

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

**Freetown Big Market #1,**

**Appellant,**

**v.**

**Case Number: C0195871**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

It is the decision of the USDA that there is sufficient evidence to support that the Retailer Operations Division properly imposed a permanent disqualification of Freetown Big Market #1 from participation 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 Code of Federal Regulations (CFR) Part 278 in its administration of the SNAP, when it imposed a permanent disqualification against Freetown Big Market #1.

**AUTHORITY**

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

**CASE CHRONOLOGY**

In a letter dated December 29, 2016, 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 April 2016 through September 2016. The letter noted that the penalty

for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter stated the Appellant had the right to respond to the charges within 10 days of receipt to provide explanations for the irregular SNAP transaction patterns. The letter also stated 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 Appellant submitted a written response to the charges in a letter dated January 6, 2017. The Appellant denied the charges of trafficking and submitted a series of exhibits which included the affidavit of the owner as well as purchase invoices and other documents. The Appellant did not request a trafficking CMP in lieu of a permanent disqualification.

After considering the Appellant's response and all the evidence in the case, the Retailer Operations Division issued a determination letter dated August 17, 2017. The determination letter informed the Appellant it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The determination letter also stated that the Retailer Operations Division considered the Appellant's eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations. The Retailer Operations Division determined that the Appellant was not eligible for a trafficking CMP because the Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter postmarked August 24, 2017, the Appellant requested an administrative review of the Retailer Operation Division's determination. The request for administrative review was granted.

### **STANDARD OF REVIEW**

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

### **CONTROLLING LAW AND REGULATIONS**

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

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(e)(1)(i) states:

*FNS shall 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 or selling of ... [SNAP] benefits for cash or consideration other than eligible food ....

7 CFR § 271.2 states, *inter alia*:

*Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption.*

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

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

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

*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) states, *inter alia*:

(ii) *Firms that request consideration of a civil money penalty in lieu of a*

*permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence as specified in § 278.6(i), that establishes the firm's eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in § 278.6(i). This information and evidence shall be submitted within 10 days, as specified in § 278.6(b)(1).* [Emphasis added.]

*(iii) If a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified in § 278.6(b)(1), the firm shall not be eligible for such a penalty.* [Emphasis added.]

## SUMMARY OF CHARGES

The Appellant was charged and determined to be trafficking based on an analysis of electronic benefit transfer (EBT) transaction data from April 2016 through September 2016. This involved the following transaction patterns which are trafficking indicators:

- In a series of transactions, multiple transactions were made from individual household benefit accounts within unusually short timeframes.
- In a series of transactions, the majority or all of individual recipient benefits were exhausted in unusually short periods of time.
- In a series of transactions, excessively large purchase transactions were made from recipient accounts.

**Charge Letter Attachment 1: Multiple transactions were made from individual benefit accounts in unusually short time frames.** This attachment lists 30 sets of 66 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Violating stores often conduct multiple transactions from the same household account to avoid the detection of single high dollar transactions that cannot be supported by the retailer's food inventory and infrastructure.

**Charge Letter Attachment 2: In a series of transactions, the majority or all of individual recipient benefits were exhausted in unusually short periods of time.** This attachment lists sets of 42 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP benefits. SNAP recipients do not normally exhaust their benefits in multiple transactions or a single large transaction in a short period of time.

**Charge Letter Attachment 3: Excessively large purchase transactions were made from recipient accounts.** This attachment lists 266 SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The

substantial number of high dollar purchases atypical of a SNAP authorized combination grocery store calls into question the legitimacy of these transactions.

### **APPELLANT'S CONTENTIONS**

The Appellant made the following summarized contentions in its request for administrative review, in relevant part:

