

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

Citgo Fuel & Mini Mart,

Appellant,

v.

Case Number: C0205084

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 a permanent disqualification of Citgo Fuel & Mini Mart (hereinafter “Appellant”) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed by the Retailer Operations Division.

ISSUE

The issue accepted for review is whether or not the Retailer Operations Division, in its administration of SNAP, took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, when it imposed a permanent disqualification against Citgo Fuel & Mini Mart.

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.”

SUMMARY OF CHARGES

The Appellant was charged with trafficking and subsequently permanently disqualified based on an analysis of EBT transaction data from July 2017 through November 2017. This involved the following transaction patterns which are common trafficking indicators:

- There were multiple transactions made from individual household benefit accounts within unusually short timeframes.
- Excessively large purchase transactions were made from recipient accounts.

CASE CHRONOLOGY

The agency's record shows that FNS initially authorized Citgo Fuel & Mini Mart for SNAP participation as a convenience store on January 28, 2011. In a letter dated January 18, 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 between the months of July 2017 and November 2017. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also stated that the Appellant could request a civil money penalty (CMP) in lieu of permanent disqualification for trafficking, but noted that such a request must be made within 10 days of receipt of the charge letter under the conditions specified in 7 CFR § 278.6(i).

In correspondence between January 25, 2018 and March 2, 2018, the Appellant, through counsel, responded to the charge letter, disputing that any trafficking violations had occurred at the store. The Appellant's chief response was dated February 28, 2018, in which Appellant's counsel provided a five-page written explanation along with nine separate exhibits of documentation and evidence. One of the Appellant's main arguments against the allegations of trafficking was that the firm offered a variety of food items in bulk packages, such as a box of Kellogg's cereal bowls for \$69.99; 20 cans of Monster energy drink for \$42.00; and 24 cans of Red Bull energy drink for \$45.00. The Appellant argued that making these large purchases saved the customer money versus buying them individually.

As for multiple transactions from the same household in short periods of time, the Appellant argued that it has no control over how frequently a person shops at the store. It contended that a client may leave the store and then send a family member back into the store for a second purchase a short time later. The Appellant argued that the firm does not know when the same card is being used multiple times and cannot refuse such transactions. The Appellant further argued that its customers purchase a lot of Red Bull and Monster energy drinks, at \$45.00 and \$42.00 per case, respectively. According to the Appellant, it rings up each case of Red Bull and Monster in separate transactions for the purpose of keeping track of inventory. Finally, the Appellant contended that most customers do not know their SNAP benefit balance, so they frequently make an initial purchase, and then, upon discovering that there are funds remaining in their account, make a subsequent purchase immediately afterward.

As for excessively large transactions, the Appellant argued that there is no definition in the regulations regarding "excessively large." Additionally, the Appellant insisted that its store carries sufficient inventory to cover such transactions, and contended that in September 2017 the average family of four spent 5 U.S.C. § 552 (b)(6) & (b)(7)(C). on groceries, so the "large" transactions at its store were not unusual and certainly not trafficking. Transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). are rare at Citgo Fuel & Mini Mart, and the Appellant argued that large transactions alone should not be a basis for disqualification. The Appellant further claimed that its firm is one of the few stores in the area that is open 24 hours a day. This leads to a larger customer base, including customers who make large purchases.

Finally, the Appellant stated that its employees are well-trained in SNAP guidelines and encouraged FNS staff to visit the store so they can see for themselves that the firm is following all regulations.

Documentation provided by the Appellant included EBT and cash register receipts, photographs of the store, customer affidavits, inventory invoices, business tax returns, and a copy of the firm's employee SNAP training guide.

After considering the Appellant's reply and documentation and further reviewing the evidence in the case, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated April 5, 2018. This letter informed the Appellant that it would be permanently disqualified from SNAP upon receipt of the letter in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The letter also stated that the Retailer Operations Division considered the Appellant's eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations, but that a CMP was not appropriate in this case 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.

In a letter postmarked April 13, 2018, the Appellant, through counsel, appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted.

STANDARD OF REVIEW

In an appeal of adverse action, such as disqualification from SNAP participation, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that an 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 AND REGULATIONS

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

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 § 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, [or] evidence obtained through a transaction report under an electronic benefit transfer system....

