

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

Quick Stop Market #1,

Appellant,

v.

Case Number: C0212824

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the USDA that there is sufficient evidence to support that the Retailer Operations Division properly imposed a permanent disqualification of Quick Stop Market #1 as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278 in its administration of the SNAP, when it imposed a permanent disqualification against Quick Stop Market #1.

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 October 31, 2018, the Retailer Operations Division charged the Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred during the months of May 2018 through September 2018. The letter noted that the penalty for

trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter stated the Appellant had the right to respond to the charges within 10 days of receipt to provide explanations for the irregular SNAP transaction patterns. The letter also stated that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt under the conditions specified in 7 CFR § 278.6(i). The charge letter was delivered via UPS on November 1, 2018.

The Appellant, through counsel, responded to the charges in a letter dated November 8, 2018. Among other contentions, the Appellant stated that the Appellant store did not engage in any illegal acts. In the alternative, the Appellant requested a trafficking CMP as it had an effective compliance program to prevent SNAP violations.

After considering the evidence in the case and the Appellant's contentions, the Retailer Operations Division issued a determination letter dated November 16, 2018. The determination letter informed the Appellant it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(c) and 7 CFR § 278.6(e)(1). The determination letter also stated that the Retailer Operations Division considered the Appellant's eligibility for a trafficking CMP according to the terms of 7 CFR § 278.6(i) of the SNAP regulations. The Retailer Operations Division determined that the Appellant was not eligible for a trafficking CMP because the Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter postmarked November 27, 2018, the Appellant, through counsel, requested an administrative review of the Retailer Operation Division's determination. The request for administrative review was granted.

STANDARD OF REVIEW

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

CONTROLLING LAW AND REGULATIONS

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

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

... a disqualification under subsection (a) shall be ... permanent upon ... the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards...

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

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

7 CFR § 278.6(e)(1)(i) states:

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

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

The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone

7 CFR § 271.2 defines eligible food, in part, as:

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

7 CFR § 278.6(a) states, in part:

FNS may disqualify any authorized retail food store ... if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system....

7 CFR § 278.6(i) states, in part:

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

7 CFR § 278.6(b)(2) states, in part:

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

SUMMARY OF CHARGES

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

- **Charge Letter Attachment 1:** There were an unusual number of transactions ending in a same cents value. This attachment lists 253 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C).**
5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- **Charge Letter Attachment 2:** Multiple transactions were made from individual benefit accounts within a set time period. This attachment lists 38 sets of 82 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C).**
5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- **Charge Letter Attachment 3:** In a series of transactions, the majority or all of individual recipient benefits were exhausted in unusually short periods of time. This attachment lists 30 sets of 66 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C).**
- **Charge Letter Attachment 4:** Excessively large purchase transactions were made from recipient accounts. This attachment lists 263 SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C).**
5 U.S.C. § 552 (b)(6) & (b)(7)(C).

APPELLANT'S CONTENTIONS

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

- The store is located in a high-poverty neighborhood with large families and is surrounded by Section 8 housing. Most of the store customers purchase food for their entire household as they would at a full-service grocery store. Many of these customers are unemployed and can purchase food at any time of day.
- Regarding Charge Letter Attachment 1, many items at this store are priced at even dollar amounts. For this reason there are many transactions that end in .00.
- Regarding Charge Letter Attachment 2, once a customer makes their first purchase, the customer will then ask how much is left on their card and based on the reply, will purchase more groceries. For this reason, they normally make a test purchase of a qualified grocery item and then plan for future purchases. Their future purchase is normally made **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** of finding out how much money is remaining on their card.
- The SNAP manual issued by the USDA disallows store owners from questioning the purchasing of SNAP qualified items.
- Regarding Charge Letter Attachment 3, many customers will buy large quantities of frozen food to meet the family's needs for a whole month to eliminate the need for frequent visits to the store. Given the customer base, there are a significant number of individuals that do not own automobiles. Secondly, there are also a number of individuals that have restrictions such as wheelchairs and other accessibility issues that make it very difficult to make frequent trips to the grocery store. For this reason, buying in bulk is a practical option.
- Regarding Charge Letter Attachment 4, store customers normally have a large number of children per family. As a result, the children of the card holder do much of the family's shopping. They routinely return to the store numerous times, sporadically, to pick up more items to take home. For this reason, the transactions are not bundled together like a family living in the suburbs where it is normal for one adult in the home to do the shopping for the family, with maybe 1-2 more shopping trips for the rest of the week. It is common for transactions to be excessively large since there are sometimes seven (7) children living in the same home with different needs. Since the store is located within a short walking distance of their customers, there are normally many transactions from the same card holder. The store also sells large amounts of raw meat by the pound, which account for the large transactions.
- Under 7 CFR § 278.6(d), the store owner and employees have not violated

SNAP law as the store transactions are based on the sale of qualified merchandise. In addition, the store has never had any prior investigations or sanctions.

