

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

**3030 Mini Market Inc,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0217779**

**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 3030 Mini Market Inc. (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 3030 Mini Market Inc. on August 15, 2019.

**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 July 18, 2019, the Retailer Operations Division informed the Appellant that 3030 Mini Market 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."

In a response to the Retailer Operations Division of July 26, 2019, the Appellant, through counsel, replied to the charges therein denying the trafficking allegations and providing various

explanations for the questionable SNAP transactions that were outlined in the July 18, 2019 Charge Letter.

After considering the Appellant's reply and the evidence in the case, the Retailer Operations Division issued a Determination Letter dated August 15, 2019, informing the Appellant that 3030 Mini Market 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) 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 a letter postmarked August 23, 2019, the Appellant, through counsel, requested an administrative review of the Retailer Operations Division's decision to permanently disqualify the firm from participation in the SNAP. FNS granted the Appellant's request for administrative review by letter dated September 12, 2019.

### **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 contained in the Food and Nutrition Act of 2008, amended, 7 U.S.C. § 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 2021, Part 278.6(a) and Part 278.6(e)(1)(i) of the Regulations establish the authority upon which a permanent disqualification may be imposed upon a retail food store or wholesale food concern. 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 December 2018 through May 2019. This involved the following SNAP transactions patterns which are indicative of trafficking:

- There were multiple transactions made from the accounts of individual SNAP 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 reply to the Charge Letter and in the administrative review request, the Appellant, through counsel, stated the following summarized contentions, in relevant part:

- The Appellant denies the trafficking allegations.
- It is important to note that the Appellant is a fairly large convenience/grocery store (on New York City standards) compared to other similar stores in the neighborhood. The store is approximately 1,200 square feet, with several aisles packed with a variety of food items and various products and merchandise. All of the store's aisles are well stocked.
- It is important to consider the Appellant's location and how it impacts the store's EBT transactions. The Appellant is located directly across the street from the New York City housing development called the Edenwald Houses, which is the largest housing development in the Bronx, made up of over 2,000 apartments and more than 5,400 residents. As a result, a large number of the housing development's low income residents shop at the Appellant using their EBT cards, and in turn, this high volume of low income residents translates to a large number of EBT transactions. As such, it is important to understand why the Appellant's EBT transactions may differ than another grocery store in another random neighborhood in New York City. Given the store's location and the circumstances previously discussed, it is unfair and inappropriate to compare the Appellant's EBT transactions to many other grocery stores in New York City.
- With regard to the SNAP transactions documented in Charge Letter Attachment 1, it is not unusual for customers to complete one transaction and later (which often equates to the following day) make another transaction. When this occurs, the customer would obviously need to return to the store and complete a completely new EBT transaction. In the same way that USDA's allegations are wholly circumstantial accusations which have an innocent explanation, it is also true of the transactions in this Attachment from the

same customers 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is nothing more than customers returning to make additional purchases after making their original purchase 5 U.S.C. § 552 (b)(6) & (b)(7)(C) earlier.

- USDA’s allegations of trafficking are essentially based upon the premise that several EBT transactions at the Appellant firm show a pattern of “unusual, irregular, and inexplicable activity”. The information presented by USDA simply does not satisfy section 271.2’s definition of “trafficking”. According to section 271.2, “trafficking” requires some evidence of exchanging SNAP benefits for either cash or ineligible items. USDA has presented absolutely no evidence of the Appellant’s employees exchanging SNAP benefits for cash or ineligible items. The mere submission of analytical numbers should not be sufficient to establish “trafficking.” An antiquated algorithm should not be used as the sole basis to support an allegation of “trafficking” and remove a store’s SNAP participation. Without an actual individual or some other direct evidence which supports USDA’s allegation of trafficking, it is inappropriate to find that the Appellant has violated the SNAP regulations. The information presented by USDA merely illustrates a typical six month period at the Appellant firm in which all EBT transactions were legal and conducted in full compliance with the SNAP regulations.
- Prior to the trafficking allegations, the Appellant had established and implemented an effective compliance policy and program to prevent violations of the SNAP regulations. The owner and five employees were all initially trained on the SNAP regulations and compliance when they started working at the store and all employees have maintained regular training in order to remain knowledgeable regarding the SNAP rules and regulations. A manual which clearly explained the rules and accepted transactions when using SNAP cards was generated when the Appellant firm opened in April of 2017. It is clear that during the six month review period, the Appellant had already developed and instituted an effective program which promoted full compliance with all SNAP regulations. The Charge Letter made no allegation that the Appellant lacked an effective compliance policy and program to prevent SNAP violations. The Charge Letter made no mention of the Appellant’s compliance policy and program to prevent SNAP violations; the letter did not criticize, question, or in any way discuss the Appellant’s compliance policy and program. While the August 15, 2019 Determination Letter claims that the Appellant did not have an effective compliance policy and program, there is absolutely nothing to support such an assertion by USDA. USDA makes this accusation without any evidence, documentation, or information to corroborate its claim. It seems somewhat disingenuous for USDA to characterize the Appellant’s compliance policies and programs ineffective when the firm’s compliance policies and programs are almost identical to those cited on USDA’s website. The owner and employees have submitted affidavits asserting that they had a policy in place and that the policy was implemented in the form of a manual detailing SNAP compliance issues and regular employee training and supervision to ensure that every employee is compliance with all SNAP regulations.
- The Appellant requests that USDA’s findings that the firm failed to have an effective compliance policy and program to prevent SNAP violations and the decision to impose a permanent SNAP disqualification be reversed.