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 states, in part:

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 § 271.2 states, in part:

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

7 CFR § 278.6(b)(1) states, in part:

Any firm considered for disqualification...under paragraph (a) of this section...shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of noncompliance before FNS makes a final administrative determination. The FNS regional office shall send the firm a letter of charges before making such determination. The letter shall specify the violations or actions which FNS believes constitute a basis for disqualification.... The letter shall inform the firm that it may respond either orally or in writing to the charges contained in the letter within 10 days of receiving the letter...

7 CFR § 278.6(c) states, in part:

The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination. In the case of a firm subject to permanent disqualification under paragraph (e)(1) of this section, the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS, regardless of whether a request for review is filed in accordance with part 279 of this chapter.

7 CFR § 278.6(b)(2)(ii) states, in part:

Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence... that establishes the firm's eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in § 278.6(i). This information and evidence shall be submitted within 10 days, as specified in § 278.6(b)(1).

7 CFR § 278.6(b)(2)(iii) states:

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.

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...

APPELLANT'S CONTENTIONS

The Appellant, through counsel, made the following summarized contentions in its request for administrative review, in relevant part:

- The decision to permanently disqualify the store was not justified in light of the evidence that was submitted to the Retailer Operations Division in response to the charge letter. This evidence offers a significant amount of proof that the Appellant did not violate any SNAP regulations.
- The firm would ring up Red Bull purchases one at a time to keep a proper inventory of the amount of Red Bull being sold. This is an important item as it is one of the most expensive items with the highest volume sold. This method ensures that employees are following proper guidelines; not only the firm's guidelines, but SNAP as well.
- Among the documents presented earlier were copies of receipts from actual purchases that were included in the charge letter. This alone is proof that no violations occurred.
- The firm has also provided affidavits from customers verifying their purchases.
- Additionally, the firm has provided invoices showing that the amount of inventory in the store supports the sales being made with SNAP benefits.
- The firm also provided tax returns, an employee handbook on SNAP guidelines, and pictures of the store to show the available inventory and prices of the food items.
- There is simply no more evidence that the Appellant could produce that could prove any more that the firm has operated its business within SNAP guidelines.
- Citgo Fuel & Mini Mart is a pillar in the community with strong ties to its customers. These customers rely on the presence of the store and its ability to accept SNAP, as very few stores in the area accept SNAP.
- SNAP is an essential part of the Appellant's business and may not survive if the disqualification is upheld. The Appellant is well aware of its reliance on SNAP and would not do anything to jeopardize its status with the Program.
- Appellant implores FNS to visit its location to see its operation. It strongly believes that a second look at the large amount of material evidence will show that no violations have occurred.

In support of its request for review, the Appellant submitted a complete copy of all documents that were submitted previously to the Retailer Operations Division.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. However, in reaching a decision, full attention was given to all contentions presented, including any not specifically summarized or explicitly referenced herein.

ANALYSIS AND FINDINGS

The primary issue for consideration in a case based on suspicious SNAP redemption data is whether or not the Retailer Operations Division adequately established that the Appellant firm engaged in the violation of trafficking. In other words, did the Retailer Operations Division, through a preponderance of the evidence, establish that it is more likely true than not true that the irregular and unusual transactions cited in the charge letter were the result of trafficking?

Contractor Store Visit

The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered not only the Appellant firm's EBT transactions, but also information obtained from an April 15, 2017, store visit which was conducted by an FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This store visit information was used to ascertain if there were justifiable explanations for the firm's irregular SNAP transaction patterns. The store visit report and photographs documented the following store size, description, and characteristics:

- Citgo Fuel & Mini Mart is a small convenience store/gas station operating in the city of Chicago, Cook County, Illinois.
- At the time of the contractor's visit, the firm had no shopping carts or shopping baskets for customer use, which is not uncommon for stores of this size. Customers shopping in such stores generally do not purchase more food than they can carry in their arms.
- The store visit photographs show one checkout counter with two cash registers and agency records reflect the use of two EBT point-of-sale devices.
- The store does not appear to use optical scanners to process transactions.
- The store's staple food stock is moderate in each of the four staple food categories, but most of the firm's inventory appears to be snack foods and drinks, which is typical of convenience stores.
- Available nonfood items at Citgo Fuel & Mini Mart include gasoline, tobacco products, automotive supplies, and miscellaneous household merchandise.
- The checkout area consists of a very small countertop where items can be placed to be rung up. The store clerks are situated behind a Plexiglas window. The constricted checkout area is not suitable for conducting large or rapid transactions as there is very little space on the counter to place more than a few small items at a time and little room for customers to maneuver with large amounts of groceries.
- There is no indication from the store visit report that the firm has a special pricing structure, although most items appear to end in 9, such as \$0.99, \$1.59, \$5.99, etc. A few items are priced at even-dollar intervals, such as three cans of soda for \$1.00 or three boxes of cereal for \$10.00. According to the contractor, transaction totals are not rounded up or down at checkout.

