

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

Cascade Food Mart,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0193031

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is sufficient evidence to support a finding that a Permanent Disqualification from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against Cascade Food Mart by the Retailer Operations Division of FNS.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(e)(1)(i) in its administration of the SNAP when it imposed a Permanent Disqualification against Cascade Food Mart on November 29, 2016.

AUTHORITY

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

CASE CHRONOLOGY

In a letter dated September 26, 2016, the Retailer Operations Division informed the Appellants that their firm was in violation of the terms and conditions of the SNAP regulations, 7 CFR § 270 – 282, based on EBT SNAP benefit transactions that "establish clear and repetitive patterns

of unusual, irregular, and inexplicable SNAP activity for your type of firm."

In telephone conversations with Retailer Operations Division staff on October 5, 2016, October 6, 2016, and October 26, 2016 and in letters dated October 7, 2016, October 13, 2016, October 21, 2016, and November 7, 2016, the Appellants, through counsel, denied the trafficking allegations and provided various documents to explain the questionable SNAP transactions that were outlined in the September 26, 2016 Charge Letter.

After considering the Appellants' replies and the evidence in the case, the Retailer Operations Division issued a Determination Letter dated November 29, 2016, informing the Appellants that Cascade Food Mart was being permanently disqualified from participation in the SNAP in accordance with 7 CFR § 278.6(e)(1) for trafficking violations.

In a letter postmarked December 10, 2016, the Appellants, through counsel, requested an administrative review of the Retailer Operations Division's decision to permanently disqualify the firm from participation in the SNAP. FNS granted the Appellants' request for administrative review by letter dated December 12, 2016.

STANDARD OF REVIEW

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

CONTROLLING LAW

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, amended, 7 U.S.C. § 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 2021, Part 278.6(a) and Part 278.6(e)(1)(i) of the Regulations establish the authority upon which a permanent disqualification may be imposed upon a retail food store or wholesale food concern. 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 and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system ... [Emphasis added].

7 CFR § 278.6(e)(1)(i) states:

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

7 CFR § 271.2 states, *inter alia*:

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

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

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

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

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

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

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

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

SUMMARY OF CHARGES

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

- There were multiple transactions made too rapidly to be credible;
- There were multiple transactions made from individual benefit accounts in unusually short timeframes;
- There were an excessive number of manual key-entered EBT transactions made at the subject location; and
- There were excessively large purchase transactions made from recipient accounts.

APPELLANTS' CONTENTIONS

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

In the Appellants' replies to the Charge Letter and in the review request postmarked December 10, 2016 and subsequent correspondence postmarked January 3, 2017, the Appellants, through counsel, stated the following summarized contentions, in relevant part:

- The Appellants deny that trafficking of SNAP benefits took place at Cascade Food Mart;
- However, if SNAP violations did occur at Cascade Food Mart during the review period, they were the responsibility of the general manager and they were conducted without the Appellants' knowledge, consent, involvement, or approval;
- This is the first time that the Appellants have been cited for any SNAP violations;
- The Appellants were in the process of selling Cascade Food Mart prior to receiving the Charge Letter from FNS. In fact, the store was sold to new owners on October 6, 2016;
- The multiple transactions made too rapidly to be credible are the result of Cascade Food Mart having two different cash registers and two EBT POS devices;
- The excessively large purchase transactions are the result of the majority of SNAP customers who patronize Cascade Food Mart not having transportation available to them to reach larger chain grocery stores. As such, many of the store's SNAP customers purchase food items in large quantities during the same visit, such as cases of bottled water, sodas, energy drinks, frozen vegetables, frozen entrees, meat products, chips, grains, canned foods, and cereals, to avoid having to make multiple trips to Cascade Food Mart; and
- The Appellants are requesting that FNS impose a trafficking civil money penalty

(CMP) in lieu of a permanent SNAP disqualification of Cascade Food Mart.

