

The impact of US state law initiatives for food ingredients on the food industry

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This article discusses the impact of US state laws banning food ingredients. It examines two recently enacted state laws that require a warning or disclosure statement on the label, but do not outright ban ingredients. The article also examines federal developments that may, in part, be the result of, or a response to, the state initiatives.

Keywords – state ingredient bans, synthetic dyes, transparency, MAHA, food chemical safety

Introduction and background

Since 2023, many US states have introduced laws banning certain substances from foods sold or marketed within their jurisdictions. Although initial laws showed some consistency across states, more recent bans have diverged, and the bans have expanded beyond synthetic dyes and a select few substances (such as propylparaben, potassium bromate, and brominated vegetable oil). The Secretary of the US Department of Health & Human Services (HHS), Robert F. Kennedy, Jr., and the US Food and Drug Administration (FDA) seem to support the state law initiatives as consistent with the Make America Healthy Again (MAHA) agenda.

The impact of these state law bans and FDA-related actions on the food industry is significant. The continuing enactment of state laws banning additional ingredients and requiring labeling statements, such as warnings or disclosures, creates challenges for the food industry. These laws result in a fractured, constantly changing regulatory environment. The lack of transparency about how states decide which substances to ban creates even more uncertainty. More recent state laws requiring warning or disclosure statements on foods containing certain ingredients add a layer of complexity. Manufacturers must continually monitor state-level developments to evaluate whether reformulation of their products is necessary.

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In 2023, California passed a law prohibiting several ingredients in foods sold and served in schools. This was the start of broader state initiatives resulting in laws prohibiting certain ingredients in foods, including dietary supplements. Over the last couple of years, the list of banned ingredients has expanded and now covers ingredients that may not be easily replaced. More recent state laws do not outright ban ingredients but instead require warnings or disclosure statements on food labels containing certain ingredients. These laws apply to additional ingredients that, thus far, have not been the subject of any bans.

The impact of state-level ingredient bans on businesses is significant. Many state laws have unique requirements or target different ingredients, creating uncertainty in the food industry. States can enact laws relatively quickly, and it is often unclear how states determine what ingredients to include in the list of banned substances.

State law initiatives banning food ingredients

The current trend of state laws prohibiting certain FDA-approved food ingredients may be traced back to 2023. On 7 October 2023, Assembly Bill (AB) 418, the California Food Safety Act, was signed into law.¹ AB 418 prohibits any food product manufactured, sold, delivered, distributed, held, or offered for sale in California after 1 January 2027 from including brominated vegetable oil (BVO), potassium bromate, propylparaben, and Red No. 3. Originally, the list included titanium dioxide, but it was removed from the bill shortly before it was passed. When signing the bill into law, the state's governor, Gavin Newsom, noted that the law "is a positive step forward on these four food additives until the United States Food and Drug Administration reviews and establishes national updated safety levels for these additives."² California delayed implementation until 2027 to allow companies to adjust their product formulations to remove the ingredients described as harmful.²

Other states introduced similar bills banning the same four ingredients and additional ones. For example, New York introduced AB A6424A, which would ban the four ingredients that California banned, as well as titanium dioxide (except in dairy), azodicarbonamide (ADA), and butylated hydroxyanisole (BHA).³ However, none of those proposed bills was finalized.

In 2024, the focus of state laws expanded to cover all other major petroleum-based food colors: Blue Nos. 1 and 2, Green No. 3, Red No. 40, and Yellow Nos. 5 and 6. These petroleum-based colors are FDA-approved, and the FDA refers to them as certified colors. However, popular language colloquially refers to them as synthetic dyes.⁴

Concerns about the safety of Red No. 3 were raised more than three decades ago. In 1990, the FDA withdrew the provisional listing of this color additive for

cosmetics based on evidence that high doses caused cancer in laboratory rats.⁵ Other synthetic dyes have not been linked to cancer, but more recent research showed links to other potential negative impacts, such as hyperactivity in children, allergies, and other health issues. Such effects were not traditionally considered in the safety evaluation of food additives.