- At the time of the contractor’s visit in April 2017, the store did not appear to offer large quantities of food in bulk packages, such as by-the case.

The available inventory of SNAP-eligible food at the time of the store visit showed stock that would be typical of a convenience store/gas station, where households normally purchase a limited number of items to supplement their overall dietary needs. There was little indication that SNAP households would be inclined to regularly visit the store to purchase large quantities of groceries, especially considering the overall limited staple food inventory, the absence of shopping carts and baskets, and the availability of much larger grocery stores in the immediate vicinity, including one supermarket and two super stores.

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.

SNAP Transaction Analysis

Charge Letter Attachment 1: Multiple transactions were made from individual benefit accounts in unusually short time frames. This attachment lists 34 sets of transactions (108 transactions in all) 5 U.S.C. § 552 (b)(6) & (b)(7)(C).. 5 U.S.C. § 552 (b)(7)(E).

For example, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The three transactions totaled 5 U.S.C. § 552 (b)(6) & (b)(7)(C), an extraordinary amount for a convenience store with no shopping carts or baskets and limited inventory

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Such transaction patterns are highly irregular and strongly suggestive of trafficking.

The Appellant has made a number of contentions related to the transactions in Attachment 1. For example, the Appellant argued that it has no control over how frequently a person shops at the store. The Appellant further argued that its customers purchase a lot of Red Bull and Monster energy drinks, at \$45.00 and \$42.00 per case, respectively. According to the Appellant, each case of Red Bull and Monster is rung up in a separate transaction for the purpose of keeping track of inventory.

With regard to these arguments, it is true that regulations do not govern or mandate how a SNAP household spends its benefit allotment, including how many times a household may use its EBT card at a particular location. However, the transactions noted in the charge letter are questionable not because they exceed any limits for use, but because they display patterns of use that are inconsistent with the store’s documented physical characteristics and are inconsistent with normal shopping behavior by SNAP households. It should be further noted that the transactions identified in the charge letter are not marginally abnormal, but decidedly so, especially in comparison with other nearby SNAP-authorized stores of similar size. This review does not contend that frequent or large EBT transactions are overtly suspicious when they occur on an occasional or intermittent basis, but when such transactions form questionable patterns on a

consistent basis over a substantial period of time, such activity is considered highly irregular, and a firm's intent to comply with program regulations is called into question.

Unfortunately, the Appellant's evidence supporting its arguments is unpersuasive. For example, none of the transaction receipts identify what was actually purchased. A receipt that simply gives a dollar amount is not evidence that trafficking was not occurring. As for the customer affidavits, these are also unconvincing because the truth of such statements cannot be verified. Customers engaging in trafficking would be unlikely to admit to committing such violations as such an admission would potentially expose them to administrative and/or criminal charges.

As for the argument that customers purchase large amounts of Red Bull and Monster energy drinks, this claim is certainly possible, but verification of this claim is lacking. For example, the Appellant submitted a fair amount of evidence, including inventory receipts and photographs, to support this notion. However, the photographs were taken roughly three months after the review period ended and after the Appellant received the charge letter. Thus, they cannot be considered an accurate representation of store conditions as they existed during the review period. Inventory records have some value, as they identify the kinds of merchandise purchased by the firm and made available to customers. But even these do not identify what specific items were purchased during the transactions in question.

