

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

Preston General Store, Inc,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0172870

FINAL AGENCY DECISION

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) finds that there is sufficient evidence to support the determination by the Retailer Operations Division (“ROD”) to impose a permanent disqualification from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) against Preston General Store, Inc. (“Appellant”).

ISSUE

The purpose of this review is to determine whether the ROD took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.6(a), (c) and (e)(1)(i), when it imposed a Permanent Disqualification against Appellant on November 17, 2014.

AUTHORITY

According to 7 U.S.C. § 2023 and its implementing regulations at 7 CFR § 279.1, “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 27, 2014, the ROD charged Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations. This charge was based on a series of SNAP transaction patterns that “establish clear and repetitive patterns of unusual, irregular, and inexplicable activity for your type of firm.” This letter of charges states: “As provided by Section 278.6(e)(1) of the SNAP regulations, the sanction for trafficking is permanent disqualification.” The letter

also states that “. . . under certain conditions, FNS may impose a civil money penalty (CMP) . . . in lieu of a permanent disqualification of a firm for trafficking.”

Appellant replied to the ROD’s charges in writing. The record reflects that the ROD received and considered the information provided prior to making a determination. The ROD determined that Appellant’s contentions did not outweigh the evidence that the store was trafficking. Based on the preponderance of evidence, the ROD concluded that trafficking is the most probable explanation for the questionable transactions listed in the charge letter attachments.

The ROD issued a determination letter dated November 17, 2014. This letter informed Appellant that it was permanently disqualified from participation as an authorized retailer in SNAP in accordance with Section 278.6 (c) and 278.6(e)(1) for trafficking violations. The letter also states the ROD considered Appellant’s eligibility for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP regulations. The ROD determined that Appellant was not eligible for the CMP because Appellant had not submitted sufficient evidence to demonstrate that it had established and implemented an effective compliance policy and program to prevent SNAP violations.

On November 24, 2014, Appellant, through counsel, appealed the ROD’s determination and requested an administrative review of this action. The appeal was granted.

STANDARD OF REVIEW

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means Appellant has the burden of providing relevant evidence that a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than untrue.

CONTROLLING LAW

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and implemented through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern in the event that personnel of the firm engaged in trafficking of SNAP benefits.

7 CFR § 278.6(a) states, in part:

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

(Emphasis added.)

7 CFR § 278.6(a) states, in part:

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

7 CFR § 278.6(c) reads, in part:

The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination. In the case of a firm subject to permanent disqualification under paragraph (e)(1) of this section, the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS, regardless of whether a request for review is filed in accordance with part 279 of this chapter.

7 CFR § 278.6(e)(1)(i) reads, in part:

FNS shall . . . [d]isqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.

Trafficking is defined in 7 CFR § 271.2, in part, as:

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”

Also at 7 CFR § 271.2, eligible food is defined as:

Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption . . .

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

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

7 CFR § 278.6(b)(2)(iii) states:

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

SUMMARY OF CHARGES

The charges under review were based on an analysis of SNAP Electronic Benefit Transfer (EBT) transaction data during the period from March 2014 through May 2014. This analysis identified the following patterns of SNAP transaction activity that indicate trafficking:

- An inordinate number of transactions ending in same-cents values;
- Consecutive transactions made too rapidly to be credible;
- Multiple transactions made from the same accounts in unusually short time frames;
- Transactions that depleted the majority or all of a recipient's monthly SNAP benefits made in unusually short timeframes; and,
- Unusually large transactions.

The attachments enclosed with the charge letter specify the questionable and unusual SNAP transactions indicative of trafficking which were conducted at Appellant during the review period.

APPELLANT'S CONTENTIONS

Appellant's responses regarding this matter are essentially as follows:

- Nearly all of Appellant's customers are SNAP participants and have little access to transportation. Appellant provided a link to county demographic information.
- Customers return to the store after a short period of time when they forget to purchase an item.
- Appellant rounds down transactions.
- Appellant offers meat and pizza specials for \$140 and \$10.
- Many of Appellant's prices end in "99" cents.
- After making a purchase and seeing their balance customers make additional purchases.
- Appellant has two cash registers. The same household may make purchases with different EBT cards at different registers.
- Many customers buy all their groceries for the month on one day.
- Appellant is a full-service grocery store and general store. Appellant sells a wide variety of meats, seafood, cheese, infant formula, and vegetables.
- Disqualification poses a hardship to SNAP customers who rely on the store.
- There is no direct evidence of trafficking.
- Appellant requests a warning.

