

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

**Economeat & Fish Market,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0215135**

**FINAL AGENCY DECISION**

The U.S. Department of Agriculture, Food and Nutrition Service (FNS), finds that there is sufficient evidence to support the determination by the Retailer Operations Division to impose a permanent disqualification against Economeat & Fish 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 Retailer Operations Division took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.6(a), (c) and (e)(1)(i), when it imposed a permanent disqualification against Appellant on May 20, 2019.

**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 April 23, 2019, the Retailer Operations Division charged Appellant with trafficking based on a series of irregular SNAP transaction patterns that occurred in July 2018 through December 2018. 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).

Store ownership responded to the charges by letter dated May 2, 2019. The response did request consideration for a CMP, but did not contain any documentation in support of one. The Retailer

Operations Division notified Appellant by letter dated May 20, 2019, that the firm was permanently disqualified from participation as a SNAP retailer 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 dated May 30, 2019, Appellant, through counsel, appealed the Retailer Operations Division's assessment and requested administrative review. The appeal was granted. Counsel also submitted a Freedom of Information Act (FOIA) request via email to USDA FNS on June 18, 2019. USDA FNS responded to this request in a letter dated July 17, 2019, that was received by counsel on July 18, 2019. On August 5, 2019, counsel requested and was approved for an extension of time to respond to August 14, 2019. Subsequent correspondence dated August 14, 2019, was also 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 July 2018 through December 2018. This involved three patterns of EBT transaction characteristics indicative of trafficking:

1. Multiple transactions were made from individual benefit accounts in unusually short time frames.
2. The majority or all of individual recipient benefits were exhausted in unusually short periods of time.
3. 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:

- Appellant cited demographic data for area residents including statistics on households with children or older members as well as the median income of SNAP households;
- The firm is a grocery store with a meat department serving inner city customers for over 10 years with no SNAP complaints or violations. The firm is located in an economically depressed area surrounded by government housing units. The firm stocks a variety of staple foods, but specifically functions as a meat market offering meat plans that are reasonable and affordable. There are no comparable meat markets in the immediate vicinity selling as large a variety at comparable prices. The firm also provides shopping baskets providing the ability for shoppers to gather a substantial amount of food and transport it to the register without difficulty. The firm offers promotional packages such as 40 pounds of chicken wings for \$95.00, 40 pounds of party wings for \$45.00, five pounds of conch for \$55.00, and 10 pounds of ribs \$25.00;
- Appellant cited a FNS 2011 study on SNAP benefit redemption patterns showing that a large portion of households redeemed nearly all their benefits in the first two weeks of

the month. It also provided statistics from a 2016 study by Convenience Store News on customer shopping patterns that shows small grocery and convenience store customers are among the most loyal when it comes to store selection with 70.5 percent of daily and 62.8 percent of weekly shoppers stating they shop at the same store every time. This study also states that SNAP participants shopping daily or weekly are significantly more likely to do so in the morning (6 AM-8:59 AM) on the way to work or school or during the late evening (7 PM-10 PM) while running errands. Low income SNAP households are also more likely to shop at small grocery/convenience stores than non-participants. In 2016, the FMI annual report on grocery shopping trends shows that consumer shopping habits trended toward an increase in the use of convenience stores, small grocery stores, and ethnic food stores. Appellant referenced another Departmental study that SNAP participants spend almost 62 percent of their benefits on meats, sweetened beverages, vegetables, frozen prepared foods, and prepared desserts. Unlike normal shopping habits, SNAP participants buy sweetened beverages, frozen prepared foods, and prepared desserts at a much higher rate than traditional customers;

- The analyzed transactions are no different than previous transactions. Owners are not allowed to request or verify the identity of EBT beneficiaries, verify the EBT card used, or the PIN numbers. The USDA cannot conclude that the firm is involved in any scheme based on their analysis. In some cases, the firm has detected and prevented the use of any EBT card by more than one person by refusing the sale in those cases;
- The Department cites a total of 210 transaction matrices that occurred in July 2018 through December 2018 in support of the charge that these transactions are somehow suspicious. On a regular basis, the participants will make significant grocery purchases from Economeat & Fish Market 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of receiving the deposit into their accounts. It is not uncommon for customers to make multiple purchases in a short period of time after receiving their SNAP benefits. Often, they realize after making their first purchase that they forgot an item or now decide to purchase items they saw while shopping. Also members of the same household will shop together and make their purchases separately using the same EBT card or will go on a spending spree making purchase after purchase without leaving the store or by returning after a brief absence. Households may also participate in co-shopping where different adult household members share shopping responsibilities which could result in separate transactions at the firm in a short period of time. A large portion of SNAP households redeem nearly all their benefits within the first two weeks of the month as stated in a FNS report on redemptions. It also found that 21.4 percent of benefits were immediately used 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of issuance. It is not unexpected that SNAP recipients are going to spend their benefits quickly in this timeframe. In light of the reasonable explanations set forth by the Appellants, it is unlikely that the suspicious transaction patterns were the result of trafficking. Here, the transactions at issue consisted of innocent transactions, made within a 5 U.S.C. § 552 (b)(6) & (b)(7)(C) period at the Appellant firm, that are easily explained by either (1) the participant forgetting an item in his/her prior transaction; (2) co-shopping; and/or (3) the participant making a purchase, returning home, and then returning to make a second purchase. If the transactions were to occur at a 5 U.S.C. § 552 (b)(6) & (b)(7)(C), the 5 U.S.C. § 552 (b)(6) & (b)(7)(C) would not be charged with trafficking;
- The large transactions are because the firm is a meat market where the majority of sales