- The Appellant denies all charges of trafficking in SNAP benefits.
- As shown by Exhibits 1 through 7, Freetown Big Market #1 is a major importer and retailer of rare African foods and purchases substantial amounts of food items including meat.
- Regarding the transactions cited in Charge Letter Attachment 1:
  - The store has no free parking and clients often have to rush outside to put money in the meter. They then come back and make another purchase.
  - After making an initial purchase, customers will often see other items while exiting the store and will then come back to select those items.
  - Women with children may not be able to carry all the items they intended to buy and will come back to make additional purchases.
  - The back-to-back transactions are due to customers making a purchase without knowing the balance on their card; when they see their balance on the receipt that will make a second purchase.
  - On a few occasions, the terminal died and resulted in two swipes of the card; when the mistake was realized the store contacted the customer to rectify the overcharge.
  - Customers will often make a purchase and then decide to window shop at other nearby African stores to compare prices; when they realize that prices are better at the Appellant store they come back to make additional purchases.
  - The store was never informed that back-to-back purchases were against the regulations.
- Regarding the transactions cited in Charge Letter Attachment 2:
  - The store was never informed that there was a spending limit for each customer and there is nothing in the SNAP regulations that states this.
  - There is nothing in regulations that states that the store is required to check the customer's SNAP balance.
  - The store has no personal relationship with shoppers and does not know how much is on the card; therefore, customers will decide on how much they want to spend and how often they swipe their card.
  - The store customers often purchase in bulk as shown by the store's credit card transactions.
- Regarding the transactions cited in Charge Letter Attachment 3:
  - The African food products sold by the store are not cheap. The store sells smoked fish at \$12.00 per pound; goat meat at \$5.49 to

\$6.00 per pound; 5 gallons of palm oil for \$50.00; 32 pound buckets of peanut butter for \$50.00; and 100 pound bags of rice for about \$50.00.

- The charge letter transactions may be unusual for an American grocer; however, such spending is prevalent in the ethnic African business district. There are at least 20 such similar African ethnic food businesses nearby.
- It is typical for African ethnic food stores to round off prices as people from West African are more comfortable paying in whole dollar amounts.
- The store inspector failed to assess the entire store and did not take photographs of the meat market, walk-in freezer and extra storage unit. The Appellant has provided evidence of the extra storage unit and receipts showing that the store is a frequent importer of large quantities of ethnic African foods.
- Freetown Big Market #1 was never warned by FNS about the possibility of violations occurring.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. Please be assured, however, in reaching a decision, full attention was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

## **ANALYSIS AND FINDINGS**

### **Authorization History**

The Food & Nutrition Service (FNS) authorized Freetown Big Market #1 for the SNAP on November 20, 2013. The Retailer Operations Division classified Freetown Big Market #1 as a combination grocery store during the review period.

The owner signed the SNAP application for the store on September 14, 2013 and acknowledged that the owner was aware of the SNAP regulations and understood those regulations. That application included a certification and confirmation that the owner would "accept responsibility on behalf of the firm for violations of the SNAP regulations, including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time." The violations listed on this certification include accepting SNAP benefits in exchange for cash, otherwise known as trafficking, and other violations including accepting SNAP benefits for ineligible items or as repayment on credit accounts.

### **Store Visit Report**

The case record documents that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during an October 29, 2016 store visit conducted by an FNS contractor to observe the nature and scope of the firm's operation, stock and facilities. This information was then used to ascertain if there were justifiable explanations for the store's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Freetown Big Market #1 is approximately 500 square feet in size and operates out of a freestanding building in an urban commercial area.
- The store had two (2) shopping baskets and no shopping carts for customer use.
- The store had one (1) cash register and one (1) point-of-sale device.
- The store had no optical scanners or conveyor belts.
- There was no food stored outside of public view in a storage area.
- There were no large bulk foods, international or specialty foods that might sell for a high price. There were no fresh meat/seafood bundles or fresh fruit/vegetable boxes for sale.
- The checkout area consisted of a small counter and window opening in a Plexiglas barrier. As a result of the limited space there was little room to stack purchases and the checkout area was not conducive to conducting large transactions.

The SNAP eligible food stocked by the store was generally of a low dollar value consisting mainly of inexpensive canned and packaged goods, snack foods, single-serving food items and accessory food items. The more expensive items included bags of rice and small packages of frozen meats and frozen vegetables which were located in several reach in coolers. Accessory food items included, but were not limited to: coffee, tea, carbonated and non-carbonated drinks, condiments, and spices. The stocked ineligible items included health and beauty products, paper goods, general housewares, and household cleaning products. The store offered a money transfer service and other services including but not limited to photocopying and key copying.

### **Multiple Transactions by the Same Household within a Short Time Period**

SNAP households have no limit on the number of times they may use their SNAP cards or how much eligible food they may purchase. However, the SNAP transactions noted in the charge letter 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 combination grocery store's stock and facilities and are thus indicative of trafficking.

Violating stores often conduct multiple transactions from the same household account as a method to avoid the detection of single high dollar transactions that

cannot be supported by the retailer's food inventory and infrastructure. Charge Letter Attachment 1 lists sets of 66 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E). It is not credible that a combination grocery store, even one selling international foods, would have suspicious SNAP transactions exceeding the average SNAP transaction of a superstore, supermarket or meat market in Pennsylvania. It is even less likely that these excessively large transactions would be conducted multiple times by the same household during a short time period.