- Appellant was denied due process by not being provided all information requested in its FOIA request.
- Appellant has not had any previous issue with SNAP compliance.
- Appellant did not receive any warnings.
- Appellant denies the allegations.
- Appellant requests that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) be disassociated from FNS records as an owner of the store. She has not been a store owner since February 1997, only the President and Secretary.

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

- Two pages of Appellant’s 2013 corporate tax return.
- Two affidavits each signed by an owner.
- A notice of dismissal regarding ten counts of “Welfare Fraud” concerning 5 U.S.C. § 552 (b)(6) & (b)(7)(C)

These explanations may represent only a brief summary of Appellant’s contentions. However, in reaching a decision, full consideration has been given to all contentions presented, including any others that have not been specifically listed here.

ANALYSIS AND FINDINGS

Regarding Appellant’s denial of violations, this review examines the relevant information regarding the determination. Once the ROD establishes trafficking occurred, Appellant bears the burden of providing relevant evidence to support a conclusion, considering the record as a whole, that that it did not engage in trafficking. If this is not demonstrated, the case will be sustained. Without supporting evidence and rationale, assertions that the firm has not violated program rules do not constitute valid grounds for overturning the determination.

Store Characteristics

In reaching a disqualification determination, the ROD considered information obtained during an April 14, 2014 store visit conducted by a USDA contractor to observe Appellant’s operation, stock, and facilities. This store visit information was used to ascertain if there were justifiable explanations for the firm’s irregular SNAP transaction patterns. The store visit report documented the following store size, description, and characteristics:

- Store size is approximately 2,000 square feet with some additional food storage outside of public view;
- Available inventory of SNAP-eligible food items showed stock composed predominantly of inexpensive items, which is typical of a convenience store;
- Cash registers and three electronic SNAP terminal devices¹;

¹ This appears to be a typo. Appellant states there was only one SNAP terminal device, which is to be correct.

- No shopping carts or hand baskets;
- No scanners or conveyor belts;
- No evidence of a wholesale business such as posted prices or separate entrances for wholesale customers; and,
- No meat or seafood specials or bundles.

In addition, the store's checkout counter space areas were cluttered and small allowing very little surface area to place large purchases. Appellant contends it is a full-service grocery store and general store. Appellant sells a wide variety of meats, seafood, cheese, infant formula, and fresh and frozen vegetables. Appellant is a convenience store². Appellant carried a small supply of meat and cheese and only two types of perishable vegetables. The available food was primarily of a low-dollar value and there was no hint that the firm sold items in bulk. Given the available inventory, there was no sign that Appellant would be likely to have SNAP redemption patterns that differed significantly from those of similarly-sized competitors.

Same-Cents Transactions

An interesting characteristic of questionable transactions is that many of them end in a same-cents value. Sets of repeating digits are highly unorthodox and do not regularly occur in legitimate transactions; such transaction structuring is a common hallmark of trafficking activity. In the absence of any compelling rationale to the contrary, these patterns strongly indicate that the firm is trafficking in SNAP benefits.

Attachment 1 to the charge letter documents transactions ending in same-cents values. A review of the store visit record indicates that the store did not promote any specials that could explain the pattern of large numbers of transactions ending in these values. This attachment includes 99 same-cents transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

There were a total of 332 SNAP transactions that met the parameters of this attachment in May 2014. Of these transactions, a total of 55 (17%) ended in “00” cents. There were a total of 395 SNAP transactions that met the parameters of this attachment in March 2014. Of these transactions, a total of 44 (20%) ended in “99” cents.

A number of households whose transactions were cited in other attachments to the charge letter also consistently made transactions that ended in same-cents values. Transactions appearing in more than one attachment to the charge letter are more suspicious as they display multiple patterns common to trafficking transactions.

Appellant admits that it has a pricing structure typical of convenience stores, where items are often priced to end in “.x9” cents. With such a pricing structure, it is unlikely for transactions to naturally end in “99” cents or even-dollar values with the frequency they occurred during the

² Appellant was incorrectly recategorized as a large grocery store based on a 2014 submission to FNS which stated that 65% of its sales were from staple food. However, Appellant’s response to the charge letter stated that 32% of its sales were from staple food and 45% was from gasoline sales. This is more consistent with the information Appellant previously supplied to FNS.

review period. Even if many of Appellant's prices were for "99" cents, the purchase of even a single additional item that was not priced at an even-dollar amount would rule out an even-dollar transaction or a transaction ending in "99" cents.

