

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

Zoom Zoom #5,

Appellant,

v.

Case Number: C0210317

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that a permanent disqualification of Zoom Zoom #5 (hereinafter “Appellant”) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed by the Retailer Operations Division.

ISSUE

The issue accepted for review is whether or not the Retailer Operations Division, in its administration of SNAP, took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, when it imposed a permanent disqualification against Zoom Zoom #5.

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.”

SUMMARY OF CHARGES

The Appellant was charged with trafficking and subsequently permanently disqualified based on an analysis of EBT transaction data from February 2018 through May 2018. This involved the following transaction patterns which are common trafficking indicators:

- There were multiple transactions made from the accounts of individual SNAP households within a set time period.
- Excessively large purchase transactions were made from recipient accounts.

CASE CHRONOLOGY

The agency's record shows that FNS initially authorized Zoom Zoom #5 for SNAP participation as a convenience store on November 2, 2010. In a letter dated July 18, 2018, the 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 between the months of February 2018 and May 2018. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also stated that the Appellant could request a civil money penalty (CMP) in lieu of permanent disqualification for trafficking, but noted that such a request must be made within 10 days of receipt of the charge letter under the conditions specified in 7 CFR § 278.6(i).

In correspondence between July 23, 2018, and August 7, 2018, the Appellant owner and his attorney responded to the charge letter, claiming that the firm did not engage in any illegal acts and requesting a CMP in lieu of permanent disqualification. In support of its response, the Appellant submitted handwritten letters from the two owners and one employee attesting to participation in training activities related to the acceptance of SNAP benefits. The Appellant also submitted handwritten statements from three apparent SNAP participants, claiming that they regularly shop at Zoom Zoom #5 and spend large amounts of money from their SNAP accounts. Finally, the Appellant submitted 54 pages of inventory invoices listing merchandise offered for sale in the store.

After reviewing the Appellant's response to the charges and further considering the evidence in the case, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated August 16, 2018. This letter informed the Appellant that it would be permanently disqualified from SNAP upon receipt of the letter in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The letter also stated that the Retailer Operations Division considered the Appellant's eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the regulations, but determined that a CMP was not appropriate in this case because the Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations.

In a letter postmarked August 24, 2018, the Appellant, through counsel, appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted.

STANDARD OF REVIEW

In an appeal of adverse action, such as disqualification from SNAP participation, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that 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 found in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 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, in part:

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

7 CFR § 278.6(a) states, in part:

FNS may disqualify any authorized retail food store...if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, [or] evidence obtained through a transaction report under an electronic benefit transfer system....

7 CFR § 278.6(e)(1)(i) states:

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

7 CFR § 271.2 states, in part:

Trafficking means: The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone...

7 CFR § 271.2 states, in 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(b)(1) states, in part:

Any firm considered for disqualification...under paragraph (a) of this section...shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of noncompliance before FNS makes a final administrative determination. The FNS regional office shall send the firm a letter of charges before making such determination. The letter shall specify the violations or actions which FNS believes constitute a basis for disqualification.... The letter shall inform the firm that it may respond either orally or in writing to the charges contained in the letter within 10 days of receiving the letter...

7 CFR § 278.6(c) states, in part:

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) of this section, 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, regardless of whether a request for review is filed in accordance with part 279 of this chapter.

7 CFR § 278.6(b)(2)(ii) states, in 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).

7 CFR § 278.6(b)(2)(iii) states:

If a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified in § 278.6(b)(1), the firm shall not be eligible for such a penalty.

7 CFR § 278.6(i) states, in part:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking ... if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program... In determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of permanent disqualification for trafficking, the firm shall, at a minimum, establish by substantial evidence its fulfillment of each of the following criteria:

Criterion 1. The firm shall have developed an effective compliance policy as specified in § 278.6(i)(1); and

Criterion 2. The firm shall establish that both its compliance policy and program were in operation at the location where the violation(s) occurred prior to the occurrence of the 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...

APPELLANT'S CONTENTIONS

The Appellant, through counsel, made the following summarized contentions in its request for administrative review, in relevant part:

- Appellant wishes to prove that it did not engage in any illegal acts stemming from large transactions and the high volume of transactions from the same card holder in a short period of time.
- The store is located in a low-income neighborhood in a notorious neighborhood for poverty. This leads to a higher than normal amount of EBT business. The store is

surrounded by multi-family housing units where the majority of tenants use EBT for nearly all of their groceries.

