

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

**Turnpike BP Inc,**

**Appellant,**

**V.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0215145**

**FINAL AGENCY DECISION**

It is the decision of the USDA that the record indicates that Turnpike BP, Inc., (hereinafter Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP). There is sufficient evidence to support a finding that the permanent disqualification from participation as an authorized retailer in the program, 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(c) and (e)(1) in its administration of the SNAP, when it assessed a permanent disqualification against Appellant by letter dated March 19, 2019.

**AUTHORITY**

7 U.S.C. § 2023 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 February 28, 2019, Retailer Operations Division charged the Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred during the months of August 2018 through January 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 the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt under the conditions specified in 7 CFR § 278.6(i).

In correspondence dated March 11, 2019, Appellant, through counsel, responded to the charge letter and generally stated that ownership denies the alleged charges of trafficking and maintains that its response and accompanying documentation adequately demonstrate that the transactions analyzed between August 2018 – January 2019, do not exhibit a clear and repetitive pattern of unusual, irregular, and inexplicable activity for this type of firm. With regards to the first count, the transactions are due to individual members of various eligible families coming into the firm on multiple occasions throughout the day to purchase items that were, despite being an inefficient way of shopping, compliant with the SNAP regulations. Further with the closure of a nearby supermarket and a major competitor gas station a few months back, an influx of EBT customers occurred which reasonably led to increased volumes of transactions, due to the increased demand with limited alternative sources of supply.

With regard to the second count, the store has a full grocery area as indicated in the appended photos. Many of these items range high in price as indicated from the wholesale receipts attached. The recent closure of the supermarket and the major competitor gas station also led to an increase in eligible EBT customers with different tastes that required higher priced goods. Although our client maintains that no trafficking violations occurred, in the event the USDA finds otherwise, our client prefers to pay a civil money penalty (CMP), in lieu of permanent disqualification. Counsel included documentation to point out that the firm had a compliance policy and training program and also included an affidavit from the owner and stated that it demonstrates that there was no benefit or involvement in trafficking by ownership and that the firm management was not involved in any alleged previous trafficking violations.

After giving consideration to the Appellant's reply and evidence of the case, Retailer Operations Division issued a determination letter dated March 19, 2019. The letter informed Appellant that it was permanently disqualified from the SNAP in accordance with Sections 278.6(c) and 278.6(e)(1) of the SNAP regulations. The letter also stated that Retailer Operations Division considered Appellant's eligibility for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP regulations. However, Retailer Operations Division determined that Appellant was not eligible for the CMP because it failed to submit sufficient evidence to demonstrate that Appellant had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter dated March 29, 2019, Appellant, through counsel, appealed the Retailer Operations Division's assessment and requested an administrative review of this action. The appeal was granted.

## **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 an Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

## **CONTROLLING LAW**

The controlling statute in this matter is contained in the Food & Nutrition Act of 2008, as amended, 7 U.S.C. § 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.6(a) (c) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store in the event that personnel of the firm have engaged in trafficking SNAP benefits.

7 CFR § 278.6(a) states, *inter alia*, that “FNS may disqualify any authorized retail food store...from further participation in the program if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system...”

7 CFR § 278.6(c) reads, in part, “*Review of Evidence.* The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination. In the case of a firm subject to permanent disqualification under paragraph (e)(1)...the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS...”

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.” Trafficking is defined, in part, in 7 CFR § 271.2, as “the buying or selling of SNAP benefits for cash or consideration other than eligible food.”

7 CFR § 271.2 states in part that, “Eligible foods mean: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption.”

## **SUMMARY OF THE CHARGES**

The charges on review were based on an analysis of SNAP electronic benefit transfer (EBT) transactions dated during the six month period of August 2018 through January 2019. This involved two patterns of EBT transaction characteristics indicative of trafficking:

1. Multiple transactions were made from the accounts of individual SNAP households within a set time period.
2. Your store conducted EBT transactions that are large based on the observed store characteristics and recorded food stock.

