

**U.S. Department of Agriculture
Food and Nutrition Service
Administrative Review
Alexandria, VA 22302**

United Market,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0201565

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is sufficient evidence to support a finding that a **Permanent Disqualification** from participation as an authorized retailer in the Supplemental Nutrition Assistance Program¹ was properly imposed against United Market (hereinafter “United Market” and/or “Appellant”) and its owners of record, by the Retailer Operations Division of the FNS.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(e)(1) in its administration of the Supplemental Nutrition Assistance Program (SNAP) when it imposed a Permanent Disqualification against United Market in a letter dated October 16, 2017.

AUTHORITY

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

¹ Section 4001(b) of the Food, Conservation, and Energy Act of 2008 (P.L. 110-234; 122 Stat. 1092) amended the Food and Nutrition Act of 2008 by striking “food stamp program” and inserting “supplemental nutrition assistance program” effective October 1, 2008

CASE CHRONOLOGY

In a letter dated August 3, 2017, the Retailer Operations Division informed Appellant that it was being charged with violation of the terms and conditions of the SNAP regulations, 7 CFR §§ 270-282, based on Electronic Benefit Transaction (EBT) SNAP benefit transactions considered to “establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm.”

The Retailer Operations Division record indicates Appellant responded, through counsel, in writing. Following documented consideration of Appellant’s response the Retailer Operations Division advised Appellant of a final determination of permanent disqualification from participation in the SNAP in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1) for trafficking violations, in a letter dated October 16, 2017, documented to have been delivered to Appellant on October 17, 2017.

The determination letter also advised that the 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. The Retailer Operations Division determined that the Appellant was not eligible for the trafficking CMP because the Appellant did not **timely** submit evidence to demonstrate the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter dated October 27, 2017, received in the offices of the Administrative Review Branch on October 30, 2017, Appellant, through counsel, submitted an appeal of the Retailer Operations Division’s assessment, requesting an administrative review of the action. The appeal was granted.

STANDARD OF REVIEW

In appeals of adverse actions, an appellant bears the burden of proving by a preponderance of the evidence, that the administrative 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 AND REGULATIONS

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (the “Act”)², 7 U.S.C. § 2021 and promulgated through regulation under Title 7 of the Code of Federal Regulations (CFR),³ part 278. In particular CFR § 278.6(a) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern.

² Effective October 1, 2008, the *Food Stamp Act of 1977* was superseded by the *Food and Nutrition Act of 2008*, as amended through P.L. 110-246.

³ Title 7 of the Code of Federal Regulations may be accessed in its entirety via the Internet at https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title07/7tab_02.tpl

7 U.S.C. § 2021(b)(3)(B) states, in relevant 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 § 278.6(e)(1)(i) states, in relevant part:

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

7 CFR § 271.2(1) defines trafficking, in relevant part:

“ ... the buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits ... for cash or consideration other than eligible food either directly, indirectly, in complicity or collusion with others, or acting alone:...”

7 CFR § 271.2 states, in relevant part:

“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 § 278.6(a) states, in relevant part:

“FNS may disqualify any authorized retail food store ... if the firm fails to comply with the Food & 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(c) states, in relevant 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...”

7 CFR § 278.6(b)(2)(ii), states, in relevant part:

“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).**” [Emphasis added]

7 CFR § 278.6(i), states, in relevant part:

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

SUMMARY OF THE CHARGES

The Retailer Operations Division materials and the charge letter dated August 3, 2017, reveal that charges were based on an analysis of EBT SNAP benefit transaction data during the four-month period of February 2017 through May 2017 and involved two (2) patterns of EBT transaction characteristics indicative of trafficking as follow:

- Attachment #1 lists multiple SNAP EBT transactions made from individual benefit accounts in unusually short timeframes.
- Attachment #2 lists excessively large purchase transactions made from the accounts of SNAP recipients.

