

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

Millennium Store II,

Appellant,

v.

Case Number: C0204079

Retailer Operations Division,

Respondent.

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 Millennium Store II (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 December 18, 2017.

AUTHORITY

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

CASE CHRONOLOGY

In a letter dated November 21, 2017, the Retailer Operations Division charged the Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred during the

months of May 2017 through October 2017. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also noted that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within ten days of receipt under the conditions specified in 7 CFR § 278.6(i).

Appellant, through its accountant, responded to the charges in a letter dated November 30, 2017, that admitted to the business offering credit accounts, but the response neither requested nor contained any evidence to be considered in support of the CMP. Upon receipt of Appellant's response, the Retailer Operations Division requested evidence of the existence of credit accounts at the business. Appellant, through its accountant, confirmed in an email dated December 11, 2017, that the documentation previously submitted was evidence of credit accounts. The Retailer Operations Division notified Appellant in a letter dated December 18, 2017, that the firm was permanently disqualified from participation as an authorized retailer in SNAP in accordance with Section 278.6(c) and 278.6(e)(1) for trafficking violations. This determination letter also stated that Appellant's eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations was considered. However, the letter stated ". . . you are not eligible for the CMP because you failed to submit sufficient evidence to demonstrate that your firm had established and implemented an effective compliance policy and program to prevent violations of the Supplemental Nutrition Assistance Program."

By letter dated December 29, 2017, Appellant, through new counsel, appealed the Retailer Operations Division's assessment and requested an administrative review of this action. The appeal was granted. A Freedom of Information Act (FOIA) request was submitted on February 1, 2018, and the Agency responded to this request by correspondence received by counsel on March 1, 2018. Appellant also requested an extension of time to respond from March 22, 2018, to March 29, 2018, which was approved. Subsequent correspondence dated March 29, 2018, was received from Appellant.

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 of SNAP benefits.

7 U. S. Code § 2021(a)(2) states, “Regulations promulgated under this chapter shall provide criteria for the finding of a violation of, the suspension or disqualification of and the assessment of a civil penalty against a retail food store or wholesale food concern on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, or evidence obtained through a transaction report under an electronic benefit transfer system.”

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

7 CFR § 278.6(e)(1)(i) reads, in part, “FNS shall . . . [d]isqualify a firm permanently if . . . personnel of the firm have trafficked as defined in § 271.2. ” Trafficking is defined, in part, in 7 CFR § 271.2, as, “The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits . . . for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone” Trafficking is further defined, in 7 CFR § 271.2, to include “(5) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.”

7 CFR § 278.2(f) states, inter alia: “Coupons [SNAP benefits] shall not be accepted by an authorized retail food store in payment for items sold to a household on credit.”

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)(ii) states, inter alia: “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 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 Part 278.6(b)(1), 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 May 2017 through October 2017. This involved two patterns of EBT transaction characteristics indicative of trafficking:

1. Multiple transactions were made from individual benefit accounts in unusually short time frames.
2. Excessively large purchase transactions were made from recipient accounts.

APPELLANT’S CONTENTIONS

In the response to the letter of charges, in the response for the verification of credit accounts, in the request for administrative review, and in the subsequent correspondence, Appellant has stated as its position in the matter the following:

- The Appellant business is a 1,200 square foot commercial retailer that stocks a variety of basic grocery items (nuts, candies chips, canned meats, bakery cakes, canned vegetables, bread products, eggs, milk, yogurt, rice, beans, cooking oil, coffee, tea, assorted nuts, sugar, flour, cereals, etc.), including fresh meats and deli meats, and has been in business for more than three years. The business also sells fresh vegetables and fruit. The business has six hand baskets for customer use;
- Less than a handful of employees operate the cash register and each has been trained to implement the SNAP program and accept EBT payments since the store started accepting EBT payments. The training included a disclosure of the store’s policies regarding violation of EBT regulations and a guide showing what transactions were permissible, what items were eligible, and how/when payments could be accepted. All store employees have reviewed the publicly available SNAP training information and training video on the Department’s website;
- Nearly all clientele are from the surrounding neighborhoods. The 7th Congressional District has more than 57,900 households receiving SNAP benefits and is exceedingly poor with 55.5 percent of households living below the poverty level. This District also has 43.2 percent of SNAP households with one or more people 60 years old or older, 41.5 percent with

- children under 18, and 49.4 percent with disabled individuals;
- A considerable portion of clients walk to the store which results in more trips for SNAP participants. Households frequently will buy one or two days' worth of meals and then return to purchase more food. Clients typically spend 40-60 percent of their SNAP benefits at the Appellant business. As noted in the USDA's "Analysis of EBT Redemption Patterns: Methods and Detailed Tables" (February 2011), the clients will expend more than half their benefits within seven days of receipt. As noted in the FNS "Redemption Patterns in the Supplemental Nutrition Assistance Program, Final Report (2011), a large portion of households redeem nearly all their benefits in the first two weeks of the month;
- In order to retain customers, the Appellant business had an active practice of extending short term credit for three to four weeks to SNAP participants in the neighborhood who had run out of benefits so they can continue buying food for their kids and family. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Often there is a transaction to settle the old debt followed by another transaction to purchase a few more items on the same day. Two or three family members can also use the same EBT card for making quick purchases in the same day. Store ownership was unaware that payment of credit with EBT funds was an unacceptable violation of SNAP regulations and has been informed to stop extending credit as it is against SNAP regulations. The credit program was informal with records commonly destroyed after balances had been paid. Nevertheless, a copy of the credit book in Appellant's possession that contains a handful of the credits provided and paid by store customers is submitted;
- The store maintains a monthly inventory 5 U.S.C. § 552 (b)(6) & (b)(7)(C) with about 120 food items as shown by store invoices. This allows the business to sell 5 U.S.C. § 552 (b)(6) & (b)(7)(C) weekly to SNAP customers. The report shows an average of \$40.00 per transaction and for any grocery store maintaining \$10,000.00 in inventory, a transaction of \$40.00 should not be considered as an excessively large purchase. These amounts also involve credit extended in the prior weeks plus current purchases. 5 U.S.C. § 552 (b)(6) & (b)(7)(C);
- Appellant cites two case law decisions (1975 and 2009) regarding credit and contends that there is no requirement for SNAP retailers to maintain records of credit issued. Despite FNS internal guidance, complete records of all credit transactions, or a substantial portion thereof, is not necessary to prove by a preponderance of evidence that a credit existed. In fact, where a SNAP retailer provides 17 or more letters from SNAP participants to substantiate the store's claim that it issued credits, FNS's prior holdings and case history indicate that sufficient evidence exists to substantiate the store's contentions. In the 2009 case cited, the retailer supplied only client letters and did not supply any evidence of actual credit balances. FNS withdrew the five ALERT trafficking charges in favor of the store's position that a credit program existed;
- The evidence consists of the store visit review, the case analysis, the

