

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

Sams Golden Land,

Appellant,

v.

Case Number: C0199942

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is sufficient evidence to support a finding that a Permanent Disqualification from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against Sams Golden Land by the Retailer Operations Division of FNS.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(e)(1)(i) in its administration of the SNAP, when it imposed a Permanent Disqualification against Sams Golden Land on July 10, 2017.

AUTHORITY

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

CASE CHRONOLOGY

In a letter dated May 19, 2017, the Retailer Operations Division informed the Appellant that his firm was in violation of the terms and conditions of the SNAP regulations, 7 CFR § 270 – 282, based on EBT SNAP benefit transactions that "establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm."

In telephone conversations with Retailer Operations Division staff on May 30, 2017 and May 31, 2017, and in a letters received by the Retailer Operations Division on June 13, 2017 and June 26, 2017, the Appellant, through counsel, cited credit extension and bulk purchases of specialty foods by SNAP customers as the explanations for the questionable SNAP transactions that were outlined in the May 19, 2017 Charge Letter.

After considering the Appellant's replies and the evidence in the case, the Retailer Operations Division issued a Determination Letter dated July 10, 2017, informing the Appellant that Sams Golden Land was being permanently disqualified from participation in the SNAP in accordance with 7 CFR § 278.6(e)(1) for trafficking violations.

In a letter postmarked July 20, 2017, the Appellant, through counsel, requested an administrative review of the Retailer Operations Division's decision to permanently disqualify the firm from participation in the SNAP. FNS granted the Appellant's request for administrative review by letter dated August 1, 2017.

STANDARD OF REVIEW

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

CONTROLLING LAW

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, amended, 7 U.S.C. § 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 2021, Part 278.6(a) and Part 278.6(e)(1)(i) of the Regulations establish the authority upon which a permanent disqualification may be imposed upon a retail food store or wholesale food concern. There also exist FNS policy memoranda and clarification letters which further explain the conditions necessary in order to permanently disqualify retail stores.

7 U.S.C. § 2021(b)(3)(B) states, inter alia:

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

7 CFR § 278.6(a) states, inter alia:

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

7 CFR § 278.6(e)(1)(i) states:

Disqualify a firm permanently if: Personnel of the firm have trafficked as defined in § 271.2.

7 CFR § 271.2 states, inter alia:

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

7 CFR § 278.2(f) states, inter alia:

SNAP [Food Stamp] benefits shall not be accepted by an authorized retail food store in payment for items sold to a household on credit. A firm that commits such violations shall be disqualified from participation in the SNAP [Food Stamp Program] for a period of one year.

7 CFR § 278.6(f)(1) states, inter alia:

A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification.

7 CFR § 278.6(i) states, inter alia:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking as defined in § 271.2 if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations ...

7 CFR § 278.6(b)(2) states, inter alia:

(ii) Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence as specified in § 278.6(i), that establishes the firm's eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria

included in § 278.6(i). This information and evidence shall be submitted within 10 days, as specified in § 278.6(b)(1). [Emphasis added].

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

SUMMARY OF CHARGES

The Appellant was charged and determined to be trafficking based on an analysis of EBT transaction data from February 2017 through April 2017. This involved the following SNAP transactions patterns which are indicative of trafficking:

- There were multiple transactions made from individual benefit accounts in unusually short timeframes; and
- There were excessively large purchase transactions made from recipient accounts.

APPELLANT'S CONTENTIONS

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

In the Appellant's replies to the Charge Letter and in the review request postmarked July 20, 2017 and in a subsequent correspondence postmarked August 26, 2017, the Appellant, through counsel, stated the following summarized contentions, in relevant part:

- The Appellant denies that trafficking of SNAP benefits took place at Sams Golden Land.
- This is the first time that Sams Golden Land has been cited for any SNAP violations since it was initially authorized to participate in the SNAP.
- The multiple transactions made from individual benefit accounts in unusually short timeframes are the result of Sams Golden Land accepting SNAP benefits as repayment on credit accounts from SNAP customers. The Appellant did not realize that credit extension to SNAP customers is a violation of the SNAP regulations. Only 4 of the 57 households listed in Attachment 1 are repeated, the remaining are unique households. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The Appellant indicates that none of the 28 household accounts were exhausted which indicates that these are legitimate transactions. The ALERT system does not identify how many items or what items were purchased.
- The excessively large purchase transactions are the result of SNAP customers purchasing specialty foods in bulk (i.e., fresh fish, poultry, rice, and soups) that the Appellant purchases from Burma. These foods are expensive to ship to the United States. The store's total invoice receipts for its food inventory during the review period

5 U.S.C. § 552 (b)(6) & (b)(7)(C) which demonstrates that the Appellant is purchasing eligible food items and selling the inventory, not trafficking SNAP benefits.

- A permanent SNAP disqualification will impose a hardship on the surrounding Burmese households who rely upon Sams Golden Land for specialty staple foods.
- The Appellant requests that in lieu of a permanent SNAP disqualification, FNS impose a six month SNAP disqualification for Sams Golden Land as this is the first violation for the Appellant and he was trying to help the surrounding Burmese community by extending credit to them.
- The Appellant cited various case laws in support of a few of his contentions.

