

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

**El Rincon Grocery & Liquor LLC,**

**Appellant,**

**v.**

**Case Number: C0191407**

**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 there is sufficient evidence to support a finding that a Permanent Disqualification from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against El Rincon Grocery & Liquor LLC (hereinafter “El Rincon”) by the Retailer Operations Division of FNS.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(e)(1)(i) in its administration of the SNAP when it imposed a Permanent Disqualification against El Rincon on October 11, 2016.

**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.

**CASE CHRONOLOGY**

In a letter dated August 29, 2016, the Retailer Operations Division informed the Appellant that his firm was in violation of the terms and conditions of the SNAP regulations, 7 CFR § 270 – 282, based on EBT SNAP benefit transactions that "establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm."

In letters postmarked September 6, 2016 and September 23, 2016, the Appellant cited credit extension to a select few SNAP customers and other explanations for the questionable SNAP transactions that were outlined in the August 29, 2016 Charge Letter.

After considering the Appellant's replies and the evidence in the case, the Retailer Operations Division issued a Determination Letter dated October 11, 2016, informing the Appellant that El Rincon was being permanently disqualified from participation in the SNAP in accordance with 7 CFR § 278.6(e)(1) for trafficking violations.

In a letter postmarked October 21, 2016, the Appellant requested an administrative review of the Retailer Operations Division's decision to permanently disqualify the firm from participation in the SNAP. FNS granted the Appellant's request for administrative review by letter dated October 27, 2016.

## **STANDARD OF REVIEW**

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

## **CONTROLLING LAW**

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, amended, 7 U.S.C. § 2021 and 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. 5 U.S.C. § 552 (b)(7)(E).

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 and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system ... [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 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 § 278.2(f) states, *inter alia*:

SNAP [Food Stamp] benefits shall not be accepted by an authorized retail food store in payment for items sold to a household on credit. A firm that commits such violations shall be disqualified from participation in the SNAP [Food Stamp Program] for a period of one year.

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) states, *inter alia*:

(ii) 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 as specified in § 278.6(i), 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].

(iii) 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 penalty. [Emphasis added].

### **SUMMARY OF CHARGES**

The Appellant was charged and determined to be trafficking based on an analysis of EBT transaction data from February 2016 through July 2016. This involved the following SNAP transactions patterns which are indicative of trafficking:

- There were an unusual number of transactions that ended in a same cents value; and
- There were excessively large purchase transactions made from recipient accounts.

### **APPELLANT'S CONTENTIONS**

The following represents a brief summary of the Appellant's contentions in this matter. Please be assured, however, that in reaching a decision, full attention and consideration was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

In the Appellant's replies to the Charge Letter and in the review request postmarked October 21, 2016, the Appellant stated the following summarized contentions, in relevant part:

- El Rincon has been authorized to participate in the SNAP for approximately eight years and this is the first time that it has been cited for any SNAP violations;
- The unusual number of transactions that ended in a same cents value (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) are the result of: (1) SNAP customers not having enough money on their EBT cards to pay for the entire purchase so they make an even dollar purchase on their EBT cards and then pay the rest of the purchase amount with cash or a credit card; and (2) Most food items stocked at El Rincon being priced at either 5 U.S.C. § 552 (b)(6) & (b)(7)(C);
- The excessively large purchase transactions are the result of El Rincon accepting SNAP benefits as repayment on credit accounts from a select few SNAP customers;
- The Appellant was unaware that extending credit to SNAP customers was a violation of the SNAP regulations;
- In order to ensure that SNAP violations do not occur again, the Appellant has ceased extending credit to SNAP customers; and
- The Appellant is requesting that FNS impose a small disqualification period for El Rincon in lieu of a permanent SNAP disqualification.

In support of the Appellant's contentions, the following document was submitted to FNS:

- A page from a notebook which has credit account information listed on it for 19 different customers.

