

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

Center Deli Market LLC,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0194727

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture, Food and Nutrition Service (FNS) that the permanent disqualification from the Supplemental Nutrition Assistance Program (SNAP) imposed upon Center Deli Market LLC (hereinafter “Appellant”) by the Retailer Operations Division, Investigations and Analysis Branch, hereinafter “ROD Office” is hereby sustained.

ISSUE

The issue accepted for review is whether the ROD Office took appropriate action, consistent with 7 U.S.C. § 2021, 7 CFR § 278.6(a) and 7 CFR § 278.6 (e)(1) and (i) in its administration of the SNAP when it imposed a permanent disqualification upon Appellant.

AUTHORITY

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

CASE CHRONOLOGY

In a letter dated November 8, 2016, 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 during the months of April through September 2016. The letter noted that the sanction for trafficking is permanent disqualification, as provided by 7 CFR §278.6(e)(1). The letter also noted that the Appellant could request a trafficking civil money

penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt under the conditions specified in 7 CFR §278.6(i). The record reflects that the SNAP Office received and duly considered Appellant's replies to the Charge Letter. By a letter dated June 5, 2017, Appellant was informed that it was permanently disqualified from participation as a retail store in the SNAP and was ordered upon receipt of the letter to cease accepting SNAP benefits; consequently, Appellant ceased to accept said benefits. On June 14, 2017, Appellant requested an administrative review of the SNAP Office's decision; the request was granted.

STANDARD OF REVIEW

In appeals of adverse actions an appellant bears the burden of demonstrating by a preponderance of the evidence that the administrative actions should be reversed. That means an appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

CONTROLLING LAW

The controlling statute in this matter is contained in the Food & Nutrition Act of 2008, as amended, at 7 U.S.C. § 2021 and in Part 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 2021, Part 278.6(a) and Part 278.6 (e)(1)(i) of the Regulations establish the authority upon which a permanent disqualification may be imposed upon 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(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(e)(1)(i) states:

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 issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers, (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.

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

A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification.

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...

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

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.

SUMMARY OF THE CHARGES

- A series of multiple SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) were debited from individual benefit accounts in unusually short time frames (Attachment 1).
- A series of excessively large SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) were debited from recipient accounts (Attachment 2).

APPELLANT'S CONTENTIONS

In Appellant's reply to the Charge Letter, and in its written request for review dated June 14, 2017, it was argued that:

1. This is the first occasion of alleged violations and there has been no prior warning.
2. The very general nature of the allegations is itself a violation of Food Stamp guidelines

and are merely queries about a redemption pattern that require an explanation. No evidence of trafficking has been provided. The allegation is based on some computer analysis of the transactions rather than upon any individual analysis or observation of the transactions. A disqualification cannot be based on mere suspicion. The Charge Letter does not describe the nature and scope of the violations. The general nature of the allegations provides no objective criteria by which to review the validity of the charges and thus do not satisfy due process requirements. Therefore, only a warning letter is warranted. There is no evidence of any intent by the Owners of the firm to commit SNAP violations.

3. The analysis period mentioned in the Charge Letter is at most four months and is a very small and statistically insignificant sample to draw any valid conclusions about SNAP transaction patterns.
4. The firm does have an effective compliance policy, which is to allow only authorized items to be purchased and to not exchange cash for Food Stamp credits. The Owner oversees and implements this policy. There is only one other person working at the store. The policy has been in place during all relevant time periods in this matter. The Owner is not aware of any trafficking violations because none have occurred.
5. Appellant provided statements from 19 customers, each referencing specific transactions in the Charge Letter and attesting that these were legitimate purchases of food items, that the customer relies on the store to redeem benefits and would suffer hardship in the event the firm is disqualified. Appellant can demonstrate 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in receipts for food products sold for 2016. Appellant provides sales summaries from two vendors and provides copies of product purchase invoices and receipts in support of its contentions in support of the above. Additionally, Appellant provides a copy of a Facebook page showing advertising and store getting good reviews.
6. Regarding Attachment 1:
 - a. Attachment 1 transactions are due to deli sales from the area by customers who work or live nearby, a large percentage of which walk to the store and thus are limited to what they can carry, thus requiring multiple visits to the store.
 - b. The regulations state that there can be no limit on the number of transaction a customer may conduct; thus the firm cannot limit said transactions.
 - c. No transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C); most were on different days. No transactions occur 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of one another. Customers frequently return to the store.
 - d. The store is a popular destination for prepared sandwiches. The average lunch ticket is \$10 for a sandwich, chips and a beverage.
7. Regarding Attachment 2:
 - a. Customers get benefits at the beginning of the month and make purchases at the deli, which is highly regular.
 - b. Most transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) cannot be considered excessively large by any reasonable criteria.
 - c. The store has a thriving lunch business. Customers make purchases for cold sandwiches for the week. Lines for sandwich purchases extend out the door of the firm. Some customers purchase multiple cold sandwiches to consume offsite. The store purchases 5 U.S.C. § 552 (b)(6) & (b)(7)(C) deli meat per week and fresh bread is delivered on a daily basis.