- In the alternative, the store is eligible for a trafficking CMP under 7 CFR § 278.6(i) as the owner and his employees review the SNAP user's manual on a regular basis.

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

ANALYSIS AND FINDINGS

Authorization History

The Food & Nutrition Service (FNS) authorized Quick Stop Market #1 for the SNAP on October 29, 2013. During the review period of May 2018 through September 2018, the Retailer Operations Division classified the store as a convenience store.

The store owner signed the SNAP application for the store on August 16, 2013 and acknowledged that the owner was aware of the SNAP regulations and understood those regulations. That application included a certification and confirmation that the owner would "accept responsibility on behalf of the firm for violations of the SNAP regulations, including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time." The violations listed on this certification include accepting SNAP benefits in exchange for cash, otherwise known as trafficking, and other violations such as accepting SNAP benefits as repayment on credit accounts or in exchange for ineligible items.

Store Visit Report

The case record documents that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a September 23, 2018 store visit conducted by an FNS contractor to observe the nature and scope of the store's operation, stock and facilities. This information was then used to ascertain if there were justifiable explanations for the store's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Quick Stop Market #1 is approximately 1,000 square feet in size according to store personnel.
- The store had no shopping carts and no handheld shopping baskets for customer use.

- The store had one (1) cash register and one (1) point-of-sale device.
- The store did not have an optical scanner or conveyor belts at the checkout.
- Store personnel confirmed that no food was stored in an area outside of public view and that no food was stored offsite.
- Food items generally had prices ending in 9 cent amounts. The store did not have a special price structure such as ending most product prices at 00 cents. Store personnel confirmed that the store did not round prices up or down at the checkout.
- The store did not sell expensive food in bulk such as fresh meat bundles, fresh seafood specials, and/or fresh fruit and vegetable boxes.
- The checkout area consisted of a small countertop of no more than two (2) feet by three (3) feet in size. There were displays of candy and snack foods and a single bunch of bananas on the countertop as well as adjacent shelving which further constricted space at the checkout area. The very limited space for stacking food at the checkout area made it not conducive to conducting large transactions.

The SNAP eligible food stocked by the store consisted mainly of inexpensive canned and packaged goods with a very limited amount of lunch meat, fresh fruit and produce typical of a convenience store. The store sold a large amount of single-serving snack foods, ice cream, popsicles, potato chips, candy and other inexpensive accessory food items such as carbonated sodas, coffee, tea, condiments, and spices.

The stocked ineligible items included tobacco products, health and beauty aids, paper goods and cleaning products. Store personnel confirmed that the most expensive items sold by the store were 12.4 ounce cans of Similac at \$19.99; 18.76 ounce cans of Folgers Perfect Measures at \$8.99; a 1.12 pound can of Ovaltine at \$6.99; and 23.5 ounces of Pub Style Pizza at \$5.99. The Similac was limited to approximately 18 stocking units; the pizza was limited to approximately ten (10) stocking units; the Ovaltine was limited to three (3) stocking units and the coffee was limited to two (2) stocking units. Therefore, these items did not appear to be available in large quantities to support bulk sales. Store personnel stated that the store sometimes sold cases of food such as pizza puffs, chicken strips, ground beef and Italian beef, but that it had limited cooler space and customers could only obtain these items through ordering in advance. There was no signage or menus in the store stating that customers could make orders of these products.

Given the available inventory as noted above, there is no indication from the store visit report that the store would be likely to have SNAP transaction patterns significantly different from similar-sized competitors offering similar food items.

Same Cent Transactions

During the review period, Quick Stop Market #1 conducted 904 SNAP transactions

5 U.S.C. § 552 (b)(6) & (b)(7)(C); of these, a total of 330 transactions (36.5%) ended in 00 cents. 253 even dollar transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 87 even dollar transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Thus, a significant percentage of the store's large dollar transactions ended in 00 cents despite the store having most food items priced at amounts ending in nine (9) cents. When such repetitive patterns are unsupported by special pricing structures they are a strong indicator of trafficking in SNAP benefits.