photographs, statements from customers, invoices, credit ledger, and this brief. SNAP regulations do not prohibit the issuance of credit; merely that payment cannot be accepted in the form of an EBT [SNAP] transaction. Credit payments represent multiple purchases of several items over a period of time and often resemble those transactions that ALERT looks for. Credit payments are likely to be made when a customer returns to make an additional purchase therefore two transactions are likely – one for the purchases the consumer came to the store to purchase and another payment for the credit. ALERT cannot distinguish trafficking from credit and a data analysis cannot make such distinction as the patterns are no more indicative of trafficking than they are of credit;

- Co-shopping, where both adult members are about 50 percent responsible for picking-up groceries, is on the rise in the United States. In 2016, 85 percent of U.S. adults say they have at least 50 percent of the household responsibility for grocery shopping. This is manifested in the way that SNAP participants shop at the store in several ways: (1) different household members will shop separately using the same account to pick-up different needs and personal needs on top of the household's list, (2) different household participants will travel to the store together to make purchases and then separate their purchases to track what amount each party has used from their benefits account. The second option is most common at the store where most local SNAP participants shop together with other adult members. The increase in multigenerational households is part of the driving force for this increase in co-shopping. Parents and grandparents have different shopping priorities and needs, and because their benefits are awarded together, they are portioned out among the household members to permit flexibility in purchases. Another part of the driving force is to respond to socioeconomic trends, such as more dual income households, by distributing responsibility for shopping. As a result, co-shoppers within a SNAP household end-up balancing the dual role of shopping for groceries and seeking out what they want personally, including and especially personal snacks. All of this means that what was traditionally a single shopping trip in the 1990's (when co-shopping was significantly less prevalent, and when ALERT was originally built) is now two or three trips, conducted by separate members of the household for different purposes. The store's SNAP participants exemplify this more than most given the higher rate of children and elderly living in their households. With respect to this matter, co-shopping results in a higher number of transactions that occur in a shorter- than-the-Department-expects period of time. Some of the transactions listed are the result of this type of shopping behavior. An acknowledgment by 44 customers confirming that they purchase items more than twice a day from the business is submitted;
- Counsel finds it find it important to consider the limitations of the ALERT system, as its over utilization by the Department has created an internal belief that the system is wildly 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 five, or arguably six, 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 a result of trafficking versus the issuance of credit. This implies that the patterns themselves do not and cannot be viewed to favor either the issuance of credit or trafficking. 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. However, this moot as to find a baseline store to compare the Appellant's store would require the Department to identify another store that is offering credit and has a pricing structure identical to the Appellant. Presumably, the Department is not aware as to whether or not stores are offering credit (or they would presumably be suspended). Accordingly, comparison data is worthless other than to indicate that something is "suspicious". Appellant has already acknowledged that the issuance of credit was occurring; therefore, the remaining decision left for the Review Division to determine is whether or not, by a preponderance of the evidence, it's more likely that the Appellant was trafficking, as alleged, or maintained a credit as the Appellant has asserted. Two additional court cases were cited, one where a Motion for Summary Judgment was denied based on ALERT data not being reliable for purposes of disqualification where comparison stores were either not considered or were not available. The other held that ALERT data was unreliable where reasonable explanations existed within store operations as a likely alternative to trafficking;

- **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. All of these were the result of credit, co-shopping, or both. Appellant has already identified those accounts that had credits and upon which credit was paid. Normally, a SNAP participant with credit would come to the store without the prior knowledge of the exact balance that was on his/her EBT card. That isn't to say that he/she doesn't have the ability to find their balance out using their phone or the internet, just that these participants don't take advantage of those tools. Instead, they prefer to have a general knowledge of roughly how much is in their account. As such, the participant would authorize the store to run a certain amount (which they were reasonably certain was less than the current balance on the card) and, upon approval of the transaction, would make a second payment or pay off the credit balance. Each of these first transactions was designed to get a transaction to go through which would then tell the participant how much money remained on the account. The Department's numbers are predicated on the idea that the data can be reasonably compared to other local stores that (presumably) have similar

business strategies and sales points. Furthermore, this analysis also operates under the assumption that the patterns would favor trafficking over the issuance of credit. To find a comparable store, the Department would have to venture outside of the immediate geographic area, which would then fail to account for the seriously dense population of residents around the Appellant's store, and the community's individual shopping habits. If adequate comparison stores did not share these factors, the differences in their transactions would be irrelevant as the stores would not be similarly situated. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Furthermore, it is common with SNAP firms to have regular grocery customers that are unable to get all of their grocery items in their initial trip, only to have to return the store after they make their purchases in order to make additional purchases. As outlined above, Appellant has submitted acknowledgements by 44 SNAP participants which show that transactions made by the participants can occur 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of one another, or once a month. These statements provide substantial evidence that the algorithm has misidentified these transactions as suspicious, whereas these transactions are the result of shopping patterns of those individual customers. Transactions that occur on consecutive days are not suspicious. Customers come into the store on a regular basis, so two transactions that are separated 5 U.S.C. § 552 (b)(6) & (b)(7)(C) are reasonable for local participants who simply went to the store two days in a row. These are people who have incurred a credit in the prior month for food that they have taken from the store, and then are coming back to make payments when they have the ability to do so, or are co-shopping;

- The store's position is not that the large transactions are single session purchases of food items. A substantial portion of these transactions are payment for several different shopping trips, many of which occur over the course of an entire calendar month. Again, the transactions are the result of credit balances that existed from the prior food purchases that was taken by the participant on credit. In reality, these participants ran up a balance on their credit account with the store (buying eligible food items), and come in when they feel comfortable making payments and pay down all or a vast majority of their outstanding balance. Some of these transactions (though in the minority) are combination credit payments and new item purchases. Had the Department identified the remainder of the households, the Appellant would be able to further identify participants who took advantage of the credit system offered by the Appellant. Under the Department's guidelines from July of 2016, an average family of 4, spending moderately, can expect to spend \$880.00 at the grocery store over the course of four weeks. With respect to those transactions that were not payments on credit accounts, co-shopping (as described above) does contribute to larger transaction sizes. It is not uncommon for households to shop with other persons (friends, other family members) and make purchases for others while simultaneously making purchases for themselves. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These types of transactions are common throughout the industry, and within the

