

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

Bbb Deli Grocery Corp,

Appellant,

v.

Case Number: C0208372

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the USDA that there is sufficient evidence to support that the Retailer Operations Division properly imposed a permanent disqualification of Bbb Deli Grocery Corp. as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, when it imposed a permanent disqualification against Bbb Deli Grocery Corp.

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 June 20, 2018, 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 November 2017 through April 2018. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter stated the Appellant had the right to respond to the charges within 10 days of receipt to provide explanations for the irregular SNAP transaction patterns.

The letter also stated that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt under the conditions specified in 7 CFR § 278.6(i). The charge letter was delivered via UPS on June 21, 2018.

In a letter received on June 29, 2018, the Appellant denied trafficking in SNAP benefits, but stated that the store was located in an area near shelters and that customers found it convenient to shop at the store multiple times a day. The Appellant stated that the store sells products that can easily add up **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** per transaction and provided purchase invoices as proof of the store's food inventory. In addition, the Appellant stated that the store also accepts SNAP benefits as repayment on credit accounts which is the reason for many of the large transactions. Lastly, the Appellant requested a trafficking CMP in lieu of a permanent disqualification.

The Retailer Operations Division replied in a letter dated August 2, 2018 that the acceptance of SNAP benefits as payment for items sold to a household on credit is a violation of 7 CFR § 278.2(f). The letter requested documentation to support that food items were purchased on credit and stated this documentation must identify specific accounts along with corresponding dates and amounts. In response, the Appellant submitted a 33-page copy of photo IDs, slips of paper with names and dollar amounts, and EBT terminal receipts as evidence that it was accepting SNAP benefits as repayment on credit accounts.

After considering the Appellant's responses and the evidence in the case, the Retailer Operations Division issued a determination letter dated August 27, 2018. The determination letter informed the Appellant it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(e)(1). The determination letter also stated that the Retailer Operations Division considered the Appellant's eligibility for a trafficking CMP according to the terms of 7 CFR § 278.6(i). The Retailer Operations Division determined that the Appellant was not eligible for a trafficking CMP because the Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP. The determination letter was delivered to the Appellant on August 28, 2018.

In a letter postmarked September 7, 2018, the Appellant requested an administrative review of the Retailer Operation Division's determination. The request for administrative review was granted.

STANDARD OF REVIEW

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

CONTROLLING LAW AND REGULATIONS

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

7 U.S.C. § 2021(b)(3)(B) states, in part:

... 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 § 271.2 states that the definition of “coupon” includes:

... an electronic benefit transfer card or personal identification number issued pursuant to the provisions of the Food and Nutrition Act of 2008, as amended, for the purchase of eligible food.

7 CFR § 278.6(e)(1)(i) states:

FNS shall ... disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.

7 CFR § 271.2 defines trafficking, in part, as:

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 § 271.2 defines eligible food, in part, as:

Any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods and hot food products prepared for immediate consumption

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(i) states, in part:

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

7 CFR § 278.6(b)(2) states, in part:

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

SUMMARY OF CHARGES

The Appellant was charged and determined to be trafficking based on an analysis of electronic benefit transfer (EBT) transaction data from November 2017 through April 2018. This involved the following transaction patterns which are trafficking indicators:

- **Charge Letter Attachment 1:** There were an unusual number of transactions ending in a same cents value. This attachment lists 494 transactions [5 U.S.C. § 552 \(b\)\(6\) & \(b\)\(7\)\(C\)](#). [5 U.S.C. § 552 \(b\)\(6\) & \(b\)\(7\)\(C\)](#).
- **Charge Letter Attachment 2:** Multiple transactions were made from individual benefit accounts in unusually short time frames. This attachment lists 24 sets of 51 transactions [5 U.S.C. § 552 \(b\)\(6\) & \(b\)\(7\)\(C\)](#). [5 U.S.C. § 552 \(b\)\(6\) & \(b\)\(7\)\(C\)](#).
- **Charge Letter Attachment 3:** Excessively large purchase transactions were made from recipient accounts. This attachment lists 231 SNAP transactions [5 U.S.C. § 552 \(b\)\(6\) & \(b\)\(7\)\(C\)](#). [5 U.S.C. § 552 \(b\)\(6\) & \(b\)\(7\)\(C\)](#).