The Appellant states that many items at this store are priced in even dollar amounts and for this reason there are many transactions that end in .00. However, there is no evidence that the store had a special pricing policy that would cause a disproportionate number of high dollar transactions to end in 00 cents. The store visit report documented that most items in the store had price amounts ending in nine (9) cents. Even a price list submitted by the Appellant showed retail prices ending in typical amounts such as .49, .69 and .99.

Based on the store visit report, the Appellant's food inventory contains almost exclusively inexpensive canned and packaged goods, single-serving food items and accessory foods and a limited amount of fresh produce. Due to the store's mostly low cost foods, the larger dollar transactions cited in the charge letter would normally consist of multiple food products being purchased in one transaction. It is implausible that several of these relatively inexpensive items purchased together would disproportionately result in total purchase prices ending in 00 cents. Instead when SNAP customers buy multiple food items, resulting in higher dollar amounts, the total transaction amount is more likely to result in a random statistical spread of ending cent ranges from 00 to 99 cents.

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

Multiple Transactions by the Same Household within a Short Time Period

The Appellant cites the SNAP Training Guide for Retailers and states that it cannot question how SNAP customers choose to spend their benefits. It is true that SNAP households have no limit on the number of times they may use their SNAP cards or how much eligible food they may purchase. However, the SNAP transactions noted in the charge letter are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of a convenience store's stock and facilities and are thus indicative of trafficking.

Violating stores often conduct multiple split transactions from the same household

account as a method to avoid the detection of single high dollar transactions that cannot be supported by the retailer's food inventory and infrastructure. Charge Letter Attachment 2 lists 38 sets of 82 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This average transaction greatly exceeds the average SNAP transaction for a Ramsey County convenience store during the review period 5 U.S.C. § 552 (b)(7)(E). In fact, this average SNAP transaction is much larger than the average supermarket or superstore SNAP transaction in Minnesota during the review period. It is not credible that a convenience store would have suspicious SNAP transactions greater than a supermarket or superstore. It is even less likely that these excessively large transactions would be conducted multiple times by the same household during a short time period.

The Appellant states that once a customer makes their first purchase, the customer will then ask how much is left on their card and based on the reply, will purchase more groceries. For this reason, they normally make a test purchase of a qualified grocery item and then plan for future purchases. Their future purchase is normally 5 U.S.C. § 552 (b)(7)(E) of finding out how much money is remaining on their card.

The Appellant's contentions are not credible. First, it is not necessary to run a transaction to determine the balance remaining on the card as the SNAP recipient can run a balance inquiry at the store without making a purchase. Second, even if a recipient had run an initial transaction to determine the balance on the card, there would be an interval of time in which the client went to select additional food items for purchase and transported them to the counter to complete another large dollar transaction all without shopping carts and shopping baskets. This would likely take more than a few minutes especially if the second transaction was larger than the first. Lastly, most of the transactions cited in the charge letter 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and therefore would not be explained by an initial purchase to determine the balance on the card followed by an additional purchase.

The Appellant states that store customers normally have a large number of children per family. As a result, the children of the card holder do much of the family's shopping. They routinely return to the store multiple times to pick up more items to take home. The Appellant alleges it is common for transactions to be excessively large since there are sometimes seven (7) children living in the same home with different needs. Since the store is located within a short walking distance of their customers, there are normally many transactions from the same card holder as there are numerous visits.

The Appellant's contentions are not credible. Even if families in the area have multiple children who make frequent trips to the store, it is unlikely they would consistently make large dollar purchases atypical of a convenience store. It is even more unlikely considering that the store does not have shopping carts or shopping baskets. It is also noteworthy that the other SNAP authorized stores in the area, including a nearby supermarket and superstore with a greater depth and breadth of

food at likely better prices, do not exhibit these same irregular transaction patterns.

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

Exhaustion of Benefits

Charge Letter Attachment 3 lists 30 sets of 66 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in which SNAP benefits were exhausted or nearly exhausted in a short time frame. **5 U.S.C. § 552 (b)(7)(E)**. SNAP recipients do not normally exhaust or nearly exhaust their benefits in a single large transaction or through multiple transactions within a short period of time.

