

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

Stop Zone Inc,

Appellant,

v.

Case Number: C0203815

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 the permanent disqualification of Stop Zone Inc. (Stop Zone or Appellant) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP), as initially imposed by the Retailer Operations Division, was appropriate.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(a), (c) and (e)(1) in its administration of the SNAP, when it assessed a permanent disqualification against Appellant.

AUTHORITY

7 USC § 2021 and the 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 22, 2018, the Retailer Operations Division charged 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 November 2017 through April 2018. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also noted that Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within ten days of receipt under the conditions specified in 7 CFR § 278.6(i).

Appellant replied to the charges on May 30, 2018. Appellant denied trafficking and explained that the transactions were normal based on the unique circumstances of the store. Appellant requested a CMP.

After considering the evidence and the retailer's reply, the Retailer Operations Division issued a determination letter dated June 29, 2018. The determination letter informed Appellant that it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The determination letter also stated that Appellant was not eligible for a trafficking CMP because 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.

By letter submitted by email on July 6, 2018, Appellant, through counsel, appealed the Retailer Operations Division's determination and requested an administrative review.

STANDARD OF REVIEW

In appeals of adverse actions, the Appellant bears the burden of proving by a clear 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, as amended, 7 USC § 2021 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.6(a), (c) and (e)(1) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern in the event that personnel of the firm have engaged in trafficking SNAP benefits.

7 USC § 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 § 271.2 states, in part, that, eligible foods means:

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

7 CFR § 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 § 278.6(a) states:

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(b)(2)(ii) states, inter alia:

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

7 CFR § 278.6(e)(1) reads, in part:

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

7 CFR § 278.6(i) states, inter alia:

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 THE CHARGES

Appellant was charged and determined to be trafficking based on an analysis of EBT transaction data from November 2017 through April 2018. This involved the following SNAP transaction patterns which are indicative of trafficking:

- There were an unusual number of transactions ending in a same cents value.
- There were multiple transactions made from individual benefit accounts in unusually short time frames.
- There were excessively large purchase transactions made from recipient accounts.

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that the questionable transactions were the result of trafficking.

APPELLANT'S CONTENTIONS

In its July 6, 2018, administrative review request, and subsequent correspondence submitted on August 17, 2018, Appellant, through counsel, provided the following summarized contentions, in relevant part:

- The store has been in business for more than 50 years.
- Appellant submitted 44 affidavits from EBT customers that describe their purchase patterns.
- Appellant is a neighborhood gas station and convenience store selling a wide variety of SNAP eligible food products ranging from bread, milk, and eggs to an assortment of frozen foods (frozen pizza), fresh meat and fish, yogurt, infant formula, breakfast cereals (one box for \$3.99 and two boxes for \$6.99), pineapple juice for \$4.49, and tomato juice for \$3.99.
- Appellant also sells expensive items such as Illy espresso coffee beans (one can for \$19.99), ionized water (\$19.99 per case), and large canisters of infant baby formula (\$23.99.)
- Many customers in the neighborhood prefer to shop at Appellant based on the availability, variety, and competitive pricing of these items, as well as the proximity to their homes.
- When **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** closed in March 31, 2016, Appellant became the go-to store.
- Appellant is more like a small grocery than a gas station or convenience store.