are meat products. There are many high value meat items as well as several meat plans that may be considered a big ticket item. These plans are tailored to the inner city customers and are reasonable and affordable. The bargain is for our customers to buy in bulk and many customers buy our meat products and freeze them for later consumption. The Department sets forth 379 transactions in Attachment 2 to the charge letter which the Department states resulted in the depletion of the bulk amount of a recipient's SNAP benefits within a short time frame 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and 970 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in Attachment 3 which the Department alleges to be "large" transactions. The owners are not responsible and do not have knowledge about consumers depleting their benefits within a time frame. Sometimes a customer will return to make another transaction or add a product after the cashier has closed the transaction, but these are not considered irregular transactions. The firm will not prevent or discriminate customers from making multiple transactions within any timeframe unless the regulations are changed or advised to do so by USDA. As previously stated, the firm is a specialty meat market with higher value products than an ordinary non-meat market medium grocer and is the only retailer in the immediate vicinity that specializes as a meat market making it very popular among the local SNAP (and non-SNAP) residents. The firm further entices its customers to buy the meat packages by offering freebies with said packages, such as two liter bottles of soda, a loaf of white bread, eggs, and/or additional meat. As previously stated, according to the Department's own research, the top expenditure for SNAP households is Meat, Poultry, and Seafood, and the second is sweetened beverages. Thus, pursuant to the Department's own findings, it is reasonable to expect SNAP customers to spend large amounts and/or the majority of their benefits at the Appellants' Store on meat packages, especially when free sweetened beverages are added to the deals. Here, the question with respect to Attachments 2 and 3 become an issue of whether or not the transactions found in the data could be supported by the firm's substantial inventory – both in quantity and price – which it clearly can. Specifically, as set forth in more detail above, the Store conducted 5 U.S.C. § 552 (b)(6) & (b)(7)(C) worth of food sales in January 2018 through December 2018 – clearly enough to support the SNAP transactions conducted at the Store as set forth by the Department in July 2018 through December 2018. Aside from the firm's substantial inventory, a reasonable and plausible explanation for the higher transactions is that the households conducting the transactions have a larger number of SNAP residents residing therein, thus requiring a larger quantity of grocery products each month than those households with less participants. As the Department has redacted all of the identifying information for the SNAP participants, the Appellants are unable to confirm the actual amount of SNAP residents residing in said households. In summary, the transactions included in Attachments 2 and 3 to the charge letter are not trafficking. They are supported by the firm's substantial inventory and the special meat packages and bundles offered therein, and are reasonably explained by co-shopping, reliance on the Store as a primary grocer for some minutiae of local participants, or the general aberration and statistical outlier to the average whole;

- The onsite inspection cited only a few of the firm's more expensive items, missing all of the meat packages and the bulk meats. Despite noting the more expensive items, the inspector reported lower priced items such as vegetable oil and rice as the most expensive items. The visit report shows the firm was sufficiently stocked in all four staple food

categories and had sufficient provisions to satisfy the purchase amounts listed in the Charge Letter;

- Just as important as the errors/omissions regarding the store's inventory and expensive items is the negative FNS investigation report showing that the store's clerk refused to traffick on July 10, 2018. This report is extremely important and should be given great weight in determining whether the Appellant firm engaged in trafficking. The charge letter shows at least 10 transactions occurred that same day and at least one was likely to have been conducted around the same time as the investigator was in the store. The investigator was denied cash in exchange for SNAP benefits and did not note having witnessed trafficking at the store. This negative report provides concrete evidence that trafficking did not occur at the firm on this date even though the ALERT system flagged at least 10 transactions that trafficking was more likely than not occurring at the firm;
- The November 21, 2018, FNS store visit noted only one POS terminal; however, the charge letter shows three EBT terminals. The Case Analysis Document was heavily redacted making it impossible to determine what the specific issues in the case were and does not appear to have a terminal verification. Since not all of the transactions were appropriately identified they should not be attributed to the Appellant firm. Thus, as some of the transactions contained in the Charge Letter have been erroneously contributed to the Appellant, the disqualification should be withdrawn and the Appellants' SNAP authorization be reinstated. Since the only documentation provided to the Appellants is the charge letter and the Case Analysis Document was heavily redacted, it is impossible for the Appellants to guess what FNS staff took issue with in this case. It is likely that the presence of a Confirmation Bias exists, a tendency to interpret information in a way that supports one's preconceptions leading to statistical errors. This bias is blaringly present in this matter where the Department conducted a RIB investigation at the Appellant firm 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at least 10 transactions listed in the charge letter occurred, yet the FNS investigator was unable to entice the Store's clerk to engage in trafficking. In this instance, ambiguous or contradictory evidence has been disregarded or interpreted in such a way that unreasonably favors the Department's hypothesis that trafficking is occurring at the Appellant firm. A valid statistical analysis should consider all relevant factors and not favor any particular hypothesis;
- It is important to consider the limitations of the ALERT system, as over utilization by the Department has created an internal belief that the system is infallibly accurate. During a 2016 deposition, a USDA witness testified that the ALERT system was developed in the mid-1990's and is designed to sort through every EBT transaction in the country to look for the occurrences of six, or arguably seven, types of transactions. Why these types of transactions are important is not abundantly clear as the Department does not have case studies indicating that these transaction types are indicative of any particular type of wrongdoing within the SNAP regulations. The witness stated that the system simply identifies "suspicious transactions" and that ALERT is unable to distinguish transactions that occur as the result of one type of violation from another. The system is not always accurate as the numbers fail to account for special business practices, differences in demographics and food stuffs, and geographic areas. This evaluation is supposed to be conducted by the analyst, however, the analyst does not understand the system's capabilities and leans too heavily upon the ALERT data, often failing to account for

differences in shopping habits of local participants. Appellant referenced other court cases in support of this contention;