In support of the Appellant's contentions, the following documents were submitted to FNS:

- A hand-written credit log/ledger from a spiral notebook paper;
- Credit extension identification of specified transactions listed in Charge letter Attachment 1;
- 11 Notarized customer affidavits attesting that they were extended certain amounts of credit by Sams Golden Land on specified dates;
- 18 Photos of product available for sale at Sams Golden Club;
- 6 Pages of EBT receipt copies for transactions listed in Attachment 1 of the Charge Letter;
- Monthly Sales Worksheets for each month of the review period that includes hand-written numbers;
- Sams Golden Land's Bank of America Bank statements for each month of the review period;
- A list of inventory purchases for the review period which appears to have been printed from the store's cash register;
- Vendor invoices for product purchases made for Sams Golden Land during the review period;
- A letter from the Appellant's Pastor;
- 18 Additional notarized customer affidavits attesting that they purchased foods at Sams Golden Land with their EBT cards; and
- A hand-written statement from the Appellant attesting that he extended credit to SNAP customers during the review period and that he was unaware that credit extension was a violation of the SNAP regulations.

ANALYSIS AND FINDINGS

Store Characteristics

FNS authorized Sams Golden Land as a combination grocery store on October 23, 2012. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a March 10, 2017 store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information obtained from the store visit was also used to ascertain if there were justifiable

explanations for the firm's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Approximately 1,500 square feet in size and it does not have a storage area outside of public view;
- Located in a suburban, commercial area of Decatur, Georgia;
- No shopping carts and only four hand-held baskets available for customer use;
- One cash register and one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;
- No optical scanner;
- A moderately stocked combination grocery store predominantly stocking specialty/ethnic food items from Burma;
- Store did not meet the requirements for participation in the SNAP under Criterion A at time of store visit as it stocked only canned milk and infant formula from the Dairy staple food category;
- No meat/seafood specials or bundles that might sell for high prices;
- Not a WIC Program vendor; however, the store sells a limited variety and amount of infant formula;
- Store visit observations indicate that Sams Golden Land does not appear to extend credit to customers;
- No signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include specialty/ethnic foods;
- Limited checkout counter area and it is stocked with miscellaneous items. As such, the checkout counter does not provide adequate space for the large amounts of individual food items necessary to make up many of the large transactions cited in the Charge Letter Attachments;
- No fresh meats, poultry, or fish items;
- The only frozen meats in stock are a minimal variety and amount of chicken and fish;
- Does not have a deli case/section and it does not sell deli meats and cheeses by the pound;
- Other meat items include eggs;
- Does not have a kitchen and it does not prepare and sell hot and cold prepared, ready-to-eat foods that are intended for immediate consumption and require no additional preparation are prepared;
- Other frozen food items include bread products;
- A minimal variety and amount of fresh produce items to limes, cabbage, onions, peppers, potatoes, tomatoes, and cucumbers;
- Other staple foods available for purchase include such items as 100% juice, dried beans/peas, dried bananas, canned milk, pasta, rice, flour, corn meal, snack foods, etc.;
- Much of the remaining food stock consisted of accessory foods such as candy, carbonated and non-carbonated drinks, spices/seasonings, tea, coffee, and vegetable oil; and
- An extensive supply of ineligible nonfood items such as paper products, household cleaning supplies, health and beauty items, ice chests, household items, infant diapers, toys, jewelry, clothing, gift items, party supplies, souvenirs, etc.

It is worth noting that the average SNAP purchase in a combination grocery store in Dekalb County, Georgia (the county in which Sams Golden Land is located) during the analysis period was \$35.90, reflecting that the large purchases identified in the Charge Letter Attachments are not routinely made in area authorized SNAP stores.

On review, the investigative materials provided by the Retailer Operations Division, including computer printouts of transaction data available from Federal records, store visit observations, information regarding area competitor firms, and household shopping patterns, were analyzed.

Government analyses of stores caught in trafficking violations during on-site investigations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include, in part, those cited in the letter of charges. Based on this empirical data, and in the absence of any reasonable explanations for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the most likely explanation for “unusual, irregular, and inexplicable” transactions and patterns cited in the letter of charges is trafficking. Transactions having such characteristics sometimes do have valid explanations that support that they were the result of legitimate purchases of eligible food items. This is why opportunities are afforded to charged retailers to explain the questionable transactions cited. In this case, the Retailer Operations Division determined that the Appellant’s contentions did not outweigh the evidence. The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that questionable transactions were the result of trafficking. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

Denial of Trafficking Allegations

Regarding the Appellant’s contention that he denies the trafficking allegations, this review encompasses and documents the examination of the primary and relevant information in this case, the purpose of which is, as noted above, to determine whether the Appellant demonstrates by a preponderance of the evidence that the permanent disqualification should be reversed. In this case, therefore, if the Appellant demonstrates by a preponderance of the evidence that trafficking did not occur in the Appellant’s firm, then trafficking will be considered not to have occurred and the disqualification reversed. If this is not demonstrated the case is to be sustained. Assertions that the firm has not violated program rules, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations or for mitigating their impact.

First Time Violator

The Appellant contends that this is the first time that Sams Golden Land has been cited for any SNAP violations since it was initially authorized to participate in the SNAP. However, a record of participation in the SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges. Trafficking in SNAP benefits is an extremely serious violation and both

7 U.S.C. § 2021(b)(3)(B) and 7 CFR § 278.6(e)(1)(i) state that a first time violation warrants a permanent disqualification.

Credit Transactions

The Appellant contends that the multiple transactions made from individual benefit accounts in unusually short timeframes are the result of Sams Golden Land accepting SNAP benefits as repayment on credit accounts from SNAP customers. When a retailer claims it maintains credit accounts to explain irregular SNAP transactions and data patterns, FNS requires a level of detail regarding the legitimacy of the claim. This is because retailers have often made false admissions of credit in an attempt to obtain a lesser penalty after committing more egregious violations such as trafficking. Credit transactions must be accounted for with substantive evidence such as the dates credit was extended, to whom, for what amount, and for what items.

