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

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| Raceway #901, | ) | |
| | ) | |
| Appellant | ) | |
| | ) | |
| v. | ) | **Case Number: C0186024** |
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| ROD Office, | ) | |
| | ) | |
| 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 Raceway #901 (hereinafter "Appellant") by the ROD (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 December 17, 2015, 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 May through October 2015. The letter noted that the sanction for trafficking is permanent disqualification, as provided by 7 CFR

§278.6(e)(1). The letter also noted that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt under the conditions specified in 7 CFR §278.6(i). The record reflects that the SNAP Office received and duly considered Appellant's replies to the Charge Letter. By a letter dated February 5, 2016, 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 February 16, 2016, 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. There also exist FNS policy memoranda and clarification letters which further explain the conditions necessary in order to permanently disqualify retail stores.

7 U.S.C. § 2021(b)(3)(B) states, *inter alia*:

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

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

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

7 CFR § 278.6(e)(1)(i) states:

> Disqualify a firm permanently if: Personnel of the firm have trafficked as defined in §271.2

7 CFR § 271.2 states, *inter alia*:

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

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

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

7 CFR §278.6(i) states, *inter alia*:

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

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

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

Additionally, in interpretation of the regulations, relevant policy provides, *inter alia*, that:

> …the retailer must provide adequate proof that credit accounts existed at the time the suspicious EBT transactions occurred…. The determining office shall compare the credit information provided by the retailer against the transactions in the Charge Letter and the recipient's personal identifying information…If the retailer does not provide adequate proof the determining office shall permanently disqualify the retailer for trafficking.

## SUMMARY OF THE CHARGES

Examples of transaction data contained in the SNAP Office's Charge Letter, as well as additional data reflected in the record, are included below to serve as a point of reference for the following discussion:

7 USC 2018 (b)(7)(e)

The above are a few examples of many existing in agency data.

## APPELLANT'S CONTENTIONS

In Appellant's reply to the Charge Letter, in its written request for review dated February 16, 2016, and in subsequent correspondence, it was argued that:

1. Appellant states that no specific provision of 7 C.F.R. § 271.2 has been cited but adds that subsections 2, 3, 4, and 5 could not apply.
2. It appears that the sum and substance of the allegations contained in the Charge Letter are based purely on analytics run by USDA that indicate that the amount of some transactions are "exceedingly high" and that multiple transactions occurred in a short time frame. It is assumed that high transactions and multiple transactions in short periods indicate cash being exchanged for SNAP benefits; however, the letter contains zero evidence of either. There is zero evidence that there were any undercover agents getting cash in exchange for SNAP benefits. There has been no confession or statement from anyone employed at the store indicating that the allegations are true.
3. With regard to Attachment 1, a SNAP user may simply forget items they wanted to purchase once they got to the car and return to finish shopping. Similarly, a husband could have returned to the car only to have his wife or kids send him back for additional items. It is at least plausible that one member of the household did their shopping and handed the card to another member to do their shopping. Finally, some of the transactions in Attachment 1 are actually days apart.
4. Looking at numbers in a vacuum can lead to incorrect conclusions. With regard to Attachment 2, the firm is not only a gas station but also operates as a small grocery. Appellant provides documentation showing a diverse inventory which most gas stations do not have. Pop, energy drinks, coffee, milk, bread, sandwiches, chips, candy, lunch meat, fruit, canned items, condiments, etc. One could conceivably do nearly all of their food shopping at the store; therefore, it is not only possible but routine for people to purchase over $30 worth of food items, especially given the high markup employed at the store, as do most convenience stores. For every $20 of items purchased at the Appellant firm it is likely that the same items at Walmart would cost half that price. The store operates as a business and does not force customers to shop there and Appellant was under no obligation whatsoever to tell customers that they may get a better deal down the street. Appellant provides copies of receipts for all transactions listed in the Charge Letter as "exceedingly high." Appellant also provides copies of store invoices for the relevant time period; these show that the food items coming into the store match what is being sold as food items going out, including room for store mark-up.
5. In the event the agency does find a basis to levy sanctions against the store, Appellant requests that a civil money penalty be imposed in lieu of a permanent disqualification, per 278.6(i). The store meets all four requirements:

a. Exhibit A shows the firm's compliance 7 USC 2018 (b)(7)(e) and that it meets the first element of CMP eligibility.
b. Exhibit B certifies that the above compliance 7 USC 2018 (b)(7)(e) was in place at the time of the alleged violations and in fact was in place since the store began using SNAP. Thus the second element is met.
c. Exhibit C certifies that all employees are trained under the attached compliance 7 USC 2018 (b)(7)(e); thus the third element is met.
d. Exhibit D certifies that ownership in no way knew about any of the alleged violations until the Charge Letter was received and that said owners derived no benefit from the alleged violations. Because ownership was unaware of any potential violations and derived no benefit therefrom the final element of CMP eligibility is met.

## ANALYSIS AND FINDINGS

In regard to contention 1 above, Appellant correctly concludes that the definition of trafficking noted at 7 CFR § 271.2 (1) and (6) are the operative provisions in the present case.

Regarding contention 2 above, Charge Letters are not required by regulation or 7 USC 2018 (b)(7)(e) 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 will be discussed in further detail below. Appellant contends that the substance of the ROD Office's case against the firm is derived from data only and 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. 7 USC 2018 (b)(7)(e) is prescriptive on the evidence obtained and the amount of data used (typically three to six months of data is required). Various statistical tools and graphical reports are utilized, as well as store visit documentation reflecting the firm's nature and extent of inventory and the firm's logistical wherewithal. Compliance history and household data are evaluated. The record reflects that Appellant's firm was chosen for analytical investigation based upon numerous detailed and rigorous mathematical algorithms applied not only to Appellant's firm but to all SNAP-authorized firms, including all firms of a like type (convenience stores, in this case) in the state of Alabama. The data analyzed includes numerous comparisons of information such as the average SNAP purchase amount in a convenience store in the state, which was $7.21 during the analysis period, dramatically lower than most of the transaction data contained within the Charge Letter. The record contains documentation, including photographs of the firm's interior and exterior, an inventory survey

and a layout diagram, of a visit to Appellant's firm conducted on October 14, 2015. These documents reflect the firm to have been a typical convenience store in all relevant respects. The firm maintained a substantial inventory of tobacco products, alcohol, automotive supplies, phone accessories, gift items, automotive supplies and other non-food items. The firm also maintained a substantial inventory of prepared, ready-to-eat food and accessory food items (candy, beverages, etc.), typical convenience store stock, and also operated as a gas station. The documentation presents no indication of advertised specials, promotions or bulk or expensive food items; Appellant provides no corroborating documentation of same. The firm utilized two small registers, with approximately two-by-two feet of counter space each, surrounded by tobacco and tobacco-related products, candy and other non-food items. There were no shopping carts or baskets with which customers could transport large orders to the small check-out area or to waiting transportation. Most visible items were priced in standard retail variations of $.x9.

The record, including the firm's application to participate in the SNAP, thus reflects that the firm was correctly categorized as a convenience store. 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. 7 USC 2018 (b)(7)(e) and procedures direct that 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 policies and 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 by agency policy 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, regulations and agency policy, as noted above (pages 2–3).

Furthermore, the case presented by the ROD Office does not rest solely upon transaction data and printouts thereof (although the regulations do provide for such data-only charges) 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, which is summarized herein, 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.

With regard to contention 3 above, while there are legitimate reasons why a SNAP recipient or household member might return to a convenience store during a short period of time, such purchases are more typically in small amounts and for obtaining just a few items. The examples in Attachment 1 indicate a series of repetitive purchases that total large amounts. Spending such substantial amounts of SNAP benefits in a convenience store, when there are super stores, supermarkets and grocery stores nearby which carry a substantially larger variety of foods at lower cost, is 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. In fact, a comparison of the number of repetitive transactions conducted at the Appellant firm with the nearest six convenience stores (from just over 100 feet to just over three-quarters of a mile from the Appellant firm), reflects 136 such transactions (63 sets of such transactions) at the Appellant firm and none at the other convenience stores. There is no compelling rationale offered to explain why only Appellant's customers made repetitive visits spending large amounts in short timeframes. The record reflects, as noted, that Appellant's store is a typical convenience grocery store in all relevant respects and provides no plausible bases for customer's unusual attraction to the firm and unorthodox transaction patterns. The Appellant store was clearly not the only store in the immediate area offering food items to SNAP customers; 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.

