

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

Chinatown Liquors,

Appellant,

v.

Case Number: C0217153

Retailer Operations Division,

Respondent.

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 Chinatown Liquors (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 Chinatown Liquors on July 10, 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 May 29, 2019, the Retailer Operations Division informed the Appellant that Chinatown Liquors 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 responses to the Retailer Operations Division of June 7, 2019, June 11, 2019, June 12, 2019, June 13, 2019 and June 17, 2019, the Appellant replied to the charges therein denying the

trafficking allegations and providing various explanations for the questionable SNAP transactions that were outlined in the May 29, 2019 Charge Letter.

After considering the Appellant's replies and the evidence in the case, the Retailer Operations Division issued a Determination Letter dated July 10, 2019, informing the Appellant that Chinatown Liquors 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 July 16, 2019, the Appellant 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 July 31, 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 March 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 replies to the Charge Letter and in the administrative review request, the Appellant stated the following summarized contentions, in relevant part:

- With regard to the SNAP transactions documented in Charge Letter Attachment 1, of the 180 unusual SNAP transactions documented in the Charge Letter, 50 transactions in 19 sets were made with similar transaction amounts. All of these transactions have amounts that are multiples 5 U.S.C. § 552 (b)(6) & (b)(7)(C), because the Appellant sold 25 pound bags of rice at \$23.00 per bag (which rose to \$24.00 per bag since early March 2019). By purchasing multiple bags of rice per transaction, the majority of the SNAP recipients made transactions in the amount 5 U.S.C. § 552 (b)(6) & (b)(7)(C). When these recipients purchased additional items, such as drinks or canned meat, the transactions showed amounts 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Within a 10-minute walking distance of the Appellant firm, many of the store's SNAP customers reside in a large low-income apartment complex. Culturally, these recipients eat rice as their main source of carbohydrates, within a large number of family members per household. Without a personal automobile, however, these SNAP recipients are forced to make multiple trips within a short period of time, hand-carrying two or three 25 pound bags of rice each time they leave the store.
- With regard to the SNAP transactions documented in Charge Letter Attachment 2, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These transactions are the result of SNAP recipients purchasing multiple food items, including several 25 pound bags of rice costing \$23.00 (or \$24.00 from March 1, 2019) per bag. Approximately 70% of the store's monthly SNAP revenues come from rice sales, so purchases of multiple bags of rice is very common. Given the large number of family members per household, SNAP recipients often make transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). On average, the Appellant

purchased approximately 110 bags of rice per month to meet the demands of SNAP customers. The 180 total SNAP transactions cited in the Charge Letter correlates to purchases of 110 bags of rice per month, closely matching the store's monthly purchase average.

- The Appellant has an effective compliance policy and program in place. Since the beginning of its operations, the Appellant has voluntarily and proactively implemented the following policies and trainings with all store employees to prevent any form of violations: (1) Monthly trainings sessions, reviewing how to follow the SNAP regulations (i.e., Not selling prohibited products, including hot/prepared foods, tobacco products, and alcohol); (2) Random closed-circuit camera inspection for any violation activity of the SNAP regulations; (3) Matching daily inventory count of major SNAP applicable products (i.e., bags of rice, canned goods, etc.) against daily store sales records; and (4) Keeping minimum amount of cash in the cash register.

In support of these contentions, the Appellant submitted the following documents to FNS for review:

- Listing of transactions cited by USDA;
- Photo of in-store display of rice with listed prices;
- Invoices of rice purchases for November 2018 through March 2019; and
- Monthly sales reports for December 2018 through March 2019.

ANALYSIS AND FINDINGS

Store Characteristics

FNS authorized Chinatown Liquors as a convenience store on August 1, 2016. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during an April 11, 2019 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 1,200 square feet in size with no additional food storage outside of public view;
- No shopping carts and four 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 checkout counter area with limited check-out counter space;
- 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 \$.x9 and/or \$.00;
- Transaction totals are not rounded up or down at the checkout counter;
- Telephone and on-line orders were not taken and delivery was not offered;
- No deli and deli meats and cheeses were not sold by the pound;
- No kitchen;
- The four most expensive food items in stock were Jasmine rice at \$24.00 per 25 pounds; Calrose rice at \$19.10 per 25 pounds (6 units in stock); butter at \$9.95 per pound (4 units in stock); and Sanka coffee at \$7.99 per jar (7 units in stock);
- No fresh or frozen meats, poultry, or seafood;
- Frozen foods included individual/single-serve sizes of corn dogs, sandwiches, chimichangas, and Hot Pockets;
- Meat items included units of canned/potted meat, canned fish, eggs, and meat jerky;
- Dairy included milk (cow and coconut varieties), butter, yogurt, and cheese;
- Fresh produce stock consisted of a few bananas and lemons;
- Other staple foods available for purchase included such items as juice, pasta, rice, cereal, flour, and canned goods;
- Much of the remaining food stock consisted of accessory foods such as candy, carbonated and non-carbonated drinks, ice cream, snack foods/chips, sugar, and condiments; and
- Ineligible nonfood items included tobacco products, health and beauty aids, paper products, household cleaning supplies, automotive supplies, alcohol, toys, clothing, sunglasses, propane, pet food, and gift items/souvenirs.

