

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

**Kpe Oil Inc,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0255680**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is sufficient evidence to support a finding that a permanent disqualification from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against Kpe Oil Inc (hereinafter “Kpe Oil Inc” or “Appellant”) by the Retailer Operations Division of FNS.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(e)(1)(i) in its administration of the SNAP, when it imposed a permanent disqualification against Kpe Oil Inc.

**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 November 21, 2022, the Retailer Operations Division informed the Appellant that Kpe Oil Inc was in violation of the terms and conditions of the SNAP regulations, 7 CFR § 270 –282, based on EBT SNAP benefit transactions that "establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm." The letter also noted that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt under the conditions specified in 7 CFR § 278.6(i). Per UPS confirmation of delivery, the charge letter was delivered to the Appellant at the store address of record on November 22, 2022.

In responses to the Retailer Operations Division of November 23, 2022 and November 30, 2022, the Appellant, through counsel, replied to the letter of charges. The record reflects that the Retailer Operations Division received and considered the information provided prior to making a determination.

After considering the Appellant's responses and the evidence in the case, the Retailer Operations Division issued a determination letter dated January 9, 2023, informing the Appellant that Kpe Oil Inc was being permanently disqualified from participation in the SNAP in accordance with 7 CFR § 278.6(e)(1) for trafficking violations. The letter also stated that the Appellant was not eligible for a trafficking civil money penalty (CMP) in accordance with 7 CFR § 278.6(i) as the Appellant did not 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 an email correspondence of January 16, 2023, the Appellant, through counsel, requested an administrative review of the Retailer Operations Division's determination. FNS granted the Appellant's request for administrative review by letter dated January 26, 2023. In an email correspondence of January 31, 2023, the Appellant, through counsel, submitted additional information in support of the request for administrative review.

### **STANDARD OF REVIEW**

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

### **CONTROLLING LAW**

The controlling statute in this matter is covered in the Food and 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. There also exist FNS policy memoranda and clarification letters which further explain the conditions necessary in order to permanently disqualify retail stores.

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

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

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

FNS may disqualify any authorized retail food store ... if the firm fails to comply with the Food 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) states:

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

7 CFR § 271.2 states, *inter alia*:

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

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

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

7 CFR § 278.6(i) states, inter alia:

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

7 CFR § 278.6(b)(2) 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 penalty. [Emphasis added].

### **SUMMARY OF CHARGES**

The Appellant was charged and determined to be trafficking based on an analysis of EBT transaction data from November 2021 through April 2022. This involved the following SNAP transactions patterns which are indicative of trafficking:

- There were a large number of transactions in repeated dollar values;
- There were multiple transactions made from the accounts of individual households within a set time period; and
- There were EBT transactions conducted that are large based on the observed store characteristics and recorded food stock.

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that questionable transactions were the result of trafficking.

## **APPELLANT'S CONTENTIONS**

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

In the replies to the charge letter, in the administrative review request, and in subsequent correspondence, the Appellant, through counsel, stated the following summarized contentions, in relevant part:

- The Appellant denies the trafficking allegations.
- The Appellant has followed the guidelines and regulations as listed in the SNAP Reminder webpage.
- The Appellant has only made SNAP transactions for allowable items and is therefore unsure of where these violations stem from.
- FNS has not alleged any violation against the Appellant and there is no direct evidence of SNAP violations.
- The charge letter alleges three forms of violations, none of which are actual violations but rather possible indicators of potential violation. Indicators of violations are not in fact violations. FNS has not alleged any direct violations, per the SNAP regulations.
- With regard to the transactions documented in Attachment 1, the Appellant has only made EBT transactions for allowable items, per SNAP rules for retailers that are posted and maintained on premises.
- With regard to the transactions documented in Attachment 2, the Appellant is open 24 hours a day, 7 days a week which provides customers with more opportunity to make purchases.
- With regard to the transactions documented in Attachment 3, the Appellant has only made EBT transactions for allowable items. This violation does not consider the expensive, bulk products available for purchase with SNAP benefits such as energy drink packs and soft drink packs which can result in SNAP transactions with large price amounts.
- The Appellant will make the steps needed to continue to comply with all SNAP transaction requirements and be more aware of activity that could pose as an indicator of a violation.
- The Appellant requests reversal of the permanent SNAP disqualification determination.