It is Appellant's contention that the inordinate number of transactions ending in same-cents values are due to the normal practice of the firm to end a transaction in the same-cents value of \$.00. The assertion that the firm rounds off transaction amounts is not supported by the evidence. Even if Appellant regularly rounded off transactions, this would not explain the high frequency of transactions that ended in \$.99 or other amounts.

Patterns of transactions ending in same-cents amounts indicate that SNAP transaction amounts are contrived. Random data, which legitimate transaction activity approximates, is extremely difficult to produce intentionally; it is very difficult to avoid repetitive patterns when attempting to create the appearance of normal, near-random transactions. That various customers each repeatedly had totals with identical cents values during the review period strains the credibility of Appellant's declaration that this activity reflected the acceptance of SNAP benefits in exchange for eligible food items. As Appellant has offered no rational explanation for why such patterns might exist, it is reasonable to conclude that these same-cents transactions are the result of trafficking.

Rapid Transactions

Attachment 2 to the charge letter documents back-to-back transactions made in rapid order at the same terminal. There are 37 sets of transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** included in this document. As Appellant has two registers, there is insufficient evidence to support that the rapid transactions were the result of trafficking.

Repeat Transactions by the Same Household

Attachment 3 to the charge letter documents the same household conducting back-to-back transactions in unusually short time frames. Violating stores may conduct multiple transactions from the same household account **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** to avoid the detection of single, high-dollar trafficking transactions. There are 290 repeat transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** included in this document.

Nearly all of Appellant's customers are SNAP participants, have little access to transportation, and many customers buy all their groceries for the month on one day. The record reflects that customers conducting rapid, repetitive, and large transactions at Appellant frequently spent SNAP benefits at better-stocked and more competitively-priced grocery stores, sometimes on or about the same day they shopped at Appellant.

Appellant is correct that customers sometimes forget an item or see something at the checkout and decide to purchase it after already having completed a transaction. In such instances, it is reasonable to expect the subsequent purchase would be for a nominal amount. This is because it

is quite rare to find very expensive items positioned at the checkout area, especially in smaller stores. Also, forgotten goods purchased immediately after a prior transaction typically consist of only one or two items. However, the subsequent transactions exceeded any minor amount. In some cases, the amounts of subsequent transactions equaled or exceeded the preceding transaction total.

Appellant argues that after making a purchase and seeing their balance customers make additional purchases. While there are legitimate reasons why a SNAP recipient might return to a convenience store in a short period of time, the examples in Attachment 3 indicate a series of purchases that total to large amounts. SNAP benefits are intended to supplement the food budget for households whose net income is near or below the Federal Poverty Level. It is difficult to believe customers who must rely on SNAP benefits to make ends meet prefer to pay higher prices and spend considerable amounts of their benefits at a convenience store. Spending sizable portions of one's SNAP benefit allotment in a convenience store - when there are larger stores at which one also shops that carry more variety of foods at a lower cost - is unreasonable customer behavior. Moreover, households listed in this attachment conducted this strange shopping pattern of making substantial purchases at Appellant multiple times during the review period. Given the common practice of violating retailers breaking up large, suspicious transactions into multiple, smaller transactions to avoid detection, a firm's explanation and evidence for why these transactions are occurring 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in a convenience store should be both rational and compelling. Appellant's explanation is neither.

SNAP Benefit Depletions

Attachment 4 to the charge letter documents the same household exhausting all or nearly all its benefits in rapid order. There are 118 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) included in this document.

In some cases, SNAP customers depleted SNAP account balances to within pennies of a zero balance and/or depleted balances during the first week of the month. It is highly implausible that customers would desire, or be able, to regularly conduct large transactions that deplete balances to within pennies of a zero balance. The likelihood that these transactions were the result of the legitimate sale of only eligible foods only is extremely small.

A government report on SNAP shopping patterns³ indicates that after the first day of benefit issuance, on average, 80 percent of a household's allotment remains unspent. Even after seven days, 40 percent of benefits still remain unspent. It typically takes 14 days to deplete 80 percent of one's benefits, and 21 days to deplete 90 percent. This report also revealed that households most often redeemed their benefits at supermarkets and supercenters, with only four percent of all households never shopping in a supermarket.