Moreover, multiple repetitive digits (highlighted on pages 3 through 5 above), strongly indicate that many of the SNAP transaction amounts reflected in Attachment 1 were contrived. Random data, which legitimate transaction activity approximates, is extremely difficult to produce intentionally; it is very difficult to avoid producing repetitive patterns when attempting to create the appearance of normal, near-random transactions. Such sets of repeating digits are highly unorthodox, implausible and do not regularly occur in legitimate transactions; that dollar and/or cents values would be repeated (often also repeating the sequence) by multiple customers in a 24-hour period severely strains the credibility of Appellant's contentions that the activity represented therein resulted from the acceptance of SNAP benefits as payment for eligible food. Lastly, Appellant states that some Attachment 1 transactions are days apart; however, all of the transaction sets in Attachment 1 occurred within 24-hour periods.

In regard to contention 4 above, as noted in the foregoing, the documentation contained in the store visit indicates that the firm is a typical convenience store in all relevant respects; the inventory listed by Appellant is common convenience store inventory, the store category with

which the Appellant firm was compared in examining the transaction data. Store visit documentation reflected the presence of a large inventory of single-serving sizes of most snack items, also very typical of convenience stores. The product purchase invoices/receipts provided by the Appellant further corroborate that the firm primarily purchases such snack items. It is worth noting that the firm did not stock fresh fruit, vegetables or fresh meat of any kind, as is common in grocery stores. The photos and inventory survey documenting the store visit moreover reflect that many of the canned staple food items were stocked in relatively small numbers, often only one or two cans of each brand or product, certainly not the level of stock maintained by stores whose customers are routinely shopping for these kinds of items; conversely, Appellant's inventory of soda, chips and other snack items was much more substantial.

The record reflects that the ROD Office carefully tabulated and analyzed the product purchase invoices provided by Appellant, the results of which are shown in the table below:

| 7 USC 2018 (b)(7)(e) |
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As can be readily ascertained, product purchases, after allowing for a 35% mark-up, fall substantially short of supporting SNAP redemptions. It should be noted that the shortfall is quite likely substantially understated as well since the above figures do not take into account commercial credit/debit and cash sales which Appellant surely had.

Copies of sales receipts provided by Appellant do not indicate what was purchased and thus cannot be correlated with product purchase invoices/receipts. Moreover, there are numerous anomalies in the receipts that call their validity into question.

- There were several receipts indicating individual items priced implausibly high: transaction #419, one item at $39.56, #456 and #457, one item each at $39.56 and both on the same day, #472, one item at $22.00, #151, one item at $52.69 and #275, one item at $41.59. Store visit photos reflect the presence of no food items at these high prices and that the firm sold no bulk-packaged or otherwise expensive items.
- Many of the receipts reflect purchases that exactly match the prices of six packs of beer as seen in the store visit photographs.
- The photographs further reflect 12-packs of soda, placed immediately adjacent to the cash registers, priced at one for $4.00 and two for $8.00; 200 of the largest transaction receipts (from $65.97 to $131.13) were examined and none included either a $4.00 or $8.00 item, despite the fact that 28 of them occurred in October (the month of the store visit) and 11 occurred on or after the date of the visit (October 14, 2015).
- Photographs further reflect small bags of chips priced at $2.00 and various snack cakes priced at $.50; these items were on a shelf endcap immediately across the aisle from the cash registers. However, purchases of items so priced are extremely rare in the receipts.
- It is noted that many of the receipts, especially for the larger transactions and especially for those clustering around $100, list the more expensive items first or toward the top of the receipt ($13.98, $18.76, $20.76, $27.96, etc.) while the inexpensive items tend to be listed at or near the bottom ($0.05, $0.10, $0.25, $0.49, $0.69, $0.99, etc.), suggesting

that the totals were general goals being worked toward by scanning item amounts into the register and not merely scanning food items as they are brought to the check-out area. It is reiterated that the firm provided no shopping carts or baskets with which customers could transport large orders to the register or to waiting transportation. Most of these transactions occurred in August and September and nearly all in the afternoon to late evening.