## **ANALYSIS AND FINDINGS**

### **SNAP Authorization**

During the review period of November 2021 through April 2022, Kpe Oil Inc was classified as a convenience store. When the Appellant was authorized by FNS for participation in the SNAP on April 4, 2018, the owner signed a SNAP application for the store and acknowledged he 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 such as accepting SNAP benefits as repayment on credit accounts or in exchange for ineligible items.

### **Store Visit Observations**

The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a May 3, 2022 store visit conducted by a FNS contractor to

observe the nature and scope of the firm's operation, stock, and facilities. The available inventory of SNAP-eligible food at the time of the store visit showed food stock that would be typical of a convenience store, where households normally purchase a limited number of items. 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. This information obtained from the store visit was also used to ascertain if there were justifiable explanations for the firm's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Approximately 1,100 square feet in size with approximately 525 square feet of storage area outside of public view;
- Had three walk-in storage coolers which stocked predominantly drinks and alcohol;
- Did not have storage freezers;
- No shopping carts and no hand-held baskets available for customer use;
- One small checkout counter area with limited check-out counter space which was surrounded by a Plexiglas barrier with only a small slit for placing items for purchase;
- One specialty cash register for alcohol sales;
- One cash register and one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;
- Had optical scanners;
- No signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, and grocery package deals;
- No meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices;
- No evidence of a wholesale business such as posted prices or separate entrances for wholesale customers;
- Did not utilize an unusual pricing structure, such as prices ending in \$.x9 or \$.x00;
- Transaction totals were not rounded up or down at the checkout counter;
- Telephone and on-line orders were not taken and delivery was not offered;
- Did not stock a profusion of specialty or ethnic goods;
- Had a broken cooler;
- Had empty shelves;
- Had expired/outdated/spoiled food;
- Firm was not a WIC Program vendor and did not sell infant formula;
- The five most expensive (i.e., costing \$5.00 and above) SNAP-eligible food items in stock were various sodas at \$8.99 per 12/12 fluid ounces; Red Bull at \$8.99 per 4/8.4 fluid ounces (6 units in stock); Jack Links jerky at \$8.78 per 3.25 ounces (5 units in stock); Maxwell House coffee at \$6.28 per 11.5 ounces (3 units in stock); and various cereals at \$5.99 per 10.8 to 16.6 ounces;
- No fresh or frozen meats, poultry, or seafood;
- Frozen food stock included ice cream only;
- Did not have a kitchen; The only hot foods sold were hot beverages;
- Did not have a deli or prepared food section and deli meats and cheeses were not sold by the pound;
- Meat items included units of canned/potted meat, meat jerky, and canned fish;
- Did not meet the requirements for participation in the SNAP under Criterion A as the firm was deficient in dairy products stocking milk only;
- No fresh produce stock;
- Other staple foods available for purchase included such items as juice, nuts, pasta/ramen, cereal, flour, baking mix, oatmeal, oats-other, and canned goods;

- Much of the remaining food stock consisted of accessory foods such as candy, carbonated and non-carbonated drinks, condiments, cakes/pastries, and snack foods; and
- Ineligible nonfood items included health and beauty aids, household cleaning supplies, tobacco products and pipes, automotive supplies, lottery tickets, clothing, paper products, gasoline, gift items/souvenirs/party goods, cell phone accessories, toys, pet food, charcoal, and alcohol.

### **Charge Letter Attachments**

On review, the investigative materials provided by the Retailer Operations Division, including computer printouts of transaction data available from Federal records, store visit observations, information regarding area competitor firms, and household shopping patterns, were analyzed.

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. Based on this empirical data, and in the absence of any reasonable explanations for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the most likely explanation for “unusual, irregular, and inexplicable” transactions and patterns cited in the letter of charges is trafficking. Transactions having such characteristics sometimes do have valid explanations that support that they were the result of legitimate purchases of eligible food items. This is why opportunities are afforded to charged retailers to explain the questionable transactions cited. In this case, the Retailer Operations Division determined that the Appellant’s contentions did not outweigh the evidence. The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that questionable transactions were the result of trafficking. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

### **Transactions in Repeated Dollar Values (Charge Letter Attachment 1)**

This charge letter Attachment documents 18 transactions with repeated dollar values of \$59.xx totaling \$1,075.70; 42 transactions with repeated dollar values of \$61.xx totaling \$2,595.97; 22 transactions with repeated dollar values of \$63.xx totaling \$1,392.45; 32 transactions with repeated dollar values of \$65.xx totaling \$2,096.94; 22 transactions with repeated dollar values of \$68.xx totaling \$1,505.67; and 16 transactions with repeated dollar values of \$73.xx totaling \$1,178.39. Typically, the frequency of transactions peak at the average for that store type. Thereafter, the frequency of store transactions gradually decreases as the amounts in the transactions increases. The frequency of transactions do not typically spike at specific amounts. Such unusual clustering around specific transaction amounts is indicative of trafficking.