In support of the Appellants' contentions, the following documents were submitted to FNS:

- A copy of USDA's "Using SNAP Benefits" poster (FNS-110);
- A copy of USDA's "We Welcome SNAP EBT Customers" poster (FNS-132);
- A copy of USDA's "Report Abuse" poster (FNS-240);
- A copy of USDA's "SNAP EBT Do's and Don'ts for Cashiers" and "Penalties for Violation of SNAP" (FNS-136);
- Training manual for Cascade Food Mart that was developed from USDA's "SNAP Training Guide for Retailers" (FNS-330);
- A photocopy of the CD containing USDA's "SNAP Training Guide for Retailers" (FNS-330);
- Asset Purchase Agreement dated October 6, 2016;
- Assignment and Assumption of Lease Agreement dated June 15, 2008;
- Assignment and Assumption of Lease dated September 21, 2016;
- Bill of Sale for Cascade Food Mart dated October 6, 2016;
- Monthly inventory reports for Cascade Food Mart dated January 3, 2016 through August 4, 2016;
- Vendor invoices for food purchases made for Cascade Food Mart during the six month review period; and
- Monthly Funding Reconciliation and Card Processing Statements for Cascade Food Mart for the six month review period.

ANALYSIS AND FINDINGS

Store Characteristics

FNS authorized Cascade Food Mart as a convenience store on March 31, 2014. The casefile indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during an August 20, 2016 store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information obtained from the store visit was also used to ascertain if there were justifiable explanations for the firm's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Cascade Food Mart is approximately 1,200 square feet in size and it has a storage area outside of the public view that is approximately 450 square feet in size. The storage area/room stocks candies, various drinks, and ineligible non-food items;
- Cascade Food Mart is located in a suburban, commercial area of Atlanta, Georgia;
- There were no shopping carts or hand-held baskets available for customer use;
- Cascade Food Mart has two cash registers and two EBT point-of-sale (POS) devices for use in ringing-up SNAP transactions;

- There were no optical scanners or conveyor belts for the speedy processing of transactions;
- Cascade Food Mart has a food stock that is typical of convenience stores and it offers customers a minimal variety and amount of eligible staple foods for sale;
- The eligible food stock at Cascade Food Mart appears to be mostly snack foods and drinks;
- The majority of the staple foods stocked at Cascade Food Mart are stocked on one central island which has some areas that are thinly stocked with food items;
- At the time of the store visit, Cascade Food Mart did not meet the eligibility requirements to participate in the SNAP under Criterion A as it stocked only three packages of cheese and ice cream from the Dairy staple food category ;
- There were no meat/seafood specials or bundles that might sell for high prices;
- Cascade Food Mart is not a WIC Program vendor and it does not sell any infant formula or infant foods;
- The store does not stock any high priced food items;
- It does not appear from the store visit observations that Cascade Food Mart extends credit to customers;
- No signs were posted in the store nor were there any flyers advertising the availability of bulk foods offered at a discounted rate to include specials on food purchased by the case;
- The checkout counters have a very limited space as they are surrounded by a Plexiglas barrier. As such, the checkout counters do not provide adequate space for the large amounts of individual food items necessary to make up many of the large transactions cited in the Charge Letter Attachments;
- There were no fresh or frozen meats, poultry, or fish items;
- Cascade Food Mart does not have a deli case/section and it does not sell any deli meats and cheeses by the pound;
- Cascade Food Mart does not have a kitchen and it does not offer for sale any in-store prepared hot and cold prepared, ready-to-eat foods that are intended for immediate consumption and require no additional preparation;
- Meat items available for sale included canned fish, canned shellfish, canned/potted meat, meat jerky, and eggs;
- Cascade Food Mart does not stock any fresh produce items;
- Cascade Food Mart does not stock any frozen fruits or vegetables;
- The only frozen food item stocked at the subject store is ice cream;
- Other staple foods available for purchase included such items as 100% juice, canned fruits and vegetables, pasta, cereal, flour, corn meal, baking mixes, snack foods, cakes/pastries, etc.;
- During the FNS store visit, many of the canned goods stocked at Cascade Food Mart were dusty/dirty indicating that they are not sold on a regular or consistent basis;
- Much of the remaining food stock consisted of accessory foods such as candy and gum, carbonated and non-carbonated drinks, condiments, spices, and vegetable oil; and
- Cascade Food Mart stocked a good supply of ineligible nonfood items such as

over-the counter medications, health and beauty items, tobacco products, hats, paper products, household cleaning supplies, alcohol, lottery tickets, automotive supplies, toys, panty hose, etc.

On review, the investigative materials provided by the Retailer Operations Division, including computer printouts of transaction data available from Federal records, store visit observations, information regarding area competitor firms, and household shopping patterns, were analyzed.

