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Make America Artificial Color Free (Again?): New FDA Enforcement Discretion Policy Allows for Broader Use of 'No Artificial' Claims for Foods

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The US Food and Drug Administration (FDA) continues to advance the Make America Healthy Again (MAHA) strategy by limiting or prohibiting the use of petroleum-based food dyes – Federal Food, Drug, and Cosmetic Act (FD&C Act) certified colors –particularly in foods consumed by children. In September 2025, the MAHA Commission signaled that while it intended to limit certain food dyes, it wanted to enable labeling claims that convey where foods no longer contained such dyes, such as by taking a more flexible view of the claim "no artificial color." To deliver on this commitment and encourage companies to move away from petroleum-based dyes, FDA announced on February 5, 2026, a new enforcement discretion policy for color additive labeling claims.

Under current federal law, claims such as "no artificial colors," apply only to products with no added color whatsoever, regardless of the source of that added color. Under FDA's new enforcement discretion policy, however, FDA will not take enforcement action against a company using the following claims, as long as the foods tied to these claims do not contain any FD&C Act certified colors listed in 21 CFR part 74:

- Made without artificial food colors/colorings
- No artificial color/colors/coloring
- No added artificial color/colors/coloring

This policy marks a notable step by FDA to help companies transition away from petroleum-based dyes and communicate those changes directly to consumers – without fear of enforcement consequences from FDA. Even before this announcement, this was not an area of focus for FDA warning letters; however, FDA had indicated its intent to stop foods bearing such claims at the border. For instance, FDA's Import Alert 99-39 previously subjected some foods labeled "no artificial colors" to detention without physical examination. Thus, this new policy is likely to have the greatest and most immediate impact in the import context.

Even with a reduced risk of drawing a federal enforcement action from FDA, as companies are all too aware, federal enforcement is just one area of risk. Food companies need to continue to be aware of risks associated with state laws and class action-related litigation, which may be premised on these claims despite FDA's new enforcement discretion policy. For example, some states have statutory safe harbor provisions for conduct authorized by federal regulatory bodies, although some courts have been hesitant to hold some agency actions, such as FDA guidance, as authorizing conduct.[1] This trend may increase post-*Loper Bright*, because courts can now exercise independent judgment in their interpretation of the law and no longer give deference to agency interpretation.[2] And while evidence of enforcement discretion by FDA may bolster a company's defense in state class action litigation, the weight of this defense will be dependent on the exact state law at issue and the weight it gives to FDA's policy choices.[3]

Practically speaking, FDA's enforcement discretion policy reduces federal-level risk for food companies. It may also strengthen a company's defenses in state class action litigation, though it does not eliminate risk altogether. Companies should continue to take a measured, strategic approach to their labeling claims.

Cooley's life sciences and healthcare regulatory and wellness teams closely monitor FDA enforcement discretion in this space and actively work with clients on their regulatory strategy and implementation.

Notes

1. See *Vanzant v. Hill's Pet Nutrition, Inc.*, 934 F.3d 730 (7th Cir. 2019), where the court held that an FDA guidance document was not considered authorizing conduct protected under the safe harbor.

2. See *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 369 (2024).
3. See *Eli Lilly & Co. v. Revive Rx, LLC,* No. CV H-23-3521, 2025 WL 3640703, at *27 (S.D. Tex. Dec. 15, 2025).

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