## **ANALYSIS AND FINDINGS**

## Store Characteristics

FNS authorized El Rincon as a convenience store on May 13, 2008. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a June 20, 2016 store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information obtained from the store visit was also used to ascertain if there were justifiable explanations for the firm's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- El Rincon is a free-standing store that is approximately 750 square feet in size and it does not have a storage area outside of the public view;
- El Rincon is located in an urban, residential area of Milwaukee, Wisconsin;
- There were no shopping carts or hand-held baskets available for customer use;
- El Rincon has one cash register and one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;
- There was no optical scanner or conveyor belt for the speedy processing of transactions;
- Many of the store shelves are sparsely stocked with food items;
- The store has an empty chest freezer;
- El Rincon had a minimal food stock that is typical of convenience stores and it offers customers a minimal variety and amount of eligible staple foods for sale;
- There were no meat/seafood specials or bundles that might sell for high prices;
- El Rincon is a WIC Program vendor and, therefore, stocks infant foods such as infant formula, infant fruits/vegetables, infant cereal, and infant meats. It is important to note that since El Rincon is a WIC Program vendor, the majority of customers who qualify for SNAP benefits also qualify for WIC Program benefits/vouchers and in most cases, utilize their WIC Program benefits in lieu of SNAP benefits to purchase infant formula and infant foods;
- Per the store visit observations, the most expensive food items stocked at El Rincon appear to be infant formula, frozen processed chicken, and frozen fish fillets;
- It does not appear from the store visit observations that El Rincon extends credit to store customers;

- There were no signs posted in the store nor were there any flyers advertising the availability of bulk foods offered at a discounted rate to include food combination deals/specials;
- El Rincon does not have a food preparation area or kitchen in which hot and/or cold prepared, ready-to-eat foods that are intended for immediate consumption and require no additional preparation are prepared and offered for sale to customers;
- El Rincon does not have a deli area and it does not sell deli meats and cheeses by the pound;
- There were no tables with chairs located inside of the store for use by customers in eating in-store prepared hot and/or cold prepared, ready-to-eat foods that are intended for immediate consumption;
- The checkout counter has a limited space, it is cluttered with miscellaneous items, and does not provide a space for the large amounts of individual food items necessary to make up many of the large transactions cited in the Charge Letter Attachments;
- El Rincon did not stock any fresh meats, poultry, or seafood items;
- El Rincon stocks a minimal amount and variety of frozen meats to include processed chicken and fish fillets;
- Other meat items available for sale included canned/potted meat, canned fish, canned shellfish, eggs, packaged lunch meat, packaged hot dogs, bacon, and meat jerky;
- El Rincon does not stock any fresh produce items;
- The store stocked a minimal amount and variety of frozen fruits and vegetables;
- Other staple foods available for purchase included such items as 100% juice, canned fruits and vegetables, pasta, rice, cereal, loaf bread, tortillas, grits, corn meal, cakes/pastries, snack foods, milk, margarine/butter, ice cream, etc.;
- Much of the remaining food stock consisted of accessory foods such as candy and gum, carbonated and non-carbonated drinks, seasonings, condiments, vegetable oil, etc.; and
- El Rincon stocked a good supply of ineligible nonfood items such as tobacco products, alcohol, over-the-counter medications, paper products, household items, piñatas, health and beauty supplies, laundry detergent, lottery tickets, pet food, automotive supplies, household cleaning supplies, etc.

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.

Government analyses of stores caught in trafficking violations during on-site investigations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include, in part, those cited in the letter of charges. Based on this empirical data, and in the absence of any reasonable explanations for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the most likely explanation for “unusual, irregular, and inexplicable” transactions and patterns cited in the letter of charges is trafficking. Transactions having such characteristics sometimes do have valid explanations that support that they were the result of legitimate purchases of eligible food items. This is why opportunities are afforded to charged retailers to explain the questionable transactions cited. In this case, the Retailer Operations Division determined that the Appellant’s contentions did not outweigh the evidence. The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that questionable transactions were the result of trafficking. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

### **First Time Violator**

The Appellant contends that El Rincon has been authorized to participate in the SNAP for approximately eight years and this is the first time that it has been cited for any SNAP violations. However, a record of participation in the SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges.

### **Unusual Number of Transactions Ending in a Same Cents Value (Charge Letter Attachment 1)**

This Attachment lists 113 transactions

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

In addition, there were 138 transactions

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



When such repetitive patterns are unsupported by special pricing structures they are a strong indicator of trafficking in SNAP benefits.