APPELLANT’S CONTENTIONS

In the letter dated October 27, 2017, counsel, on behalf of Appellant, contends that:

- Appellant is predominantly a “SUPER MERCADO” which caters to the needs of the local Hispanic population.
- Appellant has been in business as a Partnership since 2011, conducting a very clean business operation since its inception without running afoul of the local, state or federal laws in any manner to date.
- Area residents depend on the market to meet their families’ needs, therefore the loss of United Market as a SNAP retailer would be devastating to the local Hispanic community
- Appellant is willing to take any and all necessary steps in order to prevent future violations and assure rigid compliance.
- Appellant has been following the Retailer Training requirements and is taking very strong action towards preventing any future violations with refresher training for all employees. Recourse being taken includes:
 - Purchase of cash registers that record transactions and provide transaction activity on demand
 - Retraining with use of the video/DVD training and SNAP Training Guide

- Biannual recurrent training with affidavits signed by all co-owners and employees and a log kept recording the training for inspection on demand
- Development and maintenance of a three (3) ring binder to be kept on premises to record and log updates as received from FNS. Staff training is to occur within three (3) business days of receipt of the update
- Owners and employees are to be made aware that affirmation of training is made with risk of perjury with is a crime punishable by imprisonment
- Placement of SNAP fraud posters in open and obvious locations (pictures verifying placement to be sent).

Counsel recommends support of the implementation of steps listed; with a probationary period of six (6) to 12 months; followed by self-monitoring and ongoing provision of annual update training with logs to be provided to FNS. Attached to the submission is a copy of the “Reminder to Store Owners – SNAP Training Expectations (undated)”.

In a subsequent letter dated November 20, 2017, counsel, on behalf of Appellant, provided supplemental information including:

- Copies of the initial SNAP training and introductory letter provided upon Appellant’s SNAP authorization.
- A list of employees initially trained in SNAP policies and procedures at Appellant, with indication that no change in personnel has occurred thus averting a need for new employee training.
- Affirmation of counselor’s review of the aggressive re-training identified in the October 27, 2017 letter, with assurance that Internet training using the FNS SNAP training web link will be completed and fraud posters will be posted.
- Offering to have Appellant personnel undergo SNAP training at the USDA office in Nashville to remove any doubt or concerns regarding current training.

The preceding represents only a brief summary of Appellant’s contentions 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 herein.

ANALYSIS AND FINDINGS

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

With regards to Appellant’s contentions in explanation of questionable transactions, the issue in review is whether there is sufficient evidence, through a preponderance of that evidence, that it is more likely true than not true that the questionable transactions were the result of trafficking.

Appellant Operations:

The record reveals that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a store visit conducted by FNS contracted personnel on June 11, 2017. The June 11, 2017 visit was authorized by a self-declared “manager”, who is listed in the official agency record as a partner. The store visit resulted in materials reflecting observations made, and responses received, from the manager/partner during the store visit which describes the nature and scope of Appellant’s operation, as well as the stock and facilities.

The record indicates that Appellant was authorized in SNAP effective November 7, 2011 as a convenience store, in accordance with FNS definitions.

Appellant is currently reported to be open from 7AM until 11PM, Monday through Saturday; and, from 8AM until 11PM on Sunday. Appellant is indicated to be conducting business in a commercial space of approximately 2300 square feet, with approximately 300 square feet of storage space available outside of customer view. (See photos below)

Sketch of store provided for reference below:

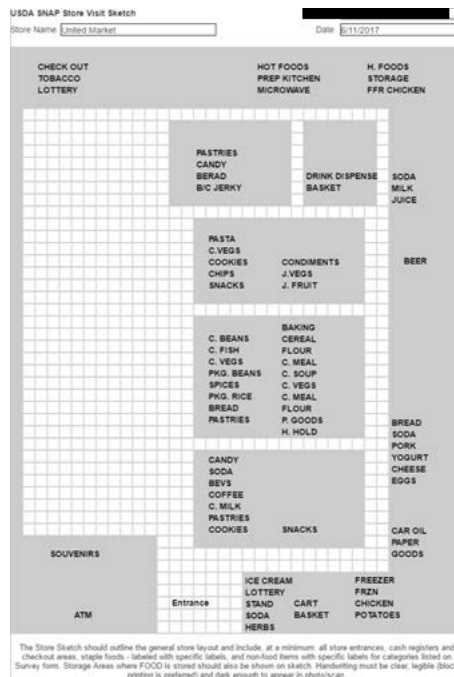


Photo # 39 – Store Sketch

The deli area is shown to be used for preparation of the made-to-order sandwiches and hot food as advertised (menu board photos below). A 300 square foot storage area was declared and documented at the time of the store visit.

The store visit materials describe United Market to be operating with one (1) general use cash register that is equipped with scanning technology; and, a second cash register used exclusively

for lottery transactions and Western Union money transfer service. The checkout operation is seen in the certified store visit photographs to include limited space for placement of products presented for purchase. The space is further limited with merchandise and lottery displays.

The store visit materials document that there are two (2) hand-held shopping baskets; and, one (1) shopping carts available to support the delivery of purchases to the counter/checkout area for the completion of merchandise price totaling and payment.

As indicated Appellant's operation includes a deli advertising breakfast made to order; cold and hot made-to-order sandwiches/ subs/ heroes; various lunch/dinner offerings; combo meals, side orders and, meat/cheese sold by weight. The deli does not display any meats or cheeses sold by weight.

Certified photographs from the June 11, 2017, contracted store visit are presented below:



Photo # 1 – Storefront



Photo #25 – Partial Store Overview



Photo # 5 – Food Preparation Area



Photo #19– Front View of Checkout Area



Photo # 9 – Menu Board – Hot food Chicken Unit



Photo # 18 – Souvenir, Smoking Paraphernalia, clothes

The inventory checklist completed at the time of the June 11, 2017 store visit identifies food varieties available in each of the four (4) staple food groups as follows:

- Four (4) varieties of dairy products including between six (6) and 20 units of milk; and, more than 20 units of cheese, ice cream, and sour cream/yogurt.
- Nine (9) varieties of fruits and vegetables with 100 percent juice and more than 20 potatoes as the only fresh/refrigerated or frozen foods. There were between six (6) and 20 units of canned carrots, parsnips/beets/ radishes or mixed vegetables; and more than 20 units of six (6) varieties of canned fruits and vegetables.
- Eight (8) varieties of breads and cereals were identified with between six (6) and 20 units of breakfast cereals and corn meal/grits; and the remaining six (6) varieties available in units of 20 or more. The only fresh/frozen or refrigerated foods identified were loaf bread and snack cakes.
- Six (6) varieties of meat/poultry/fish staple foods are identified in the store visit materials with three (3) cans of potted meat; five (5) units of eggs; six (6) to 20 packages of bacon/ham/sausage; and more than 20 units of chicken; canned finned fish, and meat jerky.

The menu describes hot and cold foods including breakfast offerings; cold and hot sandwiches; chicken tenders; corn dogs; burritos; fried chicken pre-made and set in warming trays to the left of the checkout counter sold by piece; hot wings sold by piece; and sides such as fries; wedges, and rice.

The four (4) most expensive items available for sale at the time of the store visit were identified to include:

- Chicken wings sold by the case @ \$42 for 2 packages (weight not provided);
- Dry beans @ \$8.49 for a 64 ounce package;
- Beef jerky @ \$7.89 for a 2.85 ounce package; and,
- Water sold by the 24 bottle case @ \$6.99.

Non-SNAP products and services offered at Appellant include hot food, alcoholic beverages (beer), lottery tickets; tobacco products, mobile phones/phone cards; automotive products; health and beauty aids; paper goods, cleaning products; housewares; hookah pipes and other smoking paraphernalia; T-shirts; souvenirs; and, an ATM.