The Appellant states that many customers will buy large quantities of frozen food to meet the family's needs for a whole month to eliminate the need for frequent visits to the store. The Appellant claims that there are a significant number of individuals that do not own automobiles and a number of individuals that have restrictions such as wheelchairs and other accessibility issues that make it very difficult to make frequent trips to the grocery store. For this reason, according to the Appellant, buying in bulk is a practical option.

The Appellant's contentions are not credible, it is unlikely that someone that does not own an automobile or someone in a wheelchair would be making bulk purchases amounting to hundreds of dollars in a store that lacked shopping baskets or shopping carts. In addition, the store had a limited amount of coolers and freezers and would not have been able to provide large quantities of frozen food for a whole month to multiple households.

In addition, a government report on SNAP shopping patterns indicates that after the first day of benefit issuance, on average, 80 percent of a household's allotment remains unspent. Even after seven days, 40 percent of benefits still remain unspent. It takes two weeks to deplete 80 percent of one's benefits, and three weeks to deplete 90 percent. Although many SNAP households do shop early in the month as opposed to later in the month, most households do not spend all or a majority of their monthly benefits in a single day at one store. Depleting one's entire allotment in a single day, or in a single large transaction, leaving no benefits for the remainder of the month, is inconsistent with the normal shopping behavior of SNAP households.

In addition, the Appellant does not explain how the store is conducting transactions that are many times higher than a SNAP authorized Minnesota supermarket or superstore. Based on a preponderance of the evidence this irregular transaction pattern is more likely than not the result of trafficking in SNAP benefits.

Excessively Large Transactions

The Appellant states that the SNAP Training Guide for Retailers prohibits store owners from questioning the purchasing of SNAP qualified items. It is true that SNAP households have no limit on the amount of eligible food they may purchase (subject to the remaining balance on the card). However, the SNAP transactions noted in the charge letter are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of a convenience store's stock and facilities and are thus indicative of trafficking.

Charge Letter Attachment 4 cites 263 SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E)**. Even the smallest transactions cited in the charge letter had an amount which is three or four times higher than the average SNAP purchase amount for a Minnesota convenience store.

The substantial number of high dollar purchases atypical of a SNAP authorized convenience store calls into question the legitimacy of these transactions. As noted previously, there is no indication from the store visit report that the store would be likely to have SNAP redemption patterns significantly different from similar-sized competitors offering similar food items.

The Appellant states that it is common for transactions to be excessively large since there are sometimes seven (7) children living in the same home with different needs. Since the store is located within a short walking distance of their customers, there are normally many transactions from the same card holder. The Appellant also claims that the store also sells large amounts of raw meat by the pound, which accounts for the large transactions.

The Appellant's contentions are not credible. Even if families in the area have multiple children who make frequent trips to the store, it is unlikely they would consistently make large dollar purchases atypical of a convenience store. It is even more unlikely considering that the store does not have shopping carts or shopping baskets. It is also noteworthy that the other SNAP authorized stores in the area, including a nearby supermarket and superstore with a greater depth and breadth of food at likely better prices, do not exhibit these same irregular transaction patterns. There is also no evidence that the store sells a large amount of raw meat by the pound that could account for transactions of this excessively large size.

A transaction spread analysis conducted by the Retailer Operations Division shows that Quick Stop Market #1 had many more transactions

5 U.S.C. § 552 (b)(6) & (b)(7)(C) than the average SNAP convenience store in Ramsey County. As the dollar amounts increased, the average convenience store SNAP transactions steadily decreased to almost zero.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Based on the store's food inventory, there is no legitimate reason why the store would have such abnormal spikes in SNAP transactions at those high dollar levels.

Lastly, the case record documents that the Retailer Operations Division conducted a detailed analysis of four (4) households identified in the charge letter to analyze their shopping patterns at Quick Stop Market #1 compared to their shopping patterns at other SNAP authorized stores. All of these households had access to, and shopped at supermarkets and/or superstores. However, despite this access to better stocked stores, these sampled households often conducted excessively large transactions at Quick Stop Market #1 on the same day or within a few days of shopping at these larger stores. It is highly unlikely that a convenience store would have legitimate SNAP transactions comparable or larger than these SNAP authorized supermarkets and superstores with a better selection and variety of food items at likely better prices.

In summary, the store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding the average SNAP transaction amount of similar type stores. In addition to the statistical irregularity of such high dollar transactions, the limited availability of counter space for checking out and the lack of shopping carts and shopping baskets support the Retailer Operations Division determination. Customers purchasing such large quantities of food items would have to hold them in their arms, or enlist the help of others while shopping. Based on a preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 4 are more likely than not the result of trafficking in SNAP benefits.