As to the argument that the firm intentionally chooses to ring up every case of Red Bull or Monster separately, this review cannot think of any reason why this would be an accounting advantage in any way. If a customer wished to purchase four cases of Red Bull at \$45.00 each, it would be much quicker and easier for the store clerk (and for the customer) to simply enter that amount four times **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. This would then require just one EBT or credit card transaction, which would actually save the store money, since nearly all banks impose a surcharge every time an EBT or credit card is used. While it is possible there is an accounting advantage to the firm to ring up cases of Red Bull in this manner, this review cannot comprehend what these advantages might be, and the Appellant has not provided enough information about its business practices to show why this would be the case. As noted earlier, smaller, repetitive transactions from a single household is often a sign of a firm trying to elude suspicion by avoiding single high-dollar transactions that they believe FNS is watching out for. The transactions in Attachment 1 appear to be less about accounting and inventory concerns, and more about trying to avoid detection.

This review also has doubts that customers would legitimately spend large portions of their SNAP allotment on energy drinks. It is difficult to picture a SNAP household – very often **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** traveling to a convenience store to purchase 96 cans of Red Bull in one visit. Such shopping behavior is extraordinarily unusual. Unfortunately, the Appellant's evidence offers no real insight as to what really took place during the transactions in question.

Without compelling evidence, such as itemized cash register receipts, it is reasonable for this review to conclude that the questionable transactions in Attachment 1 were more likely than not the result of trafficking violations.

Charge Letter Attachment 2: Excessively large purchase transactions were made from recipient accounts. This attachment lists 222 SNAP transactions

5 U.S.C. § 552 (b)(6) & (b)(7)(C). These large transactions are not consistent with a convenience grocery store in the state of Illinois. The Retailer Operations Division has determined that during the review period, the average SNAP transaction amount for a convenience store in Illinois was \$6.13. In Cook County, the average was even lower, at just \$5.87 per transaction. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Given that the Appellant firm does have a moderate inventory of staple and other eligible foods, and considering that the firm does sell a few expensive items, it is probable that there would be an occasional purchase where the transaction amount is high, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As such, there may well be some legitimate SNAP purchases sprinkled among the transactions listed in Attachment 2. However, as noted earlier, there is little evidence that the firm would be likely to have SNAP redemption patterns that differ significantly from similar-sized competitors, especially considering the absence of shopping carts and baskets, the limited overall inventory, and the extremely constricted checkout area. The substantial number of high-dollar transactions in a five-month period calls into question the legitimacy of these transactions.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Considering how many items it would typically take to add up 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and considering that the store does not have any shopping carts or baskets, and given the fact that there are much larger supermarkets and superstores in the area with substantially greater inventory and variety, this review finds it unlikely that SNAP households would legitimately choose to spend large portions of their benefit allotments at a small store such as Citgo Fuel & Mini Mart.

The Appellant's contentions regarding the transactions in Attachment 2 are similar to those for Attachment 1. For example, the Appellant argues that there is not a regulatory definition of the term "excessively large." 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As such, "large" transactions cannot be considered unusual and should not be a basis for disqualification.

As mentioned previously, regulations do not govern or mandate how a SNAP household spends its benefit allotment, including how large an individual transaction can be. However, the transactions noted in Attachment 2 are questionable not because they exceed any limits for use, but because they display patterns of use that are inconsistent with the store's physical characteristics and inconsistent with normal shopping patterns of SNAP households at convenience stores. It should be noted that the firm was not charged with trafficking simply because the transactions were large. An occasional sizeable transaction, by itself, is rarely considered suspicious. But when such transactions occur on a regular basis at stores not typically known for such activity, a firm's intent to comply with program regulations is called into question.

Unfortunately the Appellant has not provided evidence that would indicate that the specific transactions listed in Attachment 2 were legitimate purchases of eligible food. Such evidence might include itemized cash register receipts which list exact items purchased during a given transaction.

On a related note, it is remarkable to this review that many transactions in Attachment 2 occurred **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. SNAP transactions may occur at any time of day, of course, but the fact that so many of them occurred during these unusual hours is highly irregular and substantially different from other stores in the area. Suspicious transactions taking place at a time when stores are typically at their emptiest are another indicator that violations may be occurring. The Appellant's documentation does nothing to explain why this would be the case.

The transactions identified in the charge letter are highly unusual and substantially different from comparable stores in the area. As noted earlier, in an appeal of adverse action, the onus is on the Appellant to prove, by a preponderance of the evidence, that the administrative action should be reversed. This means submitting sufficient and compelling evidence that would lead a reviewer to conclude that trafficking did not occur. Unfortunately, the Appellant's evidence is not compelling and does not verify that the specific transactions listed in the charge letter were legitimate purchases of eligible food. Without such evidence, it is the conclusion of this review that the transactions listed in the charge letter were, more likely than not, the result of trafficking violations committed by the Appellant.

