



United States
Department of
Agriculture

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Food and
Nutrition Service

3101 Park
Center Drive
Alexandria, VA
22302-1500

SUBJECT: Applicability of FNS Instruction 788-16 to Multi-State Proprietary
Child and Adult Care Food Program Sponsors (CACFP)

TO: Regional Directors
Child Nutrition Programs

FNS Instruction 788-16, Administrative Procedures for Multi-State Sponsoring Organization-Child Care Food Program, dated October 19, 1983, implemented FNS' policy on the administration of multi-state sponsoring organizations in the Child Care Food Program.

This memorandum is intended to clarify that the provisions of FNS Instruction 788-16, copy attached, also apply to proprietary multi-state CACFP sponsors. The remainder of this memorandum addresses some specific questions that have arisen regarding how State agencies and Regional offices should address a variety of issues involving multi-state proprietary CACFP sponsors.

Please provide this information and a copy of FNS Instruction 788-16 to your State agencies (SAs). Regional offices with cognizant responsibilities should begin initiating appropriate administrative oversight activities for the upcoming CACFP program year beginning October 1, 2003. If you have any questions, please contact Terry Hallberg, Branch Chief, Program Analysis and Monitoring Branch, at 703-305-2590.

A handwritten signature in blue ink that reads "Stanley C. Garnett".

STANLEY C. GARNETT
Director
Child Nutrition Division

Attachments

cc: Lael Lubing, GMD
Rachel Bishop, OGC

The contents of this guidance document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

Question 1: When is a proprietary organization considered multi-state for purposes of Instruction 788-16?

Answer: Instruction 788-16, copy attached, applies to proprietary organizations under the same standards for applying the Instruction to nonprofit multi-state family day care home sponsors. A proprietary organization is multi-state when the parent corporation operates affiliated proprietary centers in more than one state. In addition, the Instruction applies to a franchisee of the parent corporation when the franchisee operates affiliated centers in more than one state.

Question 2: Why doesn't the Instruction apply to proprietary organizations sponsoring unaffiliated centers in more than one state?

Answer: Proprietary organizations are not permitted to sponsor unaffiliated centers.

Question 3: How does the Instruction apply to franchised operations?

Answer: A franchise is a business arrangement where the developer/owner (the franchisor) of a business concept grants others (the franchisees) the licensed right to own and operate businesses based on the business concept, using the trademark associated with the business concept. Historically, FNS has viewed an institution providing child care under a franchise arrangement as distinct entity (institution) from the organization (parent company) that granted the franchise, even when the franchisee operates more than one center. For this reason, a franchisee operating multiple centers in a single state would not be subject to Instruction 788-16, but a franchisee operating multiple centers in more than one state would be subject to Instruction 788-16.

Question 4: Can a State agency require that all proprietary centers participating in the CACFP within its State must be independently owned or franchised?

Answer: No. Neither the statute nor the regulations permit the State agency to establish a specific form of ownership as a prerequisite to CACFP participation.

Question 5: Can the State agency assume that a center is a franchised operation?

Answer: No. In the absence of documentation that a particular center is a franchisee under the federal and state laws regulating franchise arrangements, the State agency should consider the center to be part of the parent corporation.

Question 6: How does a State agency determine if a particular center is a franchise?

Answer: The easiest way is to ask the center or the State agency can ask the parent corporation. Since many states regulate franchise arrangements, information on approved franchises may also be available from the State's regulators.

Question 7: We have been requiring that all proprietary centers obtain a program-specific audit as allowed under Department's regulation 7 CFR Part 3052. Can we still require program-specific audits when the center is part of a multi-state organization?

Answer: No. While the State agency can continue to establish audit requirements for franchised proprietary institutions; pursuant to Instruction 788-16, the affiliated centers of a multi-state proprietary sponsor will be included in the organization-wide audit of the multi-state sponsor. Copies of the organization-wide audit will be shared with all administrating State agencies. We are requesting Regional Offices assist the affected State agencies in coordinating this activity.

Question 8: Is the cognizant State agency permitted to develop its own requirements for the organization-wide audit?

Answer: Yes; however FNS recommends that the cognizant State agency adopt the Part 3052 organization-wide audit requirements. If the cognizant State agency chooses to develop its own organization-wide audit requirements, FNS recommends the cognizant State agency coordinate its efforts with the other affected State agencies.

Question 9: Do the corporate audits some multi-state sponsors obtain for other purposes meet the organization-wide audit requirements of Part 3052?

Answer: Without a review of the actual audit report, it is not possible to determine if a particular corporate audit meets the Part 3052 requirements. In keeping with the intent of Part 3052, FNS recommends the cognizant State agency develop organization-wide audit requirements that permit a multi-state sponsor to build upon any audit work already performed for its corporate audit.

Question 10: How will the 15 percent limitation of the sponsor's retention of CACFP reimbursements apply in the case of multi-state sponsors?

Answer: The 15 percent limitation is still computed on the sponsor's earnings in each state. Multi-state sponsors must meet the 15 percent limitation individually and in total. This means that if a sponsor operates in two states with the same amount of reimbursement earned in each state, the sponsor could not average its earnings over the two states by recovering 17 percent in one state and 13 percent in the second state. Consistent with Instruction 788-16, the multi-state sponsor would develop a comprehensive budget that identifies its costs, by state and in total. These costs represent the sum of direct and shared costs from each individual state program and the sponsor's home office costs. The budget would also identify the method used by the sponsor to allocate shared costs between state programs and the budget would identify the amount of CACFP reimbursement the sponsor would retain for home office costs and the amount of reimbursement that each state would receive for direct administrative costs occurring within the state. The cognizant Regional Office would be responsible for verifying that the total budget does not exceed the 15 percent limitation on a corporate-wide basis, approving the sponsor's cost allocation methods

for shared costs and the amount of each state's shared costs. Each State agency, upon receiving information from the cognizant Regional Office on the amount of allocated costs approved in its State, would then add its share of the allocated administrative costs to direct state administrative costs to determine that the sponsor was within the 15 percent limitation for its own State.

Question 11: If a State agency determines that a multi-state sponsor's request to retain more than 15 percent for its operations is approvable, does the approval apply to all states?

Answer: No. When a multi-state sponsor seeks permission to retain more than 15 percent for its entire operation, the cognizant Regional Office is responsible for approving that request. However, if the sponsor was seeking to increase the retention percentage to cover its administrative costs in a specific state, the affected State agency would be responsible for the approval or denial of the request.