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

Macoris Grocery,

Appellant,

v.

Case Number: C0168688

Retailer Operations Division,

Respondent.

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 Macoris Grocery (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 April 2, 2014, 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 July through October 2013. 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 firm's April 14, 2014 reply contained a Freedom of Information (FOIA) request; a June 10, 2014 reply to that request was provided by the agency.

On September 3, 2014, Appellant appealed the FOIA response; an answer to that appeal was provided dated August 11, 2017. Appellant replied to the Charge Letter again on August 29, 2017. The record reflects that the SNAP Office received and duly considered Appellant's replies to the Charge Letter. By a letter dated September 22, 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 October 3, 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, 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 & 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, 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, (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, in part:

> 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, in part:

> FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking as defined in § 271.2 if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations…

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

> 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 478 SNAP transactions totaling 5 U.S.C. § 552 (b)(6) & (b)(7)(C) ended in a same-cents value (Attachment 1).
- A series of multiple SNAP transactions totaling 5 U.S.C. § 552 (b)(6) & (b)(7)(C) were debited from individual benefit accounts in unusually short time frames (Attachment 2).

- A series of 425 excessively large SNAP transactions totaling 5 U.S.C. § 552 (b)(6) & (b)(7)(C) were debited from recipient accounts (Attachment 3).

APPELLANT'S CONTENTIONS

In Appellant's replies to the Charge Letter, and in its written request for review dated October 3, 2017, it was argued that:

1. This is the first occasion of any allegations of misuse of the SNAP program against Appellant.
2. Regarding Attachment 1, some items end in 99 cents and the sum of these items will result in totals that end in 99 cents. The store sells Enfamil baby formula for $18.99, Pedia Sure for $14.99, a large bag of rice for $12.99 and cooking oil for $10.99. If a customer comes into the store with a fixed dollar amount that they want to spend, the store will often round down the total to end in 99 cents so that the client does not overspend.
3. Regarding Attachment 2 to the Charge Letter, customers frequently return to the store on the same day after they have made an initial purchase and return home to tell their family members about what specials the store had available that day. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). His client has contacted FNS to correct those transactions and get new equipment. Other transactions listed in Attachment 2 took place during the early days of the month. FNS studies have shown that most SNAP recipients exhaust their benefits by the end of the month and expend the vast majority of at the beginning of the month. One of the charges against Appellant is that "multiple transactions were made from individuals benefit accounts in unusually short time frames"; the regulations specify that there shall be no limit of the number of SNAP transactions. If Appellant had refused the transactions, it would have been a violation of SNAP regulations.
4. Regarding Attachment 3, customers purchase as many items as they can while they have credit on their EBT cards at the beginning of the month. Appellant has sales which encourage customers to make large purchases. The SNAP regulations also do not prohibit rounding off transactions or large transactions.
5. None of the very general allegations contained in the Charge Letter constitute violation of the Food Stamp Program guidelines. These allegations are merely queries about a pattern of Food Stamp redemption that require an explanation and there is no evidence of trafficking contained in the letter. The letter is based on computer analysis rather than upon any individual analysis or observation of these transactions.
6. The ROD Office does not explain why transactions ending in a same cents value are prohibited.
7. The ROD Office does not address the regulations that authorize/require an unlimited number of EBT transactions, with regard to the ROD Office's Attachment 2 to the Charge Letter.

8. The ROD Office does not define an "excessively large transaction." There is no SNAP regulation that prohibits any particular SNAP transaction amount.

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 November 5, 2013, 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:

- No optical scanners.
- No shopping baskets.
- No shopping carts.
- One cash register, one card reader.
- No evidence of wholesale business.
- Hot food sold.
- No dining area.
- Deli section present.
- No meat/seafood bundles/specials or fruit/vegetable boxes.
- No fresh meat; some frozen meat items offered.
- Estimated 1200 square feet of store space.
- The firm sold tobacco and tobacco-related products, alcohol, paper goods, clothing, health and beauty products, paper goods, housewares, over-the-counter medicines and other non-food items.
- The firm appeared to operate also as a general store, maintaining a large inventory of non-food items, as described above.
- Prices in standard retail variations of $.x9. Photos: 3, 14, 15, 17, 18, 20, 24, 26, 30, 31 and 34.
- Prepared food entrées advertised; menu marquee and pricing posted, deli sandwiches made-to-order advertised. Photos: 21 and 29.
- Checkout counter space in convenience store fashion and approximately 1 X 1.5 feet and surrounded by candy, snack food items and tobacco products. Register behind Plexiglas barrier. Photo: 6.

The documentation presents no indication of advertised specials, promotions, 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 1.5 feet of useable space) but was otherwise surrounded by candy, snack food items and tobacco products. 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

categorized as a convenience store from July through September, 2013 and a small grocery during October 2013, the months included in the analysis period. The change from convenience store to small grocery store was due not to a change in store inventory but rather to sales figures reported in June 2013 by the owner of the firm during a routine reauthorization process. The ROD Office notes that the firm's average transaction amount and total SNAP redemptions substantially exceeded state convenience store and small-grocery store averages during the same period. In particular, Appellant's SNAP redemptions were multiple times both state store-type averages during the analysis period, whether categorized as a convenience store or a small grocery store.

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."

Regarding contention 2 above, as the ROD Office notes, a combination of inexpensive items with prices ending in $.99 does not routinely produce totals also ending in $.99. While some items priced at $12.99, $14.99 and $18.99 (for infant formula) purchased individually and with no other items, could produce some of the transactions in Attachment 1, these items account for only 134 of the transactions (28%); however, as SNAP households are categorically eligible for WIC benefits (which provide for the purchase of infant formula, among other items), most SNAP households do not use SNAP benefits to purchase infant formula.