APPELLANT'S CONTENTIONS

The Appellant made the following summarized contentions in its response to the charge letter, and its request for administrative review, in **relevant** part:

- The store allowed customers to repay credit accounts with SNAP benefits.

- The store is located in an area near shelters and customers find it convenient to shop at the store multiple times a day.
- Many of the store customers live nearby and find it troublesome to travel to a supermarket.
- The store sells meat for \$20 or \$30. Along with other food items sold by the store, a customer can easily have a transaction adding up to **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.
- The store has provided purchase invoices to document its food inventory.
- The store has provided evidence of a compliance policy and training program and should qualify for a trafficking CMP in lieu of a permanent disqualification.

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

ANALYSIS AND FINDINGS

Authorization History

The Food & Nutrition Service (FNS) authorized Bbb Deli Grocery Corp. for the SNAP on July 21, 2017. During the review period of November 2017 through April 2018, the Retailer Operations Division classified the store as a small grocery store.

The owner signed the SNAP application for the store on July 7, 2017 and acknowledged that the owner was aware of the SNAP regulations and understood those regulations. That application included a certification and confirmation that the owner would “accept responsibility on behalf of the firm for violations of the SNAP regulations, including those committed by any of the firm’s employees, paid or unpaid, new, full-time or part-time.” The violations listed on this certification include accepting SNAP benefits in exchange for cash, otherwise known as trafficking, and other violations such as accepting SNAP benefits as repayment on credit accounts or in exchange for ineligible items.

Store Visit Report

The case record documents that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during an April 12, 2018 store visit conducted by an FNS contractor to observe the nature and scope of the store’s operation, stock and facilities. This information was then used to ascertain if there were justifiable explanations for the store’s irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Bbb Deli Grocery Corp. is approximately 900 square feet in size.
- The store did not have any shopping carts or handheld shopping baskets for customer use.
- The store had one (1) cash register and one (1) point-of-sale device for grocery purchases.
- The store did not have an optical scanner or conveyor belts at the checkout.
- There was a small storage area of approximately 120 square feet that stored mostly beverages out of public view. Store personnel confirmed that no food was stored offsite.
- The store did not have a special pricing structure such as most items ending in even dollars. Instead, food items generally had typical retail prices ending in nine (9) cent amounts such as .49, .89 and .99. Store personnel confirmed that the store did not round prices up or down at the checkout.
- The store did not sell items in bulk such as fresh meat bundles, fresh seafood specials, or large boxes of fresh produce. The store did not sell any specialty or international foods that would normally sell for a high price.
- The checkout area consisted of a small countertop and window opening surrounded by a Plexiglas barrier with shelving. The countertop had empty space of no more than two (2) feet by two (2) feet in size for stacking items to be purchased. The very limited space for stacking food at the checkout area made it not conducive to conducting large transactions.

The SNAP eligible staple food stocked by the store consisted mainly of inexpensive canned and packaged dry goods with only a limited amount of fresh produce. The store also sold low cost accessory food items such as snack foods, ice cream, carbonated drinks, coffee, tea, condiments, and spices. The store had a small deli counter with meat and cheese sold by the pound. The stocked ineligible items included lottery tickets, tobacco, alcohol, mobile phone accessories, health and beauty products, paper goods, and cleaning products. The store also had a kitchen and food preparation area where SNAP ineligible hot and heated prepared food was made and sold using products from the deli counter.

Store personnel confirmed that the most expensive items sold by the store was infant formula at \$18.99 per can; a 20-pound bag of rice at \$14.99; gallon of cooking oil at \$14.89; and a pound of cheese at \$8.99. However, the store did not appear to have sufficiently large quantities of these items that would explain the large dollar transactions cited in the charge letter. Regarding the infant formula, a SNAP household with infant(s) would be more likely to purchase formula at a WIC authorized vendor using their WIC benefits. Given the available inventory as noted above, there is no indication from the store visit report that the store would be likely to have SNAP transaction patterns significantly different from similar-sized competitors offering similar food items.

Credit Accounts

The Appellant claims that at least some of the transactions cited in the charge letter were repayments on credit accounts. As evidence, the Appellant provided a 33-page document with

copies of photo IDs, slips of paper with written customer names and miscellaneous dollar amounts, and EBT terminal receipts. Not all of these documents formed a complete set. For example, there were customer IDs provided without any other documentation. Some IDs were provided with only a matching EBT terminal receipt and no slips of paper.