Appellants' store. Notably, the store does not retain its receipts (it's not required to do so), so the absence of receipts in this matter should not be construed against the retailer. So the question becomes an issue of whether or not the transactions found in the data could be supported by the store's traditional inventory;

- The Department does not have any direct evidence that trafficking is occurring. Instead, the Department has relied upon a data analysis that fails to adequately account for the presence of a credit system, and how such credit payments would be reflected in the ALERT patterns. As mentioned above, the ALERT system's patterns cannot distinguish between the issuance of credit or trafficking – the practical effect of which means that these transactions would both be flagged. While there is direct evidence of a credit program (the log), there is no direct evidence of trafficking present. Therefore, it is more likely that a credit system existed than the presence of trafficking;
- There is no direct evidence that trafficking has occurred, and the circumstantial evidence points to a greater likelihood that the issuance of credit existed, and such transactions resulting from the credit system caused the patterns. These transaction pattern types are consistent with how credit balances are paid down. The store's inventory receipts and expenses support the argument that the food is moving through the store, even if the revenue derived therefrom is postponed. With respect to the data analysis, the EBT transaction data looks as you would expect for a store that has been issuing credit. Large payments made to pay off old balances, often made at the same time new purchases are being made; fast payments and new purchase transactions because on the new purchases need to be rung up. Conversely, the Department lacks concrete evidence to support a theory of trafficking at every level. The most significant information relied upon by FNS to this point is the transaction patterns produced by ALERT. These patterns cannot distinguish trafficking from credit issuance, and the transaction data is more consistent with the issuance of credit than with trafficking. As such, the Retailer Operations Division has made a mistake in finding that trafficking occurred. Therefore, this Review Division should reverse the prior decision for permanent disqualification, and instead issue a Charging Letter or other letter in line with the appropriate sanction (a 1 year suspension) for the offense actually committed; and,
- Given their management experience, ownership has not been exposed to handle a complex number of SNAP regulations and it would only be fair for them to receive a first warning notice to correct these violations and not to make a drastic decision to terminate SNAP service.

Appellant submitted 15 pages of inventory purchases, a listing showing the mark-up percentages for a sampling of 40 store inventory items, 10 pages of credit log sheet pages, a four page petition signed by SNAP customers to not disqualify the business (three pages were by customers shopping multiple times per day), and 15

undated color photographs of the Appellant business in support of these contentions.

The preceding 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.

ANALYSIS AND FINDINGS

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 the Appellant business 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

The FNS authorized the business on January 30, 2015, and the business is classified as a convenience store. The file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during an October 23, 2017, 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 EBT transactions at Appellant's store that formed patterns indicative of trafficking. The store review summary documented the following store size, description, and characteristics:

- The business was a convenience small store offering a moderate quantity and variety of staple foods and offering no unique services or stocking any unique food items.
- The business stocked a limited quantity and variety of Hispanic foods (e.g. Goya) typically found in stores as well as many mainstream American brand products.
- Exterior signage advertised lottery, ATM, meat, groceries, cigarettes, and tobacco.
- There were no shopping carts and only six small handheld baskets for customer use seen during the visit making it difficult for customers to carry large amounts of food to the checkout.
- No food packages, bundles, bulk products, case sales, or other sales were evident that would explain the unusual transactions and no SNAP eligible cased items were available for purchase.
- The store visit report specifically notes that the business was not a specialty

store and that there were no meat bundles or fruit and vegetable boxes for sale.

- The checkout area was an opening approximately 1.5 feet deep by 2.0 feet wide set between two walls of plastic storage units with displays taking up counter space on both sides and a chest type ice cream freezer directly in front of it that customers must reach over in order to place their purchases on the counter. The small size of the checkout area would make it problematic to process large orders.
- The checkout counter had one cash register, one POS terminal, and no optical scanner as evidenced by the store visit report and photographs.
- The store had a moderate stock of staple foods that also included many single serving and pre-packaged items with a large portion of inventory in accessory foods (primarily candy and drinks), snacks, and ineligible items.
- The store had no fresh unprocessed meats, an extremely limited selection of fresh seafood (Pollock and Herring fillets), no frozen unprocessed meats or seafood, a minimal quantity and variety of processed meats and seafood (canned meat/fish/poultry, jerky, hot dogs, bacon, sausages, and packaged lunch meats), no deli meats, a very limited quantity and variety of frozen entrees and frozen dinners, a minimal selection of fresh fruit and vegetables, no frozen fruits, a limited selection of frozen vegetables, a moderate quantity and variety of canned and packaged staple food items, no sour cream, no yogurt, no deli cheeses, a very limited selection of baby foods, no baby cereals, no infant formula, and very few expensive eligible food items.
- Ineligible items included: tobacco, lottery, household products, paper products, auto products, pet products, health and beauty items, ATM, charcoal, clothing, and candles while accessory foods included: candy, spices, condiments, coffee, tea, cocoa, cooking oil, sugar, and carbonated/uncarbonated drinks.
- Signage was in English and there were no SNAP posters (anti-fraud, eligible items, reporting trafficking, etc.) visible in the store.
- The business's hours of operation were 7:00 AM-10:00 PM daily as confirmed by a store employee during the store visit.
- Most food items were priced with all visible staple food prices ending in .x9 cents except for a very limited number of items priced differently such as some snacks and drinks priced at \$2.00, two for \$1.00, two for \$2.50, and two for \$3.00. Comments on the FNS store visit report by the contract reviewer specifically stated that most of the food prices ended in .x9 cents. A price ending in .x9 cents is the most common pricing structure for stores of this type.
- The FNS store visit report listed the four most expensive items costing more than \$5.00 for sale in the store as being a 20 pound bag of rice priced at \$16.49, a 96 ounce bottle of cooking oil priced at \$8.99, a 29 ounce box of processed frozen chicken priced at \$9.99, and a 3.5 ounce jar of coffee priced at \$5.49. The listing of the most expensive items was provided by a store employee during the store visit.
- The store was not a WIC vendor. While the business did stock a limited

quantity of baby foods, most SNAP households with infants or small children are WIC participants and therefore would be purchasing these products using WIC vouchers at WIC vendors, not SNAP EBT.