- d. The store is located in the midst of many private and government employees.

ANALYSIS AND FINDINGS

At the outset it should be noted that the ROD Office ordered a contracted store visit to the Appellant firm as part of its investigation into Appellant's questionable transaction activity; the visit was conducted on October 20, 2016, as a result of which documentation was obtained including photographs of the interior and exterior of the store, a store layout diagram and a store inventory survey. This documentation reflected the following:

- Optical scanners used at check-out.
- No shopping carts or baskets.
- One cash register.
- One card reader.
- Food sold for onsite consumption. Outdoor signage advertised sandwiches; picnic tables located just outside the store. Deli and prepared food marquee/menu on wall above deli case. Deli case contains prepared salads and other prepared food items. Countertop menu marquee advertised prepared foods (sandwiches and salads). Photos: 6, 8, 15, 22, 23 and 26.
- Deli section present.
- No meat/seafood bundles/specials or fruit/vegetable boxes.
- Estimated 480 square feet of store space.
- Food storage area approximately 70 square feet. Appeared to contain primarily soft drinks. Photos: 5 and 24.
- Not a delivery route or specialty food store.
- The firm sold tobacco and tobacco-related products, health and beauty products, cleaning supplies, laundry detergent, incense, over-the-counter medicines, pet food, clothing, automotive supplies and other non-food items.
- No promotional, special, bulk or package items offered or advertised.
- Comments: "Storage did not contain any staple food items."
- Prices in standard retail variations of \$.x9. Photos: 6, 8, 13, 16, 22, 23 and 27.
- Firm is a typically-stocked convenience store in all relevant respects. Photos: 5, 7, 9, 16, 18, 23, 25, 27 and 28.
- Check-out counter approximately 1 X 2 feet and surrounded by candy, snack foods, tobacco and tobacco-related items and other non-food items. Signage near the counter reads "\$5.00 min. Debit/Credit. Photos: 7 and 27.
- The firm is an unusually small convenience store. Photos: 5, 7, 15, 23, 27 and 28.

The documentation presents no indication of advertised specials, promotions or bulk or expensive food items. As noted above, photographs reflect that several visible prices of food and other items were in standard retail variations of \$.x9. The checkout area was set up in convenience store fashion, utilizing a small check-out area (approximately 1 by 2 feet of useable space) but was otherwise surrounded by candy, snack foods, tobacco and tobacco-related items and other non-food items. There were no shopping carts or baskets with which

customers could transport large orders to the small check-out area or to waiting transportation. This documentation reflects that the firm was a typically-stocked convenience store in all relevant respects, although the store is unusually small, even for a convenience store. It is worth noting that the average SNAP purchase in a convenience store in the state of Connecticut during the analysis period was \$8.48, reflecting that large purchases are not routinely made in such stores.

In regard to contention 1 above, Appellant notes that this case represents the firm's first and only SNAP violation (or series of same); however, a record of program participation with no previously or subsequently documented violations does not constitute valid grounds for dismissing the present serious charges or for mitigating the impact of the violations upon which they are based. There is no provision in the Act, regulations or agency policy that reverses or reduces a sanction based upon a lack of prior and/or subsequent violations or assurances of future compliance by a firm and its owners, managers and/or employees; likewise, sanctions for prior violations are not prerequisite to sanctions due to later violations. Moreover, prior sanctions may precipitate an increase in the severity of a later sanction (see §278.6(e)(6)). Further, as noted above, the Food & Nutrition Act of 2008 provides that a store's disqualification "*shall be* (emphasis added) permanent upon ... the first occasion of... trafficking."

