

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

**Vincent Convenience Market LLC d/b/a
Vincent Convenience Market,**

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0196070

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 Vincent Convenience Market LLC d/b/a Vincent Convenience Market (hereinafter “Vincent Convenience 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 Vincent Convenience Market in a letter dated July 25, 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 February 6, 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 ownership, and that the response was duly considered. Following that due consideration to the letter of charges, 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 July 25, 2017, documented to have been delivered to Appellant on July 31, 2017.

The determination letter also stated 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 any 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 August 7, 2017, received in the offices of the Administrative Review Branch on August 10, 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

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.

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.

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

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

7 CFR § 278.6(e)(1)(i) states, *inter alia*:

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

7 CFR § 271.2 states, *inter alia*:

*“ **Trafficking** means the buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits ... 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, *inter alia*:

“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, *inter alia*:

*“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, *inter alia*:

“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...”

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

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

7 CFR § 278.6(i), states, *inter alia*:

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

SUMMARY OF THE CHARGES

The Retailer Operations Division materials and the charge letter dated February 6, 2017, reveal that charges were based on an analysis of EBT SNAP benefit transaction data during the six (6) month period of June 2016 through November 2016 and involved three (3) patterns of EBT transaction characteristics indicative of trafficking as follow:

- Attachment #1 lists multiple SNAP EBT transactions made too rapidly to be credible.
- Attachment #2 lists multiple SNAP EBT transactions made from individual benefit accounts in unusually short timeframes.
- Attachment #3 lists excessively large purchase transactions made from the accounts of SNAP recipients.

APPELLANT’S CONTENTIONS

In the letter dated August 7, 2017, counsel, on behalf of Appellant, requested review of the permanent disqualification offering contentions that include:

- Explanation that the owners:
 - immigrated to the United States from Vietnam and are now citizens;
 - have operated Appellant for approximately a decade without instance of violation or administrative or criminal action taken against them;
 - always pay taxes;
 - have hired an accountant and taken obligations as citizens and business people seriously; and,

- are willing to meet with SNAP representatives to explain business, and/or to have video monitoring conducted.
- Statistical information does not mean trafficking but only serves as a basis for inquiry.
- The transactions identified in the letter of charges are the same from one attachment to next.
- Appellant operates with one (1) point-of-service device supporting three (3) cash registers which explains why transactions can be processed in the times identified as customers conduct transactions simultaneously; customers sometimes request that large orders be divided; and the cost of items – i.e. energy drinks and food items easily total amounts called large.
- Appellant conducted a large sales volume in 2016 with revenue of 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Tax return to be sent.
- A notarized affidavit from Duy (Louis) Nguyen affirms the explanations provided.

In a letter dated August 11, 2017 counsel requested that someone with some statistical analysis experience examine the exhibits provided; and, indicated that interviews were being conducted to support the provision of additional information.

In a letter dated September 7, 2017 counsel provided information for consideration including:

- Indication that there was never an on-site investigation conducted of Appellant beyond a visit wherein it was indicated that Appellant's processes were in order.
- Reference to *Duchimza v. US, Dist, Court, D. Connecticut, 2016* citing questionable expert testimony provided by USDA; noting that absent in-person investigation it is hard to understand the imposition of a permanent disqualification; and noting the inadequacy of comparison stores in the *Duchimza* case.
- Materials evidencing SNAP refresher training materials provided for employees in 2017.
- Requesting "any other data or information that was used to substantiate the claims made concerning our client's alleged trafficking".

Counsel's request for further information as understood to imply a Freedom of Information Act request and was processed accordingly, with a response provided to counsel from the FOIA Officer for the FNS dated October 24, 2017. No further information and/or materials have been received by the administrative review officer as of this writing on January 17, 2018.

