USDA

United States Department of Agriculture

Food and Nutrition Service

Park Office Center

3101 Park Center Drive
Alexandria
VA 22302

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SUBJECT: Procurement Standards and Resource Management Requirements related to Franchise Agreements

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

The Food and Nutrition Service (FNS) is aware that school food authorities and Program operators may be operating the National School Lunch Program (NSLP), School Breakfast Program (SBP), and other Child Nutrition Programs (CNP), in a way that includes offering reimbursable meals and non-program foods (a la carte sales, catering, adult meals, etc.) using foods from popular franchise restaurants through a franchise agreement. Upon review, such franchise agreements contained a number of serious flaws which are out of compliance with applicable Federal law.

Franchise agreements often have provisions that are inherently problematic for the Child Nutrition Programs because they entail having a school or sponsor essentially "buy" into an agreement with a commercial vendor for the purpose of exclusively marketing or selling that company's good or services as opposed to having that vendor submit a bid for its products during a competitive process. While it may be possible to sell the products of a franchise, those products must be competitively procured from among competitively solicited franchises. Failure to properly compete violates competitive procurement standards as required in Program regulations and 2 CFR 200.318-326 (formerly 7 CFR Parts 3016.36 and 3019.40-48, as applicable), and for schools operating NSLP and SBP, regulations on competitive food services in 7 CFR Parts 210.11 and 220.12 and use of nonprofit food service account (NFSA) funds in 7 CFR 210.14(a).

Other concerns found include:

- Improperly procured franchise equipment using NFSA funds;
- Restrictions on the sale of other food causing possible noncompliance with meal patterns;
- Improper separation of NPFSA funds and possible access to the NPFSA funds by the franchise; and
- Agreement duration with automatic renewal.

Because of the varied nature of franchise agreements, it is strongly recommended that Program operators have their Program's and/or State's legal counsel review, beforehand, any agreements entered into with franchise operations to ensure they do not violate applicable federal, state, or local law. In the event the Program operator competitively procures food from a franchise vendor in compliance with applicable requirements, they should also contact their local inspection officials to determine the requirements to purchase and resell food.

State agencies are reminded to distribute this memorandum to Program operators immediately. Program operators should contact their State agency for additional information, as needed. Should State agencies identify issues involving Franchise Agreements, please contact your respective FNS Regional Office.

Sarah Smith-Holmes
Division Director
Program Monitoring and Operational Support