- Most of the firm's customers buy groceries for the entire household, as would a customer at a fully-fledged grocery store.
- The firm is a high-volume seller of meat products in large quantities.
- The average family consists of three to eight children and a single parent, which requires a higher than usual consumption of eligible food items.
- The EBT card can be used numerous times throughout the day because there are many individuals in each family and there are a large number of unemployed persons who visit the store.
- The firm has a high volume of sales and cost of goods, incorporating both EBT and non-EBT sales.
- Since the firm's authorization, there have never been any violations of SNAP law; nor has the firm ever been under investigation for trafficking in SNAP benefits.
- The Appellant and its employees review their SNAP user's manual on a regular basis.
- The firm sells a high volume of frozen goods that account for what FNS has called "excessively large transactions."
- The store is fully stocked with SNAP-eligible food items.
- Regarding Attachment 1 (multiple transactions from the same household within a set time period):
 - The store is located in an urban area with numerous families with many children. The children make purchases at various times for themselves and their family. Because there are many people in each family, the individual transactions reflect these numbers. It is impossible to track the needs of each family.
 - Once a customer makes their first purchase, the customer then asks how much money is left on the card. Based on the reply, they will purchase more groceries. They often make a test purchase and then plan for future purchases, 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
 - The SNAP manual does not permit store owners to question the purchases of SNAP-eligible food items. Store owners are not allowed to restrict the time or purchase amounts of their customers.
 - Many customers buy large quantities of frozen goods to meet the family's needs for a whole month and eliminate the need for frequent visits to the store.
 - Many customers do not own vehicles. Other customers are restricted to wheelchairs or have other accessibility issues that make it difficult to make frequent trips to the grocery store. As such, buying in bulk is a practical option.
- Regarding Attachment 2 (excessively large transactions):
 - Most customers have large families. As a result, the children do much of the family's shopping. They routinely return to the store numerous times, sporadically, to pick up more items to take home. For this reason, the transactions are not bundled together in one or two transactions like a family living in the suburbs might do.
 - It is common for transactions to be excessively large since there are sometimes seven children with different needs living in the home.
 - Since the store is located within a short walking distance for many customers, there are often many transactions from the same card holder.

- The firm sells large amounts of higher priced merchandise, such as frozen pizza, brisket, pork chops, ribs, and chicken wings.
- The transactions are not unreasonably large. The firm has shopping baskets that can hold a sizeable amount of goods. There are no transactions listed in the charge letter that would exceed the expectation of a normal trip to a grocery store.
- There are no violations that have ever taken place and there has been no benefit to the Appellant by any misuse of EBT.
- Frozen foods make up the larger transactions at the store and numerous family members sharing one EBT card create a higher volume of purchases.
- Appellant requests approval of a CMP and asks to remain authorized to accept SNAP benefits at the store.

In support of its contentions, the Appellant submitted the following documentation:

- Handwritten letters from the two Appellant owners (one dated July 28, 2018, the other undated), indicating that they had three weeks of training. In the second week of training, they learned how to use the cash register, credit card machine, and EBT machine. They also watched the USDA rules and regulations video.
- Handwritten letter from a store employee, dated July 23, 2018, stating that he or she learned how to use the cash register, credit card machine, and EBT machine. This person also watched the USDA rules and regulations video.
- Handwritten statements from three customers attesting to using their SNAP benefits at Zoom Zoom #5 for eligible food items.
- Two letters of support from community members urging FNS not to close the store down for the sake of the local residents and indicating that the store owner contributes positively to the community.
- Thirty-two inventory invoices from Silver Star Wholesale and The Milk Guy!, some of which had been submitted previously to the Retailer Operations Division.
- A three-page, handwritten list of products apparently available for purchase at the store, along with their wholesale prices, retail prices, and markup percentages.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. However, in reaching a decision, full attention was given to all contentions and evidence presented, including any not specifically summarized or explicitly referenced in this document.

ANALYSIS AND FINDINGS

The primary issue for consideration in a case based on suspicious SNAP redemption data is whether or not the Retailer Operations Division adequately established that the Appellant firm engaged in the violation of trafficking. In other words, did the Retailer Operations Division, through a preponderance of the evidence, establish that it is more likely true than not true that the irregular and unusual transactions cited in the charge letter were the result of trafficking?