The Appellant contends that the store has only made EBT transactions for allowable items, per SNAP rules for retailers that are posted and maintained on premises.

**5 U.S.C. § 552 (b)(7)(E).** Based on the contractor visit, the store does not have packaged items nor does it offer large quantities of individual foods in bulk, foods sold by the case, or grocery package deals offered at a discounted rate that can result in the same repeated dollar values by random customers. As such, it is implausible that these 152 transactions resulted in the same six dollar values by different customers. Consequently, the occurrence of these repeated transactions is greater than the expected average transaction frequency for the dollar amounts. Therefore, in the absence of any compelling rationale to the contrary, it appears that these transaction amounts are contrived and are indicative of trafficking.

**5 U.S.C. § 552 (b)(7)(E).**

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

### **Repeat Transactions by the Same Household (Charge Letter Attachment 2)**

This charge letter Attachment documents 96 sets of transactions (224 total transactions) that total \$16,489.87 in SNAP benefits to meet the parameters of this scan. These transactions were conducted by 77 different SNAP households. 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.

#### **5 U.S.C. § 552 (b)(7)(E).**

The Appellant contends that the store is open 24 hours a day, 7 days a week which provides customers with more opportunity to make purchases.

Although it is not uncommon for customers to have more than one transaction per day and there are no limits on the number of times EBT cards may be used or the amount of eligible foods that may be purchased, it is not common that such multiple transactions are for large dollar amounts. 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 the Appellant's stock and facilities and are therefore, indicative of trafficking.

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 benefit allotment in just one or two days, especially from a convenience store like the Appellant firm that has a limited food stock, no fresh produce stock, no fresh or frozen meats, poultry, or seafood, and no frozen food stock other than ice cream. The store visit observations indicate that the subject firm is a convenience store and gas station without unique food stock, floor plan, or other characteristics. The Appellant's transaction activity is unusual as every transaction in each set of transactions range from \$20.05 to \$286.89 and the average convenience store transaction in 5 U.S.C. § 552 (b)(6) & (b)(7)(C) during the review period was 5 U.S.C. § 552 (b)(7)(E) and 5 U.S.C. § 552 (b)(7)(E) for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) County. The second, third, and subsequent transactions in each set are too large to consist of forgotten items.

The store visit report, which was completed in collaboration with and signed by the store manager (Note: The store manager's name is the same as the store owner, 5 U.S.C. § 552 (b)(6) & (b)(7)(C)), and store visit photos offer no explanation as to why SNAP customers would routinely shop at Kpe Oil Inc multiple times during a short period or purchase such a large volume of items, there being no great variety or advertisements of products, price advantage, profusion of large packages, or significant bulk items or food cases for sale. The SNAP-eligible food stocked by the store was generally of a low dollar value, consisting mainly of inexpensive canned and packaged goods, drinks, snack foods, single-serving food items and accessory food items.

In addition, the store visit report and photos indicate that there was only one cash register and one EBT POS device for use in ringing-up SNAP transactions, one checkout counter with limited check-out counter space which was surrounded by a Plexiglas barrier with only a small slit to place items for purchasing, no shopping carts and no hand-held baskets available to customers for transporting food within the store, and no conveyor belts to expedite high dollar or rapid consecutive purchases. The store visit observations also indicate that the firm offered no special or custom services to customers, such as on-line or telephone orders and/or delivery services, or a profusion of specialty or ethnic goods which would entice SNAP customers to utilize the subject store over other area authorized retail stores.

It is recognized that sometimes a firm may have unusual transaction patterns due to a recipient's lack of access to other SNAP authorized stores. However, during the review period there were 6 SNAP authorized retailers of comparable or larger size located within a 1.0 mile radius of Kpe Oil Inc, including 2 super stores (located 0.25 miles and 0.37 miles away, respectively), and 4 other convenience stores, that could meet the nutritional needs of SNAP customers. In addition, there were 33 SNAP authorized stores located within a 2.0 mile radius of the subject firm, including 4 super stores, 1 supermarket, 1 medium grocery store, 12 combination/other stores, and 15 other convenience stores. Some of these authorized SNAP stores are larger than Kpe Oil Inc and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store.