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

Denial of Trafficking Allegations

Regarding the Appellants’ contention that they deny the trafficking allegations, this review encompasses and documents the examination of the primary and relevant information in this case, the purpose of which is, as noted above, to determine whether the Appellants demonstrate by a preponderance of the evidence that the permanent disqualification should be reversed. In this case, therefore, if the Appellants demonstrate by a preponderance of the evidence that trafficking did not occur in the Appellants’ firm, then trafficking will be considered not to have occurred and the disqualification reversed. If this is not demonstrated the case is to be sustained. Assertions that the firm has not violated program rules, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations or for mitigating their impact.

SNAP Violations Made Without Appellants’ Knowledge, Consent, Involvement, or Approval

The Appellants contend that if, however, SNAP violations did occur at Cascade Food Mart during the review period, they were the responsibility of the general manager and they were conducted without the Appellants’ knowledge, consent, involvement, or approval. This contention cannot be accepted as a valid basis for dismissing any of the charges, or for

mitigating the impact of those charges. As owners of the store, the Appellants are liable for all violative transactions that occur at Cascade Food Mart. Regardless of whom the ownership of a store may utilize to handle store business (i.e., regardless of whether a store owner, store manager, store clerk, family member, etc. was involved in the violative transactions), ownership is accountable for the proper handling of SNAP benefit transactions. Prior to becoming authorized to participate in the SNAP on March 31, 2014, the Appellants completed and submitted a SNAP Application for Retail Stores. The SNAP Application contained a section indicating that the person(s) signing the Application understood and agreed to ensure that store employees follow the SNAP rules and regulations and that the person(s) accepts responsibility for any SNAP violations that may occur at the store that were committed by any of the store's employees---paid, unpaid, new, temporary, full-time, part-time, etc. The SNAP Application also included a section that contained a statement which acknowledged that the person(s) signing the Application was aware that violations of Program rules could result in fines, legal sanctions, withdrawal, or disqualification of the store. In addition, the Appellants were provided with program training and reference materials which reinforced the statements included in the SNAP Application.

The regulations establish that an authorized food store may be disqualified from participating in the program when the store fails to comply with the Act or regulations because of the wrongful conduct of an owner, manager, or someone acting on their behalf. Trafficking is defined in 7 CFR § 271.2 of the SNAP regulations which states that trafficking means the “buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone... The Food and Nutrition Act of 2008, at § 2021, does not allow for discretion in determining sanctions for trafficking and is specific in its requirement that “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, 7 CFR § 278.6(e)(1)(i) of the SNAP regulations states that FNS shall disqualify a firm permanently if personnel of the firm have trafficked. The Appellants' implied contention that the SNAP violations were committed under the management of the general manager without their knowledge, consent, involvement, or approval cannot be accepted as a valid basis for diminishing the penalty. To allow store ownership to disclaim accountability for the acts of persons whom the ownership chooses to utilize to handle store business would render virtually meaningless the enforcement provisions of the Food and Nutrition Act and the enforcement efforts of USDA.

No Prior Charges

The Appellants contend that this is the first time that they have been cited for any SNAP violations. However, a record of participation in the SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges.

Appellants Sold Store Soon After Receipt of Charge Letter

The Appellants contend that they were in the process of selling Cascade Food Mart prior to receiving the Charge Letter from FNS. In fact, the store was sold to new owners on October 6, 2016. The Appellants provided FNS with various documents, including the Asset Purchase Agreement dated October 6, 2016, Assignment and Assumption of Lease Agreement dated June 15, 2008, Assignment and Assumption of Lease dated September 21, 2016, and Bill of Sale for Cascade Food Mart dated October 6, 2016, to validate their claim that they sold the subject store to new owners on October 6, 2016. However, the Appellants were charged and determined to be trafficking based on an analysis of EBT transaction data from February 1, 2016 through July 31, 2016. Since the Appellants did not sell Cascade Food Mart until after the review period had ended (i.e., the store was sold on October 6, 2016), the Appellants were the owners of Cascade Food Mart and are responsible for the violative SNAP transactions that occurred during the six month review period.

Multiple Transactions Made Too Rapidly to be Credible (Charge Letter Attachment 1)

This Attachment lists 27 sets of transactions (54 total transactions)

5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP benefits that met the parameter of this Scan.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The Appellants contend that the multiple transactions made too rapidly to be credible are the result of Cascade Food Mart having two different cash registers and two EBT POS devices. However, in each of the transaction sets listed in this Charge Letter Attachment, both transactions were conducted on the same cash register/terminal. Therefore, the Appellants' explanation for these questionable transactions is unsubstantiated.