The Retailer Operations Division determined that the documentation submitted by the Appellant was insufficient to establish that the transactions cited in the charge letter were due to the repayment of credit accounts. Regarding the slips of paper with names and dollar amounts, there is no indication if these amounts represent credit repayments. The slips of paper do not show when or if credit was extended to the customer, what food was purchased on credit, or the date that any credit was repaid. Even if they were credit repayments, the documentation does not indicate whether the debt was repaid by cash, credit card or SNAP benefits. The photo IDs combined with the EBT receipts alone, does not prove whether or not these were credit repayments, another type of violative transaction, or a legitimate SNAP purchase.

When a retailer claims it maintains credit accounts to explain irregular SNAP transactions and data patterns, FNS requires a level of detail regarding the legitimacy of the claim. This is because retailers have often made false admissions of credit in an attempt to obtain a lesser penalty after committing more egregious violations such as trafficking. 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. The documentation submitted by the Appellant does not meet these requirements as the documents do not indicate what food items, if any, were purchased on credit, when the credit was extended, when the account was paid off, or whether it was paid off by cash, check, credit card or SNAP benefits. In conclusion, there is insufficient evidence to support the Appellant's claim that the transaction patterns cited in the charge letter were due to repayments of credit accounts with SNAP benefits.

Same Cent Transactions

Out of 2,143 SNAP transactions conducted during the review period, Bbb Deli Grocery Corp. conducted 801 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Out of these larger dollar transactions, a total of 494 transactions (61.67 percent) ended in 00, 50 or 99 cents. The Appellant offered no explanation for this irregular transaction pattern.

When such repetitive patterns are unsupported by special pricing structures they are a strong indicator of trafficking in SNAP benefits. There is no evidence that the store had a special pricing policy that would cause a disproportionate number of higher dollar transactions to end in 00, 50 or 99 cents. Store personnel also stated during the store visit that the firm did not round prices up or round prices down at the checkout.

Based on the store visit report, the Appellant store's food inventory contains almost exclusively inexpensive canned and packaged goods, single-serving food items and accessory foods. Due to the store's mostly low cost foods, the larger dollar transactions cited in the charge letter would normally consist of multiple food products being purchased in one transaction. It is implausible that several of these relatively inexpensive items purchased together would disproportionately

result in total purchase prices ending exactly in 00, 50 or 99 cents. The store visit report documented that most items in the store had price amounts ending in nine (9) cents. When SNAP customers buy multiple food items ending in nine (9) cents, resulting in higher dollar amounts, the total transaction amount is more likely to result in a random statistical spread of ending cent ranges from 00 to 99 cents.

Consequently, when there are a disproportional amount of transactions that end in a same cents value, it appears that these transaction amounts are contrived and therefore, in the absence of any compelling rationale to the contrary, are a strong indicator that the firm is trafficking in SNAP benefits. A preponderance of the evidence indicates that the irregular transactions cited in Charge Letter Attachment 1 are more likely than not a result of the store trafficking in SNAP benefits.

Multiple Transactions by the Same Household within a Short Time Period

SNAP households have no limit on the number of times they may use their SNAP cards or how much eligible food they may purchase. However, the SNAP transactions noted in the charge letter are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of a small grocery store's stock and facilities and are thus indicative of trafficking.

Violating stores often conduct multiple split transactions from the same household account as a method to avoid the detection of single high dollar transactions that cannot be supported by the retailer's food inventory and infrastructure. Charge Letter Attachment 2 lists 24 sets of 51 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E)**. It is not credible that a small grocery store with limited staple foods would have suspicious SNAP transactions greater than a supermarket or superstore. It is even less likely that these excessively large transactions would be conducted multiple times by the same household during a short time period.

The store visit pictures show that is unlikely that SNAP customers would want to shop at this store multiple times during a short time frame, or purchase such a large volume of items. In addition, the store's small checkout area and very limited counter space makes it unsuitable for conducting large transactions. The store also had no shopping carts and no handheld baskets for customer use. Based on the analysis above, and in the absence of any other reasonable explanation, the irregular transaction patterns are more likely than not to be a result of trafficking in SNAP benefits.

Excessively Large Transactions

SNAP households have no limit on the amount of eligible food they may purchase (subject to the remaining balance on the card). However, the SNAP transactions noted in the charge letter are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of a small grocery store's stock and facilities and are thus indicative of trafficking.