- The quantity and variety of the store's staple food inventory was less than that seen during the previous FNS store visit on January 26, 2015.

Multiple transactions in unusually short time frames

This Attachment documents 32 individual transactions in 11 sets of two or more transactions conducted by six different households in a short period of time. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Two transaction sets are comprised of four individual transactions, six transaction sets are comprised of three individual transactions, and the remaining three sets are comprised of two individual transactions. One household conducted four of the 11 transaction sets. 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 account within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by a retailer's inventory and structure. These sets of transactions appear to be in amounts which are indicative of trafficking.

Appellant contends that Attachment 1 lists 11 transaction sets 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and that all of the transactions are the result of credit, co-shopping, or both. In order to retain customers, the Appellant business had an active practice of extending short term credit for three to four weeks to SNAP participants in the neighborhood who had run out of benefits so they can continue buying food for their kids and family. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Often there is a transaction to settle the old debt followed by another transaction to purchase a few more items on the same day. Appellant has already identified those accounts that had credits and upon which credit was paid. Appellant also contends that a SNAP participant with credit would come to the store normally without the prior knowledge of the exact balance that was on his/her EBT card. That isn't to say that he/she doesn't have the ability to find their balance out using their phone or the internet, just that these participants don't take advantage of those tools. Instead, they prefer to have a general knowledge of roughly how much is in their account, As such, the participant would authorize the store to run a certain amount (which they were reasonably certain was less than the current balance on the card) and, upon approval of the transaction, would make a second payment or pay off the credit balance. Each of these first transactions was designed to get a transaction to go through which would then tell the participant how much money remained on the account. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Furthermore, a considerable portion of clients walk to the store which results in more trips for SNAP participants. Households frequently will buy one or two days' worth of meals and then return to purchase more food. It is common with SNAP firms to have regular grocery

customers that are unable to get all of their grocery items in their initial trip, only to have to return the store after they make their purchases in order to make additional purchases. As outlined above, Appellant has submitted acknowledgements by 44 SNAP participants which show that transactions made by the participants can occur 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of one another, or once a month. These statements provide substantial evidence that the algorithm has misidentified these transactions as suspicious, whereas these transactions are the result of shopping patterns of those individual customers.

Transactions that occur on consecutive days are not suspicious. Two or three family members can also use the same EBT card for making quick purchases in the same day. Co-shopping, where both adult members are about 50 percent responsible for picking-up groceries, is on the rise in the United States. In 2016, 85 percent of U.S. adults say they have at least 50 percent of the household responsibility for grocery shopping. This is manifested in the way that SNAP participants shop at the store in several ways: (1) different household members will shop separately using the same account to pick-up different needs and personal needs on top of the household's list, (2) different household participants will travel to the store together to make purchases and then separate their purchases to track what amount each party has used from their benefits account. The second option is most common at the store where most local SNAP participants shop together with other adult members. The increase in multigenerational households is part of the driving force for this increase in co-shopping. Parents and grandparents have different shopping priorities and needs, and because their benefits are awarded together, they are portioned out among the household members to permit flexibility in purchases. Another part of the driving force is to respond to socioeconomic trends, such as more dual income households, by distributing responsibility for shopping. As a result, co-shoppers within a SNAP household end-up balancing the dual role of shopping for groceries and seeking out what they want personally, including and especially personal snacks. All of this means that what was traditionally a single shopping trip in the 1990's (when co-shopping was significantly less prevalent, and when ALERT was originally built) is now two or three trips, conducted by separate members of the household for different purposes. The store's SNAP participants exemplify this more than most given the higher rate of children and elderly living in their households. With respect to this matter, co-shopping results in a higher number of transactions that occur in a shorter-than-the-Department-expects period of time. Some of the transactions listed are the result of this type of shopping behavior. Appellant submitted 10 pages of credit log sheet pages and a four page petition signed by SNAP customers to not disqualify the business (three pages were by customers shopping multiple times per day) 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 convenience 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 right after checking-out, of household members/friends shopping together and making separate purchases, or of a household making a payment toward their credit account followed or preceded by a purchase as all of the 11 transaction sets 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These 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 11 sets have subsequent transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Appellant provides no basis for its statement of SNAP recipients not knowing their account balance and not wanting to use options such as making a telephone call or checking their balance on the internet. If customers were truly conducting a transaction first in order to check their SNAP balance it would be expected that the transaction would be for a small dollar amount in order to avoid exceeding the remaining balance. A check of the first transactions in this Attachment shows that all are of a sizeable dollar amount 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It should be also noted that as required by SNAP regulations at 274.12 (f), the EBT card holder must be able to check their account balance using the retailer's POS terminal without making any purchases or standing in a checkout line, and they can telephone a toll-free number for that information as well. Regulations also require that EBT card holders receive a POS terminal receipt showing the dollar amount of remaining benefits. Additionally, most recipients receive the same benefit level each month and would therefore know what would be in their EBT account. Contrary to Appellant's contention, with the number of methods available, it would be unusual for this many households to not know their SNAP balance. Further, a review of the data compiled by the Retailer Operations Division in its analysis of the shopping patterns for households listed in this Attachment shows that in seven of the 11 sets the household conducted transactions at other stores and/or at the Appellant business earlier on the same day as the listed transactions and would have received a receipt listing their remaining balance just as the receipts submitted by Appellant show. In an eighth transaction, the household conducted a balance inquiry at the Appellant business, without having to make a purchase, immediately before its listed transactions. Therefore in at least eight of the 11 transaction sets, the households had prior knowledge of their account balances thus refuting Appellant's contentions that each of the first transactions were conducted in order to determine the remaining SNAP balance as the households clearly knew their balance beforehand. This also brings up the question of why didn't the households that conducted lower dollar value transactions at the Appellant business on the same day as or on the days immediately before the listed transactions make payments for their credit account balances then. It also doesn't make sense that a household that had received credit during the previous month would wait several days after having received its new allotment to pay the credit back or that store ownership would allow a household to make several low dollar value transactions over a period of days without making a payment for the outstanding credit balance. The only explanation that makes sense for this unusual behavior is that these households had

not received credit and were therefore not making payments for credit received, but instead were trafficking their SNAP benefits.

It is also unusual that none of the six households listed in this Attachment that Appellant alleges were using credit accounts made purchases of eligible food items during the same shopping trips that they purportedly made payments against their credit account balance. It seems it would be much more efficient and less stressful, especially for households containing small children and/or elderly/disabled individuals, to make a payment for credit and also shop at the same time.