Frequent and large transactions conducted rapidly in order to purchase eligible foods at Cascade Food Mart are highly unlikely given the store's logistical wherewithal and store stock. The firm does not maintain the logistical wherewithal required to rapidly process these transactions. In light of the above, consider the time required to process a legitimate purchase and the steps involved:

1. Unloading items onto the checkout counter (no hand-held baskets or shopping carts are available to customers of Cascade Food Mart);
2. Separating eligible items and ineligible items;
3. Handling by the cashier of individual items to determine the price, which in this case involved manual keying of amounts;
4. Entering the prices into a cash register, once for eligible foods and once for ineligible items;
5. Bagging the items for carry out;
6. Handing the customer bagged items to make room for more food items the customer is bringing to the counter;
7. Informing the customer of the total;

8. Pressing the “SNAP transaction key” on the point-of-sale device;
9. Swiping the card;
10. Entering by the customer of the required PIN;
11. Cashier entry of the purchase amount;
12. Confirming customer has a sufficient benefit balance;
13. Processing and approval of the transaction by the system;
14. Printing out register and EBT receipts;
15. Accepting an alternate form of payment for nonfood items and possibly handling cash change; and
16. Removing products from the checkout area so the next customer in line can begin another transaction.

While such transactions may well be done in succession, one will readily surmise that performing these processes on large transactions is not done rapidly. The amount of time required is generally proportional to the dollar amount of the transaction; typically, the larger the dollar amount transacted the longer the time period between the transactions.

Limited counter space as well as manually key-entering 19-digit card numbers adds additional time to transactions. Cascade Food Mart processed orders **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, yet the firm had only small checkout counters, no optical scanners and none of the logistical tools such as conveyor belts, rotating bagging platforms or order separators that are routinely used in rapid throughput operations. Frequent and large transactions conducted rapidly in order to purchase eligible foods at Cascade Food Mart are highly unlikely given the store’s logistical wherewithal and store stock. 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 hand-held baskets or shopping carts, and very little checkout counter space, processed rapidly is implausible. The Appellants’ rationale regarding how it may conduct such transactions rapidly is not compelling.

Multiple Transactions Made from Individual Benefit Accounts in Unusually Short Timeframes (Charge Letter Attachment 2):

This Attachment documents 54 sets of transactions (121 total transactions) **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These transactions were conducted by 43 different households. Violating stores often conduct multiple transactions from the same household account as a method to avoid detection of single high dollar transactions that cannot be supported by the retailer’s food inventory and infrastructure.

The Appellants did not provide any contentions or evidence to support that the multiple transactions made from individual household accounts in unusually short timeframes were for the purchase of legitimate foods by SNAP customers.

While there are no limits on the number of times EBT cards may be used or the amount of eligible foods that may be purchased, the SNAP transactions noted in the Charge Letter are questionable because they display characteristics of use inconsistent with the nature and extent of the store’s stock and facilities and are indicative of trafficking. Although it is not uncommon

for customers to conduct more than one transaction per day, it is not common that such multiple transactions are for large dollar amounts. Cascade Food Mart is not set up to provide for all of one's food needs with no fresh or frozen meats, no frozen fruits and vegetables, no fresh produce items, and lacks an abundant depth and breadth of staple foods. Also, the store visit observations indicate that there is no evidence of a price advantage or custom or special services rendered at the subject store. It is irregular for convenience stores to have purchases such as those cited, especially when Cascade Food Mart does not stock any high priced food items so all of the food items stocked at the store are low priced items.

A review of client shopping data for the review period shows that clients shopping at Cascade Food Mart are also shopping at other area grocery stores, as well as full-line supermarkets and super stores that most likely offer customers a much larger quantity and variety of eligible food items for better prices. Based on these shopping patterns, transportation to other stores is not an issue for these SNAP customers. Yet, these customers continue to shop and spend suspiciously high dollar amounts in short timeframes at Cascade Food Mart, where the eligible food stock is limited, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of their purchases at better stocked stores. This is a strong indicator of trafficking.

Sometimes a firm may have unusual transaction patterns due to a recipient's lack of access to other SNAP authorized stores. However, there are 16 SNAP authorized retailers, including a super store, located within a 1.0 mile radius of Cascade Food Mart that can meet the nutritional needs of SNAP customers. As mentioned above, SNAP customers that shopped at Cascade Food Mart during the six month review period also shopped at other area grocery stores and, therefore, transportation to other stores is not an issue for these customers. Therefore, lack of access to other authorized stores does not appear to be an explanation for Cascade Food Mart's abnormally high SNAP transaction amounts conducted within a short timeframe of each other.