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:

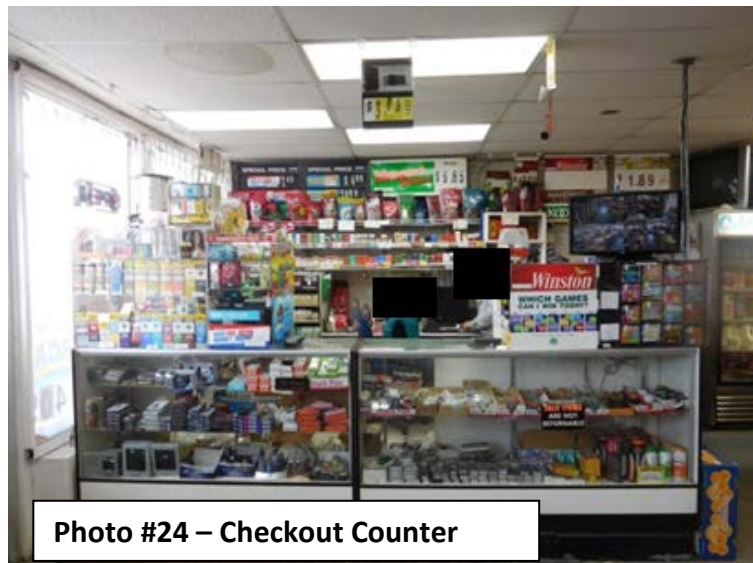
The record reveals that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a store visit conducted by FNS contracted personnel on November 28, 2016.

The November 28, 2016 visit was authorized by the self-identified "owner" and resulted in materials reflecting observations made during the store visit which describe the nature and scope of Appellant's operation, as well as the stock and facilities which are then used by the Retailer Operations Division in their evaluation of the charge letter materials.

Appellant is reported to be open six (6) days per week from 4:30AM until 7:30PM on Monday through Friday; from 5:30AM until 6:00PM on Saturday; and, closed on Sunday; estimated to be operating out of a commercial space of approximately 1200 square feet at street level of what appears to second story housing. No out of public view storage was declared or identified in either the store visit certified photographs or the sketch of the store layout.



The store visit materials describe Vincent Convenience Market as a convenience store, operating with two (2) general use cash registers that are not equipped with scanning technology; supported with one (1) point-of-sale (POS) terminal. Notably on review Appellant declares three (3) cash registers however it is also noted that lottery tickets are sold therefore it is reasonable that the third checkout register is not set up for general use but exclusively used for lottery transactions.



The store visit materials document that there are less than ten (10) hand-held shopping baskets; and no shopping carts available to support the delivery of purchases to the counter/checkout area for the completion of merchandise price totaling and payment. The area identifiable for staging and packaging of items presented for purchase appears limited to the space seen on top of the glass display cases that also include merchandise displays on each side of the clear space.

The record indicates that Appellant was authorized as a SNAP retailer on February 23, 2007.

Below are two (2) officially certified photographs showing the general store layout (Photo #14 on left taken from front of store and photo #22 on the right taken from the back of the store). The depth of stock as seen in the photographs appears to include merchandise that is fronted (positioned to the front of the shelves) and available in limited numbers for each variety.



Photo #14 – General Layout (taken front of store to back)



**Photo #22 – General Layout
(taken back of store to front)**

The inventory at the time of the November 28, 2016 store visit includes varieties in each of the four (4) staple food groups as follows:

- Four (4) varieties of dairy products with more than 20 units identified in three (3) [butter/margarine; cheese; milk] and two (2) units of sour cream in variety number four (4).
- Seventeen (17) varieties of fruits and vegetables with seven (7) of those in volume of more than 20 units; five (5) of the varieties including both fresh/frozen and canned

goods. Three (3) of the varieties are documented to include five (5) or less stocking units, with two (2) fresh apples; two (2) cans of pears; and five (5) cans of corn. Fresh watermelon and grapes (seen in photographs) are available together with limited numbers of bell peppers, potatoes, fresh and canned tomatoes, and greens.

- Nine (9) varieties of breads and cereals were identified with five (5) of those available in units of 20 or more. The only fresh/frozen/refrigerated items identified in this category include bread and cakes/muffins.
- Nine (9) varieties of meat/poultry/fish staple foods are identified in the store visit materials with pre-packaged deli meats and eggs listed as fresh/frozen/refrigerated. The inventory appears to include a substantial supply of canned meat and fish.

Non-SNAP products and services offered at Appellant include tobacco products, alcohol, lottery tickets, cleaning products, health and beauty aids, paper products; and an ATM.

Charge Letter Attachment Analysis:

The data reflected in the letter of charges dated February 6, 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 instead it is used by Retailer Operations Division to develop information and evidence for consideration in support of their ultimate decision.