- Another issue that exists with respect to the data analysis is whether or not appropriate comparison stores have been selected to provide a baseline set of data against which to compare the Appellant's transactions. It is entirely impossible to deduce what the actual data used was or the result concluded therefrom since the Case Analysis Document provided is heavily redacted and provides no statistical data or useful information. It is entirely unclear which stores, if any, were used as proper comparison stores and what was also offered therein. As for ALERT's data, the system's conclusions are directly rebutted by the Department's own negative investigation conducted on July 10, 2018 and the fact that the transactions set forth in the report from ALERT include three POS terminal numbers despite the Appellants' firm having one POS terminal as confirmed by the Department's own investigator during the November 21, 2018 store visit. As such, the Appellants have shown by a preponderance of the evidence that the transactions cited in the Charging Letter are more likely than not innocent transactions rather than trafficking. Appellant referenced other court cases in support of this contention;
- The Division has held that without relevant evidence from the retailer, such as itemized cash register receipts, comprehensive pricing information, SNAP recipient statements, federal business tax returns, state tax filings, business banking statements, inventory records, or itemized cash register receipts, it is reasonable for the review to conclude that trafficking more likely than not occurred at the store. Appellant cited cases indicating that where such documents were provided, the presence of these documents would change the outcome of the analysis;
- Appellant submitted the firm's 2018 Corporate Tax Return and the 2018 Profit & Loss Statement, as well as the pricing information for the meat specials/bundles. These documents reflect that the firm conducted **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** worth of food sales in January through December 2018. This total amount of reported food sales supports the innocence and legitimacy of the SNAP transactions conducted at the firm which, according to the Department, amounted **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in July 2018 through December 2018. As such, it is clear that the firm more likely than not conducted innocent transactions rather than trafficking SNAP benefits. These documents are more than sufficient to substantiate the Appellants' claim that the inventory more than satisfied the SNAP transactions in the charge letter, and make it more likely than not that food was being sold in the Store. Furthermore, all of these documents are precisely what the Department has stated it looks for from retailers to demonstrate their innocence. If the Store were trafficking, then said documents would be inconsistent. However, in this instance, there is no inconsistency – the transactions set forth in the Attachments to the charge letter are clearly supported by the financial documents, the firm's inventory and pricing structures, and the Department's own report of the Store conducted on November 21, 2018. As this point, it is more likely that the Department has misidentified legitimate transactions as a result of an errant assumption about the Store's inventory and clientele; and,
- Even though the statistical analysis may suggest trafficking, the owners are not involved in nor do they have any knowledge about these irregular transactions. If the owners are considered liable for any SNAP violations, consideration for a CMP is requested.

Appellant submitted photos of meat products and signage for meat plans and meat specials, the firm's 2018 Profit & Loss statement, the 2018 Corporate federal income tax return, an excerpt from the April 2016 Convenience Store News, the FNS Profile of SNAP Households for Florida Congressional District 27, the FNS November 2016 report of Foods Typically Purchased by SNAP Households, and the FMI report on Grocery Shopping Trends 2016 in support of these contentions.

## **ANALYSIS AND FINDINGS**

Government analyses of stores caught in trafficking violations during on-site investigations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include, in part, those cited in the letter of charges. 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.

The Retailer Operations Division presented a case that Appellant trafficked SNAP benefits. Each Attachment furnished with the letter of charges represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at Appellant's store 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 initially authorized the firm on June 4, 1998. The record shows that the firm received a hardship CMP in lieu of a six month disqualification in 2005 for selling ineligible items in exchange for SNAP benefits during an undercover investigation. The firm also received a warning letter in 2011 and again in 2017 for selling ineligible items in exchange for SNAP benefits during an undercover investigation. The record indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a November 21, 2018, store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information was then used to ascertain if there were justifiable explanations for the firm's suspicious SNAP transactions. The store visit documented the following store size, description, and characteristics:

- The firm was a good sized store offering a moderate 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 limited variety of canned and packaged Hispanic foods, primarily Goya products. There were no other ethnic or specialty food items.
- The store visit report and photos showed no shopping carts and only nine small hand baskets for customer use thus severely limiting the amounts of food that could be moved to the checkout.
- No case sales, bulk items, or other sales were evident that would explain the unusual transactions and no cased items were available for purchase except for beverages.