Based on the above analysis, it is the determination of this review that Citgo Fuel & Mini Mart likely trafficked in SNAP benefits during the review period. The attachments furnished with the charge letter adequately identify the irregular patterns of SNAP transactions which indicate that trafficking was likely taking place. Conversely, the Appellant has failed to provide a rational explanation to why such patterns might exist. As there are multiple unexplained patterns of irregular transactions, the case of trafficking is convincing.

Hardship to Appellant and SNAP Recipients

The Appellant has stated that its customers rely on the presence of the store and its ability to accept SNAP. It also claims that SNAP is an essential part of its business and may not survive if the disqualification is upheld. These arguments imply that not only will the Appellant suffer financially, but the SNAP households who shop at the firm will experience hardship if they are not able to use their benefits at the store any longer.

With regard to the insinuation that the community would experience hardship if the firm was disqualified, it is recognized that some degree of inconvenience to SNAP households is likely whenever a SNAP-authorized store is disqualified and households are forced to use their benefits elsewhere. Regulations at 7 CFR § 278.6(f) do allow, in some circumstances, for a civil money penalty to be imposed in lieu of disqualification when there is an absence of other SNAP-authorized retailers in the area. However, the regulations are clear that a CMP for hardship to SNAP households may not be imposed in lieu of permanent disqualification for trafficking.

As for the assertion that the firm itself would suffer if the disqualification were to be upheld, Federal statute at 7 U.S.C. § 2021(b)(3)(B) makes it clear that disqualification for trafficking shall be permanent, even on the first occasion. It is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in SNAP. However, there is no provision in the SNAP regulations for waiver or reduction of an

administrative penalty on the basis of possible economic hardship to either the ownership personally or to the firm resulting from the imposition of such a penalty.

To allow store ownership to be excused from being assessed administrative penalties based on a purported economic hardship to the store's ownership or to the firm itself would render virtually meaningless the provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA. Moreover, giving special consideration to economic hardship to the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with Program regulations, but also to those retailers who have been disqualified from the Program in the past for similar violations.

Therefore, the Appellant's claim that the community will be adversely affected and that the firm may incur economic hardship based on the assessment of an administrative sanction do not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

Civil Money Penalty

As noted earlier, the Retailer Operations Division determined that the Appellant firm was not eligible for a civil money penalty in lieu of permanent disqualification for trafficking because it did not submit sufficient evidence to demonstrate that it had established and implemented an effective compliance policy and program to prevent SNAP violations.

In accordance with regulations at 7 CFR § 278.6(b)(2), in order for a civil money penalty to be considered, a firm must not only notify FNS that it desires the agency to consider a trafficking CMP in lieu of permanent disqualification, but it must also submit appropriate documentation within designated timeframes. The case record shows that in its response to the charge letter, the Appellant provided evidence to suggest that the firm had a compliance policy and program, but it did not specifically request a CMP. Further, the evidence provided by the Appellant was not submitted within the designated 10-day period as required by 7 CFR § 278.6(b)(2)(ii). Therefore, in accordance with 7 CFR § 278.6(b)(2)(iii) and § 278.6(i), a civil money penalty in lieu of permanent disqualification for trafficking is not an option in this case.

CONCLUSION

An analysis of the Appellant's EBT transaction record was the primary basis for the decision by the Retailer Operations Division to permanently disqualify Citgo Fuel & Mini Mart from SNAP participation. This data provided sufficient evidence for this review to conclude that the questionable transactions and patterns listed in the charge letter were more likely than not the result of trafficking violations committed by the Appellant. Likewise, the Appellant has not proven, by a preponderance of the evidence, that the administrative action should be reversed.

Based on a review of all available information and evidence in this case, the decision to impose a permanent disqualification against the Appellant firm, Citgo Fuel & Mini Mart, under the ownership **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, is sustained.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in Section 279.7 of the SNAP regulations. 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 the Appellant owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a complaint is filed, it must be filed within 30 days of receipt of this decision.

Under the Freedom of Information Act, we are releasing this information in a redacted format as appropriate. FNS will protect, to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy.

JON YORGASON
Administrative Review Officer

October 5, 2018