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

The Appellant, through counsel, made the following summarized contentions in its response to the permanent disqualification letter issued by Retailer Operations Division, and its request for administrative review, in relevant part:

1. There are many EBT customers that reside in the local neighborhoods whose limited access to groceries led to shopping at the firm for something more than a small item.
2. The traffic and the large volume purchases were assisted in part by the closure of a nearby supermarket and the major competitor gas station.
3. Our client denies the alleged charges of trafficking and maintains that the response and accompanying documentation adequately demonstrate that the transactions analyzed between August 2018 and January 2019, do not exhibit a clear and repetitive pattern of unusual, irregular and inexplicable activity for this type of firm.
4. The multiple transactions that were made from the accounts of individual SNAP households within a set time period were due to individual members of various eligible families coming into the firm on multiple occasions throughout the day to purchase items that were compliant with SNAP regulations.
5. With regards to the second count, the firm conducting EBT transactions that are large based on the observed store characteristics and recorded food stock is also an erroneous statement to make from an outside perspective of the firm's operations. The firm has a full grocery area as indicated in the appended photos compiled into Exhibit B.
6. These items are listed for retail and many of which, being eligible for EBT, range high in price as indicated from the wholesale receipts attached as Exhibit C.
7. Although our client maintains that no trafficking violations occurred, in the event the USDA finds otherwise our client prefers to pay a civil money penalty (CMP) in lieu of permanent disqualification. A compliance policy, effective prior to the alleged violations beginning on or prior to August 2018, that is meant to prevent the violations of the SNAP regulations and to ensure member of the firm personnel accepts and handles EBT transactions in accordance with SNAP regulations is referenced and attached in Exhibit A and D. A personnel training program containing the effective training curricula with the YouTube video used is attached in Exhibit A and E.

Appellant provided a signed Affidavit of **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** dated March 11, 2019. Appellant also provided 69 black and white photographs of the store's stock, some which appeared to be duplicates and all were unrecognizable due to the quality of the photograph, 13 color photographs of store stock, 174 pages of purchase invoices many that were duplicates from its response to the charge letter, document labeled Operational Compliance Policies dated February 1, 2015 and three pages of an alleged SNAP Training Log with names and initial for the dates of February 5, 2015 (Thursday), July 6, 2016 (Wednesday), August 7, 2017 (Monday) and August 15, 2018 (Wednesday).

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

## ANALYSIS AND FINDINGS

The FNS authorized the business as a convenience store on July 13, 2005. The file indicates that in reaching a disqualification determination, Retailer Operations Division considered information obtained during a May 13, 2018, store visit to the business 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 EBT transactions at Appellant that formed patterns indicative of trafficking. The firm review summary documented the following store size, description, and characteristics:

- One cash register and one POS device with a small counter area partially obstructed by other smaller items available for sale.
- Estimated to be approximately 1736 square feet.
- No shopping baskets or carts available for customers.
- No adding machines or optical scanners were available at checkout. No specialty registers present.
- Store operates through a night window or plastic barrier with food stock behind the barrier.
- No evidence of wholesale business such as posted prices or separate entrances for wholesale customers.
- No unusual pricing structure such as ending most products with 00 cents and does not round transaction totals.
- Food stored in an area outside of public view in an area approximately 50 square feet.
- Store has storage freezers or coolers but not food stored off site.
- Store is not primarily selling one food type such as meat, poultry, dairy, seafood, fruits, baked goods or vegetables.
- Store does not take telephone or online orders and does not offer delivery
- Highest priced eligible food items were Kickass Jerky (\$7.99) and Red Bull (\$8.99).
- Store stocks a significant amount of non-food items such as but not limited to paper products, household products, tobacco products, automotive products, pet food, cleaning products, clothing items, .
- Store stocks limited amounts of dairy products, bread and cereal products, fruit and vegetable products and meat, poultry and fish products. No fresh fruits or produce, no fresh meat or poultry. Most meats are canned, packaged or frozen. Appellant may not have been eligible to maintain a SNAP authorization as it appeared deficient in the dairy products category at the time of the store visit.
- A kitchen/prepared food area with hot foods sold for onsite consumption.
- A deli or prepared food section. Stock is used in preparation of food.
- No meat or seafood specials or bundles or fruit/vegetable boxes sold.