- The store visit report specifically noted that the firm was not a specialty store and that there were meat packages for sale, but no seafood specials or fruit and vegetable boxes for sale. Seven meat packages were priced at \$28.99, \$29.99, \$54.99, \$64.95, \$64.99, \$99.95, and \$109.99. The stock of fresh and frozen meats was limited making it questionable as to how many meat packages could be sold with existing stock.
- There was only one checkout area that was approximately 2.5 feet wide and 2.0 feet deep with many displays taking up space on both sides leaving a limited area for customers to place their purchases. The 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 also was a specialty cash register for lottery sales.
- The firm had a moderate stock of staple foods that also included many single serving and pre-packaged items with a significant portion of inventory in soda, candy, snacks, and other drinks as well as many ineligible items.
- There was a large deli display case, a kitchen/food prep area, and a large menu board listing prices for a variety of hot and cold sandwiches, cold salads, and hot drinks.
- The firm had a minimal quantity and variety of fresh unprocessed meat or seafood and frozen unprocessed meat or seafood, a limited stock of processed meats (canned meat, poultry, fish; packaged lunch meats; deli meats; sausages, and jerky), no bacon, no hot dogs, no frozen entrees, no frozen dinners, several cartons of eggs, a moderate quantity and variety of fresh fruit or vegetables, a limited selection of frozen vegetables, an extremely limited selection of frozen fruits, no dried fruits, a moderate selection of dried beans and peas, no other dried vegetables, limited selection of single serving nuts, a minimal quantity and variety of canned soups, a moderate quantity and variety of 100 percent fruit juices, no 100 percent vegetable juices, a moderate selection of canned and packaged staple food items, deli cheese, packaged cheese, single serving yogurt, no sour cream, butter, margarine, a very limited selection of baby cereals, no baby foods, no infant formula, bread, rolls, no pitas, no tortillas, no tostadas, corn meal, flour, rice, several pancake mixes, cold cereal, hot cereal, single serving cold cereal, many single serving Ramen noodle soup, a moderate selection of dry pasta and dry noodles, mac&cheese, single serving mac&cheese, coffee, tea, no cocoa, and few expensive staple food items outside of the meat packages and meats.
- Ineligible items included: tobacco, lottery, alcohol, hot food and drinks, household products, paper products, auto products, health and beauty items, ATM, charcoal, lighter fluid, clothing, and hats while accessory foods included: candy, condiments, snacks, baked goods, cooking oil, sugar, single serving ice cream, spices, coffee, tea, baking mixes, and un/carbonated drinks.
- The firm's hours of operation were 7 AM-8 Monday- Saturday and 7 AM-3 PM Sunday as confirmed by the store owner. The owner also stated that the firm did not take phone orders, did not take online grocery orders; did not deliver groceries; and did not round prices up or down.
- Signage was in English 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

ended in .x9 cents. A price ending in .x9 cents is a common pricing structure for smaller grocery stores.

- The FNS store visit report listed the four most expensive food items costing more than \$5.00 for sale in the store, excluding meat packages, as being a one gallon container of Mazola vegetable oil priced at \$14.99, a one gallon container of Crisco vegetable oil priced at \$12.99, a 10 pound bag of parboiled rice priced at \$8.99, and a one gallon container of GV vegetable oil priced at \$7.99. It was noted that there was only one container of Mazola oil, one bag of rice, and four containers of Crisco and GV oil in stock. This listing of the most expensive items was provided by the store owner during the store visit.
- The firm was not a WIC vendor. While the firm did stock an extremely limited selection of baby cereals, most SNAP households with infants or small children are WIC participants and therefore would be purchasing these products at a WIC vendor using WIC vouchers, not SNAP EBT at the Appellant firm.
- The store visit photos showed some empty or marginally stocked display racks, shelves, and coolers. The firm also stocked significantly less fresh meat and poultry than during the previous FNS store visit on September 27, 2017.

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

This Attachment documents 481 individual transactions in 210 sets of two or more transactions conducted by 152 different households in a short period of time.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). There are also 156 individual transactions ending in the same cents amount of .00 cents and 136 ending in the same cents amount of .99 cents.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). These unusual amounts also do not match any of the advertised meat packages. 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 106 of the 210 sets. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). One set is comprised of five individual transactions, 12 sets are comprised of four individual transactions, and 35 sets are comprised of three individual transactions, while the remaining sets are comprised of two individual transactions. There were 10 transactions conducted before the firm's scheduled opening time of 7:00 AM. 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 contends it is not uncommon for customers to make multiple purchases in a short period of time after receiving their SNAP benefits. Often, they realize after making their first purchase that they forgot an item or now decide to purchase items they saw while shopping. Also members of the same household will shop together and make their purchases separately using the same EBT card or will go on a spending spree making purchase after purchase without leaving the store or by returning after a brief absence. Households may also participate in co-shopping where different adult household members share shopping responsibilities which could result in separate transactions at the firm in a short period of time. Here, the transactions at issue consisted of innocent transactions, made within a 5 U.S.C. § 552 (b)(6) & (b)(7)(C) period at the

Appellant firm, that are easily explained by either (1) the participant forgetting an item in his/her prior transaction; (2) co-shopping; and/or (3) the participant making a purchase, returning home, and then returning to make a second purchase. If the transactions were to occur at a 5 U.S.C. § 552 (b)(6) & (b)(7)(C), the 5 U.S.C. § 552 (b)(6) & (b)(7)(C) would not be charged with trafficking. Appellant submitted an excerpt from the April 2016 Convenience Store News for the Single Store Owner, the FNS November 2016 report of Foods Typically Purchased by SNAP Households, and the FMI report on Grocery Shopping Trends 2016 in support of these contentions.

SNAP households have no limit on the number of times they may use their benefits or the dollar value of eligible food they may purchase. The SNAP transactions listed in this Attachment are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of a medium grocery store'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 after checking-out or of household members/friends shopping together and making separate purchases as 178 of the 210 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) with 157 of the 210 sets having subsequent transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C), far more than the cost of a forgotten item or two. Appellant also offers no explanation as to why households would conduct up to five sizeable transactions at a moderately stocked store within a short period of time when there are many larger retail food stores located nearby and at a distance where these households are regularly shopping. This includes a supermarket with a larger selection of fresh meats than the Appellant firm stocks that is located directly across the street as well as a super store and two other supermarkets located within a one mile radius. A comparison of meat prices with the nearest supermarket conducted by the Retailer Operations Division noted that the supermarket offered lower prices. The proximity of the super stores and supermarkets makes it unlikely that any SNAP recipient would consider the Appellant firm as their primary source for groceries. It is also noted that the FNS report on redemptions states, "Households most often redeemed their benefits at supermarkets and supercenters. Purchases at supermarkets and supercenters accounted for nearly two-thirds of all transactions and more than 80 percent of all benefits redeemed".