The Appellant provided the Retailer Operations Division with copies of a credit log/ledger written in a spiral notebook as proof that he extended credit to SNAP customers during the review period. The Appellant stated that the credit extensions were re-paid to Sams Golden Land and then a follow up transaction for foods was made by the household on the same day or the next day. The Appellant also provided notarized affidavits/statements from 11 different customers attesting that certain SNAP transactions listed in Charge Letter Attachment 1 are the result of credit extension by Sams Golden Land. In addition, six pages of EBT register receipts for SNAP transactions that were listed in Attachment 1 were also provided to support the Appellant's credit extension contention.

The Retailer Operations Division reviewed the information/documentation provided by the Appellant and properly determined that the documents were insufficient to support the Appellant's credit extension contention for the following reasons:

- The credit ledgers are hand-written and do not provide any customer identification information such as the SNAP household numbers or EBT card numbers. In addition, many of the credit entries only included a partial name of the SNAP customer.
- There is no verification that the purchases listed on the credit ledgers were made by SNAP customers other than the Appellant's hand-written transaction numbers written on the credit ledgers and the information that was provided on the customer affidavits. Since the credit ledgers are hand-written, they could easily have been contrived by the Appellant in an effort to justify the questionable SNAP transactions listed in Attachment 1. Also, the customers who signed affidavits were very specific with regard to the dates and amounts of credit that was extended to them. It is highly unlikely that these customers would remember specific dates and credit amounts for purchases that were made a few months prior to the date that they signed the affidavits.
- None of the individual food items purchased on credit were listed on the credit ledgers. Only the purchase totals were listed. In addition, many of the dates listed on the credit ledgers have several purchase amounts listed for that day. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. It is highly unlikely that SNAP customers made multiple credit purchases on the same day.

- No documentation was provided to validate whether the alleged credit was paid off by cash, check, credit card or SNAP benefits. The Appellant himself informed FNS that Sams Golden Land extends credit to all customers---not just SNAP customers.
- No documentation was provided that indicates the date to which the credit was paid off.
- The Appellant only provided customer affidavits which supposedly indicate that 20 of the transactions listed in Attachment 1 are the result of credit extension. However, there are a total of 57 questionable SNAP transactions included in the Attachment. The Appellant claimed that the remaining 37 transactions are the result of these SNAP customers making additional transactions with their EBT cards upon making their credit extension payment. However, none of the documents/information provided by the Appellant validates this claim.
- The cash register receipts provided to FNS do not include an itemized list of the items that were purchased. Only the total amount of the purchase is listed. As such, there is no way to validate that only eligible food items were purchased with SNAP benefits.

Additional inaccuracies were identified by the Retailer Operations Division with regard to the information/documentation provided by the Appellant in support of a contention of credit extension. A summary of these inaccuracies are listed below.

It is important that the book keeping method used in the credit ledgers would be very difficult for the Appellant to track. **5 U.S.C. § 552 (b)(7)(E)**.

5 U.S.C. § 552 (b)(7)(E)

Though the credit ledger is missing the level of detail required to support a valid conclusion that Sams Golden Land was engaging in credit extension rather than trafficking in SNAP benefits, FNS completed a thorough review of the first half (14 out of 28 transaction sets) of the transaction sets in Attachment 1.

In addition to the credit ledger the firm provided FNS with 11 notarized client statements which all allege that they purchased food items on credit on certain dates. When the household visited the subject firm to repay the credit extension they also completed an additional transaction with their EBT card for staple foods.

There are 24 unique households in Attachment 1. The subject firm submitted client statements from 11 of those households. The majority of households in this Attachment did not submit statements. It is also interesting to note that three of the households that submitted statements conducted more than one set of rapid transactions during the review period. However, they only claimed repayment of credit for one of the transaction sets in their notarized statement.

As part of the analysis of the credit allegation submitted by the subject firm, the ALERT transaction data was reviewed for the first 14 (of 28) transactions sets listed in Attachment 1. Where a credit statement was submitted, it will be noted in the analysis below. It is important to note that clients have an incentive not to admit to trafficking as it could impact their eligibility for EBT benefits. As a result, if the clients were engaging in trafficking, it is unlikely they would admit to such in their notarized statements.

The findings for the first 14 sets of transactions are included below.

5 U.S.C. § 552 (b)(7)(E)

The subject firm indicated they extended credit to this household on 3/10/2017.

5 U.S.C. § 552 (b)(7)(E)

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The subject firm indicated that they extended credit to this household on the following dates and amounts.

5 U.S.C. § 552 (b)(7)(E)

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

However, the name provided in the client statement does not match the name in the credit log. The client statement is attributed to 5 U.S.C. § 552 (b)(7)(E). The credit log lists the credit entry as belonging to 5 U.S.C. § 552 (b)(7)(E). A review of the Georgia state administrative terminal indicates that the name associated with this household number is 5 U.S.C. § 552 (b)(7)(E).

The discrepancy in the names between the three documents casts doubt on the legitimacy of this information. The information contained in the credit log makes it impossible to determine if the transactions were for credit extended, credit payments, actual purchases combined with a credit payment, or even if they were for eligible food items. Without this information it is impossible to determine if these transactions were the result of credit extension repayments.

5 U.S.C. § 552 (b)(7)(E)

The subject firm indicated that they extended credit to this household on the following dates and amounts.

5 U.S.C. § 552 (b)(7)(E)

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

5 U.S.C. § 552 (b)(7)(E)

The household was essentially out of EBT benefits at the time that the firm alleges to have extended credit to the household. The subject firm included a credit log which they claim shows the extension of credit. The information contained on the credit log pages makes it impossible to determine if the transactions were for credit extended, credit payments, actual purchases combined with a credit payment, or even if they were for eligible food items. Without this information it is impossible to determine if these transactions were the result of credit extension

repayments. No additional evidence was submitted to confirm the subject firm's allegation that these transactions were the result of credit.