Additionally, it should be noted that a warning letter is not a statutory or regulatory prerequisite to a disqualification: the presence of a prior warning may in some cases increase the sanction imposed on a firm (see §278.6(e)(2), (3)(i) & (ii), (4) and (6)), while the lack of a warning does not decrease a sanction properly imposed or prevent the imposition of such a sanction. Charge letters may be issued without a prior warning and firms are given the opportunity to reply to these charges. Thus, Appellant was duly notified of the violations in accordance with the statute and pertinent regulations.

Regarding contention 2 above, Charge Letters are not required by regulation or agency policy to provide investigative techniques/case analysis standards or even to provide a totality of the evidence contained in the case file, but rather to present a firm with transactions the ROD Office has found to be implausible given various considerations and to provide the firm the opportunity to explain how such transactions may be legitimate. The record reflects that the ROD Office has provided a lengthy and comprehensive case in support of its sanction determination, as is discussed in further detail herein. Appellant asserts that the substance of the ROD Office's case against the firm is derived from data only and implies that there were no independent witnesses to affirm the trafficking allegations. 7 CFR §278.6(a), noted above, establishes the authority upon which FNS may disqualify any authorized retail food store on the basis of evidence obtained through a transaction report under an electronic benefit transfer system. Such cases are developed with the standard in mind that a *prima facie* preponderance of evidence is sufficient in order to charge a firm with SNAP-benefit trafficking. Various statistical tools and graphical reports are utilized, as well as store visit documentation reflecting the firm's nature and extent of inventory and the firm's logistical wherewithal. Compliance history and household data are evaluated. The record reflects that Appellant's firm was chosen for analytical investigation based upon numerous detailed and rigorous mathematical algorithms applied not only to Appellant's firm but to all SNAP-authorized firms, including all firms of a like type (convenience stores, in this case) in the state of Connecticut. As noted, the record contains

documentation, including photographs of the firm's interior and exterior, an inventory survey and a layout diagram, of a visit to Appellant's firm conducted on October 20, 2016. These documents reflect the firm to have been a typically-stocked convenience store. The firm also maintained a substantial inventory of prepared, ready-to-eat food and accessory food items (candy, beverages, etc.), which is typical of convenience store stock.

This and other data presented the ROD Office with a statistically valid *prima facie* indication of highly unusual transaction activity; the activity therein identified is not marginally aberrant, but markedly so. Properly analyzed and interpreted, the ROD Office does not contend that the EBT (electronic benefits transfer) transactions detailed in its Charge Letter are overtly suspicious when they occur on an occasional or intermittent basis, but when such transactions form repetitive patterns on a consistent and comparative basis over substantial periods of time such activity is identified for further analysis. Only after a careful, comprehensive and complete analysis, from which appropriate conclusions are logically derived, will the firm be issued a Charge Letter. The firm is then given the opportunity to reply to those charges and provide any information it deems appropriate in justifying as legitimate the transaction activity detailed in the Charge Letter. In the present case, these procedures are shown by the record to have been duly performed in all relevant and appropriate detail. Moreover, as noted above, the regulations at 7 CFR § 278.6(a) state that FNS may disqualify any authorized retail food store *on the basis of evidence obtained through a transaction report under an electronic benefit transfer system*; consequently, transaction data as a basis for the charges at issue is as valid as evidence obtained through an undercover investigation. ROD Offices are not required to apply any other standard, including an evaluation of case law, than that described herein. Accordingly, the case against the firm is not reflected by the record to lack evidentiary value or to fail to adhere to established investigative methodology, but rather to be comprehensive, analytic, logically derived and specific in its charges of SNAP benefit trafficking, an egregious violation of the Act and the regulations, as noted above.