The Appellants did not provide any compelling justification as to why SNAP households are conducting multiple transactions at Cascade Food Mart or evidence that all of the irregular transactions cited in the Charge Letter were for eligible food items only. Based on the analysis above and in the absence of any other reasonable explanation, the irregular transaction patterns are more likely than not to be a result of trafficking in SNAP benefits.

Excessive Number of Manual Key-Entered SNAP Transactions (Charge Letter Attachment 3)

This Attachment to the Charge Letter documents a significant number of EBT manual (key-entered) transactions made at Cascade Food Mart during the six month review period. There are 70 manual transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) included in this document.

The Appellants did not provide any contentions or evidence to support that the excessive number of manual (key-entered) SNAP transactions that were conducted during the review period were for the purchase of legitimate foods by SNAP customers.

Manually keyed transactions are those in which the magnetic strip on the back of the EBT card is

not being read by the store's EBT POS device and the store clerk must manually key-enter the lengthy EBT card number. When the magnetic strip on an EBT card fails, it can no longer be swiped and replacement EBT cards contain different identification numbers. On-site investigations into trafficking at retailers have found it is not uncommon for retailers to have a SNAP recipient's PIN and EBT card number in order to facilitate trafficking SNAP benefits in exchange for cash without the need for the recipient to be physically present. The retailer enters the EBT card number manually as the SNAP recipient has the actual EBT card and then enters the PIN. A review of other EBT transactions on the dates of these manual transactions shows that Cascade Food Mart's POS devices were functioning properly as there were swipe transactions before and after the manual transactions. The SNAP recipient forgetting his/her PIN would not result in a manually key-entered EBT transaction leaving a recipient's EBT card having a worn or malfunctioning strip as the only possible reason, outside of trafficking, for these excessive numbers. An analysis of the transaction data in this Attachment identified transactions by multiple households which do not fit the pattern of an EBT card having a worn or malfunctioning strip and therefore are indicative of trafficking. Specifically, the Retailer Operations Division identified SNAP households that conducted manually key-entered transactions at Cascade Food Mart even though the household's EBT card was able to be swiped at other stores. A pattern of manually keyed and swiped transactions using the same EBT card is indicative of trafficking.

Excessively Large Purchase Transactions (Charge Letter Attachment 4)

This Attachment lists 1,223 SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. This average is more than seven times larger than the average transaction made at convenience stores in Georgia during the review period. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Even the smallest transaction cited in this Charge Letter Attachment is almost four times larger than this store type in Georgia. As noted previously, there is no indication from the store visit that Cascade Food Mart would be likely to have SNAP redemption patterns significantly different from similar-sized competitors offering similar food items.

The Appellants contend that the excessively large purchase transactions are the result of the majority of SNAP customers who patronize Cascade Food Mart not having transportation available to them to reach larger chain grocery stores. As such, many of the store's SNAP customers purchase food items in large quantities during the same visit, such as cases of bottled water, sodas, energy drinks, frozen vegetables, frozen entrees, meat products, chips, grains, canned foods, and cereals, to avoid having to make multiple trips to Cascade Food Mart.

Regarding the Appellants' contentions, a review of client shopping data for the review period shows that clients shopping at Cascade Food Mart are also shopping at other area grocery stores, as well as full-line supermarkets and super stores that most likely offer customers a much larger quantity and variety of eligible food items for better prices. Based on these shopping patterns, transportation to other stores is not an issue for these SNAP customers. Yet, these customers continue to shop and spend suspiciously high dollar amounts in short timeframes at Cascade Food Mart, where the eligible food stock is limited,

5 U.S.C. § 552 (b)(6) & (b)(7)(C) of their purchases at better stocked stores.

In addition, while SNAP customers, may on a rare occasion, purchase food items in large quantities during the same visit, such as cases of drinks, frozen vegetables, frozen entrees, meat products, chips, grains, canned foods, and cereals, to avoid having to make multiple trips to Cascade Food Mart, the FNS store visit report and photos show that Cascade Food Mart offers a limited stock of SNAP eligible foods with no fresh or frozen meats, poultry, or seafood, no frozen fruits or vegetables, and no fresh produce items. The only frozen food item stocked at Cascade Food Mart is ice cream. The inventory report and photos also show no expensive eligible foods in stock that would account for these large amounts as well as showing the store has limited checkout counter spaces, no optical scanners, and no shopping carts or hand-held baskets in which to transport the large number of items required to make up these large transaction amounts. Without these, it is unlikely that such large dollar value transactions could be for actual food purchases and more likely they are trafficking.