- It is not unusual for customers to make multiple legitimate food purchases at Appellant in small timeframes often reflecting the fact that they don't have a car to transport a large amount of groceries.
- The client affidavits establish that the store is the closest available option for EBT customers, grocery purchases 5 U.S.C. § 552 (b)(6) & (b)(7)(C) per visit are extremely common, Appellant has excellent customer service, and they have never been offered cash in exchange for SNAP benefits.
- The average flagged transaction 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- Appellant's inventory demonstrates that the transactions represent reasonable bills for SNAP eligible food items, which based on the unique nature of some of those items, are sold at higher prices than one would expect for a small grocery store.
- The transactions are indicative of the hard work Appellant has done to endear itself to the neighborhood as well as the lack of availability of a nearby supermarket.
- FNS' assumption that any sale 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is suspicious or excessively large is completely unwarranted.
- Based on the price list, picture evidence, and customer testimonies, confirming that items justifying those prices are routinely stocked and sold in the store, is clear that EBT customers making legitimate food purchase 5 U.S.C. § 552 (b)(6) & (b)(7)(C) with the purchase of only one or two eligible food items.
- There were only seven transactions per day ending in same cents value and only account for 5% of the transactions at Appellant.
- If transactions were truly indicative of trafficking there would be a greater amount of them.
- One would expect to see a greater amount of whole dollar transactions if trafficking.
- There are a number of products ending in 99 cents and the store runs specials such as 12 pack of soda \$5.99 and two packs for \$10.99.
- If it was trafficking then there would be a larger amount of higher dollar amounts.
- Customers acknowledged that they frequent Appellant with one customer stating that it shopped as many as six times per day at Appellant.
- Other customers share their card with family members.
- It is not uncommon for customer without transportation to return to the store multiple times in the same day in order to break up the amount of items they must carry home in a single trip.
- Some customers will make a second purchase based on the discussion from cashier before leaving the store.
- Some customers do not have personal transportation and walk to the store on foot to purchase grocery items, thus if they want to purchase bulk items of large quantities of items they must break up purchases into multiple trips. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- Counsel refers to previous court decisions.
- FNS' sole evidence is a few months of redemption data to show that a set of transactions are suspicious.
- The three patterns identified are not unusual when accounting for the products, location

and the customers of Appellant.

- FNS has failed to include any facts or analysis from an site visit report regarding the quantity and type of EBT eligible inventory sold by Appellant

In support of its contentions, counsel submitted the following documents:

- Tax Card for Stop Zone Property;
- Forty-four customer affidavits;
- Forty-seven pages of color photographs; and
- News article titled *More Handord businesses slated to close*.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. However, in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced.

ANALYSIS AND FINDINGS

Store Visit

FNS authorized Stop Zone as a convenience store originally authorized on December 29, 2003. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a September 7, 2017, store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information was then 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:

- Stop Zone is approximately 2,200 square feet, with no additional storage outside of public view for some beverages.
- The checkout area was small and limited in space.
- There were no shopping baskets and no shopping carts for customer use.
- There were two cash registers and one point-of-sale device.
- There was no fresh meat, poultry, or fish,
- The only meat items was canned meat, canned fish, and beef jerky.
- Fresh produce included a two peaches (one of which was rotten) and one lemon.
- There was limited dairy staple food items with only milk.
- Other staple foods available for purchase was, juice, rice, bread, beans, cereal, pasta, and canned goods.
- Much of the remaining stock consisted of accessory foods such as candy, spices, and carbonated and uncarbonated drinks.
- Ineligible items included gas, lottery, alcohol, tobacco, health and beauty products, cleaning products, and paper products.
- It was noted that there was spoiled food and ice crystals on frozen food indicating low turnover.

The available food was primarily of a low-dollar value. The four most expensive food items were case of bottled water (\$5.99); case of soda (\$5.99) and beef jerky (\$6.99). The store visit contractor confirmed with the store personnel that there were fewer than four eligible food items priced greater than \$5.00. The SNAP eligible food stocked by the store was generally of a low dollar value consisting mainly of inexpensive canned and packaged goods, snack foods, single-serving food items and accessory food items. Given the available inventory, there was very little sign that the firm would be likely to have SNAP redemption patterns that differed significantly from those of similar-sized competitors, especially competitors that sell similar or identical food items.

Charge Letter Attachments

Each attachment furnished with the charge letter represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at the Appellant firm during the review period. As there is more than one pattern of irregular transactions, the case of trafficking becomes more convincing.

Charge Letter Attachment 1. There were an unusual number of transactions ending in a same cents value. During the review period, there were 1308 transactions ending in a same cents value that meet the parameters of this attachment. When such patterns are unsupported by special pricing structures, they are an indicator of trafficking in SNAP benefits.

Counsel states that there are a number of products ending in 99 cents. In addition, the store visit report that was completed with the cooperation of the store employee indicated that typically prices ended in 9 cents. It is possible that some of the smaller transactions are the result of purchasing some same cent items and this could explain some of the lower dollar same cent transactions. However, the larger transactions cited in the charge letter would most likely consist of the purchase of several relatively inexpensive items and it is unlikely that these purchases would routinely total to an amount ending in same cents. Consequently, when many transactions end in a same cents amount, it appears that these transaction amounts are contrived and in the absence of compelling evidence to the contrary, are suggestive of trafficking.

