categories: Asian products, frozen products and Myanmar products. Invoice prices on sampled products are not consistent with prices on Appellant's price list. Of the 27 items added to the frozen products category, only 4 invoices reflect clearly legible prices. Upon reviewing the Myanmar product list, the ROD Office notes that most of the items were not present in the invoices. The ROD Office notes that there are many discrepancies between the Appellant's explanations, the invoices and the price lists. However the ROD Office contends that even if all items were stocked at the store and priced as stated, such would not explain the activity detailed in the Charge Letter. This review affirms that finding, as discussed in further detail herein.

With regard to contention 9 above,

- Appellant provided 10 customer affidavits. The ROD Office analyzed the household shopping habits of these customers. It is noted that that the affidavits list specific purchases and amounts but do not reference which month or day these purchases were purportedly made; no itemized receipts were provided. It is not clear if the items listed were purchased in one or several transactions.
  - Regarding the affidavit referencing a purchase  
**5 U.S.C. § 552 (b)(6) & (b)(7)(C)**: the customer's address does not match the affidavit address; the amount stated was not found in any SNAP transaction for this household from June through November 2016.
  - Regarding the affidavit referencing a purchase  
**5 U.S.C. § 552 (b)(6) & (b)(7)(C)**: there were two matching names found, neither of which conducted any transactions at the Appellant firm during the analysis period. The amount stated was not found in any SNAP transaction for this household from June through November 2016.
  - Regarding the affidavit referencing a purchase  
**5 U.S.C. § 552 (b)(6) & (b)(7)(C)**: no name match was found. The amount stated was not found in any SNAP transaction for this household from June through November 2016.
  - Regarding the affidavit referencing a purchase  
**5 U.S.C. § 552 (b)(6) & (b)(7)(C)**: no name match was found. The amount stated was not found in any SNAP transaction for this household from June through November 2016.
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**5 U.S.C. § 552 (b)(6) & (b)(7)(C)**: no name match was found. The amount stated was not found in any SNAP transaction for this household from June through November 2016.
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  - Regarding the affidavit referencing a purchase  
5 U.S.C. § 552 (b)(6) & (b)(7)(C): no name match was found. The amount stated was not found in any SNAP transaction for this household from June through November 2016.

Appellant notes that it has seen analysts and officers write off affidavits because not all participants show up in Charge Letter transactions and argues that such affidavits should not be discredited merely because ALERT failed to pull up those transactions. In the present case, none of the 10 participants conducted transactions that appeared in the Charge Letter; moreover, there is no evidence that a system failure occasioned the absence of the above-referenced transactions in the store's transaction data. There is no evidence in the record that the transaction data is inaccurate in any relevant aspect. The most reasonable conclusion to be made is that these transactions did not occur at the Appellant firm during the analysis period. As evidence, these affidavits need not be discredited per se, but their relevance to the case at hand is clearly tenuous and of questionable value in showing that such activity routinely occurred during the analysis period. Additionally, it is not clear why affiants could not attest to transactions conducted during the analysis period; no rationale explaining this absence has been provided.

In regard to contention 10 above, the ROD Office is not required to provide charge or determination letters in languages other than English; it is the responsibility of the retailer to obtain translation services if necessary in order to respond to such letters and, moreover, it is likewise the retailer's responsibility to comply with the statute and regulations governing the SNAP, regardless of English proficiency. The statute and regulations make no exceptions for language issues.

Regarding contention 11 above, the Office of General Counsel is in fact consulted at the branch level in cases such as those described in 7 C.F.R. § 279.6; said office is likewise routinely consulted in matters involving judicial review. No further findings are rendered in this regard.

With regard to contention 12 above, from all indications in the record, the ROD Office obtained the transaction data available via the ALERT system, found it to be suspicious in comparison to other stores, and then undertook a thorough investigation before concluding that trafficking was likely occurring. The investigation is shown in the record to include a substantial amount of analytical work well beyond the Charge Letter data, including, as noted, household transaction analysis, store visit documentation and redemption and transaction analytics. The implication that the ROD Office merely allowed the ALERT system to declare that trafficking was occurring is not supported by the record. Such considerations provide the context to which Appellant refers.

The record, moreover, does not support the contention that the ROD Office did not evaluate meaningful comparison stores. Appellant's product purchase receipts/invoices, product lists and photos have been discussed in the foregoing and are not found to rebut the ROD Office's analysis. That the firm was not categorized as a medium grocery has also been discussed in the foregoing; at the time of the analysis conducted and the sanction determination, the firm could not possibly have been correctly categorized as a supermarket, large grocery, medium grocery or even a small grocery.

