

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

**East Food Mart Inc,**

**Appellant,**

**v.**

**Case Number: C0211461**

**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 East Food Mart Inc. (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 East Food Mart Inc.

**AUTHORITY**

7 U.S.C. § 2023 and its implementing regulations at 7 CFR § 279.1 provide that “[A] food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 . . . may file a written request for review of the administrative action with FNS.”

**SUMMARY OF CHARGES**

The Appellant was charged with trafficking and subsequently permanently disqualified based on an analysis of EBT transaction data from January 2018 through March 2018. This involved the following transaction patterns which are common trafficking indicators:

- There were multiple transactions made from the accounts of individual SNAP households within a set time period.
- Excessively large purchase transactions were made from recipient accounts.

## CASE CHRONOLOGY

The agency's record shows that FNS initially authorized East Food Mart Inc. for SNAP participation as a convenience store on August 15, 2012. In a letter dated August 27, 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 January 2018 and March 2018. 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 on September 5 and 17, 2018, the Appellant, through counsel, responded to the charge letter, claiming that the firm's owners did not in any way, shape, or fashion, do anything illegal in the operation of their store. The Appellant argued that on many occasions, two or more members of the same family will shop at the same time and arrive at the two cash registers at around the same time. As a result, it is common to see one charge being processed shortly after another. The firm does not believe it has the authority to deny a lawful purchase if the cardholder has the proper PIN number.

The Appellant further argued that it is not unusual for customers to make large purchases, such as several containers of infant formula for \$17.00 per can, or a package of quarter-pound beef patties for \$17.99. Appellant does not believe it has the authority to question whether the customer has the need for certain items, and does not have the ability to tell someone that they cannot purchase a food item in whatever quantity they want so long as the funds are available on the EBT card. The firm does have receipts, and some of these were provided by the Appellant, but according to the Appellant, the cash registers are older and do not identify the purchased items specifically; just a manufacturer's bar code for the items and the price. Occasionally, the receipts will indicate soda or frozen food, which is generally chicken wings. Appellant invites FNS to visit the store and go through its books with them to see what is going on.

The Appellant further stated that in August 2018, the store was the victim of a robbery where a thief stole the cash register and some of the receipts from underneath the register. The receipts were in a bag, and the thief probably thought the bag contained money. According to the Appellant, this incident hinders its ability to provide FNS with additional detailed information because of the loss of its records.

According to the Appellant, it runs a clean establishment and provides a valuable service to the community as there are no supermarkets nearby. Taking away the firm's ability to accept SNAP will undoubtedly put the store out of business and cause the community to suffer.

In support of its response, the Appellant provided a copy of the policy report from the August 2018 robbery; a handwritten inventory price list showing approximately 100 different food items and their corresponding retail prices; 27 itemized cash register receipts; and 10 EBT receipts that correspond to 10 of the cash register receipts.

After reviewing the Appellant's response to the charges and further considering the evidence in the case, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated September 24, 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 regulations, but determined 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 October 3, 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:

- It is clear to the Appellant that no one at USDA looked at its September 17, 2018, written response to the trafficking charges.
- Appellant believes the regulations support its position that if anyone goes to the store with the EBT card and the appropriate PIN number, the firm does not have the right to refuse them service.
- In small communities like this one, more than one household member will visit the store at the same time. Occasionally, they arrive at the two cash registers at the same time. One person gets their transaction rung up, and they then turn the EBT card over to the other person who is also being rung up.
- The Appellant is in no way, shape, or form, buying SNAP cards. A close look at the firm's operations would show that customers are coming out of the store with food every single time. It is not a case of someone going in and coming out with cash.
- Smaller grocery stores like this one do not have sophisticated cash registers. They cost money and small stores are scratching out a living.
- Disqualification will hurt the firm, causing it to go out of business; it will also hurt the very people FNS is trying to protect. This will reduce competition, thus allowing prices to become much higher.

In support of its contentions, the Appellant submitted a copy of its original response to the charge letter along with a copy of the September 24, 2018, determination letter.