Counsel states that the store will run specials such as 12 pack of soda \$5.99 and two packs for \$10.99. The store visit report confirms that there were cases of soda for sale on the store visit. The store visit report also indicates that the most expensive item was \$6.99. Thus, these larger dollar transactions are the combination of many low dollar priced items and it is not likely that the purchase of several items would end in 99 cents.

Counsel reports that there were only seven transactions per day ending in same cents value and only account for 5% of the transactions at Appellant. Counsel reasons that if transactions were truly indicative of trafficking there would be a greater amount of them. The available evidence shows that actually 18 % of the transactions that met the parameters of this scan were even cents transactions. Moreover, it is not unusual for a store to have largely legitimate SNAP transactions

while conducting a small number of trafficking violations. To state that only a small percentage of transactions are irregular or abnormal does not explain the irregular transactions.

Counsel explains that if it was trafficking one would expect to see a greater amount of whole dollar transactions if trafficking. There is no evidence to support this.

Appellant failed to provide a credible explanation for the same cent transactions listed on Charge Letter Attachment #1.

Charge Letter Attachment 2. Multiple transactions were made from individual benefit accounts in unusually short time frames. This attachment documents 31 sets of transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP benefits that meet the parameters of this scan. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Counsel explains that some customers will make a second purchase based on the discussion from cashier before leaving the store. Although it is not uncommon for customers to have more than one transaction per day, it is not common that such multiple transactions are for large dollar amounts. The SNAP transactions noted in the charge letter are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of Appellant's stock and facilities and are therefore indicative of trafficking. The photographs from the store visit offer no explanation as to why SNAP customers would routinely shop at Appellant multiple times during a short period or purchase such a large volume of items, there being no great variety of products, price advantage, profusion of large packages, or significant bulk items for sale. The second and third transactions in each set are too large to consist of forgotten items.

It is not uncommon for customer without transportation to return to the store multiple times in the same day in order to break up the amount of items they must carry home in a single trip. The Retailer Operations Division determined that customers were shopping at nearby super stores and supermarkets. There is a medium grocery, supermarket, and super store located within a one-mile radius. Appellant submitted 44 customer affidavits. Of the customers that conducted transactions at Appellant during the review period, all shopped at other stores during the review period. Counsel admits that Appellant's prices are greater due to the nature of its business. It is therefore questionable why these households that had access to supermarkets and super stores would spend large amounts of their limited SNAP benefits on products that were priced higher than at the other stores they were also shopping.

In an attempt to avoid detection, retailers engaging in trafficking will commonly break a single large transaction into a series of two or more transactions conducted over an abbreviated period of time. Appellant has not offered any evidence to show that the transactions listed in Attachment 1 were legitimate purchases of eligible food.

Charge Letter Attachment 3: Excessively large purchase transactions were made from recipient accounts. This attachment lists 1094 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The photographs from the store visit indicate that the counter space was small, and there was no fresh meat and limited fresh produce. 5 U.S.C. § 552 (b)(7)(E). There is no compelling reason for customers to consider Stop Zone as a first choice destination to fulfill large purchases of

food.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). There is no evidence that the firm would be likely to have SNAP redemption patterns that differ considerably from similar-sized competitors. These large transaction amounts are also not consistent with the store's inventory. Most of the food products in the store consisted of accessory food items such as snack foods, candy, and soda and inexpensive staple foods such as canned and packaged goods. The frequency of high-dollar purchases in a six-month period calls into question the legitimacy of these transactions.

Counsel explains that Appellant sells expensive items such as Illy espresso coffee beans (one can for \$19.99), ionized water (\$19.99 per case), and large canisters of infant baby formula (\$23.99.) None of these items were available for purchase on the day of the store visit. In fact, as indicated previously, the store manager indicated that there was only three items that were priced greater than \$5.00. Even if Appellant did sell these few items, it is unlikely to explain many of the transactions listed. There is no evidence to support that Appellant stocked a significant volume of these items.

