

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

**Sunoco,**

**Appellant,**

**V.**

**Case Number: C0219336**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

It is the decision of the USDA that the record indicates that Sunoco, (hereinafter Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP). There is sufficient evidence to support a finding that the permanent disqualification from participation as an authorized retailer in the program, as initially imposed by the Retailer Operations Division was appropriate.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(c) and (e)(1) in its administration of the SNAP, when it assessed a permanent disqualification against Appellant by letter dated August 28, 2019.

**AUTHORITY**

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

**CASE CHRONOLOGY**

In a letter dated August 14, 2019, 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 January 2019 through June 2019. The letter noted that the penalty 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 Appellant failed to respond to the charge letter in a timely manner therefore Appellant's late response was not considered in the Retailer Operations Division's determination. The record also reflects that Appellant submitted, after the required submission date, a response to the August 14, 2019 charge letter. The correspondence generally stated that the store is away from the main shopping center in a location with residential houses and customers often walk to the store. It offers a variety of household consumable/food items and it keeps a large inventory to have all items a store can provide.

Appellant stated that it adheres to the provisions of the SNAP Act and provide training to staff as provided in the training guide for retailers. Appellant also stated that it maintains the record books, copies provided, which details purchases. The grocery purchases were 5 U.S.C. § 552 (b)(6) & (b)(7)(C) from January 1, 2019 to July 31, 2019. Ownership indicated that it did not benefit from the sales/violations in any manner and did not suspect that something was going wrong since the sales and purchases did not fluctuate. Appellant provided, in its response, hand written purchase totals for January 2019 through August 2019 but no actual purchase receipts or invoices were provided.

Retailer Operations Division issued a Determination letter dated August 28, 2019. The letter informed Appellant that it was permanently disqualified from the SNAP in accordance with Sections 278.6(c) and 278.6(e)(1) of the SNAP regulations. The letter also stated that Retailer Operations Division considered Appellant's eligibility for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP regulations. However, Retailer Operations Division determined that Appellant was not eligible for the CMP because it failed to submit sufficient evidence to demonstrate that Appellant had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter dated September 9, 2019, Appellant, through counsel, appealed the Retailer Operations Division's assessment and requested an administrative review of this action. The appeal was granted.

## **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 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, 7 U.S.C. § 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.6(a) (c) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store in the event that personnel of the firm have engaged in trafficking SNAP benefits.

7 CFR § 278.6(a) states, *inter alia*, that “FNS may disqualify any authorized retail food store...from further participation in the program 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(c) reads, in part, “*Review of Evidence.* 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)...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...”

7 CFR § 278.6(e)(1) reads, in part, “FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.” Trafficking is defined, in part, in 7 CFR § 271.2, as “the buying or selling of SNAP benefits for cash or consideration other than eligible food.”

7 CFR § 271.2 states in part that, “Eligible foods mean: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption.”

## SUMMARY OF THE CHARGES

The charges on review were based on an analysis of SNAP electronic benefit transfer (EBT) transactions dated during the six month period of January 2019 through June 2019. This involved three patterns of EBT transaction characteristics indicative of trafficking:

1. There were a large number of transactions ending in the same cents value.
2. Multiple transactions were made from the accounts of individual SNAP households within a set time period.
3. Your store conducted EBT transactions that are large based on the observed store characteristics and recorded food stock.

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that the questionable transactions were the result of trafficking.