While Appellant claims that co-shopping where different household participants travel to the store together to make purchases and then separate their purchases to track what amount each party has used from their benefits account is most common at the Appellant business where most local SNAP participants shop together with other adult members, the evidence does not support this.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Unlike non-SNAP families, 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 likely reduce the impact of co-shopping on SNAP recipients. This reviewer is also not aware of any co-shopping studies that specifically address SNAP households therefore any contentions by Appellant are assumptions as opposed to facts.

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 the subsequent transaction dollar amount is for a substantial amount in all of these transaction sets and that they nearly equal or exceed the dollar amount of the first transaction in all 11 sets. It is also unusual based on the limited food stock that all of the transaction sets in this Attachment 5 U.S.C. § 552 (b)(6) & (b)(7)(C) when the comparable average convenience store SNAP transaction amount in Suffolk County during the period under review was \$7.22. 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 convenience stores further supporting that trafficking was occurring at the Appellant business during the period under review.

An analysis of the shopping patterns for all of the six households listed in this Attachment conducted by the Retailer Operations Division shows that they have ready access to transportation as evidenced by their shopping at a variety of other larger food stores located nearby and at a distance from Appellant's location with

all of the households shopping at super stores and/or supermarkets. This analysis also shows that, on average, the households in this Attachment travelled 4.98 miles from Appellant's location to shop at super stores, supermarkets, and other larger stores. This indicates these households were able to travel and sought out preferred food selection at favorable prices. The larger stores advertise more available food selection at comparable or lower prices and stock fresh meats and vegetables not available at the Appellant business. The behavior of these households indicates they do not consider the business to be an exclusive, primary, or first choice food source. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Appellant's contentions fail to offer any explanation or rationale for why these households would conduct multiple purchases at a moderately stocked convenience store that carries no unique foods or offers any special services when they are regularly shopping at larger stores that would offer a greater quantity and variety of staple food items at better prices. Common sense dictates that it is improbable that households with limited cash resources would choose to make multiple purchases totaling to high dollar values 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 more likely than not that these households were trafficking SNAP benefits at the Appellant business and the multiple transactions were attempts by to obscure trafficking by dividing a large dollar value transaction into a series of smaller dollar value transactions. This is a method used by stores to avoid high dollar transactions that cannot be supported.

The 10 pages of evidence submitted to support the existence of credit accounts at the Appellant business consists of EBT POS receipts and corresponding handwritten paper log sheets listing the month, the name of the credit recipient, a listing of dates and dollar amounts of claimed credit transactions, and a payment date for when the credit balance was paid. No itemized cash register receipts were submitted and the log sheets do not provide a listing of the items purchased on credit so there is no way to determine if these purchases included many of the ineligible items offered for sale at the Appellant business. The log sheets also do not contain an EBT card serial number or any other information identifying that the household is actually an EBT recipient.

There are 10 different names listed on the log sheets and an analysis by the Retailer Operations Division matches the 10 alleged credit repayment transactions to six households. The transactions for three of the names (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) belong to one household while the names 5 U.S.C. § 552 (b)(6) & (b)(7)(C) belong to two other households. There is no indication on any of the credit evidence or in Appellant's multiple contentions that the Appellant business was aware that seven of the ten credit log sheets actually belong to only three households. This contradicts Appellant's contention that the business knows its customers and it is also suspicious since there is only one EBT card for each household and common sense would indicate that if the business were actually allowing credit that store ownership would be tracking it by the household's EBT card number especially in any situations where multiple

individuals may have been using the same account. It is also illogical and improbable that the two or three individuals supposedly using the same EBT card would each be making repayments against the credit allegedly used for the preceding month instead of one large payment being made. Furthermore, it is unusual that the petition submitted by Appellant lists the full name of the female SNAP recipient for the account used by 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and the surname is not Hispanic nor is the first name similar to any of the three names listed on the credit log sheets suggesting that these credit logs and the names on them were fabricated. Additionally, the EBT account supposedly used by 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is that of a single person household making it less likely to have multiple users and again indicating that the credit logs and names were fabricated. The review conducted by the Retailer Operations Division also notes that the credit log sheet dates for the transactions conducted by 5 U.S.C. § 552 (b)(6) & (b)(7)(C) match the settlement dates on the EBT receipts, but not the transaction dates on the same receipt. This significant discrepancy further supports that the credit log sheets were fabricated after the fact using the store's EBT POS receipts in an attempt to garner a lesser penalty than the permanent disqualification required for trafficking violations and do not actually reflect credit transactions.

The household transaction records used by the Retailer Operations Division in their household analysis also show that some of these six households were allegedly charging items on credit at the Appellant business even though they were using SNAP benefits on their EBT cards to make purchases at other SNAP retailers. For example, the credit log for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) shows that he allegedly used credit on September 2, 5, 10, 11, 16, 18, 25, and 29 while an examination of the SNAP transactions for this same household show that it had SNAP benefits available in its account until September 22, 2018. No explanation is offered by Appellant to explain why households like 5 U.S.C. § 552 (b)(6) & (b)(7)(C) with remaining benefits would need to use credit at the Appellant business. These same household records show that three of the six households in this Attachment responsible for conducting five of the 11 transaction sets were, in fact, single person households as evidenced by their monthly SNAP allotment 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Since more than 45 percent of the transactions in this Attachment were conducted by single person households, Appellant's contention that the multiple transactions were conducted by different household members is thereby much less likely. Appellant also offers no explanation as to why single person households whom would be expected to have smaller food needs would need to conduct a large number of multiple transactions.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Based on the store's pricing structure of almost all food prices ending in .x9 cents combined with the fact that the Appellant business primarily has only low priced food items, the purchase of the many items with prices ending in .x9 cents needed for the high dollar transactions in this Attachment would most likely not result in a total ending in a same cents amount 5 U.S.C. § 552 (b)(6) & (b)(7)(C) as multiples of nine seldom have a value ending

in these amounts making it statistically impossible that 21 of the 32 individual transactions in this Attachment would end in these values with legitimate food purchases. When there are a disproportional amount of transactions ending in a same cent value, it appears that these transaction amounts are contrived and therefore, in the absence of any compelling rationale to the contrary, are indicative of trafficking.

