

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

Tiger Meat Market,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0216115

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 Tiger Meat Market (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 March 26, 2019, 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 September 2018 through February 2019. 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 by fax on April 3, 2019. Appellant denied the allegations and explained that the transactions were for eligible food items only, including meat specials. After considering the retailer's reply and the evidence, the Retailer Operations Division issued a determination letter dated September 27, 2019. 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 postmarked September 20, 2019, 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(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 September 2018 through February 2019. This involved the following SNAP transaction patterns which are indicative of trafficking:

- There were multiple transactions made from one or more SNAP households within a short timeframe.
- There were multiple transactions made from individual benefit accounts within a set time period.
- 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 September 20, 2019, administrative review request, Appellant provided the following summarized contentions:

- Appellant has never had any violations.
- Most of the customers buy groceries for their entire household as would a customer at a grocery store.
- The average customer purchases enough grocery items to last them for two to four weeks.
- Each household card can be used numerous times throughout the day.
- Appellant had a training program in place that included verbal training, in-store training and a copy of the manual provided to all employees.
- There was no indication of improper training.
- This was a first time offense and would dictate a CMP instead of a permanent disqualification.
- There are absolutely no guidelines that under SNAP rules that the original alleged violations are even violations.
- Just because the ALERT system attempts to signify that the three trafficking allegations are irregular does not mean that these allegations hold weight.
- Under 278.6 Appellant and its employees have not violated SNAP law.
- The transactions are based on the sale of qualified merchandise and Appellant was never reprimanded in the past and there was no intent to violate the regulations.
- A customer makes their first purchase, the customer then asks how much money is left on their card and based on the reply purchases more groceries.
- Customers normally make a test purchase of a qualified grocery item and then plan for future purchases.
- Their future purchase is normally made **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** of finding out how much money is remaining on their card.
- Some cardholders allow their family members to use the card, therefore causing multi-transactions in the same day.

- Customers are also known to forget items during the initial transaction and follow up within a very short time frame to purchase more items.
- The USDA is alleging trafficking for both transactions in a short period of time as well as within a set time period which are essentially the same thing, therefore these allegations should not be portrayed as separate alleged violations.
- There is no time limit as to how long a customer must wait to make additional purchases.
- Appellant's customers are sometimes bound by transportation issues or health issues, for which reason some of them might only shop at Appellant.
- Traditional grocery stores such as 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and 5 U.S.C. § 552 (b)(6) & (b)(7)(C) are not readily available in the neighborhood that Appellant services and Appellant's customers are accustomed to paying higher prices that are offered in smaller stores.
- The USDA must take into account that most of this timeframe was during the Holiday season wherein food items such as turkeys, hams, and other holiday foods are sold.
- Customers purchase in bulk that includes chicken sold in cases, pork loin, pigs feet sold in cases, chicken sold in quarters, and other bulk meat items.
- Tiger Meat Market has implemented an effective compliance policy.
- A photocopied booklet is provided to each of its employees and issues concerning EBT processing are addressed semi-annually, when updates are published, and upon the hiring of each new employee.
- The USDA has the burden of proof to justify that a compliance policy was not in place prior to the alleged trafficking charges.
- Appellant has met its obligations to clearly prove that a compliance policy was already in place prior to the allegations.
- Tiger Meat Market has had its compliancy policy in place since the owner of the store received his SNAP license in 2010.
- Each store has its own way of maintaining this policy under the guidelines, but still adheres to the compliance policy standards.
- The Tiger Meat Market training program is a combination of verbal, practical training, and a review of the SNAP manual as a group.
- Employees of the business have their own manuals which they use to review the store processes semi-annually or when there are updates to the manual.
- The current charge allegations are a first time occurrence for the business and it is a surprise for the owners as they know that it is not illegal to have multiple transactions in short time frames nor is it illegal to have excessively large purchase transactions.
- Based upon the initial allegations the following excerpt is relative: "Upon the second occasion of trafficking involvement by any member of firm management uncovered during a subsequent investigation, a firm shall not be eligible for a civil money penalty in lieu of permanent disqualification."