Furthermore, the case presented by the ROD Office does not rest solely upon transaction data and printouts thereof and was indeed obtained through a formal investigative process. As summarized herein, the record contains a comprehensive array of documentation and analytical work well beyond the data presented in the Charge Letter. The transaction data is indeed factual and specific, the existence and accuracy of which is not in dispute; redundant systems confirm numerous data points for each transaction including the date, time, store authorization number, terminal ID, amount transacted, prior balance and other particulars. It is worthwhile to restate as well that, as noted above, in appeals of adverse actions an appellant bears the burden of demonstrating by a preponderance of the evidence that the administrative actions should be reversed; Appellant must provide a preponderance of evidence that the transactions detailed in the charge letter were more likely than not due to the legitimate sale of eligible food in exchange for SNAP benefits. In the absence of compelling information/documentation weighed in comparison to that provided by the ROD Office, the evidence preponderates in favor of the ROD Office's determination that SNAP-benefit trafficking substantially produced the transaction activity at issue in the present case.

It should be noted as well that while the ROD Office is required to consider and evaluate all evidence and responses that are provided by the Appellant in accordance with 7 CFR § 278.6(c),

the agency is under no obligation in the determination letter to expound, point-by-point, upon every contention or piece of evidence presented. The determination letter clearly states that consideration was given to the information and evidence available to the ROD Office and to the replies made by the Appellant. After an evaluation of all information, the ROD Office determined that the SNAP-benefit trafficking cited in the Charge Letter had occurred at the firm. Implied in the letter is the determination that the evidence or response by the Appellant was either not credible or was insufficient to prove that trafficking had not occurred. While the determination letter may not have been as comprehensive as the Appellant would prefer, this review finds that due process was appropriately provided and that there was no negligence on the part of the ROD Office with regard to the manner in which it explained its disqualification decision.

Lastly, SNAP authorization is an administrative privilege, granted upon initial and continued proof of eligibility and compliance with the governing rules and regulations, and not an unencumbered right or entitlement, and does not extend said privilege in perpetuity when a firm is at least once granted a license to participate. USDA has the obligation to safeguard the public's trust and financial interest and labors to do so by operating the program in accord with the statute enacted by Congress and the regulations promulgated by USDA to implement the provisions thereof. Within this context, while due process is honored, the agency is not burdened with proving to Appellant's satisfaction that FNS has correctly imposed the sanction at issue, but rather it is Appellant's burden to demonstrate that it has not engaged in SNAP-benefit trafficking by presenting a preponderance of evidence of same. As such, contentions that the agency hasn't proven its case are a largely irrelevant and ineffective means by which to demonstrate that Appellant has not engaged in violative activity. While errors on the agency's behalf are indeed relevant and must be addressed, corrected and can indeed result in a reversal during administrative review, an Appellant must focus a substantial amount of its probative efforts on explaining why the transaction activity at issue is in fact not due to SNAP-benefit trafficking.

With regard to contention 3 above, the record reflects that the analysis period used by the ROD Office extended from April to September 2016, which includes six months of SNAP activity and redemption data. ROD Offices are required to use from three to six months of such data as a starting point in this kind of investigation; as such, the data utilized in the case under review is at the upper extreme of that requirement. No further findings are rendered in this regard.

In regard to contention 4 above, 7 CFR §278.6(i) provides for the imposition of a civil money penalty in lieu of permanent disqualification for trafficking; Appellant was advised of the requirement regarding civil money penalties in lieu of permanent disqualification in the SNAP Office's November 8, 2016 Charge Letter, which further advised that documentation of eligibility for this sanction was to be provided within a given time limit. The SNAP regulations are specific at 7 CFR §278.6(b)(2)(iii) that "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, the firm shall not be eligible for such a penalty." The regulations provide no discretion to extend the time within which documentation and evidence in support of a civil money penalty may be submitted. In its December 16, 2016 written reply to the Charge Letter, Appellant requested consideration of said sanction but did so past the 10 day timeframe noted above; moreover, no documentation in support thereof was provided. Thus the SNAP Office decision not to impose a civil money penalty is found to have

been in accordance with 7 CFR §278.6(b)(1), §278.6(b)(2)(ii), §278.6(b)(2)(iii) and §278.6(i). Appellant presented a request for consideration of a trafficking civil money penalty (TCMP) in its July 17, 2017 request for review, 248 days following the firm's receipt of the Charge Letter and 238 days beyond the 10-day timeframe. Though the request cannot therefore be considered, the documentation and evidence provided by Appellant clearly fall short of the standard detailed at § 278.6(i), as noted in the following:

Criterion 1:

- Appellant provided insufficient written and dated documentation to reflect a commitment to ensure that the firm was operated in a manner consistent with SNAP regulations:
 - Documentation of the development and/or operation of a policy to terminate violating employees (not provided).
 - Documentation of the development and/or operation of procedures/policy to implement corrective action in response to complaints of violations (not provided).
 - Documentation of the development and/or operation of procedures providing for internal review of employees' compliance (not provided).
 - Documentation must establish that the policy statements were provided to violating employees prior to the commission of the violation(s) (not provided).

Criterion 2:

- Appellant did not provide documentary evidence which establishes that the firm's compliance policy and program were in operation prior to the occurrence of the violations at issue.

Criterion 3:

- Appellant did not provide the following:
 - Documentation of dated training curricula and dates of training sessions prior to the violations.
 - Records of dates of employment of all firm personnel.
 - Contemporaneous documentation of participation of violating personnel in initial and follow-up training prior to violations.
- Appellant provided insufficient documentation to demonstrate that its training program meets or is otherwise equivalent to the following standards:
 - Training shall be designed to establish a level of competence that assures compliance with program requirements as included in part 278.
 - Training materials shall clearly state that the following acts are prohibited and are in violation of the statute and regulations (Appellant did not provide copies of its training materials):
 - The exchange of SNAP benefits for cash.
 - The exchange of SNAP benefits for firearms, ammunition, explosives or controlled substances.
 - Training for all who work in the store within one month of implementing the compliance policy documented in Criterion 1.
 - Any subsequently hired employees are trained within one month of hiring and trained periodically thereafter.

Criterion 4:

- Appellant provided insufficient evidence in support of the following:

- Ownership/Management was not aware of, did not approve, did not benefit from or was not involved in trafficking. Appellant has provided no records or documentation demonstrating that SNAP benefits used in the transactions noted in the Charge Letter were in fact not deposited into its bank account. Conversely, as noted above, transaction data and other evidence confirms that the violative transactions did in fact result in monetary deposits into the firm's bank account in the exact amounts noted in the Charge Letter. It is noted for the record that the regulations allow an exception to the Criterion 4 language if it is ownership/management's first involvement in SNAP-benefit trafficking.

The statute, regulations and agency policy do not limit the scope of the required compliance policy and program to the prevention of violations other than those caused by error, inadvertence, oversight or lack of management supervision, but rather direct that the policy and program are structured to prevent all violations, regardless of cause. The standard of substantial evidence employed above is difficult to meet, indeed impossible if such policy and program are not implemented and documented prior to the violations, but such is the standard required by the regulations, as noted above, and to which Appellant is held during the course of this review. Additionally, neither the size of an organization nor the number of its personnel is a consideration in determining the eligibility of a firm for a civil money penalty in lieu of permanent disqualification for trafficking. Moreover, while significant effort may be required to develop and maintain a compliance policy and program, if such fails to meet the requirements, that level of effort, even if substantial, does not mitigate the insufficiency. Lastly, the criteria for eligibility for a civil money penalty in lieu of permanent disqualification are clearly stated as *minimum* standards below which eligibility is precluded. The regulations at 7 C.F.R § 278.6(i) are purposely prescriptive and require an unequivocal and well-documented commitment to compliance and training. Accordingly, the SNAP Office correctly determined that Appellant did not qualify for a civil money penalty in lieu of a permanent disqualification.

Regarding contention 5 above, it is noted for the record that 19 customer statements referenced 103 transactions, whereas the Charge Letter contains 343 transactions. Thus even if all of the statements were viewed as factual and accurate reflections of legitimate purchases, less than one third of the Charge Letter transactions would be explained.