Contractor Store Visit

The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered not only the Appellant firm's EBT transactions, but also information obtained during a June 26, 2018, store visit which was conducted by an FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This store visit information was used to ascertain if there were justifiable explanations for the firm's irregular SNAP transaction patterns. The store visit report and photographs documented the following store size, description, and characteristics:

- Zoom Zoom #5 is a standard gas station/convenience store, approximately 1,400 square feet in size, operating in the city of Wichita Falls, Wichita County, Texas.
- At the time of the contractor's visit, the firm apparently had one shopping cart and one handheld shopping basket for customer use, but neither is visible in any of the contractor's photographs. The very limited number of such carts and baskets is not unusual for stores of this size. Customers shopping in convenience stores generally purchase only as much food as they can carry in their arms.
- The store visit photographs show one cash register for food purchases and agency records reflect the use of one EBT point-of-sale device.
- It appears that the firm uses optical scanners to process transactions.
- The checkout area consists of a small cluttered countertop where items can be placed for purchase. The constricted checkout area is not suitable for conducting large or rapid transactions as there is very little space on the counter to place more than two or three small items at a time and little room for customers to maneuver with large amounts of groceries.
- The store's staple food inventory in each of the four staple food categories is sufficient for program eligibility, but meager in its overall depth and breadth of stock. It is clear that the focus of the store is on snack foods, drinks, hot foods, and non-foods rather than staple foods.
- SNAP-eligible, non-staple accessory food items available at the store include carbonated and uncarbonated drinks, snacks, candy, and condiments. The store also sells ineligible, nonfood items, including gasoline, alcoholic beverages, tobacco products, cleaning supplies, personal care items, automotive products, and other miscellaneous household merchandise.
- The store also sells hot prepared foods, including hot brisket sandwiches, loaded baked potatoes, etc.
- There is no evidence that the store sells meat or cheese by the pound and no evidence that the firm sells any items in bulk, such as meat bundles or fruit and vegetable boxes.
- There is no indication from the store visit report that the firm has a special pricing structure. From all indications, most prices appear to end in 9, such as \$0.99, \$1.69, etc.
- According to the contractor's report, the most expensive SNAP-eligible food item was a 3-ounce package of Matador beef jerky selling for \$6.59. All other eligible foods were less than \$5.00 each, which is not unusual for a store selling primarily snack foods and drinks.

The available inventory of SNAP-eligible food at the time of the store visit showed stock that would be typical of a gas station/convenience store, where households normally purchase a limited number of items to complement their overall dietary needs. There was no indication that SNAP households would be inclined to regularly visit Zoom Zoom #5 to purchase large quantities of groceries, especially considering the very limited number of shopping carts and baskets and the availability of larger SNAP-authorized grocery stores just a short distance away, including both a supermarket and a large grocery store. Given the available inventory and the store's characteristics, this review could find no reason why the Appellant firm's SNAP redemption patterns differed so significantly from those of nearby, similar-sized competitors.

SNAP Transaction Analysis

Charge Letter Attachment 1: Multiple transactions were made from the accounts of individual SNAP households within a set time period. This attachment lists 15 sets of transactions (37 transactions in all) 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E).

For example, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), an extraordinary amount for a convenience store/gas station like Zoom Zoom #5, which has very few expensive food items. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This review cannot comprehend what would have been available at Zoom Zoom #5, a marginally-stocked convenience store, that would not have been available at the much larger supermarket, which has much greater variety and inventory and a full complement of shopping carts and shopping baskets to help transport a large number of food items. Such shopping behavior is very often indicative of trafficking.

Considering the amount of food it would take to add up to the transaction totals in Attachment 1, this review finds it very unlikely that these could be legitimate transactions.

The Appellant has made a number of contentions related to Attachment 1, including the argument that numerous families have many children. According to the Appellant, the children or other household members make purchases at various times for themselves and their family. The Appellant further claims that customers will often make a test purchase, and then once they discover their remaining SNAP balance, they make future purchases, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The Appellant also argues that the SNAP manual does not permit store owners to question the purchases of SNAP-eligible food items or restrict the time or purchase amount of their customers.

Unfortunately, the Appellant has not offered any relevant evidence to support its claims. It did offer a few handwritten statements from customers describing their shopping habits, but the firm did not provide any actual proof, such as itemized cash register receipts, to show that the transactions in question were legitimate purchases of eligible food. Anecdotal explanations without appropriate supporting documentation do little to convince this review that the transactions in Attachment 1 were legitimate purchases. Further, the truth of customer statements cannot be verified. Customers engaging in trafficking violations would be unlikely to admit to this behavior. On the contrary, customer statements would be expected to attest to the legitimacy of questionable transactions regardless of whether they were, in fact, legitimate.