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

- Affidavit from owner and one employee concerning training;
- Six customer statements;
- Three page price list;

- Holiday Menu;
- Nineteen photographs of stock;
- Convenience Store Training Log;

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 Tiger Meat Market as a small grocery on April 14, 2010. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a February 12, 2019, 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:

- Tiger Meat Market is approximately 2500 square feet with no additional storage outside of public view.
- The checkout space is small and limited.
- There were some shopping baskets and shopping carts for customer use.
- There were one cash register and one point-of-sale device.
- There was some fresh meat and poultry.
- There was an almost empty deli case with limited deli meat to slice.
- Fresh produce was limited and included onions, potatoes, lettuce, and tomatoes.
- Dairy included milk, cheese, and butter.
- Other staple foods available for purchase were eggs, juice, rice, bread, beans, cereal, pasta, and a limited selection of canned goods.
- Much of the remaining stock consisted of accessory foods such as candy, spices, and carbonated and uncarbonated drinks.
- There was hot food including breakfast options, as well as seafood and boiled dinners.
- Ineligible items included hot food, gas, tobacco, alcohol, health and beauty products, cleaning products, automotive supplies, pet food, and paper products.
- The shelves were noted to not be fully stocked.

The highest priced items noted were packaged chicken wings - \$23.49; rabbit - \$9.62; chicken things - \$6.99, and can of mustard greens -\$5.99. Given the available inventory as noted above, there is no indication from the store visit report that the store would be likely to have SNAP redemption patterns significantly different from similar-sized competitors.

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: Multiple transactions were made from one or more SNAP households within a short timeframe. This attachment lists 33 sets of transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in SNAP benefits.

Considering the fact that this store has a small checkout area, one EBT point-of-sale device, and no conveyor belt, and considering the number of items that it would typically take to add up to the dollar amounts found in this attachment, it is unlikely that legitimate transactions could have occurred in such short periods of time.

It's not likely a clerk could process a small transaction and the second large transaction in 30 seconds. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These two transactions were conducted manually with the POS device and not swiped, therefore these transactions would have taken longer to complete.

The Retailer Operations Division determined that the transaction pattern of Appellant exceeded the two other small groceries, as seen on the table herein. The Retailer Operations Division determined that the other two stores offered a wider variety of meat and offer meat specials. Both of these stores were noted to have more than ten different varieties of meat, poultry, or fish at the last store visit. The data from these nearby stores provided adequate evidence to demonstrate that the transaction patterns at the Appellant firm were highly unusual and indicative of possible trafficking violations.

5 U.S.C. § 552 (b)(7)(E)

Counsel contends that the USDA is alleging trafficking for both transactions in a short period of time as well as within a set time period which are essentially the same thing, therefore these allegations should not be portrayed as separate alleged violations. This is incorrect as the parameters for both scans are different. Although there may be some overlap and some transactions listed on each Attachment, the criteria are different. The Charge Letter Attachment 2 transactions are conducted by the same household. The transactions listed on Charge Letter Attachment 1 can be the same household, but for the most part are different households. Of the 33 transactions sets listed on Charge Letter Attachment 1, only four were conducted by the same household.

Appellant did not adequately explain these transactions.

Charge Letter Attachment 2: Multiple transactions were made from individual benefit accounts in unusually short time frames. This attachment documents 49 sets of transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in SNAP benefits that meet the parameters of this scan. Multiple transactions conducted by the same household account within a short period of time is a

method which violating stores use to avoid single high dollar transactions that cannot be supported by a retailer's inventory and structure.

Appellant, through counsel, explains that there is no limit to the number of times a household can use its EBT card. This is true. However, the SNAP transactions noted in the charge letter are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of Appellant's stock and facilities and are therefore indicative of trafficking. 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 photographs from the store visit offer no explanation as to why SNAP customers would routinely shop at Appellant multiple times during a short period. Appellant lacks an abundant depth and breadth of staple foods. There was limited fresh produce as well as sparse selection of other staple food items. The second and third transactions in each set are too large to consist of forgotten items.