In support of these contentions, the Appellant submitted the following documents/information for review:

- Affidavits of the store owner and five employees;
- Five signed training documents;
- SNAP Program Policy & Procedures; and
- 19 black and white photos of food and non-food stock.

## **ANALYSIS AND FINDINGS**

### **Store Characteristics**

FNS authorized 3030 Mini Market Inc. as a convenience store on August 30, 2017. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a November 27, 2018 store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. 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 1,600 square feet in size and approximately 300 square feet of additional storage outside of public view that stocked predominantly drinks and non-food items;
- No shopping carts or hand-held baskets available for customer use;
- One cash register and one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;
- One specialty cash register for lottery sales;
- One checkout counter area with limited check-out counter space and was partially obstructed by an ice cream freezer;
- No 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;
- No indication from the store visit report that the firm has a special pricing structure, such as prices ending in \$x.x9 and/or \$x.00;
- Transaction totals are not rounded up or down at the checkout counter;
- Telephone and on-line orders were taken and delivery was offered;
- The four most expensive food items in stock were Enfamil infant formula at \$18.99 per 12.5 ounces (3 units in stock); Canilla rice at \$11.99 per 20 pounds; deli meat at \$8.99 per pound; and cheese at \$7.99 per pound;
- No fresh or frozen meats, poultry, or seafood;
- Had a deli in which prepared, made-to-order sandwiches were prepared and sold;
- Deli meats and cheeses were sold by the pound;
- Had a kitchen and hot foods were sold;

- Meat items included units of canned/potted meat, deli meats, canned fish, sausage, eggs, packaged fish, and meat jerky;
- Dairy included milk (cow, soy, and coconut varieties), margarine, cheese, infant formula, sour cream, and yogurt;
- A limited variety and amount of fresh produce;
- Other staple foods available for purchase include such items as juice, pasta, rice, cereal, baking mix, loaf bread, bagels, buns/rolls, corn meal, tortillas, and canned goods;
- Much of the remaining food stock consists of accessory foods such as candy, carbonated and non-carbonated drinks, snack foods, cakes/pastries, coffee, and condiments; and
- Ineligible nonfood items included tobacco products, health and beauty aids, paper products, household cleaning supplies, automotive supplies, lottery tickets, alcohol, mobile phones/phone cards, and household items.

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. There was little indication that SNAP households would be inclined to regularly visit the store to purchase large quantities of groceries. Given the available inventory and the store's characteristics, this review could find no reason why the Appellant firm's SNAP redemption patterns differed so significantly from those of similar sized competitors.

### **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.

Stores caught in trafficking violations consistently display particular characteristics or patterns of transactions, including those cited in the letter of charges. Nevertheless, transactions having such characteristics are sometimes valid and sufficient evidence that support that they were the result of legitimate purchases of eligible food items is provided. This is why opportunities are afforded to charged retailers to explain the questionable transactions cited and to provide evidence that they are legitimate.

The Retailer Operations Division presented a case that the 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 store during the review period. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

### **Repeat Transactions by the Same Household (Charge Letter Attachment 1)**

This Charge Letter Attachment documents 60 sets of transactions (147 total transactions) **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in SNAP benefits to meet the parameters of this scan. These

transactions were completed by 33 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.