Counsel states that Appellant is more like a small grocery than a gas station or convenience store. Appellant explains that it has fresh meat and fish, yogurt, and eggs. However, none of these items were available on the day of the store visit. The only meat, poultry or fish items were canned meat, canned fish, and jerky. The only produce was two peaches (one of which was rotten) and a lemon. There were no shopping baskets or carts. The evidence does not support that Appellant is more like a grocery store. In fact, on the day of the store visit Appellant did not meet SNAP authorization criteria. A retailer must have at least three varieties of each staple food category and Appellant did not have three varieties of dairy. Appellant submitted photographs of the store stock. There were post-it notes in the photographs advertising specials that were not available on the day of the store visit and were likely created for purposed of responding to the charges. Even in the photographs there were only a few packages of the meat and frozen pizzas. The frozen pizzas also appear to be in a refrigerator and not a freezer.

When a supermarket or super store is available, it is unlikely that a SNAP recipient would conduct excessively large SNAP transactions at a convenience store with a limited selection of staple foods like Appellant. The Retailer Operations Division determined that there is one medium grocery store, one supermarket and one superstore within a one-mile radius of Appellant. Thus, households who shop at Appellant have access to and do shop at large grocery stores, supermarkets and super stores, among all other types of authorized stores.

The Retailer Operations Division examined three households identified in the charge letter to analyze their shopping patterns at Stop Zone compared to their shopping patterns at other SNAP authorized stores. However, despite this access to better stocked stores, each of the three households conducted excessively large transactions at Stop Zone within a short time of shopping at a supermarket or super store. It is questionable as to why households would conduct large transactions at Appellant, when these households had just visited or planned to visit larger stores with a better selection of fresh meat and produce and likely better prices.

In summary, Appellant's layout, business structure, and food inventory do not support a high percentage of transactions markedly exceeding the average SNAP transaction amount of similar type stores. 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. Therefore, based on this empirical data, and in the absence of evidence to legitimize 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.

Customer Affidavits

Appellant submitted 44 affidavits from EBT customers that describe their purchase patterns. Customers acknowledged that they frequent Appellant with one customer stating that it shopped as many as six times per day at Appellant. Counsel explains that the client affidavits establish that the store is the closest available option for EBT customers, grocery purchases **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** per visit are extremely common, Appellant is known for excellent customer service, and customers have never been offered cash in exchange for SNAP benefits.

One of the affidavits included two different EBT card numbers increasing the households to 45. Three of the 45 households did not provide an EBT card number and their transactions could not be reviewed. Twenty-six of the households could not be located with the EBT card number provided. Thus, there were only 16 households that were able to be reviewed. Three of these 16 households did not conduct any SNAP transactions at Appellant during the review period.

In summary, there were 13 households that conducted SNAP transactions at Appellant during the review period. Each of these households shopped at several at other stores during the review period including super stores and supermarkets. One customer explained that it had no transportation in its affidavit but it transacted benefits at seven other stores during the review period. These 13 customers conducted 37 of the Charge Letter Attachment 1 transactions, no transactions listed on Attachment 2, and 16 transactions listed on Attachment 3. In summary, the customer statements were not considered sufficient evidence that the transactions were for eligible food items only.

Closure of **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**

Appellant, through counsel, contends that Appellant's business increased as a result of the closure of **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Appellant did not submit any evidence to support this statement. The available evidence does support that Appellant's redemptions did increase immediately following the closure of **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. However, this increase only lasted a few months and benefits returned to what it had been previously. Furthermore, SNAP redemptions increased significantly well after the closure of **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Moreover, one can expect additional SNAP redemptions when a store closes; however, it does not explain the unusual transactions that are listed in the

Attachments. The evidence does not support that the questionable transactions are due to the closure of 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Evidence

Counsel contends that FNS has failed to include any facts or analysis from an onsite visit report regarding the quantity and type of EBT eligible inventory sold by Appellant. Counsel contends that the sole evidence is a few months of redemption data to show that a set of transactions are suspicious. The ALERT system is a computerized fraud detection tool to identify SNAP transactions that form patterns having characteristics indicative of trafficking. However, this tool does not by itself determine or conclude that trafficking has occurred. The Retailer Operations Division must still conduct an extensive analysis of the transaction data and patterns, often with other factors such as, in this case, observations from store visits, an analysis of customer shopping behavior and a comparison of stores in the area, and render a determination whether the questionable transactions were, more likely than not, the result of trafficking.