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 and evidence presented, including any not specifically summarized or explicitly referenced in this document.

### **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 during a November 18, 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:

- East Food Mart Inc. is a small convenience store/corner market, approximately 700 square feet in size, operating in the city of Chester, Delaware County, Pennsylvania.
- At the time of the contractor's visit, the firm did not have any shopping carts or handheld shopping basket for customer use, which is not unusual for stores of this size. Customers shopping in such stores typically purchase only as much food as they can carry in their arms.
- The store visit photographs show two cash registers for food purchases and agency records reflect the use of one EBT point-of-sale device.
- It appears that the firm uses optical scanners to process transactions.
- The checkout area consists of a narrow countertop where items can be placed for purchase. The cashier is located behind a Plexiglas barrier. 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.
- The store's staple food inventory in each of the four staple food categories is sufficient for program eligibility and is similar to other nearby convenience stores.
- SNAP-eligible, non-staple accessory food items available at the store include carbonated and uncarbonated drinks, snacks, candy, and condiments. The store also sells ineligible, nonfood items, including tobacco products, cleaning supplies, personal care items, and other miscellaneous household merchandise.
- There is no evidence that the store sells meat or cheese by the pound and no evidence that the firm sells any items in bulk, such as meat bundles or fruit and vegetable boxes.
- There is no indication from the store visit report that the firm has a special pricing structure, such as most prices ending in .00 or .50.
- According to the contractor's report, the most expensive SNAP-eligible food item was a 35-pound container of soybean oil selling for \$24.99. There was one of these items in stock. The store also sells 32 ounces of frozen beef patties for \$12.99; 4.5 pounds of frozen French fries for \$9.99, and 2.4 pounds of frozen fish steaks for \$7.49. The majority of eligible foods were less than \$5.00 each.

The available inventory of SNAP-eligible food at the time of the store visit showed stock that would be typical of a convenience store or corner market, where households normally purchase a limited number of items to complement their overall dietary needs. There was no indication that SNAP households would be inclined to regularly visit East Food Mart Inc. 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 larger SNAP-authorized grocery

stores just a short distance away, including two superstores within a one-mile radius of the store. 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 nearby, similar-sized competitors.

### **SNAP Transaction Analysis**

**Charge Letter Attachment 1:** Multiple transactions were made from the accounts of individual SNAP households within a set time period. This attachment lists 19 sets of transactions (54 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), an extraordinary amount for a convenience store like East Food Mart Inc. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Such patterns and transaction totals at a standard convenience store are highly irregular and are often an indication of trafficking. As such, these transactions warrant further explanation.

The Appellant has argued that on occasion, multiple members of the same household will shop separately but simultaneously, and then stand in opposite checkout lines before getting to the store's two cash registers at around the same time. According to the Appellant, after one transaction is rung up, the EBT card is handed to the other household member for a second transaction. In its original response to the charge letter, the Appellant also argued that individuals will sometimes buy food for breakfast and then return to the store later and buy food for lunch; or they give the EBT card to their children, who buy food when they get hungry. The Appellant contends that it does not have any method of tracking the number of times a household uses its EBT card at the store. It also believes that it does not have any authority to deny a lawful purchase.

Unfortunately, anecdotal explanations without appropriate supporting documentation do little to convince this review that the transactions in Attachment 1 were legitimate purchases. In its initial response to the charges, the Appellant did provide a small number of itemized cash register receipts and a few corresponding EBT receipts, but the receipts offer few details. The vast majority of items on the receipts are simply listed as "no tax" and do not indicate what was actually purchased. Occasionally, a receipt will indicate "frozen food" or "soda," and some items are listed with what the Appellant claims is a manufacturer's product number, but roughly half of the items have no description at all other than "no tax." Are these legitimate food purchases? It is impossible to determine.