## FOIA REQUEST

In subsequent correspondence dated October 21, 2019, Appellant, through counsel, submitted a Freedom of Information Act (FOIA) request. The FOIA was processed on October 22, 2019. The record reflects that the requested FOIA documentation was provided to counsel on November 26, 2019 via email. Appellant, through counsel, was notified in correspondence dated November 26, 2019, that all documentation, in support of its position, was to be provided no later than December 17, 2019

## APPELLANT'S CONTENTIONS

The Appellant made the following summarized contentions in its response to the permanent disqualification letter issued by Retailer Operations Division, and its request for administrative review, in relevant part:

1. Many of the SNAP clientele live in close proximity to the store and will therefore visit multiple times a day, making purchases during each visit.
2. These SNAP clientele have expressed a preference for conducting transactions ending in "00" cents. We sell inexpensive food items, such as candy, which are kept at the counter to aid in the customers transaction ending in "00" cents.
3. It is common practice for the store's clerks to round down a transaction for our regular SNAP clientele to keep customer loyalty and satisfaction.
4. I have attached the store's vendor invoices for January 2019 through June 2019. Unfortunately following a thorough search of my records, I was unable to locate all of the vendor invoices for this time period. I have attached a spreadsheet reflecting the inventory missing from the attached vendor invoices.
5. At no time did I, or any other person associated with my store, commit trafficking. All Sunoco's personnel are trained on proper SNAP procedures and regulations and are told that there is an absolute no tolerance policy at Sunoco.

In supplemental correspondence dated December 17, 2019, Appellant, through counsel, made the following contentions:

1. The store is, to the Appellant's knowledge, the only retail store in the surrounding area that provides the community with such an expansive and diverse selection of grocery products.
2. The Appellant's inventory is supported by the warehouse invoices submitted herewith. (none provided)
3. Appellant offers specials/bundles and rounding of transactions to attract customers. Appellant sells large bundles such as cases of Red Bull, cases of Power Aid, cases of soda, cases of cookies, cases of Oreos, cases of king size candy bars. Appellant also offers price incentives for customers who purchase certain bundles such as 50 pack case of chips for \$20 or a 24 count case of noodle soup for \$20.
4. Some of the store's SNAP customers were fearful that they would not have their SNAP benefits during the recent government shutdown (beginning December 22, 2018 and ending January 25, 2019). As a result of their fear, they purchased an increased amount of their usual groceries during January 2019. Many of the store's SNAP customers likely feared that the government was going to shut down the SNAP program and as such, they were attempting to use all of their benefits before they would be unable to do so.
5. The negative investigations are extremely important and should be given great weight in the determination as to whether the Appellants engaged in trafficking as the investigation was conducted during the subject review period

Appellant, through counsel, provided signed and dated customer affidavits from eight (8) customers, a signed and dated affidavit from the owner, an article dated April 2016 entitled

“Convenience Store News for the Single Store Owner” by Angela Hanson, a 2016 copy of the U.S. Grocery Shopping Trends published by the Hartman group, a copy of the November 2016 USDA report on Foods Typically Purchased by Supplemental Nutrition Assistance Program (SNAP) Households, a copy of the August 2019 USDA Profile of SNAP Households in 2017 for Ohio and an excel spreadsheet of snack and accessory food items.

The preceding may represent a brief summary of Appellant’s contentions in this matter however, in reaching a decision, full attention has been given to all contentions presented, including any not specifically recapitulated or referenced herein.

## ANALYSIS AND FINDINGS

The FNS authorized the business as a convenience store on February 4, 2016. The file indicates that in reaching a disqualification determination, Retailer Operations Division considered information obtained during a May 11, 2019, store visit to the business conducted by a FNS contractor to observe the nature and scope of the firm’s operation, stock and facilities. This information was then used to ascertain if there were justifiable explanations for the EBT transactions at Appellant that formed patterns indicative of trafficking. The firm review summary documented the following store size, description, and characteristics:

- One cash register and one POS device with a small counter area partially obstructed by other smaller items available for sale.
- Estimated to be approximately 2400 square feet.
- Two shopping baskets but no carts available for customers.
- An optical scanner was available at checkout. No specialty registers present.
- Store does not operate through a night window or plastic barrier with food stock behind the barrier.
- No evidence of wholesale business such as posted prices or separate entrances for wholesale customers.
- No unusual pricing structure such as ending most products with 00 cents and **does not round transaction totals.**
- Food is not stored in an area outside of public view and no storage freezers/coolers or food stored off site.
- Store is not primarily selling one food type such as meat, poultry, dairy, seafood, fruits, baked goods or vegetables.
- Store does not take telephone or online orders and does not offer delivery
- The store visit documentation indicates that there were no items stocked that sold for \$5 or higher in the store.
- Store stocks an ample amount of non-food items such as but not limited to paper products, cleaning products, housewares, lottery tickets, clothing items, pet food, tobacco products, alcohol products, automotive products, gasoline and health and beauty aids.
- Store stocks limited amounts of dairy products, bread and cereal products, fruit and vegetable products and meat, poultry and fish products. No fresh produce and one bunch of bananas, no fresh meat or poultry. Most meats are canned, packaged or precooked/frozen.
- No kitchen/prepared food area

- No hot foods sold for onsite consumption.
- No deli or prepared food section. Stock is not used in preparation of food.
- No meat or seafood specials or bundles or fruit/vegetable boxes sold.
- Appellant was deficient in the dairy product category missing two varieties and six stocking units.

The issue for consideration is whether Retailer Operations Division has presented a convincing case that Appellant likely trafficked in SNAP benefits. Each attachment furnished with the charge letter represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at the Appellant firm during the review period. As there is more than one pattern of irregular transactions, the case of trafficking becomes more convincing.

**Attachment 1 of the Charge Letter – There were a large number of transactions ending in the same cents value.**

This attachment lists 66 transactions that end in 00 cent values. When such repetitive patterns are unsupported by special pricing structures they are a strong indicator of trafficking in SNAP benefits.

The Appellant, through counsel, contends that it offers specials/bundles and rounding of transactions to attract customers. Appellant sells large bundles such as cases of Red Bull, cases of Power Aid, cases of soda, cases of cookies, cases of Oreos, cases of king size candy bars. Appellant also offers price incentives for customers who purchase certain bundles such as 50 pack case of chips for \$20 or a 24 count case of noodle soup for \$20. Appellant, through counsel, also contends that SNAP clientele have expressed a preference for conducting transactions ending in “00” cents. We sell inexpensive food items, such as candy, which are kept at the counter to aid in the customers transaction ending in “00” cents.

With regard to these contentions, the store visit documentation indicates that Appellant does not have a special pricing structure that would account for the percentage of transactions that ended in 00 cents and Appellant indicated that it does not round SNAP transactions up or down during purchases. Also, based on the store pricing information gathered from the store visit, it is unlikely that items purchased together would routinely total to the same amount or end in a 00 cents value.

When there are a disproportionate amount of transactions ending in same cent value it appears the transactions are contrived and absent any compelling rationale to the contrary it is a strong indicator of trafficking. Especially when item prices end with a standard \*9 it is implausible that several of these relatively inexpensive items purchased together would routinely total to a purchase amount ending in 00 cents. In addition a store that is rounding prices up or down or an even value would not have any transactions ending in odd values. Based on review of the store photos, there is no justifiable stock that can explain large even dollar transactions. This is a small convenience/gas station selling only inexpensive food items. There was no noticeable large packages or expensive food, no fresh or frozen meats and no fresh produce. As indicated, by the store owner, the store does not sell anything over \$5.00 and does not round transaction totals.

Additionally, the store visit documentation and photographs do not indicate that the store offered any specials and did not reveal that any meat specials or items sold in bulk were available with pricing ending in 00 cents values or values that when coupled with other items would consistently end in a 00 cents value. Appellant also did not provide any evidence that it offered specials or that the pricing structure would consistently result in SNAP totals ending in 00 cents. While some of the transactions in this Attachment may have been for legitimate staple food purchases, particularly those in the lower dollar amounts, there is insufficient evidence that these repeating same cent transactions are legitimate. When many transactions end in a same cents amount, it appears that these transaction amounts were contrived and therefore, in the absence of compelling evidence to the contrary, are suggestive of trafficking. As such, the transactions in Attachment 1 have not been adequately documented as legitimate and therefore do not constitute valid grounds for dismissal of the current charges of violations or for mitigating their impact.