Charge Letter Attachment 3 cites 231 SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E). Even the smallest transactions cited in the charge letter had an amount which is three (3) or four (4) times higher than the average SNAP purchase amount for a Bronx County small grocery store.

A transaction spread analysis conducted by the Retailer Operations Division shows that the Appellant firm had double the transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) than the average New York small grocery store. However, when the dollar amounts increased above this level, the average number of transactions for New York small grocery stores steadily decreased while the Appellant firm had abnormally large spikes 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Based on the store's food inventory, which is typical of a small grocery store with limited to moderate food stock, there is no credible reason why the store would have such abnormal spikes in transactions at those high dollar levels.

The Appellant claims that the store sells meat for \$20 or \$30. However, this is not supported by the store visit or information supplied by store personnel during the store visit. The substantial number of high dollar purchases atypical of a SNAP authorized small grocery store calls into question the legitimacy of these transactions. As noted previously, there is no indication from the store visit report that the store would be likely to have SNAP redemption patterns significantly different from similar-sized competitors offering similar food items.

Sometimes a store may have higher than normal SNAP transactions due to the lack of access to other SNAP authorized stores in the area. However, the Retailer Operations Division determined that during the review period there were 197 SNAP authorized stores located within a one-mile radius of Bbb Deli Grocery Corp. These included 105 other small grocery stores, 50 medium grocery stores, eight (8) large grocery stores, 26 supermarkets and eight (8) superstores. The nearest supermarket was 0.04 miles away and the nearest superstore was 0.14 miles away and were thus easily accessible. A government report¹ on SNAP benefit redemption patterns revealed that households most often redeemed their benefits at supermarkets and superstores with only four (4) percent of all households never shopping in a supermarket or superstore. Thus, when a supermarket or superstore is available, it is highly unlikely that a SNAP recipient would conduct excessively large SNAP transactions at a small grocery store with a limited to moderate selection of staple foods.

Lastly, the case record documents that the Retailer Operations Division conducted a detailed analysis of three (3) households identified in the charge letter to analyze their shopping patterns at Bbb Deli Grocery Corp. compared to their shopping patterns at other SNAP authorized stores. All of these households had access to, and shopped at, larger stores including supermarkets and/or superstores. However, despite this access to better stocked stores, these sampled households often conducted excessively large transactions at Bbb Deli Grocery Corp. on the same day or within a few days of shopping at these larger stores. It is highly unlikely that a small grocery store would have legitimate SNAP transactions comparable or larger than these SNAP authorized supermarkets and superstores.

¹ "Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program," report prepared by Mathematica Policy Research for the Food and Nutrition Service, February 2011.

In summary, the store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding the average SNAP transaction amount of similar type stores. In addition to the statistical irregularity of such high dollar transactions, the limited availability of counter space for checking out, and the lack of shopping carts and shopping baskets support the Retailer Operations Division determination. Customers purchasing such large quantities of food items would have to hold them in their arms, or enlist the help of others while shopping. Based on a preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 3 are more likely than not the result of trafficking in SNAP benefits.

Purchase Invoices

The Appellant submitted its available food purchase invoices from the review period in an attempt to show it had sufficient food inventory to support its SNAP redemptions. The Retailer Operations Division tabulated the food purchases from the review period and applied a 40 percent markup to estimate the gross retail food sales during the review period. This analysis indicated that the store had an insufficient food inventory to support its SNAP redemptions even before taking into account that the store likely had food sales by cash, check or credit card. Thus, the store likely did not have sufficient food stock to justify its SNAP redemptions for the review period. However, it should be noted that even if the store had sufficient inventory to support its SNAP redemptions, this would still not explain the irregular transaction patterns cited in the charge letter. It is not unusual for violating stores to conduct largely legitimate SNAP transactions while conducting a smaller number of trafficking transactions with a few trusted households.

CIVIL MONEY PENALTY

The Appellant timely requested consideration for a trafficking CMP in lieu of a permanent disqualification under 7 CFR § 278.6(i). However, the Retailer Operations Division correctly determined that there is insufficient evidence to demonstrate that the firm had established and implemented an **effective** SNAP compliance policy and training program **prior** to the violations. The Appellant submitted four (4) nonnotarized statements from the owner and employees, dated after the violations, that the store had provided EBT training on unspecified dates.