However, there are signs of inconsistencies with the data provided in the customer statements. A sample of a few of the statements was compared to the data compiled by the ROD Office in its household analysis. Two statements referenced transactions conducted by other households. One of these referenced a transaction for a similar but different amount, suggesting that it was a transcription error done while utilizing the Charge Letter to create the customer statement. Another statement referenced an identical transaction that was conducted on the wrong date, also suggesting a transcription error. Two statements by the same household reference the same transaction twice but use different dates. While the errors are minor, they do tend to suggest that they were not verified against receipts and/or store or customer records and appear likely to have been created solely from the Charge Letter. Appellant does not state or describe its method of matching Charge Letter transactions with specific customers.

Transaction activity of the last five customers listed in Appellant's July 17, 2017 letter in support of its review request were examined in detail and the following observations made:

- All had shopped at super stores and/or supermarkets during the analysis period.
- Four of the five shopped at super stores and/or supermarkets on or about the same day as conducting implausible transactions at the Appellant firm, including the transactions referenced in their customer statements, again supporting the ROD Office's position that these households were not reliant upon the Appellant firm for food items.
- All shopped at other convenience stores during the analysis period.
- Three shopped at medium, small and/or combination grocery/other stores during the analysis period, again, an indication that the households had transportation and access to better-stocked stores and in fact visited such other stores.

In sum, less than one-third of the Charge Letter transactions are referenced, inconsistencies in the statements cast some doubt regarding the accuracy of the statements and a sample of the statements taken reflected that customers are not limited to shopping only at Appellant's typically-stocked convenience store and in fact regularly shop at much better-stocked and quite likely more competitively-priced super stores, supermarkets and grocery stores, often on or about the same day, calling into question what these customers could obtain at Appellant's convenience store that they could not obtain at the super stores, supermarkets and grocery stores.

With regard to the product purchase receipts/invoices and sales summaries provided by Appellant, the ROD Office conducted an extensive analysis of this documentation and offered the following observations, which are corroborated by this review. 65 of the invoices provided were inside while 77 were outside the analysis period. Invoices primarily reflect regular delivery of bread items. Only bread items from a single vendor was itemized; the remainder did not reflect what was purchased from the vendors. There were no invoices showing the purchase of any food item other than bread – this was also true for the invoices outside the analysis period.

The Restaurant Depot letter provided only a total amount of sales to the firm. This vendor sells both food and non-food items, although the figure did not separate these out. Also, the amount provided was for the entire year of 2016, so it is impossible to accurately separate out those purchases occurring during the analysis period.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Regarding Facebook documentation, the ROD Office points out that no evidence of any promotion or advertising of deli, grocery or sandwich items by the firm is found in the documents provided. There were a few customer reviews (5) and a couple of other comments. This review concurs with those findings.

In regard to Appellant's contention that a disqualification will work a hardship upon SNAP customers, the issue of hardship worked upon retailers or SNAP clients is not a consideration under the statute or regulations in decisions to disqualify firms due to SNAP-benefit trafficking. The only alternative to permanent disqualification, once trafficking is established, is to impose a trafficking civil money penalty in lieu of permanent disqualification. As noted, in order for this alternate penalty to be considered, a retailer must provide sufficient evidence demonstrating that the firm had established and implemented an effective compliance policy and program to prevent violations prior to said violations, as stipulated in § 278.6(i). Appellant did not timely request

consideration for same and did not provide such evidence and, accordingly, this alternate penalty was correctly withheld.

With regard to contention 6 above, while there are legitimate reasons why a SNAP recipient or household member might return to a convenience store during a short period of time, such purchases are more typically in small amounts and for obtaining just a few items. The examples in Attachment 1 indicate a series of repetitive purchases that total large amounts. Customers spending such substantial amounts of SNAP allotments in a typically-stocked convenience store, when there are other larger food stores nearby which carry substantially larger varieties of food at lower costs, is implausible. Lastly, large transactions for the purchase of legitimate food items (which at this store would have been a substantial number of lower priced items), using no shopping carts and very little checkout-counter space, is additionally implausible. Multiple transactions over a short period of time, especially of high dollar value, are very suspicious because they are typical of stores and SNAP customers which are attempting to diminish attention to signs of SNAP-benefit trafficking. Frequent and large transactions conducted in order to purchase eligible foods at Appellant's store are highly unlikely given Appellant's logistical wherewithal and store stock. There is no compelling rationale to explain why only Appellant's customers made repetitive visits spending large amounts in short timeframes. The record reflects, as noted above, that the Appellant firm was a typically-stocked convenience store in all relevant respects and provides no plausible bases for customers' unusual attraction to the firm and unorthodox transaction patterns.