The record shows that there are 16 SNAP authorized retailers (to include 10 convenience stores, 2 combination grocery/other stores, 3 small grocery stores, and 1 super store) located within a 1.0 mile radius of Cascade Food Mart. Several of the SNAP authorized stores are larger than the subject store and offer a greater quantity and variety of food products at comparable, or better prices as compared to the subject store. An analysis of the shopping patterns for the SNAP households listed in this Attachment shows that all of the households shopping at Cascade Food Mart have access to transportation and that all are regularly shopping at a variety of larger stores, including super stores and supermarkets, located nearby and at several miles distance from the Appellants' location. While Cascade Food Mart does offer some staple food items, SNAP recipients are already shopping at other larger SNAP retailers located in proximity to the Appellants' business offering a greater quantity and variety of products, including fresh meats/seafood and produce, at lower prices. Therefore, the store has nothing to attract SNAP customers as there are no special or custom services offered.

The Appellants provided FNS with several documents in order to substantiate that the SNAP transactions listed in the Charge Letter Attachments were legitimate SNAP purchases made by SNAP recipients and that they had purchased enough foods during the review period to cover the SNAP transactions that occurred during the six month review period. These documents included monthly inventory reports for Cascade Food Mart dated January 3, 2016 through August 4, 2016 and Monthly Funding Reconciliation and Card Processing Statements for Cascade Food Mart for the six month review period.

With regard to the monthly inventory reports provided for Cascade Food Mart, FNS does not dispute the inventory lists provided. However, FNS normally utilizes the invoice analysis it conducts for the review period to determine if a retailer had enough food in stock during that timeframe. Therefore, FNS will rely upon the vendor invoice analysis (provided below) for its evaluation of the store's food inventory. A review of the Monthly Funding Reconciliation and Card Processing Statements by the Retailer Operations Division indicates that these documents only confirm that EBT transactions took place at Cascade Food Mart during the review period; however, they do not identify the exact items purchased. More importantly, the Statements

confirm that sales from the EBT transactions were deposited in the Appellants' bank account. As such, the Appellants' claim that they did not benefit from the violative SNAP transactions that occurred during the review period is unfounded.

The Appellants also provided FNS with vendor invoices for food purchases made during the six month review period in order to substantiate that Cascade Food Mart purchased enough staple food items to cover/explain the SNAP transactions that occurred at the store during the review period. The Retailer Operations Division conducted a careful analysis of the vendor invoices provided; however, the analysis includes only the invoices that had dates within the review period of February 1, 2016 through July 31, 2016. Ineligible non-food items, purchase invoices dated outside of the review period, and illegible invoices were not included in the analysis.

The table below outlines the results of FNS' invoice analysis.

5 U.S.C. § 552 (b)(7)(E)

Cascade conducted 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP benefit redemptions during the review period. The subject store had no WIC redemptions. The purchase invoice analysis found that Cascade Food Mart had purchased approximately 5 U.S.C. § 552 (b)(6) & (b)(7)(C) worth of SNAP eligible foods for the review period. Cascade Food Mart's inventory does not support the redemption amounts for the review period. The invoices do not support the store's SNAP redemptions or explain the store's suspicious transaction activity that occurred during the review period. Based on the invoice analysis findings, if Cascade Food Mart were to sell food items only to SNAP recipients (i.e., if SNAP sales accounted for 100% of the store's sales), the food product mark-up would have to be approximately 5 U.S.C. § 552 (b)(7)(E) in order to adequately explain the SNAP transactions that occurred during the six month review period. Therefore, it is highly unlikely with the evidence provided by the Appellants and the store staple food inventory observed at the FNS store visit that Cascade Food Mart can justify the extremely high EBT redemptions that occurred during the review period for this type of store.

It is important to note that even if the vendor invoices provided by the Appellants did show that Cascade Food Mart had purchased sufficient food inventory to account for the firm's SNAP redemption volume, sufficient inventory alone does not explain the suspicious patterns of SNAP transactions such as transactions made too rapidly to be credible, rapid and consecutive transactions by individuals during the same store visit or in a single day, and excessive numbers of manual key-entered SNAP transactions. Even the large dollar transactions would remain questionable if there were sufficient food inventory to support such transactions when consideration is made of there being only a limited variety of stock in the store, no fresh or frozen meats, no fresh or frozen fruits or vegetables, and no fresh produce items, a greater variety of foods at comparable or lower prices at other stores, no shopping carts or hand-held baskets available for customer use, and very little counter spaces to place food for purchase at the checkout counters. Even if there were sufficient food stock at Cascade Food Mart to mathematically support high dollar transactions, there does not appear to be anything that would reasonably attract SNAP households to shop there, a convenience store, in some cases traveling a few miles to do so, and spend substantial amounts of their SNAP benefits.