Charge Letter Attachment Analysis:

The data reflected in the letter of charges dated August 3, 2017 is the result of information gained primarily from the Anti-Fraud Locator using Electronic Benefits Transfer (EBT) Retailer Transactions (ALERT) system which is a fraud detection, decision support system designed to monitor and track electronically conducted retail transactions completed by SNAP recipients in authorized meal program and food retailer locations.

The ALERT System facilitates management of the program by providing transaction-level information to Federal personnel charged with the responsibility of SNAP retailer management and compliance. The system uses pre-defined criteria or patterns for potential fraud detection. Pre-formatted reports provide information on those stores and transactions meeting the criteria. ALERT supports both online analysis and online queries and reports for use by FNS. The system does not make the final determination of sanction or disqualification instead it is used by Retailer Operations Division to develop information and evidence for consideration in support of their development of an ultimate decision.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The Retailer Operations Division documents that completing multiple transactions within a **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** period is a method used by some stores to avoid high dollar transactions that cannot be supported and are indicative of trafficking.

Retailer Operations Division determined that given Appellant's operational information it is not reasonable that households could bring to the counter quantities of SNAP eligible foods, in the amounts identified in the Attachment #1 materials, from the inventory identified at the store visit to support the transaction amounts or the transaction sets as listed.

Appellant contends that Appellant operates with two (2) cash registers and both registers are used early in the month when SNAP benefits become available to customers and SNAP expenditures are highest.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). The inventory of that product was not immediately visible and there would have to be multiple cases sold to attain the amounts identified. The delivery of enough merchandise to achieve the totals for the individual transactions are not reasonable amounts that can be hand carried to the counter because the two (2) hand-held baskets and one (1) shopping cart appear in the photos to be used to stock the firm by personnel based on their placement in the entryway to the stock room area.

Attachment #2: Represents **excessively large purchase transactions made from the accounts of SNAP recipients** with 100 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C).**
5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The Retailer Operations Division indicates that the average convenience store transaction in the State of Tennessee in the focus period was \$6.73; **5 U.S.C. § 552 (b)(6) & (b)(7)(C).**
5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Further suspicion is aroused with the 11 transactions (11 percent of the total transactions) were completed, using the SNAP/EBT card in the manual process, by a single household with transactions as indicated in the following table. **5 U.S.C. § 552 (b)(6) & (b)(7)(C).**

5 U.S.C. § 552 (b)(7)(E)

In response to the August 3, 2017 letter of charges Appellant, through counsel provided various documents to the Retailer Operations Division including:

- three (3) unsworn affidavits attesting to training for employees[notably two (2) of the three (3) documents were signed by individuals identified as partners in the official record];
- demographic information supporting the contention that Appellant is located in an area with an impoverished Hispanic/Latino population who it caters to;
- 55 photos of the firm's inventory indicating it consists largely of favorite items unique to the Hispanic culture;
- an inventory list citing household items reported to be sought after by the Hispanic population;
- multiple copies of a returned check from Appellant's bank;
- over 200 invoices dated both inside and outside the review period;
- a letter from Appellant's bank about the refund of an incorrectly charged cash deposit fee; and,
- a credit card processing statement from June 2017.

Appellant contends that it operates as a "SUPER MERCADO" providing ethnic specialty items to the significant (36.1 percent), and growing Hispanic/Latino population of the area, 21 percent of whom report incomes below \$25,000.

Appellant provided photos and invoices support the contention that a significant part of the inventory purchases were made for recognized Hispanic culture products such as: imported soda; cookies and pastries; coffee; prepared flour for use in making tortillas; corn and flour tortillas; Jumex juices; Goya brand canned and dry goods; cheeses; spices; and Hispanic branded non-foods including candles; laundry soap; laundry softener; and general cleaners with Hispanic labels.

Invoice Materials:

The invoice materials provided for consideration were fully analyzed and tallied by the Retailer Operations Division and the record shows that during the focus period a total of more than 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in inventory was purchased; presumably supporting the approximately redacted per 7 U.S.C. 2018 (b)(6) & (b)(7)(c) in SNAP redemptions recorded for the same period. While it would appear that the inventory purchases are reasonable it is noted that the transaction totals as listed in the charge letter attachments are still not reasonable in consideration of Appellant's operational information.