The issue for consideration is whether Retailer Operations Division has presented a convincing case that Appellant likely trafficked in SNAP benefits. 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.

**Attachment 1 of the Charge Letter – Multiple transactions were made from the accounts of individual SNAP households within a set time period.**

There were 27 sets of 70 SNAP transactions that met the parameters of this attachment. Multiple transactions conducted by the same household account 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is a method which violating stores use to avoid the detection of single high dollar transactions that cannot be supported by the retailer's inventory and structure. The store visit report does not indicate any compelling reason for customers to consider Turnpike BP Inc. a first choice destination to fulfill large purchases of food, or that they would have made relatively large, multiple purchases at the store within a set time period. The store's stock is limited and consists mainly of inexpensive prepackaged accessory foods and canned\bottled beverages; as well as, grocery items like canned and jarred goods; dried goods, condiments and snack items.

The Appellant, through counsel, contends that the multiple transactions, made from the accounts of individual SNAP households within a set time period, were due to individual members of various eligible families coming into the firm on multiple occasions throughout the day to purchase items that were compliant with SNAP regulations. With regard to this contention, though some of the SNAP transactions, particularly in the lower amounts, may be legitimate SNAP transactions it is not plausible that a SNAP household would visit Appellant, multiple times in a day or two to make large purchases given Appellant's available staple food stock.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is unlikely that the second transaction was a legitimate SNAP transaction given the Appellant's stock, limited counter space in which to place items, no hand baskets or carts in which to transport or hold the number of items no doubt needed to make up the transaction amount, and the time required to ring up the items and process the SNAP transaction. Nor would it be reasonable on 10/2/2018 and 10/3/2018, for a SNAP household to visit Appellant's store, a minimally stocked convenience store, seven (7) times

5 U.S.C. § 552 (b)(6) & (b)(7)(C). The record reflects that this household also visited an area large grocery store on the same day as its visit to Appellant's store which indicates that Appellant's firm was not used as the sole source of food purchases.

Appellant, through counsel, contends that there are many EBT customers that reside in the local neighborhoods whose limited access to groceries led to shopping at the firm for something more than a small item. Also, the traffic and the large volume purchases were assisted in part by the closure of a nearby supermarket and the major competitor gas station. With regard to these contentions, the record reflects that there are 24 SNAP authorized retailers located within a one mile radius of Appellant's store which include larger better stocked medium grocery stores and supermarkets. Retailer Operations also conducted an analysis of the shopping habits of 17 of the households identified in the charge letter. This analysis concluded that these households also shopped at other area grocery stores including full-line supermarkets and superstores that offer a much larger quantity and variety of eligible food items for likely better prices either on the same day or within a day of visiting Appellant's firm. This again indicates that lack of access to other stores is not at issue. However, despite this access to large supermarkets and superstores, these households consistently conducted much higher transactions at the Appellant firm than at better stocked supermarkets/superstores in and around the New Haven County area of Connecticut.

This is another strong trafficking indicator.

Based on the analysis above and in the absence of any compelling evidence to the contrary, the irregular and unusual transaction pattern cited in the charge letter is unlikely and a strong indicator of trafficking in SNAP benefits. In conclusion, it is therefore more likely true than not true that the irregular transactions cited in the charge letter Attachment 1 are due to trafficking in SNAP benefits.

**Attachment 2 of the Charge Letter - Your store conducted EBT transactions that are large based on the observed store characteristics and recorded food stock**

There were 193 SNAP transactions that met the parameters of this attachment. Based on the results of the contracted store visit, the large transaction amounts are not consistent with the store's inventory of low priced foods. The firm does not offer food in bulk or any ethnic or specialty foods that sell for a high price. Therefore, the substantial number of high dollar purchases calls into question the legitimacy of these transactions. Appellant's food stock does not support such large transactions and in the absence of reasonable explanation to support such large transactions, this behavior is indicative of trafficking. Keep in mind that there are no carts or baskets to aide in transporting items, and the checkout area is small and located behind a plastic barrier, leaving little room to stack the number of items needed to substantiate the SNAP transactions cited in Attachment 2.