Lastly, the case record documents that the Retailer Operations Division conducted a detailed analysis of four SNAP households identified in the Charge Letter to analyze their shopping patterns at Cascade Food Mart compared to their shopping patterns at other SNAP authorized stores. Each of these households had access to, and shopped at larger stores including super stores and/or supermarkets. It is obvious that these SNAP households had transportation available to them to reach these other authorized stores. However, despite this access to better stocked stores, these sampled households conducted excessively large transactions at Cascade Food Mart often **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** of shopping at the larger stores where they conducted much smaller SNAP purchases. It is highly unlikely that a convenience store with minimal staple foods would have legitimate SNAP transactions greater than these larger and better stocked stores.

In summary, the store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding those of similar type stores. In addition to the statistical irregularity of such high dollar transactions, the limited availability of counter space for checking out and the lack of shopping carts and hand-held baskets support the Retailer Operations Division's determination. It is not plausible that the store's customers are carrying large amounts of food around the store without the benefit of shopping carts and/or hand-held baskets. Customers purchasing such large quantities of food items would have to hold them in their arms, or enlist the help of others while shopping. Based on the preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 4 are more likely than not the result of trafficking in SNAP benefits.

CIVIL MONEY PENALTY

The Appellants are requesting that FNS impose a trafficking civil money penalty (CMP) in lieu of a permanent SNAP disqualification of Cascade Food Mart. There is a provision at 7 CFR §278.6(i) of the SNAP regulations for the imposition of a trafficking CMP in lieu of a permanent disqualification for trafficking if the retail store establishes that there was an effective compliance policy and training program and that both were in effect and implemented prior to the occurrence of violations. The Appellants were advised of this provision in the Charge Letter of September 26, 2016 which also advised that documentation of eligibility for that alternative sanction was to be **substantial**, in accordance with the four criteria detailed in the referenced regulation and must be provided within a specific time limit (i.e., within ten days of the receipt of the Charge Letter). If the Appellants' request and the required documentation are not submitted on time, they will lose their right for any further consideration for a trafficking CMP. The regulations do not provide the Agency discretion to extend the time within which documentation and evidence in support of a trafficking CMP may be submitted. As such, only the information that is submitted within ten days of the Appellants' receipt of the Charge Letter may be considered by FNS when considering the Appellants' request for implementation of a trafficking CMP in lieu of a permanent SNAP disqualification.

In a written correspondence received by the Retailer Operations Division on October 7, 2016

in which the Appellants, through counsel, were responding to the Charge Letter allegations, the Appellants requested consideration for a trafficking civil money penalty in lieu of a permanent SNAP disqualification. However, the Appellants only partially addressed the requirements described herein and did not provide substantial evidence, in accordance with the criteria detailed in the referenced regulations, that the firm established and implemented an effective policy and program to prevent violations. Therefore, in the November 29, 2016 Disqualification Letter, the Appellants were informed by the Retailer Operations Division that consideration was given to the Appellants for a trafficking CMP according to the terms of the SNAP regulations but the Retailer Operations Division determined that the Appellants were not eligible for the trafficking CMP because they failed to submit sufficient evidence to demonstrate that Cascade Food Mart had established and implemented an effective compliance policy and program prior to the SNAP violations occurring in order to prevent violations of the SNAP.

To verify that the Appellants had established and implemented an effective compliance policy and program at Cascade Food Mart prior to the occurrence of the SNAP violations, the Appellants submitted the following information to the Retailer Operations Division in their October 7, 2016 response to the Charge Letter allegations:

Copies of the following documents were provided as follows:

- USDA's "Using SNAP Benefits" poster (FNS-110);
- USDA's "We Welcome SNAP EBT Customers" poster (FNS-132);
- USDA's "Buying or Selling SNAP-EBT Benefits (Food Stamps) or WIC Benefits is a Federal Crime" poster (FNS-240);
- USDA's "SNAP EBT Do's and Don'ts for Cashiers" poster (FNS-136);
- USDA's "Penalties for Violation of the SNAP" poster (FNS-136);
- USDA's "Report Abuse" poster (FNS-240);
- Cascade Food Mart's Employee Training Guide which included certain pages excerpted from USDA's "SNAP Training Guide for Retailers" (FNS-330);
- A photocopy of the CD containing USDA's "Training Guide for Retailers" (FNS-330).