This Attachment also lists four transactions that occurred after the store's reported closing time with two transactions posted well after the store's 10:00 PM closing at 10:34 PM and at 11:03 PM. It is an indication of potential trafficking when there are transactions occurring outside of the store's reported business hours.

A review of the four page petition by SNAP customers shows that only three of the four pages have a typed header stating that the customers completing the petition were shopping multiple times per day at the Appellant business and none of the four pages make any statement regarding the existence of credit accounts at the Appellant business. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The Retailer Operations Division also analyzed the shopping patterns for the households on the petitions and found that two households listed had the same EBT card number and 24 EBT card numbers were either not provided on the petition or the card number could not be located in the database. Of the remaining households, there were three that conducted no transactions at the Appellant business during the period under review while a fourth household conducted only one transaction. This analysis also shows that remaining households spent on average 5 U.S.C. § 552 (b)(6) & (b)(7)(C) more per SNAP transaction than at the subject store, traveled on average 6.90 miles from the subject store location to reach other stores, and on average made SNAP transactions at 13 other stores.

This behavior indicates these households do not rely on the subject store as prime, first choice, or exclusive food source. The households made SNAP transactions at supermarkets and superstores that advertise more available food selection including fresh meats and produce not available at the subject store. These larger stores stock similar and identical food items and brands at comparable or lower prices compared to the subject store. There is a superstore located 0.34 mile from the subject store and according to Google Maps the two stores are a seven minute walk from one another. A household limited to walking for transit can also easily walk to the superstore. The average distances these households travelled and the close proximity of the superstore indicate transit and distance are not a limitation for households in the area. The low average dollar transaction amounts at the Appellant business do not support the idea of a household acquiring enough food items for several days in a pair of transactions and returning to purchase more. The low dollar amounts more accurately support the idea that these households use the subject store to acquire small food items as needed and make high dollar transactions at larger food stores with greater available food selection at favorable prices. They clearly do not shop at the Appellant business the way described by Appellant. The fact that, based on the evidence provided, more than half of the households listed on

the petition cast cannot be shown to be conducting multiple transactions at the Appellant business combined with the shopping pattern analysis casts significant doubt on the validity and accuracy of the petition and refutes Appellant's claim that the petition provides substantial evidence that the algorithm misidentified these transactions as suspicious.

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.

Appellant's claim of offering store credit is also addressed further later in this decision.

High Dollar Value Transactions

This Attachment lists 168 individual EBT 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 transactions is uncharacteristic for a convenience store of this size offering a moderate stock of staple foods and calls into question the legitimacy of these transactions. The SNAP transactions listed in this Attachment are all substantially higher than the average SNAP transaction amount of \$7.22 for this store type in Suffolk County. The 168 excessively large SNAP EBT transactions at Appellant's business for the review months represents more than 25 percent of all SNAP redemptions at Appellant's business during the period under review. This is unusual and indicative of trafficking.

The evidence under review shows that SNAP households shopping at the Appellant business 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 business. The large dollar transactions remain questionable when considering the proximity of these other SNAP authorized stores that would be better shopping options for consumers. Based on these shopping patterns, transportation does not appear to be an issue for these households. Yet, these recipients continue to shop and spend suspicious high dollar amounts at the Appellant business, where the eligible food stock is limited, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** of their purchases at larger food stores. Specifically, 24 of the 41 households listed in this Attachment shopped at a super store or supermarket on the same day they conducted suspicious transactions at the Appellant business.

Evidence shows that the difference in the average SNAP transaction dollar amount, the total SNAP transaction dollar volume, and the SNAP transaction count for Suffolk County convenience stores during the review months and at the Appellant business is significant. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The unusually high number of SNAP transactions combined with the relatively low transaction dollar amount is an indication that the business may be dividing larger transactions into multiple smaller transactions in an effort to circumvent detection as previously discussed. A comparison of Appellant's SNAP redemptions to that of nearby convenience stores that had redemptions for the review period shows similar differences. Additionally, none of these nearby stores exhibit the same suspicious transaction patterns listed in the charge letter for the Appellant business 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 a further indication that the SNAP transactions in this Attachment and the others do not represent legitimate food purchases. The Retailer Operations Division considered all of these to be indicators of unusual and suspicious activity.

This store also had irregular SNAP transaction data as compared to like type convenience stores in Suffolk County. A comparison of Appellant's SNAP redemption data with that of Suffolk County convenience stores using ten dollar increments shows that Appellant's transaction count and dollar volume ranges are significantly higher than the average of like type stores in all ranges 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These high dollar transactions are considered to be irregular and suspicious based on the Appellant store's food inventory. The Retailer Operations Division determined there was no credible reason for the Appellant business to have transactions at those high dollar levels given the moderate stock of staple foods and the lack of any specialty, bulk, or ethnic foods that might sell for large dollar amounts and therefore also considered this to be a strong indication of trafficking. None of Appellant's contentions explain these unusual and suspicious differences.

Appellant contends the Appellant business is a 1,200 square foot commercial retailer that stocks a variety of basic grocery items (nuts, candies chips, canned meats, bakery cakes, canned vegetables, bread products, eggs, milk, yogurt, rice, beans, cooking oil, coffee, tea, assorted nuts, sugar, flour, cereals, etc.), including fresh meats and deli meats, and has been in business for more than three years. The business also sells fresh vegetables and fruit and maintains a monthly inventory 5 U.S.C. § 552 (b)(6) & (b)(7)(C) with about 120 food items as shown by store invoices. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The store's position is not that the large transactions are single session purchases of food items. A substantial portion of these transactions are payment for several different shopping trips, many of which occur over the course of an entire calendar month. Again, the transactions are the result of credit balances that existed from the prior food purchases that was taken by the participant on credit. In reality, these participants ran up a balance on their credit account with the store (buying eligible

food items), and come in when they feel comfortable making payments and pay down all or a vast majority of their outstanding balance. Some of these transactions (though in the minority) are combination credit payments and new item purchases. Under the Department's guidelines from July of 2016, an average family of 4, spending moderately, can expect to spend \$880.00 at the grocery store over the course of four weeks. With respect to those transactions that were not payments on credit accounts, co-shopping (as described above) does contribute to larger transaction sizes. It is not uncommon for households to shop with other persons (friends, other family members) and make purchases for others while simultaneously making purchases for themselves.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). These types of transactions are common throughout the industry, and within the Appellants' store. Notably, the store does not retain its receipts (it's not required to do so), so the absence of receipts in this matter should not be construed against the retailer. So the question becomes an issue of whether or not the transactions found in the data could be supported by the store's traditional inventory. Appellant submitted 15 pages of inventory purchases, a listing showing the mark-up percentages for a sampling of 40 store inventory items, and 15 undated color photographs of the Appellant business in support of these contentions.