Regarding Appellant's contention that it cannot limit the number of SNAP transactions by customers, while this is acknowledged, the issue revolves not around limiting the number of such transactions but that the transactions in Attachment 1 are substantially outside the norm for typically-stocked convenience stores in number, size and elapsed time between transactions.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Given the store's pricing in standard retail variations of \$.x9, specifically including deli items and sandwiches, totals regularly ending in quarter dollar increments are implausible and appear contrived. Moreover, 13 of the 19 households whose transactions comprise Attachment 1 shopped at a supermarket or super store within 3 days of conducting implausible transactions at the subject store, again indicating that these customers were not forced by location or lack of transportation to rely upon the firm for groceries or other food items. ROD points out that several authorized firms in the area also sell deli sandwiches. The dollar amounts at Appellant's store are not incidental or typical convenience store transactions. **5 U.S.C. § 552 (b)(6) & (b)(7)(C).** These are similar-stocked firms within the same neighborhood, yet they do not display the implausible transaction activity seen at the Appellant firm. It is again noted that the average SNAP transaction in a convenience store in the state of Connecticut during the analysis period was \$8.48.

In regard to contention 7 above, Appellant notes that customers make large purchases at Appellant's store after receiving benefit allotments early in the month. However, a government report on SNAP shopping patterns¹ indicates that after the first day of benefit issuance, on

¹ U.S. Department of Agriculture, Food and Nutrition Service, Office of Research and Analysis, "Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program," by Laura Castner and Juliette Henke. Project Officer Anita Singh, Alexandria, VA; February 2011.

average, 80 percent of a household's allotment remains unspent. After seven days 40 percent of benefits remain unspent. Typically two weeks elapse prior to the average household's depletion of 80 percent of its SNAP benefits while three weeks elapse prior to depleting 90 percent. Large single transactions, or multiple and high cumulative transactions which diminish balances over a short period of time soon after benefit issuance, are indicative of SNAP benefit trafficking and attempts to diminish attention to signs of same.

Regarding the contention that Appellant's transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) are not excessively large by any reasonable standard, the ROD Office notes that Appellant had approximately twice the number of such transactions as the statewide store-type average during the same period. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

With regard to contention 7c and d above, Attachment 2 contains transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C); while some of the transactions at the lower end could conceivably result from households purchasing multiple sandwiches, the plausibility of the rationale substantially lessens as the amounts increase. As noted, there are other SNAP-authorized firms in the area selling sandwich and deli items but not conducting such numbers of excessively large transactions.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Product purchase receipts/invoices provided by Appellant have been discussed in the foregoing.

Lastly, the ROD Office conducted an in-depth analysis of household SNAP activity at the Appellant firm during the period April through September 2016 and notes that households conducting implausible transactions at the Appellant store were visiting supermarkets and super stores on or about the same day. In many cases customers' average purchases and total amount of purchases at Appellant's typically-stocked convenience store were much higher than those conducted at the much-better stocked and more competitively-priced stores, calling into question what the customers were able to obtain at Appellant's firm that they could not obtain at the other stores, most of which likewise offer deli items and prepared sandwiches.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). In the absence of compelling evidence to the contrary, the redemption decline following the firm's receipt of the Charge Letter signals a compliance response thereto and a corresponding reduction of violative activity.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Likewise, in the absence of compelling evidence to the contrary, the precipitous decline in implausible transactions following the firm's receipt of the Charge Letter signals a compliance response thereto and a corresponding reduction of violative activity.

CONCLUSION

In view of the above, the decision of the ROD Office to permanently disqualify Appellant from participation in the SNAP is hereby sustained. The decision will become final upon the 30th day following Appellant's receipt of this document.

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 provisions of the Freedom of Information Act (FOIA), FNS is 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.

DANIEL S. LAY
Administrative Review Officer

January 24, 2018