Appellant explains customers will make an initial purchase and then when they find out how much they have in SNAP benefits they then make an additional purchase. The Retailer Operations Division compared Appellant to two nearby small groceries. Appellant conducted 49 transaction sets that met the parameters of this scan, whereas the other two nearby stores collectively conducted 14 transaction sets that met the parameters of this scan. Appellant's explanation does not address why this transaction pattern occurs much more frequently at Appellant than at other nearby similar stores.

Counsel explains that customers normally make a test purchase of a qualified grocery item and then plan for future purchases. Their future purchase is normally made **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** of finding out how much money is remaining on their card. However, only four of the 49 transaction sets occurred **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Thus, even if balance checks were the reason for these transactions sets, although unlikely, it could only possible explain four out of the 49 questionable transactions sets. Moreover, as indicated previously, this pattern is not as prolific in these nearby stores. Therefore it is unclear why households are more apt to shop like this at Appellant and not at other similar stores.

Counsel explains that traditional grocery stores are not readily available in the neighborhood that Appellant serves. Counsel further states that Appellant's customers are sometimes bound by transportation issues or health issues, for which reason some of them might only shop at this store as well. The Retailer Operations Division determined that there are three other small groceries, four medium groceries, one supermarket, and one super store within a two-mile radius of Appellant. The Retailer Operations Division determined that there were 173 households that conducted the flagged transactions at Appellant. Of these 173 households, 135 or 78 percent, conducted a SNAP transaction at larger grocery, supermarket or super store within one day of its flagged transaction at Appellant. Furthermore, 163 of these households or 94 percent conducted a SNAP transaction at a larger grocery stores within three days of its flagged transaction at Appellant.

The Retailer Operations Division examined three households identified in the charge letter to analyze their shopping patterns at Tiger Meat Market compared to their shopping patterns at

other SNAP authorized stores. Despite access to better stocked stores, each of the other households conducted excessively large transactions at Tiger Meat Market within a short time of shopping at a supermarket or super store. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 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 fact, counsel acknowledges that Appellant charges more higher prices than are offered at these larger stores. There is no compelling reason for customers to consider Tiger Meat Market, as a first choice destination to fulfill large purchases of food.

Appellant has not offered any evidence to show that the transactions listed in Charge Letter Attachment #2 were legitimate purchases of eligible food.

Charge Letter Attachment 3: Excessively large purchase transactions were made from recipient accounts. This attachment lists 213 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The frequency of high-dollar purchases in a six-month period calls into question the legitimacy of these transactions.

The Retailer Operations Division compared Appellant to two other small groceries. Appellant's total dollar SNAP volume was greater than the other two stores and its average SNAP transaction amount was also more than double the average SNAP transaction amount of each of the other two stores. The Retailer Operations Division determined that Appellant conducted more SNAP transactions in each ten dollar range 5 U.S.C. § 552 (b)(6) & (b)(7)(C) compared to the other two small groceries. The Retailer Operations Division considered this an indicator of trafficking considering Appellant's eligible food stock, infrastructure, and proximity to larger, better stocked stores.

Appellant explained that it offered Holiday food packages. The Retailer Operations Division determined that the store actually conducted the least large dollar transactions during November and December.

Appellant submitted evidence with its reply to the charges that the Retailer Operations Division determined explained these large dollar transactions. The evidence included invoices for its food stock and its meat packages. After the retailers initial reply to the charges, the Retailer Operations Division determined that Appellant provided a credible explanations and sufficient for the transactions in Attachment 3.

Invoice Analysis

During the initial determination, the retailer submitted inventory invoices/receipts. The Retailer Operations Division analyzed the invoices submitted by the firm. The Retailer Operations Division reviewed all of the invoices and determined that based on the inventory invoices submitted by the retailer, the firm likely purchased sufficient inventory to support their SNAP redemptions during the review period.

However, the Retailer Operations Division discovered that two of the receipts showed the purchase of store inventory with SNAP benefits. The receipts included 71 cans of green beans

and several boxes of spaghetti, and butter marinade. All three items were seen in the store visit photographs being as part of Appellant's inventory. It is more likely than not that the firm either purchased the card from SNAP recipients and used it to purchase store inventory or knowingly purchased eligible food items previously purchased with SNAP by the household for cash. This is considered trafficking. Thus, although Appellant submitted invoices to show it purchased sufficient inventory to justify its SNAP redemptions, the inventory invoices actually was further evidence of the firm's trafficking in SNAP benefits.