The Retailer Operations Division's analysis of the evidence submitted by Appellant in support of its contentions relating to the store having credit accounts has been discussed at length in the previous section with the determination that the evidence advanced was insufficient to support Appellant's contention that credit accounts were responsible for the suspicious transactions. Accordingly, the credit discussion will not be repeated in this section. As credit has been removed as an explanation for the suspicious transactions at the Appellant business, Appellant's contentions relating to comparison stores are also no longer relevant.

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 the store's stock. An analysis of shopping patterns by the Retailer Operations Division shows that households in this Attachment are regularly shopping at much larger stores, and conducting transactions of large dollar amounts, yet are conducting comparable or higher dollar value transactions at the Appellant business.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). It would make no sense for a single person household that regularly shops at larger stores and apparently has no transportation limitations to spend large dollar amounts at the Appellant business since its cost of goods would be higher than that of larger stores such as supermarkets or super stores.

Information obtained during the FNS store visit on October 23, 2017, shows that the Appellant business 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, beverages, and single serving

foods as well as many ineligible items. Contrary to Appellant's listing of grocery items, the business does not sell bakery cakes, yogurt, fresh meats, or deli meats and stocks a minimal selection of fresh fruit and vegetables. Since the Appellant business offers no fresh unprocessed meats, an extremely limited selection of fresh seafood (Pollock and Herring fillets), no frozen unprocessed meats or seafood, a minimal quantity and variety of processed meats and seafood (canned meat/fish/poultry, jerky, hot dogs, bacon, sausages, and packaged lunch meats), no deli meats, a very limited quantity and variety of frozen entrees and frozen dinners, a minimal selection of fresh fruit and vegetables, no frozen fruits, a limited selection of frozen vegetables, a moderate quantity and variety of canned and packaged staple food items, no sour cream, no yogurt, no deli cheeses, a very limited selection of baby foods, no baby cereals, no infant formula, and very few expensive eligible food items., these patterns are deemed to be suspicious. The fact that tobacco, lottery, household products, paper products, auto products, pet products, health and beauty items, ATM, charcoal, clothing, and candles are not eligible for purchase with SNAP benefits also provides no justification for the high transaction amounts. The business carries no special foods or offers any unique services that are not also available at other nearby grocery stores making it unlikely that SNAP recipients with available transportation would make this business their grocery store of choice. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Increasing food prices make it even more unlikely that SNAP recipients, with limited food benefits, would want to spend a considerable part of their benefits in a convenience store that does not address all of their food shopping 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 would also offer store brand products at lower prices, offer weekly specials, and have shopping carts and checkouts with 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.

A review of the 15 pages of inventory purchases consisting of 11 invoices submitted by Appellant in the initial response to the letter of charges was conducted by the Retailer Operations Division. The eleven invoices were provided from Frito-Lay (3), Genere Food Corporation (3), Taurus Packing Company Inc. (2), Hershey's Ice Cream (1), and Goya (2). Nine of the invoices were dated within the period under review while one invoice each from Frito-Lay and Goya were dated in November 2017, after the review period, and no invoices were submitted for the month of May 2017. A review of the items being purchased shows many snack items, drinks, and nonfood items. A detailed analysis of the nine invoices was conducted by the Retailer Operations Division that included subtracting all nonfood item purchases and then applying a 70 percent markup to the total dollar amount of the nine invoices in order to produce a figure representing potential eligible food sales. The potential sales figure was then compared to SNAP redemptions at the Appellant business for the months of June through October 2017 since no invoices

for May 2017 were provided. This comparison showed that the potential sales volume accounted for only 34 percent of SNAP redemptions for the same period thereby confirming the inadequacy of store inventory for the relevant review months. Additionally, the Appellant business has a very small checkout area, no shopping carts, no optical scanner, and only six small hand baskets thereby making it difficult to facilitate the great quantities of eligible food items required to make up these large dollar transactions. Therefore, it is improbable that the food items purchased in these high dollar amounts could be carried to the register without the use of carts and more likely that the amounts were contrived. Based on this discussion, Appellant did not provide adequate evidence to support the legitimacy of the excessively large transactions in this Attachment.

It was further noted that SNAP redemptions at the Appellant business dropped following the store visit on October 23, 2017. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. A pronounced decrease in SNAP transactions following the store visit is a clear indication of trafficking since, if trafficking were not occurring, there would be no abnormal fluctuations in redemption amounts.

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

Credit and Other Contentions

Store ownership contends the Appellant business, in order to retain customers, had an active practice of extending short term credit, a violation of SNAP regulations at Section 278.2(f), for three to four weeks to SNAP participants in the neighborhood who had run out of benefits so they can continue buying food for their kids and family. The SNAP participants would then repay the credits when they received their SNAP benefits the following month. Store ownership was unaware that payment of credit with EBT funds was an unacceptable violation of SNAP regulations and has been informed to stop extending credit as it is against SNAP regulations. Less than a handful of employees operate the cash register and each has been trained to implement the SNAP program and accept EBT payments since the store started accepting EBT payments. The training included a disclosure of the store's policies regarding violation of EBT regulations and a guide showing what transactions were permissible, what items were eligible, and how/when payments could be accepted. All store employees have reviewed the publicly available SNAP training information and training video on the Department's website.

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. This review encompasses and documents the examination of the primary and relevant information in this case, the purpose of which is to determine whether Appellant demonstrates, by a

preponderance of the evidence, that the disqualification should be reversed. In this case, therefore, if Appellant demonstrates by a preponderance of the evidence that it did not engage in trafficking with SNAP benefits, then such transactions will be considered legitimate and the disqualification reversed. If this is not demonstrated, the case is to be sustained. 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. While store ownership may or may not have personally conducted the violative transactions, SNAP rules and regulations state that regardless of whom the ownership of a store may utilize to handle store business or their degree of involvement in store operations, the ownership is accountable for the proper training of staff and the monitoring and handling of all SNAP benefit transactions. The ownership remains liable for all violative transactions handled by store personnel, whether paid or unpaid, new, full-time or part-time. Additionally, a record of participation in SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges.