The Appellants also provided FNS with a statement indicating that all of the posters listed above were posted in the store for store cashiers and/or SNAP recipients to view. In addition, the Appellants stated that the General Manager that they hired to manage Cascade Food Mart was delegated with the responsibility of training store employees who were responsible for ringing-up SNAP transactions utilizing the Training Guide listed above. In addition, employees were required to watch the CD of "Training Guide for Retailers" (FNS-330) at the time that they were hired at the subject store.

However, the documents and statements provided by the Appellants were not sufficient to demonstrate that Cascade Food Mart had established and implemented an effective compliance policy and program prior to the occurrence of the SNAP violations. The Appellants submitted no evidence to validate that Cascade Food Mart had an effective compliance policy and

program in place prior to the occurrence of the SNAP violations other than their statement of such. The Appellants did not provide an employee roster showing dates of hire for each employee (both current and past employees who received training—including the store manager and the store owners), no signatures were provided from each employee (both past and present) acknowledging that they had received training or that a compliance policy was in effect prior to the review period and on which dates they had received the training, etc. The Appellants did not provide FNS with any documentation to validate the employees who had worked at Cascade Food Mart, verification on the dates of their employment at Cascade Food Mart, verification that the employees listed have been the only employees who have worked at the store since the compliance program was implemented, etc.

The Appellants did not provide FNS with any documentation to verify that they had developed and implemented an employee training manual prior to the cited SNAP violations. In fact, the Appellants informed FNS that the training manual was prepared for use by Cascade Food Mart after they received the Charge Letter from FNS. The Appellants did not provide any evidence to verify that all new employees are trained on the compliance policy and program prior to being able to conduct SNAP transactions as there were no signatures provided from store employees verifying this claim. In addition, the Appellants provided no documentation that store employees received on-going, periodic training on the SNAP regulations and the proper acceptance and handling of SNAP coupons. In addition, the Appellants did not provide FNS with an evaluation of the effectiveness of the firm's compliance policy and program to ensure SNAP compliance and to prevent SNAP violations, as is required by Appellants who are seeking an assessment for a trafficking CMP in lieu of permanent SNAP disqualification. There was no indication that the firm's policy was to terminate the employment of violating store employees or that the firm had implemented a policy intended to initiate corrective action following complaints of SNAP violations. The SNAP regulations state that an effective compliance policy includes documentation reflecting the development and/or operation of a policy to terminate the employment of any firm employee found violating the SNAP regulations prior to the occurrence of the SNAP violations.

The Appellants provided FNS with a statement that they did not benefit from the trafficking violations that occurred during the review period. However, the Appellants did not submit any supporting documentation to verify this claim. In fact, the Monthly Funding Reconciliation and Card Processing Statements provided for Cascade Food Mart confirm that sales from the EBT transactions that were conducted during the review period were deposited in the Appellants' bank account. In addition, in determining whether store ownership benefited from trafficking of SNAP benefits in which they were not directly involved, it is generally assumed that if EBT settlements are made to the storeowner's account, the store owner had benefited from such transaction. The store employee/manager/owner involved in the trafficking transactions took cash out of the store's cash register and the benefits most likely went into the Appellant's bank account. The Appellants did not submit any documentation to contradict this issue. Therefore, based on the lack of substantial evidence and information submitted, the Appellants failed to demonstrate that Cascade Food Mart had established and implemented an effective compliance policy and program prior to the SNAP violations that occurred during the review period. As such, the Appellants' request for consideration of a trafficking civil money penalty in lieu of a

permanent SNAP disqualification was appropriately denied.

CONCLUSION

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

The record has yielded no indication of error or discrepancy in the reported findings by the Retailer Operations Division that program benefits were accepted in exchange for cash or consideration other than eligible food. Therefore, based on a review of the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged. Therefore, the decision to impose a permanent disqualification from participation in the SNAP against Cascade Food Mart is sustained.

RIGHTS AND REMEDIES

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

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

LORIE L. CONNEEN
ADMINISTRATIVE REVIEW OFFICER

December 1, 2017