5 U.S.C. § 552 (b)(7)(E)

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

In two of the four transactions listed above, the household had adequate EBT benefits available at the time that the subject firm alleges that it extended credit to the household. As such, the household would have no need for credit extension on those dates and, therefore, it is unlikely that Sams Golden Land would have extended credit to the household.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

5 U.S.C. § 552 (b)(7)(E)

It is highly unlikely that the subject firm would have extended credit to a customer who had not visited the store in the year proceeding the review period.

The fact that the subject firm's account of the total credit extended to the household did not coordinate with either of the transactions attributed to this household in Attachment 1, the household's available EBT benefits at the time the firm alleges credit was extended, and the fact that the household had not visited the subject firm to redeem benefits in the year prior to the review period indicate that the household's transactions in Attachment 1 are unlikely to be the result of credit. It is more likely that the household's transactions are the result of trafficking.

5 U.S.C. § 552 (b)(7)(E)

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

5 U.S.C. § 552 (b)(7)(E)

The subject firm included a credit ledger which they claim shows the extension of credit. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is possible that these two transactions were the result of the subject firm violating the SNAP regulations to extend credit to this customer. Note that the two transactions in question are both for minimal amounts. However, the information contained on the credit ledger pages makes it impossible to determine if the transactions were for credit extended, credit payments, actual purchases combined with a credit payment, or even if they were for eligible food items. Without this information it is impossible to determine if these transactions were the result of credit extension repayments.

5 U.S.C. § 552 (b)(7)(E)

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

5 U.S.C. § 552 (b)(7)(E)

5 U.S.C. § 552 (b)(6) & (b)(7)(C). In three of the five transactions where the subject firm alleges it extended credit to the household, the household had more than enough available EBT benefits to cover the transactions. It is highly unlikely that the subject firm would extend credit to a household which had available EBT benefits.

5 U.S.C. § 552 (b)(7)(E)

Finally, FNS utilized the Georgia state administrative terminal to verify the name associated with this household. According to the GA state administrative terminal, the name that is associated with this household is 5 U.S.C. § 552 (b)(7)(E). However, that name does not match the name indicated on the credit ledger entry which is 5 U.S.C. § 552 (b)(7)(E). Nor does the name match the notarized statement submitted by the subject firm which lists the transactions as belonging to 5 U.S.C. § 552 (b)(7)(E).

Because of the available EBT benefits at the time of alleged credit extensions and discrepancies between the retailer reply, credit ledger information, and the client statement, it is unlikely these transactions are the result of credit extensions.

5 U.S.C. § 552 (b)(7)(E)

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

This household submitted a notarized client statement indicating the subject firm had extended credit in the amounts and dates listed in the Appellant's reply. The name in the credit log appears to attribute these transactions to 5 U.S.C. § 552 (b)(7)(E).

According to the Georgia state administrative terminal, the name associated with this household number is 5 U.S.C. § 552 (b)(7)(E). However, the signature information from the notarized client statement contains the name 5 U.S.C. § 552 (b)(7)(E). There is a name discrepancy between the credit log, state administrative terminal, and notarized statement submitted by the subject firm. Based on these discrepancies, it is highly unlikely these rapid transactions were the result of the extension of credit.

5 U.S.C. § 552 (b)(7)(E)

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

5 U.S.C. § 552 (b)(7)(E)

A review of the household information in the Georgia State Administrative Terminal was completed by FNS. The household name in the Georgia administrative terminal is listed as 5 U.S.C. § 552 (b)(7)(E). This name appears to match the last name in the credit log (Note: The first names listed in the Georgia Administrative Terminal and in the credit ledger do not match). However, neither name appears to match the name on the notarized statement submitted by the Appellant. See below for excerpts of two of the discrepant names.

5 U.S.C. § 552 (b)(7)(E)

Additional Irregularities

It is important to note that in the three SNAP households that appeared in Attachment 1 more than once, there were material discrepancies in the information provided by the Appellant.

5 U.S.C. § 552 (b)(7)(E)

In transactions #15 and #16 the name listed on the credit ledger is 5 U.S.C. § 552 (b)(7)(E). In transactions #38 and #39 the name is listed on the credit ledger as 5 U.S.C. § 552 (b)(7)(E). The statement was made by 5 U.S.C. § 552 (b)(7)(E) which supports the credit ledger entries for transactions #15 and #16. However, it does not match up with the name recorded on the credit ledger for transactions #38 and #39. The customer statement submitted also does not address transactions #38 or #39 in Attachment 1.

The information for this household number was obtained from the Georgia state administrative terminal. The recipient name in the GA state administrative terminal for this household is 5 U.S.C. § 552 (b)(7)(E) which does not match either entry.

5 U.S.C. § 552 (b)(7)(E)

Finally, it is worth noting here that the household name listed in the Appellant's credit ledger is difficult to discern. However, it does not appear to match the name listed in the Georgia state administrative terminal. The 6/20/2017 notarized customer statement lists the household's name as 5 U.S.C. § 552 (b)(7)(E), which does not appear to match either the credit ledger or the Georgia state administrative terminal.

5 U.S.C. § 552 (b)(7)(E)

While all three of these transactions were completed by the same household, none of the names recorded in the credit ledger match. They are listed in the credit ledger as 5 U.S.C. § 552 (b)(7)(E).