When the store owners signed the certification page of the SNAP retailer authorization application to become authorized as a SNAP retailer in October 2014, they confirmed they understood and agreed to abide by program rules and regulatory provisions. They 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. This certification page specifically includes violations such as accepting SNAP benefits as payment on credit accounts or loans. 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. Despite agreeing to abide by SNAP rules and regulations, ownership now admits that the business allowed credit accounts, a clear violation of SNAP regulations and rules. Additionally, the SNAP Retailer Training Guide and the SNAP retailer training video, provided to all retailers upon initial authorization and upon reauthorization, both cite credit accounts as violating SNAP regulations making it difficult to believe that store ownership was not aware that offering credit violated SNAP regulations. That store ownership also contends all store employees have reviewed the SNAP Retailer Training Guide and viewed the retailer training video makes it even more unlikely that they were not aware that accepting SNAP payments for credit accounts was a violation of SNAP regulations

Ownership's admission that the business extended credit is documented in the case file under review and is not contested. Accepting SNAP benefits for payment on credit is a violation of Section 278.2(f) and warrants a one year disqualification period as specified by Section 278.6(e)(4); this Section includes a like disqualification period for the sale of ineligible items by management personnel. It is the agency's position that credit violations constitute owner or management involvement and that a one year disqualification is the base sanction. To refute

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

In regard to case law cited by Appellant regarding credit accounts, 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 of the SNAP Office 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.

In support of Appellant's admission to accepting SNAP benefits for payment on credit accounts, a program violation, Appellant submitted documentation consisting of 10 pages of credit log sheet pages and a four page petition signed by SNAP customers.

The credit documents submitted by Appellant do not provide a detailed or itemized breakdown of what food items were purchased on the listed dates and contain no specific details such as the customer's full name, address, SNAP account number, or the SNAP EBT card serial number. Accordingly, no determination as to the SNAP eligibility of the items purportedly purchased on credit could be made. Additionally, the petition makes no reference to credit. The Retailer Operations Division's analysis of these documents combined with their shopping pattern analysis of the cited households disproved Appellant's contentions and also cast doubt on the validity of the documentation submitted. Therefore, the documents offered by Appellant do not provide sufficient evidence that the store permitted credit accounts during the review period. Since Appellant was unable to provide evidence of credit accounts for any of the transactions outlined in the letter of charges, the transactions were then evaluated by the Retailer Operations Division to determine if trafficking occurred. The transactions showed clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity indicative of trafficking as previously discussed.

Appellant's contention regarding the 7th Congressional District statistics are not in dispute nor is the fact that the business has six hand baskets for customer use.

Appellant contends there is no evidence of trafficking, the ALERT system has limitations, and the ALERT system is unable to distinguish transactions that occur as a result of trafficking versus the issuance of credit. As to the two court cases

cited by counsel regarding the ALERT system, the administrative review process is to determine whether FNS followed the Food and Nutrition Act and the regulations issued under the Act when it took action against the retailer. The administrative review officer is not responsible for determining whether any legal cases cited by counsel apply to Appellant's situation. If the Final Agency Decision is appealed to the Federal district court, the judge is responsible for determining whether case law cited by counsel is on point and applicable to Appellant's case.

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 . . . [d]isqualify 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, either directly, indirectly, in complicity or collusion with others, or acting alone" SNAP regulations at 7 CFR § 278.6(a) clearly state, in part, 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 . . .**" (Emphasis added).

Government analyses of stores caught in trafficking violations during on-site investigations found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include those cited in the letter of charges. FNS employs a computerized fraud detection tool to identify these patterns. This tool does not determine that trafficking has occurred, but only identifies a retail store for further investigation. The actual case of trafficking is made by the Retailer Operations Division on the basis that the transaction patterns cannot be explained based on the store size, layout, inventory, and other factors such as the existence of credit accounts. The Retailer Operations Division staff must still analyze the transaction patterns, along with other information such as store visit observations, customer shopping patterns, and comparative data from nearby stores. Only then is a conclusion made as to whether the questionable transactions were, more likely than not, the result of trafficking. Nevertheless, transactions with these patterns sometimes have valid explanations that support the idea they were the result of legitimate purchases of eligible food items, which is why opportunities are given to charged retailers to explain the questionable transactions cited.

In the present case, the data presented in the Attachments is solely based on the SNAP electronic benefit transfer transactions conducted at the Appellant business

during the period under review. 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 period under review. 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 photographs from the FNS store visit on October 23, 2017, a transaction comparison and analysis of like type and larger stores, and analysis of shopping patterns for recipient households conducting transactions at the Appellant business during the review period. 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 the 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 in the charge letter Attachments. 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 evidence under review shows SNAP activity indicative of trafficking. Neither the Food and Nutrition Act of 2008, as amended, nor the regulations issued pursuant thereto 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 or warning letters 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 request a trafficking CMP or to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations within the specified timeframe. As such, the Retailer Operations Division determined that Appellant was not eligible for a trafficking CMP in lieu of permanent disqualification.

Appellant made no mention of how the business met any of the four criteria in either its response to the charge letter or in the request for administrative review and no documentation or other evidence of any kind, including written statements, was subsequently received from Appellant in support of a trafficking CMP. While in the subsequent correspondence store ownership, as previously discussed, does claim that all store employees have reviewed the SNAP Retailer Training Guide and viewed the retailer training video, the fact that the business alleges to not have known that accepting SNAP benefits for repayment of credit accounts was a violation negates the likelihood of this having actually occurred. Therefore, 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 has presented a case that Appellant has likely trafficked in SNAP benefits. The Retailer Operations Division's 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 that are consistent with trafficking violations in SNAP benefits. This is evidenced by: the suspicious patterns in two Attachments of EBT transaction data, the inadequacy of the store's staple food stock as observed during the store visit to support large transactions in short time frames, the lack of adequate evidence for customer spending habits given that there are other SNAP authorized stores located within proximity to Appellant that likely offer a greater selection of eligible food items at competitive prices, and the irregular SNAP transaction data of Appellant as compared to other like type and larger stores in the county and state.

The retailer has not provided sufficient evidence to rebut the case that Appellant most likely trafficked in SNAP benefits. Therefore, based on a review of all of the evidence in this case, it is more likely true than not true that program violations did,

in fact, occur as charged by the Retailer Operations Division. Based on the discussion above, the determination to impose a permanent disqualification against Appellant is sustained. Furthermore, Retailer Operations properly determined that Appellant was not eligible for a trafficking CMP according to the terms of 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

April 27, 2018