

## Proposed Rule on Menu Labeling Leaves Grocery Stores Guessing

In its proposed rule on menu labeling, published in the April 6 *Federal Register*, the FDA sought to answer the most pressing question about the regulation — exactly which type of establishment would be required to follow the menu labeling provisions in Section 4205 of the Affordable Care Act? The answer was pretty certain for some: Movie theatres, amusement parks, general merchandise stores, hotels, trains, planes would be clearly exempted from menu labeling requirements; while cafeterias, pastry and confectionary stores, coffee shops, snack bars and ice cream parlors would clearly *not* be exempted. For grocery stores and convenience stores, however, the answer was not so clear. That’s because the agency is offering two different definitions for the fuzzy term “restaurant or similar retail food establishment,” as it appears in the law passed by Congress. **Page 2**

## FDA Panel Votes Not To Require Warning Labels for Artificial Dyes

While the FDA should conduct further studies on the link between artificial food dyes and childhood hyperactivity, no warning labels should be required on the packages of foods containing those dyes, an FDA advisory panel recommended on March 31, following two days of hearings that featured parents, scientists and food industry representatives. The FDA held the meeting in response to a June 2008 citizen petition filed by the advocacy group Center for Science in the Public Interest. The advisory panel voted 8-6 against requiring warning labels. The FDA is not obligated to follow the recommendations of its advisory panels, but it usually does so. **Page 3**

## Proposed Rule on Updated Nutrition Facts Label Likely Out by Year’s End

The FDA is in the process of updating the Nutrition Facts label and will publish a proposed rule as early as this year, said Michael M. Landa, acting director at FDA’s Center for Food Safety and Applied Nutrition. Landa spoke on April 5 at the annual conference of the Food and Drug Law Institute in Washington, D.C. “We solicited, via advance notice of proposed rulemaking several years ago, thoughts on such things a making calories more prominent — we’re working on that,” said Landa. “There’s also the question whether some nutrients should [be removed] as mandatory nutrients and others should come on board. We’re also, at the same same time as we’re doing the Nutrition Facts label — it’s really part of it, although in a separate proposal — updating serving sizes.” He noted that the serving sizes currently in use are based on consumption data from the 1970s and 1980s. **Page 5**

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