Most state laws expanding the food ingredient bans to include all synthetic dyes have been limited to foods served or sold at public schools. Again, California led the way. In August 2024, the California School Food Safety Act was signed into law, prohibiting the main synthetic food dyes (i.e., Blue Nos. 1 and 2, Green No. 3, Yellow Nos. 5 and 6, and Red No. 40) in foods sold or served at public schools for grades 1 to 12 by 31 December 2027.⁶ (As already noted, Red No. 3 was already banned statewide by the California Food Safety Act.) Other states followed:

- Arizona House Bill 2164 banned the main synthetic dyes, titanium dioxide, BVO, potassium bromate, and propylparaben, effective during the 2026-27 school year;⁷
- Utah House Bill 402 banned the main synthetic dyes, potassium bromate, and propylparaben, effective in the 2026-27 school year;⁸ and
- Virginia House Bill 1910 banned the main synthetic dyes from food in public schools, effective 1 July 2027.⁹

It is worth noting that though this article focuses on food ingredients, the California Food Safety Act, as well as some other states' laws, do more than ban certain ingredients. For example, the California Food Safety Act also sets nutritional standards for foods that may be served at public schools.

In 2025, West Virginia became the first state in the nation to ban synthetic dyes, not just from food products served or sold at schools, but from all foods. HB 2354, signed into law on 13 February 2025, bans synthetic dyes (BHA and propylparaben) from school foods starting 1 August 2025.¹⁰ The law will ban the ingredients from all foods sold in West Virginia beginning 1 January 2028.

Most state laws focused on synthetic dyes, BVO, propylparaben, potassium bromate, and other ingredients, such as titanium dioxide, butylated hydroxytoluene (BHT), BHA, and ADA. However, any resemblance of consistency across state laws evaporated when, more recently, two southern states – Texas and Louisiana – enacted laws requiring a warning or disclosure statement on labels for foods containing any of the 44 specified substances. Rather than prohibiting substances outright, Texas and Louisiana passed laws requiring a warning or a disclosure on food labels for foods that include certain food ingredients.

Texas Senate Bill (SB) 25

This bill, also called the Make Texas Healthy Again law, requires, among other things, that any food or beverage containing any of the 44 specified ingredients or categories of ingredients carry a prominent warning statement if the FDA

requires the ingredient to be named on a food label.¹¹ The law applies to all foods on packages developed or copyrighted from 1 January 2027 onward. The warning statement reads: “This product contains an ingredient that is not recommended for human consumption by the appropriate authority in Australia, Canada, the European Union, or the United Kingdom.”

In addition to the ingredients already banned in other states, the Texas law covers a broader range of ingredients, such as bleached flour, bromated flour, ficin, morpholine, and olestra, not previously included in state law bans. The legislative history of the Texas law does not provide insight into the decision-making process lawmakers used to determine what ingredients to include in the list. Interestingly, the list of 44 substances includes substances that the FDA already banned from foods sold or marketed in the US (e.g., synthetic trans fatty acid and Red No. 4).

The Texas law includes a federal preemption clause for laws and regulations promulgated by the FDA or the US Department of Agriculture that:

- Prohibit the use of the ingredient;
- Impose conditions on the use of the ingredient, including requiring a warning or disclosure statement; or
- Determine that the ingredient or class of ingredients is safe for human consumption.

This preemption provision, added shortly before the law was signed, seems to reduce the possible impact of this law significantly, as all but a few ingredients on the list of 44 have been approved as a food or color additive or affirmed as GRAS by the FDA for their intended use (i.e., the agency had determined that they are safe for human consumption).

Louisiana SB 14

Around the same time that the Texas bill was enacted, Louisiana’s governor, Jeff Landry, signed SB 14 into law.¹² The Louisiana law bans 15 food ingredients from foods sold or served in public schools starting in the 2027-2028 school year. This list includes the ingredients named in other state bans (e.g., synthetic dyes, BVO, and propylparaben) as well as additional ingredients not included in other state law bans (e.g., artificial sweeteners).

SB 14 bans certain ingredients from foods sold or served in schools. It contains a separate provision requiring a disclosure statement on foods containing certain ingredients sold or manufactured elsewhere in Louisiana. The list of 44 ingredients includes the 15 ingredients banned from foods sold or served at public schools and an additional 29 ingredients. Food products containing these ingredients may be sold in Louisiana, provided the label includes a QR code directing consumers to a webpage that must disclose their presence. The disclosure must be accompanied by the statement: “Notice: This product contains [insert ingredient here]. For more information about this ingredient, including FDA approvals, click here.”¹² The QR codes and digital disclosures must be included on the outer product packaging starting 1 January 2028. While the Louisiana law stops short of requiring on-package printed warnings as Texas does, its QR code–based digital notice system claims to balance transparency with practicality.