In regard to contention 13, as noted, the ROD Office notes that, at the time of the sanction decision, there were two comparable firms within a three-mile radius, one of which was located within walking distance. The ROD Office verified that the nearer firm, categorized as a medium grocery store, had a substantial inventory of fresh produce, flours and seeds, frozen and dried fish and other meats in a much larger selection, both small and large bags of various kinds of rice, canned and small packaged goods, frozen vegetables, bread, spices and many other ethnic items. Documentation reflects a superior variety and depth of stock than offered by Appellant. The other comparable firm also stocked a substantial inventory of canned and small packaged goods, dried fish, bread, beans, peas, flours, rice, frozen fish, and other meat, fresh produce, frozen produce, spices, oils and other ethnic items. Documentation likewise reflects a comparable and arguably superior variety of staple food items. The ROD Office presents documentation that reflects Appellant's numbers of rapid, repetitive, balance-depleting, key-entered and excessively large transactions were multiple times that of the nearby stores with comparable or superior food inventory.

Regarding contention 14 above, since benefits are issued the first through the 23<sup>rd</sup> of each month, virtually no transactions can be said to occur more than a week following the issuance dates (except those occurring on the 31<sup>st</sup> of July, August and October). 14 of 34 sets and 28 of 68 transactions (41%) in Attachment 1 occurred during the first two weeks of each month. 21 of 41 sets and 43 of 84 transactions (51%) in Attachment 2 occurred during the first two weeks of each month. Very nearly the same number of sets/transactions occurred during the first half as in the second half of the month. That is, the transactions appear rather evenly distributed across each month. Indeed, the purpose of such an issuance schedule is to evenly distribute SNAP benefits to recipients throughout the month. As such, the contention is rhetorically tautologous and conveys little information about the shopping habits of the households referenced in the Charge Letter.

With regard to contention 15 above, there is no compelling rationale offered to explain why only customers shopping at Appellant's firm would engage in co-shopping; as the ROD Office points out, comparable firms do not reflect such unorthodox shopping patterns or, alternatively, exhibit such patterns to a drastically reduced extent only. Moreover, Attachment 1 contains rapid transactions by different households; that is, the secondary transaction is often conducted by a household other than that conducting the primary transaction. A co-shopping rationale does not comport with this data.

While there are legitimate reasons why a SNAP recipient or household member might return to a small combination grocery/other store during a short period of time, such purchases are more typically in small amounts and for obtaining just a few items. The examples in Attachment 2

indicate a series of repetitive purchases that total large amounts. Customers spending such substantial amounts of SNAP allotments in a small combination grocery/other store, when there are other better-stocked food stores nearby which carry larger varieties of food, is implausible. Lastly, large transactions for the purchase of legitimate food items (which at this store would have been a substantial number of lower priced items), using no shopping carts and very little checkout-counter space, is additionally implausible. Multiple transactions over a short period of time, especially of high dollar value, are very suspicious because they are typical of stores and SNAP customers which are attempting to diminish attention to signs of SNAP-benefit trafficking. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Frequent and large transactions conducted in order to purchase eligible foods at Appellant's store are highly unlikely given Appellant's logistical wherewithal and store stock. There is no compelling rationale to explain why only, or primarily, Appellant's customers made repetitive visits spending large amounts in short timeframes. The record reflects, as noted above, that the Appellant firm was a small and typically-stocked combination grocery/other store in all relevant respects and provides no plausible bases for customers' unusual attraction to the firm and unorthodox transaction patterns.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Nonetheless, following the purchase of even one **inexpensive** item, Attachment 1 lists large primary transactions followed by large secondary transactions in time frames that are implausible for a firm with Appellant's logistical wherewithal.

The firm did not maintain the logistical wherewithal required to rapidly process these transactions. In light of the above, consider the time required to process a legitimate purchase and the steps involved: 1) unloading items from shopping cart (the firm did not provide these, however; thus it is unclear how customers transport large orders to the register or to waiting transportation), 2) separating eligible from ineligible items, 3) the cashier's handling of individual items to determine the price, which in this case involved manual keying of amounts, 4) weighing individual items if sold by weight, 5) entering prices into a register or adding machine, once for eligible foods and once for ineligible items, which is typical for larger purchases, 6) handling manufacturers cents-off coupons, if applicable, 7) bagging the items for carry out, 8) informing the customer of the totals (one for eligible foods and one for non-eligible items, if applicable, which for large purchases includes most transactions), 9) pressing the "SNAP transaction key" on the point-of-sale device, 10) swiping the card, 11) customer entry of the required PIN, 12) cashier entry of the purchase amount, 13) confirming customer has a sufficient benefit balance, 14) the transaction being processed by the system and receiving approval, 15) printing out receipts, 16) accepting an alternate form of payment for nonfoods and possibly handling cash change and 17) the customer removing products from the checkout area so the next customer in line can begin the next transaction. While such transactions may well be done in succession, one will readily surmise that performing these processes on large transactions is not 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 as well as manually key-entering 19-digit card numbers adds additional time to transactions.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Frequent and large transactions conducted rapidly in order to purchase eligible foods at Appellant's store are highly unlikely given Appellant's logistical wherewithal and store stock. Lastly, large transactions for the purchase of legitimate food

items (which at this store would have been a substantial number of lower priced items), using no shopping carts and very little checkout-counter space, and processed rapidly, is implausible.