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.

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. 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 19 sets of transactions (50 total transactions) 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP benefits to meet the parameters of this scan. 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 an argument that of the 180 unusual SNAP transactions documented in the Charge Letter, 50 transactions in 19 sets were made with similar transaction amounts. All of these transactions have amounts 5 U.S.C. § 552 (b)(6) & (b)(7)(C), because the Appellant sold 25 pound bags of rice at \$23.00 per bag (which rose to \$24.00 per bag since early March 2019). By purchasing multiple bags of rice per transaction, the majority of the SNAP recipients made transactions in the amount 5 U.S.C. § 552 (b)(6) & (b)(7)(C). When these recipients purchased additional items, such as drinks or canned meat, the transactions showed amounts 5 U.S.C. § 552 (b)(6) & (b)(7)(C). In support of its contentions, the Appellant submitted a listing of transactions cited by USDA.

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 report and photographs from the store visit offer no explanation as to why SNAP customers would routinely shop at Chinatown Liquors 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, and subsequent transactions (i.e., up to six 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 as well as the lack of optical scanners, Chinatown Liquors has no shopping carts and only four hand-held baskets available to customers for transporting food within the store.

The Appellant contends that every transaction documented in the Charge Letter includes the purchase of at least one 25 pound bag of rice. In addition, culturally, the store's SNAP recipients eat rice as their main source of carbohydrates, with a large number of family members per household. FNS acknowledges that culturally, the store's SNAP recipients may eat rice as their main source of carbohydrates and that there may be a large number of family members per SNAP household. 5 U.S.C. § 552 (b)(7)(E).

In support of its contentions regarding SNAP recipient rice purchases, the Appellant also submitted a photo of an in-store display of rice with prices listed as \$24.00 for 25 pound bags and \$11.00 for 10 pound bags (Note: The Appellant indicated that prior to March 2019, a 25 pound bag of rice was priced at \$23.00). However, the undated photograph provided by the Appellant shows more stock of 25 pound bags of Jasmine rice than was noted in the FNS store visit photographs. As such, it appears that the Appellant's photo of its rice stock was contrived in an effort to support its contentions. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and 5 U.S.C. § 552 (b)(7)(E).

The Appellant contends that within a 10-minute walking distance of the firm, many of the store's SNAP customers reside in a large low-income apartment complex. FNS acknowledges that the Appellant firm may be located within a 10-minute walking distance of a large low-income apartment complex. It is also acknowledged 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 14 SNAP authorized retailers, including 5 other convenience stores, 4 small grocery stores, 4 medium grocery stores, 1 supermarket, and 1 super store, located within a 0.32 mile radius of Chinatown Liquors that can meet the nutritional needs of SNAP customers. Some of these authorized SNAP stores are larger than Chinatown Liquors and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store.

The Appellant contends that many of the store's SNAP customers do not have a personal automobile and are therefore, forced to make multiple trips within a short period of time, hand-carrying two or three 25 pound bags of rice each time they leave the store. With regard to these contentions, the record indicates that SNAP customers who shopped at Chinatown Liquors during the review period also shopped at other area grocery stores and, therefore, transportation to other stores is not an issue for these customers. In addition, there is a better stocked SNAP authorized small grocery store specializing in Asian Foods that is located next to the Appellant firm that also offers 25 pound bags of Jasmine rice at comparable prices as the subject firm. Therefore, lack of access to other authorized stores and the unavailability of other authorized food stores that offer 25 pound bags of rice at comparable prices 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 130 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 with regard to the SNAP transactions documented in this Charge Letter Attachment, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These transactions are the result of SNAP recipients purchasing multiple food items, including several 25 pound bags of rice costing \$23.00 (or \$24.00 from March 1, 2019) per bag.