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 5 U.S.C. § 552 (b)(6) & (b)(7)(C) when the comparable average medium grocery store SNAP transaction amount in Miami Dade County during the review period was \$14.57. These multiple transactions indicate that the amounts were contrived in an attempt to avoid suspiciously high transactions that would be indicative of trafficking by breaking them into multiple, smaller amounts. 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 period under review.

The Retailer Operation Division's analysis of shopping patterns for households listed in this Attachment 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. Their analysis also showed numerous households that shopped at the Appellant firm and a super store and/or supermarket 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and inexplicably spent more at Appellant's medium grocery store than they did 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 moderately stocked grocery 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 supermarkets and super stores. 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.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). A review of this household's shopping pattern shows it shopped at a total of 13 other stores during the review period and that eight of these 13 stores were located more than 4.66 miles from Appellant's location with most transactions being conducted at stores located more than 8.33 miles away indicating that this household likely does not reside near the Appellant firm, yet travelled miles out of its way to shop there. There is no legitimate reason why this household would spend so much of its SNAP allotment at a moderately stocked grocery store when it clearly had access to and frequently shopped at supermarkets and super stores located nearby and at a distance. The more plausible explanation is that this household was trafficking at the firm. Other households analyzed exhibited similar shopping patterns indicative of trafficking.

Appellant claims that co-shopping may account for some of the transaction sets. Appellant's claim is based on a survey that involved interviews with 10 consumers from five two-shopper households in Seattle in 2016. However, a review of the survey report finds no mention of SNAP households being interviewed. This reviewer is also not aware of any co-shopping studies that specifically address SNAP households therefore Appellant's contentions regarding co-shopping are assumptions as opposed to facts and are without any evidentiary value. Appellant's references to the excerpt from the April 2016 Convenience Store News on customer shopping patterns is targeted toward convenience stores or possibly small grocery stores and provides questionable applicability for medium grocery stores. Additionally, Appellant's August 14, 2019, brief references a finding from a USDA report on foods typically purchased by SNAP households which states that, "Unlike normal shopping habits, SNAP participants buy sweetened beverages, frozen prepared foods, and prepared desserts at a much higher rate than traditional consumers". This shows that SNAP households are not comparable to non-SNAP households in all areas which would likely include co-shopping. Also, unlike non-SNAP households, under SNAP regulations there can be multiple benefit households under the same roof each with its own EBT card and SNAP benefits. This provides additional SNAP benefits in a separate EBT account for individuals such as the elderly or disabled living with family members who have

their own shopping priorities or needs. During SNAP eligibility interviews, the family structure is carefully evaluated to determine if multiple households may be authorized which would reduce the numbers, if any, of SNAP recipients co-shopping. Based on this discussion, it seems unlikely that co-shopping would have any measurable effect on SNAP shopping patterns.

Ten of the transactions in this Attachment occurred well before the firm's reported business hours with transactions occurring as early as 6:23 AM and in amounts **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The firm's reported business hours have the firm closing at 8:00 PM and opening at 7:00 AM. Large dollar transactions occurring well outside of store business hours are indicative of trafficking.

The Appellant firm processed several transaction pairs, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, markedly faster than supermarkets typically process purchases, yet the Appellant firm does not have an optical scanner or any of the logistical tools such as conveyor belts, rotating bagging platforms, or order separators that are routinely used in rapid throughput operations. It is therefore improbable that large dollar value transactions for the purchase of legitimate food items which would consist of a substantial number of lower priced items based on Appellant's stock could be processed in the times listed in this Attachment given the facilities at the firm. The large transaction dollar amounts and the short interval between transactions in this Attachment demonstrate the improbability of these being legitimate eligible food purchases and suggest trafficking as the most likely explanation.

There also were an unusually large number of individual transactions ending in same cents amounts, specifically 156 ending in .00 cents and 136 ending in .99 cents as well as a large number of high dollar transactions for the exact same amounts. The firm's pricing structure had most prices ending in .x9 cents as confirmed by the store owner during the November 21, 2018, store visit and would not have accounted for this disproportionately large percentage of transactions ending in same cents amounts. The visit report, completed in conjunction with the store owner, specifically noted that the firm's pricing structure has the majority of food prices ending in .x9 cents and that the firm does not round transaction totals up or down. 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 or .99 cents as multiples of .x9 cents (e.g. .09, .18, .27, etc.) seldom have a value ending in .00 or .99 cents making it statistically impossible that this many store transactions would end in .00 or .99 cents with legitimate food purchases. Additionally, a review of the pricing for the firm's seven meat packages shows that they do not account for the large number of high dollar transactions for the exact same amounts. With no alternative explanation or hypothesis advanced by the Appellant, these transactions are indicative of trafficking.

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 379 EBT transactions in 263 sets of one or more transactions involving 195 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). 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 in a period 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 good sized medium grocery store offering a moderate quantity and variety of staple foods as well as a large variety of accessory foods and ineligible nonfood items. The store visit report shows that the firm does not carry any unique items or offer any distinctive services outside of several meat packages. 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 is a nearby supermarket directly across the street from Appellant's location that offers a greater quantity and variety of staple foods at better prices. The Retailer Operations Division 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 contends that the large transactions are because the firm is a meat market where the majority of sales are meat products. As previously stated, according to the Department's own research, the top expenditure for SNAP households is Meat, Poultry, and Seafood, and the second is sweetened beverages. Thus, pursuant to the Department's own findings, it is reasonable to expect SNAP customers to spend large amounts and/or the majority of their benefits at the Appellants' store on meat packages, especially when free sweetened beverages are added to the deals and that the firm further entices its customers to buy the meat packages by offering freebies with said packages, such as two liter bottles of soda, a loaf of white bread, eggs,

and/or additional meat. The owners stated that they are not responsible and do not have knowledge about consumers depleting their benefits within a time frame. A large portion of SNAP households redeem nearly all their benefits within the first two weeks of the month as stated in a FNS report on redemptions. It also found that 21.4 percent of benefits were immediately **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** of issuance. It is not unexpected that SNAP recipients are going to spend their benefits quickly in this timeframe. In light of the reasonable explanations set forth by the Appellants, it is unlikely that the suspicious transaction patterns were the result of trafficking.