It should be made clear that SNAP regulations do not provide limitations on the number of transactions that can be made by SNAP households or how large the individual transactions can be. However, the transactions noted in Attachment 1 are questionable not because they exceed any limits for use, but rather because they display patterns of use that are inconsistent with the store's documented physical characteristics and in comparison with similar stores in the area and around the country. It should be further noted that the transactions identified in the charge letter are not marginally abnormal, but decidedly so. This review does not contend that the EBT transactions detailed in the charge letter are overtly suspicious when they occur on an occasional or intermittent basis. But when such transactions form repetitive and 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.

Because the Appellant's evidence offers little insight into the specific transactions in question, and because the transactions themselves are exceedingly unusual, it is reasonable for this review to conclude that trafficking was a likely cause of the transaction patterns listed in this attachment.

**Charge Letter Attachment 2: Excessively large purchase transactions were made from recipient accounts.** This attachment lists 102 SNAP transactions

5 U.S.C. § 552 (b)(6) & (b)(7)(C). These large transactions are not consistent with other convenience stores in the state of Pennsylvania. The Retailer Operations Division has determined that during the review period, the average SNAP transaction amount for a convenience store in Pennsylvania was \$8.54. In Delaware County, the average was a bit higher at \$8.91, but the average transaction in Attachment 2 is almost five times larger than the average purchase amount for this store type.

Given that the Appellant firm has a modest inventory of staple foods and other SNAP-eligible items, such as snacks and drinks, 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 transactions sprinkled among the transactions listed in Attachment 2. However, as noted earlier, there is no evidence that the firm would be likely to have SNAP redemption patterns that differ significantly from nearby, similar-sized competitors, especially considering the absence of shopping carts and baskets to help transport large quantities of food, the constricted checkout area, and the availability of much larger stores just a short distance away. The substantial number of high-dollar transactions in a three-month period calls into question the legitimacy of these transactions.

Attachment 2 lists 12 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) during the review period, including a high of 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Considering how many low-priced food items it would typically take to add up 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and considering the store's characteristics, this review finds it unlikely that SNAP households would legitimately choose to spend large portions of their benefit allotments at a store such as East Food Mart Inc.

The Appellant, through counsel, contends that it is not unusual for its customers to make large purchases, such as several containers of infant formula, or a package of quarter-pound beef patties or frozen chicken wings. Appellant does not believe it has the authority to question whether the customer has the need for certain items, and may not tell someone that they cannot purchase a food item in whatever quantity they want so long as the funds are available on the EBT card. Appellant's counsel further states, "I can assure you my clients are not in any way, shape or fashion, doing anything illegal in the operation of their store. They check on it daily to be sure that their employees are doing whatever is required to be done in a lawful manner."

Finally, the Appellant claims that it is not "buying SNAP cards." Appellant's counsel states: "A close look at their operations would show that people are coming out of there with food every



single time. It is not a matter of someone coming in there and getting cash and allowing the SNAP card to be used for a larger amount.”

With regard to the claim that it is common for customers to make large purchases at East Food Mart Inc., this review acknowledges that the nearest supermarket or superstore is just over three-quarters of a mile away. As such, it is possible that a household might conduct an occasional large transaction at their nearest convenience store. However, because the Appellant firm has no shopping carts or even any handheld shopping baskets, it is likely that large transactions, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), would be rare, particularly since transportation does not seem to be a significant barrier to those households shopping at the Appellant store. But large transactions seem to occur quite regularly at East Food Mart Inc., which is very different from similarly stocked convenience stores in the area. There is nothing from the contractor’s store visit report that would justify such shopping patterns at this store.

As for the contention that households purchase several containers of infant formula at one time, such a claim is unlikely to be true. The vast majority of SNAP households that contain infants and children under the age of five are also eligible for WIC participation. Therefore, it is uncommon for such households to purchase items from the WIC food package, such as infant formula, with their SNAP benefits. It would be very unusual for a SNAP household which also receives WIC benefits to spend its limited SNAP resources on expensive infant formula when it would already be able to purchase such items with WIC benefits.

As it did in Attachment 1, the Appellant contends that it has no authority to deny a legitimate purchase as long as funds are available on the customer’s EBT card. The response to this contention is the same as it was in Attachment 1. There are no regulations that limit the number of items that can be purchased in a single transaction or that limit how large an individual transaction can be. The charge of trafficking is not based on the firm exceeding a nonexistent limit, but rather on the patterns of use that are inconsistent with the store’s documented physical characteristics and in comparison with similar stores in the area.