Comparison/Competitor Store Information:

Retailer Operations Division documents that the subject firm is located in an area that includes at least five (5) other SNAP authorized retailers with a one (1) mile radius consisting of four (4) convenience stores and a combination dollar type store. Extending the radius to two (2) miles reveals 15 additional convenience stores; nine (9) dollar type stores; two (2) medium grocery stores; one (1) supermarket; and three (3) superstores. The nearest superstore, a Walmart is located 1.42 miles away. Notably a medium grocery store "Mercado" is located 1.19 miles away.

Retailer Operations Division completed a comparison analysis of the SNAP redemptions, transaction count, average transactions, and incidence of occurrence of suspicious transactions in the same categories as those identified for Appellant using the State and County averages as well as the four (4) nearest comparable convenience stores. The results are demonstrated in the following table:

5 U.S.C. § 552 (b)(7)(E)

Clearly Appellant's results are suspiciously distinct when evaluating the State as a whole, the county, and four (4) of its closest competitors. There has been no reasonable explanation offered for the distinctions. The four (4) comparison firms are obviously within the same geographic, economic, and demographic area as Appellant, similarly serving the same population.

Household Analysis:

The Retailer Operations Division documents analyzing four (4) households to illustrate suspicious transactions at Appellant. Each of the households is found to have conducted numerous suspicious transactions with United Market while also shopping at larger, better stocked, and likely better priced grocery stores, supermarkets and superstores.

- 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

“Super Mercado” operation:

Appellant contends that it operates as a “Super Mercado”, catering specifically to the local Hispanic population. Retailer Operations Division affirms that the merchandise seen in the official store visit photographs; and, shown on the invoices presented for consideration indeed show a significant portion of Hispanic branded items. However, Retailer Operations Division notes that the store signage (promotional and instructional) is all seen in the official store visit photographs to be depicted in English. While the merchandise does appear to be Hispanic branded it is notable that the brands seen are generally commonly available in many markets well beyond Hispanic population areas.

In the instant case a medium grocery store, advertising as a “Mercado”, located 1.19 miles from Appellant was specifically reviewed and found to have not only exactly branded products but a much more robust selection. Appellant notably does not offer any fresh produce beyond the few onions and potatoes marked on the store visit inventory document. The medium grocery store is shown to carry a variety of fresh produce. Similarly, while Appellant is not noted to carry fresh meat, poultry or seafood, beyond a limited supply of ham, bacon and sausage; and, chicken wings in case quantities, the medium grocery store has an extensive selection of fresh meats and poultry products.

The official store visit photographs for one (1) of the comparison convenience stores (located at 0.77) from Appellant reveals that it also carries similarly Hispanic branded merchandise to that seen in Appellant’s June 11, 2017 official store visit.

Clean Business since 2011:

The record shows that Appellant’s contention regarding the operation of a “clean business” is supported with the official agency record as it relates to SNAP benefits. However, a record of participation in the SNAP with no previously documented instances of violations does not constitute valid grounds to dismissal of the current charges of violations; or, for mitigating the impact of the violations upon the penalty assessed.

Appellant contends that the transactions identified in the letter of charges represent legitimate SNAP/EBT transactions, however, despite having a cash register system that itemizes transactions no evidence that the transactions were legitimate was provided for consideration

As indicated in 7 U.S.C. §2021(b)(3)(B) FNS is not afforded any latitude to consider lesser penalties for violations of trafficking, except in those cases where the firm meets established eligibility requirements for a CMP in lieu of disqualification.