The Appellant states that the store has no free parking and clients often have to rush outside to put money in the meter. They then come back and make another purchase. The Appellant provides no evidence to support this contention and it is unlikely that customers would be able to accomplish this task considering the size of the purchases and the fact that the store has no shopping baskets to transport food to their cars.

The Appellant states that after making an initial purchase, customers will often see other items while exiting the store and will then come back to select those items. While it is possible that a SNAP recipient could forget an item or two and make a second purchase, it is very unlikely that the second purchase would greatly exceed the average for a SNAP authorized combination grocery store in Pennsylvania during the review period. 5 U.S.C. § 552 (b)(7)(E).

The Appellant states that women with children may not be able to carry all the items they intended to buy and will come back to make additional purchases. Regarding this contention, in each set of transactions, there is at least one excessively large transaction that would require a shopping cart to transport food around the store and Freetown Big Market #1 has no shopping carts.

The Appellant states that the back-to-back transactions are due to customers making a purchase without knowing the balance on their card; when they see their balance on the receipt that will make a second purchase. This contention is unlikely as SNAP recipients may run balance inquiries at the store to determine the balance on their card. Several transactions cited in Charge Letter Attachment 2 show that balance inquiries were being conducted at the store and store personnel should be familiar with this process.

The Appellant states that on a few occasions, the terminal died and resulted in two swipes of the card; when the mistake was realized the store contacted the customer to rectify the overcharge. Charge Letter Attachment 1 shows only two instances in which the same amount was swiped twice. 5 U.S.C. § 552 (b)(7)(E). Lastly, the Appellant has provided no evidence that it contacted any customers to refund their SNAP benefits and any such refunds would have to be put directly back into the EBT account.



The Appellant states that customers will often make a purchase and then decide to window shop at other nearby African stores to compare prices; when they realize that prices are better at the Appellant store they come back to make additional purchases. 5 U.S.C. § 552 (b)(7)(E). This process would involve transporting the second purchase items to the limited checkout area without the benefit of shopping carts, having the amount keyed at the register, a card swiped, a PIN entered, an approval indicated and a receipt printed. This process would also include the transportation and storage of items purchased from the first transaction whether in the car or being taken home.

The store visit pictures show that is unlikely that SNAP customers would want to shop at this store multiple times during a short time frame, or purchase such a large volume of items, there being no great variety of products, price advantage, profusion of large packages, or significant bulk items for sale. In addition, the store's limited counter space makes it unsuitable for conducting large transactions. The store also has no shopping carts for transporting food within the store. Based on the analysis above, and in the absence of any other reasonable explanation, the irregular transaction patterns are more likely than not to be a result of trafficking in SNAP benefits.

### **Exhaustion of Benefits in a Short Time Frame**

Charge Letter Attachment 2 lists sets of 42 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in which SNAP benefits were exhausted or nearly exhausted in a short time frame. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The Appellant states that the store was never informed that there was a spending limit for each customer and there is nothing in the SNAP regulations that states this. Regarding this contention, it is true that SNAP households have no limit on the amount of eligible food they may purchase (subject to the remaining balance on the card). However, the SNAP transactions noted in the charge letter are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the known spending habits of SNAP customers. A government report on SNAP shopping patterns<sup>1</sup> indicates that after the first day of benefit issuance, on average, 80 percent of a household's allotment remains unspent. Even after seven days, 40 percent of benefits still remain unspent. It takes two weeks to deplete 80 percent of one's benefits, and three weeks to deplete 90 percent. Although many SNAP households do shop early in the month as opposed to later in the month, most households do not spend all or a majority of their monthly benefits in only a day or two. Depleting one's entire allotment in one or two days, or in a single large transaction, leaving no benefits for the remainder of the month, is inconsistent with the normal shopping behavior of SNAP households.

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<sup>1</sup> "Analysis of EBT Benefit Redemption Patterns: Methods for Obtaining, Preparing, and Analyzing the Data," report prepared by Abt Associates for the Food and Nutrition Service, USDA, November 2005.

The Appellant states that there is nothing in regulations that states that the store is required to check the customer's SNAP balance. Further, the store has no personal relationship with shoppers and does not know how much is on the card; therefore, customers will decide on how much they want to spend and how often they swipe their card. Regarding this contention, it is true that stores are not required to check the customer's balance before making a transaction. However, the transactions cited in Charge Letter Attachment 2 show six (6) instances in which the SNAP recipient made a balance inquiry before making an excessively large transaction which depleted or nearly depleted their remaining benefits.