A review of the transactions in this Attachment shows that nearly one-third of the transaction sets **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The SNAP benefit issuance level for a single person household with no reported income during the review period **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** indicating that many of these transactions were likely conducted by single person households. While better prices may be achieved by purchasing meat packages, it seems unlikely that single person households would be purchasing large quantities of meat and exhausting their limited SNAP benefits leaving no funds to purchase staple food items needed for the remainder of the month until the next month's issuance. It would also be difficult for households to store that much meat as it is perishable and storage space would be limited for most households. This would especially be true for those households living in subsidized housing who most likely have only a standard refrigerator with a small freezer compartment. Additionally, none of the transaction sets in this Attachment are in the amounts of the Appellant firm's meat packages.

SNAP households may purchase large quantities of sweetened beverages; however, Appellant's claim that these households who are also regularly shopping at larger stores would be more likely to purchase an expensive meat package at a moderately stocked grocery store just because it comes with a free two liter bottle of soda is demeaning and without basis. While SNAP households do tend to make larger purchases in the days immediately following receipt of their monthly allotment, the behavior by households in this Attachment is contrary to the documented shopping patterns of SNAP households, as previously discussed, who typically make just over nine transactions each month consisting of relatively small dollar amounts. Also, no explanation or rationale has been offered by Appellant as to why households that are regularly shopping at larger stores offering a greater variety and quantity of SNAP eligible food stock at lower prices and who apparently have no transportation limitations would be conducting high dollar transactions at a store that offers only a moderate selection of staple food items and has no shopping carts that would be needed for the large transactions in this Attachment. Appellant also does not provide any specific explanations for the irregular shopping patterns exhibited by the households listed in this Attachment or why they would deplete or exhaust their SNAP benefits in a short period of time with some conducting up to five multiple transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Based on this discussion, trafficking is the only feasible explanation for the irregular shopping patterns.

It should be noted that this Attachment is not targeting excessively large transactions per se. It represents a pattern whereby 195 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)**, all on the same day. As previously noted, this is not typical shopping behavior exhibited among SNAP recipients.

## High Dollar Value Transactions

This Attachment lists 970 individual EBT 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 moderate stock of staple foods and calls into question the legitimacy of these transactions. Many of these transactions end in the same cents amounts of .00 and .99 cents, as previously discussed, that are not supported by the firm's pricing structure or inventory. The transactions are also substantially higher than the average SNAP transaction amount of \$14.57 for this store type in Miami Dade County. This is unusual and indicative of trafficking.

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 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 smaller grocery stores out of necessity, this is not the case when they have better alternatives. FNS records show there are 24 comparably sized or larger SNAP retailers located within a 2.0 mile radius of the Appellant firm that includes four super stores, nine supermarkets, three large grocery stores, and eight medium grocery stores as well as one meat specialty store and two seafood specialty stores. As previously stated, the nearest supermarket is located directly across the street from the Appellant firm. The many larger stores would offer greater quantities and varieties of staple food items at lower prices than would be found at this moderately stocked grocery store.

The difference in the average SNAP transaction amount, the total SNAP transaction dollar volume, and the total SNAP transaction count for Miami Dade County medium grocery stores during the review months and at the Appellant firm is significant. Appellant's average SNAP transaction amount is **5 U.S.C. § 552 (b)(7)(E)** larger than that of Miami Dade County medium grocery stores while its average SNAP transaction dollar volume is **5 U.S.C. § 552 (b)(7)(E)** larger and its total SNAP transaction count is **5 U.S.C. § 552 (b)(7)(E)** 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 Retailer Operations Division 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 Miami Dade County. A comparison of Appellant's redemption data to the average for County medium grocery stores using ten dollar increments shows that Appellant's transaction count and dollar volume significantly exceeds 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 Miami Dade County medium grocery stores begin averaging less than one transaction in each range **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, less than 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. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. 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 Retailer Operations Division determined there was no credible reason for the firm to have transactions at these dollar levels given the moderate stock of staple foods and the lack of any specialty 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 as these transactions do not match the meat package prices at the Appellant firm.

Appellant states the firm is a grocery store with a meat department serving inner city customers for over 10 years with no SNAP complaints or violations. The firm is located in an economically depressed area surrounded by government housing units. The firm stocks a variety of staple foods, but specifically functions as a meat market offering meat plans that are reasonable and affordable. There are no comparable meat markets in the immediate vicinity selling as large a variety at comparable prices. The firm also provides shopping baskets providing the ability for shoppers to gather a substantial amount of food and transport it to the register without difficulty. The firm offers promotional packages such as 40 pounds of chicken wings for \$95.00, 40 pounds of party wings for \$45.00, five pounds of conch for \$55.00, and 10 pounds of ribs \$25.00. On a regular basis, the participants will make significant grocery purchases from Economeat & Fish Market **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** of receiving the deposit into their accounts. There are many high value meat items as well as several meat plans that may be considered a big ticket item. The bargain is for our customers to buy in bulk and many customers buy our meat products and freeze them for later consumption. The question with respect to Attachments 2 and 3 become an issue of whether or not the transactions found in the data could be supported by the firm's substantial inventory – both in quantity and price – which it clearly can. Specifically, as set forth in more detail above, the store conducted **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** of food sales in January 2018 through December 2018 – clearly enough to support the SNAP transactions conducted at the Store as set forth by the Department in July 2018 through December 2018. Aside from the firm's substantial inventory, a reasonable and plausible explanation for the higher transactions is that the households conducting the transactions have a larger number of SNAP residents residing therein, thus requiring a larger quantity of grocery products each month than those households with less participants. As the Department has redacted all of the identifying information for the SNAP participants, the Appellants are unable to confirm the actual amount of SNAP residents residing in said households. In summary, the transactions included in Attachments 2 and 3 to the charge letter are not trafficking. They are supported by the firm's substantial inventory and the special meat packages and bundles offered