The legality of this method is supported by 7 CFR §278.6(a) which 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.]

The documentation and evidence provided by the Retailer Operations Division was thoroughly examined. From all indications, the Retailer Operations Division obtained the EBT data (provided by ALERT), found it to be suspicious in comparison to other area stores of similar size, and then undertook a thorough investigation before concluding that trafficking was likely occurring. Appellant’s implication that the Retailer Operations Division simply charged a store with trafficking violations simply because it was listed on some computerized reports is unfounded.

Appellant bears the burden of demonstrating by a preponderance of the evidence that the administrative actions should be reversed and that the transactions detailed in the charge letter were more likely than not due to the legitimate sale of eligible food in exchange for SNAP benefits. Appellant offered no relevant evidence to prove that the transactions listed in the charge letter were legitimate purchases of eligible food. In the absence of compelling information or documentation weighed in comparison to the evidence provided by the Retailer Operations Division, the evidence weighs in favor of the Retailer Operations Division’s determination that SNAP-benefit trafficking substantially produced the transaction activity at issue in the present case.

Case Law

Appellant cites some case law which it claims supports its position. It should be noted that considerations of legal precedent through case law is beyond the scope of this review. Instead this administrative review is limited to whether the Retailer Operations Division appropriately

followed the Food and Nutrition Act of 2008, as amended, and the regulations promulgated under the Act, and whether the action taken is sustainable by a preponderance of the evidence. Therefore, any application of a judicial precedent would best be addressed in a judicial review in a court of law.

CIVIL MONEY PENALTY

In the charge letter, the Retailer Operations Division informed Appellant of its right to request a trafficking CMP under 7 CFR § 278.6(i). Appellant was informed that it would need to provide both the request and supporting evidence within ten calendar days of receiving the charge letter and that no extension of time could be granted for making the request or for providing the required evidence. Appellant claimed that it had documented control procedures in place to prevent EBT transactions from being cashed out and it also provided its EBT rules posted at the registers. Appellant provided Stop Zone Compliance Policies & Procedures Manual that was signed May 25, 2018, January 1, 2018, January 1, 2017, July 31, 2016, Employees SNAP Regulations Knowledge Assessments, Stop Zone Inc. Convenience Store & Retail Operations Policies & Procedures with a revision date May 2016 and another revised May 2018

The criteria for a trafficking CMP in lieu of disqualification as defined under 7 CFR § 278.6(i) 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.]

The Retailer Operations Division determined that Appellant was not eligible for a CMP because there was insufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program prior to the SNAP violations in this case. The Retailer Operations Division determined that the May 2016 manual was likely created for purposes of responding to the charge letter. The links to FNS resources and videos used on the manual were not available as of May 2016. Thus, the evidence submitted to show that a policy was in place prior to the violations was not credible.

It is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier determination of the Retailer Operations Division. This review is limited to what circumstances existed at the time that was the basis of the Retailer Operations Division's action. Thus, the determination by the Retailer Operations Division that Appellant did not meet the standards for a trafficking CMP under 7 CFR §278.6(i) is sustained.

CONCLUSION

The Retailer Operations Division's analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Appellant. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking violations in SNAP benefits. 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 occur as charged by the Retailer Operations Division. The determination to impose a permanent disqualification against Appellant is sustained.

The Retailer Operations Division also determined that Appellant was not eligible for a trafficking civil money penalty according to the terms of 7 CFR Section 278.6(i) of the SNAP regulations. Under review, the denial of a trafficking CMP was deemed correct and proper.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in 7 USC § 2023 and 7 CFR § 279.7. If a judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which the Appellant's owners 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, we are releasing this information in a redacted format as appropriate. FNS will protect, to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy.

MARY KATE KARAGIORGOS
Administrative Review Officer

November 8, 2018