Based on the analysis above, it appears that the transactions cited in the charge letter are contrived and therefore, in the absence of plausible evidence to the contrary, are likely the result of trafficking in SNAP benefits.

**Attachment 2 of the Charge Letter - Multiple transactions were made from individual accounts in unusually short timeframes.**

There were 25 sets of 66 SNAP transactions that met the parameters of this attachment. Multiple transactions conducted by the same household account within a set time period is a method which violating stores use to avoid the detection of single high dollar transactions that cannot be supported by the retailer's inventory and structure. Although Appellant has a scanner the store only has one cash register and a small counter in which to process food purchases. There are no shopping carts and only two shopping baskets. Therefore, it is extremely suspicious to have repeated transactions in a short period of time.

Appellant, through counsel, contends that some of the store's SNAP customers were fearful that they would not have their SNAP benefits during the recent government shutdown (beginning December 22, 2018 and ending January 25, 2019). As a result of their fear, they purchased an increased amount of their usual groceries during January 2019. Many of the store's SNAP customers likely feared that the government was going to shut down the SNAP program and as such, they were attempting to use all of their benefits before they would be unable to do so.

With regard to this contention, this perception of SNAP recipient fear is unlikely as the Federal Government kept SNAP recipients apprised of the state of benefit issuance and the SNAP program. It would also be more likely for SNAP households to ration their SNAP benefits during the government shutdown, as not to run out, than to rush out and spend a large amounts or exhaust all of their SNAP benefits at a minimally stocked convenience store and gas station, especially if they were uncertain if they would receive their benefits in the following month.

Furthermore, no information or indication was disseminated by the Federal Government that the SNAP program was ending therefore, there did not appear to be any rational behind the thought that the SNAP program would be extinguished or preventing SNAP recipients from utilizing existing benefits.

It must be noted that SNAP households have no limits on the number of times they may use their SNAP cards or how much eligible food they may purchase. The transactions in this Attachment do not contain the characteristics associated with a recipient purchasing forgotten items a short time after checking out or households returning to purchase a forgotten item or two. It is certainly not unusual for a small number of SNAP households to conduct multiple transactions in a set time period. For example, mothers may shop and later send a child to the store to pick-up a forgotten item nonetheless; it is unusual that the second transaction amount would be for more than a nominal amount. The SNAP transactions in Attachment 2 of the Charge letter are not consistent with shopping patterns of someone who may have forgotten an item or two during the first trip nor are they consistent with the Appellant's available staple food stock.

The purpose of this review is to determine, based on all evidence of the record as presented by Retailer Operations Division and Appellant's contentions and supporting documentation, if the repetitive patterns of unusual, irregular, and inexplicable SNAP activity for this type of firm are indicative of trafficking. In conclusion, it is therefore more likely true than not true that the irregular transactions cited in the charge letter Attachment 2 are due to trafficking in SNAP benefits.

**Attachment 3 of the Charge Letter - Excessively large purchase transactions were made from recipient accounts.**

There were 123 SNAP transactions that met the parameters of this attachment. Based on the results of the contracted store visit, the large transaction amounts are not consistent with the store's inventory of low priced foods. The firm does not offer food in bulk or any ethnic or specialty foods that sell for a high price. It was observed that there appeared to be no basis for exceptional customer attraction to the subject store, there being no great price advantage, profusion of large packages, or bulk items.

It is not common for a shopper to spend large dollar amounts at a small convenience/gas store when they have access to larger grocery stores. As indicated by store owner the store sold nothing over \$5.00. Therefore, the substantial number of high dollar purchases calls into question the legitimacy of these transactions. The Appellant's food stock does not support such large transactions and in the absence of reasonable explanation to support such large transactions, this behavior is indicative of trafficking.