³ 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.

It is extremely doubtful that a SNAP household making a legitimate purchase would choose to spend a large portion of its monthly allotment at a convenience store with likely higher prices and substantially less inventory than what would be found at a supermarket or superstore. Although many SNAP households do shop early in the month as opposed to later in the month, most households do not spend all or a majority of their monthly benefits in only a few transactions or a single day. Depleting a large portion of one's SNAP balance early in the benefit month, leaving little to purchase food for the remainder of the month, is inconsistent with the normal shopping behavior of SNAP households.

Large Transactions

The food stock and facilities of Appellant as reported in the store visit documentation do not appear sufficient to provide for all of one's food needs. People generally do not spend large sums at such stores. It is rare for a convenience store such as Appellant's to have purchases like those included in Attachment 5 to the charge letter. This attachment cites 520 EBT transactions during the three-month period of investigation **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

Additionally, many of the charge letter transactions arrive at, or cluster around, certain dollar amounts in \$5 increments (**5 U.S.C. § 552 (b)(6) & (b)(7)(C)**). Households typically shop to obtain a certain mix of food items, irrespective of the total cost (other than to remain within allotment balances), and do not strive to achieve a particular total. The purchase amount of eligible food items typically approximates a random total. In contrast, firms facilitating trafficking tend to concentrate transactions at particular dollar amounts. In the absence of any compelling rationale to the contrary, the pattern of clustering transactions around certain dollar levels is implausible and indicative of transaction structuring and SNAP-benefit trafficking.

These transactions significantly exceed the county's average SNAP transaction, which was \$26.80 for a large grocery stores during the three months of the review period. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Appellant's average transaction is significantly higher than the county's average transaction. As previously stated, Appellant has a limited food stock typical of a convenience store and does not have any features that would induce people to spend substantially more than the typical convenience store purchase amount.

Based on the store layout, infrastructure, and available inventory, it is not credible that the Appellant would so frequently conduct large transactions closely resembling those typically found at a supermarket or superstore. It is not plausible that the firm's customers would regularly carry very large amounts of merchandise around the store without the benefit of shopping carts or shopping baskets, especially since larger, better-stocked stores are readily available and in the vicinity of the Appellant firm. Appellant is not set up to process high-dollar transactions, as indicated by its lack of equipment to facilitate large transactions and limited counter space. There are no legitimate bases for SNAP customers' unusual attraction to the firm such as a superior selection of staple foods, price advantages, package specials, bulk or promotional items, an extensive variety of otherwise unavailable ethnic food items, or special services rendered. Appellant failed to provide convincing evidence to establish the legitimacy of these excessively

large transactions, such as itemized cash register receipts. Based on all of these factors discussed in this section, the large volume of transactions for high-dollar amounts is unlikely to indicate a pattern of legitimate food purchases.

Expensive Offerings

Appellant asserts it sells expensive items which explain the large purchases. The evidence does not support this contention. Appellant states it sells meat and pizza specials for \$140 and \$10. The store visit documentation states Appellant does not offer meat specials. There is no evidence from the store visit photos that Appellant offered these specials. Appellant did not provide any receipts or invoices in support of its contentions.

While there may have been occasions when Appellant sold expensive items, based on evidence from the store visit, and lack of corroborating receipts or invoices, it is more likely true than not true that the sale of expensive items does not explain the large SNAP transactions that occurred at Appellant. Trafficking is a more likely explanation for the unusual and irregular pattern of high-dollar transactions.

No Applicable Mitigating Factors

Appellant asserts that this is the first time there has been an issue related to SNAP and that it did not receive prior warnings. A record of program participation with no documented previous violations, however, does not constitute valid grounds for mitigating the impact of the present serious determination of trafficking. To require Appellant to receive a warning of violations before administrative action can be taken would render the enforcement provisions of the Food and Nutrition Act and the enforcement efforts of the USDA virtually meaningless.

Appellant requests a warning. Neither the Food and Nutrition Act of 2008, as amended, nor the accompanying regulations cite any minimum dollar amount of cash or SNAP benefits, or number of occurrences, for such exchanges to be defined as trafficking. Nor do they cite any degrees of seriousness pertaining to trafficking of SNAP benefits. Trafficking is always considered to be extremely serious, even when the exchange of SNAP benefits for cash is dollar-for-dollar or is conducted by a non-managerial store clerk. This is reflected in the Food and Nutrition Act, which reads, in part, that disqualification “shall be permanent upon . . . the first occasion of a disqualification based on . . . trafficking . . . by a retail food store.” In keeping with this legislative mandate, § 278.6(e)(1)(i) of the SNAP regulations states that FNS must disqualify a firm permanently if personnel of the firm have trafficked. There is no agency discretion in the matter of what sanction is to be imposed when trafficking is involved.