therein, and are reasonably explained by co-shopping, reliance on the Store as a primary grocer for some minutiae of local participants, or the general aberration and statistical outlier to the average whole. Appellant submitted six photos of meat products and signage for meat packages and meat specials, the firm's 2018 Profit & Loss statement, the 2018 corporate federal income tax return, and the FNS Profile of SNAP Households for Florida Congressional District 27 in support of these contentions.

Contrary to Appellant's claims that the firm has had no SNAP violations, the record shows the firm received a hardship CMP in 2005 in lieu of a six month disqualification for selling ineligible items in exchange for SNAP benefits during an undercover investigation. The firm also received a warning letter in 2011 and again in 2017 for selling ineligible items in exchange for SNAP benefits during an undercover investigation. Additionally, Appellant submitted the FNS Profile for Florida Congressional District 27 that provides demographic data for SNAP households within the District when the firm, in fact, is in Congressional District 24 as shown by [www.govtrack.us](http://www.govtrack.us) and confirmed by the US House of Representative's Find Your Representative web page. It is not unusual for SNAP recipients to live in economically depressed areas with low median income levels, but this alone does not explain the unusual and suspicious transactions listed in the charge letter. Many SNAP households also live in subsidized housing that may be government housing areas or private housing that participates in subsidized government programs. A review of low income housing near the Appellant firm conducted by the Retailer Operations Division shows that the closest housing property is located 0.3 miles away. While there is a homeless shelter located across the street, it provides communal dining for residents so they would not be conducting large transactions at the Appellant firm. Appellant also offers no explanation or evidence that supports how these SNAP households are storing the perishable meats they are allegedly purchasing in bulk quantities. Storage space would be limited for most of these low income households living in subsidized housing to a standard refrigerator with a small freezer compartment. Appellant's claim of co-shopping has been previously discussed and dismissed.

The majority of the photos provided by Appellant show the same signage advertising seven meat packages that was evident during the November 21, 2018, FNS store visit with the exception of the large sign advertising bulk meat specials such as chicken wings and conch. A review of photos from the FNS September 27, 2017, store visit also do not show this sign suggesting that it was added after the fact in an effort by store ownership to explain the high dollar value transactions. As stated previously, the suspicious transactions listed in the charge letter do not reflect the prices for Appellant's meat packages therefore there appears to be no correlation between the meat packages and the high dollar transactions listed in this Attachment. While it would be expected that some SNAP recipients may shop at the Appellant firm to purchase some meats and packages, the Retailer Operations Division's analysis of household shopping patterns shows that they are shopping at the supermarket located across the street and at other supermarkets and super stores where they can purchase meat and seafood at cheaper prices than can be found at the Appellant firm.

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 Retailer Operations Division shows that

households in this Attachment 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.

Information obtained during the FNS store visit on November 21, 2018, shows that the Appellant firm offers a moderate quantity and variety of SNAP eligible staple food items, many accessory foods, and many ineligible items. Much of the inventory for sale consists of inexpensive snacks, candy, drinks, and various single serving foods as well as many ineligible items. The fact that tobacco, lottery, alcohol, hot food and drinks, household products, paper products, auto products, health and beauty items, ATM, charcoal, lighter fluid, clothing, and hats 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 EBT receipts for the period under review to document the legitimacy of these excessively large transactions. The firm also has a very small checkout area and no shopping carts 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 only a moderate 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.

A review of the Appellant's IRS 1120S report shows 2018 gross profits 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Previous documents from store ownership show 2012 sales of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) with 10 percent in ineligible items. By subtracting 10 percent from the gross profits to account for ineligible items and another 20 percent to account for food purchases made using cash, credit, or debit cards reduces the amount to 5 U.S.C. § 552 (b)(6) & (b)(7)(C) that can be attributed to SNAP sales. The firm's 2018 SNAP redemptions totaled 5 U.S.C. § 552 (b)(6) & (b)(7)(C) leaving a deficit of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and showing that the firm did not have enough food sales to cover SNAP redemptions. Insufficient inventory is an indication of trafficking. Appellant's statement, previously cited, that the store conducted 5 U.S.C. § 552 (b)(6) & (b)(7)(C) worth of food sales in January 2018 through December 2018 that is clearly enough to support the SNAP transactions conducted at the Store as set forth by the Department in July 2018 through December 2018 is seriously flawed as it compares store sales over a 12 month period to SNAP redemptions over the six month period reviewed by FNS.

It is further noted that SNAP redemptions at the Appellant firm fluctuated unusually following receipt of the charge letter on April 25, 2019. The average SNAP transaction dollar amount decreased 49.78 percent from April 2019 to May 2019 while the volume of SNAP redemptions

decreased 67.56 percent over the same period. A pronounced increase or decrease in SNAP redemptions following 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. Even though the firm's SNAP license was terminated on May 21, 2019, these drops far exceed the approximately 33 percent reduction, at the most, that would result from not redeeming SNAP benefits during the last 10 days of the month.