Basis of Determination under 7 CFR § 278.6(d)

The Appellant, through counsel, appears to contend that the Retailer Operations Division did not properly apply the three factors under 7 CFR § 278.6(d) before imposing a permanent disqualification on the firm. SNAP regulations at 7 CFR §278.6(d) states, in part, that in making a disqualification determination FNS shall consider:

- (1) The nature and scope of the violations committed by personnel of the firm,
- (2) Any prior action taken by FNS to warn the firm about the possibility that violations are occurring, and
- (3) Any other evidence that shows the firm's intent to violate the regulations.

The Appellant also states that the store has never been subject to any sanctions since it was first authorized.

With regard to the nature and scope of the violations, trafficking in SNAP benefits

is a very serious violation and warrants a permanent disqualification on the **first violation**. Both 7 U.S.C. § 2021(b)(3)(B) and 7 CFR § 278.6(e)(1)(i) mandate that the penalty for trafficking is a permanent disqualification and does not provide for a lesser period of disqualification or a warning letter.

In addition, 7 CFR § 278.6(d) does not **require** the Retailer Operations Division to give prior warnings or to show the firm's intent to violate. The Retailer Operations Division only has to **consider**, when rendering a final determination, any prior warnings or intent to violate that might be evident if applicable. Intent to violate is not applicable in this case as the definition of trafficking at 7 CFR §271.2 does not require an element of intent on the part of the violator.

It is true that SNAP regulations allows for the issuance of warning letters in some cases. Specifically, 7 CFR § 278.6(e)(7) states "send the firm a warning letter if violations are too limited to warrant a disqualification." However, in this case, a warning letter was not issued because the violations were not limited and trafficking in SNAP benefits warrants a permanent disqualification. In conclusion, 7 CFR § 278.6(d) does not constitute valid grounds for dismissal of the trafficking charges or for mitigating the impact of those charges through a warning letter or lesser penalty.

CIVIL MONEY PENALTY

The Appellant timely requested consideration for a trafficking CMP in lieu of a permanent disqualification under 7 CFR § 278.6(i). However, the Appellant submitted insufficient evidence to demonstrate that the firm had established and implemented an effective SNAP compliance policy and program prior to the violations. The Appellant store owner did provide an undated signed statement that he studied the USDA Training Guide for Retailers before accepting SNAP benefits, but this is not the type of substantial evidence required by the regulations.

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

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

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

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

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

Criterion 4. **Firm ownership** was not aware of, did not approve, **did not benefit from**, or was not in any way involved in the conduct or approval of trafficking violations; or it is only the first occasion in which a member of firm management was aware of, approved, benefited from, or was involved in the conduct of any trafficking violations by the firm
.... [Emphasis added.]

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

As specified in Criterion 1 above, in determining whether a firm has established an effective policy to prevent violations, **FNS shall consider written and dated statements** of firm policy which reflect a commitment to ensure that the firm is operated in a manner consistent with this part 278 of current [SNAP] regulations

As required by Criterion 2, **such policy statements shall be considered only if documentation is supplied** which establishes that the policy statements were provided to the violating employee(s) prior to the commission of the violation. In addition, in evaluating the effectiveness of the firm's policy and program to ensure FSP compliance and to prevent FSP violations, FNS may consider the following:

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

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

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

- (i) Training for all managers and employees whose work brings them into contact with SNAP benefits or who are assigned to a location where SNAP

benefits are accepted, handled or processed **shall be conducted within one month of the institution of the compliance policy** under Criterion 1 above. Employees hired subsequent to the institution of the compliance policy **shall be trained within one month of employment**. All employees shall be trained periodically thereafter;

(ii) Training shall be designed to **establish a level of competence that assures compliance with Program requirements** as included in this part 278;

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

In conclusion, the Retailer Operations Division's decision not to impose a trafficking CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR § 278.6(i).

CONCLUSION

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

In the absence of any reasonable explanations for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the letter of charges evidence trafficking as the most likely explanation. Therefore, based on a review of all of the evidence in this case, it is more likely true than not true that program violations did in fact occur as determined by the Retailer Operations Division. Based on the discussion above, the decision to impose a permanent disqualification against Quick Stop Market #1, Appellant, is sustained.

RIGHTS AND REMEDIES

Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and Title 7,

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

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

RONALD C. GWINN
Administrative Review Officer

March 20, 2019