This household submitted a notarized statement in support of transactions #31 and #32. However, the household did not address the other two sets of transactions in the notarized statement. The notarized statement was made by 5 U.S.C. § 552 (b)(7)(E) which does not appear to match the name listed in any of the three credit log transactions noted for this household. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Again, the Georgia state administrative terminal was used to verify the household name information for this household number. There are three different names listed in the credit log. The GA state administrative terminal appears to list a completely different name. 5 U.S.C. § 552 (b)(7)(E)

The contradictory statements between the client statement, the retailer reply, and the credit log bring into question the legitimacy of the client statement and the firm's allegations that this was the result of a payment on credit.

Additional Analysis of Notarized Client Statements

FNS compared the names provided on the credit ledger entries, notarized customer statements, and the Georgia state administrative terminal for three additional (not included in the analysis above) households that provided statements. There are serious discrepancies between the credit log and notarized client statements provided by the subject firm and the GA state administrative terminal information for the three different SNAP households responsible for Attachment 1 transactions: #36 and #37, #40 and #41, and #44 and #45. Therefore, the information provided by the Appellant in the three client statements does not support the transactions listed by the Appellant in the credit ledger for these three SNAP households.

In support of his claim that trafficking did not occur at Sams Golden Land during the review period, the Appellant provided FNS with 18 additional notarized customer affidavits attesting that they purchased foods at Sams Golden Land with their EBT cards. It is important to note that these customer affidavits did not claim that Sams Golden Land extended credit to them but rather they had purchased food products at the subject store (no time period specified) with their EBT cards. The Appellant also submitted his own notarized statement indicating that he extended credit to store customers and did not traffick SNAP benefits. With regards to the affidavits provided by the Appellant which purport to establish that the questionable SNAP transactions were legitimate and that no trafficking occurred, the truth of such declarations can neither be confirmed nor denied. Although such affidavits may be sworn to and notarized, that does not mean that they are necessarily truthful. One would not expect a SNAP customer or store owner to admit that questionable transactions were not legitimate, were it really so. On the contrary, one would expect that any SNAP customer/store owner affidavit provided would attest to questionable transactions being legitimate.

It seems unlikely that so many recipients were granted credit when they had adequate SNAP funds to purchase eligible foods at the time such credit was supposedly granted. It is equally unlikely that store ownership would extend credit to customers who were not regularly shopping at their business. The discrepancies noted between the credit logs and customer statements submitted by the subject firm when compared to each other and the state administrative terminal information are another indicator that the credit ledger submitted by the Appellant does not adequately prove that Sams Golden Land was engaging in credit extensions rather than trafficking. While some of the transactions in Attachment 1 may be the result of credit extensions granted by the subject firm, there are too many discrepancies, occurrences of credit being extended while the household had available EBT benefits to complete the transactions, and occurrences where credit was extended to customers who were not regular customers of the subject firm – in fact, these customers had not completed transactions at the subject firm in the 6 to 12 months prior to the review period. The evidence of credit advanced was not sufficient to rebut the majority of transactions listed in the Charge Letter Attachments.

Repeat Transactions by the Same Household

Charge Letter Attachment 1 lists 28 transaction sets (57 total transactions)

5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is not credible that the subject store would have so many suspicious SNAP transactions greatly exceeding the average SNAP transaction for combination grocery stores in Dekalb County during the review period. Violating stores often conduct multiple transactions from the same household account to avoid detection of single high dollar transactions that cannot be supported by the firm's food inventory and infrastructure.

The Appellant contends that the multiple transactions made from individual benefit accounts in unusually short timeframes are the result of Sams Golden Land accepting SNAP benefits as repayment on credit accounts from SNAP customers. The Appellant did not realize that credit extension to SNAP customers is a violation of the SNAP regulations. Only 4 of the 57 households listed in Attachment 1 are repeated, the remaining are unique households. None of the 57 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The Appellant indicates that none of the 28 household accounts were exhausted which indicates that these are legitimate transactions. The ALERT system does not identify how many items or what items were purchased.

With regard to the Appellant's claim that these questionable SNAP transactions are due to SNAP benefits being accepted as repayment on credit accounts, as noted above, the information/documentation provided by the Appellant is not sufficient to support that these transactions were due to repayments of credit accounts. As such, the Appellant's claim that credit extension was the explanation for these questionable SNAP transactions is unsubstantiated.

The Appellant contends that he did not realize credit extension to SNAP customers is a violation of the SNAP regulations. The Appellant, upon being authorized by FNS to participate in the SNAP on October 23, 2012, received the same Authorization Kit that is sent to all retail food stores when they are newly authorized in the SNAP, including various information booklets, signs and posters indicating the Do's and Don'ts, rules of the SNAP available in several different languages, a copy of the SNAP regulations and a training video. Moreover, periodic newsletters have been sent to all retail food stores participating in the SNAP with a reminder in almost every newsletter sent that accepting nutrition assistance program benefits for payment on credit accounts is a violation. In accordance with 7 CFR § 278.2(f) . . . SNAP benefits "may not be accepted by an authorized retail food store in payment for any eligible food sold to a household on credit". As such, the Appellant's contention is unfounded.

The Appellant contends that only 4 of the 57 households listed in Attachment 1 are repeated, the remaining are unique households. None of the 57 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The Appellant indicates that none of the 28 household accounts were exhausted which indicates that these are legitimate transactions. The ALERT system does not identify how many items or what items were pursued. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The fact that (1) the majority of the transactions in Attachment 1 do not end in repeating cents patterns, (2) most of the households on Attachment 1 are unique, (3) none of the household accounts were exhausted by making

transactions at the subject firm, and (4) ALERT does not identify how many items or what was purchased does not provide any evidence to support that the unusual SNAP transactions listed in the Charge Letter are legitimate transactions for EBT eligible items. The absence of the extraordinary unusual patterns within the unusual transactions above does not justify the transactions. Sams Golden Land did not provide any compelling justification as to why households are conducting multiple transactions at the subject firm or evidence that all the irregular transactions cited in the Charge Letter were for eligible food items only. Multiple transactions over a short period of time, especially of high dollar value, are indicative of attempts to diminish attention to signs of trafficking regardless of whether they all end in the same cents pattern or the households' benefits are exhausted at the subject firm.