Similar to the Texas bill, there is little to no information about the Louisiana lawmakers’ basis for selecting the 44 ingredients that require a disclosure statement. Although there is significant overlap between the list of 44 ingredients subject to the disclosure pursuant to SB 14 and the list of 44 ingredients subject to the warning statement under SB 25, they are not identical. Unique to the Louisiana bill is the inclusion of noncaloric sweeteners such as acesulfame potassium, aspartame, and sucralose, whereas unique to the Texas law is the inclusion of diacetyl tartaric fatty acid esters of mono- and diglycerides, ficin, and titanium dioxide. Both lists include substances the FDA has already prohibited (e.g., partially hydrogenated oil, synthetic trans fatty acids, and dimethylamylamine).

State initiatives and the FDA

As mentioned, state laws banning ingredients seem to originate, at least in part, from frustration with the FDA’s lack of response to concerns raised about the safety of the banned ingredients. Consumer organizations and others frustrated with the agency’s lack of a response to issues they deemed urgent turned to the states because states can act more quickly than the federal government when faced with health concerns related to food ingredients.

However, states may not have the resources to do an adequate assessment of the safety of an ingredient and may not consider possible consequences of a ban outside the state. In addition, state laws are subject to pressure by consumers and businesses, and there is usually a lack of transparency around the legislative process. Moreover, a state-level approach to regulating food ingredients will lead to a patchwork of regulations that could result in reduced product availability and inconsistent enforcement.

Like all regulated industries, the food industry prefers federal regulation because it provides nationwide consistency and uniformity, making it easier for

food manufacturers to comply and avoid potential market disruptions. Moreover, the federal regulatory process is generally more transparent. A federal standard would result in consumer confidence in the safety of the food supply nationwide but as already noted, federal regulation is often slow. It is not clear if recent FDA actions are, at least in part, the result of or a response to the various state initiatives, but it is noteworthy that the FDA has taken several actions related to food chemical safety since California passed the first ban in 2023.

First, since 2023, the FDA has addressed the safety of two substances subject to the California ban. In 2024, the agency withdrew the food additive approval of BVO, meaning that as of 2 August 2025, BVO may not be used in any foods sold or marketed in the US.¹³ Next, on 16 January 2025, after three decades of inaction, the agency granted a 2022 petition by the Center for Science in the Public Interest and 23 other organizations. It withdrew its approval for Red No. 3 in food and orally ingested drugs.¹⁴ Public interest organizations had been waiting for FDA action regarding Red No. 3 for decades. In 1990, when it withdrew the provisional listing of Red No. 3 as a color additive for use in cosmetics, the FDA indicated it would act to ban the use of Red No. 3 in food and ingested drugs based on evidence that “large amounts of the color have been shown to cause cancer in rats.”^{15,16} Under the law, the FDA may not approve a color additive if there is any evidence that the substance causes cancer in man or animal, even if the animal study has no relevance for human safety.¹⁷ Yet, it seems that the FDA only took action on Red No. 3 following state bans and the submission of a citizen petition. As of 15 January 2027, Red No. 3 may no longer be incorporated in foods intended for sale in the US.

Second, in recent years, the FDA has shifted its focus to food chemical safety and has initiated work on developing a framework for an ongoing postmarket, systematic review of the safety of ingredients and food contact substances on the market. It is not clear whether these actions are related to the state actions, but they seem to validate states’ initiatives related to food ingredients.

Secretary Kennedy seems supportive of the state bans and has indicated that the state bans of certain ingredients, specifically bans of the synthetic dyes, align with the federal focus on chemical safety as part of the current administration’s MAHA movement. He has praised the state laws banning synthetic dyes as essential tools to fight chronic disease and reduce national healthcare costs.¹⁸ In April 2025, the HHS and FDA jointly announced a series of new measures to phase out all petroleum-based synthetic dyes from the nation’s food supply.¹⁹ Possibly recognizing that rulemaking to undo color additive approvals is time consuming and requires a thorough safety review by the FDA, as well as an opportunity for comment by the public, Kennedy asked that industry voluntarily phase out synthetic dyes and replace them with natural alternatives. To facilitate this transition, the FDA has accelerated review and

approval of nature-derived color additives, including calcium phosphate, galderia extract blue, gardenia blue, and butterfly pea flower extract.²⁰

In May 2025, the FDA announced steps to “increase transparency and ensure the safety of chemicals in our food.”²¹ It launched a postmarket review process for ingredients that “concern consumers most” and committed to expediting the review of ingredients already under consideration and subject to state law bans. As of 19 August 2025, the FDA’s list of chemicals under postmarket review includes ADA, BHA, BHT, potassium bromate, propylparaben, titanium dioxide, and the six synthetic dyes banned by several state laws.²²

Impact on the food industry

The state initiatives have resulted in a patchwork of varying, rapidly changing state-level food ingredient bans and implementation timelines, creating a compliance nightmare and legal uncertainty for manufacturers, distributors, and retailers of food products that include these substances. Most foods are marketed nationwide, so it is not feasible for most companies to develop products tailored for one state only.

