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**FISCAL YEAR 2016
CHILD AND ADULT CARE FOOD PROGRAM
FAMILY DAY CARE HOME SPONSOR MEMORANDUM #11**

TO: Family Day Care Home Sponsor

FROM: Marla J. Moss, Director
Office of School Support Services

DATE: March 18, 2016

**SUBJECT: Food and Drug Administration Requirements for Vending
Machines**

On December 1, 2014, the U.S. Department of Health and Human Services, Food and Drug Administration (FDA) published the final rule, *Food Labeling; Calorie Labeling of Articles of Food in Vending Machines*, in the Federal Register. The purpose of this FDA rule is to provide consumers with clear and consistent nutrition information, allowing them to make informed and healthful dietary choices when purchasing items from vending machines. Covered vending machine operators must comply with this regulation by December 1, 2016.

This memorandum is intended to inform Child Nutrition Program (CNP) operators about FDA's vending machine regulation. The Food and Nutrition Service (FNS) cannot predict how many CNP operators will be required to comply with this rule. However, there are no specific exemptions for CNP operators. Therefore, local educational agencies, school food authorities, and individual schools participating in the National School Lunch Program and Child and Adult Care Food Program institutions or Summer Food Service Program sponsors covered by the FDA final rule must comply by December 1, 2016. Please note, this memorandum is not intended to explain the FDA regulation in detail or to be used by CNP operators as a resource to determine if they are required to comply. Additionally, there are no FNS requirements for State agencies or CNP operators to monitor this FDA requirement.

The FDA vending machine final rule requires covered vending machine operators who own or operate 20 or more vending machines to disclose calorie information for foods (or beverages) sold from their machines. FDA defines a *covered vending machine operator* as a person or entity that:

"Controls or directs the function of the vending machine, including deciding which articles of food are sold from the vending machine or the placement of the articles of food within the vending machine, and is compensated for the control or direction of the function of the vending machine."

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The FDA regulation requires that calorie declarations disclosed by covered vending machine operators be clear, conspicuous, and prominently placed. Calorie information may be disclosed on a sign (e.g., small placard, sticker, or poster) near the food item or selection button. Electronic or digital displays also may be used. If the consumer can clearly examine the nutrition facts label of a food item sold from the vending machine before purchase, or the nutrition information is otherwise visible at the point of purchase (e.g., through front-of-package calorie labeling), then no further calorie information is required. FDA is working with the vending and packaging industry to develop front-of-package nutrition labels and expects many covered vending machine operators will benefit from this exception.

Covered vending machine operators also must disclose their contact information on the machine to enable the FDA to contact operators for enforcement purposes. Failure to comply with the FDA regulation will render covered vending machine food misbranded under the Federal Food, Drug, and Cosmetic Act. During the first year of implementation, FDA will focus primarily on education and outreach. FDA is working on additional guidance including monitoring and oversight requirements which will be made available through the FDA website.

CNP operators with vending machines not covered by the new FDA regulation are encouraged to voluntarily comply. Making nutrition information available for items sold through vending machines may help children and adults make more informed choices about the foods they select. CNP operators may already have nutritional information on hand for reimbursable meals or other food items sold a la carte through vending machines.

CNP operators also may wish to incorporate requirements of this FDA regulation into their vending machine contracts in order to ensure that covered vending machine operators contracted by the CNP operator include the calorie information when it is required. Please note that items sold to students on campus throughout the school day, including those sold in vending machines, must comply with [Smart Snacks in School requirements](http://www.fns.usda.gov/healthierschoolday/tools-schools-focusing-smart-snacks) (<http://www.fns.usda.gov/healthierschoolday/tools-schools-focusing-smart-snacks>) and other local wellness policy requirements.

Additional details about the FDA final rule may be found online on the [Federal Register website](https://www.federalregister.gov/articles/2014/12/01/2014-27834/food-labeling-calorie-labeling-of-articles-of-food-in-vending-machines) (<https://www.federalregister.gov/articles/2014/12/01/2014-27834/food-labeling-calorie-labeling-of-articles-of-food-in-vending-machines>).

As noted above, FNS is distributing this memorandum for informational purposes. All questions about the vending machine labeling requirements should be directed to FDA by email at CalorieLabelingVend@fda.hhs.gov with a copy sent to the FNS Regional Office.

If you have any questions regarding this memorandum, please contact the Child and Adult Care Food Program at 517-373-7391.