It should be made clear that SNAP regulations do not provide limitations on the number of transactions that can be made by SNAP households or how large the individual transactions can be. However, the transactions noted in the charge letter are questionable not because they exceed any limits for use, but rather because they display patterns of use that are inconsistent with the store's documented physical characteristics and in comparison with similar stores in the area. It should be further noted that the transactions identified in the charge letter are not marginally abnormal, but decidedly so. This review does not contend that the EBT transactions detailed in the charge letter are overtly suspicious when they occur on an occasional or intermittent basis. But when such transactions form repetitive and questionable patterns on a consistent basis over a substantial period of time, such activity is considered highly irregular, and a firm's intent to comply with program regulations is called into question.

Because the Appellant has offered little evidence or explanation beyond conjecture it is reasonable for this review to conclude that trafficking was a likely cause of the transaction patterns listed in this attachment.

Charge Letter Attachment 2: Excessively large purchase transactions were made from recipient accounts. This attachment lists 174 SNAP transactions

5 U.S.C. § 552 (b)(6) & (b)(7)(C). These large transactions are not consistent with other convenience stores in the state of Texas. The Retailer Operations Division has determined that during the review period, the average SNAP transaction amount for a convenience store in Texas was \$7.43. In Wichita County, the average was even lower at \$7.24. The average transaction in Attachment 2 is more than 10 times larger than the average purchase amount for this store type.

Given that the Appellant firm has a modest inventory of staple foods and other SNAP-eligible foods, such as snacks and drinks, it is probable that there would be an occasional purchase where the transaction amount is high, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As such, there may well be some legitimate SNAP transactions sprinkled among the transactions listed in Attachment 2. However, as noted earlier, there is no evidence that the firm would be likely to have SNAP redemption patterns that differ significantly from nearby, similar-sized competitors, especially considering the minimal number of shopping carts or baskets to help transport large quantities of food, the very constricted checkout area, and the availability of much larger stores in the area. The substantial number of high-dollar transactions in a four-month period calls into question the legitimacy of these transactions.

Attachment 2 lists 10 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) during the review period, including a high of 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Considering how many low-priced food items it would typically take to add up 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and considering the store's characteristics, this review finds it highly unlikely that SNAP households would legitimately choose to spend large portions of their benefit allotments at a store such as Zoom Zoom #5.

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

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5 U.S.C. § 552 (b)(6) & (b)(7)(C). These transactions are so far removed from typical shopping behavior of SNAP households that credible evidence is necessary to prove that the transactions were valid. Such evidence would include itemized cash register receipts showing exactly the items purchased. The household's one-paragraph, handwritten statement containing generalized claims is wholly insufficient to convince this review that such transactions are legitimate.

The Appellant has made a large number of other anecdotal claims regarding the transactions in Attachment 2. For example, the Appellant argues that many customers buy large quantities of frozen goods, such as pizza or meat items, to meet the family's needs for a whole month and to eliminate the need for frequent visits to the store. Unfortunately, at the time of the contractor's store visit, the only frozen food available was ice cream. No other freezers or coolers were found onsite that contained large quantities of pizza or meat.

The Appellant claims that households have limited transportation options, making it difficult to travel to the grocery store. Unfortunately, this does not appear to be true, as noted in the examples above.

The Appellant claims that most of its customers buy groceries for the entire household, as would a customer at a fully-fledged grocery store. Unfortunately, Zoom Zoom #5 is nothing like a "fully-fledged grocery store." The quantities and varieties available at Zoom Zoom #5 pale in comparison to what is found at an actual grocery store.

Finally, the Appellant claims that there are no transactions listed in the charge letter that would exceed the expectations of a normal trip to a grocery store. Unfortunately, this is patently untrue, as described earlier in this section.

As for the inventory records provided by the Appellant, these do little to justify the extraordinarily unusual transactions listed in the charge letter. The invoices from Silver Star Wholesale are largely filled with ineligible tobacco products and low-priced snack foods, which are unlikely to account for very large transaction totals. The invoices from The Milk Guy! do contain some meat items, such as pork chops, spare ribs, and brisket, but the Appellant has offered no evidence that these are purchased individually. This review finds it much more likely that such items are used in the preparation of ineligible hot meals, which appear to be a significant part of the firm's business.