The average convenience store transaction in New Haven County, Connecticut, during the review period, was \$8.16. Appellant's largest transaction amount during the review period was 5 U.S.C. § 552 (b)(6) & (b)(7)(C) 11 times higher than the average transaction amount for this store type.

Appellant, through counsel, contends that the firm conducting EBT transactions that are large based on the observed store characteristics and recorded food stock is also an erroneous statement to make from an outside perspective of the firms operations. The firm has a full grocery area as indicated in the appended photos compiled into Exhibit B. Appellant, through counsel, also contends that these items are listed for retail and many of which, being eligible for EBT, range high in price as indicated from the wholesale receipts attached as Exhibit C.

With regard to these contentions, Appellant did not provide any evidence of any high dollar items in the store and a review of the store visit photographs do not show any evidence of high priced items available for sale in the store. The store visit documentation indicates that management reported the highest priced items in the store were jerky priced at \$7.99 and Red Bull priced at \$8.99. Appellant provided 69 color photographs of the stores stock, many of which were duplicates or multiple copies of the same photo. Appellant also submitted approximately 174 pages of purchase invoices/receipts in support of its position.

It is important to note that Appellant is a gas station/convenience store and its stock is not sufficient to meet all staple food needs with no fresh or frozen meat or seafood, very limited fresh produce and minimal dairy products. In fact the store visit documentation suggests that Appellant may have been ineligible to maintain a SNAP authorization at the time of the visit as it

was deficient in the dairy staple food products. Although Appellant purchased beef patties and Philly steaks, those items are also used in preparation of the hot foods sold and were not displayed for individual purchase in an unprepared state. Appellant has a deli area with deli meats and cheese however, there was no signage indicating that those items were sold by the pound. Although management stated, during the store visit, that they were \$5.99 per pound, those items are also used in preparing sandwiches for takeout.

### **Invoices/Receipts**

A review of the invoices and receipts provided indicates that, with Appellant's markup of 25 – 30 percent, Appellant's eligible purchases were significantly less than its SNAP redemptions for the review period. Even if the receipts and invoices did show that the store purchased sufficient food inventory to account for the firm's SNAP redemption volume, sufficient inventory alone does not explain the suspicious patterns of SNAP transactions cited in the charge letter. These transactions would remain questionable even if there were sufficient food inventory to support such transactions when consideration is made of there being only a limited variety of stock in the store, no fresh meats or seafood, minimal produce, a greater variety of foods at lower prices at other stores, including the supermarkets and superstores at which many customers also shop, no shopping carts, and very little counter space to place food for purchase at the checkout counter. Even if there were sufficient food stock at Turnpike BP, Inc. to mathematically support high dollar transactions, there does not appear to be anything that would reasonably attract SNAP households to make large multiple purchases or single large purchases at this store.

Based on this empirical data, and in the absence of sufficient evidence as to the legitimacy of such transactions, a conclusion can be drawn, through a preponderance of evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the charge letter evidence trafficking as the most likely explanation. In this case, ownership did not provide sufficient evidence to legitimize Appellant's transaction data as outlined in the Attachments. Retailer Operations Division determined that Appellant's contentions did not outweigh the evidence that the store was trafficking and concluded, through a preponderance of evidence, that trafficking is the most probable explanation for the questionable transactions listed in the charge letter attachments.

The transaction data and overall firm record convincingly demonstrate repetitive patterns of unusual, irregular, and inexplicable SNAP activity for this type of firm indicative of trafficking. Once Retailer Operations Division established the convincing case against Appellant, ownership bears the burden of proving, by a preponderance of the evidence, that the administrative action 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. If this is not demonstrated, the case is to be sustained.

As noted, 7 CFR § 278.6(a) states that 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 inconsistent redemption data, and evidence obtained through a



transaction report under an electronic benefit transfer system.