The Appellant contends that the unusual number of transactions that ended in a same cents value (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) are the result of: (1) SNAP customers not having enough money on their EBT cards to pay for the entire purchase so they make an even dollar purchase on their EBT cards and then they pay the rest of the purchase amount with cash or a credit card; and (2) Most food items stocked at El Rincon being priced 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Regarding the Appellant's contention that the unusual number of transactions that ended 5 U.S.C. § 552 (b)(6) & (b)(7)(C) are the result of SNAP customers not having enough money on their EBT cards to pay for the entire purchase so they make an even dollar purchase on their EBT cards and then pay the rest of the purchase amount with cash or a credit card, the Appellant did not provide FNS with any evidence, such as cash register receipts from the review period, that validate this contention. While this may be the situation on a rare occasion, it is not very likely that a large number of SNAP customers would have a remaining balance on their EBT cards that ends in an even dollar amount (5 U.S.C. § 552 (b)(6) & (b)(7)(C)). Therefore, the Appellant's contention does not explain these questionable SNAP transactions.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

***FNS store visit photo indicating that some of the food items offered for sale at El Rincon end in price variations of 49 cents:***





FNS store visit photo indicating that some of the food items offered for sale at El Rincon end in price variations of 49 cents:





*FNS store visit photo indicating that some of the food items offered for sale at El Rincon end in price variations of 19 cents:*





*FNS store visit photo indicating that some of the food items offered for sale at El Rincon end in price variations of 99 cents:*





*FNS store visit photo indicating that some of the food items offered for sale at El Rincon end in price variations of 59 cents:*



Due to El Rincon's mostly low cost foods, the larger dollar transactions cited in the Charge Letter would normally consist of multiple food products being purchased in one transaction. It is implausible that several of these relatively inexpensive items purchased together would disproportionately result in a total purchase price ending 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Instead, when SNAP customers buy multiple food items, resulting in higher dollar amounts, the total transaction amount is more likely to result in a more dispersed statistical spread of ending cent ranges 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Consequently, when there are a disproportional amount of transactions that end in a same cents value, it appears that these transaction amounts are contrived and therefore, in the absence of any compelling rationale to the contrary, are a strong indicator that the firm is trafficking in SNAP benefits. A preponderance of the evidence indicates that the irregular transaction purchases ending 5 U.S.C. § 552 (b)(6) & (b)(7)(C) cited in Charge Letter Attachment 1 are more likely than not a result of the store trafficking in SNAP benefits.

### **Excessively Large Purchase Transactions (Charge Letter Attachment 2)**

Attachment 2 of the Charge Letter cites 145 EBT transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As noted previously, there is no indication from the store visit report that the store would be likely to have SNAP redemption patterns significantly different from similar-sized competitors offering similar food items.

The Appellant contends that the excessively large purchase transactions are the result of El Rincon accepting SNAP benefits as repayment on credit accounts from a select few SNAP customers. The Appellant noted to FNS that he extended credit to only four or five SNAP customers. When a retailer claims it maintains credit accounts to explain irregular SNAP transactions and data patterns, FNS requires a level of detail regarding the legitimacy of the claim. This is because retailers have often made false admissions of credit in an attempt to obtain a lesser penalty after committing more egregious violations such as trafficking. Credit transactions must be accounted for with substantive evidence such as the dates credit was extended, to whom, for what amount, and for what items.

The Appellant indicated to FNS that he kept track of the credit extended to SNAP customers in a small notebook and that he added each customer's name to a notebook page with the amount owed to El

Rincon. Then, when the customer received their monthly SNAP benefit allotment and came to El Rincon and paid off their credit account in full, the Appellant discarded the notebook page with the credit information included on it. The Appellant provided FNS with a copy of a page from a notebook which listed 19 different customers' names and the total amount of credit owed by each customer. FNS reviewed the information/documentation and properly determined that the document was insufficient to support the Appellant's credit extension contention for the following reasons:

- Only the first name of the customer to whom credit had been extended was provided on the notebook page. The Appellant did not provide FNS with any SNAP recipient-identifiable information;
- The Appellant provided no documentation/information that FNS could use to match the questionable SNAP transactions outlined in the Charge Letter to individual credit purchases;
- There was no documentation provided listing the individual foods that were purchased on credit and by which SNAP customer;
- The notebook page provided by the Appellant listed 19 different customers' names to which El Rincon had extended credit. However, in the Appellant's response to the Charge Letter allegations dated September 6, 2016, the Appellant stated that he extended credit to only a few select customers (i.e., only four or five individuals);
- No documents were provided to validate whether the alleged credit was paid off by cash, check, credit card or SNAP benefits;
- No documentation was provided that indicates when the food items were purchased on credit and when the credit was paid off;
- No documentation was provided that would validate that the credit extended to each SNAP customer was done so during the six month review period; and
- No documentation was provided that would validate the amount of credit that was extended to each SNAP customer.