The Appellant has provided several contentions regarding the SNAP transactions documented in this Attachment, including a claim that it is not unusual for customers to complete one transaction and later (which often equates to the following day) make another transaction. When this occurs, the customer would obviously need to return to the store and complete a completely new EBT transaction. It is nothing more than customers returning to make additional purchases after making their original purchase **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** earlier.

With regard to the Appellant's contentions, 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.

The Appellant contends that the store is a fairly large convenience/grocery store (on New York City standards) compared to other similar stores in the neighborhood. The store is approximately 1,200 square feet, with several aisles packed with a variety of food items and various products and merchandise. All of the store's aisles are well stocked.

However, the report and photographs from the store visit offer no explanation as to why SNAP customers would routinely shop at 3030 Mini Market Inc. multiple times during a short period or purchase such a large volume of items, there being no great variety of products, price advantage, profusion of large packages, or significant bulk items or food cases for sale. The second, third, fourth, and fifth transactions in each set are too large to consist of forgotten items. In addition to the store's limited checkout space which is unsuitable for large transactions, 3030 Mini Market Inc. has no shopping carts or hand-held baskets available to customers for transporting food within the store.

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, there are 21 SNAP authorized retailers, including 2 large grocery stores, 1 supermarket (which is located 0.29 miles from the subject firm), and 1 super store, located within a 0.5 mile radius of 3030 Mini Market Inc. that can meet the nutritional needs of SNAP customers. Some of these authorized SNAP stores are larger than 3030 Mini Market Inc. and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store.

The record indicates that SNAP customers who shopped at 3030 Mini Market 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. **5 U.S.C. § 552 (b)(7)(E).**

Unfortunately, the Appellant has not provided any evidence to show that the transactions listed in Attachment 1 were legitimate purchases of eligible foods. The arguments presented by the Appellant hold little weight without some kind of evidence to substantiate its claims.

### **Excessively Large Transactions (Charge Letter Attachment 2)**

This Charge Letter Attachment lists 169 SNAP transactions, **5 U.S.C. § 552 (b)(6) & (b)(7)(C).** 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 is a fairly large convenience/grocery store (on New York City standards) compared to other similar stores in the neighborhood. The store is approximately 1,200 square feet, with several aisles packed with a variety of food items and various products and merchandise. All of the store's aisles are well stocked. In support of its contentions, the Appellant provided 19 black and white photos of food and non-food stock.

With regard to the Appellant's contentions, 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 3030 Mini Market Inc. to have purchases like those included in this Attachment to the Charge Letter. This Attachment cites 169 EBT transactions during the six month period of investigation **5 U.S.C. § 552 (b)(6) & (b)(7)(C).**

The FNS store visit report and photos of November 27, 2018 show that 3030 Mini Market Inc. offers a moderate stock of SNAP eligible foods with no fresh meats, poultry, or seafood, no frozen meats, poultry, or seafood, a minimal variety and amount of fresh produce, and lacks an abundant depth and breadth of staple foods. The store visit inventory report and photos also show only a few expensive eligible foods in stock that would account for these large amounts as well as showing the store has limited checkout counter space and no shopping carts or hand-held baskets in which to transport the large number of items required to make up these large transaction amounts. Without these, it is unlikely that such large dollar value transactions could be for actual food purchases and more likely they are trafficking.

The store visit report and photos also 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, 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. There is no evidence of a price advantage or custom or special services rendered at the subject store that are

not offered at other authorized SNAP stores in the area. There is no evidence that the firm would be likely to have SNAP redemption patterns that differ considerably from similar sized competitors. These large transaction amounts are also not consistent with the Appellant store's inventory.

**5 U.S.C. § 552 (b)(7)(E).**

The Appellant contends that the store is located directly across the street from the New York City housing development called the Edenwald Houses, which is the largest housing development in the Bronx, made up of over 2,000 apartments and more than 5,400 residents. As a result, a large number of the housing development's low income residents shop at the Appellant using their EBT cards, and in turn, this high volume of low income residents translates to a large number of EBT transactions. Given the store's location and the circumstances previously discussed, it is unfair and inappropriate to compare the Appellant's EBT transactions to many other grocery stores in New York City.

FNS acknowledges that the Appellant is located in close proximity to a housing development as a review of Google maps shows that Edenwald Houses is located at 0.3 miles from 3030 Mini Market Inc. However, while the Appellant firm may be located in a neighborhood with households that qualify for SNAP benefits, these factors are not an indication that questionable transactions would be occurring at any given store. The subject store shows unusual transaction patterns that are not displayed in other similarly stocked stores. If specific household needs are causing these questionable transactions at the subject store, it would be expected that similar patterns would also present themselves at nearby firms as well. But this is simply not the case.