Moreover, the data reprinted on pages 7 through 14 above reflect that customers conducting implausible transactions at the Appellant firm were shopping at much better and very likely better-priced super stores, supermarkets and grocery stores (typically these firms are the most competitively-priced stores in a given area), on or about the same day, calling into question what these customers could obtain at Appellant's typically-stocked convenience store that they could not obtain, almost certainly at lower prices, at the better-stocked stores. This data also reflects that customers were conducting repetitive and excessively large transactions primarily or only at the Appellant firm. In fact, a comparison of the number of excessively large transactions conducted at the Appellant firm with the nearest six convenience stores (from just over 100 feet to just over three-quarters of a mile), reflects 406 such transactions at the Appellant firm, 10 at one of the other firms, two at one firm and none at the remaining four stores.

The issue in the present case is that the firm's transaction activity is drastically out of step with its staple food inventory. Appellant allows that its prices are high but that customers shop at the store in the same manner as other convenience stores and implies that customers expect to pay higher prices at such stores. As noted above, the average SNAP transaction in a convenience store during the analysis period of May through October 2015 was $7.21, substantially lower than the bulk of the transaction activity noted in the Charge Letter; in fact, the transactions in Attachment 2 range from four to over 23 times this amount, yet the firm maintained a very typical convenience store inventory. There is no basis for customers' attraction to the Appellant firm, there being no superior selection of staple foods, no evidence of a price advantage, no evidence of package, bulk or promotional items, no extensive variety of otherwise unavailable ethnic food items and no evidence of custom or special services rendered.

The ROD Office notes that Appellant's average SNAP transaction during the analysis period ranged from 2.2 to 3.5 times that of the nearest six comparable firms; the firm's SNAP redemptions during this period were 3.5 times that of the average convenience store in the state of Alabama during the same period. At the time of the sanction decision there were 16 SNAP-authorized firms within a two-mile radius of the Appellant firm, including two super stores (one at less than one-fifth of a mile from the Appellant firm), two supermarkets and two small grocery stores. Agency data indicates that there are currently 15 SNAP-authorized firms within a one-mile radius of the Appellant firm, including one super store (at under one-fifth of a mile), two supermarkets, two small grocery stores (from one-third to just under one-half mile), four combination grocery/other stores (one at under one-fifth of a mile) and six other convenience stores (five of which are from just over 100 feet to under one-half mile), demonstrating that there were several much better-stocked stores in the area. As noted, the record demonstrates that Appellant's customers in fact frequented these better-stocked stores.

The ROD Office further notes that the numbers of Appellant's SNAP transactions in most transaction bands during the analysis period were multiple times that of the store-type average in the state of Alabama: in the $20.00 to $29.99 band, the firm conducted over two and three-quarters times the average number of transactions conducted in SNAP-authorized convenience stores in the state; in the $30.00 to $39.99 band, the firm conducted over four times the average number of transactions; in the $40.00 to $49.99 band, the firm conducted seven times the average number of transactions; in the $50.00 to $59.99 band, the firm conducted over seven times the average number of transactions; in the $60.00 to $69.99 band, the firm conducted 27 times the average number of transactions; in the $70.00 to $79.99 band, the firm conducted 21 times the average number of transactions; in the $80.00 to $89.99 band, the firm conducted over 18 times the average number of transactions; in the $90.00 to $99.99 band, the firm conducted over 32 times the average number of transactions; in larger transaction bands (from $100 to $169.99) the firm conducted as much as 80 times the average number of transactions. As noted, the firm is a typically-stocked convenience 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.