The ROD Office further notes that, with regard to customers requesting totals be rounded down to $.99, these same customers do not exhibit the same behavior at other stores. It is further unclear why several customers would request the exact same cents-value rounding. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

With regard to contention 3 above, the ROD Office notes that Attachment 2 transactions are not questionable because they exceed any limit for usage but rather because they display characteristics inconsistent with the firm's inventory and with SNAP household transaction activity. The ROD Office further notes several examples of households traveling substantial distances to the Appellant firm to conduct implausible transactions when there were similar or better-stocked firms

closer to the households' residences, calling into question what the households were able to obtain at Appellant's store that they could not also obtain at closer and comparable and/or better-stocked stores. It is not clear why customers would make repeated trips involving substantial distances in short periods of time to purchase specialty goods when such goods could be obtained in one trip. However, the perceptions persists that splitting up large transactions into smaller transactions averts attention to signs of SNAP-benefit trafficking. The store visit did not reflect the presence of advertised specials or of food items not available at many other SNAP-authorized locations in the area.

The ROD Office also notes that FNS studies show that 80% of allotments remain unspent following the first day of issuance, 40% remain after seven days and 20% remain after two weeks and 10% after three weeks, while Appellant contends that the vast majority of benefits are expended in the early days of the month. While both of these statements are true in their own ways, FNS studies[1] more importantly reflect that almost 85% of SNAP benefits are spent at supermarkets and super stores (with just under 2% spent at small grocery stores). Transactions at small grocery stores and convenience stores are more frequent but substantially smaller. The average transaction at a convenience store and a small grocery in the state of Connecticut during the analysis period was, $9.88 and $12.55, respectively, indicating that large purchases are not routinely made at such stores.

Thus, 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 2 indicate a series of repetitive purchases that total large amounts. Customers spending such substantial amounts of SNAP allotments in a typically-stocked convenience store or small grocery 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, or primarily, 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/small grocery store in all relevant respects and provides no plausible bases for customers' unusual attraction to the firm and unorthodox transaction patterns.

[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.

In regard to contention 4, as noted in the foregoing, while SNAP recipients may expend more benefits in the first half of the month, they typically do not fully deplete those benefits within a few days of issuance and, moreover, tend to spend small amounts at convenience stores and small grocery stores. As noted during the store visit to the Appellant firm, the firm did not stock fresh meat, poultry or fish products, stocked very little frozen items of this type, stocked no bulk or expensive special items or packages and, in fact, offered no shopping baskets or carts, further evidence that large purchases at the store are unusual. As noted in the foregoing, the purported $.99-cents rounding rationale is highly unorthodox, counterintuitive and Appellant's customers do not engage in the same behavior to the same extent at other stores; as such, the explanation is not compelling.

The SNAP Office notes that, at the time of the sanction decision, there were 47 SNAP- authorized stores within a one-mile radius of the Appellant firm, including four supermarkets, one large grocery store, four medium grocery stores, 12 other small grocery stores, five combination grocery/other stores and 21 other convenience stores. The ROD Office conducted an analysis of household data and noted that many customers clearly had access to and routinely shopped at better-stocked super stores and supermarkets in the area on or about the same day as conducting implausible transactions at the Appellant firm, again calling into question what customers were able to obtain at Appellant's typically-stocked convenience store/small grocery store that they were not able to obtain at much better-stocked and more competitively-priced stores. The Appellant store was clearly not the only store in the immediate area offering food items to SNAP customers; as noted above, it was clearly not the best-stocked firm in the area and it was clearly not the only store being visited by Appellant's customers. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As noted, the firm was a typically-stocked conveniences store/small grocery store in all relevant respects; there exists in the record no legitimate basis for the nature and level of the firm's transaction and redemption activity.

Regarding contention 5 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 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 November 5, 2013.

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 retailer in accordance with 7 CFR § 278.6(c), the agency is under no obligation in the determination letter to expound, point-by-point, on 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 violations 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 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 6 above, same-cents transactions are not prohibited, though stores with a statistically high number of these transactions, in the absence of a compelling explanation for same, exhibit characteristics of SNAP-benefit trafficking.

In regard to contention 7 above, as noted in the foregoing, there is no regulatory limit on the number of transactions in a given period of time, though stores with a statistically high number of these transactions, in the absence of a compelling explanation for same, exhibit characteristics of SNAP-benefit trafficking.

With regard to contention 8 above, likewise, there is no regulatory limit on the dollar amount of SNAP transactions, though stores with a statistically high number of large transactions, in the absence of a compelling explanation for same, exhibit characteristics of SNAP-benefit trafficking.

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 April 2, 2014 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 reply to the Charge Letter, Appellant did not specifically request consideration of said sanction; Appellant stated that it had an effective compliance policy and provided copies of undated photographs of FNS materials posted at Appellant's store. The documentation and evidence provided by Appellant clearly fall short of the standard detailed at § 278.6(i), as noted in the following:

<u>Criterion 1:</u>

- 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 employees prior to the commission of the violation(s) (not provided).

<u>Criterion 2:</u>

- 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.

<u>Criterion 3:</u>

- 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 that the following acts are prohibited and are in violation of the statute and regulations:
        - 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 transactions did in fact result in monetary deposits into the firm's bank account. 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 and regulations 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; this determination 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).

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

May 23, 2018