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 Chinatown Liquors to have purchases like those included in Attachment 2 to the Charge Letter. This Attachment cites 130 EBT transactions during the four month period of investigation 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The Appellant contends that these transactions are the result of SNAP recipients purchasing multiple food items, including several 25 pound bags of rice costing \$23.00 (or \$24.00 from March 1, 2019) per bag. However, the FNS store visit report and photos of April 11, 2019 show that Chinatown Liquors offers a minimal stock of SNAP eligible foods with no fresh meats, poultry, or seafood, no frozen meats, poultry, or seafood, a very minimal variety and amount of fresh produce, and lacks an abundant depth and breadth of staple foods. The store visit inventory report and photos indicate that the Appellant firm is approximately 1,200 square feet in size with no additional food storage outside of public view. The store visit report and photos also show only a few expensive eligible foods in stock that would account for these large amounts. In addition, the store has limited checkout counter space, no optical scanners, and no shopping carts and only four hand-held baskets in which to transport the large number of items required to make up these large transaction amounts. Without a sufficient number of these, it is unlikely that such large dollar value transactions could be for actual food purchases and more likely they are trafficking.

Other than a few 25 pound bags of rice, 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, no evidence that the store takes special food orders, 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. As noted earlier, the four most expensive food items in stock were Jasmine rice at \$24.00 per 25 pounds; Calrose rice at \$19.10

per 25 pounds (6 units in stock); butter at \$9.95 per pound (4 units in stock); and Sanka coffee at \$7.99 per jar (7 units in stock).

The Appellant contends that approximately 70% of the store's monthly SNAP revenues come from rice sales, so purchases of multiple bags of rice is very common. Given the large number of family members per household, SNAP recipients often make transactions

5 U.S.C. § 552 (b)(6) & (b)(7)(C). In support of its contentions, the Appellant submitted numerous vendor invoices/receipts for food purchases from Asian Food Trading Co. Inc. FNS conducted an analysis of the invoices provided by the Appellant. While the submitted invoices were dated November 2018 through March 2019, only the invoices from the review period (i.e., December 2018 to March 2019) were included in the invoice analysis.

5 U.S.C. § 552 (b)(7)(E).

The Appellant also submitted monthly sales reports for December 2018 through March 2019 which were analyzed by FNS. 5 U.S.C. § 552 (b)(7)(E). There is no reasonable explanation for these discrepancies other than trafficking is most likely occurring at Chinatown Liquors.

5 U.S.C. § 552 (b)(7)(E).

While the Appellant firm may be located in a neighborhood/area 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 14 SNAP authorized retailers, including 5 other convenience stores, 4 small grocery stores, 4 medium grocery stores, 1 supermarket, and 1 super store, located within a 0.32 mile radius of Chinatown Liquors that can meet the nutritional needs of SNAP customers. Some of these authorized SNAP stores are larger than Chinatown Liquors 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 Chinatown Liquors have access to transportation and that all are regularly shopping at a variety of larger stores, including super stores and/or supermarkets, located nearby and at several miles distance from the Appellant's location. While Chinatown Liquors 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).

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 Charge letter. Therefore, based on this empirical data, 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, the absence of optical scanners, the absence of shopping carts and an insufficient number of 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 a sufficient number 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.

CIVIL MONEY PENALTY

The Appellant contends that it has an effective compliance policy and program in place. Since the beginning of its operations, the Appellant has voluntarily and proactively implemented the following policies and trainings with all store employees to prevent any form of violations: (1) Monthly trainings sessions, reviewing how to follow the SNAP regulations (i.e., Not selling prohibited products, including hot/prepared foods, tobacco products, and alcohol); (2) Random closed-circuit camera inspection for any violation activity of the SNAP regulations; (3) Matching daily inventory count of major SNAP applicable products (i.e., bags of rice, canned goods, etc.) against daily store sales records; and (4) Keeping minimum amount of cash in the cash register.

In the May 29, 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 violations(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 request for administrative review postmarked July 16, 2019 (i.e., **past the ten day required timeframe for requesting and providing supporting documentation in support of a request for the imposition of a civil money penalty in lieu of a permanent SNAP disqualification**), the Appellant noted that it had an effective compliance policy and program and place since the beginning of its operations. While not specifically requested, FNS considered the Appellant's eligibility for consideration of a civil money penalty in lieu of a permanent SNAP disqualification. However, the Appellant provided no supporting documentation in support of a request for consideration of a civil money penalty in lieu of a permanent SNAP disqualification.

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 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 Chinatown Liquors 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

September 16, 2019