It is the finding of this review that the attachments furnished with the charge letter adequately identify the irregular patterns of SNAP transactions which indicate that trafficking was likely taking place. The transactions listed in the charge letter are highly unusual and substantially different from comparable stores in the area. Based on these and other factors, such as the store's physical characteristics and inventory, the case of trafficking is overwhelming.

In an appeal of adverse action, the onus is on the Appellant to prove, by a preponderance of the evidence, that the administrative action should be reversed. This means submitting sufficient and compelling evidence that would lead a reviewer to conclude that trafficking did not occur. Unfortunately, the Appellant has not offered any compelling evidence and its anecdotal contentions do not sufficiently address the specific transactions listed in the charge letter. Therefore, it is the conclusion of this review that the transactions in the charge letter were, more likely than not, the result of trafficking violations committed by the Appellant.

No Prior Violations

The Appellant contends that since the time of the firm's initial authorization, there have never been any violations of SNAP law; nor has the firm ever been under investigation for trafficking in SNAP benefits.

Unfortunately, this contention does not provide a valid basis for dismissing the charges or for modifying the disqualification penalty. The law states that when serious violations, such as trafficking, occur, permanent disqualification is the required penalty, even on the first occasion, as noted in 7 U.S.C. § 2021(b)(3)(B).

Civil Money Penalty

As noted earlier, the Retailer Operations Division determined that the Appellant firm was not eligible for a civil money penalty in lieu of permanent disqualification for trafficking because it did not submit sufficient evidence to demonstrate that it had established and implemented an effective compliance policy and training program to prevent SNAP violations.

In accordance with regulations at 7 CFR § 278.6(b)(2), in order for a civil money penalty to be considered, a firm must not only notify FNS that it desires the agency to consider a trafficking CMP in lieu of permanent disqualification, but it must also submit appropriate documentation within designated timeframes. The case record shows that the Appellant did request a CMP when it originally replied to the charge letter, but the evidence it provided does not meet the standard required for consideration of this alternative penalty.

The primary issue regarding the imposition of a trafficking CMP is whether or not the Appellant meets each of the four eligibility criteria for such a penalty (see page 5 of this document for a listing of these criteria). These criteria must be met in order for a firm to sufficiently demonstrate that it had an effective compliance policy and program to prevent SNAP violations. In accordance with 7 CFR § 278.6(i), fulfillment of each of the four criteria must be established by "substantial evidence." In this case, the only evidence of a compliance policy or training program are three handwritten statements by the two store owners and one employee. One of the statements is undated, while the other two are dated in July 2018, more than two months after the end of the review period. According to regulations, in order to be eligible for a trafficking CMP, a firm's evidence must show that both its policy and a training program were in operation prior to the commission of the violations. The Appellant's brief statements, which were not produced until after receipt of the charge letter, do not meet this standard.

This review acknowledges that the standard of evidence needed in order to be found eligible for a civil money penalty in lieu of permanent disqualification for trafficking is difficult to meet. Nevertheless, it is the standard required by the regulations and the standard to which the Appellant is held during the course of this review. While significant effort may be required to develop and maintain a compliance policy and training program, if a firm fails to meet the minimum requirements as required by regulation, this review has no alternative but to conclude that the firm is not eligible for a CMP. Lastly, it should be noted that the CMP criteria as stated in 7 CFR § 278.6(i) are clearly *minimum* standards, below which eligibility is precluded. Accordingly, it is the determination of this review that the Retailer Operations Division correctly determined that Appellant is not eligible for a civil money penalty in lieu of permanent disqualification.

CONCLUSION

An analysis of the Appellant's EBT transaction record was the primary basis for the decision by the Retailer Operations Division to permanently disqualify Zoom Zoom #5 from SNAP participation. This data provided ample evidence for this review to conclude that the questionable transactions and patterns listed in the charge letter were more likely than not the result of trafficking violations committed by the Appellant. Likewise, the Appellant has not proven, by a preponderance of the evidence, that the administrative action should be reversed.

Based on a review of all available information and evidence in this case, the decision to impose a permanent disqualification against the Appellant, Zoom Zoom #5, under the ownership of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), is sustained.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in Section 279.7 of the SNAP regulations. If a judicial review is desired, the complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which the Appellant owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a complaint is filed, it must be filed within 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.

JON YORGASON
Administrative Review Officer

March 8, 2019