Appellant contends that the store is, to the Appellant's knowledge, the only retail store in the surrounding area that provides the community with such an expansive and diverse selection of grocery products. With regard to this contention, the record reflects that there are 20 additional SNAP authorized retailers within one mile of Appellant's store to include a supermarket, small grocery store, combination/other grocery stores and 13 other fully stocked convenience stores. Retailer Operations also conducted an analysis of the shopping habits of three of the households identified in the charge letter. This analysis concluded that these households also shopped at other area grocery stores including full-line supermarkets and superstores that offer a much larger quantity and variety of eligible food items for likely better prices either on the same day or within days of visiting Appellant's firm. This again indicates that lack of access to other stores is not at issue. However, despite this access to large supermarkets and superstores, these



households consistently conducted much higher transactions at the Appellant firm than at better stocked supermarkets/superstores in and around the Summit County area of Ohio. This is another strong trafficking indicator.

### RECEIPTS/INVOICES

Appellant, through counsel, contends that it has attached the store's vendor invoices for January 2019 through June 2019. Unfortunately following a thorough search of my records, I was unable to locate all of the vendor invoices for this time period. I have attached a spreadsheet reflecting the inventory missing from the attached vendor invoices. With regard to this contention, the spread sheet produced by Appellant cannot be accepted as proof of purchases as the totals are not confirmed with **actual** purchase receipts and invoices.

### CUSTOMER AFFIDAVITS

Appellant, through counsel, provided 10 customer affidavits attesting to their shopping patterns and percentage or amount of SNAP benefits spent at Appellant's store. Of the 10 customer affidavits provided by counsel, two (2) were found to be duplicates leaving a total of eight (8). An analysis of the eight (8) customer affidavits revealed that two households could not be found in the system and may not be SNAP recipients, one household could not be matched in the system based on the information provided and three of the households did not have any SNAP transactions conducted at Appellant's store during the review period. The remaining two households, were found to have SNAP transactions identified in Attachment 3 however none of the transactions were for the amounts in which the customer claims to have spent at the Appellant store.

The SNAP transaction activity of the households at Appellant's store do not support the information provided in the affidavits and therefore may have been fabricated in support of Appellant's position. Additionally, with regard to client affidavits provided by Appellant which purport to establish that questionable transactions were legitimate and that no trafficking occurred, the truth of such declarations can neither be confirmed nor denied. Although such affidavits may be sworn to and notarized, that does not mean that they are necessarily truthful or necessarily demonstrate compliance by all individuals with whom the firm conducts transactions. One would not expect clients to admit that questionable transactions were not legitimate, were it really so. On the contrary, one would expect that any client affidavit provided would attest to questionable transactions being legitimate.

Based on this empirical data, and in the absence of sufficient evidence as to the legitimacy of such transactions, a conclusion can be drawn, through a preponderance of evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the charge letter evidence trafficking as the most likely explanation. In this case, ownership did not provide sufficient evidence to legitimize Appellant's transaction data as outlined in the Attachments. Retailer Operations Division determined that Appellant's contentions did not outweigh the evidence that the store was trafficking and concluded, through a preponderance of evidence, that trafficking is the most probable explanation for the questionable transactions listed in the charge letter

attachments.

Appellant, through counsel, contends that the negative investigations are extremely important and should be given great weight in the determination as to whether the Appellants engaged in trafficking as the investigation was conducted during the subject review period. With regards to this contention, it is important to note that an investigators inability to successfully complete a trafficking transaction, during an onsite investigation, does not inevitably mean that the Appellant does not exchange SNAP benefits for cash. A number of factors could come into play when dealing with an individual that is unknown or unfamiliar to store personnel and out of caution they may decline to conduct specific transactions with that unknown/unfamiliar person. Additionally, without knowing the specifics of the case it cannot not be definitively determined why the exchange was declined. Even if the two transactions, cited by counsel when the investigator was allegedly present in the store were considered legitimate SNAP transactions, this does not justify or explain the remaining transactions cited in the charge letter.