As already noted, state laws can be passed relatively quickly but often lack transparency. This creates significant uncertainty for companies trying to decide the formulation of their food products. For example, California AB 418, originally included titanium dioxide.²³ However, shortly before the bill’s signing, that ingredient was removed from the list of prohibited substances. Yet, New York’s AB A6424A proposed to ban titanium dioxide, except in dairy, whereas other states’ proposals include titanium dioxide without restriction.³ Such discrepancies create uncertainty about the safety standard (if any) that states apply.

The list of banned ingredients seems to be expanding, and new state bills banning ingredients continue to be introduced. As a result, companies may need to shift gears in reformulating products whenever a new ingredient is included in a state law. Reformulating products can be complex and expensive, as manufacturers must find suitable alternatives for ingredients that affect product color, preservation, or texture. It is not practical to change formulations within a short time.

So far, state-initiated bans have not been challenged on preemption or other grounds. The Federal Food, Drug, and Cosmetic Act authorizes the FDA to regulate ingredients used in foods, but does not include a provision that preempts states from taking action to protect their consumers against food claimed to be unsafe.²⁴

To date, most state bans are limited to unpopular ingredients. Public statements from public officials, such as Kennedy, that synthetic dyes “are poisonous

compounds that offer no nutritional benefit and pose real, measurable dangers to our children’s health and development,” affect public sentiment about these substances and seem to validate state laws that ban the synthetic food dyes.¹⁹ Also, most earlier bans have been limited to foods served or sold at schools. As a result, an industry challenge to state laws prohibiting “poisons” is unattractive. Even if a legal challenge against state laws banning certain ingredients were successful, public sentiment is unlikely to change, and consumers will likely avoid foods with synthetic dyes. Several large companies have already committed to removing synthetic dyes from their portfolio, even though they continue to be FDA-approved color additives.²⁵

Compliance with the state labeling laws, such as the Louisiana law, may be more challenging than compliance with outright bans. This is especially so for laws requiring warnings or disclosure statements on labels for products containing widely used food ingredients. Although reformulation to avoid the labeling may seem the least burdensome, the list of ingredients subject to the Texas and Louisiana laws is long, and finding acceptable alternatives to certain ingredients, such as the artificial sweeteners aspartame, acesulfame, and sucralose, may be complicated. In addition, if reformulation is not an option, it is not clear if there’ll be one or two warnings/disclosures on the label or what will happen if a third state requires yet another warning/disclosure. At that time, the impact and lack of alternatives may be sufficient to tip the balance to possible judicial challenges to warnings or disclosure statements required by state laws.

Conclusion

Looking ahead, the US food industry is facing an uncertain future as state initiatives expand. Such state laws will continue to evolve and have significant impacts on interstate commerce. It remains to be seen if (and when) the current administration will step in to provide relief. Thus far, the MAHA movement has supported state initiatives. However, the state initiatives do increase regulatory burden and seem inconsistent with the current administration’s focus on deregulation. In fact, on 15 August 2025, the US Department of Justice (DoJ) issued a “Request for information [RFI] on state laws having significant adverse effects on the national economy or significant adverse effects on interstate commerce.”²⁶ In this RFI, the DoJ requests public input on state laws that significantly and negatively affect the national economy or interstate commerce and potential federal legislative or regulatory actions that may address the problems caused by state laws. The RFI seems to present an opportunity for members of the food industry to call attention to the challenges posed by the growing state law initiatives creating a patchwork of laws affecting the food and beverage industry, and to request federal action to address those challenges.

Abbreviations

AB, assembly bill; **ADA**, azodicarbonamide; **BHA**, butylated hydroxyanisole; **BHT**, butylated hydroxytoluene; **BVO**, brominated vegetable oil; **DoJ**, Department of Justice [US]; **FDA**, Food and

Drug Administration [US]; **GRAS**, generally recognized as safe; **HHS**, [Department of] Health & Human Services [US]; **MAHA**, Make America Healthy Again; **RFI**, request for information; **SB**, senate bill.

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