The criteria for a trafficking CMP in lieu of disqualification is defined under 7 CFR § 278.6(i) which reads, in part:

In determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of a permanent disqualification for trafficking, the firm shall, at a minimum, establish by **substantial** evidence its fulfillment of each of the following criteria:

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

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 sent to the firm; and

Criterion 3. The firm had developed and instituted an **effective** personnel training program as specified in §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; or it is only the first occasion in which a member of firm management was aware of, approved, benefited from, or was involved in the conduct of any trafficking violations by the firm [Emphasis added.]

Regarding compliance policy standards, 7 CFR 278.6(i)(1) further states, in part:

As specified in Criterion 1 above, in determining whether a firm has established an effective policy to prevent violations, **FNS shall consider written and dated statements** of firm policy which reflect a commitment to ensure that the firm is operated in a manner consistent with this part 278 of current [SNAP] regulations As required by Criterion 2, **such policy statements shall be considered only if documentation is supplied** which establishes that the policy statements were provided to the violating employee(s) prior to the commission of the violation. In addition, in evaluating the effectiveness of the firm's policy and program to ensure FSP compliance and to prevent FSP violations, FNS may consider the following:

- (i) **Documentation** reflecting the development and/or operation of a policy to terminate the employment of any firm employee found violating FSP regulations;
- (ii) **Documentation** of the development and/or continued operation of firm policy and procedures resulting in appropriate corrective action following complaints of FSP violations or irregularities committed by firm personnel;
- (iii) **Documentation** of the development and/or continued operation of procedures for internal review of firm employees' compliance with FSP regulations [Emphasis added.]

Regarding training program standards, 7 CFR 278.6(i)(2) further states, in part:

A firm which seeks a civil money penalty in lieu of a permanent disqualification **shall document its training activity** by submitting to FNS its dated training curricula and records of dates training sessions were conducted; a record of dates of employment of firm personnel; and contemporaneous documentation of the participation of the violating employee(s) in initial and any follow-up training held prior to the violation(s). FNS shall consider a training program **effective** if it meets or is otherwise equivalent to the following standards:

- (i) Training for all managers and employees whose work brings them into contact with SNAP benefits or who are assigned to a location where SNAP benefits are accepted, handled or processed **shall be conducted within one month of**

the institution of the compliance policy under Criterion 1 above. Employees hired subsequent to the institution of the compliance policy **shall be trained within one month of employment**. All employees shall be trained periodically thereafter;

- (ii) Training shall be designed to **establish a level of competence that assures compliance with Program requirements** as included in this part 278;
- (iii) Written materials, which may include FNS publications and program regulations that are available to all authorized firms, are used in the training program. Training materials shall clearly state that the following acts are prohibited and are in violation of the Food and Nutrition Act of 2008 and regulations: the exchange of food coupons, ATP cards or other program access devices for cash; and, in exchange for coupons, the sale of firearms, ammunition, explosives or controlled substances, as the term is defined in section 802 of title 21, United States Code. [Emphasis added.]

The evidence provided by the Appellant does not rise to the level of substantial evidence necessary to establish its eligibility for a trafficking CMP. For example, the Appellant did not provide any evidence of a written compliance policy in place before the violations as described at 7 CFR 278.6(i)(1). The Appellant also did not establish that it had an **effective** compliance training program prior to the violations as described at 7 CFR 278.6(i)(2). Indeed, it would be very difficult for the Appellant to contend that it had an **effective** SNAP compliance policy and training program when it alleges the store was offering food on credit to its customers and accepting SNAP benefits as repayment on credit accounts in violation of SNAP regulations. In conclusion, the Retailer Operations Division's decision not to impose a trafficking CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR § 278.6(i).

CONCLUSION

The Retailer Operations Division's analysis of the Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify the retailer. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. Government analyses of stores caught in trafficking violations during on-site investigations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include, in part, those cited in the letter of charges.

In the absence of any reasonable explanations for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the letter of charges evidence trafficking as the most likely explanation. Therefore, based on a review of all of the evidence in this case, it is more likely true than not true that program violations did in fact occur as determined by the Retailer Operations Division. Based on the discussion above, the decision to impose a permanent disqualification against Bbb Deli Grocery Corp., Appellant, is sustained.

RIGHTS AND REMEDIES

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

Under the Freedom of Information Act, 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.

RONALD C. GWINN
Administrative Review Officer

November 8, 2018