The transaction data and overall firm record convincingly demonstrate repetitive patterns of unusual, irregular, and inexplicable SNAP activity for this type of firm indicative of trafficking. Once Retailer Operations Division established a convincing case against Appellant, ownership bears the burden of proving, by a preponderance of the evidence, that the administrative action 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. If this is not demonstrated, the case is to be sustained.

### **COURT CASES MENTIONED**

As to the court cases cited by counsel, the administrative review process is to determine whether FNS followed the Food and Nutrition Act and the regulations issued under the Act when it took action against the retailer. The administrative review officer is not responsible for determining whether any court cases cited by counsel apply to Appellant's situation. If this final agency decision is appealed to the federal district court, the judge is responsible for determining whether the court cases cited by counsel are on point and applicable to the case presently under review

As noted, 7 CFR § 278.6(a) states that 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 inconsistent redemption data, and evidence obtained through a transaction report under an electronic benefit transfer system.

Retailer Operations Division has presented a convincing case that Appellant has likely trafficked in SNAP benefits. This is evidenced by: the suspicious patterns in three attachments of EBT transaction data, the inadequacy of the firm's eligible food stock as observed and recording during the onsite visit to support such large transactions, the lack of evidence of invoices of foods in inventory to cover SNAP redemption totals for the review months, the lack of explanation for customer spending habits given that there are other SNAP authorized stores

located within proximity to Appellant, and the irregular SNAP transaction data of Appellant as compared to other convenience stores in the State.

Generally, stores caught in trafficking violations consistently display particular characteristic transaction patterns including those cited in the charge letter and, in the absence of evidence for the legitimacy of such transaction patterns, based on information submitted by the Appellant and a comparison of the store's characteristics and available stock to the transaction patterns cited in the charge letter, a conclusion can be drawn through a preponderance of evidence that the unusual, irregular, and inexplicable transactions and patterns evidence trafficking as the most likely explanation. While ownership was afforded the opportunity to provide valid explanations and evidence that support that the questionable transactions were the result of legitimate purchases of eligible food items, Retailer Operations Division determined that Appellant's contentions did not outweigh the evidence in the record.

The purpose of the administrative review process is to ensure that firms aggrieved by Retailer Operations Division's adverse actions have the opportunity to have their position fairly considered by an impartial review authority prior to that adverse action becoming final. Appellant has been duly given, and has taken the opportunity to present to USDA through the administrative review process whatever evidence and information it deems pertinent in support of its position that Retailer Operations Division's adverse action should be reversed. Therefore, any evidence and information that Appellant presented to Retailer Operations Division, as well as any such information submitted subsequently, have now been considered in this administrative review in rendering the final agency administrative decision in this case. The record does not indicate any departure from established policy or procedures with regard to Appellant's right to a fair and thorough review.

### **CIVIL MONEY PENALTY**

Appellant, through counsel, contends that all of Sunoco's personnel are trained on proper SNAP procedures and regulations and are told that there is an absolute no tolerance policy at Sunoco. With regard to this contention, Appellant was notified in the charge letter dated August 14, 2019, that it had 10 calendar days upon receipt of the charge letter to provide required documentation in order to be considered for the trafficking CMP. Appellant failed to provide Retailer Operations Division with the required documentation to be considered for a trafficking CMP in lieu of disqualification. Therefore, Retailer Operations Division correctly determined that Appellant was not eligible for a trafficking CMP as set forth in the SNAP regulations.

### **CONCLUSION**

Ownership has not provided sufficient evidence to rebut the case that Appellant most likely trafficked in SNAP benefits. As such, 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 shall disqualify the firm permanently.

Retailer Operations Division's analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Sunoco from participation in the SNAP.

This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. Therefore, based on a review of all the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged by Retailer Operations Division. Based on the discussion herein, the determination to impose a permanent disqualification against Sunoco is sustained.

### **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act of 2008, as amended, (7 U.S.C. § 2023) and to Title 7, Code of Federal Regulations, Part 279.7 (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 (FOIA), 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.

Monique Brooks  
ADMINISTRATIVE REVIEW OFFICER

March 5, 2020