While there are no limits on the number of times EBT cards may be used or the amount of eligible foods that may be purchased, the SNAP transactions noted in the Charge Letter are questionable because they display characteristic of use inconsistent with the nature and extent of the store's stock and facilities and are indicative of trafficking. Although it is not uncommon for customers to conduct more than one transaction per day, it is not common that such multiple transactions are for large dollar amounts. Sams Golden Land is not set up to provide for all of one's food needs with no fresh meats, poultry, or seafood, a limited variety and amount of fresh poultry and fish and no other frozen meats, no frozen fruits or vegetables, a limited variety and amount of fresh produce items, and it lacks an abundant depth and breadth of staple foods. The Appellant provided FNS with 18 photos of some of the food products (including pricing) offered at Sams Golden Land. These photos show a similar food product stock as compared to the photos taken during the March 10, 2017 FNS store visit. The FNS store visit observations indicate that Sams Golden Mart does not meet the requirements for participation in the SNAP under Criterion A as the store stocked only canned milk and infant formula in the Dairy staple food category. The store visit observations also indicate that there is no evidence of a price advantage or custom or special services rendered at the subject store that are not offered at other area specialty food stores. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

A review of client shopping data for the review period shows that clients shopping at Sams Golden Land are also shopping at other area grocery stores, as well as full-line supermarkets and super stores that most likely offer customers a much larger quantity and variety of eligible food items for better prices. This includes several area retail foods stores located within 1.7 miles of the subject store which carry a similar or better quantity and variety of specialty food items (i.e. comparable specialty/ethnic foods to those carried by Sams Golden Land) at comparable or better prices. Based on these shopping patterns, transportation to other stores is not an issue for these SNAP customers. Yet, these customers continue to shop and spend suspicious high dollar amounts in short timeframes at Sams Golden Land, where the eligible food stock is moderate, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of their purchases at better stocked stores. This is a strong indicator of trafficking.

Sometimes a firm may have unusual transaction patterns due to a recipient's lack of access to other SNAP authorized stores. However, there are 22 SNAP authorized retailers located within 1.0 mile of Sams Golden Land that can meet the nutritional needs of SNAP customers. These authorized stores include 7 convenience stores, 6 combination grocery stores, 3 small grocery stores, and 6 medium grocery stores. There are a total of 39 authorized SNAP stores located

within 2.0 miles of Sams Golden Land. Included in these 39 stores are four specialty food stores which carry a similar or better stock of specialty food items that are offered at the subject store at comparable or better prices. These four specialty food stores include a small grocery store, two medium grocery stores, and a super store. As mentioned above, SNAP customers who shopped at Sams Golden Land during the three month review period also shopped at other area grocery stores including the four specialty food stores. Therefore, transportation to other stores is not an issue for these customers. Therefore, lack of access to other authorized stores does not appear to be an explanation for Sams Golden Land's abnormally high SNAP transaction amounts conducted within a short timeframe of each other.

The Appellant did not provide any compelling justification as to why SNAP households are conducting multiple transactions at Sams Golden Land or evidence that all of the irregular transactions cited in the Charge Letter were for eligible food items only. 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.

Large Transactions

Attachment 2 of the Charge Letter cites 128 EBT transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. 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 contends that the excessively large purchase transactions are the result of SNAP customers purchasing specialty foods (i.e., fresh fish, poultry, rice, and soups) in bulk that the Appellant purchases from Burma. These foods are expensive to ship to the United States. The store's total invoice receipts for its food inventory during the review period **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** which demonstrates that the Appellants are purchasing eligible food items and selling the inventory, not trafficking SNAP benefits. It is important to note that the Appellant also indicated that a whole chicken, for example, can cost \$18.00. However, the Appellant's contentions are unsubstantiated.

The store visit observations indicate that there were no signs or flyers located inside or outside of Sams Golden Land which advertised the availability of any food items in bulk quantities, including the specialty foods mentioned by the Appellant. The Reviewer also noted that he/she did not see any storage areas/freezers out of the public view that might stock bulk quantities of foods. It is also important to note that at the time of the store visit, there were no fresh meats, poultry, or seafood items stocked at the subject store. In addition, the only frozen meat items stocked at Sams Golden Land were a few packages of chicken and fish. There were no fresh or frozen whole chickens or fresh fish in stock at that time.

In support of his claim that trafficking did not occur at Sams Golden Land during the review period, the Appellant provided FNS with a letter from his Pastor. FNS acknowledges the Pastor's letter; however, the letter does not validate whether or not the Appellant trafficked SNAP benefits. It is highly unlikely that the Appellant's Pastor has an in-depth knowledge of

the inner workings/management of the Appellant's business, especially with regard to SNAP sales.

The FNS store visit report and photos show that Sams Golden Land offers a moderate stock of SNAP eligible foods with no fresh unprocessed meats, poultry, or seafood, a small variety and amount of frozen poultry and fish, a limited variety and amount of fresh produce, and no frozen fruits or vegetables. The inventory report and photos also show that the store has limited checkout counter space (with miscellaneous items stocked there) and no shopping carts and only four hand-held baskets in which to transport the large number of items required to make up these large transaction amounts. Without these, it is unlikely that such large dollar value transactions could be for actual food purchases and more likely they are trafficking.