Although El Rincon may have, on a rare occasion, accepted SNAP benefits as repayment on credit accounts, the evidence submitted by the Appellant does not support the Appellant's contention that the irregular SNAP transactions listed in Charge Letter Attachment 2 are due to repayment on credit accounts.



The store visit report and photos show that El Rincon was stocked with a limited quantity and variety of staple foods as it stocked no fresh meats, poultry, or seafood items, only two varieties of frozen meat items in minimal amounts, a small amount and variety of frozen fruits and vegetables, no fresh produce items, and a moderate quantity and variety of processed meats. The inventory report and photos also show that the subject store stocks only a few expensive staple foods that would account for these large amounts as well as showing the store has limited checkout counter space, no optical scanner, and no shopping carts or hand-held baskets in which to transport the large number of items required to make up these large transaction amounts. Without these, it is unlikely that such large dollar value transactions could be for actual food purchases and more likely they are trafficking.

The record shows that there are 40 SNAP authorized retailers (to include 4 super stores, 1 supermarket, 6 small grocery stores, 6 combination grocery/other stores, and 23 convenience stores) located within a 1.0 mile radius of El Rincon. Several of these stores are larger than El Rincon and offer a greater quantity and variety of food products at comparable, or better prices as compared to the subject store. An analysis of the shopping patterns for all of the SNAP households listed in this Attachment shows that the majority of the households shopping at El Rincon have access to transportation and that all are regularly shopping at a variety of larger stores, including super stores and supermarkets, located a few miles distance from the Appellant's location. While El Rincon does offer some staple food items, SNAP recipients are already shopping at other larger SNAP retailers located within a few miles of the Appellant's business offering a greater quantity and variety of products, including fresh meats/seafood and produce, at lower prices. Therefore, the store has nothing to attract SNAP customers as there are no special or custom services offered.

FNS compared the average EBT transaction amount of El Rincon during the review period with that of the average EBT transaction amount for convenience stores located in Milwaukee County, Wisconsin during the same time period. This comparison indicated that El Rincon's average transaction amount was more than double that of the county average for convenience stores during the review period. FNS also compared the average dollar volume of El Rincon during the review period with that of the average dollar volume of convenience stores located in Milwaukee County, Wisconsin during the review period. The comparison indicated that El Rincon generated a significantly higher dollar volume during the review period as compared to the county average for convenience stores.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). FNS' comparison showed that El Rincon conducted significantly more EBT transactions at each interval, resulting in significantly higher dollar volume throughout the ranges of comparison. The appearance and quality and quantity of stock does not merit SNAP recipients conducting so many high dollar transactions at El Rincon. In fact, the store visit proves that this store does not sell any unique items that cannot be purchased at other stores in the area.

The Appellant did not submit any vendor invoices to FNS for foods purchased for El Rincon during the six month review period in order to substantiate that El Rincon purchased enough staple food items to cover/explain the SNAP transactions that occurred at the store during the review period. Therefore, a vendor invoice analysis could not be conducted by FNS. It is important to note that even if the Appellant had provided vendor invoices to FNS that were during the review period and the invoices indicated that El Rincon had purchased sufficient food inventory to account for the firm's SNAP redemption volume, sufficient inventory alone does not explain the suspicious patterns of SNAP transactions such as an unusual number of transactions ending in a same cents value. Even the large dollar transactions would remain questionable if there were sufficient food inventory to support such transactions when consideration is made of there being only a limited variety of stock in the store, only two varieties of frozen meats/seafood and no fresh meats/seafood, no fresh produce, only a limited amount and variety of frozen fruits or vegetables, a greater variety of foods at comparable or lower prices at other stores, no shopping carts or hand-held baskets available for customer use, and very little counter space to place food for purchase at the checkout counter. Even if there were sufficient food stock at El Rincon to mathematically support high dollar transactions, there does not appear to be anything that would reasonably attract SNAP households to shop there, a convenience store, in some cases traveling a few miles to do so, and spend substantial amounts of their SNAP benefits.

Lastly, the case record documents that the Retailer Operations Division conducted a detailed analysis of three SNAP households identified in the Charge Letter to analyze their shopping patterns at El Rincon compared to their shopping patterns at other SNAP authorized stores. Each of these households had access to, and shopped at larger stores including super stores and/or supermarkets. It is obvious that these SNAP households had transportation available to them to reach these other authorized stores. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is highly unlikely that a convenience store with minimal staple foods would have legitimate SNAP transactions greater than these larger and better stocked stores.