Therefore, it is likely that both the store and its SNAP customers are familiar with this process. Three of these large dollar transactions occurred **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** after the balance inquiry which would not be enough time for shopping and it is unlikely that a customer would select a large amount of food, transport it to the restricted counter space without the benefit of a shopping cart, and only then make a balance inquiry.

The Appellant supplied a spreadsheet of its alleged credit card transactions showing large purchase amounts. The Appellant contends that this proves that its store customers often purchase in bulk. However, this information is insufficient to prove that the store's SNAP transactions are legitimate. The credit card transactions would normally include ineligible non-food items and services that would not be allowed in SNAP transactions. In addition, the store visit photographs do not show any products packaged for bulk sales or any indication of advertisements informing store customers of the sale of bulk items.

None of the above explanations are sufficient to explain how the store is conducting transactions that are many times higher than a SNAP authorized Pennsylvania meat market, supermarket or superstore during the review period. Based on a preponderance of the evidence these irregular transaction patterns are more likely than not the result of trafficking in SNAP benefits.

### **Excessively Large Transactions**

SNAP households have no limit on the amount of eligible food they may purchase (subject to the remaining balance on the card). However, the SNAP transactions noted in the charge letter 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 combination grocery store's stock and facilities and are thus indicative of trafficking.

Charge Letter Attachment 3 cites 266 SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. **5 U.S.C. § 552 (b)(7)(E)**.

The Appellant states that the African food products sold by the store are not cheap. Allegedly, the store sells smoked fish at \$12.00 per pound; goat meat at \$5.49 to \$6.00 per pound; 5 gallons of palm oil for \$50.00; 32 pound buckets of peanut butter for \$50.00; and 100 pound bags of rice for about \$50.00. It is possible that the store does sell some of these products at the prices listed. However, the Retailer Operations Division determined that the store conducted a disproportionate number of high dollar food stamp transactions that appear unreasonable in comparison to the store's actual stock as determined by the store visit report. The store does not sell food in pallets or in bulk. The firm does not offer any specials, deals, fresh poultry, fresh meats, promotional items or incentives to have customers constantly shop at this location.

The Appellant states that the charge letter transactions may be unusual for an American grocer but that such spending is prevalent in the ethnic African business district. It is true that sometimes a store may have higher than normal SNAP transactions due to the lack of other SNAP authorized stores in the area or where a store is the only one selling specialty or international items. However, the Retailer Operations Division determined that within a half-mile radius of Freetown Big Market #1 there were, during the review period, 49 SNAP authorized stores including 24 small grocery stores, three (3) medium grocery stores, one (1) large grocery store, and one (1) superstore. At least six of these stores sold African and international food. Thus, the Appellant's excessively high SNAP transactions are not explained by a lack of SNAP authorized stores in the area or the lack of stores selling African food. In addition, a government report on SNAP benefit redemption patterns<sup>2</sup> revealed that households most often redeemed their benefits at supermarkets and supercenters with only four percent of all households never shopping in a supermarket or superstore. Thus, when a supermarket or superstore is available, it is highly unlikely that a SNAP recipient would conduct these types of SNAP transactions at a store like Freetown Big Market #1.

Lastly, the case record documents that the Retailer Operations Division conducted a detailed analysis of three (3) households identified in the charge letter to analyze their shopping patterns at Freetown Big Market #1 compared to their shopping patterns at other SNAP authorized stores. All of these households had access to, and shopped at supermarkets and superstores during the review period. However, despite this access to better stocked stores, these sampled households conducted excessively large transactions at the Appellant store **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** of shopping at supermarkets and superstores. It is highly unlikely that a combination grocery store, even one with some African food, would have legitimate SNAP transactions larger than those conducted at meat markets, supermarkets and superstores.

In summary, the store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding the average

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<sup>2</sup> "Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program," report prepared by Mathematica Policy Research for the Food and Nutrition Service, February 2011.

SNAP transaction amount of similar type stores. In addition to the statistical irregularity of such high dollar transactions, the limited availability of counter space for checking out and the lack of shopping carts support the Retailer Operations Division determination. It is not plausible that the store's customers are carrying large amounts of food around the store without the benefit of shopping cart. Customers purchasing such large quantities of food items would have to hold them in their arms, or enlist the help of others while shopping. Based on a preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 3 are more likely than not the result of trafficking in SNAP benefits.