Attachment #1: Represents **multiple SNAP EBT transactions made too rapidly to be credible** and includes 34 transactions; grouped in 17 sets; where 11 households redeemed SNAP benefits in sets of two (2); 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The Retailer Operations Division documents that because there are multiple steps in processing each transaction such as handling each individual item, brought to the counter with the use of less than ten (10) hand-held shopping baskets; key entering the prices into the register; and, placing aside the item for packaging, it is unreasonable for the transactions identified to have been processed in the time listed.

On review it is noted that six (6) of the transaction sets included one (1) of the two (2) transactions in the amount 5 U.S.C. § 552 (b)(6) & (b)(7)(C); it is not unreasonable for those transaction to be conducted within the time documented when considering Appellant's

contention that both cash registers are sometimes used to facilitate processing. Four (4) of the six (6) households with 5 U.S.C. § 552 (b)(6) & (b)(7)(C) less transactions had only the one (1) set of transactions; therefore, seven (7) households remain in the suspicious transaction pattern. Four (4) of the households repeated the transaction pattern in more than one (1) month.

The suspicious pattern is not representative of many transaction sets although it is questionable that transactions such as #1 and #2 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Appellant is not documented to stock fresh meats beyond the deli style pre-packaged type. The official store photographs do include evidence that there are some frozen items available such as breakfast burritos, and frozen potatoes, and two (2) whole frozen hens. No individual items could be identified to be priced 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Nonetheless, seven (7) households conducting multiple transactions over the course of six (6) months in a suspicious pattern is not representative of a significant enough pattern to support consideration of the pattern as identified. Therefore, the Attachment #1 to the letter of charges is being eliminated from consideration in the determination of whether or not the evidence supports the permanent disqualification of Appellant.

Attachment #2: Represents **multiple SNAP EBT transactions made from individual benefit accounts in unusually short timeframes** and includes 42 transactions; grouped in 19 sets; where 11 households redeemed SNAP benefits in sets of two (2) to three (3) 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 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; the materials in review did not evidence any reason why SNAP customers would consider Appellant as its first choice food destination for multiple purchases.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Retailer Operations Division documents that the stock and facilities (limited counter space, no carts, only few hand-held baskets, and, no scanning capability) do not support the repeated transactions by individual households.

Appellant provides that it is operated with one (1) point-of-service device supporting three (3) cash registers which explains why transactions can be processed in the times identified as customers conduct transactions simultaneously; request that large orders sometimes be divided; and the costs of items – i.e. energy drinks and food items - easily total amounts called large. As discussed previously whether there are (2) or three (3) general use cash registers (which is not reconciled between the store visit materials and Appellant's contention) it is reasonable that transactions can be conducted rapidly when they are completed on distinct cash registers through one (1) point-of-sale device; or are divided upon customer request; no evidence affirming

merchandise prices was provided to verify the statement that items an easily total to the amounts identified.

The determination of the Retailer Operations Division 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 #2 materials, from the inventory identified at the store visit to support the transaction amounts or the transaction sets as listed is sustained.

Attachment #3: Represents **excessively large purchase transactions made from the accounts of SNAP recipients** with 61 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 Colorado in the focus period was \$7.21. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

In reply to the charges identified in Attachment #3 Appellant indicates that customer purchases are not limited as no reference to such limits is included in the SNAP Training Guide. Appellant indicates that "big purchases of food inventory" are made from Sam's Club and Costco, providing five (5) monthly Sam's Club statements and three (3) Citi Card Costco statements for consideration. Appellant further describes that food items in combination with energy drinks can total the amounts identified as excessively large.

None of the receipts provided include itemized purchase information therefore the materials cannot be used to validate the contention that these purchases represent inventory to support the volume of SNAP redemptions recorded at Appellant in the focus period.

Retailer Operations Division documents that the transactions are suspicious in consideration of the operation and facilities of Appellant citing no identified specialty items for sale, no fresh meats, limited fresh produce, and no expensive food stock.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Appellant did not provide any evidence of the availability of a significant inventory of energy drinks; and, the food items identified in the certified store visit photographs do not appear to represent items of significant cost.

The transactions identified in the letter of charges as suspicious in Attachment #3 are not supportable in consideration of the contentions as provided by Appellant.

Comparison/Competitor Store Information:

Retailer Operations Division documents that the subject firm is located in an area that is well served by SNAP authorized retailers including two (2) superstores; one (1) supermarket; and one (1) large grocery store.