It is noted that USDA employs a computerized fraud detection tool to identify EBT transactions that form patterns having characteristics indicative of trafficking. However, this tool does not, by itself, determine or conclude that trafficking has occurred. FNS’s Retailer Operations Division must still analyze the transaction data and patterns with other factors, such as observations from a store visit, an analysis of customer shopping behavior, and a comparison with similar stores in the area, and then render a determination as to whether or not the questionable transactions were, more likely than not, the result of trafficking.

The legality of this method is identified in 7 CFR § 278.6(a) which 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 ....**” [Emphasis added.]

Prior to a disqualification determination, the accused firm is given ample opportunity to reply to the charges and provide any information it deems appropriate in justifying as legitimate the transaction activity detailed in the charge letter.

It should be noted that this reviewer has thoroughly examined the documentation and information provided by the Retailer Operations Division and has found no evidence to suggest that the agency simply manufactured numerical data and declared it to be trafficking. From all indications, the Retailer Operations Division obtained the EBT data, found it to be suspicious in comparison to other area stores of similar size, and then undertook a thorough analysis, including consideration of the Appellant's response to the charge letter, before determining that trafficking was likely occurring.

It should be further noted that the transactions identified in Attachment 2 are not marginally abnormal, but decidedly so. When such transactions form repetitive and 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.

As to the claim that the firm is not doing anything illegal "in any way, shape or fashion," the Appellant's 27 cash register receipts paint a much different picture. For example, the receipts show that the Appellant regularly allows the sale of cigarettes in exchange for SNAP benefits and regularly charges sales tax on SNAP purchases, both of which are violations of SNAP regulations. For instance, 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Most of the items on the receipts are listed as "no tax," with no other identifying characteristics. What are these items? Are they legitimate purchases of eligible food? Non-food? Cash? It is impossible to determine. For example, 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

As for any receipts that may have been taken by thieves in the August 2018 robbery incident, this review finds it unlikely that the stolen receipts would shed any more light on this case than the receipts that the Appellant submitted with its written response to the charge letter. The Appellant acknowledges that its cash register was older and does not offer detailed information. Accordingly, this review finds that the store robbery, which occurred five months after the end of the period of time in question, is of little relevance in this matter.

It is the finding of this review that the attachments furnished with the charge letter adequately identify the irregular patterns of SNAP transactions which indicate that trafficking was likely taking place. The transactions listed in the charge letter are highly unusual and substantially different from comparable stores in the area. Based on these and other factors, such as the store's physical characteristics and inventory, the case of trafficking is convincing.

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 anecdotal contentions do not sufficiently address the specific transactions listed in the charge letter, and the evidence it did provide, such as cash register receipts, only serve to undermine its claim that violations were not occurring. Therefore, it is the

conclusion of this review that the transactions in the charge letter were, more likely than not, the result of trafficking violations committed by the Appellant.

### **Hardship to Appellant and SNAP Recipients**

The Appellant, through counsel, contends that a disqualification against the store will not only hurt the firm, causing it to go out of business, but will also hurt the very people FNS is trying to protect. If the store goes out of business, it will reduce competition, thus allowing prices to become much higher.

With regard to the contention that the community will experience hardship if the firm is disqualified, it is recognized that some degree of inconvenience to SNAP households is likely whenever a SNAP-authorized store is disqualified and a household is forced to use its 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 would suffer financially 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 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 contentions that the community will be adversely affected and that the firm may incur economic hardship based on the assessment of a disqualification do not provide a valid basis for dismissing the charges or for modifying 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 training 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 the Appellant did not request a civil money penalty when it replied to the charge letter and there is no evidence that the Appellant submitted any documentation that would indicate that the firm had a compliance policy or training program of any kind.

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 East Food Mart Inc. 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, East Food Mart Inc., under the ownership of 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

April 23, 2019