Retailer Operations Division has presented a convincing case that Appellant has likely trafficked in SNAP benefits. This is evidenced by: the suspicious patterns in two attachments of EBT transaction data, the inadequacy of the firm's eligible food stock as observed and recorded during the onsite visit to support such large transactions, the lack of evidence of invoices of foods in inventory to cover SNAP redemption totals for the review months, the lack of explanation for customer spending habits given that there are other SNAP authorized stores located within proximity to Appellant, and the irregular SNAP transaction data of Appellant as compared to other convenience stores in the State.

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 charge letter. Therefore, based on this empirical data, and in the absence of evidence for the legitimacy for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the unusual, irregular, and inexplicable transactions and patterns cited in the letter of charges evidence trafficking as the most likely explanation. While ownership was afforded the opportunity to provide valid explanations and evidence that support that the questionable transactions were the result of legitimate purchases of eligible food items, Retailer Operations Division determined that Appellant's contentions did not outweigh the evidence in the record.

The purpose of the administrative review process is to ensure that firms aggrieved by Retailer Operations Division's adverse actions have the opportunity to have their position fairly considered by an impartial review authority prior to that adverse action becoming final. Appellant has been duly given, and has taken the opportunity to present to USDA through the administrative review process whatever evidence and information it deems pertinent in support of its position that Retailer Operations Division's adverse action should be reversed. Therefore, any evidence and information that Appellant presented to Retailer Operations Division, as well as any such information submitted subsequently, have now been considered in this administrative review in rendering the final agency administrative decision in this case. The record does not indicate any departure from established policy or procedures with regard to Appellant's right to a fair and thorough review.

### **CIVIL MONEY PENALTY**

The Appellant requested consideration for a CMP and contends that a compliance policy, effective prior to the alleged violations beginning on or prior to August 2018, that is meant to prevent the violations of the SNAP regulations and to ensure member of the firm personnel accepts and handles EBT transactions in accordance with SNAP regulations is referenced and attached in Exhibit A and D. A personnel training program containing the effective training curricula with the YouTube video used is attached in Exhibit A and E.

The issue to be decided here, then, is whether, through a preponderance of the evidence, Turnpike BP, Inc. had an effective policy and program to prevent trafficking violations that was fully in accord with the provisions of 7 CFR §278.6(i), and thus that it is eligible for a CMP.

7 CFR §278.6(i) specifies that in order for a firm to qualify for a CMP in lieu of permanent disqualification, it must submit *substantial evidence* that it has fulfilled 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...”

As it relates to the above Criteria 1 and 2, 7 CFR §278.6(i)(1), entitled “Compliance policy standards,” provides the following, in relevant part:

“...in determining whether a firm has established an effective policy to prevent violations, FNS shall consider written and dated statements of firm policy which reflect a commitment to ensure that the firm is operated in a manner consistent with this part 278 of current SNAP regulations and current SNAP policy on the proper acceptance and handling of food coupons. As required by Criterion 2, such policy statements shall be considered only if documentation is supplied which establishes that the policy statements were provided to the violating employee(s) prior to the commission of the violation. In addition, in evaluating the effectiveness of the firm’s policy and program to ensure SNAP compliance and to prevent SNAP violations, FNS may consider the following:

- i. Documentation reflecting the development and/or operation of a policy to terminate the employment of any firm employee found violating SNAP regulations;
- ii. Documentation of the development and/or continued operation of firm policy and procedures resulting in appropriate corrective action following complaints of SNAP violations or irregularities committed by firm personnel;
- iii. Documentation of the development and/or continued operation of procedures for internal review of firm employees’ compliance with SNAP regulations;
- iv. The nature and scope of the violations charged against the firm;
- v. Any record of previous firm violations under the same ownership; and
- vi. Any other information the firm may present to FNS for consideration.”