Comparison of the average number of transactions and the average transaction amounts for Vincent Convenience Market and the three (3) closest competitor convenience stores reveals that the SNAP redemption volume for two (2) of the three (3) comparison stores is lower. The nearest convenience store records a slightly higher volume of SNAP redemptions, a higher average transaction amount, and a higher number of excessively large transactions identified; however, the number of both rapid multiple transactions and multiple transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is significantly lower.

5 U.S.C. § 552 (b)(7)(E).

5 U.S.C. § 552 (b)(7)(E).

Household Analysis:

An analysis was completed of the SNAP transactions of three (3) households identified in the attachment materials to the letter of charges. The analysis reveals that each of the households analyzed conducted numerous suspicious transactions at Appellant, clearly distinct from the patterns for the same households at alternative shopping venues as described by the Retailer Operations Division.

For example:

- The first household recorded is documented to have conducted two (2) SNAP transactions simultaneously, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in redemptions, in three (3) of the six (6) months in the focus period.

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

Ownership Information:

Per counsel's explanation Appellant's ownership consists of individuals who immigrated to the United States from Vietnam and are now citizens; have operated Appellant for approximately a decade without instance of violation or administrative or criminal action taken against them;

always pay taxes; have hired an accountant and taken obligations as citizens and business people seriously; and, are willing to meet with SNAP representatives to explain business, and/or to have video monitoring conducted.

These contentions, while conveying the integrity and business ethics of ownership, are not directly related to the charges in review. The scope of this review is limited to the charges as identified in the February 6, 2017 letter of charges and the determination conveyed in a letter dated July 25, 2017.

Denial of Charges:

Appellant, through counsel, has provided a notarized affidavit from one (1) of the owners of record indicating that there has been no exchange of SNAP for cash (trafficking) or for any other non-allowable use. However, absent evidence and rationale in support of the contention, the contention cannot be used to mitigate or reverse the current charges in review.

SNAP Transaction Patterns Repetitious:

Appellant provides that the transactions identified in each of the attachments to the letter of charges are representative of the same transaction, providing 16 examples of the duplication. While it is affirmed that some of the transactions identified in the different attachments are duplicative, they have been identified in each of the patterns by virtue of meeting the different considerations used to establish each pattern.

Duchimza v US, Dist. Court, D. Connecticut 2016:

In materials dated September 7, 2017 counsel, on behalf of Appellant drew some parallels between the cited court case and the situation in review in the instant case. Appellant indicates that 1) there was never an on-site investigation at Appellant inferring that one is necessary to support a determination that trafficking is occurring; 2) the determination of trafficking in the instant case has been based solely on statistical analysis; and 3) the comparison stores in the instant case may not have been supportable as comparisons.

- 1) As referenced previously in these materials, the record documents that an on-site visit was conducted at Appellant on November 28, 2016. Notably the personnel conducting that visit were not FNS staff but individuals on contract to review Appellant's inventory, store layout, general operation and document the findings of that visit. Those personnel were not in a position with authority to affirm for Appellant "that their processes were in order and according to SNAP guidelines".
- 2) The information gained from the contracted store visit were considered in conjunction with the statistically identified patterns as well as Appellant's explanations by the Retailer Operations Division to achieve a final determination.

- 3) As indicated in the table above there is no evidence that the comparison stores in the instant case were not comparable for the purposes of the determination in consideration.

SNAP Redemptions Change:

5 U.S.C. § 552 (b)(7)(E)

Civil Money Penalty:

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 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 July 25, 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 February 6, 2017 advised Appellant that documentation of eligibility for that alternative sanction was to be provided within 10 days. The record documents that no timely request for a civil money penalty in lieu of disqualification was made by Appellant, either verbally or in writing.

Appended to the September 7, 2017 response from counsel there are documents which describe the “EBT Compliance Program Guidance”; a “Compliance Monition Checklist” signed and dated August 1, 2017; and a “Complete an EBT Transaction” step by step procedure. These materials:

- do not evidence the existence of an effective compliance policy at the time of the charges;
- were not received within 10 days of the delivery of the letter of charges; and,
- do not meet the four (4) criteria as described in regulation including:
 - Written and dated documentation that showed a commitment to ensuring that the firm was operated in a manner consistent with SNAP regulations;
 - Documentation of the development of a policy to terminate violating employees;
 - Documentation of the development of procedures for internal review of employee compliance with SNAP regulations; and,

- Documentation of procedures or policy addressing corrective action if violations were identified.

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 as a SNAP authorized retailer against Vincent Convenience 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

January 17, 2018