The record shows that there are 22 SNAP authorized retailers located within 1.0 mile and 39 SNAP authorized retailer located within 2.0 miles of Sams Golden Land. These authorized stores include four specialty food stores located within 1.7 miles of the subject store which carry a similar or better stock of specialty food items at comparable or better prices. These four specialty food stores include a small grocery store, two medium grocery stores, and a super store. Several of the authorized stores located within 2.0 miles of Sams Golden Land are larger than the subject store and offer a greater quantity and variety of food products at comparable or better prices. An analysis of the shopping patterns for all of the SNAP households listed in this Attachment shows that the majority of the households shopping at Sams Golden Land have access to transportation and that all are regularly shopping at a variety of larger stores, including super stores and/or supermarkets and the four specialty food stores, located nearby and at several miles distance from the Appellant's location. While Sams Golden Land does offer some staple food items, SNAP recipients are already shopping at other larger SNAP retailers located in proximity to the Appellant's business offering a greater quantity and variety of products, including fresh meats/seafood and produce, at lower prices. Therefore, the store has nothing to attract SNAP customers as there are no special or custom services offered that are not available at the other area specialty food stores.

FNS compared the SNAP transaction spread for Sams Golden Land (during the review period) to that of three nearby competitors identified as having a similar or superior inventory of ethnic/specialty products as the subject store. These specialty stores are located within 1.7 miles of the subject store and include a small grocery store and two different medium grocery stores. The comparison analysis indicates that Sams Golden Land had a substantially larger number of high dollar transactions than the comparable stores. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Sam's Golden Land conducted notably more transactions in the larger amounts than the competition, an indicator of illicit SNAP activity.

As is indicated in the below charts, FNS also compared the Average SNAP Transaction and Dollar Volume of Sams Golden Land (during the review period) to that of other combination grocery stores in the state of Georgia, DeKalb County, and the three nearby competitors identified as having a similar or superior inventory of ethnic/specialty products as Sam's Golden Land (i.e., a small grocery store and two medium grocery stores located within 1.7 miles of the subject store). The comparison analysis indicates that Sams Golden Land consistently had a significantly higher average transaction total in comparison to the other competing stores listed

above. As such, the validity of the transactions conducted at Sams Golden Land during the review period is highly questionable.

5 U.S.C. § 552 (b)(7)(E)

FNS also compared the number of “multiple transactions made from individual benefit accounts in unusually short timeframes” and the number of “excessively large purchase transactions” that were made at Sams Golden Land during the review period to that of the same three competing specialty stores mentioned above. The comparison indicates that Sams Golden Land had a significantly higher ALERT rank and substantially more scan hits in both SNAP transaction categories—a strong indicator of trafficking activity.

There is no plausible explanation to resolve the discrepancy between the subject firm’s high number of flagged transactions and the nearby competitive firm’s (i.e., the three specialty food stores mentioned above) relatively low number of flagged transactions.

5 U.S.C. § 552 (b)(7)(E). As the three area firms were chosen specifically because they offer an equal or superior stock of staple and specialty items as compared to Sams Golden Land, this pattern is very suspicious. The flagged transactions at the subject firm are highly unusual and likely indicative of trafficking.

The Appellant’s allegation that the spending habits of the Burmese community justify the unusual transactions at Sams Golden Land is not supported. The transaction data at the subject firm is not similar to the nearby firms with comparable stock where many of Sams Golden Land’s customers are also shopping. The subject firm’s SNAP transactions are unusual and more likely than not indicative of trafficking.

With the Appellant’s initial reply to the Charge Letter, he provided FNS with Sams Golden Land’s total invoice receipts for its food inventory during the review period. Initially, the Appellant stated that the total of the invoice receipts **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** which demonstrates that he had purchased eligible food items and was selling the inventory during the review period, not trafficking SNAP benefits. However, in the Appellant’s request for administrative review dated July 20, 2017, he stated that Sams Golden Land’s total invoice receipts for its food inventory during the review period **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

In the initial retailer response, the Appellant claimed roughly 50% of their business was EBT sales. The Appellant included a Monthly Sales Worksheet for February 2017 through April 2017 (as well as bank statements) in his June 13, 2017 reply. In the Appellant’s June 26, 2017 reply, he indicated that during the review period EBT sales accounted for 74% of their business. FNS coordinated the sales numbers provided in the June 26, 2017 to the sales numbers provided in the June 13, 2017 reply. A summary of those worksheets is included below.

5 U.S.C. § 552 (b)(7)(E)

The total of the EBT sales figures were close to the EBT Monthly Dollar Volume listed in ALERT. FNS used the ALERT redemption figures rather than the monthly sales worksheet data submitted by the firm.

The Appellant also included an inventory purchases spreadsheet with the June 26, 2017 response. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). However, the inventory purchase spreadsheet cannot be used because it does not list what was purchased, who paid for the purchased items, or who (which store) was billed for the items. The spreadsheet by itself does provide evidence to support that the list of expenses were legitimate inventory purchases of EBT eligible foods by Sams Golden Land during the review period. An excerpt of the inventory purchase spreadsheet is below.

5 U.S.C. § 552 (b)(7)(E)

The Appellant submitted 31 receipts/invoices to FNS for stock purchased during the review period. Of the 31 receipts/invoices provided by the Appellant, eight were duplicates and were not considered by FNS. The remaining 23 receipts were reviewed to identify eligible versus ineligible items and totaled. Every effort was made to give the benefit of the doubt to the subject firm. If FNS was unable to determine whether an item was eligible or ineligible based on the description or obscured view of a receipt, the item was counted as eligible.