Appellant contends that the total of the both transactions were already known when the first transaction was conducted; 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Additionally, if transactions were being conducted on two purchases with known totals, the speed of the transaction would be limited only to the equipment and connection processing capacity and would be consistent from one set of transactions to the next; 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

With regard to the case law cited by Appellant, it is beyond the scope and authority of this review to determine the applicability of same. This review is limited to consideration of whether or not the ROD Office duly adhered to the Food and Nutrition Act of 2008, as amended, and the implementing regulations, and whether or not the action taken is sustainable by a preponderance of the evidence. Therefore, the application of any judicial precedent is better addressed via judicial review. Accordingly, no further findings or conclusions are rendered in this regard.

Regarding contention 17 above, similar to Attachment 2, there is no compelling rationale offered to explain why only customers shopping at Appellant's firm would deplete balances; comparable firms do not reflect such unorthodox shopping patterns, or, alternatively, exhibit such patterns to a drastically reduced extent only.

With regard to contention 18 above, as noted in the foregoing, product purchase receipts/invoices provided by Appellant were analyzed by the ROD Office, said analysis was affirmed during this review and the documentation fell substantially short of justifying the firm's SNAP redemptions. In regard to the assertion that the agency does not require firms to maintain invoices: in fact, ROD Offices quite often request product purchase invoices/receipts in order to determine SNAP eligibility; to suggest that the agency does not require this documentation is inaccurate; in many cases, eligibility can be accurately determined in no other way. Moreover, receipts and product purchase invoices are standard business documentation and required by a multitude of regulatory bodies at the federal, state and local level for various purposes. § 278.1(b) specifically references the agency's prerogative to request any relevant information in order to determine whether a firm's participation will further the purposes of the SNAP. § 278.6(b)(1) provides no limitation to the evidence that an Appellant may provide in reply to charge letters; likewise, § 279.3(b) provides no limitation to the information an Appellant may provide in support of a review request. Appellants are not limited, in providing evidence in support of review requests, to only that which the agency has at some point required of them. In fact, Appellant has offered a variety of such evidence in the present case, which has been accepted and added to the record without restriction.

In regard to contention 19 above, the ROD Office provides numerous examples of key-entered transactions conducted at the Appellant firm preceded or followed by card swipes on or about the same day at other firms. This data also shows that the card was successfully swiped at the Appellant firm on other occasions, clearly reflecting that the card and Appellant's card reader were operational. Some of these households conducted manual key-entered transactions only at the Appellant firm, while also conducting multiple swiped transactions during the analysis period. Appellant notes four households that it contends were non-functional. The ROD Office

notes that, with the exception of one of these households, the majority of these households' transactions were swiped, while only transactions at the Appellant firm were manually key-entered.

Regarding contention 20 above, the affidavits were discussed in detail in regard to contention 9 above; product purchase receipts and price lists were likewise discussed in detail in the foregoing. As has been noted, most of Appellant's eligible food inventory consisted of inexpensive canned and small packaged goods, requiring large numbers of such items to reach large totals, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), while the firm provided no shopping carts to transport these extremely large purchases to the small checkout area (approximately 2 X 2 feet of counter space) or to waiting transportation. Also as noted, Appellant's numbers of excessively large transactions were multiple times that of the nearby comparable stores which were similarly or better-stocked with similar ethnic food items, including bags of rice. Both of the comparable firms sold fresh meat and produce while the Appellant firm did not.

Lastly, once trafficking is established, there is no latitude to impose a lesser sanction, with the exception of a trafficking civil money penalty. There is provision at 7 CFR §278.6(i) for the imposition of a civil money penalty in lieu of permanent disqualification for trafficking. Appellant was advised of this provision in the SNAP Office's Charge Letter dated March 15, 2017, which also advised that documentation of eligibility for that alternative sanction was to have been provided within a specific time limit. In the absence of any such documentation, a civil money penalty was not imposed in lieu of permanent disqualification by the SNAP Office. The SNAP regulations are specific at 7 CFR §278.6(b)(2)(iii) in that "if a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified (within 10 days of receiving the letter of charges), the firm shall not be eligible for such a penalty." As Appellant did not request such consideration and provided no evidence or information in support thereof, the SNAP Office's decision not to impose a civil money penalty is sustained as appropriate pursuant to 7 CFR §278.6(b)(1); §278.6(b)(2)(ii), §278.6(b)(2)(iii) and §278.6(i).

## **CONCLUSION**

In view of the above, the decision of the ROD Office to permanently disqualify Appellant from participation in the SNAP is hereby sustained. The decision will become final upon the 30<sup>th</sup> day following Appellant's receipt of this document.

## **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 provisions of the Freedom of Information Act (FOIA), FNS is 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.

DANIEL S. LAY  
Administrative Review Officer

February 1, 2018