Infant Formula

Appellant contends that high transaction amounts are due in part to offering infant formula. However, it would be unusual for a SNAP household to purchase baby formula with SNAP

benefits, as households who participate in SNAP are eligible to participate in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). WIC has a more lenient income threshold for participation - and a higher participation rate of eligible participants - than SNAP. WIC provides participants with vouchers for baby formula as well as other staple items, such as orange juice and cereal. WIC participants would likely purchase all their infant formula, as well as other expensive staple goods, with their WIC benefits.

No Undue Hardship to SNAP Participants

Appellant asserts that disqualification would be a hardship to SNAP households who rely on the store. Some degree of inconvenience to SNAP benefit users is inherent in the disqualification from SNAP of any participating food store, since the normal shopping pattern of such SNAP participants may be changed due to the disqualification. Section 278.6(f)(1) of SNAP regulations provides for Civil Money Penalty (CMP) assessments in lieu of disqualification in cases where disqualification would cause “hardship” to SNAP households because of the unavailability of a comparable participating retail food store in the area to meet their needs. However, this regulation also sets forth the following specific exception: “A CMP for hardship to SNAP households may not be imposed in lieu of a permanent disqualification.” Because the matter at hand involves a permanent disqualification, this CMP provision is not applicable.

Evidence of Trafficking

Appellant argues there is no evidence or proof of trafficking. As previously stated, 7 CFR § 278.6(a) states, in part:

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

Government analyses of stores caught in trafficking violations during on-site investigations found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include those cited in the letter of charges. FNS employs a computerized fraud detection tool to identify these patterns. This tool does not determine that trafficking has occurred. The ROD must still analyze the transaction patterns, along with other information such as store visit observations, customer shopping patterns, and comparative data from nearby stores. Only then does the ROD conclude whether questionable transactions were, more likely than not, the result of trafficking. Nevertheless, transactions with these patterns sometimes have valid explanations that support the idea they were the result of legitimate purchases of eligible food items, which is why opportunities are given to charged retailers to explain the questionable transactions cited. In this case, based on the empirical data of past trafficking investigations, the number of suspicious patterns displayed, the other evidence in the file, and in the absence of any reasonable explanations for such transaction patterns, the preponderance of the evidence supports

that the “unusual, irregular, and inexplicable” transactions and patterns cited in the letter of charges are the result of trafficking.

No Denial of Due Process

Appellant contends that it has been denied due process. In this regard, the permanent disqualification of Appellant by the ROD is neither a criminal nor a civil action, but rather an administrative action imposed against the firm as a result of trafficking violations. Section 278.6(b)(1) of the SNAP regulations states that upon charging a firm with SNAP violations, the letter informing the firm of the charges “shall inform the firm that it may respond either orally or in writing to the charges contained in the letter within 10 days of receiving the letter.” Appellant responded to the charges in writing in a fax dated August 31, 2014. After considering the evidence of the case, the ROD determined that a permanent disqualification was warranted.

FNS’s due process procedures include two levels of review. First, the retailer is afforded an opportunity to reply to the charges leveled by the ROD. The regulations at 7 CFR § 278.6(c) state:

in the case of a firm subject to permanent disqualification under paragraph (e)(1) of this section . . . the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS, regardless of whether a request for review is filed in accordance with part 279 of this chapter.

After the determination letter is issued, the second level of due process involves an administrative review. Appellant availed itself of this option and in the process of which Appellant was granted almost five years to provide additional information in support of the request for review. Appellant took advantage of this opportunity and provided additional information.

Appellant was denied due process by not being provided all information requested in its FOIA request. Appellant’s FOIA request is not subject to this review. Appellant’s FOIA request, and appeal rights, were part of a separate process of which Appellant was informed.