In addition, the record indicates that SNAP customers who shopped at Kpe Oil Inc during the review period also shopped at other area grocery stores and, therefore, transportation to other stores is not an issue for these customers. Therefore, lack of access to other authorized stores or the availability of other food stores does not appear to be an explanation for the Appellant's abnormally high SNAP transaction amounts conducted within a short timeframe of each other.

The Appellant has not provided any evidence to show that the transactions listed in this Attachment were legitimate purchases of eligible foods and not the result of trafficking of SNAP benefits. The arguments presented by the Appellant hold little weight without some kind of evidence to substantiate its claims. The Appellant has the burden to provide relevant evidence to rebut the trafficking charges. This burden has not been met.

### **Excessively Large Purchase Transactions (Charge Letter Attachment 3)**

This charge letter Attachment documents 907 SNAP transactions, as large as \$420.56, that total \$69,212.95. These large transaction amounts are not consistent with the store's observed characteristics and food inventory. The frequency of high dollar purchases in the review period calls into question the legitimacy of these transactions.

The Appellant contends that the store has only made EBT transactions for allowable items. However, the food stock and facilities of the Appellant as reported in the store visit documentation do not appear sufficient to provide for all of one's food needs. People generally do not spend large sums at such stores. They usually stop at convenience stores to pick up a few staple food items, such as bread, milk, or a can or two of food that they may consider are not worth a trip to the supermarket to purchase. The Appellant contends that the large transactions are not the result of trafficking of SNAP benefits. However, it is rare for a convenience store such as Kpe Oil Inc to have purchases like those included in this Attachment to the charge letter.

The store visit observations indicate that the Appellant is a convenience store and gas station which measures approximately 1,100 square feet in size with approximately 525 square feet of storage area outside of public view, has three walk-in storage coolers which stock predominantly drinks and alcohol,

and does not have storage freezers. The stock of SNAP-eligible foods is limited with no fresh or frozen meats, poultry, or seafood, no frozen food stock other than ice cream, no fresh produce stock, and has a lack of an abundant depth and breadth of staple foods. In addition, the Appellant did not meet the requirements for participation in the SNAP under Criterion A stocking milk only. The store's meat stock was limited as well to include canned/potted meat, canned fish, and meat jerky only. The Appellant also had empty shelves and expired/outdated/spoiled foods indicating that these items are not sold on a regular or consistent basis.

The Appellant contends that this violation does not consider the expensive, bulk products available for purchase with SNAP benefits such as energy drink packs and soft drink packs which can result in SNAP transactions with large price amounts. However, the FNS store visit report as well as the store visit photos indicate that there were no signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, specials such as buy one food item and get one for free, and grocery package deals, no evidence of meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices, and no evidence of a wholesale business such as posted prices or separate entrances for wholesale customers. In addition, the firm offered no special or custom services to customers, such as on-line or telephone orders and/or delivery services, or a profusion of specialty or ethnic goods which would entice SNAP customers to utilize the subject store over other area authorized retail stores.

The store visit observations also indicate that there were only a few expensive eligible foods in stock, the majority of which were in limited quantities, that would account for these large amounts. Specifically, the five most expensive (i.e., costing \$5.00 and above) SNAP-eligible food items in stock were various sodas at \$8.99 per 12/12 fluid ounces; Red Bull at \$8.99 per 4/8.4 fluid ounces (6 units in stock); Jack Links jerky at \$8.78 per 3.25 ounces (5 units in stock); Maxwell House coffee at \$6.28 per 11.5 ounces (3 units in stock); and various cereals at \$5.99 per 10.8 to 16.6 ounces.

While there is no definition in the SNAP regulations for an excessively large purchase or transaction, FNS makes its determination based on the store type, characteristics and stocked inventory. The burden is on the Appellant to prove transactions FNS identified as large for the store type (in this case, a convenience store) are for legitimate purchases. According to the store visit, the subject store did not have inventory to support the numerous large transactions. 5 U.S.C. § 552 (b)(7)(E).