### **Lack of Warning Notice**

The Appellant states that the store was not warned of any violations prior to the issuance of the charge letter. Regarding this contention, the SNAP regulations do not require the Retailer Operations Division to give prior warnings before issuing a charge letter for trafficking. SNAP regulations at 7 CFR §278.6(e)(7) states that FNS will “send the firm a warning letter if violations are too limited to warrant a disqualification.” Trafficking transactions are not considered to be “violations that are too limited to warrant a disqualification.” Trafficking in SNAP benefits is an extremely serious violation and both 7 U.S.C. § 2021(b)(3)(B) and 7 CFR § 278.6(e)(1)(i) state that a first time violation warrants a permanent disqualification. Therefore, the Appellant's contention does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges.

### **Additional Contentions**

The Appellant states that it is typical for African ethnic food stores to round off prices as people from West Africa are more comfortable paying in whole dollar amounts. Although a number of the transactions cited in the charge letter ended in even dollar amounts, the Retailer Operations Division did not specifically charge the Appellant for having an excessive number of same cent transactions. Therefore, no further findings or conclusions are rendered in this regard.

The Appellant states that the store visit contractor failed to assess the entire store and did not take photographs of the meat market, walk-in freezer and extra storage unit. However, the Appellant did not provide photographs or any other evidence to support that it had a separate meat market or walk-in freezer. In comparison, the store visit contractor's sketch and photographs appear to be complete. Regarding the alleged extra storage unit, the Appellant only provided a contract for a storage unit with a rental agreement date of January 5, 2017 which is outside the review period of April 2016 through September 2016.

## Purchase Invoices and Receipts

The Appellant submitted numerous purchase invoices/receipts dating from January 2016 through September 2017 in an attempt to document that its SNAP eligible food purchases supported its SNAP redemption amounts. It should be noted that even if a store has a sufficient food inventory to support its SNAP redemptions, it would not necessarily explain the irregular SNAP transactions cited in the charge letter. It is not unusual for violating firms to conduct largely legitimate transactions while also conducting trafficking transactions with a smaller number of trusted households. In such cases, a store could have a sufficient amount of food inventory to support its SNAP redemptions, but would still be in violation of SNAP rules against trafficking.

A review of the case record shows that the Retailer Operations Division properly considered only those invoices dating from the review period of April 2016 through September 2016. The Retailer Operations Division determined that these documents showed the purchase 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP eligible food during the review period. The Retailer Operations Division then applied a retail markup of 40 percent to arrive at estimated sales 5 U.S.C. § 552 (b)(6) & (b)(7)(C) for the review period. In comparison, Freetown Big Market #1 had SNAP redemptions from April 2016 through September 2016 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These calculations result in a shortfall in food inventory of nearly 5 U.S.C. § 552 (b)(6) & (b)(7)(C) even before taking into account the store's cash and credit card transactions for food.

The administrative review officer in examining the invoices provided by the Appellant identified the additional purchase of approximately 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in African foods during the review period excluding freight fees and other importation expenses. However, the addition of these imported food purchases is still not enough to explain the shortfall between food inventory and SNAP redemptions during the review period. Based on the above analysis, the purchase invoices provided by the Appellant are not sufficient to explain the store's excessive SNAP redemptions nor do they explain the irregular transaction patterns cited in the charge letter.

### CIVIL MONEY PENALTY

The Appellant did not timely request consideration for a trafficking CMP in lieu of a permanent disqualification under 7 CFR § 278.6(i) even though it was informed of the right to do so in the charge letter. Even if a timely request had been submitted, the Appellant would likely not have been eligible for a trafficking CMP in lieu of disqualification because there is insufficient evidence to demonstrate that the firm had established and implemented an effective SNAP compliance policy and program prior to the violations.

Therefore, the Retailer Operations Division's decision not to impose a trafficking CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR § 278.6(i).

## **CONCLUSION**

The Retailer Operations Division's analysis of the Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify the retailer. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. 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.

In the absence of any reasonable explanations for 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 letter of charges evidence trafficking as the most likely explanation. 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 determined by the Retailer Operations Division. Based on the discussion above, the decision to impose a permanent disqualification against Freetown Big Market #1, Appellant, is sustained.

## **RIGHTS AND REMEDIES**

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

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

RONALD C. GWINN  
Administrative Review Officer

October 24, 2017