As noted previously, there are 21 SNAP authorized retailers, including 2 large grocery stores, 1 supermarket (which is located 0.29 miles from the subject firm), and 1 super store, located within a 0.5 mile radius of 3030 Mini Market Inc. that can meet the nutritional needs of SNAP customers. Some of these authorized SNAP stores are larger than 3030 Mini Market Inc. and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store.

An analysis of the shopping patterns for all of the SNAP households listed in this Attachment shows that the majority of the households shopping at 3030 Mini Market Inc. have access to transportation and that all are regularly shopping at a variety of larger stores, including super stores and/or supermarkets/large grocery stores, located nearby and at several miles distance from the Appellant's location. While 3030 Mini Market Inc. does offer some staple food items, SNAP recipients are already shopping at other larger SNAP retailers located in proximity to the Appellant's business offering a greater quantity and variety of products, including fresh meats/seafood and produce, at lower prices.

**5 U.S.C. § 552 (b)(7)(E).**

Based on the discussion above and in the absence of credible evidence for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the letter of charges evidence trafficking as the most likely explanation. Nevertheless, transactions having such characteristics

do sometimes have valid explanations that support that they were the result of legitimate purchases of eligible food items, and this is why opportunities are afforded to charged retailers to explain the questionable transactions cited. In this case, however, the Retailer Operations determined that the Appellant's contentions did not outweigh the evidence. Assertions that the firm has not violated program regulations, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations.

In summary, the store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding those of similar type stores. In addition to the statistical irregularity of such high dollar transactions, the limited availability of counter space for checking out and the lack of shopping carts and hand-held baskets support the Retailer Operations Division's determination. It is not plausible that the store's customers are carrying large amounts of food around the store without the benefit of shopping carts and/or hand-held baskets. Customers purchasing such large quantities of food items would have to hold them in their arms, or enlist the help of others while shopping. Based on the preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 2 are more likely than not the result of trafficking in SNAP benefits.

### **Data Analysis**

The Appellant contends that USDA's allegations of trafficking are essentially based upon the premise that several EBT transactions at the Appellant firm show a pattern of "unusual, irregular, and inexplicable activity". The information presented by USDA simply does not satisfy section 271.2's definition of "trafficking". According to section 271.2, "trafficking" requires some evidence of exchanging SNAP benefits for either cash or ineligible items. USDA has presented absolutely no evidence of the Appellant's employees exchanging SNAP benefits for cash or ineligible items. The mere submission of analytical numbers should not be sufficient to establish "trafficking." An antiquated algorithm should not be used as the sole basis to support an allegation of "trafficking" and remove a store's SNAP participation. Without an actual individual or some other direct evidence which supports USDA's allegation of trafficking, it is inappropriate to find that the Appellant has violated the SNAP regulations. The information presented by USDA merely illustrates a typical six month period at the Appellant firm in which all EBT transactions were legal and conducted in full compliance with the SNAP regulations.

Firms are chosen for analytical investigation based upon numerous detailed and rigorous mathematical algorithms. This data presents the Retailer Operations Division with a statistically valid prima facie indication of highly unusual transaction activity; the activity therein identified is not marginally aberrant, but markedly so. Properly analyzed and interpreted, the Retailer Operations Division does not contend that EBT transactions are overtly suspicious when they occur on an occasional or intermittent basis, but when such transactions form repetitive patterns, on a comparative basis, over a period of time that ensures such activity is not simply intermittent, such activity is identified for further analysis.

Once such firms have been identified as potential compliance cases, from approximately 256,516 authorized firms nationwide, the Retailer Operations Division undertakes a detailed examination of the available transaction data and obtains further relevant information regarding the firm's

business operations such as the level and condition of staple food stock maintained by the firm, the presence or absence of the firm's logistical retail wherewithal and numerous other factors pertinent to the firm's ability to legitimately process the transaction activity for which the firm has been flagged.