The purpose of the administrative review process is to ensure that a firm aggrieved by FNS’s adverse actions has the opportunity for their position to be fairly considered by an impartial reviewing authority prior to that adverse action becoming final. Through the administrative review process, Appellant has been duly given, and has taken, the opportunity to present any evidence and information it deemed as pertinent in support of its position that the ROD’s adverse action should be reversed. All evidence and information that Appellant presented to the ROD, as well as any such information submitted subsequently, have now been considered in this administrative review prior to rendering the final agency decision. The firm provided no additional records during the administrative review that would establish that the suspicious transactions were legitimate purchases. The record does not indicate any departure from established procedures with regard to Appellant’s right to a fair and thorough review. Appellant has exercised its opportunity to reply to the charge letter and its administrative review rights. By

doing so, it has availed itself of the full complement of the agency's statutory obligations with regard to due process.

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

Appellant requests that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) be disassociated from FNS records as an owner of the store. Appellant alleges she has not been a store owner since February 1997, only the President and Secretary. Appellant provided two affidavits, each signed by an owner. The affidavits are insufficient to demonstrate that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was not an owner at Appellant. Although Appellant alleges 5 U.S.C. § 552 (b)(6) & (b)(7)(C) sold her part of business in 1997, Appellant did not provide any documentation regarding this sale. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) continued to handle business for Appellant long after this date. While Appellant argues 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was a corporate officer and not an owner, corporate officers are also held responsible for a firm's sanctions, including a permanent disqualification for trafficking.

Summary

The ROD determined that Appellant likely trafficked in SNAP benefits. The charges of violations were based on the ROD's assessment that substantial evidence exists that the questionable transactions occurring during the review period displayed patterns inconsistent with legitimate sales of eligible food to SNAP participants. The evidence the ROD considered in support of its determination included:

- The irregular SNAP transaction data of Appellant as compared to similar stores;
- Observations made during an store visit by a USDA contractor, including the inadequacy of the firm's staple food stock to support such large transactions;
- The availability of other SNAP-authorized stores located close to Appellant; and,
- Shopping behaviors of Appellant's customers.

The transaction data and overall firm record demonstrate the patterns of unusual, irregular, and inexplicable SNAP activity for this firm is likely the result of trafficking.

Upon review, Appellant failed to prove by a preponderance of the evidence that the administrative action should be reversed. Appellant provided inadequate explanations for the suspicious transactions and insufficient evidence to legitimize its transaction data. It has not convincingly rebutted the ROD's determination that Appellant most likely trafficked in SNAP benefits. The SNAP regulations are specific with regard to the action that must be taken if personnel of the firm have trafficked, which is that FNS must disqualify the firm permanently.

CIVIL MONEY PENALTY

For a firm to have the opportunity to be considered for a civil money penalty (CMP), it must request that FNS consider a CMP in lieu of permanent disqualification and submit supporting documentation within ten days of receipt of the charge letter. Appellant was advised of these provisions in the charge letter of August 27, 2014. The regulations specify that such supporting documentation must demonstrate that the firm had established and implemented an effective SNAP compliance policy and training program prior to the occurrence of violations. A review of the administrative record indicates Appellant did not, at any time, request a CMP. Appellant also did not submit any documentation to support its eligibility for this alternative sanction, before or after the deadline.

In the absence of a request for a CMP and any supporting documentation, a CMP was not assessed by the ROD. According to the requirements stated in 7 CFR § 278.6(b)(1), § 278.6(b)(2)(ii and iii), and § 278.6(i), Appellant is not eligible for a CMP in lieu of a permanent disqualification from participation as an authorized retailer in SNAP. The determination by the Retailer Operations Division to deny Appellant a civil money penalty is sustained.

CONCLUSION

The record has yielded no indication of error in the finding by the Retailer Operations Division that Appellant trafficked in SNAP benefits. A review of the evidence supports that it is more likely true than not true that program violations occurred as charged. Based on the discussion above, the determination by the Retailer Operations Division to impose a permanent disqualification against Preston General Store, Inc. from participating as an authorized retailer in SNAP is sustained.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in 7 U.S.C. § 2023 and 7 CFR § 279.7. If Appellant desires a judicial review, the complaint must be filed in the U.S. District Court for the district in which Appellant's owner resides, is engaged in business, or in any court of record of the State having competent jurisdiction. This complaint, naming the United States as the defendant, must be filed within thirty (30) days of receipt of this decision.

Under the Freedom of Information Act, we are releasing this information in a redacted format as appropriate. FNS will protect, to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy.

RICH PROULX
ADMINISTRATIVE REVIEW OFFICER

October 8, 2019