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

### **High Priced Items, Bulk Specials Signage, and Point of Sale (POS) Terminal Verification**

Appellant claims the November 21, 2018, FNS store visit report section listing high priced items offered for sale at the Appellant firm is deficient as it does not list any of the meat packages or the bulk specials, but listed some of the store's lower priced items as being the most expensive items. A review of the report form directions for this section shows that it clearly directs the contract reviewer to exclude any meat bundles, seafood specials, and fruit/vegetable boxes from the listing of the four most expensive SNAP eligible food items costing \$5.00 or higher. Thus, the report was accurate. Appellant's claim that the FNS store visit photos capture the bulk specials such as chicken wings and conch is completely false as the FNS store visit photos clearly show a bare wall to the right of the Plan A Breakfast meat package sign where Appellant's apparently staged photo shows the bulk specials sign. Appellant also alleges that since the store visit report lists only one POS terminal while the charge letter transactions reflect three different terminals that transactions from other stores may be included in the charge letter transactions. It is noted that the store visit report form was completed in conjunction with the store owner and that the number of POS terminals in operation during the visit was based on information provided by the owner during the visit. Also, as part of the Retailer Operations Division investigation, the numbers of POS terminals in use at the Appellant firm during the review period were researched to ensure they reflect only those transactions actually occurring at the firm. This research showed that the charge letter transactions were processed by three different POS terminals during the review period. Specifically, terminal 0099 was used from July 4-September 12, 2018; terminal 0420 was used from July 1-September 4, 2018; and terminal 0904 was used from September 4-December 31, 2018, so the store visit report is accurate as to the numbers of POS terminals in operation on the day of the visit.

### **Negative RIB Investigation Report**

Appellant contends that because a FNS undercover investigator visited the firm during the review period on July 10, 2018, and the cashier refused to exchange SNAP benefits for cash that this legitimizes the approximately 10 transactions listed in the charge letter on the same date. Appellant further states that this refusal constitutes concrete evidence that no trafficking occurred on that date and therefore contradicts the transactions flagged by the ALERT system for the same date.

The evidence shows that the undercover investigator had made one previous visit to the store more than a month earlier and was waited on by a different clerk. Common sense would dictate

that it would not be unusual for a clerk to refuse to traffick SNAP benefits when approached by a complete stranger. It would also be common sense to expect that if a firm were to traffick SNAP benefits, that it would limit this to transactions made by long-term customers and/or by friends and family members. This would be especially true in a firm that has previously received a hardship CMP in lieu of a term disqualification in addition to two warning letters for allowing the sale of ineligible items in exchange for SNAP benefits.

### **Other Contentions**

Regarding Appellant's denial of trafficking, the purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division 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. When store ownership signed the certification page of the SNAP retailer authorization application to become a SNAP retailer, it confirmed it understood and agreed to abide by program rules and regulatory provisions. It also agreed to accept responsibility on behalf of the firm for violations of the SNAP including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time. The certification is clear that store 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.

In regard to case law cited by Appellant, considerations of relevant legal precedent through case law, or the lack thereof in relation to the present case, are beyond the scope of this review; this review relies upon the statute and regulations governing the SNAP and evaluates whether the decision to impose a disqualification upon the Appellant was in accordance with same and sustainable by a preponderance of the evidence. Appellant's case law references are acknowledged in this context only.

Appellant claims that determinations made by certain administrative review officers imply that the presence of relevant evidence from the retailer, such as itemized cash register receipts, comprehensive pricing information, SNAP recipient statements, federal business tax returns, state tax filings, business banking statements, inventory records, itemized cash register receipts, etc. would be sufficient to conclude that trafficking was more likely to have not occurred at the firm under review. Appellant cited cases indicating that if such documents were provided, the presence of these documents would have changed the outcome of the analysis. While documents such as those cited by Appellant are useful in determining whether the charge letter transactions represent legitimate purchases of eligible food items, their mere existence does not provide compelling evidence in support of the transactions being legitimate. Any documents provided must be fully analyzed to determine their probative value in the matter under review. Appellant appears to have misinterpreted the wording in these decisions.

Regarding Appellant's contentions concerning the ALERT system, the record in this case documents that the Retailer Operations Division analyst knew the limitations of the ALERT system and that ALERT does not identify trafficking or credit, but only identifies suspicious transactions. This knowledge was used to conduct a thorough examination and analysis of pertinent information that ultimately lead to the determination of trafficking at the Appellant business. The record, as previously stated, also shows that the analyst correctly identified like type stores offering the same type of foods and used these stores as comparison stores. There is also no basis to support Appellant's claim of a "Confirmation Bias" being present in this case. The firm was moderately stocked as evidenced by the FNS store visit report and photos, had suspicious transaction patterns, and had insufficient inventory to support redemptions. Also, any issues concerning the level of redaction present in the Case Analysis Document may be addressed through the FOIA appeal process.

The owners 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.

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 Retailer Operations Division staff before the decision was made to issue a charge letter. This investigative process included a detailed examination of information obtained from various sources, including, but not limited to the inventory report and 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 Retailer Operations Division determined that the Appellant was not eligible for a trafficking CMP in lieu of a disqualification under 7 CFR 278.6(i) because Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations within the specified timeframe. As such, the Retailer Operations Division determined that Appellant was not eligible for a trafficking CMP in lieu of permanent disqualification.

Although store ownership, in its reply to the FNS charge letter, requested a CMP, no evidence in support of the CMP was provided. 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 provide substantial evidence that it met all four criteria required by 7 CFR §278.6(i). Based on the above, the Retailer Operations Division’s decision not to impose a CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR §278.6(i).

## **CONCLUSION**

The Retailer Operations Division 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 three 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 Retailer Operations Division 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

September 23, 2019