Decline in Suspicious Activity:

Retailer Operations Division identified a suspicious decline in Appellant’s redemptions and number of transactions in June 2017, following the June 11, 2017 contracted store visit. SNAP redemptions are indicated to have declined by more than 47 percent, the suspicious repeated transactions by individual households declined by 80 percent; and, excessively large transactions reduced by 65 percent. Similarly the suspicious SNAP transactions for July and August continued to decline, and, in August 2017 there were no suspicious transactions identified for Appellant in either pattern. No reasoning is provided for the clear change in operational outcomes is readily apparent.

Civil Money Penalty (CMP):

Part 278.6(f)(1) of the SNAP regulations provides for civil money penalty assessments in cases where disqualification would cause “hardship” to SNAP households because of the unavailability of a comparable participating food store in the area to meet their needs. However, this regulation also sets forth the following specific exception to assessments thereunder: “A civil money penalty for hardship to Food Stamp [SNAP] households may not be imposed in lieu of a permanent disqualification.” Therefore, this civil money penalty provision is not applicable in the present case.

As previously indicated the October 16, 2017 determination letter advised Appellant of the ineligibility for consideration for a trafficking civil money penalty (CMP) according to the terms of Section § 278.6(i) of the SNAP regulations. The letter of charges dated August 3, 2017 advised Appellant that documentation of eligibility for that alternative sanction was to be provided within 10 days.

The record documents that Appellant is willing to take whatever necessary steps to avert future suspicion of SNAP violations. The October 27, 2017 request for appeal specifically delineated steps being undertaken such as:

- purchasing more sophisticated cash registers able to more completely identify SNAP eligible vs SNAP ineligible items;
- the provision of documented training and retraining for all Appellant personnel, using Agency provided materials and on-line references;
- advice to all personnel that attestation of compliance training subjects them to a penalty of perjury for any SNAP violations conducted following signature; and,
- maintenance of records of SNAP program change and training materials received via Agency notification; and,

- placement of fraud posters.

In a subsequent letter, dated November 20, 2017, additional materials were submitted affirming the 2011 SNAP training provided to initial employees who have not changed; an affirmation of counselor's review of the aggressive re-training identified in the October 27, 2017 letter, with assurance that Internet training using the FNS SNAP training web link will be completed and fraud posters will be posted; and an offer to have Appellant personnel undergo SNAP training at the USDA office in Nashville to remove any doubt or concerns regarding current training.

Notably all of the materials identified to reference SNAP compliance policies and training were received well after the deadline established as 10 days from Appellant's receipt of the August 3, 2017 letter of charges. Retailer Operations Division documented that both Appellant and counsel had been advised that no extension to the provision of a request for CMP, which would include materials such as those cited, was allowed per regulation.

7 CFR §278.6(i) specifies the criteria for a firm's eligibility for a civil money penalty in lieu of permanent disqualification for trafficking, stating in relevant part, "FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking as defined in §271.2 if the firm **timely** submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program." The materials provided by Appellant were not timely provided and therefore cannot be considered for the imposition of an alternative CMP in lieu of permanent disqualification. Therefore, on review the Retailer Operations Division's determination that Appellant firm is ineligible for the imposition of civil money penalties in lieu of disqualification is affirmed.

CONCLUSION

The Retailer Operations Division analysis of Appellant's EBT transaction records, upon which charges of violations are based, together with observations made during the contracted store visit provide substantial evidence that questionable transactions during the focus period have characteristics that are not consistent with legitimate sales of eligible food to SNAP customers at a store of the nature and scope as described in the preceding materials. Rather, the characteristics are indicative of illegal trafficking in program benefits.

Therefore, based on a review of the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged and that the Retailer Operations Division has provided substantial evidence of trafficking violations.

Based on the discussion above, the decision to impose a permanent disqualification from participation in the SNAP against United Market is sustained.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in 7 U.S.C. § 2023 and 7 CFR §279.7. If a judicial review is desired, the complaint must be filed in the U.S. District Court for the district in which Appellant's owner resides, is engaged in business, or in any court of record of the State having competent jurisdiction. This complaint, naming the United States as the defendant, 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.

NANCY BACA-STEPAN
Administrative Review Officer

March 26, 2018