5 U.S.C. § 552 (b)(7)(E).

Based on the store layout, infrastructure, and available inventory, it is not credible that the Appellant would so frequently conduct large transactions closely resembling those typically found at a supermarket or super store. It is not plausible that the firm's customers would regularly carry very large amounts of merchandise around the store without the benefit of shopping carts, especially since larger, better-stocked stores are readily available and in the vicinity of the Appellant firm. The Appellant is not set up to process high-dollar transactions, as indicated by its lack of equipment to facilitate large transactions and limited counter space. There are no legitimate bases for SNAP customers' unusual attraction to the firm such as a superior selection of staple foods, price advantages, package specials, bulk or promotional items, an extensive variety of otherwise unavailable ethnic food items, or special services rendered. The Appellant failed to provide convincing evidence to establish the legitimacy of these excessively large transactions, 5 U.S.C. § 552 (b)(7)(E). Based on all of these factors discussed in this section, the large volume of transactions for high-dollar amounts is unlikely to indicate a pattern of legitimate food purchases.

The Appellant requests reversal of the permanent SNAP disqualification determination. However, neither the Food and Nutrition Act of 2008, as amended, nor the accompanying regulations 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 extremely serious, even when the exchange of SNAP benefits for cash is dollar-for-dollar or is conducted by a nonmanagerial 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, § 278.6(e)(1)(i) of the SNAP regulations states that FNS must 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.

USDA employs a computerized fraud detection tool to identify EBT transactions that form patterns that have characteristics indicative of trafficking. However, this tool does not, by itself, determine or conclude that trafficking has occurred. The Retailer Operations Division analyzes the transaction data and patterns along with other documentation such as, information from the onsite store visit report including photographs of stock and the store layout, an analysis of recipient shopping behavior, and comparisons with similar store types in local area, to render a determination as to whether or not the questionable transaction patterns were, more likely than not, the result of trafficking. The regulations at 7 CFR § 278.6(a) state that FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, and that such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through, inconsistent redemption data, and evidence obtained through a transaction report under an electronic benefit transfer system.

### **Corrective Action**

With regard to the Appellant’s contentions with respect to the implementation of corrective actions to ensure that future SNAP violations do not occur, it is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division. This review is limited to what circumstances were at the basis of the Retailer Operations Division action at the time such action was made. It is not the authority of this review to consider what subsequent remedial actions may have been taken so that the store may begin to comply with program requirements. There is no provision in the SNAP regulations or internal agency policy directives for waiver or reduction of an administrative penalty assessment on the basis of after-the-fact corrective action implemented subsequent to investigative findings of program violations. Therefore, the Appellant’s contention that it has taken or will take corrective actions, though they would have been valuable towards preventing future program violations, does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

### **CIVIL MONEY PENALTY**

As previously indicated, the January 9, 2023 determination letter advised the Appellant of the ineligibility for consideration for a trafficking civil money penalty according to the terms of Section 278.6(i) of the SNAP regulations. The letter of charges dated November 21, 2022 advised the Appellant that documentation of eligibility for that alternative sanction was to be provided within 10 days. The regulations specify that such documentation must, in part, establish that there was an effective compliance policy and training program and that both were in effect and implemented prior to the occurrence of violations. The letter indicates that no information was provided by the Appellant for consideration; therefore, on review the Retailer Operations Division’s determination that the Appellant firm is ineligible for the imposition of civil money penalties in lieu of disqualification is affirmed.

## **CONCLUSION**

The Retailer Operations Division's analysis of the Appellant's EBT transaction record, upon which charges of violations are based, together with observations made during the store visit and an analysis of customer shopping behaviors, provide substantial evidence that questionable transactions during the focus period have characteristics and display patterns that are not consistent with legitimate sales of eligible food to SNAP benefit customers at a store of this type, size and makeup. Rather, the characteristics are indicative of illegal trafficking in program benefits. The Appellant's contentions do not outweigh this evidence.

The record has yielded no indication of error or discrepancy in the reported findings by the Retailer Operations Division that program benefits were accepted in exchange for cash or consideration other than eligible food. Therefore, based on a review of the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged. Therefore, the decision to impose a permanent disqualification from participation in the SNAP against Kpe Oil Inc is sustained.

## **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. 2023) and to Section 279.7 of the Regulations (7 CFR § 279.7) with respect to 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, FNS is releasing this information in a redacted format as appropriate. FNS will protect, to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy.

LORIE L. CONNEEN  
ADMINISTRATIVE REVIEW OFFICER

April 5, 2023