An analysis of the SNAP Redemptions versus the firm's inventory was completed by FNS for all three months of the review period. The analysis was computed using the high end of the retailer's alleged markup – 30% (the retailer indicated their markup was 20-30% on EBT food; however, to provide the benefit of the doubt the high end of the Appellant's estimate was used). In addition, FNS also computed the analysis utilizing a 50% markup in case the retailer's estimate was inadvertently low. According to STARS and the retailer response, there is no WIC Program history for the subject firm. The retailer alleges 74% of the firm's sales during the review period were EBT transactions. Again, to provide the benefit of the doubt to the retailer this was rounded up to 75% by FNS. The remaining 25% was cash or credit sales. With those controls, the redemption versus inventory comparison for the review period is below.

5 U.S.C. § 552 (b)(7)(E)

As shown in the table above, regardless of the mark-up percentage used, the SNAP redemptions significantly exceed the store's inventory in each of the review months. This is highly indicative of trafficking.

5 U.S.C. § 552 (b)(7)(E)

It is noteworthy that even if the firm had been able to provide FNS with receipts demonstrating that the 5 U.S.C. § 552 (b)(6) & (b)(7)(C) claimed in the inventory purchase spreadsheet was for EBT eligible foods, the firm's redemptions would still have surpassed their available inventory. Again, FNS used the retailer's estimate of a 30% markup and 75% of sales being EBT sales. With those controls in place, Sams Golden Land's SNAP redemptions were more than 11% higher than its inventory. The table below provides the details of the analysis.

5 U.S.C. § 552 (b)(7)(E)

Again, SNAP redemptions exceeding available inventory is highly indicative of trafficking.

Lastly, the case record documents that the Retailer Operations Division conducted an analysis of nine SNAP households identified in the Charge Letter to analyze their shopping patterns at Sams Golden Land compared to their shopping patterns at other SNAP authorized stores. Each of these households had access to, and shopped at larger stores including super stores and/or supermarkets. It is obvious that these SNAP households had transportation available to them to reach these other authorized stores. However, despite this access to better stocked stores, these sampled households conducted excessively large transactions at Sams Golden Land often **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** of shopping at the larger stores where they conducted much smaller SNAP purchases. It is highly unlikely that a combination grocery store with moderate staple foods would have legitimate SNAP transactions greater than these larger and better stocked stores.

In summary, the store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding the average 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 the minimal number of hand-held baskets support the Retailer Operations Division's determination. It is not plausible that the store's customers are carrying large amounts of food around the store without the benefit of shopping carts and/or hand-held baskets. Customers purchasing such large quantities of food items would have to hold them in their arms, or enlist the help of others while shopping. Based on the preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 2 are more likely than not the result of trafficking in SNAP benefits.

Hardship on SNAP Customers

The Appellant contends that a permanent SNAP disqualification will impose a hardship on the surrounding Burmese households who rely upon Sams Golden Land for specialty staple foods. 7 CFR § 278.6(f) of the SNAP regulations provides for civil money penalty assessments in cases where disqualification would cause "hardship" to SNAP households because of the unavailability of a comparable participating food store in the area to meet their needs. However, this regulation also sets forth the following specific exception to such assessments there under: "A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification". Therefore, since this case involves a permanent disqualification action, the civil money penalty provision is not applicable to the present case.

Alternative Penalty Requested

The Appellant requests that in lieu of a permanent SNAP disqualification, FNS impose a six month SNAP disqualification for Sams Golden Land as this is the first violation for the Appellant and he was trying to help the surrounding Burmese community by extending credit to them. However, the Food and Nutrition Act of 2008, at § 2021, does not allow for discretion in determining sanctions for trafficking and is specific in its requirement that "... a disqualification . . . 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 ...”. In keeping with this legislative mandate, 7 CFR § 278.6(e)(1)(i) of the SNAP regulations states that FNS shall disqualify a firm permanently if personnel of the firm have trafficked.

Case Law

In regard to the case laws cited by the Appellant in support of a few of his contentions, considerations of relevant legal precedent through case laws, or the lack thereof in relation to the present case, are beyond the scope of this review. This review relies upon the statute and regulations governing the SNAP and evaluates whether the decision of the Retailer Operations Division to impose a disqualification upon the Appellant was in accordance with same and sustainable by a preponderance of the evidence. The Appellant’s case law references are acknowledged in this context only.

CIVIL MONEY PENALTY

As previously indicated, the July 10, 2017 Determination Letter advised the Appellant of the ineligibility for consideration for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP regulations. The letter of charges dated May 19, 2017 advised the Appellant that documentation of eligibility for that alternative sanction was to be provided within 10 days. The regulations specify that such documentation must, in part, establish that there was an effective compliance policy and training program and that both were in effect and implemented prior to the occurrence of violations. The letter indicates that no information was provided by the Appellant for consideration; therefore, on review the Retailer Operations Division’s determination that the Appellant firm is ineligible for the imposition of civil money penalties in lieu of disqualification is affirmed.

CONCLUSION

The Retailer Operations Division’s analysis of the Appellant’s EBT transaction record, upon which charges of violations are based, together with observations made during the store visit and an analysis of customer shopping behaviors, provide substantial evidence that questionable transactions during the focus period have characteristics and display patterns that are not consistent with legitimate sales of eligible food to SNAP benefit customers at a store of this type, size and makeup. Rather, the characteristics are indicative of illegal trafficking in program benefits. The Appellant’s contentions do not outweigh this evidence.

The record has yielded no indication of error or discrepancy in the reported findings by the Retailer Operations Division that program benefits were accepted in exchange for cash or consideration other than eligible food. Therefore, based on a review of the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged.

Therefore, the decision to impose a permanent disqualification from participation in the SNAP against Sams Golden Land is sustained.

RIGHTS AND REMEDIES

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

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

LORIE L. CONNEEN
Administrative Review Officer

April 6, 2018