As it relates to the above Criterion 3, 7 CFR §278.6(i)(2), entitled “Compliance training program standards,” provides the following, in relevant part:

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

- (i) Training for all managers and employees whose work brings them into contact with (SNAP benefits) or who are assigned to a location where (SNAP benefits) are accepted, handled or processed shall be conducted within one month of the institution of the compliance policy under Criterion 1 above. Employees hired subsequent to the institution of the compliance policy shall be trained within one month of employment. All employees shall be trained periodically thereafter;
- (ii) Training shall be designed to establish a level of competence that assures compliance with Program requirements as included in this part 278;
- (iii) Written materials, which may include FNS publications and program regulations that are available to all authorized firms, are used in the training program

Training materials shall clearly state that the following acts are prohibited and are in violation of the Food and Nutrition Act and regulations: the exchange of... (SNAP benefits)...for cash...”

Criterion 1: Appellant failed to provide documentation reflecting the development and/or operation of a policy to terminate the employment of any firm employee found violating SNAP regulations; documentation of the development and/or continued operation of the firm policy and procedures resulting in appropriate corrective action or documentation of the development and/or continued operation of procedures for internal review of employees compliance with SNAP regulations. In an Affidavit, Appellant explains that the owner created a compliance policy to prevent violations, provided for termination of employment of a member of firm personnel for being found to have violated and maintained a process for corrective action following complaints, provided the training and when however, no actual documentation was provided as proof of the creations. The document provided showing items that can only be purchased with EBT and who to contact in the event that an item is not on the list, does not serve as adequate evidence, in accordance with 7 CFR 278.6(i), that Appellant had an effective compliance policy in place.

Criterion 2: Appellant provided a copy of the Training Guide for Retailers and a notice dated January 15, 2015, which states “EBT Training for new employees which also stated “(also invite existing employees to this training) & Annula (sic) Refresher training for all, to take place the last Friday of every June.” The notice had a link to viewing a video on YouTube.

Criterion 3: Appellant provided a document labeled Operational Compliance Policies dated February 1, 2015 and three pages of an alleged SNAP Training Log with names and initial for

the dates of February 5, 2015 (Thursday), July 6, 2016 (Wednesday), August 7, 2017 (Monday) and August 15, 2018 (Wednesday). Appellant was initially authorized on July 13, 2005. It appears that the training log may have been fabricated for the purpose of meeting Criterion 3 of the CMP requirement. If Appellant provided training on the last Friday of every June as stated on the “training notice”, then the dates would have coincided with Friday dates and more likely than not have been on separate sheets of paper instead of being printed together as one three page document spanning four years. Although Appellant stated that all employees were trained within one month of employment, no documentation was provided to show when Appellant hired the employees. Additionally, if Appellant was SNAP authorized on July 13, 2005, it is questionable as to why the owner would wait 10 years before implementing an effective compliance policy and train employees.

Criterion 4: Appellant, through counsel, made the statement there was no benefit or involvement in trafficking by ownership and that the firm management was not involved in any alleged previous trafficking violations.

It is the determination of this review that Appellant failed to provide adequate evidence that it in fact had an effective compliance policy in place prior to the SNAP violations in order to be considered for a trafficking CMP in lieu of disqualification. The documentation provided does not rise to the level, required by regulation, to be considered for a CMP in lieu of permanent disqualification. Therefore, Retailer Operations Division correctly determined that Appellant was not eligible for a trafficking CMP as set forth in the SNAP regulations.

## **CONCLUSION**

Ownership has not provided sufficient evidence to rebut the convincing case that Appellant most likely trafficked in SNAP benefits. As such, the SNAP regulations are specific with regard to the action that must be taken if personnel of the firm have trafficked, which is that FNS shall disqualify the firm permanently.

Retailer Operations Division’s analysis of Appellant’s EBT transaction record was the primary basis for its determination to permanently disqualify Turnpike BP Inc., from participation in the SNAP. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. Therefore, based on a review of all the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged by Retailer Operations Division. Based on the discussion herein, the determination to impose a permanent disqualification against Turnpike BP Inc., is sustained.

## **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act of 2008, as amended, (7 U.S.C. § 2023) and to Title 7, Code of Federal Regulations, Part 279.7 (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 (FOIA), 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.

Monique Brooks  
ADMINISTRATIVE REVIEW OFFICER

October 1, 2019