Agency policy and procedures direct that only after a careful, comprehensive and complete analysis, from which appropriate conclusions are logically derived, will the firm be issued a Charge Letter. The firm is then given the opportunity to reply to those charges and provide any information it deems appropriate in justifying as legitimate the transaction activity detailed in the Charge Letter. In the present case, these policies and procedures are shown by the record to have been duly performed in all relevant and pertinent detail. Moreover, 7 CFR § 278.6(a), noted above, established the authority upon which FNS may disqualify any authorized retail food store on the basis of evidence obtained through a transaction report under an electronic benefit transfer system. The Retailer Operations Division's use of transaction data and other reports, in addition to store visit observations and an analysis of household shopping behavior and other relevant data and information, in rendering a finding that trafficking is the most likely explanation of the transaction activity, is as valid a means of establishing evidence as that obtained through an on-site investigation and the eye witnessing of trafficking. Accordingly, the Appellant's contention that the charges are speculative and based solely upon a computer generated analysis is not compelling.

#### **CIVIL MONEY PENALTY**

The Appellant contends that prior to the trafficking allegations, the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP regulations. The owner and five employees were all initially trained on the SNAP regulations and compliance when they started working at the store and all employees have maintained regular training in order to remain knowledgeable regarding the SNAP rules and regulations. A manual which clearly explained the rules and accepted transactions when using SNAP cards was generated when the Appellant firm opened in April of 2017. It is clear that during the six month review period, the Appellant had already developed and instituted an effective program which promoted full compliance with all SNAP regulations. The Charge Letter made no allegation that the Appellant lacked an effective compliance policy and program to prevent SNAP violations. The Charge Letter made no mention of the Appellant's compliance policy and program to prevent SNAP violations; the letter did not criticize, question, or in any way discuss the Appellant's compliance policy and program. While the August 15, 2019 Determination Letter claims that the Appellant did not have an effective compliance policy and program, there is absolutely nothing to support such an assertion by USDA. USDA makes this accusation without any evidence, documentation, or information to corroborate its claim. It seems somewhat disingenuous for USDA to characterize the Appellant's compliance policies and programs ineffective when the firm's compliance policies and programs are almost identical to those cited on USDA's website. The owner and employees have submitted affidavits asserting that they had a policy in place and that the policy was implemented in the form of a manual detailing SNAP compliance issues and regular employee training and supervision to ensure that every employee is compliance with all SNAP regulations.

In the July 18, 2019 Charge Letter the Appellant was informed by the Retailer Operations Division that, under certain conditions, FNS may impose a civil money penalty (CMP) of up to \$59,000 in lieu of permanent disqualification of a firm for trafficking. Per Section 278.6(i) of the SNAP regulations, four criteria must be met in order to be considered for a trafficking civil money penalty. If requesting a trafficking CMP, an Appellant must meet each of the four criteria listed and provide the documentation as specified within ten days of the Appellant's receipt of their Charge Letter. As specified in 7 CFR § 278.6(i), in determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of trafficking, the firm shall, at a minimum, establish by substantial evidence its fulfillment of each of the following four criteria:

Criterion 1. The firm shall have developed an effective compliance policy as specified in 7 CFR § 278.6(i)(1);

Criterion 2. The firm shall establish that both its compliance policy and program were in operation at the location where the violation(s) occurred prior to the occurrence of violations cited in the Charge Letter;

Criterion 3. The firm had developed and instituted an effective personnel training program as specified in 7 CFR § 278.6(i)(2); and

Criterion 4. Firm ownership was not aware of, did not approve, did not benefit from, or was not in any way involved in the conduct or approval of trafficking violations.

If the Appellant's request for a trafficking CMP and the required documentation are not submitted on time, it will lose its right for any further consideration for a trafficking CMP. The SNAP regulations are specific at 7 CFR §278.6(b)(2)(iii) 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, the firm shall not be eligible for such a penalty". The regulations do not provide the agency discretion to extend the time within which documentation and evidence in support of a trafficking civil money penalty may be submitted.

In the reply to the Charge Letter and in the request for administrative review, the Appellant, through counsel, requested consideration of a civil money penalty in lieu of permanent SNAP disqualification. In support of its request, the Appellant provided FNS with affidavits of the store owner and five employees, five signed training documents, and the firm's SNAP Program Policy & Procedures.

The Retailer Operations Division determined that the Appellant was not eligible for a trafficking civil money penalty in lieu of a disqualification under 7 CFR § 278.6(i) because the Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations. **5 U.S.C. § 552 (b)(7)(E).**

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

## **CONCLUSION**

The Retailer Operations Division's analysis of the Appellant's EBT transaction record, 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 3030 Mini Market 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

October 28, 2019