Moreover, as noted, there is an unusual concentration of transactions at or about the $100 level in Attachment 2 that is unexplained by Appellant's inventory and pricing. In addition to this unusual clustering, many transactions exhibited repetitive cents-values, as highlighted above. It 7 USC 2018 (b)(7)(e) Households typically shop to obtain a certain collection of food items, irrespective of the total cost (other than to remain within allotment balances), and do not strive to achieve a particular total. On the contrary, however, customers and/or store clerks attempting to agree on a general dollar level tend to concentrate numbers at certain levels, in much the same way that traders negotiating a price on an expensive item rarely offer (or counter with) a random number, $97.31 or $123.62 for example, but instead propose $95, $100 or $105. The purchase of a cart or basket (which Appellant did not provide to customers, calling into question how large orders were transported to the register or to waiting transportation) of eligible food items typically approximates a random total amount. Many transactions in Attachment 2 do not resemble random numbers but rather clearly appear contrived.

While SNAP customers are permitted to make repetitive and/or large purchases, this does not routinely occur at typically-stocked convenience stores.

The table below reflects Appellant's monthly SNAP redemptions for the period February 2015 through February 2016:

| 7 USC 2018 (b)(7)(e) |
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Lastly, in regard to contention 5 above, 7 CFR §278.6(i) provides for the imposition of a civil money penalty in lieu of permanent disqualification for trafficking; Appellant was advised of the requirement regarding civil money penalties in lieu of permanent disqualification in the SNAP Office's December 17, 2015 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 requested consideration of said sanction but provided insufficient evidence in support thereof. Thus the SNAP Office decision not to impose a civil money penalty is found to have been in accordance with 7 CFR §278.6(b)(1), §278.6(b)(2)(ii), §278.6(b)(2)(iii), §278.6(i) and long-standing 7 USC 2018 (b)(7)(e). The documentation and evidence provided by Appellant clearly fall short of the standard detailed at § 278.6(i), as noted in the following:

Criterion 1:

- Appellant provided insufficient written and dated documentation to reflect a commitment to ensure that the firm was operated in a manner consistent with SNAP regulations and 7 USC 2018 (b)(7)(e):
    - Documentation of the development and/or operation of a 7 USC 2018 (b)(7)(e) to terminate violating employees (not provided).
    - Documentation of the development and/or operation of procedures/7 USC 2018 (b)(7)(e) 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 7 USC 2018 (b)(7)(e) statements were provided to violating employees prior to the commission of the violation(s) (asserted but not established). Moreover, the purported 7 USC 2018 (b)(7)(e) statement offered was merely a compliance-related placard provided by the agency to all SNAP-authorized firms and cannot reasonably be held up to comprise the entirety of a legitimate compliance 7 USC 2018 (b)(7)(e) statement.

Criterion 2:

- Appellant did not provide documentary evidence which establishes that the firm's compliance 7 USC 2018 (b)(7)(e) and program were in operation prior to the occurrence of the violations at issue (asserted but not established, as noted above).

Criterion 3:

- Appellant did not provide the following:
    - Documentation of dated training curricula and dates of training sessions prior to the violations.
    - Records of dates of employment of all firm personnel.
    - Contemporaneous documentation of participation of violating personnel in initial and follow-up training prior to violations.
- Appellant provided insufficient documentation to demonstrate that its training program meets or is otherwise equivalent to the following standards:
    - Training shall be designed to establish a level of competence that assures compliance with program requirements as included in part 278.

- Training materials shall clearly state that 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 7 USC 2018 (b)(7)(e) documented in Criterion 1 (there is no assertion that this was done and no documentation in support thereof).
- Any subsequently hired employees are trained within one month of hiring and trained periodically thereafter (there is no assertion that this was done and no documentation in support thereof).

Criterion 4:

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

7 USC 2018 (b)(7)(e)

## 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), it may be necessary to release this document and related correspondence and records upon request. If such a request is received, FNS will seek to protect, to the extent provided by law, personal information that if released could constitute an unwarranted invasion of privacy.

/S/ November 2, 2016

DANIEL S. LAY DATE
ADMINISTRATIVE REVIEW OFFICER