Customer Statements

Appellant submitted six customer statements. The statements were handwritten and contained the household name, EBT number, and address. The transaction history of each of these SNAP households was looked up. Three of these households did not appear to conduct any SNAP of the flagged transactions included in the Charge Letter. One of the households conducted seven SNAP transactions at Appellant during the review period but only one of the flagged SNAP transactions at Appellant. Two households that submitted statements did conduct several of the questionable transactions. The transactions of these households may have been for eligible food items but the transactions were too limited. In general, customer statements are unconvincing. Customers engaging in trafficking violations are unlikely to admit to such behavior. The customer statements are not sufficient evidence that many of the transactions listed on the Charge Letter were for eligible food items only.

Basis for Determination

Appellant cites 7 CFR § 278.6(d) in its contention that the store or its employees have not violated the SNAP rules and regulations. Appellant also states that the Appellant store has been authorized since 2017 without any violations of the SNAP regulations. The SNAP regulation at 7 CFR § 278.6(d) states, in part, that in making a disqualification determination FNS shall consider:

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

With regard to the nature and scope of the violations, 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. Therefore, whether or not the store had any prior violations is not relevant in this case.

Regarding prior warnings, 7 CFR § 278.6(d) simply requires FNS to consider any prior warnings when determining a sanction. However, the SNAP regulations do not require the Retailer Operations Division to give prior warnings before issuing a charge letter for trafficking. SNAP regulations at 7 CFR § 278.6(e)(7) states that FNS will "send the firm a warning letter if violations are too limited to warrant a disqualification." Trafficking transactions are not considered to be "violations that are too limited to warrant a disqualification."

Lastly, the definition of trafficking contained in the SNAP regulations at 7 CFR § 271.2 does not require an element of intent on the part of the violator. Therefore, whether or not the owner or store employees intended to commit SNAP trafficking violations is not relevant in this case. In addition, the store owner signed a certification that he would accept responsibility on behalf of the store and its employees for any violations; therefore, whether or not the store owner was aware of the violations, the store owner is ultimately responsible and accountable for violations committed at the store.

Evidence

Counsel contends that there are no guidelines under SNAP rules that state the original alleged violations are even violations and that just because the ALERT system attempts to signify that the three trafficking allegations are irregular does not mean these allegations hold weight. The transactions reports are derived from the ALERT system, 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 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 insufficient evidence to prove that the transactions listed in the Charge Letter Attachment 1 and Attachment 2 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.

CIVIL MONEY PENALTY

Counsel explains that upon the second occasion of trafficking involvement, a firm shall not be eligible for a civil money penalty and implies that a firm is eligible for a CMP upon its first trafficking charge. It is true that the regulations prohibit a retailer from qualifying for a CMP when it is their second violation of trafficking. However, on the first charge of trafficking, a retailer can request a CMP but still needs to meet the eligibility requirements for a trafficking CMP.

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 did not request consideration for a trafficking CMP in lieu of a permanent disqualification under 7 CFR § 278.6(i), even though it was informed of the right to do so in the charge letter.

With its administrative review request, Appellant through counsel, requests a CMP. Counsel contends that Appellant has implemented an effective compliance policy and that Appellant provide verbal training, in-store training, and a copy of the manual to all employees. Counsel also reports that a photocopied booklet made in-house is provided to each of its employees and that issues concerning EBT processing are addressed quarterly. Appellant submitted a letter from an employee stating that it received training as well as a training log.

There is no authority to extend the deadline for making a request for a CMP and submitting the required evidence of its eligibility for this alternative penalty. The regulations are clear that a request for a CMP in lieu of permanent disqualification and any supporting documentation must be submitted to FNS within 10 days of the firm's receipt of the charge letter. In this case, Appellant did not meet this regulatory deadline. Therefore, the Retailer Operations Division's decision not to impose a trafficking CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR § 278.6(i).

CONCLUSION

The Retailer Operations Division's analysis of 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

March 19, 2020