In summary, the store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding the average transaction amount of similar type stores. In addition to the statistical irregularity of such high dollar transactions, the limited availability of counter space for checking out and the offering of no shopping carts or hand-held baskets support the Retailer Operations Division's determination. It is not plausible that the store's customers are carrying large amounts of food around the store without the benefit of shopping carts and hand-held baskets. Customers purchasing such large quantities of food items would have to hold them in their arms, or enlist the help of others while shopping. Based on the preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 2 are more likely than not the result of trafficking in SNAP benefits.

### **Appellant Unaware Credit Extension a SNAP Violation**

The Appellant contends that he was unaware that extending credit to SNAP customers was a violation of the SNAP regulations. The Appellant, upon being authorized by FNS to participate in the SNAP on May 13, 2008, received the same Authorization Kit that is sent to all retail food stores when they are newly authorized in the SNAP, including various information booklets, signs and posters indicating the Do's and Don'ts, rules of the SNAP available in several different languages, a copy of the SNAP regulations and a training video. Moreover, periodic newsletters have been sent to all retail food stores participating in the SNAP with a reminder in almost every newsletter sent that accepting nutrition assistance program benefits for payment on credit accounts is a violation. In accordance with 7 CFR § 278.2(f) . . . SNAP benefits "may not be accepted by an authorized retail food store in payment for any eligible food sold to a household on credit". As such, the Appellant's contention is unfounded.

### **Improvements Implemented by Appellant**

The Appellant contends that in order to ensure that SNAP violations do not occur again, he has ceased extending credit to SNAP customers. It is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division. This review is limited to what circumstances were at the basis of the Retailer Operations Division action at the time

such action was made. It is not the authority of this review to consider what subsequent remedial actions may have been taken so that the store may begin to comply with program requirements.

**5 U.S.C. § 552 (b)(7)(E).** Therefore, the Appellant's contention that he has taken corrective actions, though they would have been valuable towards preventing future program violations, does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

### **Alternative Penalty Requested**

The Appellant is requesting that FNS impose a small disqualification period for El Rincon in lieu of a permanent SNAP disqualification. However, the Food and Nutrition Act of 2008, at § 2021, does not allow for discretion in determining sanctions for trafficking and is specific in its requirement that "... a disqualification . . . 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 ...". In keeping with this legislative mandate, 7 CFR § 278.6(e)(1)(i) of the SNAP regulations states that FNS shall disqualify a firm permanently if personnel of the firm have trafficked.

### **CIVIL MONEY PENALTY**

As previously indicated, the October 11, 2016 Determination Letter advised the Appellant of the ineligibility for consideration for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP regulations. The letter of charges dated August 29, 2016 advised the Appellant that documentation of eligibility for that alternative sanction was to be provided within 10 days. The regulations specify that such documentation must, in part, establish that there was an effective compliance policy and training program and that both were in effect and implemented prior to the occurrence of violations. The letter indicates that no information was provided by the Appellant for consideration; therefore, on review the Retailer Operations Division's determination that the Appellant firm is ineligible for the imposition of civil money penalties in lieu of disqualification is affirmed.

## **CONCLUSION**

The Retailer Operations Division's analysis of the Appellant's EBT transaction record, upon which charges of violations are based, together with observations made during the store visit and an analysis of customer shopping behaviors, provide substantial evidence that questionable transactions during the focus period have characteristics and display patterns that are not consistent with legitimate sales of eligible food to SNAP benefit customers at a store of this type, size and makeup. Rather, the characteristics are indicative of illegal trafficking in program benefits. The Appellant's contentions do not outweigh this evidence.

The record has yielded no indication of error or discrepancy in the reported findings by the Retailer Operations Division that program benefits were accepted in exchange for cash or consideration other than eligible food. 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. Therefore, the decision to impose a permanent disqualification from participation in the SNAP against El Rincon Grocery & Liquor LLC is sustained.

## **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. 2023) and to Section 279.7 of the Regulations (7 CFR § 279.7) with respect to your right to a judicial review of this determination. Please note that if a judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which you reside or are engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

Under the Freedom of Information Act, 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.

LORIE L. CONNEEN  
Administrative Review Officer

October 23, 2017